

# NEC4 Engineering and Construction

## Short Contract

FCRM Operational Framework – South East Hub

A contract between

The Environment Agency

██████████  
██████████  
██████  
██████████

And

Land & Water Service Ltd

For

Cobbins Toe Drain Replacement

Contract Forms

- Contract Data
- The *Contractor's* Offer and *Client's* Acceptance
- Price List
- Scope
- Site Information

# Contract Data

## The *Client's* Contract Data

|   |   |                        |
|---|---|------------------------|
|   | The <i>Client</i> is  |                        |
| Name                                    | Environment Agency  |                        |
| Address for communications              | <div></div> <div></div> <div></div>   |                        |
| Address for electronic communications   | <div></div> <div></div>   |                        |
| The <i>works</i> are                    | To replace the toe drains of Cobbins Brook Flood Storage Reservoir embankment at Upshire in Essex, and to complete CCTV inspections of said toe drains post completion of the installation. |                        |
| The <i>site</i> is                      | <b>Cobbins Brook Statutory Flood Storage Area:</b><br>Post Code: <div></div><br>Grid Reference: <div></div>   |                        |
| The <i>starting date</i> is             | 18/05/2020  |                        |
| The <i>completion date</i> is           | 31/03/2021  |                        |
| The <i>delay damages</i> are            | nil   | Per day                |
| The <i>period</i> for reply is          | 2   | weeks                  |
| The <i>defects date</i> is              | 52  | weeks after Completion |
| The <i>defects correction period</i> is | 4   | weeks                  |
| The <i>assessment day</i> is            | the last working day  | of each month          |

|  |   |   |
|--|---|---|
| The <i>retention</i> is  | 0 | % |
| The United Kingdom Housing Grants, Construction and Regeneration Act (1996) <b>does</b> apply  |   |   |
| The <i>Adjudicator</i> is :  |   |   |
| In the event that a first dispute is referred to adjudication, the referring Party at the same time applies to the Institution of Civil Engineers to appoint an <i>Adjudicator</i> . The application to the Institution includes a copy of this definition of the <i>Adjudicator</i> . The referring Party pays the administrative charge made by the Institution. The person appointed is also <i>Adjudicator</i> for later disputes. |   |   |

## Contract Data

### The *Client's* Contract Data

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| The interest rate on late payment is   |  | % per complete week of delay.  |
| Insert a rate only if a rate less than 0.5% per week of delay has been agreed.   |  |  |
| For any one event, the liability of the <i>Contractor</i> to the <i>Client</i> for loss of or damage to the <i>Client's</i> property is limited to   | £100k  |  |
|  |  |  |
| The <i>Client</i> provides this insurance  | None   |  |
|  |  |  |
| Insurance Table  |  |  |
| Event  | Cover  | Cover provided until   |
| Loss of or damage to the <i>works</i>  | The replacement cost   | The <i>Client's</i> certificate of Completion has been issued<br><br>The defects Certificate has been issued |
| Loss of or damage to Equipment, Plant and Materials  | The replacement cost   |  |
| The <i>Contractor's</i> liability for loss of or damage to property (except the works, Plant and Materials and Equipment) and for bodily injury to or death of a person (not an employee of the <i>Contractor</i> ) arising from or in connection with the <i>Contractor's</i> Providing the Works | Minimum £5,000,000 in respect of every claim without limit to the number of claims |  |
| Liability for death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract  | The amount required by the applicable law  |  |

|  |   |  |  |
|--|---|--|--|
| Failure of the <i>Contractor</i> to use the skill and care normally used by professionals providing works similar to the works               |   | Minimum £nil in respect of every claim without limit to the number of claims | 12 years following Completion of the whole of the works or earlier termination |
|  |   |  |  |
| The <i>Adjudicator nominating body</i> is  |   | The Institution of Civil Engineers   |  |
|  |   |  |  |
| The <i>tribunal</i> is   |   | litigation in the courts   |  |
|  |   |  |  |
| The <i>conditions of contract</i> are the NEC4 Engineering and Construction Short Contract June 2017 and the following additional conditions |   |  |  |
| Only enter details here if additional conditions are required.   |   |  |  |
| Z1.0   | Sub-contracting   |  |  |
| Z1.1   | The <i>Contractor</i> submits the name of each proposed subcontractor to the <i>Client</i> for acceptance. A reason for not accepting the subcontractor is that their appointment will not allow the <i>Contractor</i> to Provide the Works. The <i>Contractor</i> does not appoint a proposed subcontractor until the <i>Client</i> has accepted them.                                       |  |  |
| Z1.2   | Payment to subcontractors and suppliers will be no more than 30 days from receipt of invoice.   |  |  |
| Z2.0   | Environment Agency as a regulatory authority  |  |  |
| Z2.1   | The Environment Agency's position as a regulatory authority and as <i>Client</i> under the contract is separate and distinct. Actions taken in one capacity are deemed not to be taken in the other.  |  |  |
| Z2.2   | Where statutory consents must be obtained from the Environment Agency in its capacity as a regulatory authority, the <i>Contractor</i> is responsible for obtaining these and paying fees (unless stated otherwise in the Scope). The <i>Client's</i> acceptance of a tender and the <i>Client's</i> instruction or variation of the works does not constitute statutory approval or consent. |  |  |
| Z2.3   | An action by the Environment Agency as regulatory authority is not in its capacity as <i>Client</i> and is not a compensation event.  |  |  |
| Z3.0   | Confidentiality & Publicity   |  |  |
| Z3.1   | The <i>Contractor</i> may publicise the works only with the <i>Client's</i> written agreement.  |  |  |
| Z4.0   | Correctness of Site Information   |  |  |
| Z4.1   | Site Information about the ground, subsoil, ducts, cables, pipes and structures is provided in good faith by the <i>Client</i> but is not warranted correct. The <i>Contractor</i> checks the correctness of any such Site Information they rely on for the purpose of Providing the Works.   |  |  |
| Z5.0   | The Contracts (Rights of Third Parties) Act 1999  |  |  |
| Z5.1   | For the purposes of the Contracts (Rights of Third Parties) Act 1999, nothing in this contract confers or purports to confer on a third party any benefit or any right to enforce a term of this contract.  |  |  |
| Z6.0   | Design  |  |  |
| Z6.1   | Where design is undertaken, it is the obligation of the <i>Contractor</i> to ensure the use of skill and care normally used by professionals providing similar design services.   |  |  |
| Z6.2   | The <i>Contractor</i> designs the parts of the works which the Scope states they are to design.   |  |  |
| Z6.3   | The <i>Contractor</i> submits the particulars of their design as the Scope requires to the <i>Client</i> for acceptance. A reason for not accepting the <i>Contractor's</i> design is that it does not comply with either the Scope or the applicable law.<br><br>The <i>Contractor</i> does not proceed with the relevant work until the <i>Client</i> has accepted this design.             |  |  |
| Z6.4   | The <i>Contractor</i> may submit their design for acceptance in parts if the design of each part can be assessed fully.   |  |  |
| Z7.0   | Change to Compensation Events   |  |  |
| Z7.1   | Delete the text of Clause 60.1(11) and replace by:  |  |  |

|       |   |
|-------|---|
|       | <p>The <i>works</i> are affected by any one of the following events</p> <ul style="list-style-type: none"> <li>• War, civil war, rebellion revolution, insurrection, military or usurped power</li> <li>• Strikes, riots and civil commotion not confined to the employees of the <i>Contractor</i> and sub-contractors</li> <li>• Ionising radiation or radioactive contamination from nuclear fuel or nuclear waste resulting from the combustion of nuclear fuel</li> <li>• Radioactive, toxic, explosive or other hazardous properties of an explosive nuclear device</li> <li>• Natural disaster</li> <li>• Fire and explosion</li> <li>• Impact by aircraft or other device or thing dropped from them</li> </ul> |
| Z7.2  | <p>Additional Compensation Event COVID-19</p> <p>Managing and mitigating the impact of COVID-19 and working in accordance with Public Health England guidance, as may vary from time to time, until 30 June 2020.</p>   |
| Z8.0  | Framework Agreement   |
| Z8.1  | The <i>Contractor</i> shall ensure at all times during this contract it complies with all the obligations and conditions of the Framework Agreement made with the <i>Client</i> .   |
| Z9.0  | Termination   |
| Z9.1  | <p>Delete the text of Clause 92.3 and replace with:</p> <p>If the <i>Contractor</i> terminates for Reason 1 or 6, the amount due on termination also includes 5% of any excess of a forecast of the amount due at Completion had there been no termination over the amount due on termination assessed as for normal payments.</p>  |
| Z10.0 | Data Protection   |
| Z10.1 | The requirements of the Data Protection Schedule shall be incorporated into this contract   |
| Z11.0 | Liabilities and Insurance   |
| Z11.1 | Civil data protection claims and regulatory fines for breaches of Data Protection Legislation are excluded from any limit of liability stated.  |

# Contract Data

## The *Contractor's* Contract Data

|   |                           |                  |
|---|---------------------------|------------------|
|   |                           |                  |
|   | The <i>Contractor</i> is  |                  |
| Name  | Land & Water Services Ltd |                  |
|   |                           |                  |
| Address for communications                            |                           |                  |
|   |                           |                  |
| Address for electronic communications                 |                           |                  |
|   |                           |                  |
| The <i>fee</i> percentage is                          | As per framework          | %                |
|   |                           |                  |
| The <i>people rates</i> are                           | As per framework          |                  |
|   |                           |                  |
| category of person                                    | unit                      | rate             |
|   |                           |                  |
|   |                           |                  |
|   |                           |                  |
|   |                           |                  |
|   |                           |                  |
|   |                           |                  |
|   |                           |                  |
|   |                           |                  |
|   |                           |                  |
| The <i>published list of Equipment</i> is             |                           | As per framework |
|   |                           |                  |
| The <i>percentage for adjustment for Equipment</i> is |                           | As per framework |
|   |                           |                  |

# Contract Data

## The *Contractor's* Offer and *Client's* Acceptance

The *Contractor* offers to Provide the Works in accordance with these *conditions of contract* for an amount to be determined in accordance with these *conditions of contract*.

The offered total of the Prices is

£

**Enter the total of the Prices from the Price List.**

Signed on behalf of the *Contractor*

Name

Position

Project Manager

Signature

Date

11/05/2020

The *Client* accepts the *Contractor's* Offer to Provide the Works

Signed on behalf of the *Client*

Name

Position

Senior Commercial Officer (SEO)

Signature

|      |  |
|------|--|
| Date |  |
|      |  |

# Price List

Entries in the first four columns in this Price List are made either by the *Client* or the tenderer.

If the *Contractor* is to be paid an amount for the item which is not adjusted if the quantity of work in the item changes, the tenderer enters the amount in the Price Column only: the Unit, Quantity and rate columns being left blank.

If the *Contractor* is to be paid an amount for the item of work which is the rate for the work multiplied by the quantity completed, the tenderer enters the rate which is then multiplied by the expected quantity to produce the Price, which is also entered.

| Item Number | Description  | Unit | Quantity  | Rate  | Price   |
|-------------|--|------|---|-------|---------|
| ■           | ■■■■■■■  |      |   |       | ■■■■■■■ |
| ■           | ■■■■■■■■■■■■■■■■■■■■   | ■    | ■   | ■■■■■ | ■■■■■■■ |
| ■           | ■■■■■■■■■■■■■■■■■■■■<br>■■■■■■■■■■■■■■■■■■■■<br>■■■■■■■■   | ■    | ■   | ■■■■■ | ■■■■■■■ |
| ■           | ■■■■■■■■■■■■■■■■■■■■<br>■■■■■■■■■■■■■■■■■■■■   | ■    | ■   | ■■■■■ | ■■■■■■■ |
| ■           | ■■■■■■■■■■■■■■■■■■■■<br>■■■■■■■■■■■■■■■■■■■■<br>■■■■■■■■■■■■■■■■■■■■<br>■■■■■■■■■■■■■■■■■■■■<br>■■■■■■■■■■■■■■■■■■■■ | ■    | ■   | ■■■■■ | ■■■■■■■ |
| ■           | ■■■■■■■■■■■■■■■■■■■■<br>■■■■■■■■■■■■■■■■■■■■<br>■■■■■■■■■■■■■■■■■■■■   |      |   | ■■■■■ | ■■■■■■■ |
| ■           | ■■■■■■■■■■■■■■■■■■■■<br>■■■■■■■■■■■■■■■■■■■■<br>■■■■■■■■■■■■■■■■■■■■<br>■■■■■■■■■■■■■■■■■■■■                         | ■    | ■■■■■■■■■■■■■■■■■■■■<br>■■■■■■■■■■■■■■■■■■■■<br>■■■■■■■■■■■■■■■■■■■■<br>■■■■■■■■■■■■■■■■■■■■<br>■■■■■■■■■■■■■■■■■■■■<br>)<br>■■■■■■■■■■■■■■■■■■■■ | ■■■■■ | ■       |
| 4.2         | ■■■■■■■■■■■■■■■■■■■■<br>■■■■■■■■■■■■■■■■■■■■<br>■■■■■■■■■■■■■■■■■■■■<br>■■■■■■■■■■■■■■■■■■■■<br>■■■■                 | ■    | ■■■■■■■■■■■■■■■■■■■■<br>■■■■■■■■■■■■■■■■■■■■<br>■■■■■■■■■■■■■■■■■■■■<br>■■■■■■■■■■■■■■■■■■■■<br>■■■■■■■■■■■■■■■■■■■■<br>)<br>■■■■■■■■■■■■■■■■■■■■ | ■■■■■ | ■       |
| ■           | ■■■■■■■■■■■■■■■■■■■■<br>■■■■■■■■■■■■■■■■■■■■<br>■■■■■■■■■■■■■■■■■■■■<br>■■■■■■■■■■■■■■■■■■■■<br>■■■■■■■■■■■■■■■■■■■■ | ■    | ■   | ■■■■■ | ■■■■■■■ |
| ■           | ■■■■■■■■■■■■■■■■■■■■<br>■■■■■■■■■■■■■■■■■■■■   | ■    | ■   | ■■■■■ | ■■■■■■■ |



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|--|
| The method and rules used to compile the Price List are  |
| Civil Engineering Standard Method of Measurement 4 <sup>th</sup> edition (CESMM4) as per the Framework Price Workbook. |

# Scope

## 1. Description of the works

The *Contractor* must complete all work stated in the Job Specification (Cobbins Toe Drain Replacement - Specification Final, March 2019). The specification must be followed strictly.

If any information in this section conflicts with or contradicts information stated in the Job Specification, the information in the Job Specification is to prevail. Any additional work stated in this contract, which is not mentioned in the Job Specification, is a requirement of The *Works* to be delivered.

Below are some key requirements and information from the Job Specification to aid pricing of The *Works*:

### Toe Drain Replacement and Inspection Chamber Installation:

The *Works* are to replace the toe drains of Cobbins Brook Flood Storage Reservoir embankment at Upshire in Essex.

When the reservoir's earth dam was constructed in 2009, toe drains were installed along the entire lengths of both upstream and downstream embankment slopes. These comprise 200mm diameter flexible UPVC perforated pipes laid in a 40mm gravel French drain. The drain lengths vary from 185m to 280m, and total 900m. Each drain outfalls via a flap valve (non-return valve) through the relevant control structure wing wall.

These *Works* are to replace most of the drains with twin-wall perforated pipes, and to construct 18 additional inspection chambers at no more than 50m intervals along each pipe run. All existing toe drainage is to be replaced, with the exception of the 185m length of drain under the Grasscrete spillway.

Inspection chambers must be constructed in compliance with section-17 of the Job Specification. Also see Drawing (CBDC 040B - Inspection Chamber Details).

To comply with the *Client's* policy of waste minimisation, the gravel surround to the existing drains is to be sieved and the clean gravel re-used (section-16.2, Job Specification).

Along the lengths of embankment where there is Enkamat is present, refer to the specification (section-16.4, Job Spec) on how to reinstate Enkamat. The exception to this is a section on the downstream left bank where significant damage has occurred and a greater area will need to be replaced. Refer to the supporting document (Approximate area of damaged Enkamat to be replaced).

Any top soil disturbed because of The *Works* will be reseeded, as specified in section-18 of the Job Specification.

### Asbestos Consideration:

The *contractor* should refer to the supporting documents (Halcrow Asbestos TN 2012-07-23) and (Soil Contamination Results 2012-11-02). The foremost is a technical note written by Halcrow following a ground investigation, which took place in 2012, to look for asbestos contaminated material after a small fragment was visually identified by *Contractor* undertaking shallow excavation works on the crest of the embankment.

Works to be undertaken by Contractors either licensed to deal with Asbestos Contaminated Material or working under the control & supervision of a licensed Asbestos removal *contractor* with experience of contaminated land remediation.

The method for dealing with potential asbestos contamination of the topsoil should be the decision of the *Contractor*. *Contractor* to provide details of how they will assess the extent of asbestos that requires removal from the site

The *Contractor* should give a price assuming that asbestos fragments can be handpicked from the soil and disposed of appropriately.

The *Contractor* should also give a price assuming all material is assessed as hazardous and that the disturbed soil should be taken off-site and replaced with new clean soil.

#### CCTV Inspection:

On completion, a CCTV survey is to be carried out on the entire system in the presence of the *Client*.

For the newly installed sections of pipe, if the CCTV survey shows any debris in the pipes, the *Contractor* are required to flush the drain. No flush water is permitted to enter the watercourse unless the sediment has been removed (section-19, Job Specification).

The CCTV survey is also to include the 185m length of drain under the Grasscrete spillway that is not currently planned to be replaced. This section of pipe is to be flushed prior to a CCTV survey (section-20, Job Specification).

In addition to these surveys, the *Contractor* is required to carry out another CCTV survey of the newly installed drainage, six months after completion of The *Works*, to check for any defects that may have propagated during the time since installation. The report must be provided to the *Client* who will pass this on to the Supervising Engineer.

The *Contractor* will repair any defects identified within the defect period. The six-month post construction CCTV survey is not outlined in the Job Specification, as it has been included later.

#### Completion:

The *Works* will be complete once the construction of the new drain is finished and the *Client*/Supervising Engineer are satisfied that The *Works* have been completed in accordance with the Job Specification. The survey upon completion must also show that there are no defaults in the new construction. The final survey after six-months can be included in the original price, however; the *Contractor* must fix any defaults identified within the defect period at no additional cost to the *Client*. A 10% retention value will be paid once the secondary survey is complete and any defaults are repaired

The *Contractor* must also provide evidence that they have complied with the Job Specification in the form of photos and As-built drawings.

The *Contractor* is required to liaise with the *Client*'s CDM Principal Designer, Supervising Engineer and Project Manager, if and when necessary.

#### Other Deliverables:

The *Contractor* shall apply for and obtain the necessary Environmental Permits.

The *Contractor* shall provide a Construction Phase Plan, Method Statement and Site Waste management plan prior to works commencing.

The *Contractor* shall provide As-built Drawings on completion of The *Works*.

On completion of The *Works*, the *Contractor* shall Update Operation and Maintenance Manual and Health and Safety File (supplied by the *Client*).

The *Contractor* shall return the completed As-built drawings, updated Operation and Maintenance Manual and updated Health and Safety File to the *Client* prior to the 6 month CCTV survey.

## **2. Drawings**

| Drawing Number | Revision   | Title                      |
|----------------|------------|----------------------------|
| CBDC 040B      | March 2019 | Inspection Chamber Details |
| CBDC 025       | March 2019 | Location Plans             |
| CBDC 030B      | March 2019 | Site Plan                  |

### 3. Specifications

| Title   | Date or Revision | Tick if publicly available |
|---|------------------|----------------------------|
| Cobbins Toe Drain Replacement - Specification Final | March 2019       |                            |
|   |                  |                            |

### 4. Constraints on how the *Contractor* Provides the Works

The *Contractor* must comply with the Environment Agency's Pollution Prevention Guidelines.

No more than 25m of drain may be left open at any one time, and no excavation may be left open over a weekend or other break.

The *Contractor* must ensure that access to both the embankment crest and the upstream control structure compound is available to the *Client* at all times.

The CCTV survey report should be of a standard recommend by the National Association of Drainage Contractors.

The *Contractor* must apply for and obtain the necessary Environmental Permits prior to delivery of *works*.

Works to be undertaken by *Contractors* either licensed to deal with Asbestos Containing Material or working under the control & supervision of a licensed Asbestos removal contractor with experience of contaminated land remediation.

#### Working times

Working hours are limited to between 07:30 and 18:00 Mondays to Fridays inclusive except in an emergency or by special arrangement with the *Employer*.

### 5. Requirements for the programme

The *Contractor* submits his programme with the *Contractor's* Offer for acceptance. The programme shall be updated and submitted to the Client on a monthly basis; to support each payment application to and confirm works complete to that assessment date. Any EWN or CE that impacts on the completion date shall be supported by an updated programme. The *Contractor* shall show the following on each programme which he submits for acceptance (in form of Gantt chart showing the critical path, proposed order and timing to undertake the works and proposed plant and labour resources):

- (a) Period required for mobilisation/ planning & post contract award
- (b) starting date
- (c) Each of the activities listed within the Price List
- (d) Any key third party interfaces: lead in periods for materials and sub-contractors; time required to obtain consents/waste permits; stated constraints; *Contractor's* risks.
- (e) Completion date

The programme shall be updated and submitted to the Client on a monthly basis to support each payment application to confirm works complete to that assessment date. Any EWN or CE that impacts on the completion date shall be supported by an updated programme.

## 6. Services and other things provided by the *Client*

| Item  | Date by which it will be provided            |
|---|--|
| Key to access the site.   | TBC (Prior to construction or on start date) |
| <h3>Site Information</h3> <p>Site Information is information which describes the site and its surroundings and is in the documents called Pre-Construction Information (PCI). A PCI will be provided for the project, please note that the PCI may not be issued at tender stage, but will be available following contract award.</p> <p>Pre-Construction Information (PCI) will be available following contract award.</p> <p>Drawing: CBDC 025, December 2018, Location Plans</p> <p>Drawing: CBDC 030B, March 2019, Site Plan</p> <p>Utility search and GRP results are included with the documents in the PCI</p> |  |
|   |  |
|   |  |
|   |  |
|   |  |
|   |  |

## Proposed sub-contractors

|    | Name and address of proposed subcontractor | Nature and extent of work |
|----|--|---------------------------|
| 1. | Form of Contract:                          |                           |
| 2. | Form of Contract:                          |                           |
| 3. | Form of Contract:                          |                           |

|    |                   |  |
|----|-------------------|--|
| 4. | Form of Contract: |  |
|----|-------------------|--|