

# NEC4 Engineering and Construction Short Contract

<b>Lot 3</b>	
<b>National Property Flood Resilience Framework</b>	
<b>A contract between</b>	<b>The Environment Agency Horizon House Deanery Road Bristol BS1 5AH</b>
<b>And</b>	<b>Flood Control NI Ltd</b>
<b>For</b>	<b>East Peckham Flood Resilience Scheme</b>
<b>Tender Documents</b>	<b>Tenderers should receive the following documents:</b>  <b>Contract Forms</b> <b>Invitation to Tender letter</b> <b>Contract Data NEC4 ECSC</b> <ul style="list-style-type: none"> <li>- <b>The <i>Contractor's</i> Offer and <i>Client's</i> Acceptance</b></li> <li>- <b>Price List</b></li> <li>- <b>Scope and Supporting Appendices</b></li> <li>- <b>Site Information &amp; Maps</b></li> </ul> <b>Project Proposal Proforma</b>

# Contract Data

## The *Client's* Contract Data

	The <i>Client</i> is	
Name	Environment Agency	
Address for communications	PSO West Kent, Environment Agency, Orchard House, Endeavour Park, London Road, Kent, ME19 5SH	
Address for electronic communications		
The <i>works</i> are	Completion of landowner consultation & detailed property surveys to enable the design, supply and installation a range of flood resistance/resilience measures on up to 115 properties. Further detail provided in the Scope.	
The <i>site</i> is	East Peckham, Kent	TN12 5AR
The <i>starting date</i> is	26 April 2021	
The <i>completion date</i> is	30 October 2022	
The <i>delay damages</i> are	£148.50	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	to be decided for each call off from framework	5%
The United Kingdom Housing Grants, Construction and Regeneration Act (1996) <b>does</b> apply		
The <i>Adjudicator</i> is : the person appointed as follows:		
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	Minimum £5,000,000 in respect of every claim without limit to the number of claims	
The <i>Client</i> provides this insurance	None	
Only enter details here if the <i>Client</i> is to provide insurance.		
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 <i>works</i> , 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 <i>works</i>	Minimum £5,000,000 in respect of every claim without limit to the number of claims	6 years following Completion of the whole of the <i>works</i> 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	
<b>Z1.0</b>	<b>Sub-contracting</b>
Z1.1	The <i>Contractor</i> submits the name of each proposed sub-contractor to the <i>Client</i> for acceptance. A reason for not accepting the sub-contractor 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 him.
Z1.2	Payment to subcontractors and suppliers will be no more than 30 days from receipt of invoice.
<b>Z2.0</b>	<b>Environment Agency as a regulatory authority</b>
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. 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.
<b>Z3.0</b>	<b>Confidentiality &amp; Publicity</b>
Z3.1	The <i>Contractor</i> may publicise the works only with the <i>Client's</i> written agreement
<b>Z4.0</b>	<b>Correctness of Site Information</b>
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.
<b>Z5.0</b>	<b>The Contracts (Rights of Third Parties) Act 1999</b>
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.
<b>Z6.0</b>	<b>Design</b>
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	<p>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.</p> <p>The <i>Contractor</i> does not proceed with the relevant work until the <i>Client</i> has accepted his design</p>
Z6.4	The <i>Contractor</i> may submit their design for acceptance in parts if the design of each part can be assessed fully.
<b>Z7.0</b>	<b>Change to Compensation Events</b>
Z7.1	<p>Delete the text of Clause 60.1(11) and replace by:</p> <p>The <i>works</i> are affected by any one of the following events</p> <ul style="list-style-type: none"> <li>• War, civil war, rebellion revolution, insurrection, military or usurped power</li> <li>• Strikes, riots and civil commotion not confined to the employees of the <i>Contractor</i> and sub-contractors</li> <li>• Ionising radiation or radioactive contamination from nuclear fuel or nuclear waste resulting from the combustion of nuclear fuel</li> <li>• Radioactive, toxic, explosive or other hazardous properties of an explosive nuclear device</li> <li>• Natural disaster</li> <li>• Fire and explosion</li> <li>• Impact by aircraft or other device or thing dropped from them</li> </ul>
Z7.2	<p>Additional Compensation Event COVID-19</p> <p>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.</p>

<b>Z8.0</b>	<b>Framework Agreement</b>
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> .
<b>Z9.0</b>	<b>Termination</b>
Z9.1	<p>Payment on Termination</p> <p>Replace Clause 92.3 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”.</p>
<b>Z10</b>	<b>Data Protection</b>
Z10.1	Schedule 11 – Data Protection Schedule of the Deed of Agreement shall be incorporated into this Agreement.
Z10.2	A request or instruction pursuant to Schedule 11 by the <i>Project Manager</i> shall be treated as being a request or instruction by the <i>Client</i> .
Z10.3	For the avoidance of doubt, reference to Supplier in Schedule 11 is reference to the <i>Contractor</i> .
<b>Z11</b>	<b>Liabilities and Insurance</b>
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 Contractor is	
Name	Flood Control (NI) Ltd	
Address for communications	Unit 44-45, Enterprise House, Balloo Avenue, Bangor, Co Down, BT19 7QT	
Address for electronic communications		
The fee percentage is	As per Framework Deed	%
The people rates are	As per Framework Deed	
category of person	Unit	rate
The published list of Equipment is		As per Framework Deed
The percentage for adjustment for Equipment is		As per Framework Deed

# 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		£58,350.00
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Enter the total of the Prices from the Price List.	
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Signed on behalf of the *Contractor*

Name	
Position	
Signature	

Date	24 March 2021
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The *Client* accepts the *Contractor's* Offer to Provide the Works

Signed on behalf of the *Client*

Name	
Position	
Signature	

Date	6 April 2021
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# Price List

The Price List is detailed in the document: 2.03 Tender Stage Pricing Schedule.xls. The summary therein (tab "T5 Pricing Summary") is repeated below.

Within the Price List document 2.03 Tender Stage Pricing Schedule.xls, where the unit is specified as 'Sum', 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 tenderer enters the amount in the Price Column only: the Unit, Quantity and rate columns being left blank.

Where the unit is specified as 'Item', the *Contractor* is to be paid an amount for the item of work which is the rate for the work multiplied by the quantity completed, the tenderer enters the rate which is then multiplied by the expected quantity to produce the Price, which is also entered.

All prices and costs provided for each item in T4 Supply Install Fwk Prices within 2.03 Tender Stage Pricing Schedule.xls shall include for the full installation cost and full functionality to the appropriate standard. Examples of costs that should be included, but not limited to, bases, channels, frames, packers and powdercoating.

Description	Unit	Quantity	Rate	Price
<b>Pricing Schedule</b>				
As per Price List document 2.03 Tender Stage Pricing Schedule.xls Tab T6 – Contract Award				58,350.00
<b>The total of the Prices</b>				58,350.00

The method and rules used to compile the Price List are:

As per the Framework Price Workbook, as amended by

**Price List document 2.03 Tender Stage Pricing Schedule.xls tabs T2-T4a and T4b**



# Scope

**The Scope comprises this Scope document sections 1 – 6, together with the following appendices;**

- 2.01 - PFR Scope Lot 3
- 2.01a - PFR Scope Lot 1
- 2.01b - PFR Scope Lot 2
- 2.02 - PFR Scope EP Comms & Eng Plan
- 2.03 – Tender Pricing Schedule v3

## 1. Description of the works

The Environment Agency has identified a number of properties in East Peckham that would benefit from Property Flood Resilience (PFR) measures. Initially 115 properties have been identified as being eligible for measures due to being located at very significant flood risk. We expect an uptake of approximately 80% based on similar schemes in the area. Additionally, we may also be providing PFR to any properties that can provide evidence of internal flooding.

The *Contractor* shall supply and install a range of standard and bespoke flood resistance or resilient products to protect properties from water ingress during flooding. Example of products include flood doors, barriers, airbricks, non-return valves, sump pumps and waterproofing treatments. The *Contractor* shall include all standard ancillary requirements when installing products that are necessary for the product to fulfil its flood resilience function. This shall include, but not be limited to, bases, channels, frames, packers and powdercoating. Minor building works may be required e.g. raising property thresholds, wall construction, or for example pointing of brickwork and stonework using suitable mortars.

The *Contractor* must be able to source products from a range of third party suppliers or in-house.

The *Contractor's* brief shall include public meetings, inspection of properties, the design and installation of suitable PFR products. Additionally, the *Contractor* shall provide training to the homeowner and/or tenant for each property at which measures are installed, and produce a completion form signed off by the Homeowner.

This Scope should be read in conjunction with the British Standards or other equivalents documents. In the event of conflict, this Scope shall prevail.

At the start of the contract and prior to works taking place the *Contractor* will provide an installation method statement to be approved by the *Client* and this will be given to the *Contractor's* installation teams to adhere to during installation of measures.

The *Client* will provide a letter to the identified properties to request signup to the scheme and outline the upcoming engagement. The *Contractor* will undertake consultation with the identified property owners as set out in the document 2.02 – PFR Scope – EP Comms & Eng Plan. This will start with a video to the identified property owners describing products used and the process of installation to help raise awareness of the scheme. Following this, the *Client* will co-ordinate a virtual video call session to highlight the timeline of the scheme and provide an opportunity for residents to ask any PFR questions. This video call session will be attended by the *Contractor*. The timeline and activities within the EP Comms & Eng Plan will be reviewed as the project progresses and will be subject to change.

Following the engagement and as homeowner's sign up to the scheme, the *Contractor* will liaise directly with the residents to arrange dates and times to complete the detailed surveys for the PFR measures. Surveys will be undertaken as detailed in 2.01 Scope for Lot 3. The *Contractor* will communicate all arranged detailed surveys to the project manager and expect an Environment Agency project member to accompany each detailed survey. The *Contractor's* surveyor will collect full names, address and contact details (including email address) of both the property owner and the tenant. Additionally, there are a number of specific requirements:

- Listed building surveys should be staggered through the project to enable gradual submission of applications to the local authority. This will spread the workload of the local authority and the project team making the submissions.
- For properties with solid floors in areas where upwelling is likely, the *Contractor* should be encouraged to consider external sump pumps rather than rely on low capacity portable puddle pumps. The project should consider whether to consider external sump pumps or provide higher capacity portable pumps.
- The *Contractor* is responsible for advising homeowners of additional contributions that may be required if additional cosmetic requirements are requested that have no part in reducing flood risk. Examples could include glazing bar inserts, additional window lights above the door etc.

At the end of the survey, the *Contractor* will confirm to the homeowner the measures to be proposed. The *Contractor* shall undertake design of the property flood resilience measures as detailed in 2.01 Scope for Lot 3. The schedule of proposed works for each property (including costs) will be provided to the *Client* within 10 days of the detailed survey. The *Client's* Environment Agency project manager will make the final decision as to whether the project is able to fund the works. The Environment Agency will apply for any listed building consents required, which may delay a number of properties from being able to have measures installed immediately.

The *Client* will confirm to the *Contractor* that the Environment Agency agree to fund the measures to the property and that the Environment Agency have received homeowner's written agreement to the proposed measures. The project will have a pre-determined cost budget per property, above which the property will require contributions from the homeowner or will not be taken forward to installation. The *Contractor* will then supply and install the measures as detailed in 2.01 Scope for Lot 3. The *Contractor* will liaise directly with the homeowner to arrange a date and time to install the PFR measures and carry out the installation.

The *Contractor* shall provide an on-site supervisor to begin the Post Installation Flood Risk Report (as per CIRIA code of practice) identifying and rectifying defects, testing and signing off of the works within 28 days of installation (including issuing of the completion certificate). The dates and times of the PIA's shall be communicated to the *Client* project manager to allow a project team member to be present at the assessment. In addition to the minimum of 10% wet testing as specified in 2.01b Scope for lot 2. The *Contractor* shall, where appropriate, consider additional innovations in testing, and shall provide a summary of such testing options to the *Client*. An instruction to proceed with any such testing may then be provided by the *Client* at its discretion.

Maps of the areas of interest for the projects below can be found in the site information:

4.01 – East Peckham – Property Locations\*

4.02 – East Peckham – Area of interest\*

\*Please note that these are for indicative purposes only and property locations and numbers are subject to change as the project progresses.

#### Five Oak Green

Five Oak Green is a village located approximately 4km to the south of East Peckham and is affected by the Alder Stream. Unlike the River Medway, the catchment responds rapidly to heavy rainfall making it difficult to provide residents with adequate flood warning. Tunbridge Wells Borough Council (TWBC) have obtained partial funding to install property flood resilience to 35 properties in Five Oak Green. To progress the project the Environment Agency will be submitting a request for FDGiA to attain full funding for the project. Subject to a successful bid for this funding and at the *Client's* discretion, the Scope relating to the East Peckham project may be increased to include the installation of PFR measures to approximately 20 properties in Five Oak Green. If pursued, this will be as a Compensation Event under clause 60.1(1) following a request and acceptance of quotation under clause 62.

## 2. Drawings

Drawing Number	Revision	Title

## 3. Specifications

Title	Date or Revision	Tick if publicly available
Minimum Technical Requirements	As per Framework	
2.01a - PFR Scope Lot 1	As attached	
2.01b - PFR Scope Lot 2	As attached	
2.01c - PFR Scope Lot 3	As attached	
2.02 - PFR Scope EP Comms & Eng Plan	As attached	
2.03 - PFR Scope – PFR Standard Building Price Approach	As attached	

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

As per the Scope document.

### Working times

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

The schedule of proposed works for each property (including costs) will be provided to the Environment Agency project manager with 10 days of the detailed survey

The *Contractor's* on-site supervisor shall begin the post installation assessment within 28 days of installation of PFR measures.

The *Contractor* will, where relevant, supply only kite marked property flood resilience products All certificates must be provided prior to products being selected.

The *Contractor* will supply barriers with 600mm protection unless agreed otherwise.

## 5. Requirements for the programme

The *Contractor* submits their programme with the *Contractor's* Offer for acceptance. The *Contractor* shows on each programme which they submit 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

(f) An updated programme shall be submitted by the Contractor on the second Thursday of each month



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

Item	Date by which it will be provided

## 7. Site Information

4.01 – East Peckham – Property Locations\*

4.02 – East Peckham – Area of interest\*

\*Please note that these are for indicative purposes only and property locations and numbers are subject to change as the project progresses.

# 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:	