

Schedule 2 – Call Off Employer Contract Data and Terms



MF1 (Rev 6) Call off Contract

Anglian-Midlands MEICA Framework - 9U3H-XU7DNK

A contract between

The Environment Agency

and ECS Engineering Services Limited

for: Ballsgate Sluice Repair

Contract Ref: project_31181

FORM OF AGREEMENT

This Agreement is made the 23rd day of November 2020 between:

- (1) ENVIRONMENT AGENCY of Horizon House, Deanery Road, Bristol, BS1 5AH (the "Purchaser") of the one part;
and
(2) ECS ENGINEERING SERVICES LIMITED (Company Number: 2454269) of Fulwood Road South, Huthwaite, Nottingham, Nottinghamshire, NG17 2JZ (the "Contractor") of the other part.

Recitals:

(A) The Purchaser wishes to have certain Works executed by the Contractor, briefly described as:

Urgent replacement of the Ballsgate Sluice Structure and installation of penstocks

and has appointed the Purchaser's ECS Engineering Services Limited (ECS) as the Engineer for the purposes thereof (the "Engineer").

(B) The Purchaser has agreed to engage the Contractor for the design, manufacture, delivery to Site, installation, testing and completion of the Works and the remedying of defects in the Works in accordance with the Contract, under the direction of the Engineer, in the sum of £ 130,477.00 exc VAT (one hundred and thirty thousand four hundred and seventy seven pounds) (the "Contract Price").

It is agreed as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the General Conditions.
2. The following documents and their annexes which have been bound in herewith shall be deemed to form and be read and construed as part of the Contract:
 - (a) this Agreement;
 - (b) the General Conditions and Appendix;
 - (c) the Special Conditions;
 - (d) the Specification and the drawing (if any) annexed to, or referred to in, the Contract;
 - (e) the Schedules;
 - (f) the Letter of Acceptance; and
 - (g) the Tender or Contractor's submission.
3. In consideration of the payments to be made by the Purchaser to the Contractor in accordance with the Contract, the Contractor agrees to design, manufacture, deliver to Site, install, test and complete the Works and to remedy defects in the Works in conformity in all respects with the provisions of the Contract.
4. The Purchaser shall pay the Contractor, in consideration of the execution and completion of the Works and the remedying of defects in the Works, the Contract Price or such other sum as may become payable under

the provisions of the Contract together with the Value Added Tax properly chargeable on such sums, at the times and in the manner prescribed by the Contract.

5. If any question, dispute or difference shall arise between the Purchaser and the Contractor in relation to the Contract or in any way related to the Works which cannot be settled amicably it shall be referenced to arbitration in accordance with Clause 52 (Disputes) of the General Conditions.

IN WITNESS whereof the parties have executed and delivered this Agreement as a deed on the date above written

Signed for and on behalf of the
Environment Agency by:

Authorised Signatory:

Name:

Position:

Date:



Ben Rawlings
Senior Commercial Officer
23rd November 2020

Signed for and on behalf of ECS Engineering Services Limited by:

Authorised Signatory

Name:

Position:

Date:



Neil Denman
Senior Estimator
10th November 2020

The Terms and Conditions comprise the:

Model Form MF/1 (Rev 6) General Conditions of Contract (2014 Edition) including:

- Tender
- Form of Taking-Over Certificate
- Form of Sub-Contract

amended as set out in:

- the Appendix to the General Conditions of Contract attached hereto;
- the Amendments and Additions to the General Conditions of Contract contained in Schedule 2 of the Deed of Agreement concerning the Anglian-Midlands MEICA Framework; and
- the Special Conditions of Contract attached hereto.

General Conditions of Contract

Appendix

Where Clause numbers are specified here they refer to the General Conditions of Contract unless otherwise indicated.

Clause 1 - Definitions

Sub-Clause 1.1m The Engineer is Raj Mathoon of the Environment Agency.

Sub-Clause 1.1s The Nominator is from the following institution:
The President of the Institution of Electrical Engineers or the President of the Institution of Mechanical Engineers as determined by the Purchaser

Sub Clause 1.1v Performance Tests

The Performance Tests are to be detailed in the Specification or set out below (as may be further defined in the Specification) or otherwise agreed between the parties.

| Name of Performance Test | Performance requirements |
|---|--------------------------|
| All Works to be installed and Site Acceptance Tested by the 31st March' 2021. | |
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Sub-Clause 1.1cc

[The Works are not divided into Sections.]

Sub-Clause 1.1ee Special Conditions
The following Special Conditions form part of the Contract:
[Special Condition 1: Incidental supply of hardware and software]
[Special Condition 2: Adjudication]

Sub Clause 1.1ll Time for Completion
The Time for Completion of the Works means 18 weeks from the Date of Commencement

The date specified for the commencement of the Works is 23rd November 2020

| | |
|-----------------|---|
| Sub-Clause 2.1 | <p>Engineer's duties</p> <p>The Engineer is required to obtain the Purchaser's prior specific approval before exercising the following duties:</p> <p>.....</p> <p>.....</p> <p>.....</p> |
| Sub-Clause 4.1 | Precedence of documents |
| Sub-Clause 10.1 | <p>The order of precedence of the documents forming the Contract is as follows:</p> <p>(a) this Agreement;</p> <p>(b) the Letter of Acceptance;</p> <p>(c) the Appendix;</p> <p>(d) the Special Conditions;</p> <p>(e) the General Conditions;</p> <p>(f) the Specification;</p> <p>(g) the drawing annexed to, or referred to in, the Contract</p> <p>(h) the Schedules;</p> <p>(i) the Tender or Contractor's submission</p> |
| Sub-Clause 5.5 | <p>Prime Cost items</p> <p>Percentage to be added - (Not applicable) N/A</p> |
| Sub-Clause 6.2 | <p>Labour, materials and transport</p> <p>Sub-clause 6.2 of the General Conditions shall not apply</p> |
| Sub-Clause 8.1 | <p>Provision of bond or guarantee</p> <p>Not required</p> |
| Sub-Clause 10 | <p>Notices</p> <div style="border: 2px solid red; padding: 10px;"> <p>Purchaser's contact details:</p> <p>Address: Environment Agency, Sentinel House, 9 Wellington Crescent Fradley Park, Lichfield, Staffs, WS13 8RR</p> <p>Facsimile Number: _____</p> <p>E-mail address: raj.mathoon@environment-agency.gov.uk</p> <p>Engineer's contact details:</p> <p>Address: Environment Agency, Sentinel House, 9 Wellington Crescent Fradley Park, Lichfield, Staffs, WS13 8RR</p> <p>Facsimile Number: _____</p> <p>E-mail address: raj.mathoon@environment-agency.gov.uk</p> <p>Contractor's contact details:</p> <p>Address: ECS Engineering Services Limited</p> <p>Facsimile Number: N/A</p> <p>E-mail address: cwilliamson@ecsengineeringservices.com</p> </div> |
| Sub-Clause 11.5 | The details of this Sub-Clause are set out in the Amendments and Additions to the General Conditions of Contract |
| Sub-Clause 11.6 | The details of this Sub-Clause are set out in the Amendments and Additions to the General Conditions of Contract |
| Sub-Clause 11.7 | <p>Power, etc. for tests on Site</p> <p>The following items will not be provided by the Purchaser:</p> <p>.....</p> <p>.....</p> <p>Use of the following items will be charged to the Contractor:</p> <p>.....</p> <p>.....</p> |
| Sub-Clause 14.2 | Form of Programme |

The details of this Sub-Clause are set out in the Amendments and Additions to the General Conditions of Contract

Sub-Clause 18.2

Site Services

The rates for Site Services provided by the Purchaser: N/A

Sub-Clause 34.1

Delay in Completion

Percentage of Contract Value to be paid or deducted for each week of delay to completion of the whole of the Works N/A

Sub-Clause 34.2

Prolonged delay

Maximum loss recoverable by the Purchaser

N/A

Sub-Clause 35.8

Consequences of failure to pass performance tests

The Time for completion of Performance Tests is set out in the Specification or set out below (as may be defined in the Specification)

| Name of Performance Test | Time for Completion of Performance Test (days after taking over) |
|--------------------------|--|
| | |
| | |
| | |

(a) The liquidated damages for failure to pass Performance Tests are set out in the Specification or set out below (as may be further defined in the Specification)

| Name of Performance Test | Acceptable limit and liquidated damages |
|--------------------------|---|
| | |
| | |

If no details are inserted into the Specification or table, the damages shall be treated wherever they cause delay to the Programme as delays to Completion and the details for such delays are set out in the Sub-Clause 34.1 within this Appendix to the General Conditions of Contract

Sub-Clause 36.1

The Defects Liability Period shall be 12 Months after taking-over.

Sub-Clause 36.3

Notice of defects

The Defects Liability Period in respect of any repair or replacement shall not extend beyond 12 months from the date of taking-over under clause 29 (Taking-over)

Sub-Clause 39.1

Payments by instalments

(where payment is to be made by way of milestones)

The Contractor is entitled to the following milestone payments on achieving the corresponding milestone deliverables:

| Milestone deliverable | Milestone payment |
|---|-------------------|
| 10% of Contract Value on Approval of Drawings | £ 13,047.70 |
| 15% of Contract Value on Completion of Manufactured Items | £ 19,571.55 |

| | |
|--|---------------------|
| 60% of Contract Value on Completion of Civils works | £ 78,286.20 |
| 15% of Contract Value on Completion of Mechanical Installation | £ 19,571.55 |
| Optional Extra Over Prices | |
| Timber Stop logs for control section | £ 675.00 Lump Sum |
| Aluminium Stop Logs for Bypass Section | £ 2,523.00 Lump Sum |
| Aluminium Stop Logs for Control Section | £ 4,696.00 Lump Sum |
| Pair of Lifting Keys for Aluminium Stop Logs | £ 990.00 Lump Sum |

(where payment is to be made by way of monthly valuations)

The Contractor is entitled to monthly payments in respect of:

(a) The value of work executed on Site;

[Less

(b) retention of%.

The Contractor shall be entitled to the release of retention as follows:

(c) half of the amount retained within 30 days after presentation of the Taking-over Certificate, and

(d) the balance of the amount retained:

(i) within 30 days after presentation of the final certificate of payment, or

(ii) forthwith if the Contractor has provided to the Purchaser a guarantee in accordance with Form 5: Defects Liability Demand Guarantee.

Sub Clause 39.2

Where Sections are applicable, if any Sections of the Works is taken over separately under clause 29 (Taking-over) the release of retention on or after taking-over shall be made in respect of the Section taken over and reference to the retention shall mean such part of the retention as shall, in the absence of agreement, be apportioned to such Section by the Engineer.]

Sub Clause 39.3

Time for application

(a) Time for applications for interim certificates of payment

(where payment is to be made by way of monthly valuations)

Applications for interim payment certificates shall be made on or after the last Friday of each month

Form of application

(d) Document to accompany applications for a certificate of payment

(where payment is to be made by way of monthly valuations)

(i) Evidence required of the value of work done on the Site:

"Each application shall be supported by separate sheets setting forth in detail the order of the Schedules of Rates the Contract Price particulars of the Works executed on the Site and of the Plant

delivered to the Site pursuant to the Contract since the period covered by the last preceding certificate (if any)”

.....

.....

(ii) Evidence required of the value of work done for Plant in the course of manufacture:

.....

.....

(iii) Evidence required for Plant delivered

.....

.....

| | |
|-----------------|--|
| Sub-Clause 39.5 | Final date for payment The Final Date is 30 days after the Due Date |
| Sub-Clause 40.4 | Delayed Payment The rate of interest on overdue payment shall be 2% per annum above the Bank of England base rate in force from time to time during the period of delay |
| Sub-Clause 40.6 | Advance Payment Advance Payments does not apply |
| Sub-Clause 40.7 | Currencies of Payment The Contract Price (including any adjustments) shall be paid in the following currencies: English Pound Sterling |
| Sub-Clause 40.8 | Taxes The Purchaser is responsible for the following taxes: Unless otherwise stated in the Contract the Contract Price is deemed to exclude Value Added Tax. To the extent that Value Added Tax is properly chargeable on the supply to the Purchaser of any goods or services provided by the Contractor under the Contract, the Purchaser shall pay such Value Added Tax as an addition to payments otherwise due to the Contractor under the Contract |
| Sub-Clause 41.2 | Allowance for profit on claims Percentage to be added – nil % |
| Sub-Clause 44.3 | Limitation of contractor's liability Limit of Liability - £5,000,000 (five million pounds) |
| Sub-Clause 47.4 | Third party insurance The details of this Sub-Clause are set out in the Amendments and Additions to the General Conditions of Contract |
| Sub-Clause 52.1 | Arbitration (c) The arbitration rules are Rules of Arbitration of the International Chamber of Commerce (2012) (d) The seat of the arbitration is London, England (where Special Condition 2: Adjudication applies) |
| Sub-Clause 52.4 | Adjudication (c) The adjudication rules are: As set out in Construction Industry Council Model Adjudication Procedure: Fourth Edition |
| Sub-Clause 53.1 | Applicable law The substantive law of the contract is the law of England |

