

INSTRUCTIONS TO TENDERERS, CONDITIONS OF CONTRACT AND CONTRACT DATA

1.0 INSTRUCTIONS TO TENDERERS

Tenderers shall treat the details of this tender document as private and confidential.

- 1.1 For each contract a Survey Brief will be issued. This document amplifies the terms, conditions and specifications contained in the Environment Agency National Standard Contract and Specification for Surveying Services. The Standard Contract, Survey Brief and associated contract drawings together form the Contract Documents. The Contract Option under which the contract will be let will be clearly stated.
- 1.2 The Tender should be made on the forms supplied with the tender documents. The Activity Schedule should be signed by the Tenderer and submitted, together with the proposed Method in the envelope provided not later than noon, on the date specified in the accompanying brief. Incomplete or late quotations will be considered void.
- 1.3 The *Employer* being the Environment Agency and including the successors of the *Employer* does not bind itself to accept the lowest or any tender. The most economically advantageous tender will be selected by evaluation of the proposals on the basis of fitness for purpose, adequacy of resources, suitability of methodology, and experience of similar work.
- 1.4 Tenders should be submitted in accordance with the tender document i.e. without qualifications. Any point of doubt or difficulty should be cleared with the *Employer* in writing as early as possible in the tender period.
- 1.5 Tenderers are expected to visit the site to familiarise themselves with the work required, and by submitting a Tender it will be assumed they have done so.
- 1.6 The Contractor (hereafter referred to as the *Surveyor*) may submit invoices to the *Employer* on completion and delivery of each phase of the Work previously agreed in writing by the *Employer* and as detailed in the Activity Schedule.
- 1.7 Variations to the Contract will be confirmed in writing.
- 1.8 The *Employer* will appoint a Representative for this survey. The Representative's name is included in the accompanying brief. All reports shall be made to the *Employer's* Representative.
- 1.9 The *Surveyor* will nominate a contact person for the duration of the Contract who will be used as a liaison between the *Surveyor* and the *Employer's* Representative.
- 1.10 The *Surveyor* will not use the Environment Agency for any references unless permission is given in writing.
- 1.11 Some areas of the site may be of Special Scientific Interest (SSSI). These, when appropriate, will be marked on the contract plans. No work is to be carried out on these sites or their boundary channels (where existing) without clearance from the Conservation/Ecology Manager at the Environment Agency.
- 1.12 When appropriate, the *Employer* shall notify the *Surveyor* of any Listed Buildings or Scheduled Ancient Monuments within the site area. No benchmarks, permanent ground markers or any other markings are to be placed into or onto these.

- 1.13 A Method must be submitted with the Tender. This proposal shall contain the following information:
- A description of the staff, equipment and methods which will be employed to undertake the field work, data processing and presentation of the final results.
 - A schedule of names of field staff to be employed so that letters of introduction can be supplied.
 - CV's of field surveyors and the key staff who will be responsible for the contractual, technical and quality management of the project.
 - Where workboats are to be used in areas covered by safety legislation or Codes of Practice, a copy of the relevant certificate shall be included with the Proposal.
 - A statement of your company's Quality Plan, a programme of work and Safe System of Working which will be applied to these works.
 - A statement of your company's Safety Policy.
- 1.14 A master copy of the documents marked * will be accepted, and should be referred to when submitting future tenders.
- 1.15 Appropriate Quality Assurance procedures shall be implemented to ensure, as far as possible, that the accuracy, completeness and standards of presentation of the results are achieved.

2.0 CONDITIONS OF CONTRACT

This contract will be governed by the terms of the **New Engineering Contract Document – Professional Services Contract, Third Edition, June 2005 (with amendments June 2006)**

2.1 CONTRACT DATA

Part one – Data provided by the *Employer*

2.1.1. General

☐ The *conditions of contract* are the core clauses and the clauses for Main Option A, dispute resolution Option W1 secondary options X2, X9, X11, Y(UK)3, of the NEC3 Professional Services Contract, June 2005 (with amendments June 2006).

☐ The *Employer* is:

Name: **Environment Agency**

Address: **Refer to the Survey Brief**

Tel: **Refer to the Survey Brief**

☐ The term *Consultant* as used in the NEC3 documentation is equivalent to the term *Surveyor* used within this document and the Environment Agency National Standard Contract and Specifications for Surveying Services

☐ The *Adjudicator* is:

the person appointed as follows:

In the event that a dispute is referred to adjudication, either:

the referring Party at the same time applies to the Institution of Civil Engineers to appoint an Adjudicator who agrees to enter into an NEC Adjudicators Contract (without amendment) and to conduct the adjudication according to the contract between the Parties. The application to the Institution includes a copy of this definition of the Adjudicator. The referring Party pays the administrative charge made by the Institution.

or

If the Parties agree the Adjudicator is a person listed on a list of accepted adjudicators prepared by the *Employer* or a person proposed by the *Surveyor*

- ☐ The *services* are:
Surveying services as described in the Scope.
- ☐ The *Scope* is in:
The Survey Brief.
- ☐ The *law of the contract* is the law of **England, subject to the jurisdiction of the English Courts.**
- ☐ The *language of this contract* is **English.**
- ☐ The *period for reply* to a communication is **5 working days.**
- ☐ The *period for retention* of documents is 6 years following Completion of earlier termination.
- ☐ The *health and safety requirements* are that the *Surveyor* shall ensure that his staff, agents and suppliers act in full accordance with the provisions of the Health and Safety at Work Act 1974, Control of Substances Hazardous to Health Regulations 1998 (COSHH) and any other Acts, Regulations or Orders pertaining to health and safety.
- ☐ The *additional conditions of contract Z* clauses are:

Z1 Publicity

Z1.1 The Parties do not disclose information about each other or those of others obtained in connection with the services except when necessary to carry out duties under the contract or law. The Environment Agency may be required to release information in order to comply with its statutory duties under the Freedom of Information Act 2000 and/or the Environment Information Regulations, any may also include some information under the Publication Scheme that it maintains under the Act.

Z1.2 The *Surveyor* may publicise the services only with the *Employer's* written agreement.

Z2 Environment Agency as regulatory authority

Z2.1 The Environment Agency's position as a regulatory authority and as *Employer* under the contract are 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 *Surveyor* is responsible for obtaining these and paying fees. The *Employer's* acceptance of a tender and the *Employer's* or *Employer's* Agent's instruction or variation of the services does not constitute statutory approval or consent.

Z3 Subconsulting

Z3.1 Clause 24.3 is deleted and replaced by the following:
The *Surveyor* appoints a SubSurveyor under the NEC3 Professional Services Contract (June 2006) unless the *Employer* agrees otherwise.

Z4 Option X9: Transfer of rights

Z4.1 Insert additional clause X9.2 as follows :
No use may be made by the *Surveyor* of any material prepared for this contract by him for purposes other than those stated in the Scope without the *Employer's* prior agreement.

Z5 Right of access

Z5.1 The *Surveyor* provides right of access for the *Employer's* Auditor to inspect all documentation in connection with this contract.

The *Employer* may at any reasonable time examine or test any part of the Work or materials and equipment intended to be used for the Work at any place where they may be. The *Surveyor* shall give every facility necessary for such examination or test and shall assist where necessary, and shall comply with any reasonable requirement of the *Employer* relating thereto. The cost of making any test shall be borne by the *Employer*.

Z6 Additional Compensation Event

Z10.1 The following shall be added to the compensation events listed in Clause 60.1: Safe access to the site(s) for survey purposes is not possible due to high river levels.

2.1.2. The Parties' Main Responsibilities.

 The *Employer's* Representative is as defined in the Survey Brief.

 The authority of the *Employer's* Representative is all the actions of the *Employer* stated in the Contract.

 The *Employer* provides details of contact names (where known) for access in the Survey Brief.

- 2.1.3. Time
- ☐ The *starting date* is **as stated in the Survey Brief**
 - ☐ The *completion date* for the whole services is **as stated in the Survey Brief**
 - ☐ The *completion date* for each *section* of the *services* is **as stated in the Survey Brief.**
- 2.1.4. Quality
- ☐ The quality policy statement and quality plan are provided with the tender proposal/method statement.
 - ☐ The *defects date* is 52 weeks after Completion of the whole of the *services*
- 2.1.5. Payments
- ☐ The *assessment interval* is **one calendar month**
 - ☐ The *currency of this contract* is **pounds sterling (£).**
 - ☐ The interest rate is **2% per annum** above the **Bank of England Base Rate.**
 - ☐ The period within which payments are made is **30 days.**
 - ☐ The *expenses* stated by the *Employer* are
 - The *staff rates* and lump sums include all *expenses* incurred in connection with the following:**
 - a. Printing, reproduction and purchase of all documents, drawings, records and photographs (black & white and colour);**
 - b. Telephone, telex, postal and other communication charges;**
 - c. All travelling time and costs, hotel *expenses*, overnight accommodation and other similar disbursements;**
 - d. Advertising;**
 - e. Printing, postage and photocopying;**
 - f. Secretarial staff or staff engaged on general accountancy or administration duties in the *Surveyor's* office;**
 - g. All other disbursements, activities or out-of-pocket *expenses*.**
- 2.1.6. Compensation Events
- ☐ The law of project is the **Law of England, subject to the jurisdiction of the English Courts.**
- 2.1.7. Indemnity and Insurance
- ☐ The amounts of insurance and the periods for which the *Surveyor* maintains insurance are:

Event	Cover	Period following Completion of the whole of the <i>services</i> or earlier termination
failure of the <i>Surveyor</i> to use the skill and care normally used by professionals providing services similar to the <i>services</i>	£2,000,000 in respect of each claim, without limit to the number of claims.	6 years
bodily injury to or death of a person (not an employee of the <i>Surveyor</i>) or loss of or damage to property resulting from an action or failure to take action by the <i>Surveyor</i> .	£5,000,000 in respect of each claim, without limit to the number of claims.	12 months
bodily injury to or death of employees of the <i>Surveyor</i> arising out of and in course of their employment in connection with this contract.	Not less than the amount required by law.	For the period required by law.

 The *Employer* provides the following insurances:
None

 The *Surveyor's* total liability to the *Employer* for all matters arising under or in connection with this contract, other than the excluded matters, is limited to **the amount of the *Surveyor's* professional indemnity insurance cover.**

2.1.8. Disputes and termination

 The person or organisation who will choose a replacement adjudicator if the Parties cannot agree a choice is:
The President of the Royal Institution of Chartered Surveyors.

 The *tribunal* is **Arbitration unless both parties agree to litigation in the High Courts.**

 The arbitration procedure is **The Arbitration Act 1996.**