

**Highways England**

**Technical Surveys and Testing**

**Engineering and Construction Short**

**Contract for**

**M5 Portbury J19 N&S MP145 Joints**

**Contract Documents**

## TECHNICAL SURVEYS AND TESTING CONTRACT CONTENTS AMENDMENT SHEET

[illegible]

## 1. Contract Data

The *Employer* is Highways England Company Limited, a company incorporated in and in accordance with the laws of England (company no. 09346363) whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ. Contact details for Highways England are:

Name

Address Brunel House | 930 Hempton Court, Aztec West | Almondsbury | Bristol | BS32 4SR

Telephone

E-mail address

The *works* are Buried utility/Asbestos Survey and Reporting

The *site* is Portbury interchange J19 North and South bridge (MP 145):

The *starting date* is 2<sup>nd</sup> March 2021

The *completion date* is 2<sup>nd</sup> April 2021

The *period for reply* to a communication is 1 week.

The *defects date* is 52 weeks after Completion.

The *defect correction period* is 4 weeks.

The *delay damages* are £NIL per day.

The *assessment day* is the last day of each calendar month.

The *retention* is nil.

The United Kingdom Housing Grants, Construction and Regeneration Act (1996, as amended) applies.

The *Adjudicator* is the person chosen by the Parties from the list of Adjudicators published by the Institution of Civil Engineers.

The *Adjudicator nominating body* is the Institution of Civil Engineers.

The Principal Designer is:

Name

Firm

Address

The interest rate is, unless the provisions of the Late Payment of Commercial Debts (Interest) Act 1998 otherwise require, 3% per annum above the Bank of England base rate in force from time to time.

The *Contractor's* liability to the *Employer* for loss of or damage to the *Employer's* property is £10,000,000.00.

The minimum amount of cover for the third insurance stated in the Insurance Table is £10,000,000 for any one occurrence without limit to the number of occurrences (except for claims arising out of pollution, contamination and products liability, where the minimum amount of cover applies in the aggregate in any one annual period of insurance).

The minimum amount of cover for the fourth insurance stated in the Insurance Table is £10,000,000 for any one occurrence.

The minimum amount of cover for the fifth insurance stated in the Insurance Table is £5,000,000 in respect of any one claim the number of claims being unlimited in any annual policy period and in the annual aggregate in respect of pollution and contamination, with an inner limit of £1,000,000 in the annual aggregate in respect of asbestos.

The *tribunal* is arbitration.

The arbitration procedure is the Institution of Civil Engineers Arbitration Procedure (Third Edition) April 2012.

The *conditions of contract* are the NEC3 Engineering and Construction Short Contract (April 2013) and the following additional conditions:

## **Z1 Conditions of Contract**

### **Identified and defined terms**

Z1.1 Insert the following definitions into clause 11.2:

“(14) Intellectual Property Rights are any current and future legal and equitable interests in patents, trademarks, design rights, copyright, know-how and other similar rights, whether or not registered or capable of registration.

(15) RIDDOR Incident is an incident occurring under any contract between

- the *Contractor* or a company associated with the *Contractor* and
- the *Employer* or any other person

which results in death or serious Injury to any worker or non-worker and for which the *Contractor* is responsible under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (or any replacement of it).”

### **Payment**

Z1.2 The following replaces clause 51.1:

“The *Employer* pays on or before the final date for payment.”

### **Insurance cover**

Z1.5 In the Insurance Table in clause 82.1:

Z1.5.1 In the row for the first insurance stated in the Insurance Table delete “The *Employer's* certificate of Completion has been issued” and insert “Cover is not required”.

Z1.5.2 In the row for the second insurance stated in the Insurance Table delete “, Plant and Materials”.

Z1.5.3 Insert the following as the row for a fifth insurance stated in the Insurance Table:

Failure of the <i>Contractor</i> to use the skill and care normally used by contractors providing works similar to the <i>works</i>	The amount stated in the Contract Data	6 years following Completion or earlier termination
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## **Z2 Corrupt practices**

### **Z2.1** The *Contractor* does not

- offer or give to any person in the service of the *Employer* any gift or consideration of any kind as an inducement or reward in relation to the obtaining or execution of this contract or any other contract with the *Employer* or for showing favour or disfavour to any person in relation to this contract or any other contract with the *Employer* or
- enter into this contract or any other contract with the *Employer* if, in connection with this contract or any such other contract, commission has been paid or an agreement for the payment of commission has been made by him or on his behalf or to his knowledge.

### **Z2.2** A failure to comply with this condition is treated as a substantial failure by the *Contractor* to comply with this contract.

## **Z3 Recovery of sums due from Contractor**

### **Z3.1** Where under this contract any sum or money is recoverable from or payable by the *Contractor* such sum may be deducted from or reduced by the amount of any sum or sums then due or which at any time thereafter may become due to the *Contractor* under this contract or any other contract with the *Employer* or any Department or Office of Her Majesty's Government.

## **Z4 Discrimination, Bullying and Harassment**

### **Z4.1** The *Contractor* indemnifies the *Employer* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Employer* arising out of or in connection with any investigation or proceedings under the Discrimination Acts resulting from any act or omission of the *Contractor*.

## **Z5 Subcontracting – RIDDOR**

### **Z5.1** Before appointing a proposed subcontractor or allowing a subcontractor to appoint a proposed subsubcontractor, the *Contractor* submits to the *Employer* for acceptance details of any RIDDOR Incident under any contract for which the proposed subcontractor or subsubcontractor is responsible and of any enforcement action brought against the proposed subcontractor or subsubcontractor.

### **Z5.2** The *Contractor* does not appoint the proposed subcontractor (or allow the subcontractor to appoint the proposed subsubcontractor) until the *Employer* has accepted the submission. A reason for not accepting the submission is that the *Employer* is not satisfied that the proposed subcontractor or subsubcontractor has put in place adequate measures to ensure that the RIDDOR Incident or enforcement action will not recur.

Z5.3 If requested by the *Employer*, the *Contractor* provides further information to support, update or clarify a submission under clause Z5.1.

Z5.4 If, following the acceptance of a submission under clause Z5.2, it is found that the subcontractor or subsubcontractor has not put in place adequate measures to ensure that the RIDDOR Incident or enforcement action will not recur, the *Employer* may instruct the *Contractor* to

- replace the subcontractor or
- require the subcontractor to replace the subsubcontractor.

## **Z6 Value Added Tax (VAT) Recovery**

Z6.1 Where under this contract any amount is calculated by reference to any sum which has been or may be incurred by any person, the amount shall include any VAT in respect of that amount only to the extent that such VAT is not recoverable as input tax by that person (or a member of the same VAT group) whether by set off or repayment.

## **Z7 Construction Industry Scheme**

Z7.1 This contract falls within the scope of the Construction Industry Scheme provided for by Chapter 3, Part 3 of the Finance Act 2004 (the "Act") and the Income Tax (Construction Industry Scheme) Regulations 2005 (SI 2005/2045) (the "Regulations").

Z7.2 The *Contractor* provides the information required by the Regulations to enable the *Employer* to verify (in accordance with paragraph 6 of the Regulations) whether the *Contractor*

- is registered for gross payment
- is registered for payment under deduction,
- is exempt from registration as a local authority or other public body or
- is neither registered nor exempt from registration.

Z7.3 If the *Contractor* is registered for payment under deduction or is neither registered nor exempt from registration

- the *Contractor* submits an application for payment which separately identifies the cost of labour and
- the *Employer* deducts the relevant percentage from the payment in accordance with the Act and the Regulations.

## **Z8 Intellectual Property Rights**

Z8.1 All Intellectual Property Rights in documents created by or on behalf of the *Employer* in connection with the contract are the property of the *Employer*.

Z8.2 The *Contractor* assigns to the *Employer* all present and future Intellectual Property Rights in all documents created by the *Contractor* or any subcontractor in performing its obligations under the contract. The *Contractor* obtains from a subcontractor equivalent rights over the material prepared by the subcontractor.

## **Z9 Removal of work**

- Z9.1 The *Employer* may instruct the *Contractor* that for urgent reasons of health and safety, part or all of the *works* is to be temporarily removed from this contract. The *Contractor* acknowledges that the *Employer* may himself provide or may appoint another supplier in place of the *Contractor* to provide work similar to the removed *works* (or part of them).
- Z9.2 An instruction given under clause Z9.1 is assessed as a compensation event, except that if the instruction is given for one of the reasons R1-R4, the assessment includes a deduction of the forecast of the additional cost to the *Employer* of completing the removed *works*.

## **Z10 Termination – PCRs, Regulation 73**

- Z10.1 The *Employer* may terminate the *Contractor's* obligation to Provide the Works if one of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applied to the *Contractor* at the Contract Date. The procedure and amount due on termination are the same as for reason R2.
- Z10.2 The *Employer* may terminate the *Contractor's* obligation to Provide the Works if
- this contract has been subject to a substantial modification which would have required a new procurement procedure pursuant to regulation 72 of the Public Contracts Regulations 2015 or
  - the Court of Justice of the European Union declares, in a procedure under Article 258 of the Treaty on the Functioning of the European Union, that a serious infringement of the obligations under the European Union Treaties and the Public Contracts Directive has occurred.

The procedure and amount due on termination are the same as for

- R2 if the modification or infringement was due to a default by the *Contractor*,
- R5 if the modification or infringement was due to a default by the *Employer*.

## **Z11 Not Used**

## **Z12 Contractor's premises and Access and Storage to Employer's Data**

### **Z12.1 In this contract**

**Risk Assessment** is a full risk assessment and security review carried out by the *Employer* in accordance with this contract.

**Offshore** is a location outside the United Kingdom of Great Britain and Northern Ireland.

### **Z12.2 Any failure of the Employer to gain approval for storing information Offshore or allowing access to information from an Offshore location in accordance with this contract**

- is not a compensation event and
- does not relieve the *Contractor* from his obligation to Provide the Works.

### **Z12.3 Failure of premises to pass the Risk Assessment**

- is not a compensation event and
- does not relieve the *Contractor* from his obligation to Provide the Works.

Z12.4 The *Contractor* pays the *Employer's* costs associated with undertaking any Risk Assessment.

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## 2. The *Contractor's* Offer

The *Contractor* is

Name [INSERT COMPANY NAME AND DETAILS BELOW]

Address .....

Telephone ..... Fax .....

E-mail address .....

The percentage for overheads and profit added to the Defined Cost for people is [CONTRACTOR TO INSERT % FIGURE]

The percentage for overheads and profit added to other Defined Cost is [CONTRACTOR TO INSERT % FIGURE]

The offered total of the Prices is [CONTRACTOR TO INSERT TOTAL IN £s]

### 3. Price List

The Price List can be found in [ECSC TST Template Price List - Portbury Joints - Trial Holes](#)

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#### 4. Works Information

The Works Information is in the document entitled **[INSERT FILENAME OF WORKS INFORMATION]**

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## 5. Site Information

The Site Information is in the document entitled **[INSERT FILENAME OF SITE INFORMATION]**

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