



# **Poole Park Access improvements and hard landscaping**

**Project DN411127  
PROCUREMENT PROCEDURE:**

## **Appendix B Contract Data Part 1 Option One**

<b>Status:</b>	Issued
<b>Version:</b>	V1.00
<b>Date:</b>	02/12/2019

## CONTRACT DATA PART ONE

### Part one – Data provided by the Employer

Statements given  
in all contracts

1 General

- The *conditions of contract* are the core clauses and the clauses for main Option B, dispute resolution Option W2 and secondary Options X2, X7, X13, X15, X16, Y(UK)2, Y(UK)3 and Z of the NEC3 Engineering and Construction Contract April 2013
- The *works* are  
  
Access improvements, hard landscaping and other works in Poole Park.
- The *Employer* is  
  
Name Bournemouth, Christchurch and Poole Council  
  
Address: Civic Centre, Poole BH15 2RU
- The *Project Manager* is  
  
Name Martin Whitchurch  
  
Address: BCP Council Environment, Unit 1, Newfields Business Park, 2 Stinsford Road, Poole, BH17 0NF
- The *Supervisor* is  
  
Name Michael Hadley  
  
Address: Civic Centre, Poole BH15 2RU
- The *Adjudicator* is  
  
To be appointed in accordance with W2.2(3)
- The *Works* Information is in:
  - Appendix A Specification
  - Appendix C Drawings
  - Appendix D Pre Construction Information
- The *Site* Information is in:
  - Appendix C Drawings
  - Appendix D Pre Construction Information

- The *boundary* of the site is shown by the red line on the drawing Appendix D 12 Masterplan and the extent of the works are as shown on the Appendix C set of drawings.
- The *language* of this 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 to a communication is 1 week.
- The *Adjudicator* nominating body is the Institution of Civil Engineers
- The tribunal is arbitration
- The following matters will be included in the Risk Register  
 Availability of materials, availability of trees, availability of specialist plant/equipment, availability of specialist sub-contractors, delivery of materials/plant/personnel to site, programme, construction risks, environmental risks, with other matters to be included as identified.

### 3 Time

- The *starting* date is 24th February 2020
- The *access* dates are

Part of the Site	Date
The whole site	24th February 2020

### 4 Testing and Defects

- The *defects* date is 52 weeks after Completion of the whole of the works.
- The defect correction period is 4 weeks except those defects listed below for which the defects correction period is 24 hours.
  - Any defect where there is a risk to public safety

### 5 Payment

- The *currency* of this contract is the pound sterling
- The assessment interval is 4 weeks
- The interest rate is 2% per annum (not less than 2) above the base lending rate of HSBC plc.

### 6. Weather

- The place where the weather is to be recorded is Poole, Dorset

- 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 08.00 hours GMT
- The weather data are the records of weather measurements for each calendar month which were recorded at Poole, Dorset and which are available from the Met Office.

#### 8 Risks and insurance

- The minimum limit of indemnity for insurance in respect of 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*) caused by activity in connection with this contract for any one event is £10,000,000. Contractor's insurance to include Pollution Cover.
- The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the Contractor arising out of an in the course of their employment in connection with this contract for any one event is £10,000,000.

#### Optional Statements

The arbitration procedure is the Institution of Civil Engineers' Arbitration Procedure (2006) or any amendment or modification in force when the Arbitrator is appointed.

The person or organisation who will choose an arbitrator: if the Parties cannot agree a choice or if the arbitration procedure does not state who selects an arbitrator is an appointed officer of the Institution of Civil Engineers

The *completion date* for the whole of the *works* is 24<sup>th</sup> December 2020.

The *Contractor* is to submit a first programme for acceptance within two weeks of the Contract Date.

The *Employer* requires the following condition to be met:

1. All tree planting shall be completed in tree planting seasons only as agreed with the employer, namely between the start of November and the end of February. The contractor programme shall reflect this requirement, phasing works and returning to plant trees as necessary.
2. Consider the access and egress to Poole Park at times by stakeholders and the public.

The period for payment is 28 days.

Where the *Contractor* produces a design or provides advice to the *Employer* in respect of the design of the *works*, the *Contractor* shall provide professional indemnity insurance with a minimum limit of indemnity for insurance in connection with this Contract for any one event of £1,000,000

#### X7 Delay Damages

Delay damages for Completion of the whole of the *works* are £250 per day.

#### X15 Limitation of the Contractor's liability for his design to reasonable skill and care

The *Contractor* is not liable for Defects in the *works* due to his design so far as he proves that he used reasonable skill and care to ensure that his design complied with the Works Information.

#### X16 Retention

The *retention free amount* is zero

The *retention percentage* is 5%

Option Y9UK)2

Does not apply, the period for payment is 28 days.

Option Y(UK)3

Term

Person or organisation

None

None

## The additional *conditions of contract* (Z-clauses)

### Z 1 Corrupt Gifts and Payments of Commission

#### DEFINITIONS

**Bribery Act:** the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation and all references to the Bribery Act shall apply *pari passu* to the giving of any fee or reward the receipt of which is an offence under sub- section (2) of Section 117 of the Local Government Act 1972

**Prohibited Act:** the following constitute Prohibited Acts:

(a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:

(i) induce that person to perform improperly a relevant function or activity; or

(ii) reward that person for improper performance of a relevant function or activity;

(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the contract;

(c) committing any offence:

(i) under the Bribery Act;

(ii) under legislation creating offences concerning fraudulent acts;

(iii) at common law concerning fraudulent acts relating to this contract or any other contract with the Authority; or

(iv) defrauding, attempting to defraud or conspiring to defraud the Authority.

**Contractor Party:** the Contractor's agents and contractors, including each Sub-Contractor.

**Contractor Personnel:** all employees, agents, consultants and contractors of the Contractor or of any Sub-Contractor.

**Authority:** the Employer

**Sub-Contract:** any contract or agreement, or proposed contract or agreement between the Contractor and any third party whereby that third party agrees to provide work or services to the Contractor or provide facilities work or services necessary for the provision of the Works or any part of the Works or necessary for the management, direction or control of the Works or any part of the Works.

**Sub-Contractor:** the third parties that enter into a Sub-Contract with the Contractor

## 1. PREVENTION OF BRIBERY

### 1.1

The Contractor :

(a) shall not, and shall procure that any Contractor Party and all Contractor Personnel shall not, in connection with this contract commit a Prohibited Act;

(b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority, or that an agreement has been reached to that effect, in connection with the execution of this contract, excluding any arrangement of which full details have been disclosed in writing to the Authority before completion or execution of this contract.

(c) give any fee or reward the receipt of which is an offence under sub- section (2) of Section 117 of the Local Government Act 1972

1.2 The Contractor shall:

(a) if requested, provide the Authority with any reasonable assistance, at the Authority's reasonable cost, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;

(b) if requested certify to the Authority in writing (such certification to be signed by a director of the Contractor compliance with this [clause 1](#) by the Contractor and all persons associated with it or other persons who are supplying goods or services in connection with this contract. The Contractor shall provide such supporting evidence of compliance as the Authority may reasonably request.

1.3 If required by the tender instructions the Contractor shall have an anti-bribery policy (which shall be disclosed to the Authority on demand) to prevent any Contractor Party or Contractor Personnel from committing a Prohibited Act and shall enforce it where appropriate. If the Contractor does not have an anti bribery policy it shall comply with Authority's anti bribery policy1.4 If any breach of [clause 1.1](#) is suspected or known, the Contractor must notify the Authority immediately.

1.5 If the Contractor notifies the Authority that it suspects or knows that there may be a breach of [clause 1.1](#), the Contractor must respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documentation. This obligation shall continue for 6 years following the expiry or termination of this contract.

1.6 The Authority may terminate this contract by written notice with immediate effect if the Contractor, Contractor Party or Contractor Personnel (in all cases whether or not acting with the Contractor's knowledge) breaches [clause 1.1](#). In determining whether to

exercise the right of termination under this *clause 1.6*, the Authority shall give all due consideration, where appropriate, to action other than termination of this contract unless the Prohibited Act is committed by the Contractor or a senior officer of the Contractor or by an employee, Sub-Contractor or supplier not acting independently of the Contractor. The expression "not acting independently of" (when used in relation to the Contractor or a Sub-Contractor) means and shall be construed as acting:

(a) with the authority; or,

(b) with the actual knowledge;

of any one or more of the directors of the Contractor or the Sub-Contractor (as the case may be); or

(c) in circumstances where any one or more of the directors of the Contractor ought reasonably to have had knowledge.]

1.7 Any notice of termination under *clause 1.6* must specify:

(a) the nature of the Prohibited Act;

(b) the identity of the party whom the Authority believes has committed the Prohibited Act; and

(c) the date on which this contract will terminate.

1.8 Despite clause W2 any dispute relating to:

(a) the interpretation of *clause 1*; or

(b) the amount or value of any gift, consideration or commission, shall be determined by the Authority and its decision shall be final and conclusive.

1.9 Any termination under *clause 1.6* will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

1.10 Upon termination the Contractor shall not be entitled to payments beyond those (if any) provided for by the contract. In addition to the costs and expenses recoverable by the Employer as provided for in section 9 of the contract the Employer shall also be entitled to recover from the Contractor any other costs or losses incurred by the Employer consequent upon termination and to receive from the Contractor such sum as in the opinion of the Employer represents the amount or value of any gift consideration paid or agreed to be paid in breach of this Clause.

1.11 In every sub-contract of any part of the Works the Contractor shall incorporate such provisions as will impose on the sub-contractor liabilities similar to those imposed on the Contractor by this Clause and such provisions as will entitle the Contractor to determine the sub-contract on terms equivalent to those which apply to the Contractor. In the event of any breach by the sub-contractor of any such provision the Contractor shall without prejudice to any of his obligations under this contract take action in accordance with the terms of the sub-contract to exercise his rights against the sub-contractor. Failure by the Contractor to take action shall



be grounds for the exercise by the Employer of his right to enter the Site and expel the Contractor. When the Contractor exercises his rights against a sub-contractor in accordance with the Clause he shall make no claim nor agree to any claim being made on his behalf against the Employer in respect of any consequential delays and extra costs arising from the contract

## **CLAUSE Z2 Privacy of Information**

- (1) The Contractor shall not give information concerning the Works for publication in the Press or on radio, television, screen or any other medium without the written consent of the Project Manager.
- (2) The terms of the contract are confidential and the Contractor shall ensure that it does not disclose the terms of the contract to any third party save with the prior written express permission of the Employer or as required by operation of law.

## **CLAUSE Z3 Confidentiality and Data Protection**

- (1) The Contractor acknowledges and accepts that it may receive information of a confidential nature relating to the Employer or the supply of the Works /Services/ Goods. The Contractor undertakes to the Employer that it will use such confidential information solely for the purposes required by the contract and will not disclose the same unless
  - (a) the Employer has consented in writing to such disclosure; or
  - (b) such disclosure is to approved sub-contractors to the extent necessary to supply the Works/Services/Goods; or
  - (c) such disclosure is required by law; or
  - (d) such information is already in the public domain, other than as a result of breach of any obligation of confidentiality.
- (2) The Contractor shall procure that its staff and approved sub-contractors comply with the provisions of clause 1 above.
- (3) The parties agree to ensure they will comply at all times with the provisions and obligations contained in the Data Protection Act 1998 and the data protection principles set out in the Data Protection Act 1998 in storing and processing personal data. In the event that either party acquires personal data from the other the party acquiring the personal data will only process it with the consent of the party from whom it is acquired. Both parties agree to indemnify each other in respect of any unauthorised disclosure of personal data.

## **CLAUSE Z4 Supply of Information & Freedom of Information**

- (1) The Contractor shall take such steps as may be reasonable

and practicable to afford the Employer access to information which is reasonably required by the Employer in connection with any of its statutory duties and responsibilities to supply or disclose information and for any purposes connected with its rights and obligations under the contract or to enable the Employer to prepare the necessary documentation to appoint another person to provide the Works/Services.

- (2) The Contractor shall in all respects co-operate with the Employer's reasonable requests so as to assist in enabling the Employer to comply with all legislation relating to access to information, the Freedom of information Act 2000 and any legislation or guidance issued under or in relation to this or any other Act and the Contractor shall not disclose to any person any information relating to the Works/Services which is exempt from disclosure without the prior written agreement of the Employer.

**CLAUSE Z5 Provision of Certificates of Insurances**

The Contractor shall provide certificates of insurance from his insurer confirming all insurances are in force not later than fourteen days before the starting date of the contract and subsequently fourteen days before the expiry / renewal of insurances during the duration of the contract.

**CLAUSE Z6 Human Rights**

The Contractor shall comply with the provisions of the Human Rights Act 1998 as if it were a public body as defined by this Act as appropriate to the provision of the Works/Services.

**CLAUSE Z7 Dealing with Water**

No surface or sub-soil water shall be pumped or allowed to enter any water course or sewer without the specific approval of the Project Manager.

**CLAUSE Z8 Fires**

No burning of rubbish or any materials arising from the works will be allowed on the site or in the Employers compound

**CLAUSE Z9 Construction (Design and Management) (CDM)**

The Contractor shall include within his price list for all obligations as defined in the HSE Construction (Design and Management) Regulations 2015 (or as in subsequent publications) and is reminded that they are a legal requirement to be implemented by all parties involved in the contract. For the purposes of this contract all conditions apply and the contractor will be nominated "The Principal Contractor" and the Employer will be known as "the Client".

**CLAUSE Z10 Health and Safety File**

Prior to the issue of the certificate of Completion, the Principal Contractor shall furnish the Employer with the completed Health and Safety File in accordance with the relevant Regulations.

**CLAUSE Z11**

**Waiver**

Failure by the Employer at any time to enforce the provisions of the Contract or to require performance by the Contractor of any of the provisions of the Contract shall not be construed as a waiver of any such provision and shall not affect the validity of the Contract or any part thereof, or the right of the Council to enforce any provision in accordance with its terms.

**CLAUSE Z12**

**Inducements**

The Council shall retain the right to terminate the contract and to recover from the Contractor the amount of any loss resulting from such cancellation, if the Contractor shall have offered or given, or agreed to give, to any person any gift or consideration of any kind as an inducement or reward for doing or refraining to do, or for having done or refrained to do, any action in relation to the obtaining or execution of the contract or any other contract with the Council or for showing or refraining to show favour or disfavour to any person in relation to the contract or any other contract with the Council, or if the like acts shall have been done by any person employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) or if in relation to any contract with the Council the Contractor or any person being employed by him or acting on his behalf shall have committed an offence under the Prevention of Corruption Acts 1889 to 1916 or shall have given any fee or reward the receipt of which is an offence under Section 117 (2) of the Local Government Act 1972. Revised 15/09/09 23

**Amended Conditions**

**CLAUSE 60.1(4)**

Delete ‘.’

Insert ‘unless the instruction is caused by the application of The Construction (Design and Management) Regulations 2015 or any clause of the ‘Construction Phase Plan’