



Framework: Marine & Coastal Framework
Supplier: Van Oord
Company Number: [REDACTED]

Geographical Area: National
Project Name: Eccles to Winterton Navigation Marker Refurbishment
Project Number: [REDACTED]

Contract Type: Engineering Construction Contract
Option: Option C

Contract Number: [REDACTED]

Revision	Status		Originator		Reviewer		Date

ENGINEERING AND CONSTRUCTION CONTRACT under Marine and Coastal Framework
CONTRACT DATA PART ONE

Project Name Eccles to Winterton Navigation Marker Refurbishment

Project Number ENV6004127R

This contract is made on 28 May 2021
 between the *Client* and the *Contractor*

- This contract is made pursuant to the Framework Agreement (the "Agreement") dated 10th day of June 2019 between the *Client* and the *Contractor* in relation to the Marine and Coastal Framework. The following Clauses and Schedules of the Agreement are incorporated into this contract by reference
- Schedules 1- 22 inclusive of the Framework schedules are relied upon within this contract.
- The following documents are incorporated into this contract by reference
 Scope
 Eccles to Winterton Navigation Marker ECC Scope v8
 Dated: 03/06/2021

Part One - Data provided by the *Client*

Statements given in all Contracts

1 General

The *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

X7: Liquidated Damages

X9: Transfer of rights

X10: Information modelling

X11: Termination by the *Client*

X18: Limitation of liability

X20: Key Performance Indicators

Y(UK)2: The Housing Grants, Construction and Regeneration Act 1996 Applies

Y(UK)3: The Contracts (Rights of Third Parties) Act 1999

Z: *Additional conditions of contract*

The *works* are

The maintenance, refurbishment and replacement of aids to navigation on the coastal frontage between Eccles and Winterton, Norfolk

The *Client* is

Name

Environment Agency

Address for communications



Address for electronic communications



The *Project Manager* is



Address for communications



Address for electronic communications



The *Supervisor* is

TBC

Address for communications

Address for electronic communications

The Scope is in
Eccles to Winterton Navigation Marker ECC Scope v8

The Site Information is in
Folder: Eccles to Winterton_Supporting Documentation

The boundaries of the site are
Drawings FR03S077_SWS054_400_001 & FR03S077_SWS054_400_002

The partner contract is

The language of the contract is
English

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

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

2 The Contractor's main responsibilities

The key dates and conditions to be met are

conditions to be met	key date
'none set'	'none set'
'none set'	'none set'
'none set'	'none set'

The Contractor prepares forecasts of the total Defined Cost for the whole of the works at intervals no longer than 4 weeks

3 Time

The starting date is 28 May 2021

The access dates are

part of the Site	date
Fastdraft	28 May 2021
Asite	28 May 2021

The Contractor submits revised programmes at intervals no longer than 4 weeks

The completion date for the whole of the works is 31 March 2022

The Client is not willing to take over the works before the Completion Date

The period after the Contract Date within which the Contractor is to submit a first programme for acceptance is 4 weeks

4 Quality management

The period after the Contract Date within which the Contractor is to submit a quality plan is 4 weeks

The period between Completion of the whole of the works and the defects date is 52 weeks

The defect correction period is

	2 weeks	except that
• The defect correction period for Public Safety	is	24 insert term
• The defect correction period for Waterways	is	24 Hours

5 Payment

The currency of the contract is £ sterling

The assessment interval is Monthly

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

share range Contractor's share percentage



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 recorded 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 measurements for each calendar month

which were recorded at

Cromer

and which are available from

Met Office Website

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

Jan	Jul
Feb	Aug
Mar	Sept
Apr	Oct
May	Nov
June	Dec

These are additional compensation events

1. Managing and mitigating the impact of Covid 19 and working in accordance with Public Health England guidance, as may vary from time to time, between 1st April 2021 and 30th June 2021
2. 'not used'
3. 'not used'
4. 'not used'
5. 'not used'

8 Liabilities and insurance

These are additional Client's liabilities

1. If a UXO is discovered during the works
2. Weather event greater than 1 in 10
3. Requirement for MMO Licence
4. Seals pupping or Terns nesting causing out of sequence or delayed working
5. Delays or stoppage to work due to complaints

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

N/A

Resolving and avoiding disputes

The *tribunal* is litigation in the courts

The *Senior Representatives of the Client* are
Name (1)

Address for communications

Environment Agency

Address for electronic communications

Name (2)

Address for communications

Address for electronic communications

The *Adjudicator* is

'to be confirmed'

Address for communications

'to be confirmed'

Address for electronic communications

'to be confirmed'

The *Adjudicator nominating body* is

The Institution of Civil Engineers

Z Clauses

Z1 Correctness of Site Information and other documents

Z1.1 Site Information, that is reasonably available to the contractor at tender 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 he relies on for the purpose of pricing for, or providing the works.

Z 2B: Water levels: *Contractor's risk*

Clause 60.1 (12) second bullet point is amended to: "are not weather conditions or floods and"

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*."

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

Delete the Schedule of Cost Components and Short Schedule of Cost Components replace with the Schedule of Cost Components as detailed in the Framework Schedule 9.

Z 6 Payment for Work Done to Date

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, not exceeding the forecast provided under clause 20.4 and accepted by the *Client*."

Z7 Aggregated *Contractor's share*

Delete existing clauses 54 and 93.3:

54.7 The *Project Manager* assess the *Contractor's* share of the difference between the Aggregated Total of the Prices and the Aggregated Price for Work Done to Date. The difference is divided into increments falling within each of the *share ranges*. The limits of a *share range* are the Aggregated Price for Work Done to Date divided by the Aggregated Total of the Prices, expressed as a percentage. The *Contractor's* share equals the sum of the products of the increment within each *share range* and the corresponding *Contractor's share percentage*.

54.8 If the Aggregated Price for Work Done to Date is less than the Aggregated Total of the Prices, the *Contractor* is paid its share of the saving. If the Aggregated Price for Work Done to Date is greater than the Aggregated Total of the Prices, the *Contractor* pays its share of the excess.

54.9 If, prior to the Completion Date, the Aggregated Price for Work Done to Date exceeds 110% of the Aggregated Total of the Prices, the amount in excess of 110% of the Aggregated Total of the Prices is retained from the *Contractor*.

54.10 The *Project Manager* makes a preliminary assessment of the *Contractor's* share at Completion of the Whole of the works using forecasts of the final Aggregated Price for Work Done to Date and the final Aggregated Total of Prices. This share is included in the amount due following Completion of the whole of the works.

54.11 The *Project Manager* makes a final assessment of the *Contractor's* share, using the final Aggregated Price for Work Done to Date and the final Aggregated Total of the Prices. This share is included in the final amount due.

93.3 If there is a termination, the *Project Manager* assesses the *Contractor's* share after certifying termination. The assessment uses as the Aggregated Price for Work Done to Date the sum of

- the total of
 - o the Defined Cost which the *Contractor* has paid and
 - o which it is committed to pay for work done before termination
 and
- the total of
 - o the Defined Cost which the *Consultant* has paid and
 - o which it is committed to pay
 in the *partner contract* before the date the termination certificate is issued under this contract.

The assessment uses as the Aggregated Total of the Prices the sum of

- the total of
 - the lump sum price for each activity which has been completed and
 - a proportion of the lump sum price for each incomplete activity which is the proportion of the work in the activity which has been completed
 and
- the total of
 - the lump sum price for each activity which has been completed and
 - a proportion of the lump sum price for each incomplete activity which is the proportion of the work in the activity which has been completed
 in the *partner contract* before the date the termination certificate is issued under this contract.

Add:

11.2(37) The Aggregated Total of the Prices is sum of

- the total of the Prices and
- the total of the Prices in the *partner contract*

11.2(38) The Aggregated Price for Work Done to Date is the sum of

- the Price for Work Done to Date and
- the Price for Service Provided to Date in the *partner contract*.

Z10 Payments to subcontractors, sub consultants and suppliers

Subcontractors

The *Contractor* will use the NEC4 contract on all subcontracts for works. Payment to subcontractors will be 28 days from the assessment date.

If the *Contractor* does not achieve payments within these time scales then the *Client* reserves the right to delay payments to the *Contractor* in respect of subcontracted work, services and supplies.

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

Z11Y(UK) 3 The Contracts (Rights of Third Parties) Act 1999

The design consultant employed by the *Contractor* is required to fulfil the obligations of the warrantor under the primary contract for design works that they complete. This includes:

Transfer of rights clause Z11

Professional indemnity insurance cover to same cover as that specified for the *Contractor*

Z11.1 The *Client* ('the third Party') may in its own right enforce the provisions of this clause, subject to and in accordance with the provisions of the Contracts (Right of Third Parties) Act 1999 and the following provisions:

Z11.1.1 the Parties may not rescind or vary any provision(s) of this agreement, including this clause, at any time without the consent of the third party; and
Z11.1.2 each third Party's rights against Party A under this agreement shall be subject to the same conditions, limitations and exclusions as apply to Party B's rights against Party A under this agreement.

Z11.2 Except as provided in clause Z11.1, this agreement does not create any right enforceable by any person who is not a Party to it ('Other Party') under the Contracts (Rights of Third Parties) Act 1999, but this clause does not affect any right or remedy of a other Party which exists or is available apart from that Act.

Z16 Disallowed Costs

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

- was incurred due to a breach of safety requirements, or due 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.

Z18 Payment of pain/gainshare

Delete existing clause 54.3 and replace with:

54.3 The *Project Manager* makes regular assessments of the *Contractor's* share until the Completion Date using forecasts of the final Price for Work Done to Date and the final total of the Prices. This share is included in the amount due in the following assessment. The *Project Manager* shall be entitled to take the *Contractor's share* percentage into account when assessing amounts in clause 50 and clause 51 due for payment at each assessment date thereafter. The *Project Manager* shall not pay any amount greater than the amount due when the forecast reaches the top *share range* in the Contract Data Part 1 (120% of the total of the Prices).

Delete existing clause 54.4 and replace with:

54.4 If clause 54.3 does not occur during the works, the *Project Manager* makes a preliminary assessment of the *Contractor's* share at Completion of the Whole of the works using forecasts of the final Price for Work Done to Date and the final total of Prices. This share is included in the amount due following Completion of the whole of the works.

Insert the following new clause 54.5:

54.5 If clause 54.3 does not occur during the works, the *Project Manager* makes a final assessment of the *Contractor's* share, using the final Price for Work Done to Date and the final total of the Prices. This share is included in the final amount due.

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 and insert the following:

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.

Z24 Acceptance of nourishment works

Delete existing clause 35.1 and replace with:

"The *Client* takes over a part of the nourished beach when the Supervisor issues an acceptance certificate. Any change in the accepted beach profile due to natural causes following the issue of the acceptance certificate is not a Defect."

Z25 Weather risk

Clause 60.1 (13) is deleted.

Z26 Breakdown of dredgers and other marine equipment

Breakdowns of dredgers and other marine equipment are not compensation events.

Breakdowns of dredgers and other marine equipment are included in Defined Cost as follows:

- First 24 hours at Idle Rate.
- Second 24 hours at half of Idle Rate.
- After 48 hours there is no charge for the dredger or other marine equipment.
- After 48 hours fixed site establishment costs and the *Contractor's* *Project Manager's* time costs only are included.
- If the dredger or other marine equipment immediately leaves the site for repair following the breakdown, then there is no charge for the offsite period.

Z27 Fisheries Liaison Officer

The responsibility for the employment and management of the Fisheries Liaison Officer (FLO) shall lie with the Contractor. Agreement to third party compensation payments can only be made by the Environment Agency's Estates Department.

Z28 Fee

No Fee is to be added to the following items:

- Crown Estate Fee
- Material Licence Holder Fee
- Approval costs (e.g. fees for Planning Applications and FEPA licences)
- Taxes (including Aggregate Taxes)

Z29 Payment of annual pain and gain shares

The pain and gain share will be determined and paid on an annual basis following the sectional completion date and assessment of the final account for each section. The payment will be in line with the process as set out in the Deed of Agreement.

Z30 Change in Quantity of Material

The *Client* is not bound to undertake any or all of the sections xxx and may cancel one or more of these sections of the *works*. The *Contractor* is to keep the *Project Manager* informed of the forecast of any potential Defined Costs associated with the cancellation of any or all of these sections of Works. In the event of the using this clause, payment will only be able to be recovered on the basis of the Defined Cost which has been incurred and those cancellation costs which have been notified by the *Contractor* in his accepted forecast. The *Client* will advise the *Contractor* of whether a section is to be removed at the Price Setting Meeting of calendar year of that particular campaign. If the quantity of beach material fall below 200,000m³ or above 500,000m³ for a campaign, the *Project Manager* will reassess the rate for that years target.

Z31 Changes to fuel prices and exchange rate

A change in Price due to change in fuel price and exchange rates will be those printed in the Financial Times on the *starting date*.

Secondary Options

OPTION X2: Changes in the law

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

OPTION X7: Delay damages

X7 only Delay damages for Completion of the whole of the *works* are [REDACTED] per day

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

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 year(s)

OPTION X18: Limitation of liability

The *Contractor's* liability to the *Client* for indirect or consequential loss is limited to £5,000,000.00

For any one event, the *Contractor's* liability to the *Client* for loss or damage to the *Client's* property is limited to £5,000,000.00

The *Contractor's* liability for Defects due to its design which are not listed on the Defects Certificate is limited to £5,000,000.00

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 £10,000,000.00

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

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 beneficiary

Part Two - Data provided by the Contractor

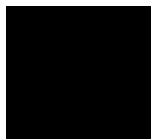
Completion of the data in full, according to the Options chosen, is essential to create a complete contract.

1 General

The Contractor is
Name

Van Oord

Address for communications



Address for electronic communications



The fee percentage is

Option C



The working areas are

The site, Van Oord Offices, JTM Maidstone Office and yards

The key persons are

Name (1)

Job

Responsibilities

Qualifications

Experience



See CV Attached

See CV Attached

Name (2)

Job

Responsibilities

Qualifications

Experience



See CV Attached

See CV Attached

Name (3)

Job

Responsibilities

Qualifications

Experience



See CV Attached

See CV Attached

Name (4)

Job

Responsibilities

Qualifications

Experience



See CV Attached

See CV Attached

The following matters will be included in
the Early Warning Register

Leaving the European Union
Seal Popping season throughout the contract duration period
Weather risk- marine operations delays
Weather risk greater than 24mph wind
No design life can be offered on painting - due to the adverse
Licences other than shown in programme, changes to licence
UXO Watching Brief during the programme of works
Delays / impacts on method due to lack of landowner permis

2 The Contractor's main responsibilities

The Scope provided by the Contractor for its design is in
N/A

3 Time

The programme identified in the Contract Data is
"Eccles to Winterton Tender Programme V9"

5 Payment

The activity schedule is

Classification: Internal

T20.052 Eccles to Winterton Build up VE Option V9

The tendered total of the Prices is

[REDACTED]

Resolving and avoiding disputes

The *Senior Representatives* of the Contractor are

Name (1)

[REDACTED]

Address for communications

[REDACTED]

Address for electronic communications

[REDACTED]

Name (2)

[REDACTED]

Address for communications

[REDACTED]

Address for electronic communications

[REDACTED]

X10: Information Modelling

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

insert details

insert details

insert details

The rates for special Equipment are

Contract Execution

Client execution

Signed under hand by for and on behalf of the Environment Agency

[Redacted signature and role information]

Signature

Role

Contractor execution

Consultant execution

[Redacted signature and role information]

Signature

Role