



Framework: Client Support Framework
Supplier: Jacobs UK Ltd
Company Number: [REDACTED]

Geographical Area: National
Project Name: Perry Barr & Witton FRMS Environmental Clerk of Works
Project Number: ENVIMMI001605

Contract Type: Professional Service Contract
Option: Option E

Contract Number: project_28699

Revision	Status	Originator	Reviewer	Date

**PROFESSIONAL SERVICE CONTRACT - Under the Client Support Framework
CONTRACT DATA**

Project Name Perry Barr & Witton FRMS Environmental Clerk of Works

Project Number ENVIMMI001605

This contract is made on 17 March 2020 between the *Client* and the *Consultant*

- This contract is made pursuant to the Framework Agreement (the "Agreement") dated 02nd day of July 2019 between the *Client* and the *Consultant* in relation to the Client Support Framework. The entire Agreement and the following schedules are incorporated into this contract by reference
- Schedules 1 through to 14 inclusive of the Framework schedules are relied upon within this contract.
- The following documents are incorporated into this contract by reference

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 secondary Options of the NEC4 Professional Service Contract June 2017.

Main Option	<input type="checkbox"/> Option E	<input type="checkbox"/> Option for resolving and avoiding disputes	<input type="checkbox"/> W2
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Secondary Options

- X2: Changes in the law
- X9: Transfer of rights
- X11: Termination by the *Client*
- X18: Limitation of liability
- 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 *service* is Provide Environmental Clerk of Works services in support of the Perry Barr & Witton FRMS

The *Client* is Environment Agency

Address for communications [Redacted]

Address for electronic communications

The *Service Manager* is [Redacted]

Address for communications Environment Agency [Redacted]

Address for electronic communications [Redacted]

The *Scope* is in PBW_ECW_Scope v1 dated 27 January 2020

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 *period for retention* is 6 years following Completion or earlier termination

The following matters will be included in the Early Warning Register
Not used

Early warning meetings are to be held at intervals no longer than 2 weeks

2 The Consultant's main responsibilities

The *key dates and conditions* to be met are
condition to be met *key date*
'none set' 'none set'
'none set' 'none set'
'none set' 'none set'

The *Consultant* prepares forecasts of the total Defined Cost plus Fee and *expenses* at intervals no longer than 4 weeks

3 Time

The *starting date* is 17 March 2020

The *Client* provides access to the following persons, places and things
access *access date*

The *Consultant* submits revised programmes at intervals no longer than 4 weeks

The *completion date* for the whole of the *service* is 28 February 2025

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

4 Quality management

The period after the Contract Date within which the *Consultant* is to submit a quality policy statement and quality plan is 4 weeks

The period between Completion of the whole of the *service* and the *defects date* is 26 weeks

5 Payment

The *currency of the contract* is the £ sterling

The *assessment interval* is Monthly

The *expenses* stated by the *Client* are as stated in Schedule 6.

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

The locations for which the *Consultant* provides a charge for the cost of support people and office overhead are All UK Offices

The *exchange rates* are those published in
on

6 Compensation events

These are additional compensation events

1. 'not used'
2. 'not used'
3. 'not used'
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 and the periods for which the *Consultant* maintains insurance are

EVENT	MINIMUM AMOUNT OF	PERIOD FOLLOWING COMPLETION OF THE WHOLE OF THE <i>SERVICE</i> OR TERMINATION
The <i>Consultant's</i> failure to use the skill and care normally used by professionals providing services similar to the <i>service</i>	£5 million in respect of each claim, without limit to the number of claims	12 years
Loss of or damage to property and liability for bodily injury to or death of a person (not an employee of the <i>Consultant</i>) arising from or in connection with the <i>Consultant</i> Providing the <i>Service</i>	Which ever is the greater of £5m or the amount required by law in respect of each claim, without limit to the number of claims	12 months
Death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with the contract	Which ever is the greater of £5m or the amount required by law in respect of each claim, without limit to the number of claims	For the period required by law
The <i>Consultant's</i> total liability to the <i>Client</i> for all matters arising under or in connection with the contract, other than the excluded matters is limited to		£5 million

Resolving and avoiding disputes

The <i>tribunal</i> is	litigation in the courts
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 Disputes

Delete existing clause W2.1

Z2 Prevention

The text of clause 18 Prevention is deleted.

Delete the text of clause 60.1(12) and replace with:

The *service* is affected by any 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 *Consultant* and sub consultants,
- 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 aerial device or thing dropped from them.

Z3 Disallowed Costs

In second bullet of 11.2 (18) add:

(including compensation events with the Subcontractor, i.e. payment for work that should not have been undertaken).

Add the following additional bullets after 'and the cost of ' :

- Mistakes or delays caused by the *Consultant's* failure to follow standards in Scopes/quality plans.
- Reorganisation of the *Consultant's* project team.
- Additional costs or delays incurred due to *Consultant's* failure to comply with published and known guidance or document formats.
- Exceeding the Scope without prior instruction that leads to abortive cost
- Re-working of documents due to inadequate QA prior to submission, i.e. grammatical, factual arithmetical or design errors.
- Production or preparation of self-promotional material.
- Excessive charges for project management time on a commission for secondments or full time appointments (greater than 5% of commission value)
- Any hours exceeding 8 per day unless with prior written agreement of the *Service Manager*
- Any hours for travel beyond the location of the nearest consultant office to the project unless previously agreed with the *Service Manager*
- Attendance of additional individuals to meetings/ workshops etc who have not been previously invited by the *Service Manager*
- Costs associated with the attendance at additional meetings after programmed Completion, if delay is due to *Consultant* performance.
- Costs associated with rectifications that are due to *Consultant* error or omission.
- Costs associated with the identification of opportunities to improve our processes and procedures for project delivery through the *Consultant's* involvement
- 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

When appointing *Consultants* on a secondment basis only:

Add clause 19

19.1 The *Client* will from starting date to Completion Date indemnify the *Consultant* against any and all liabilities, proceedings, costs, losses, claims and demands whatsoever arising directly or indirectly out of the activities of the *Consultant* in providing the services save where such claims, in the reasonable opinion of the *Client*, arise from or are contributed to by:

19.1.1 Misrepresentation or negligence by or on behalf of the *Consultant* ;

or

19.1.2 The *Consultant* has acted contrary to the *Service Manager's* reasonable instructions or wholly outside the scope of the *Consultant's* duties as defined by the *Service Manager* .

Z6 The Schedule of Cost Components

The Schedule of Cost Components are as detailed in the Framework Schedule 6.

Z7 Linked contracts

Issues requiring redesign or rework on this contract due to a fault or error of the *Consultant* under this contract or a previous contract will neither be an allowable cost under this contract or any subsequent contract, nor will it be a Compensation event under this contract or any subsequent contract under this project or programme.

Z8 Requirement for Invoice

Insert the following sentence at 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 *Service 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 *Service 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

Z9 Conflict of Interest

The *Consultant* immediately notifies the *Client* of any circumstances giving rise to or potentially giving rise to conflicts of interest relating to the *Consultant* (including without limitation its reputation and standing) and/or the *Client* of which it is aware or which it anticipates may justify the *Client* taking action to protect its interests. Should the Parties be unable to remove the conflict of interest to the satisfaction of the *Client*, the *Client*, in its sole discretion, may terminate this Contract.

Z10 Change in Control

The *Consultant* shall notify the *Client* as soon as reasonably practicable, in writing, of any agreement, proposal or negotiations which will or may result in a *Consultant* Change in Control and shall give further notice to the *Client* when any Change in Control has occurred. The *Client* may terminate this contract with immediate effect by notice in writing and without compensation to the *Consultant* within six (6) months of being notified that a Change of Control has occurred, or, where no notification has been made, the date that the *Client* becomes aware of the Change of Control, but shall not be permitted to terminate where the *Client's* prior written acceptance was granted prior to the Change in Control. A Change of Control is defined as per the Deed of Agreement, Z14.4.

Z11 Rate Increase Provision

Contracts with a duration of less than two years, which are extended over this duration by the *Service Manager* due to *Client* Scope increases, may apply a rate review as follows. The *Consultant* will charge the *Client* the contract staff rates for a minimum of two full years, and at the next annual rate review where a new staff rate list is accepted (as stated in Schedule 6), the new staff rate will apply to the contract as per Schedule 6. No Compensation Event is permitted for this different contract staff rate.

Z12 Waiver

No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party by the *Service Manager* in writing in accordance with the Contract, and with express reference to Clause Z12. The failure of either party to insist upon strict performance of the Contract, or any failure or delay in exercising any right or remedy shall not constitute a waiver or diminution of the obligations established by the Contract.

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 X18: Limitation of liability

The *Consultant's* liability to the *Client* for indirect or consequential loss is limited to

£1,000,000.00

The *Consultant's* liability to the *Client* for Defects that are not found until after the *defects date* is limited to

£5,000,000.00

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

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*

The *key persons* are

Name (7)
Job
Responsibilities
Qualifications
Experience

The following matters will be included in the Early Warning Register

3 Time

The programme identified in the Contract Data is

Managed by Ecosulis

Resolving and avoiding disputes

The *Senior Representatives* of the *Consultant* are

Name (1) [REDACTED]
Address for communications
[REDACTED]
[REDACTED]
[REDACTED]

Address for electronic communications
[REDACTED]

Name (2)
Address for communications

Address for electronic communications

Contract Execution

Client execution

Signed under hand by

for and on behalf of the Environment Agency

Signature

Role



Contract Documents

Pricing Data Part Two

NEC4 – PSC



Employee middle name (initial)	Employee Surname	Employee ID	Job Title	Grade	Rate Type	Normal office location	Rate £	Forecast hours	Forecast Cost £
	████	████	██████████	████	████	████████	█ █████	█	█ █████
	█	██████	██████████	████	████	████████	█ █████	█	█ █████
	████	████	█	████	████	████████	█ █████	█	█ █████
	██████	████	██████████	████	████	████████	█ █████	█	█ █████
	████	████	██████████	████	████	████████	█ █████	█	█ █████
									█ █
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Environment Agency NEC4 professional services contract (PSC) Scope

Project / contract information

Project name	Perry Barr and Witton FMRS
SOP reference	ENVIMMI001305
Contract reference	project_28699
Date	27/01/2019
Version number	1
Author	██████████

Revision history

Revision date	Summary of changes	Version number
9/07/19	ITT issue	1

This Scope should be read in conjunction with the version of the Minimum Technical Requirements current at the Contract Date. In the event of conflict, this Scope shall prevail. The *services* are to be compliant with the version of the Minimum Technical Requirements.



1 Objectives of the project (project outcomes)

Objective

The aim of the Perry Barr and Witton FRMS is to deliver a 1% AEP (1 in 100 year) Standard of Protection to Perry Barr and Witton, which will reduce flood risk to residential and commercial properties.

This scope is for Environmental Clerk of Works to assist with the delivery of ESIF compliant works as part of the landscape strategy. This scope of works will run in parallel to existing scope to cover the main construction works but is for the purpose of compliance with the Woodland management Strategy and Landscape Plan for the Perry Barr and Witton FRMS.

Outcome Specification

- 1 As part of the *services*, the *Consultant* will provide an Environmental Clerk of Works (ECW) to monitor, inspect and report on ESIF compliant landscaping works as outlined in the Jacob's landscape design. Generally, there is expected to be a site presence of up to 2 days per week during works as part of the landscape design.
- 2 Further information (including the extent of the project area, details of the works and the associated risks, are available from the *Client's* Project Manager or by download from Asite.

The delivery timescales from the current programme are outlined as below:

Phase of Works	Estimated Programme Date
Start of ESIF compliant landscape works	February 2020
Completion of ESIF Compliant landscape works	February 2025

2 Project team

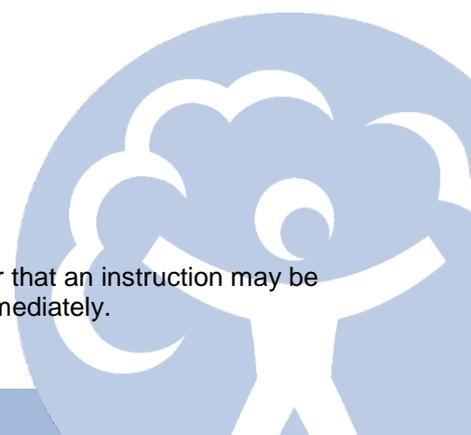
- 1 The design consultant is Jacobs
- 2 The contractor is ATM
- 3 The Project Manager is [REDACTED]
- 4 The *Client's* Project Manager is [REDACTED]
- 5 The *Client's* Project Executive is [REDACTED]
- 6 Cost management will be provided by [REDACTED]
- 7 Principal Designer is [REDACTED]

3 *Consultant* provides the *services*

3.2 Environmental Clerk of Works (ECW)

The responsibilities of the ECW are:

- 1 Advising the Landscape Contractor. Should the *Consultant* consider that an instruction may be required, they must advise the PSC Project Manager and *Client* immediately.



- 2 Provide key focussed environmental toolbox talks to the site team, or where there is a requirement for a specialised discipline or experience, it is paramount to arrange (with the *Client's* agreement) for a competent person to deliver these toolbox talks. Aspects to cover should include archaeological, landscape protection and ecological toolbox talks at the outset of site set-up, and when required during the construction period of the scheme.
- 3 Completing all actions assigned to the ECW in the Environmental Action Plan (EAP) and the EAP Drawing. As a live document, the *Consultant* will maintain the EAP and add items if/when necessary.
- 4 Attending the pre-commencement meeting to explain, or assist the *Client* in explaining, the role of the EAP to the project team.
- 5 Ensuring that each action of the EAP is completed in the necessary timeframe by the party responsible for that action. The *Consultant* will also ensure that the *Client's* contractor adheres to all other environmental legislation and the *Client's* environmental policies and with relevant planning conditions. If there are non-conformances, the *Consultant* will immediately inform the *Client*
- 6 Monitoring adherence by the Landscape Contractor to the Contractor's EMS and advising the *Client* of any incidences of non-compliance.
- 7 If there are non-conformances the *Consultant* will immediately inform the *PSC Project Manager*.
- 8 The *Consultant* must review current itemised programmes and method statements, and must be involved in all discussions regarding any relevant changes and advise the *Client* of the implications of these changes. Allow NEAS and FBG the opportunity to input into the method statements, and co-ordinate the responses back to the contractor.
- 9 Audit the site in advance of progress meetings recording details, including photos, on the 'Environmental Audit Record' appended to the EAP. (Note: It may be deemed appropriate to use the weekly ECW Reports for this purpose).
- 10 If applicable, notify and assist the PSC Project Manager and *Client* with any environmental incidents for the duration of the *services*.
- 11 Liaise pro-actively and effectively with the contractor to assist in obtaining any additional licences/consents as required.

In addition to the above, supplementary responsibilities relating to the role are:

- Monitoring compliance with the Woodland management Strategy and Landscape Plan for the Perry Barr and Witton FRMS.

The ECW will report their activities as described below:

- 12 All written reports will be in Word format with inclusion of relevant images integrated within the associated text sections, progress images are also to be included where relevant providing an overview. The weekly site audit report is to be submitted to the *Client* within 2 working days of undertaking the weekly site visits and cover both the ECW role. Feedback to be given to contractors on site on the day. It is acceptable that this is appended to the main site report to cover the ESIF works.
- 13 Attend monthly progress meetings, to update the team on compliance with EAP actions.
- 14 Provide input to the *Client's* contractor's Weekly Site Record on environmental matters, including weekly monitoring of EAP actions, recording environmental issues/ non-conformances, actions taken, and changes to design.
- 15 Maintain a file of site visit reports, weekly updates, incident reports, correction notices and EAP amendments. This file will be passed to the *Client* on completion of the project and will constitute a condition of Completion.
- 16 The *Consultant* will inform the *Client* upon completion of each phase of the EAP actions and ensure each phase is signed off by the *Client*, the ECC Contractor and the *Consultant*.
- 17 Produce a short summary report at the end of the works to compare the predicted effects against actual impacts of the temporary and permanent works. This shall be supported by

photographic evidence, including the condition of the site upon completion of site reinstatement, and submitted to the *Client* within 4 weeks of the completion of site reinstatement.

- 18 The *Consultant* undertakes reviews of waste transfer notes on file, and proposed waste sites to ensure they can accept the waste stream identified, so as to assure that the contractor's duty of care is achieved in accordance with the Environmental Protection Act 1990 Section 34 Waste Management – The Duty of Care – A Code of Practice, which refers to the Controlled Waste Regulations 1992. This is to be undertaken in mind of the reputational risk to the *Client* from non-compliance.

4 Constraints on how the *Consultant* provides the services

- 1 The named ECW is not to delegate their duties or powers without prior written agreement from the *Client*.
- 2 The *Consultant* may provide additional people (possessing alternative specialist knowledge) to support to the ECW (this may have particular relevance in terms of landscaping elements such as topsoil clearance and temporary bunded storage, subsoil de-compaction, topsoil spreading, topsoil cultivation prior to grass seeding, seeding and initial aftercare establishment).

5 Standards to be achieved

6.1 Health and safety

- 1 Health, safety and welfare is of paramount importance to the *Client* and one of the objectives for the contract is that the works should be undertaken in a manner that achieves highest possible standards. Health, safety and welfare provisions must be seen as integral parts of carrying out the works and not as stand-alone considerations. The Project Manager and *Client's* Project Manager will take reasonable steps, when considering documents supplied to them by the *Consultant*, that the **management arrangements** adopted by the *Consultant* for safety are suitable.

5.2 Co-operation with the Principal Designer

There will be a Principal Designer for this scheme. The Principal Designer duties will include for a review of any site based works and notifying the HSE of these, as well as a review of the design. The Principal Designer will comment and include for any work required following review. The *Consultant* will co-operate with the Principal Designer. The *Consultant* isn't a designer under this scope.

5.3 Data and information management and intellectual property rights

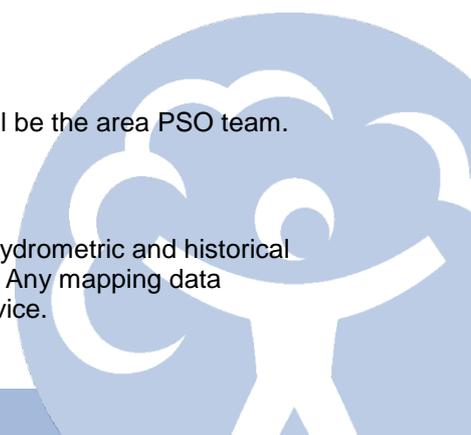
All of the data listed as being supplied to the supplier as part of this study remains the Intellectual Property of the *Client*.

5.4 Data custodianship

The data custodian for project deliverables from this commission will be the area PSO team.

5.5 Licensing information

Licences for LiDAR Data, Ordnance Survey mapping, model, survey, hydrometric and historical data will be provided to the *Consultant* upon award of this commission. Any mapping data required should be requested via the *Client's* GeoStore DataShare service.



5.6 Metadata

The *Client* populates a metadata database called the Information Asset Register (IAR). It is a requirement that all information produced by modelling work is appropriately tagged with metadata. The *Client*'s project manager will supply an IAR spreadsheet (and any supplementary local metadata requirements if appropriate) where all relevant metadata can be recorded and handed over on project completion.

5.7 Data security

- 1 All model and survey information will be provided to the supplier in an encrypted format (using WinZip 128 bit encryption) according to *Client* data security policy. It is expected that once the commission is completed, all the original data sent to the supplier, which is classed as commercially sensitive, is returned in an encrypted format using WinZip 128 bit encryption.
- 2 Project deliverables such as model files, survey data or anything of a personal nature such as questionnaires or address data must also be returned in an encrypted format using WinZip 128 bit encryption.
- 3 Further details regarding security measures will be discussed at the start-up meeting for this commission

5.8 Timesheets

Timesheets as normally utilised by the *Consultant*'s shall be submitted with fee notes unless otherwise agreed with the *Client*'s project manager. Electronic submissions would be acceptable.

5.9 Payment procedure

Payment is subject to the procedure agreed in or under the framework

5.10 Quality

The quality management system complies with the requirements of ISO9001 and ISO14001.

