

TORBAY COUNCIL

Form of Contract

Contract Reference

TBS3420

Contract Title

**Shiphay Lane/Newton Road
Traffic Signals Upgrade**

Maximum Period of Contract

5 Months or to Completion of Works

Return Date

Wednesday 9th December 2020

Return Time

12:00 noon

Return To

www.supplyingthesouthwest.org.uk

Applicant Name

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1. Contract Information

Scheme Information

Scheme Title: SHIPHAY LANE/NEWTON ROAD TRAFFIC SIGNAL UPGRADE

Contract Number: TBS3420

File Ref: 8/6/11/3

Torbay Council

Community and Customer Services

Director of Place Kevin Mowat

Highways and Transport

Service Manager Ian Jones

Traffic Control Systems Officer Neil Woolway

TDA

Engineering Department

Service Manager, Engineering David Stewart

Engineer (Urban Design) Richard Salter

Contract Documents

Prepared By: Richard Salter Signed:

Reviewed By: David Stewart Signed:

Date: November 2020

2. Location and Brief Description of Works

Location

The site is located to the north of Torquay on the A3022 Newton Road with its junctions with Shiphay Lane and Old Woods Hill. The A3022 Newton Road is the main route into and out of Torquay town centre as well as the seafront and harbour.

There are several schools in close proximity to the junction, and large numbers of school children, during the mornings and afternoons, pass through this area going to and from school.

Brief Description of Works

The works comprise of replacing the existing Traffic Signals and Controller and all associated cabling and equipment with a new ELV system. New loops will need to be cut into the carriageways and associated cabling and jointing work carried out.

LOCATION PLAN



3. Instructions for Tendering

- | | |
|--------------------------------------|---|
| 1 Value Added Tax | Unless expressly stated otherwise, all rates and prices stated in this document are to be exclusive of Value Added Tax. |
| 2 Explanation of Documents | <p>(1) If any points in the documents issued for the purpose of tendering are considered by the tenderer not to be clear, the tenderer is to communicate in writing through the Messaging facility in the opportunity within www.supplyingthesouthwest.org.uk with the Engineer (as defined in the Conditions of Contract) to obtain sufficient explanation before sending in his Tender. The Engineer will make such explanation as a matter of assistance to the tenderer, but it shall not be construed to add to, modify, or take away from the meaning and intent of the Contract and/or the obligations and liabilities of the Contractor thereunder. Please note that all communications with the Engineer during the tender period should be made in writing through the Tender Portal.</p> <p>(2) No representation, explanation or statement, made to a tenderer or anyone else by or on behalf of the Council, as to the meaning of any of the Tender Documents or otherwise in explanation as aforesaid shall bind the Council in the exercise of its powers and duties under the subsequent Contract.</p> |
| 3 Period of Acceptance of Tender | The tenderer is required to hold his tender open for a period of 12 weeks from the closing date for the submission of tenders. |
| 4 Forms | Only the successful tenderer will be required, where appropriate, to complete the Form of Agreement & Bond, after acceptance of his tender by the Council. |
| 5 Contract Documents take precedence | The information given in these Instructions for Tendering are given in good faith for the guidance of tenderers, but if there is any conflict the Conditions of Contract, Specification and Bill of Quantities shall take precedence. |
| 6 Liquidated Damages | <p>Tenderers should particularly note that the calculation of Liquidated Damages in the Appendix to the Form Tender will be based directly on the price of the accepted tender. Liquidated Damage will be calculated from the successful tenderer's total tender price, after any adjustments due to clarification/or arithmetical errors have <u>been</u> taken into account. The daily figure will be calculated using the following formula:</p> <p>Final Tender Price x 15% divided by 365 Days = £ per day</p> <p>The EMPLOYER will insert the actual figure produced by the application of the formula in paragraph 10 of the FORM OF TENDER (Appendix) <u>immediately prior to the award of Contract</u>, a copy of which will be forwarded to the successful tenderer under cover of the award letter.</p> |
| 7 Health and Safety | The tenderer's attention is drawn to the requirement of the '10 Steps to Safety'. |

4. 10 Steps to Safety

1. Ensure that you are wearing a high visibility waistcoat incorporating retro-reflective strips, together with other protective equipment when appropriate.
2. Ensure that works are correctly signed and coned with all signs clearly visible to approaching motorists, and that any attendant vehicle is using an amber flashing beacon when appropriate. Take special care for the disabled, blind, people with prams, children, the aged and infirm. Provide clearly defined safety zones and pedestrian routes.
3. Ensure that traffic control is used as necessary, and that traffic signals are working on the vehicle actuated mode unless otherwise agreed by the Highway Authority.
4. Provide appropriate barriers and lighting to all road and footway openings and obstructions. Ensure that all equipment is secured and that the site is left in a safe condition at the end of each work period.
5. Ensure that all underground mains and services have been located and their position clearly marked. Check for and eliminate any danger presented by overhead lines.
6. Check whether your work creates or involves entry into a potentially dangerous atmosphere.
7. Ensure that noise levels do not present a danger to yourself, workmates, local residents or passers by.
8. Adhere to all appropriate safe systems of work produced by your employer.
9. If you are in doubt about the safety of any activity seek immediate advice from your Supervisor, Police or Highway Authority as appropriate.
10. Ensure that details of an "Out of Hours" contact are clearly displayed at the works wherever possible.

BE SAFE - NOT SORRY!

I CONFIRM OUR WILLINGNESS TO FOLLOW THE PRINCIPLES OUTLINED ABOVE AS PART OF OUR OVERALL REQUIREMENT REGARDING ROAD SAFETY.

SIGNED

ON BEHALF OF

DATE

5. Form of Tender

Contract Reference TBS4520

(NOTE: The Appendix forms part of the Tender)

To: The Council of the Borough of Torbay

GENTLEMEN,

Having examined the Conditions of Contract, Specification and Bill of Quantities for the undertaking of the above mentioned Works (and the matters set out in the Appendix hereto), we offer to construct and complete the whole of the said Works and maintain the Permanent Works in conformity with the said Conditions of Contract, Specification and Drawings in the sum of.

-----£-----

We undertake to complete and deliver the whole of the Permanent Works comprised in the Contract within the time stated in the Appendix hereto.

Unless and until a formal Agreement is prepared and executed this Tender, together with your written acceptance thereof, shall constitute a binding Contract between us.

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

We are, Gentlemen,

Yours faithfully,

Signature

Name

Position in Company

Address

.....

Date

6. Form of Tender (Appendix)

(NOTE: Relevant Clause numbers are shown in brackets)

APPENDIX - PART 1 (TO BE COMPLETED PRIOR TO THE INVITATION OF TENDERS)

1. Name of the Employer

The Council of the Borough of Torbay
Town Hall, Castle Circus, Torquay, Devon

2. Name of the Engineer

David Stewart
Moose Hall, Barewell Road, Torquay, Devon, TQ1 4PA

3. Defects Correction Period

52 weeks

4. Number and type of copies of Drawings to be provided

One copy of each drawing listed

5. Contract Agreement

Required

6. Performance Bond

Required

Amount of Bond to be £5,000

7. Minimum amount of third party insurance (persons and property)

£5,000,000 each and every occurrence

8. Works Commencement Date (if known)

4th January 2021

Section 2

N/A

9. Time for Completion

EITHER for the whole of the Works

21 Weeks – Friday 28th May 2021

OR for Sections of the Works (Clause 1(1)(u)) ^b	N/A
Section 2	N/A
the Remainder of the Works	N/A

10. Liquidated damages for delay

Liquidated damages for this Contract are calculated as follows

Tender Total at award date x 15% divided by 365 days = £ per day

Section A (as above)

£ per week

11. Vesting of materials not on Site (if required by the Employer)^d

1 4

2 5.

3 6.

12. Percentage of the value of goods and materials to be included in Interim Certificates

97%

13. Minimum amount of Interim Certificates

n/a

14. Rate of retention (recommended not to exceed 5%)

5%

**15. Limit of retention (% of Tender Total)
(Recommended not to exceed 3%)**

3%

16. Bank whose Base Lending Rate is to be used

Average of Lloyds, Barclays, HSBC, National Westminster

**17. Requirement for prior approval by the Employer before the Engineer can act.
DETAILS TO BE GIVEN AND CLAUSE NUMBER STATED**

.....
.....
.....

18. Name of the Principal Designer

TDA, 3rd Floor Tor Hill House,
Union Street, Torquay, TQ2 5QW

19. Name of Principal Contractor

.....

Address.....

20. The Arbitration Procedure to be used is

The Institution of Civil Engineer's Arbitration Procedure (2012)

Key to superscript

- a If not stated is to be completed by Contractor in Part 2 of the Appendix.
- b To be completed if required, with brief description. Where Sectional completion applies the item for "the Remainder of the Works" must be used to cover the balance of the Works if the Sections described do not in total comprise the whole of the Works.
- c Delete where not required.
- d (if used) Materials to which the Clauses apply must be listed in Part 1 (Employer's option) or Part 2 (Contractor's option)
- e If there is any requirement that the Engineer has to obtain prior approval from the Employer before he can act full particulars of such requirements must be set out above.

7. Appendix - Part 2

(To be completed by Contractor)

- | | | |
|----|-------------------------------|---------|
| 1. | Insurance Policy Excesses | £ |
| | Insurance of the Works | £ |
| | Third party (property damage) | £ |

2. Time for Completion (if not completed in Part 1 of the Appendix)

EITHER for the whole of the Works..... weeks

OR for Sections of the Works (as detailed in Part 1 of the Appendix)

Section A weeks

Section B weeks

Section C weeks

Section D weeks

the Remainder of the Works..... weeks

3. Vesting of materials not on site (at the option of the Contractor - see ^d in Part 1)

1 4

2 5

3 6

4. Percentage(s) for adjustment of PC sums (with details if required)

.....

.....

8. Form of Agreement

THIS AGREEMENT made the day of 20

BETWEEN

.....
of
.....

.....(hereinafter called "the
Employer")

and

.....
of
.....

..... (hereinafter called "the
Contractor").

WHEREAS the Employer is desirous that certain Works should be constructed, namely the Permanent and Temporary Works in connection with "Shiphay Lane / Newton Road Traffic Signal Upgrade", and has accepted a Tender by the Contractor for the construction and completion of such Works.

NOW THIS AGREEMENT WITNESSETH as follows:-

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement, namely:-
 - (a) the said Tender and the written acceptance thereof
 - (b) the Drawings
 - (c) the Conditions of Contract
 - (d) the Specification
 - (e) the Pricing Schedule.
 - (f) the Bond of Surety (if required).
 - (g) the Forms
3. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned the Contractor hereby covenants with the Employer to construct and complete the Works in conformity in all respects with the provisions of the Contract.
4. The Employer hereby covenants to pay to the Contractor in consideration of the construction and completion of the Works the Contract Price at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed the day and year first above written.

SIGNED on behalf of the said Ltd/plc

SignatureSignature

PositionPosition

In the presence of In the presence of.....

SIGNED on behalf of said Council of the Borough of Torbay

SignatureSignature

PositionPosition

In the presence of In the presence of.....

9. Guarantee Bond

THIS GUARANTEE BOND is made as a Deed **BETWEEN** the following parties whose names and [registered office] addresses are set out in the Schedule to this Bond (the "Schedule")

- (1) The "Contractor" as principal
- (2) The "Guarantor" as guarantor, and
- (3) The "Employer"

WHEREAS

- 1) By a contract ("the Contract") entered into or to be entered into between the Employer and the Contractor particulars of which are set out in the Schedule the Contractor has agreed with the Employer to execute works (the "Works") upon and subject to the terms and conditions therein set out
- 2) The Guarantor has agreed with the Employer at the request of the Contractor to guarantee the performance of the obligations of the Contractor under the Contract upon the terms and conditions of this Guarantee Bond subject to the limitation set out in Clause 2

NOW THIS DEED WITNESSES as follows:-

- 1) The Guarantor guarantees to the Employer that in the event of a breach of the Contract by the Contractor the Guarantor shall subject to the provisions of this Guarantee Bond satisfy and discharge the damages sustained by the Employer as established and ascertained pursuant to and in accordance with the provisions of or by reference to the Contract and taking into account all sums due or to become due to the Contractor.
- 2) The maximum aggregate liability of the Guarantor and the Contractor under this Guarantee Bond shall not exceed the sum set out in the Schedule (the "Bond Amount") but subject to such limitation and to Clause 4 the liability of the Guarantor shall be co-extensive with the liability of the Contractor under the Contract
- 3) The Guarantor shall not be discharged or released by any alteration of any of the terms conditions and provisions of the Contract or in the extent or nature of the Works and no allowance of time by the Employer under or in respect of the Contract or the Works shall in any way release reduce or affect the liability of the Guarantor under this Guarantee Bond
- 4) Whether or not this Guarantee Bond shall be returned to the Guarantor the obligations of the Guarantor under this Guarantee Bond shall be released and discharged absolutely upon Expiry (as defined in the Schedule) save in respect of any breach of the Contract which has occurred and in respect of which a claim in writing containing particulars of such breach has been made upon the Guarantor before Expiry.
- 5) The Contractor having requested the execution of this Guarantee Bond by the Guarantor undertakes with the Guarantor (without limitation of any other rights and remedies of the Employer or the Guarantor against the Contractor) to perform and discharge the obligations on its part set out in the Contract.

- 6) This Guarantee Bond and the benefit thereof shall not be assigned without the prior written consent of the Guarantor and the Contractor.
- 7) This Guarantee Bond shall be governed by and construed in accordance with the laws of England and Wales and only the courts of England and Wales shall have jurisdiction hereunder

THE SCHEDULE

The Contractor: (1)

The Guarantor: (2)

The Employer: (3) THE COUNCIL OF THE BOROUGH OF TORBAY,
TOWN HALL,
TORQUAY, TQ1 3DR

The Contract: (4) Shiphay Lane / Newton Road Traffic Signal Upgrade
CONTRACT NUMBER TBS3420

The Bond Amount: (5)

Expiry: The date of issue of the Certificate of Practical Completion which shall be conclusive for the purposes of this Guarantee Bond

10. Conditions of Contract

1. The Contract will commence on a date to be agreed for a period of 4 months and may be extended up to completion of the works or until the end of the allocated budget.
2. Provision of the Service is to be carried out in accordance with these Conditions and Specification.
3. The Contractor shall adopt safe methods of work for all operations coming within the scope of the Contract and they shall comply with all relevant Acts of Parliament, Statutory Regulations, Codes of Practice and all legislation connected therewith.
4. The Contractor will be required to hold third party public liability insurance for the period of the Contract for at least the sum of £5,000,000 for any one claim unlimited for the number of claims over the period of the Contract. A copy of the policy shall be forwarded to the Employer for their approval prior to commencement of the Contract.
5. All works shall be undertaken to the satisfaction of the Council.
6. Invoices for payments should be submitted to the Council following the cyclic work and when additional instructions have been issued, requesting payment for work completed.
7. The Engineer will reserve the right to terminate the Contract for whatever reason giving three months notice.
8. In the event of the Contractor:-
 - (a) failing to begin or complete any part of the works as specified or any additional works issued by the Council,
 - or
 - (b) failing to carry out any works to which this contract relates to the satisfaction of the Council,
 - or
 - (c) failing to comply with any reasonable instruction from the Council.

The Employer may, at their discretion, arrange for the failure to be corrected by another party, the cost of which shall be recharged to the Contractor. In the event of a rectifiable failure the Employer shall allow the Contractor a maximum of 30 days to rectify the failure before engaging another party.

9. ORGANISATION AND METHOD OF WORKING

The Tenderer is required to set out below their proposed management, supervisory, administrative and operative structure and give details of the numbers, levels of qualification and the way in which they will organise their workforce to carry out the service for which they are tendering. (Continue on a separate sheet if necessary).

10. DELEGATION

The Engineer may from time to time in writing authorise the Engineer's Representative or any other person responsible to the Engineer to act on behalf of the Engineer either generally in respect of the Contract or specifically in respect of particular Conditions of these Conditions of Contract and any act of any such person within the scope of their authority shall for the purposes of the Contract constitute an act of the Engineer. Prior notice in writing of any such authorisation shall be given by the Engineer to the Contractor. Such authorisation shall continue in force until such time as the Engineer shall notify the Contractor in writing that the

same is determined PROVIDED THAT such authorisation shall not be given in respect of any decision to be taken or Certificate to be issued under Conditions involving forfeiture, bankruptcy or arbitration.

11. REFERENCE

If the Contractor shall be dissatisfied by reason of any instruction of the Engineer's Representative duly appointed under clause 10 of these Conditions they shall be entitled to refer the matter to the Engineer who shall thereupon confirm reverse or vary such instruction.

12. VARIATIONS ADDITIONS AND OMISSIONS

- (i) The Engineer shall be entitled to order any variation to the Service as may in their opinion be necessary or desirable for the satisfactory completion and functioning of the Service and shall be entitled to order any variation requiring the contractor to do all or any of the following:-
 - (a) To omit or to cease to provide any part of the Service for such period or periods as the Engineer may determine.
 - (b) To provide the Service or any part thereof in such manner as the Engineer may reasonably require.
 - (c) To provide such additional service to the Services as the Engineer shall consider necessary or desirable provided that such additional service shall be the same or similar to the Service so that the appropriate Contract Rate shall apply to such additional services.
 - (d) Permanently to vary the Service to be provided at any location.
- (ii) No variation shall be made by the Contractor without any order by the Engineer given in writing and agreed by both parties, provided that if for any reason the Engineer shall find it necessary to give any such order orally in the first instance the Contractor shall comply with such oral order. Such oral order shall be confirmed in writing by the Engineer as soon as is possible. If the Contractor shall confirm in writing to the Engineer any oral order by the Engineer, and such confirmation shall not be contradicted in writing by the Engineer immediately, it shall be deemed to be an order in writing. No variation ordered or deemed to be ordered in writing shall in any way vitiate or invalidate the Contract, but the value (if any) of all such variations shall be taken into account in ascertaining the amount of the contract price or payment due.

13. VALUE OF VARIATIONS

The value of all variations ordered by the Engineer in accordance with Condition 12 shall be ascertained by the Engineer by consultation with the Contractor in accordance with the following principles:-

- (a) Where work is of similar character and executed under similar conditions of work priced by the Contractor in the Bills of Quantities, it shall be valued at such rates and prices contained therein as may be applicable.
- (b) Where work is not of similar character or is not executed under similar conditions, the rates and prices in the Bills of Quantities shall be used as the basis for valuation so far as may be reasonable, failing which a fair valuation shall be made. Failing agreement between the Engineer and the Contractor as to any rate or price to be applied in the valuation of any variation, the Engineer shall determine the rate or price in accordance with the foregoing principles and he shall notify the Contractor accordingly.

- (c) Where work is omitted from the specification or other Contract Documents, the rates and prices contained in the Schedule of Rates or Bill of Quantities shall be used to determine the value of the work omitted.

14. CONTRACTOR'S OBLIGATIONS

- (i) The Contractor shall perform the service during the Contract period in accordance in all respects with the Contract in an efficient, effective and workmanlike manner to the satisfaction of the Engineer and shall comply with and adhere strictly to the Engineer Instructions and directions on any matters connected therewith whether mentioned in the Contract or not.
- (ii) The Contractor shall take full responsibility for the adequacy and the safety of all operations.

15. ACCESS FOR INSPECTION

The Contractor shall allow such persons as may be authorised from time to time by the Engineer access to all locations at all times during the Contract period for the purposes of inspecting:-

- (a) Work being performed pursuant to the Contract.
- (b) Materials stores and equipment used or intended for use in connection with the provision of the Service.
- (c) Records and documents in the possession of the Contractor in connection with the provision of the Service.

16. USE OF EMPLOYERS' PREMISES

The Contractor shall not be permitted to use any premises of the Employer during the Contract period for any purpose. The Contractor may, with the prior consent of the Employer, access those premises of the Employer necessary to the fulfilment of this Contract.

17a. DEFAULTS

- (i) The Contractor shall perform the work in accordance with Clause 8 and provisions of the Contract. The Engineer may at their discretion serve a notice of default (a 'Default Notice') under the provisions of this Clause. In the event of a rectifiable failure the Employer shall allow the Contractor a maximum of 30 days to rectify the default before issuing a default notice. A Default Notice may cover more than one default at any one time, at the discretion of the Engineer.
- (ii) At any time during the Contract period the Engineer may investigate each instance where the Contractor has failed to perform part or the whole of the Service in accordance with the provisions of the Contract.
- (iii) Where the Engineer is satisfied that in any particular case the Contractor has failed to perform the Service in accordance with the provisions of the Contract, they shall be entitled to instruct the Contractor to remedy the failure and to comply therewith within such period as the Engineer may determine, provided that nothing herein shall oblige the Engineer to issue an instruction under this sub-clause.
- (iv) In the event of the Contractor failing to comply with an instruction of the Engineer issued under sub-clause(3) of this Clause within the time specified therein the Engineer shall be entitled to serve a Default Notice which shall be sent to the Contractor.

- (v) In the case of a failure to comply with an instruction of the Engineer under sub-clause (iii) or under any other provision of the Contract without prejudice to any other remedy contained herein the employer may by its own or other workmen provide and execute such works or part thereof which the Contractor has failed to execute to the satisfaction of the Engineer and all costs and charges properly incurred by the employer in doing so shall on demand, be paid by the employer from any monies due or which may become due to the Contractor.
- (vi) Where the Engineer has issued an instruction under sub-clause (iii) hereof the provisions of sub-clause (v) of this Clause will not be invoked for a period of 24 hours commencing from the time when the omission is first notified to the Contractor unless in the opinion of the Engineer the omission required correcting immediately in which case the provisions of sub-clause (v) of this Clause will be invoked in the absence of any response from the Contractor.

17b. DEFAULT REMEDIES

- (a) Not Used
- (ii) Where more than 10 Default Notices are issued in any 7 day period or more than 20 in any 28 day period, the Employer may terminate the Contract in accordance with the appropriate Conditions of Contract.

18. URGENT REPAIRS

If by reason of any accident or failure or other event occurring to or in connection with any premise, depot, vehicle, plant or machinery or any part thereof, during the performance of the Service, any remedial or other work or repair shall in the opinion of the Engineer be urgently necessary, and the Contractor is unable or unwilling as soon as practicable to do such work or repair, the Employer may by their own or other workmen do such work or repair as the Engineer may consider necessary. If the work or repair so done by the Employer is work which, in the opinion of the Engineer, the contractor was liable to do at his own expense under the contract, all costs and charges properly incurred by the employer in so doing shall, and demand, be paid by the Contractor to the Employer or may be deducted by the Employer from any monies due or which may become due to the Contract or PROVIDED ALWAYS that the Engineer shall, as soon after the occurrence of any such emergency as may be reasonably practicable, notify the Contractor thereof in writing.

19. CONTRACTOR'S EMPLOYEES

- (i) The Contractor shall employ or cause to be employed in and about the performance of the Service and in the supervision thereof only such persons as are careful, skilled and experienced in their several trades and callings and the Engineer shall be at liberty to object to and require the contractor, subject to compliance with any statutory requirements or contract condition, to remove any person employed by the Contractor in or about the execution of the Services, who in the opinion of the Engineer misconducts themselves or is incompetent or negligent in the performance of their duties or fails to conform with any particular provisions with regard to safety or persists in any conduct which is prejudicial to safety or health and such persons shall not be again employed in the performance of the Service without the written permission of the Engineer.
- (ii) The Contractor shall employ or clause to be employed sufficient persons to enable the Service to be provided at all times during the contract period and shall ensure that there is a sufficient reserve of employees to provide the Service during staff holidays or staff absence through sickness or any other reasons.

- (iii) The Contractor and all persons employed by them in connection with the provision of the Service shall at all times be sufficiently and properly qualified, experienced and instructed regarding the Service and in particular in regard to the following:-
 - (a) The tasks those persons are to perform;
 - (b) The relevant provisions of the Contract;
 - (c) Any relevant policies, rules, procedures and standards of the Employer;
 - (d) All relevant policies, rules, procedures and statutory provisions regarding Health and Safety at Work including the employer's own Safety Policy;
 - (e) Fire risks and fire precautions;
 - (f) The need to recognise actual potential dangers at any Location and where possible without personal risk to make safe such situations and immediately to report such situations to the Engineer or to a member of the Employer's staff responsible for the Location.

20. SUPERVISION

The Contractor shall give or provide all necessary management and supervision during the performance of the Service. Such management and supervision shall be given by sufficient persons having adequate knowledge of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents) as may be required for the satisfactory performance of the Service.

21. CONTRACTOR'S AGENT

- (i) The Contractor shall appoint a competent and authorised Agent being a person approved of in writing by the Engineer (which approval may at any time be withdrawn) to act on behalf of the Contractor for all purposes connected with the contract and any instruction or communication given to the Contractor's Agent shall be deemed to have been given to the Contractor.
- (ii) The Contractor or the Contractor's Agent shall inform the Engineer as soon as practicable of any act or omission on the part of the Employer which prevents or hinders the Contractor from complying with the Contract provided that this condition shall not in any way release the Contractor from any obligation of his under the Contract.

22. OPERATIONAL DETAILS (PROGRAMME OF WORKS)

Notwithstanding the requirements to provide outline proposals with the Contractor's tender the successful Contractor shall provide, in writing, for approval by the Engineer in writing, detailed operational information for the provision of the Service as agreed between the Contractor and Engineer, before commencement of works.

23. NOT USED

24. PAYMENT OF TAXES ETC.

The Contractor shall be responsible for the payment of income or other taxes, national insurance contributions and any other levies arising out of the employment of any person employed by him and shall indemnify the Employer in respect of any liabilities in respect thereof.

25. RATES OF WAGES/CONDITIONS OF LABOUR

- (i)(a) The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010 or any statutory modifications or re-enactment thereof relating to discrimination in employment.
- (i)(b) The Contractor shall take all reasonable steps to secure the observance of the provisions of sub-clause (a) of this Clause by all servants employees or agents of the Contractor and all sub-contractors employed in the execution of the Contract.
- (i)(c) The Contractor shall keep proper wage books and time sheets showing the wages paid to and the time worked by the work people in their employ in and about the execution of the Contract and such wage books and time sheets shall be produced whenever required for the inspection of any Officer authorised by the Employer.

26. CONFIDENTIALITY

- (i) The Contractor and any agents or servant in their employ shall keep confidential any information contained in any material provided to the Contractor by the Employer or prepared by the Contractor pursuant to the Contract and shall not make use of such information for their own purposes nor disclose to any person (except as required by law) any such information without the written approval of the Engineer.
- (ii) The Contractor shall not dispose nor part with possession of and material provided to them by the Employer pursuant to the Contract or prepared by the Contractor pursuant to the Contract other than in accordance with the express written instructions of the Employer.

27. HEALTH AND SAFETY

- (i) The Contractor throughout the performance of the Service shall comply with all the relevant Acts of Parliament, Statutory Regulations, Codes of Practice and all legislation connected therewith or made thereunder or any statutory modification or re-enactment thereof.
- (ii) The Contractor shall adopt safe methods of work for all operations coming within the scope of the Contract or any associated operations in order to protect the Health and Safety of their own employees, other employees, including the employer's employees, and all other persons including members of the public. The safe methods of working shall be no less effective than that required by the employer's statement of Health and Safety Policy, the council's Manual of Health and Safe systems of Work and relevant HSE Codes of Practice and Guidance Notes.
- (iii) A copy of the statement of Health and Safety Policy and the Manual of Health and Safe Systems of work can be inspected during normal office hours at the Town Hall, Torquay by prior arrangement with the Engineer. Copies of relevant HSE Codes of Practice sand Guidance Notes are available from HMSO.
- (iv) The Contractor shall have full regard for the safety of all persons entitled to be associated with the Service and shall keep all sites, depots, plants, vehicles and machinery (so far as the same is under their control) in an orderly state appropriate to the avoidance of danger to such persons and shall, inter alia, in connection with the Service provide and maintain at their own cost all lights, guards, fencing, warning signs and watching when and where necessary or required by the Engineer, the Employer's Safety Officer, or by a competent statutory or other authority for the protection or for the safety and convenience of the public or others.

28. NO HOLDING OUT

The Contractor is not and shall in no circumstance hold themselves out to be the servant or agent of the Employer and is not, and shall in no circumstances hold themselves out as being, authorised to enter into any contract on behalf of the Employer or in any way bind the Employer to the performance, variation, release or discharge of any obligation. The Contractor has not, and shall in no circumstances hold themselves out as having the power to make, vary, discharge or waive any by-law or regulation of any kind. The employees of the Contractor are not and shall not hold themselves out to be, and shall not be held out by the Contractor as being servants or agent of the Employer for any purposes whatsoever.

29. STATUTORY REQUIREMENTS

The Contractor shall comply with all statutory and other provisions to be observed and performed in connection with the Service and shall indemnify the Employer against any claims made as a result of any non-compliance.

30. PREVENTION OF CORRUPTION

The Employer shall be entitled to cancel the Contract and recover from the Contractor the amount of any loss resulting from the 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 forbearing to do, or for having done or forborne to do any action in relation to the obtaining or execution of the Contract or any other Contract with the employer, or for showing or forbearing to show favour or disfavour to any person in relation to the contract with the Employer, or any other with the Employer, or if the like acts shall have been by any person employed by the Contractor or acting on their behalf (whether with or without the knowledge of the Contractor) or if in relation to any Contract with the Employer the Contractor or any person employed by them or acting on their behalf shall have committed any offence under the Public Bodies Corrupt Practices Act 1889 or the Prevention or Corruption Acts 1906-1916, or shall have given any fee or reward the receipt of which is an offence under Section 117 of the Local Government Act 1972.

31. UNIFORMS & IDENTIFICATION

- (a) The Contractor shall ensure that all persons employed in the performance of the Contract shall at all times be properly attired in the Contractor's uniform which shall best present his corporate image.
- (b) The Contractor shall ensure that all persons employed in the management and supervision of the Contract shall carry at all times identity cards in a form approved by the Engineer and make such card available for inspection on request to any authorised officer of the Council who similarly discloses their identity.

32. VEHICLES USED ON THE CONTRACT

- (b) Not used
- (ii) The Contractor shall at all times maintain vehicles, plant and equipment used in connection with the contract in good mechanical and general condition. If the Engineer is of the opinion that any such item is in less than proper condition or is otherwise detrimental to the good image of the Employer then the Contractor shall renew or replace the item as directed by the Engineer in writing.
- (iii) Not used
- (iv) The Contractor shall comply with any reasonable request by the Local Authority or other tip operator to provide visual evidence that any vehicle disposing of waste is

doing so on behalf of the Employer.

- (v) The Contractor shall arrange for and maintain a valid Operator's Licence if and as required by Law.

33. INDEMNITY

- (i) Subject to paragraph (3) of this Condition the Contractor shall:-
 - (a) Be responsible for and make compensation for any injury (including injury resulting in death) occasioned to any person whomsoever; and
 - (b) Replace reinstate and made good to the satisfaction of the Engineer or make compensation for any loss of or damage occasioned to any property or right whatsoever being injury loss or damage arising out of or in any way in connection with the execution or purported execution of the Contract.
- (ii) Save as hereinafter provided the Contractor shall hold the Employer harmless and indemnified against all actions, claims, demands, costs, charges and expenses which may be commenced or made in respect of such injury, loss or damage.
- (iii)(a) The Contractor's liability to indemnify the Employer shall be reduced proportionately to the extent that the act or neglect of the Employer his servants or agents (not being the Contractor or employed by the Contractor) may have contributed to the said loss injury or damage.
- (iii)(b) Nothing herein contained shall be deemed to render the Contractor liable for or in respect of or to indemnify for the Employer against any compensation or damages for or with respect to:-
 - (I) The right of the Employer to carry out the Service or any part thereof under in or through any land;
 - (II) Damage or injury which is the unavoidable result of the carrying out of the Service in accordance with the Contract; and
 - (III) Injuries or damage to persons or property resulting from any act or neglect or breach of statutory duty done or committed by the Employer, Engineer, Engineer's Representative or assistants, or their agents, servants or other contractors (but not being employed by the Contractor for any purposes directly or indirectly connected with the performance of the Contract).
- (iv) The Employer shall save harmless and indemnify the Contractor from and against all claims, demands, proceedings, damages, costs, charges and expenses in respect of the matters referred to in paragraph (iii) above. Provided always that the Employer's liability to indemnify the Contractor under paragraph (iii)(b) (III) above shall be reduced proportionately to the extent that the act or neglect of the Contractor or his approved sub-contractors, servants or agents may have contributed to the said injury or damage.

34. INSURANCE AGAINST INJURY LOSS OR DAMAGE TO PERSONS OR PROPERTY

- (i) Throughout the period of the Contract the Contractor (but without limiting their obligations and responsibilities under Condition 33) shall insure against any damage loss or injury which may occur to any property or to any person by or arising out of the performance of the Service or in the carrying out of the Contract. The Contractor shall notify the Employer as soon as possible but not later than within seven days of any claim demand or proceedings and to supply such particulars or details thereof as the

Employer shall reasonably require.

- (ii) Such Insurances shall be effected with an insurer and in terms approved by the Employer (which approval shall not be unreasonably withheld) and for at least the sum of five million pounds (£5,000,000) or such other sum in addition thereto as the Employer may from time to time determine. The terms shall include a provision whereby in the event of any claim in respect of which the Contractor would be entitled to receive indemnity under the policy being brought or made against the Employer the insurer will indemnify the Employer against such claims and any costs charges and expenses in respect thereof. The Contractor shall whenever required produce to the Employer the policy or policies of insurance and the receipts for payment of the current premium(s).

35. ACCIDENT OR INJURY TO WORKMEN

The Employer shall not be liable for or in respect of any damages or compensation payable at law in respect or in consequence of any accident or injury to any workman or other person in the employment of the Contractor or any Sub-Contractor save and except to the extent such accident or injury results from or is contributed to by any act or default of the Employer, its Agents, or its Servants and the Contractor shall indemnify and keep indemnified the Employer against and shall take out insurance to the satisfaction of the Employer against all such damages and compensation (save as aforesaid) and against all claims demands proceedings costs charges and expenses whatsoever in respect thereof or in relation thereto. The Contractor shall whenever required produce to the Employer the policy of insurance and the receipts for the payment of the current premium(s).

36. CERTIFICATES OF PAYMENT AND MEASUREMENT

- (i) The Contractor shall, after the end of each calendar month, submit to the Engineer an invoice showing their valuation of the work carried out as part of the Service during the preceding calendar month.
- (ii) Within fourteen days of receipt of the invoice referred to in Condition 36(i) the Engineer shall make the necessary arrangements for the payment for the services to be made to the Contractor. In the event of any dispute raised by the Engineer to the Contractor following receipt of the invoice referred to in Condition 36(i) the Engineer shall make arrangements for the payment of all undisputed sums.

37. ASSIGNMENT AND SUB-LETTING

The Contractor shall not assign the Contract or any part thereof or sub-let the whole of the Services. Except where otherwise provided in the Contract the Contractor shall not sub-let any part of the Service without the written consent of the Engineer. Such consent, if given, shall not relieve the Contractor from any liability or obligation under the Contract and they shall be responsible for the acts defaults and neglects of any Sub-Contractor their agents servants or workmen as fully as if they were the acts defaults or neglects of the Contractor their agents servants or workmen.

38. SET OFF

Any sum payable by the Contractor to the Employer or recoverable from the Contractor by the Employer may be deducted from any sum due or which later becomes due from the Employer to the Contractor under this or any other contract with the Employer.

39. NOTICES

(i) Service of a Notice on Contractor

Any notice to be given to the Contractor under the terms of the Contract shall be served by

sending it by post to or leaving it at the Contractor's principal place of business or, in the event of the Contractor being a Company, to or at its registered office, with the exception of site instructions and default notices which may be handed to the Contractors Agent.

(ii) Service of a Notice on Employer

Any notice to be given to the Employer under the terms of the Contract shall be served by sending it by post to or leaving it at the Town Hall, Torquay or any other office as directed by the Engineer in writing.

40. ARBITRATION

All disputes, differences or questions between the parties to the Contract with respect to any matter or thing arising out of or relating to the Contract other than a matter or thing as to which the decision of the Engineer is under the Contract to be final and conclusive and except to the extent which special provision for arbitration is made elsewhere in the Contract shall be referred, on the application of either party, for the decision of an Arbitrator appointed in default of agreement between the two parties, by the President for the time being of The Institute of Civil Engineers, in accordance with the provisions of the Arbitration Act 1996 or any statutory modification or re-enactment thereof. The award of the Arbitrator shall be final and binding on both parties.

41. WAIVER

The condonation by the Employer of any breach or breaches by the Contractor or any authorised Sub-Contractor of any of the stipulations, specifications and conditions contained in the Contract shall in no way prejudice or affect or be construed as a waiver of the rights, powers and remedies of the Employer under the Contract in respect of any subsequent breach or breaches as aforesaid.

42. SEVERANCE

In the event of any Clause of this Contract being declared by any Court of competent jurisdiction to be void or unenforceable the remaining clauses shall remain in full force and effect and shall not be deemed to be affected thereby.

43. EMPLOYMENT OF LOCAL LABOUR

- (i) The Contractor, when employing persons other than his regular workforce or staff for the purpose of this Contract, shall where reasonably practicable give preference to persons bona fide resident or usually employed in the Borough of Torbay and to this end where reasonably practicable utilise the services of the Torbay Job Centre.
- (ii) It is the Council's policy to recognise the freedom of its workforce to have membership of a trade union. The Contractor will be required to operate a similar policy.

44. ENVIRONMENTAL PROTECTION ACT 1990 – DUTY OF CARE

- (i) The Contractor shall be required to comply, in all respects, with the Environmental Protection Act 1990 – Section 34, Duty of Care in conjunction with Control of Pollution (Amendment) Act 1989 – The Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991.
- (ii) The Contractor will need to be approved as a Registered Waste Carrier by the Waste Regulation Authority and shall forward, to the Engineer before the start of the Contract, a copy of his Registered Carriers Certificate.
Before transferring any waste the Contractor shall prepare a Transfer Note for approval and signature by the Engineer.

45. NOT USED

46. PROVISIONAL SUMS

- (i) Certain of the provisional sums in the Bill of Quantities or Schedule of Rates may relate to work to be carried out to the order of the Engineer or by the Employer's direct labour organisation. In these cases, the provisional sum will be deducted in whole from the Contract price and the Engineer will place orders for the work and pay all accounts in connection therewith. The Contractor will not therefore be allowed in relation to these items any additional sums in respect of charges or profits.
- (ii) Should the Contractor require any payment to cover their obligations in connection with any of the above they should include such sums in the General Items of the Bill of Quantities or Schedule of Rates.

47. PRECAUTIONS AGAINST POLLUTION OF RIVERS ETC

- (i) In executing the works the Contractor shall take all necessary precautions to secure the efficient protection of rivers, streams, waterways, lakes and the like against pollution which may be likely to contaminate water supplies or cause injury to fish or plant life.
- (ii) **Precautions in Carrying out Works**
In carrying out the Works the Contractor shall take every precaution to avoid injury to or improper interference with the use of any roads, streets, canals, rivers, watercourses, sewers, drain pipes or cables.

48. DATA PROTECTION ACT 1998

The Contractor shall comply in all respects with the provisions of the Data Protection Act 1998 and will indemnify the Employer against all actions, costs, expenses, claims, proceedings and demands which may be made or brought against the Employer for breach of statutory duty under the Act which arises from the use, disclosure or transfer of personal data by the Contractor or his servants or agents.

49. CONTRACTOR TO COMPLY WITH SPECIAL REQUIREMENTS IN RELATION TO STATUTORY BODIES

The Contractor shall comply with Special Requirements in relation to The National Grid Company plc, Western Power Distribution (South West), Wales and West Utilities (South West), British Telecom PLC, South West Water Services Ltd., The Environment Agency, Virgin Media plc, The Environment Agency (as Waste Regulation Authority) and Torbay Council (as local Highway Authority) and Network Rail Infrastructure Ltd.

The contractor shall obtain from the Statutory Bodies and comply with all special requirements relating to works carried out in the vicinity of plant or apparatus controlled by the appropriate statutory body.

Compliance with such Special Requirements shall not relieve the Contractor of any of their other obligations and liabilities under the Contract and fulfilment of such other obligations and liabilities shall not relieve them of their responsibility to comply with the said Special Requirements.

50. INTELLECTUAL PROPERTY RIGHTS

Both parties will keep confidential and not use nor disclose to any third party (save for the purpose of the Contract and then only in confidence) any document, know-how, software or other information supplied by the other party. All intellectual property rights in any equipment, software or any other item supplied shall remain vested in the Contractor or its licensor. Copyright in any information supplied by the Contractor for the purposes of the Contract shall remain vested in the

Contractor.

51 RIGHTS OF THIRD PARTIES

Nothing in this Contract confers or purports to confer on any third party any benefit or any right to enforce any term of this Contract pursuant to the Contract (Rights of Third Parties) Act 1999.