

Appendix - 2

**NEC3
ENGINEERING & CONSTRUCTION
CONTRACT (ECC), April 2013.**

**OPTION A: PRICED CONTRACT WITH
ACTIVITY SCHEDULE**

Supplying the South West Portal Ref: DN437379

Contract Manager: Chandan Bhumpelly

**North Somerset Council
Castlewood, Tickenham Road
Clevedon
BS21 6FW**

Telephone: 01275 888293

Contact e-mail: structures@n-somerset.gov.uk



1. Form of Tender

The works are:

1. Deconstruct and Rebuilding the Tumbling Weir Retaining wall of 10m length X 3.5m height on Havyatt Road, Wrington, North Somerset.
2. Deconstruct and Rebuilding the Spring Lane Retaining wall of 4.6m length X up to 1.5m height on Spring Lane Road, Dundry, North Somerset.

FORM OF TENDER (INCORPORATING COLLUSION CERTIFICATE)

To: North Somerset Council
Town Hall
Weston-Super-Mare
BS23 1UJ

Having examined the Drawings, Conditions of Contract and Specification documents for the construction of the above-mentioned Works, we offer to construct and complete the whole of the said Works in conformity with the said Drawings, Conditions of Contract, Contract Data, Works Information, Site Information, Specification and any other documents listed in the Invitation to Tender or issued by the Employer or his duly appointed Representative prior to the date of return of Tender for such sum as may be ascertained in accordance with the said Conditions of Contract.

We undertake to complete and deliver the whole of the Works and the several parts thereof comprised in the Contract within the time(s) stated in the Contract Data - Part 1 hereto.

We agree that if this tender is to be accepted we will be required to execute a formal Agreement as a Deed or under Seal comprising the Contract Documents. Until the execution of that Agreement this Tender together with your written acceptance thereof and all other Contract Documents shall constitute a binding Contract between us.

We understand that you are not bound to accept the lowest or any tender you may receive.

We certify that this is a bona fide tender, and that we have not fixed or adjusted the amount of the tender by or under or in accordance with any agreement or arrangement with any other person. We also certify that we have not done and we undertake that we will not do at any time any of the following acts:

- a) Communicating to a person other than the person calling for these tenders the rates or the approximate rates of the proposed tender, except where the disclosure, in confidence, of the approximate rates of the tender was necessary to obtain insurance premium quotations required for the preparation of the tender;

- b) Entering into any agreement or arrangement with any other person that he shall refrain from tendering or as to the rates of any tender to be submitted;

- c) Offering or paying or giving or agreeing to pay or give any sum of money or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other tender or proposed tender for the said work any act or thing of the sort described above.

The word "person" includes any persons and anybody or association, corporate or incorporate; and "any agreement or arrangement" includes any such transaction, formal or informal and whether legally binding or not.

	(i)	(ii)
Signed:*
Print Name in Full:
Status:
Date:

Name and Address of Tenderer:

.....

.....

Tel No: Fax No:

Here if the Tenderer is an incorporated association either two duly Authorised Directors or a Director or the Company Secretary should sign. In the case of a partnership at least two duly authorised partners should sign. In the case of an individual that individual should sign.

2. Form of Agreement by Deed

DATE:

PARTIES

1. **The Employer:** North Somerset Council of Town Hall, Weston-Super-Mare, BS23 1UJ

2. **The Contractor:**whose registered office is located at.....

BACKGROUND

1. The Employer has invited tenders for permanent and temporary works comprising [Design & Construction of precast concrete cribblock Retaining Wall on Strawberry Line cycle way and footpath, Winscombe] (**'the Works'**).
2. The Contractor has submitted a successful tender which has been accepted by the Employer.

THE AGREEMENT

- 1.0 **Interpretation**
- 1.1 The definitions in the Conditions of Contract which are referred to in clause 2.1 shall apply to this Agreement.
- 2.0 **THE CONTRACT**
- 2.1 The following documents (**'the Contract Documents'**) are incorporated into this Agreement: -
 - (a) The priced Activity Schedule for the Works.
 - (b) The Conditions of Contract.
 - (c) Contract Data Part 1 - data provided by the Employer.
 - (d) Contract Data Part 2 - data provided by the Contractor.
 - (e) Works and Site Information - general and specification.
 - (f) Works Information - drawings.
- 2.2 In the event of inconsistency between any of the Contract Documents the Conditions of Contract shall prevail.

3.0 **CONTRACTOR'S OBLIGATION**

3.1 In consideration of the payment to be made to the Contractor by the Employer under clause 4 the Contractor agrees to construct and complete the Works and maintain the Permanent Works in accordance with the Contract Documents.

4.0 **EMPLOYER'S OBLIGATION**

4.1 In consideration of the Contractor's obligations in clause 3 the Employer agrees to pay the Contractor the Contract Price in accordance with the Contract Documents.

EXECUTED AS A DEED BY

NORTH SOMERSET COUNCIL (Name of Company)

[The Common Seal of Limited was hereunto

affixed to this Deed in the presence of: -

..... (Director)]

OR

[signed]: -

(1) (Name)

..... (Address)

.....

.....

(Director)

(2) (Name)

..... (Address)

.....

.....

[Director] [Secretary]

The Corporate Seal of North Somerset Council was hereunto affixed to this Deed in the presence of: -

..... (Name)

A Duly Authorised Officer of the said Council

CONTRACT DATA

Part one – Data provided by Employer

1 General

The condition of contract are the core clauses and the clauses for main Option **A**, dispute resolution Option **W2** and secondary Options **X2, X7, X12, X15, X16, Z1, Z2, Z3, Z4, Z5, Y(UK)2 and Y(UK)3** of the NEC3 Engineering and Construction Contract (April 2013).

- The works are:
 1. **Deconstruct and Rebuilding the Tumbling Weir Retaining wall of 10m length X 3.5m height on Havyatt Road, Wrington, North Somerset.**
 2. **Deconstruct and Rebuilding the Spring Lane Retaining wall of 4.6m length X up to 1.5m height on Spring Lane Road, Dundry, North Somerset.**

- The Employer is:

Name: **North Somerset Council**
Address: **Development & Environmental Services**
Town Hall,
Weston-Super-Mare
North Somerset,
BS23 1UJ

- The Project Manager is:

Name: **Mr Chandan Bhumpelly**
Address: **Development & Environmental Services**
Town Hall,
Weston-Super-Mare
North Somerset,
BS23 1UJ

- The Supervisor is:

Name: **TO BE CONFIRMED**
Address: **Development & Environmental Services**
Town Hall,
Weston-Super-Mare
North Somerset,
BS23 1UJ

- The Adjudicator is: **to be nominated by the Institution of Civil Engineer's**
- The Works Information is in **Appendix 1 Contained in this Contract**
- The Site Information is in **Appendix 1 Contained in this Contract**

- The *boundaries of the site* are:
As indicated in below Drawing Numbers:

Tumbling Weir Retaining Wall: 46W016/NSC/C/2018/103 Rev.01; Proposed wall General Arrangement.

Spring Lane Retaining Wall: Drawing Number: 56W026/NSC/C/2018/103, Rev.01; General Arrangement.
- The *language of this contract* is: **English**
- The law of this contract is the law of **England and Wales, subject to the jurisdiction of the courts of England and Wales**
- The *period for reply* is: **5 working days**
- The *Adjudicator nominating body* is: **The Institution of Civil Engineer's**
- The *tribunal* is **arbitration. The arbitration procedure is the latest version of the Institution of Civil Engineers Arbitration Procedure or any amendment or modification to it in force when the arbitrator is appointed.**
- The following matters will be included in the Risk Register
 - a) Access: Vehicular Access arrangement to proposed site location, and any required consents from the private landowners.**
 - b) Working near/adjacent to existing embankment collapse.**
 - c) Severe cold or winter weather conditions.**

3 Time

- The *starting date* is: **11th November 2019**
- The *access dates* are: **28th October 2019**
- The *Contractor* submits revised programmes at intervals no longer than **4weeks**

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.

5 Payments

- The *currency of this contract* is the **pound sterling**
- The *assessment interval* is **1 week**.
- The *interest rate* is **2 %** per annum above the average Rate of the Barclays Plc Bank.

6 Compensation Events

- The place where weather is to be recorded is **Avon Ski Centre**.
- 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 **09:00GMT** hours GMT
- The weather measurements are supplied by **Met Office, Fitzroy Road, Exeter, Devon, EX1 3PB, Telephone: 0370 900 0100**
- The weather data are the records of past weather measurements for each calendar month which were recorded at **Avon Ski Centre**

And which are available from **Met Office** website.

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 event is **£5,000,000 (five million pounds)**.
- The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with this contract for any one activity is **£5,000,000 (five million pounds)**.
- The minimum limit of Indemnity for Professional in respect of failure of designs in connection with this contract for any one event is **£5,000,000 (five million pounds)**.
- The *Employer* does not provide any insurance stated in the insurance table.

Optional statements

- The arbitration procedure is: - **As determined by the Institution of Civil Engineers.**
- The place where arbitration is to be held is: - **As determined by the Institution of Civil Engineers.**
- The person or organisation who will chose an arbitrator
 - If the Parties cannot agree a choice or
 - If the *arbitration* procedure does not state who selects an arbitrator is: -
The Institution of Civil Engineers
- The *Completion* Date for the whole of the *Works* is: **10 weeks from the *starting date*.**
- The Employer is not willing to take over the *works* before the Completion Date.
- The *Contractor* is to submit a first programme for acceptance within two **2** weeks of the Contract Date.

Option X7

- Delay damages for Completion of the whole of the *works* are **£200** per day.

Option X12

The *Client* is

**North Somerset Council
Town Hall,
Weston-Super-Mare
North Somerset,
BS23 1UJ**

The *Client's* objective is

To safeguard the existing disused railway embankment, and the adjacent properties gardens from the future soil slippages and the overall collapse of the embankment.

Option X16

- The retention free amount is: - **Nil**
- The retention percentage is: - **5%**

The additional Conditions of Contract are:

Z1. Prevention of bribery, gifts, inducements and other rewards

Z1.1 The *Employer* may terminate this contract and to recover from the *Contractor* the amount of any loss resulting from such termination if the *Contractor* himself or through a third party has offered or given or agreed to give any person any gift or consideration of any kind as an inducement or reward or promises or gives a financial or other advantage to another person for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or performance of this contract or any other contract with the *Employer* or for showing or forbearing to show favour or disfavour to any person in relation to this contract or any other contract with the *Employer* or if any of the like acts shall have been done by any person employed by the *Contractor* or acting on his behalf (whether with or without the knowledge of the *Contractor*) or if in relation to this contract or any other contract with the *Employer* the *Contractor* or any person employed by him or acting on his behalf shall have committed any offence under Bribery Act 2010. The *Contractor* shall have in place adequate procedures designed to prevent persons associated with him from undertaking such conduct and shall undertake regular and adequate risk assessments to prevent such conduct.

- (a) Any dispute or difference of opinion arising in respect of either the interpretation or effect or application of this clause or of the amount recoverable hereunder by *Employer* from the *Contractor* shall be decided by the *Employer* whose decision on that matter shall be final and conclusive.

Z3. Local Government Ombudsman

Z3.1 The *Contractor* understands and acknowledges that if a complaint is made to the *Employer* by a third party relating to the *service* the Local Government Ombudsman has the power to investigate such complaint and the *Employer* requires the *Contractor* to fully cooperate in such investigation. If the *Employer* is found guilty of maladministration or injustice by the Local Government Ombudsman because of the act or default of the *Contractor* the *Contractor* shall indemnify the *Employer* in respect of the costs arising from such maladministration or injustice.

Z5. Freedom of Information

Z5.1 Definitions:

“EIR” means the Environmental Information Regulations 2004.

“FOIA Information” has the meaning given to under section 84 of the FOIA.

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.

Exempt Information means information falling to the exemptions set out in the FOIA.

Confidential Information means information to which the confidentiality or commercial interests exemptions within the FOIA may apply.

Working Day means Monday to Friday inclusive except bank holidays

“Request for Information” has the meaning given under section 8 of the FOIA.

Z5.2 The *Contractor* understands and acknowledges that the *Employer* is subject to the requirements of the FOIA and EIR and agrees to assist and co-operate with the *Employer* to enable the *Employer* to comply with its information disclosure obligations.

Z5.3 The *Contractor* shall and shall procure that any Subcontractor of any tier of the *Contractor* shall provide all necessary assistance as reasonably requested by the *Employer* to enable the *Employer* to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA.

Z5.4 The *Employer* shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the provisions of the FOIA or the EIR and for determining, at its absolute discretion, the FOIA Information to be disclosed in response to a Request for Information.

Z5.5 The *Contractor* understands and acknowledges that the *Employer* may be obliged to disclose FOIA Information without consulting or obtaining consent from the *Contractor*, or without taking the *Contractor's* views into account.

Z5.6 The *Contractor* shall not respond directly to a Request for Information unless expressly authorised to do so by the *Employer*.

Z5.7 The *Contractor* shall ensure that all FOIA Information is retained for the agreed information periods as set out below and shall permit the *Employer* to inspect such records as requested from time to time:

- (a) six years following the issue of the *Service Manager's* certificate showing the final amount payable in relation to this contract. or such later date as identified in clause (b).
- (b) In relation to this contract six years following expiry or earlier termination of this contract.

Z5.8 The provision of this clause Z5 shall survive termination or expiry of this Contract.