

NEC4 Engineering and Construction

Short Contract

FCRM Operational Framework – South East Hub

A contract between

The Environment Agency
Horizon House
Deanery Road
Bristol
BS1 5AH

And

Land & Water Services Ltd

For

ENVKSLES Dredging Southern

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	Scott's Float Depot, Military Road, Playden, Rye, East Sussex TN31 7PH	
Address for electronic communications		
The <i>works</i> are	Removal of fluvial deposits from the river Medway downstream of Sluice Weir Lock.	
The <i>site</i> is	River Medway downstream of Sluice Lock Weir, East Peckham, Tonbridge, Kent TN12 5EU	
The <i>starting date</i> is	16 th August 2021	
The <i>completion date</i> is	31 st October 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	nil	%
The United Kingdom Housing Grants, Construction and Regeneration Act (1996) does 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

The interest rate on late payment is	0.5	% per complete week of delay.
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	£100,000	
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
Loss of or damage to Equipment, Plant and Materials	The replacement cost	The defects Certificate has been issued
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 £1,000,000 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	
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. 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: The <i>works</i> are affected by any one of the following events • War, civil war, rebellion revolution, insurrection, military or usurped power • Strikes, riots and civil commotion not confined to the employees of the <i>Contractor</i> and sub-contractors • Ionising radiation or radioactive contamination from nuclear fuel or nuclear waste resulting from the combustion of nuclear fuel • Radioactive, toxic, explosive or other hazardous properties of an explosive nuclear device • Natural disaster • Fire and explosion • Impact by aircraft or other device or thing dropped from them

Z7.2	Additional Compensation Event COVID-19 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 2021.
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	Delete the text of Clause 92.3 and replace with: 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.
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	Weston Yard, Albury, Guildford, surrey, GU5 9AF	
Address for electronic communications		
The <i>fee</i> percentage is	As framework	%
The <i>people rates</i> are	As framework	
category of person	unit	rate
The <i>published list of Equipment</i> is		As framework
The <i>percentage for adjustment for Equipment</i> is		As 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 £316,761.47

Enter the total of the Prices from the Price List.

Signed on behalf of the *Contractor*

Name

Position

Signature

Date 16th April 2021

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

Signed on behalf of the *Client*

Name

Position

Signature

Date

Price List

For those items with a 'Sum' unit, 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 *Contractor* enters the amount in the Price Column only: the Unit, Quantity and rate columns being left blank.

For other items, the *Contractor* is to be paid an amount for the item which is adjusted if the quantity of work in the item changes: the *Contractor* enters the amount in the Rate and Price Columns only; updates in Quantity adjusting the Price according to the Rate, as constrained within the Scope.

Item Number	Description	Unit	Quantity	Rate	Price
1	Take 4 samples of the fluvial deposits within the section to be dredged (TQ6703948005 to TQ6724748170) and one from the spoil heap beside Sluice Lock. Samples to be analysed and a report provided to the <i>Client</i>	Sum			
2	Pre-start photographic condition survey	Sum			
3	Mobilisation, including welfare provision.	Sum			
4	Produce a pre-dredge bathometric survey of the section of channel.	Sum			
5	Remove from site first 200 cubic metres of previous years' dredged material that is upon the bank adjacent to the Sluice Weir lock. Arisings to be taken from site under a waste plan approved by the <i>Client</i> .	Sum			
6	Remove further previous years dredged material from upon the bank adjacent to the Sluice Weir lock, under the direction of the <i>Client</i> . Arisings to be taken from site under a waste plan approved by the <i>Client</i> .	m ³			
7	Dredging accumulated deposits from the channel, first 1,500 cubic metres. Silts to be taken from site under a waste plan approved by the <i>Client</i> .	Sum			
8	Dredging further accumulated deposits from the channel under the direction of the <i>Client</i> . Arisings to be taken from site under a waste plan approved by the <i>Client</i> .	m ³			
9	Produce a post-dredge bathometric survey of the section of channel.	Sum			
10	Demobilisation and re-instatement	Sum			
11	Post-delivery photographic condition survey.	Sum			
12	Production of H&S file	Sum			
13	Other (<i>Contractor</i> to specify)	Sum			
	Vegetation clearance along access to lock	Sum			
The total of the Prices					£316,761.47
The method and rules used to compile the Price List are:					

Scope

1. Description of the works

The outcome of the *works* is to remove accumulated fluvial deposits from within the open sections of the river Medway between TQ6703948005 and TQ6724748170. In delivering the *works*, the *Contractor* shall:

1. Take 4 samples of the fluvial deposits on the channel bed, equally spaced within the section to be dredged (TQ6703948005 to TQ6724748170) and one from the spoil heap beside Sluice Weir lock. The *Contractor* will have these samples analysed and share the report with the *Client*. The report will inform the *Contractor's* waste plan. Samples to be taken within two weeks of the *starting date*.
2. Develop a Waste Management Plan for the approval of the *Client* before dredging works commence.
3. Develop a contingency plan of action should hazardous material be discovered or suspected whilst dredging works are underway. The *Client* must be informed immediately should hazardous material be found or suspected within the site. Produce a pre-works bathometric survey of the section of channel to be dredged (TQ6703948005 to TQ6724748170). The survey must be delivered before dredging works commence in September and will inform the *Client's* instructions to the *Contractor* of where to remove the agreed quantities of deposits from the bed of the channel.
4. Conduct a pre-start photographic condition record of the visible Site. The *Contractor* shall share the report with the *Client* before works commence.
5. A Flood Risk Activity Permit will not be required.
6. Undertake on-site mobilisation, including provision of compound and welfare facilities.
7. Provide such traffic management as may be required to facilitate delivery of the project, including obtaining required consents from the managing authority.
8. Undertake such vegetation management as shall be required to facilitate the works.
9. Remove 200m³ of previous years dredging arisings from the pile upon the bank of the river Medway beside the Sluice Weir lock.
10. The *Contractor* shall not remove arisings in excess of 200m³ from the pile upon the bank of the river Medway beside the Sluice Weir lock without obtaining prior written confirmation from the *Client*.
11. Removal of additional material from the spoil pile (Description of the *works* item 9 above) will be at the *Client's* discretion subject to the re-measurable rates set out in the Price List (item 6). Only one incomplete load (the final load) will be acceptable to the *Client*.
12. Remove 1,500m³ fluvial deposits from the River Medway between the sluice and midway towards Branbridges Road, TQ6703948005 to TQ6724748170, under the *Client's* direction.
13. The *Contractor* shall not remove silt in excess of 1,500m³, without obtaining prior written confirmation from the *Client*.
14. Removal of silts beyond 1,500m³ as specified above may be instructed by the *Client* at the *Client's* discretion and subject to the re-measurable rates set out in the Price List (item 8). Only one incomplete load (the final load) will be acceptable to the *Client*.
15. Fluvial deposits and arisings must be taken away from site under a waste plan approved by the *Client*. The *Contractor* is encouraged to investigate options for reuse of the deposits.
16. Produce a post-works bathometric survey of the section of channel dredged (TQ6703948005 to TQ6724748170).
17. Conduct a post-delivery photographic condition record of the visible Site. The *Contractor* shall share the report with the *Client* within 14 days of demobilisation.
18. Remediate any damage caused (including to property) during the course of delivering the works
19. Produce a H&S file under the guidance of the *Principal Designer*.

In delivering the *works*, the *Contractor* shall:

- Develop a Construction Phase Plan (CPP) in accordance with the Environment Plan included within the Pre-Contract Information. The CPP must be offered for review by the *Client* and the Principal Designer prior to commencement of works on site.

- Liaise with the *Client* and the *Principal Designer* on matters relating to the delivery of the project, compliance with the CDM regulations, flood risk management, regulatory compliance, ecological stewardship and the programme.
- Register for flood alerts.
- Fulfil the duties of both *Principal Contractor* and *Designer* in terms of the CDM 2015 regulations. Duties will include, but are not limited to, producing the buildability statement, Designer's risk assessment, completing the RAG list and liaising with the *Client* and *Principal Designer*.
- Protect the *Client's* reputation by maintaining good relations with neighbouring residents and the public in general.
- Until the results of the 4 samples are confirmed, the *Contractor* may assume that the silt sample analysis reports that they will provide are similar in nature to those provided within the tender pack (that the deposits are no more hazardous than previous report have suggested). However, no dredging works must be undertaken until the new sampling analysis is available and the Waste Plan has been approved by the *Client*.

2. Drawings

Drawing Number	Revision	Title

3. Specifications

Title	Date or Revision	Tick if publicly available
Environment Agency Blockage Management Guide (Gov.uk)	12/2019	yes

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

All dredging activities must be finalised before the end of October.

The *Contractor* shall not undertake any work prior to their Waste Management Plan being accepted by the *Client*.

Previous sampling of the deposits suggests that the material is not hazardous. As these samples will be over one year old when this project starts, the *Contractor* must take further samples to inform the waste plan. There remains residual risk that hazardous material may be present, that either is not detectable or is not within the sample zones. The *Contractor* shall not continue works if hazardous material is found, without obtaining prior written authorisation from the *Client*.

The *Contractor* shall work within the constraints as provided in the Pre-Construction Information (SHOv2_FBG2020_PCI-Medway Desilting11_12_SD01 external rev 1 23-9-20.docx), which is to include but is not limited to managing the hazard that these *works* could pose to resident Depressed River Mussels:

1. Work on the Medway sections shall be programmed to take place in September and October of 2021.
2. The *Contractor* shall not dredge a marginal exclusion zone of 1m.

3. The *Contractor* shall cease dredging if silts are being removed and seek advice from the *Client*.

Working times

The *Contractor* will be permitted to work between 7.30am and 6.00pm on weekdays (Monday to Friday)

5. Requirements for the programme

The *Contractor* submits his programme with the *Contractor's* Offer for acceptance. The *Contractor* shows 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) the following:

- (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

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

Item	Date by which it will be provided
Flood warnings and alerts	As soon as the <i>Contractor</i> registers
Service Plans	Within the tender pack
The <i>Client</i> will liaise with the landowner and neighbours.	Ongoing
Notices of Entry will be issued as demanded by the Designer's access plans.	Once the CPP has been produced to the satisfaction of the <i>Client</i> and Principal Designer.

Site Information

Please refer to the Pre-Contract Information/Environment Plans provided within the tender pack.

Service plans for each site provided within the tender pack.

Fish and eels may be present on each site.

The river Medway usually has higher flow volumes from the beginning of November until the end of winter as a consequence of higher seasonal rainfall.

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:	