



Framework:	Collaborative Delivery Framework
Supplier:	Kier Integrated Services Ltd
Company Number:	00873179
Geographical Area:	South West
Contract Name:	Bude Flood Defence Design and Build ECC
Project Number:	ENV0000332C
Contract Type:	Engineering Construction Contract
Option:	Option C
Contract Number:	C16268
Stage:	Construction

Revision	Status		Originator		Reviewer		Date

ENGINEERING AND CONSTRUCTION CONTRACT under the Collaborative Delivery Framework

CONTRACT DATA

Project NameBude Flood Defence Design and Build ECC

Project NumberENV0000332C

This contract is made on the date countersigned between the Client and the Contractor

- This contract is made pursuant to the Framework Agreement (the "Agreement") dated 10th day of April 2019 and Framework Agreement Extension dated and signed 1st April 2023 between the Client and the Contractor in relation to the Collaborative Delivery Framework. The entire agreement and the following Schedules are incorporated into this Contract by reference
- Schedules 1 to 23 inclusive of the Framework schedules are relied upon within this contract.
- The following documents are incorporated into this contract by reference
CDT NEC4 ECC Scope Template - Bude_ rev9

Part One - Data provided by the Client

Statements given in all Contracts

1 GeneralThe conditions of contract are the core clauses and the clauses for the following main Option, the Option for resolving and avoiding disputes and the secondary Options of the NEC4 Engineering and Construction Contract June 2017.

Main Option	Option C	Option for resolving and avoiding disputes	W2
Secondary Options			
X2: Changes in the law			
X5: Sectional Completion			
X7: Delay damages			
X9: Transfer of rights			
X10: Information modelling			
X11: Termination by the Client			
X15: Contractor's design			
X18 Limitation of Liability			
X20: Key Performance Indicators			
Y(UK)2: The Housing Grants, Construction and Regeneration Act 1996			
Y(UK)3: The Contracts (Rights of Third Parties) Act 1999			
Z: Additional conditions of contract			

The works are

The project is to provide capital maintenance on the below required condition (BRC) assets of the Bude Flood Alleviation Scheme (FAS). The works are to restore the condition of a 230m length of masonry faced embankment located along Ergue-Gaberic Way in Bude, Cornwall.

The Client isEnvironment Agency

Address for communicationsHorizon House
Deanery Road
Bristol
BS1 5AH

Address for electronic communications

The Project Manager is

Address for communicationsEnvironment Agency
Horizon House
Deanery Road
Bristol
BS1 5AH

Address for electronic communications	
The <i>Supervisor</i> is	
Address for communications	Aperture House Pynes Hill Rydon Lane Exeter EX2 5AZ
Address for electronic communications	
The Scope is in CDT NEC4 ECC Scope Template - Bude_ rev9	
The Site Information is in ENVIMSW002205-ATK-00-2ZZ-RP-C-000003	
The <i>boundaries of the site</i> are 56-21005-DR-0001 P07 - Red line drawing	
The <i>language of the contract</i> is English	
The <i>law of the contract</i> is <i>the law of England and Wales, subject to the jurisdiction of the courts of England and Wales</i>	
The period for reply is	2 weeks
The following matters will be included in the Early Warning Register	

Early warning meetings are to be held at intervals no longer than	2 weeks
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2 The *Contractor's* main responsibilities

The <i>key dates</i> and <i>conditions</i> to be met are <i>condition</i> to be met	<i>key date</i>
'none set'	'none set'
'none set'	'none set'
'none set'	'none set'
The <i>Contractor</i> prepares forecasts of the total Defined Cost for the whole of the <i>works</i> at intervals no longer than	4 weeks

3 Time

The <i>starting date</i> is	31 July 2023
The <i>access dates</i> are part of the Site	date
The <i>Contractor</i> submits revised programmes at intervals no longer than	4 weeks
The <i>Completion Date</i> for the whole of the <i>works</i> is	24 June 2024
The <i>Client</i> is not willing to take over the <i>works</i> before the Completion Date	
The period after the Contract Date within which the <i>Contractor</i> is to submit a first programme for acceptance is	4 weeks

4 Quality management

The period after the Contract Date within which the <i>Contractor</i> is to submit a quality plan is	4 weeks
The period between Completion of the whole of the <i>works</i> and the <i>defects date</i> is	52 weeks for Non-Highway works, 104 weeks for Highway works

The *defect correction period* is 2 weeks except that

- The *defect correction period* for is
- The *defect correction period* for is 24 Hours

5 Payment

The *currency of the contract* is the £ sterling

The *assessment interval* is Monthly

The *Client* set total of the Prices is £1,413,876.30

The *interest rate* is 2.00% per annum (not less than 2) above the
Base rate of the Bank of England

The *Contractor's share percentages* and the *share ranges* are

	<i>share range</i>		<i>Contractor's share percentage</i>	
less than		80 %		0 %
from	80 %	to	120 %	as set out in Schedule 17
greater than		120 %		as set out in Schedule 17

6 Compensation events

The place where weather is to be recorded is The nearest calibrated Met Office Weather Station to the site

- The *weather measurements* to be recorder for each calendar month are
- the cumulative rainfall (mm)
 - the number of days with rainfall more than 5mm
 - the number of days with minimum air temperature less than 0 degrees Celsius
 - the number of days with snow lying at 09:00 hours GMT

and these measurements:

- 1.
- 2.
- 3.
- 4.
- 5.

The *weather measurements* are supplied by Met Office
The *weather data* are the records of past weather measurement for each calendar month
which were recorded at
and which are available from

Assumed values for the ten year weather return *weather data* for each *weather measurement* for each calendar month are

Jan	Jul
Feb	Aug
Mar	Sep
Apr	Oct
May	Nov
Jun	Dec

These are additional compensation events

1. Carbon Methodology - Adherence to and compliance with the Carbon Methodology dated 08 June 2023
2. The flood trigger will be the receipt of the automated EA flood alert or a reading of 4.6m AOD at the gauge downstream Nanny Moore’s bridge. Upon receipt of this the Contractor will be expected to stop work, erect temporary defences and remove plant from the working area.
3. When the wind speed at the crane/piling rig anemometer location exceeds 7m/s for operations using man riding basket and 12m/s for operations not involving man riding basket or when it is agreed by both parties to be unsafe to continue
4. 'not used'
5. 'not used'

8 Liabilities and insurance

These are additional *Client's* liabilities

- 1 'not used'
- 2 'not used'
- 3 'not used'

The minimum amount of cover for insurance against loss of or damage to property (except the *works* , Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) arising from or in connection with the *Contractor* Providing the Works for any one event is

£15,000,000

The minimum amount of cover for insurance against death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with the contract for any one event is

not less than the amount required by law

The insurance against loss of or damage to the *works*, Plant and Materials is to include cover for Plant and Materials provided by the *Client* for an amount of

Resolving and avoiding disputes

The <i>tribunal</i> is litigation in the courts	
The <i>Senior Representatives</i> of the <i>Client</i> are	
Address for communications	Environment Agency Horizon House Deanery Road Bristol BS1 5AH
Address for electronic communications	
Name	
Address for communications	Environment Agency Horizon House Deanery Road Bristol BS1 5AH
Address for electronic communications	k
The <i>Adjudicator</i> is	'to be confirmed'
Address for communications	'to be confirmed'
Address for electronic communications	'to be confirmed'
The <i>Adjudicator nominating body</i> is	The Institution of Civil Engineers

Z Clauses

Z1 Correctness of Site Information and other documents

Z1.1 Site Information about the ground, subsoil, ducts, cables, pipes and structures is provided in good faith by the *Client* , but is not warranted correct. Clause 60.3 does not apply to such Site Information and the *Contractor* is responsible for checking the correctness of any such Site Information they rely on for the purpose of pricing for or providing the *works* .

Z1.2 Information regarding construction methods or processes referred to in pre contract health and safety plans are provided in good faith by the *Client* but are not warranted correct (except for the purpose of promoting high standards of health and safety) and the *Contractor* is responsible for checking the correctness of any such information they rely on for the purpose of pricing for, or providing the *works* .

Z3 Prevention: No change to prices

Delete first sentence of clause 62.2 and replace with:

"Quotations for compensation events except for the compensation event described in 60.1(19) comprise proposed changes to the Prices and any delay to the Completion Date and Key Dates assessed by the *Contractor* . Quotations for the compensation event described in 60.1(19) comprise any delay to the Completion Date and Key Dates assessed by the *Contractor* r.

Delete 'The' At start of clause 63.1 and replace with:

"For the compensation event described in 60.1(19) the Prices are not changed. For other compensation events the..."

Z 4 The Schedule of Cost Components

The Schedule of Cost Components is as detailed in the Framework Schedule 9.

Z 6 Payment for Work

Delete existing clause 11.2 (31) and replace with:

"11.2 (31) The Price for Work Done to Date is the total Defined Cost which the *Project Manager* forecasts will have been paid by the *Contractor* before the next assessment date plus the Fee. In all instances and circumstances the Price for Work Done to Date shall not exceed the forecast for the same as provided under clause 20.4."

Z7 Contractor's share

After cl54.2 and before cl54.3, insert the following additional clause:

54.2A If, prior to Completion of the whole of the works, the Price for Work Done to Date exceeds 111% of the total of the Prices, the amount in excess of 111% of the total of the Prices is retained from the Contractor.

Z10 Payments to subcontractors, sub consultants and suppliers

Subcontractors

The *Contractor* will use the NEC4 contract on all subcontracts for works unless another alternative and appropriate form is proposed and agreed in accordance with clause 26.3.

Payment to subcontractors will be 28 days from the assessment date.

If the *Contractor* does not achieve payments within these timescales then the Client reserves the right to delay payments to the Contractor in respect of subcontracted work, services or goods.

Failure to pay subcontractors and suppliers within contracted times scales will also adversely affect the *Contractor's* opportunities to work on framework contracts.

Z16 Disallowed Costs

Add the following bullets to clause 11.2 (26) Disallowed costs

- was incurred due to a breach of safety requirements, or due to additional work to comply with safety requirements.
- was incurred as a result of the client issuing a Yellow or Red Card to prepare a Performance Improvement Plan.
- was incurred as a result of rectifying a non-compliance with the Framework Agreement and/or any call off contracts following an audit.

Z20 Defect Dates for Sections

Where a section of the *works* is defined and is located in a separate area of the Site, the time to the *defects date* for that section is the defined period after the Completion of that *section*, and is defined in the Contract Data.

Z21 Requirement for Invoice

Add the following sentence to the end of clause 51.1:

The Party to which payment is due submits an invoice to the other Party for the amount to be paid within one week of the *Project Manager's* certificate.

Delete existing clause 51.2:

51.2 Each certified payment is made by the later of

- one week after the paying Party receives an invoice from the other Party and
- three weeks after the assessment date, or, if a different period is stated in the Contract Data, within the period stated.

If a certified payment is late, or if a payment is late because the *Project Manager* has not issued a certificate which should be issued, interest is paid on the late payment. Interest is assessed from the date by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made

Z22 Resolving Disputes

Delete W2.1

Z23 Risks and insurance

Replace clause 84.1 with the following

Insurance certificates are to be submitted to the Client on an annual basis.

Z31 ECC – Price Adjustment for Inflation

The *Client* recognises the ongoing pricing uncertainty with regards to inflation. The *Client* will mitigate this uncertainty through this clause.

Z31.1 Defined terms:

- a) The index is Office for National Statistics (ONS) CPI (UK, 2015=100).
- b) The Base Date Index (B) is the latest available index published by ONS prior to the Contract Date.
- c) The Latest Index (L) is the latest available index published by ONS before the date of assessment of an amount due.
- d) The Price Adjustment Factor (PAF) at each date of assessment of an amount due is $0.9((L-B)/B)$.

Z31.2 Application rules.

The provisions of this clause [Z31] shall apply provided that:

- a) The Price for Work Done to Date is less than or equal to the total of the Prices and
- b) Inflation remains positive i.e. L is greater than B.

Z31.3 Price Adjustment Factor.

If an index is changed after it has been used in calculating a PAF, the calculation is not changed. The PAF calculated at the last assessment date before the Completion Date for the whole of the *works* is used for calculating an amount for price adjustment after that date.

Z31.4 Price adjustment Options A and B.

NOT USED

Z31.5 Price adjustment Options C and D.

Each time the amount due is assessed, an amount for price adjustment is added to the total of the Prices which is the change in the Price for Work Done to Date since the last assessment of the amount due multiplied by $(PAF/(1+PAF))$.

Z31.6 Compensation events.

NOT USED

Z111 ECC - Fee adjustment for non compliance with Scope

Delete existing 11.2 (10) and replace with the following clause

The Fee is the amount calculated by applying the *fee percentage* to the Defined Cost excluding the cost of Sub-contractors that have not complied with procurement by best value processes as defined in the Scope. 80% of the *fee percentage* is applied to the amount of the Defined Cost for Sub-contractors that have not complied with procurement by best value processes as defined in the Scope.

Z120 ECC – Carbon reduction

Ref. (Clause No.)	Clause words
11.2 Definitions	Add as Clause 11.2(36) (36) The Performance Table states the targets the <i>Contractor</i> is to achieve in Providing the Works and sets out the adjustment to payment if a measured performance is higher, the same or lower than its target. The Performance Table is the <i>performance table</i> unless later changed in accordance with the contract.
15.1 Early Warnings	In Clause 15.1 add as a new bullet between the second and third bullet: "• result in a target in the Performance Table not being met,"
Performance Measurements	
57	Add as Clause 57:
57.1	'From the <i>starting date</i> until the Completion Date, the <i>Contractor</i> reports to the <i>Project Manager</i> its performance against the targets in the Performance Table. Reports are provided at the intervals stated in the Performance Table.
57.2	If the <i>Contractor's</i> performance against a target in the Performance Table is not achieving or is forecast not to achieve the performance target stated, it submits to the <i>Project Manager</i> for acceptance its proposals for improving performance. A reason for not accepting the proposals is that they will not provide the improvement in performance needed to achieve the target in the Performance Table.
57.3	At the dates stated in the Performance Table, • if the relevant performance does not meet the target stated in the Performance Table, the <i>Contractor</i> pays the amount stated in the Performance Table, • if the relevant performance exceeds or meets the target stated in the Performance Table, the <i>Contractor</i> is paid the amount stated in the Performance Table.
57.4	Information in the Performance Table is not Scope.
X18	X18.5 add as a new bullet after the fourth bullet: • low performance damages if the Performance Table applies

The *performance table* is [ECC-carbon-performance-table.xlsx](#)

the Performance Table for this ECC CDF Lot 2 Construction contract as set out in the Carbon Methodology dated 08 June 2023
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Secondary Options

OPTION X2: Changes in the law

The *law of the project* is the law of England and Wales, subject to the jurisdiction of the courts of England and Wales

OPTION X5: Sectional Completion

The <i>completion date</i> for each <i>section</i> of the <i>works</i> is		
<i>section</i>	<i>description</i>	<i>completion date</i>
1	Planting of Bude's tourist information centre embankment (TICE) work	08 June 2023
2	Completion of all construction work & post-construction handover documentation excluding the 2 & 4 year maintenance of seeded/grassed and planted area's as stated in the Scope	24 June 2024

X7 plus X5

Delay damages for each <i>section</i> of the <i>works</i> are		
<i>section</i>	<i>description</i>	amount per day
1	Planting of Bude's tourist information centre embankment (TICE) work	NIL
2	Completion of all construction work & post-construction handover documentation excluding the 2 & 4 year maintenance of seeded/grassed and planted area's as stated in the Scope	£365.00

OPTION X10: Information modelling

The period after the Contract Date within which the *Contractor* is to submit a first Information Execution Plan for acceptance is 2 weeks

The minimum amount of insurance cover for claims made against the *Contractor* arising out of its failure to use skill and care normally used by professional providing information similar to the Project Information is, in respect of each claim £5,000,000

The period following Completion of the whole of the *works* or earlier termination for which the *Contractor* maintains insurance for claims made against it arising out of its failure to use the skill and care is 6 years

OPTION X15: The *Contractor's* design

The *period for retention* following Completion of the whole of the *works* or earlier termination is 12 years

The minimum amount of insurance cover for claims made against the *Contractor* arising out of its failure to use skill and care normally used by professionals designing works similar to the *works* is, in respect of each claim £5,000,000.00

The period following Completion of the whole of the *works* or earlier termination for which the *Contractor* maintains insurance for claims made against it arising out of its failure to use the skill and care is 12 years

OPTION X18: Limitation of liability

The *Contractor's* liability to the *Client* for indirect or consequential loss is limited to £1,000,000

For any one event, the *Contractor's* liability to the *Client* for loss or damage to the *Client's* property is limited to £1,000,000

The *Contractor's* liability for Defects due to its design which are not listed on the Defects Certificate is limited to £5,000,000

The *Contractor's* total liability to the *Client* for all matters arising under or in connection with the contract, other than excluded matters, is limited to £5,000,000

The *end of liability date is* 6 years after the Completion of the whole of the *works*

OPTION X20: Key Performance Indicators (not used with Option X12)

The *incentive schedule* for Key Performance Indicators is in Schedule 17.

A report of performance against each Key Performance Indicator is provided at intervals of 3 months.

Y(UK2): The Housing Grants, Construction and Regeneration Act 1996

The period for payment is 14 days after the date on which payment becomes due

Y(UK3): The Contracts (Rights of Third Parties Act) 1999

term	<i>beneficiary</i>
not used	not used

Part Two - Data provided by the Contractor

Completion of the data in full, according to the Options chosen, is essential to create a complete contract.

1 General

The Contractor is

Name Kier Integrated Services Ltd

Address for communications 2nd Floor
Optimum House
Clippers Quay
Salford
M50 3XP

Address for electronic communications

The fee percentage is

Option C

The working areas are The site, Kier offices, and private dwellings of Kier staff.

The key persons are

Name (1)
Job Senior Project Manager
Responsibilities Project Delivery
Qualifications
Experience

The key persons are

Name (2)
Job Agent
Responsibilities Project Delivery
Qualifications
Experience

The key persons are

Name (3)
Job Quantity Surveyor
Responsibilities Commercial Support
Qualifications
Experience

The key persons are

Name (4)
Job
Responsibilities
Qualifications
Experience

The following matters will be included in the Early Warning Register

2 The Contractor's main responsibilities

The Scope provided by the *Contractor* for its design is in

3 Time

The programme identified in the Contract Data is

2023-07-23- INT026 Bude Programme

5 Payment

The *activity schedule* is

Resolving and avoiding disputes

The *Senior Representatives* of the *Contractor* are

Name (1) [REDACTED]
Address for communications
Hawthorn House
Emperor Way
Exeter Business Park
Exeter
EX1 3QS

Address for electronic communications
[REDACTED]

Name (2) [REDACTED]
Address for communications
Hawthorn House
Emperor Way
Exeter Business Park
Exeter
EX1 3QS

Address for electronic communications
[REDACTED]

X10: Information Modelling

The *information execution plan* identified in the Contract Data is

Contract Execution

Client execution

Signed Underhand by [PRINT NAME]

for and on behalf of the Environment Agency



28-07-2023

Project Executive

Signature

Date

Role

Contractor execution

Signed Underhand by [PRINT NAME]

for and on behalf of Kier Integrated Services Ltd



24/07/2023

Group Managing Director

Signature

Date

Role