

Sevenacres Weir Barrier to Fish Migration

NEC3 Engineering and Construction Short Contract

Client: Ayrshire Rivers Trust

Reference: WATPB6282R001F01

Revision: 01/Final

Date: 12 July 2018

HASKONINGDHV UK LTD.

36 Park Row
Leeds
LS1 5JL
Documents
VAT registration number: 792428892

+44 113 360 0533 T
email E
royalhaskoningdhv.com W

Document title: Sevenacres Weir Barrier to Fish Migration

Document short title: Sevenacres Weir Fish Pass

Reference: WATPB6282R001F01

Revision: 01/Final

Date: 12 July 2018

Project name: Sevenacres Weir

Project number: PB6282

Author(s): Mark Donoghue

Drafted by: Mark Donoghue

Checked by: Steve Vernon

Date / initials: 12/07/18

Approved by: Steve Vernon

Date / initials: 12/07/18

Classification

Confidential



Disclaimer

No part of these specifications/printed matter may be reproduced and/or published by print, photocopy, microfilm or by any other means, without the prior written permission of HaskoningDHV UK Ltd.; nor may they be used, without such permission, for any purposes other than that for which they were produced. HaskoningDHV UK Ltd. accepts no responsibility or liability for these specifications/printed matter to any party other than the persons by whom it was commissioned and as concluded under that Appointment. The integrated QHSE management system of HaskoningDHV UK Ltd. has been certified in accordance with ISO 9001:2015, ISO 14001:2015 and OHSAS 18001:2007.

Table of Contents

1	CONTRACT AGREEMENT	3
2	CONTRACT DATA	4
2.1.1	The Contractor's Offer	7
2.1.2	The Employer's Acceptance	7
2.2	Price List	8
2.2.1	Preamble to the Price List	8
2.2.2	Price List	8
2.3	Works Information and Site Information	9

Appendices

Appendix A1 - Form of Contractor Collateral Warranty

Appendix A2 - Works Information and Site Information



1 CONTRACT AGREEMENT

The contract is a NEC3 Engineering and Construction Short Contract.

A contract between **Ayrshire Rivers Trust (“the Employer”)**

and **[CONTRACTOR]** (“the Contractor”)

(Include registered company number and registered office)

for **Sevenacres Weir Larinier Fish Pass**

TENDER DOCUMENT

Contents	Page
Contract Agreement	3
Contract Data	4
The <i>Contractor’s</i> Offer	7
The <i>Employer’s</i> Acceptance	7
Price List	8
Appendices	
Appendix A1 – Form of Contractor Collateral Warranty	
Appendix A2 - Works Information and Site Information	

2 CONTRACT DATA

The *Employer* is

Name Ayrshire Rivers Trust
1 Gibbsyard,
Auchincruive Estate,
Ayr
Address KA6 5HW
Telephone 01292 737300
Contact Muir Glendinning
E-mail address muir@ayrshireriverstrust.org

The *works* are The works consist of the construction of a Lariner fish pass along the right bank of the Lugton Water River to provide passage to Migratory Salmonids and Non-Migratory Trout past the Sevenacres Weir. This will include ground investigation work to confirm bedrock level in the river channel, installation of temporary works to divert river flows and create a dry working area , breaking out of existing weir locally in area of proposed works, excavation of the river bank and bed, construction of reinforced concrete base and walls of fish pass, placing of rock armour scour protection to bed and banks, installation of fish pass baffles within reinforced concrete channel, backfill and reinstatement of area, including the installation of security screens, open-mesh walkway, access steps, guardrails and fencing. Pending outcome of further survey/investigation, remedial work may also be required to the existing mass concrete weir at the tie-in with the left bank.

The *site* is Unnamed Road off B785,
E-NE of Kilwinning,
KA13 7RG,
NGR: NS 33454 44324.

The *starting date* is TBC

The *completion date* is 31st October 2018

The *period for reply* is 2 weeks

The *defects date* is 52 weeks after completion

The *defects correction period* is 2 weeks

The *delay damages* are £400 / day

The *assessment day* is The last working day of each month.

The *retention* on the works is 3%
Does the United Kingdom
Housing Grants, Construction
and Regeneration Act (1996) Yes



apply?

The *Adjudicator* is If it reaches the point at which an adjudicator is required, either party can ask the adjudicator nominating body.

Name	TBC if required
Address	TBC if required
Telephone	TBC if required
E-mail address	TBC if required



The interest rate on late payments is	0.5% per complete week of delay.
The <i>Contractor</i> is not liable to the <i>Employer</i> for loss of or damage to the <i>Employer's</i> property in excess of	£5,000,000 for any one event
The <i>Employer</i> provides this insurance.	N/A
The minimum amount of cover for the third insurance stated in the Insurance Table is	£10,000,000
The minimum amount of cover for the fourth insurance stated in the Insurance Table is	£10,000,000
The <i>Adjudicator nominating body</i> is	Institution of Civil Engineers
The <i>tribunal</i> is	Litigation in the courts
If the <i>tribunal</i> is arbitration, the arbitration procedure	Not applicable
The <i>conditions of contract</i> are the NEC3 Engineering and Construction Short Contract (April 2013) (as amended) and the following additional conditions:	
Z1 - Contractor Collateral Warranties	The Contractor shall, within 10 Working Days of request made by the Employer with a completed engrossment, duly execute in self-proving form and deliver a collateral warranty agreements in the form attached (Appendix A1) in favour of the Landowner and SEPA.
Z2 – Third-Party Agreements	The Contractor shall not by its act or omission put the Employer in breach of the Third-Party Agreements and shall indemnify the Employer against any losses or damages accruing to it in the event of any such breach of the Third-Party Agreements arising from the Contractor's act or omission. The Third-Party Agreements are (i) the Licence for Works Agreement between the Employer and the Landowner and (ii) the Grant Award Agreement between the Employer and SEPA. The Contractor has been provided with copies of such Third-Party Agreements or relevant extracts prior to the execution of the Contract and is deemed to be fully aware of their terms.



2.1.1 The Contractor's Offer

The *Contractor* is

Name

Address

Telephone

Fax

E-mail address

The percentage for overheads and profit added to the Defined Cost for people is %.

The percentage for overheads and profit added to other Defined Cost is %

The *Contractor* offers to Provide the Works in accordance with the *conditions of contract* for an amount to be determined in accordance with the *conditions of contract*.

The offered total of the Prices is

Signed on behalf of the *Contractor*

Name

Position

Signature

Date

2.1.2 The Employer's Acceptance

The *Employer* accepts the *Contractor's* Offer to Provide the Works

Signed on behalf of the *Employer*

Name

Position

Signature

Date

2.2 Price List

2.2.1 Preamble to the Price List

Items in the Price List must be for discrete clearly identifiable sections of work. Because payment depends on the satisfactory completion of items, it is necessary to define tangible completion for items where completion is not physically obvious.

The *Contractor* is to provide the price data for the Works.

2.2.2 Price List

Item No.	Description	Unit	Quantity	Rate	Price
1	Preliminaries	sum	1		
2	Mobilisation	sum	1		
3	Vegetation clearance / tree stump removal	sum	1		
4	Removal and off-site disposal of debris from channel bar	sum	1		
5	Removal and off-site disposal of sediment bar from channel	sum	1		
6	Ground investigation to ascertain bed rock level	sum	1		
7	Temporary works to create dry working area	sum	1		
8	Breaking out of existing weir locally	sum	1		
9	Breaking out of bedrock	sum	1		
10	Reinforced concrete works	sum	1		
11	Open mesh flooring works	sum	1		
12	Rock armour works	sum	1		
13	Steel works (guardrails, security screens, ladder, Larinier baffles)	sum	1		
14	Construct concrete access steps	sum	1		
15	Earthworks / backfilling	sum	1		
16	Grass seeding	sum	1		
17	Erect timber fencing	sum	1		
18	[Provisional Item] Investigation / remedial actions at existing weir left bank	sum	1	20,000	20,000
19	Demobilisation	sum	1		
Total of the Prices					



2.3 Works Information and Site Information

The document titled Sevenacres Weir Barriers to Fish Migration – Works Information and Site Information, is included in **Appendix A2**.



Appendix A1 - Form of Contractor Collateral Warranty



Form of Contractor Collateral Warranty

Collateral Warranty Agreement

Among

- 1 [Ayrshire Rivers Trust] (hereinafter along with its permitted assignees called the "**Employer**")
- 2 [], a company incorporated under the Companies Acts (Registered Number []) and having its registered office at [] (hereinafter referred to as the "**Contractor**"); and
- 3 [], a company incorporated under the Companies Acts (Registered Number []) and having its registered office at [] (hereinafter referred to as the "**Beneficiary**"); and

Whereas

- (A) The Contractor has entered into the Contract with the Employer in terms of which the Contractor has undertaken to carry out the Works: and
- (B) The Beneficiary is [the owner of the site of/grant funder of the Works];

Now therefore the parties have agreed and do hereby agree as follows:

1 Definitions and Interpretation

- 1.1 In this Agreement, unless the context otherwise requires, the following expressions shall have the meanings assigned to them:

"**Contract**" means the NEC3 Short Contract entered into between the Employer and the Contractor dated [] for the Works;

"**Employer**" means the said Ayrshire Rivers Trust;

"**Completion**" means the date of completion of the Works in terms of the Contract;

"**Working Day**" means Monday to Friday inclusive but shall exclude any day which is a recognised public holiday in the country in which the Project is to be executed;

"**Works**" means the construction of a fish pass to provide passage to Migratory Salmonids and Non-Migratory Trout past the Sevenacres Weir on the Lugton Water River.

- 1.2 Words importing the singular only shall also include the plural and vice versa and, where the context requires, words importing persons shall include firms and corporations.
- 1.3 Clause headings shall not affect the construction of this Agreement.
- 1.4 References to a Clause are, unless the context otherwise requires, references to the relevant Clause of this Agreement.



2 Duty of Care

2.1 The Contractor hereby warrants to the Beneficiary that

2.1.1 the Contractor will carry out the Works in conformity with the Contract in a good and workmanlike manner;

2.1.2 the Contractor will observe, perform and comply with all the provisions on the part of the Contractor to be observed, performed and complied with contained in the Contract; and

2.1.3 the Works will comply with any performance specification or requirement contained in the Contract

2.2 The Contractor shall have no greater duty to the Beneficiary under this Agreement than it would have had if the Beneficiary had been named as employer under the Contract (provided that the Contractor shall not seek to defend or dispute any claim by the Beneficiary on the basis that the employer under the Contract has not suffered any loss or has not suffered or could not have suffered the same loss which the Beneficiary is seeking to recover pursuant to this Agreement).

3 Reliance

The Contractor acknowledges and accepts that the Beneficiary has and shall be deemed to have relied upon the Contractor's skill and judgement in respect of those matters which relate to the Contractor's obligations pursuant to the Contract, and that if the Contractor is in breach of any of the Contractor's obligations, the Beneficiary may suffer loss.

4 Independent Inspection

The liability of the Contractor under this Agreement shall not be modified, released, diminished or in any way affected by any independent inspection, investigation or enquiry into any relevant matter which may be made or carried out by or for the Beneficiary, nor by any failure or omission to carry out such inspection, investigation or enquiry, nor by the appointment of any independent party to review the progress of or otherwise report to the Beneficiary in respect of the Works, nor by any action or omission of any such independent party whether or not such action or omission might give rise to any independent liability of such independent party to the Beneficiary.

5 Assignment and Further Warranties

5.1 The Beneficiary (or any party to whom the Beneficiary may have assigned or transferred its rights/obligations and/or benefit of this Agreement in terms of Clause 8.1) shall be entitled, without the need for consent, to assign or transfer its rights and/or obligations (whenever arising) and the benefit of this Agreement or any part, thereof. Thereafter those rights and/or obligations and benefit assigned or transferred shall, without the need for consent, be assignable or transferable by the assignee once only. The Contractor shall not be entitled to assign or transfer any rights or obligations hereunder without the consent of the Beneficiary.

5.2 The Contractor shall not be entitled to contend that any person to whom this Agreement is assigned or transferred in accordance with this Clause 5 is precluded from recovering under this Agreement any loss resulting from any breach of this Agreement (whenever arising) by reason that such person is an assignee or transferee and not a named party hereunder.

6 **Insurance**

6.1 The Contractor undertakes to the Beneficiary to take out and maintain professional indemnity insurance with a limit of indemnity of not less than £5 million, to be held on an each and every basis, with a reputable insurance company carrying on business in the UK, from the date hereof and for a period expiring 12 years after practical completion of the Works, but only to the extent that such insurance continues to be available in the UK insurance market upon reasonable terms and at commercially reasonable premium rates.

6.2 As and when reasonably requested to do so by the Beneficiary, the Contractor shall produce for inspection documentary evidence that such insurance is being properly maintained.

6.3 The Contractor shall forthwith notify the Beneficiary if such insurance ceases to be available upon reasonable terms and at commercially reasonable premium rates or if for any other reason the Contractor is unable to continue to maintain such insurance.

6.4 The obligations of the Contractor in this clause are without prejudice to his other obligations under this Agreement or otherwise at law, and continue to apply notwithstanding the termination of the Contract for any reason.

7 **General**

7.1 Should there be any conflict between the Contract and anything in this Agreement then, as between the Beneficiary and the Contractor the Contract shall prevail.

7.2 The provisions of this Agreement shall be without prejudice to any other right of action that the parties may have in delict or otherwise.

8 **Amendment of the Building Contract**

The Contractor confirms and undertakes to the Beneficiary that it will not agree to amend, vary, supplement or assign the Contract or enter into an agreement collateral to the Contract (save an agreement which is in implement of the terms of the Contract) without the prior consent in writing of the Beneficiary.

9 **Duration of Agreement**

Before, on or after completion of the Works, the provisions of this Agreement and the rights and obligations of the parties under it shall continue to have effect as between the Beneficiary and the Contractor even if the employment of the Contractor is suspended or terminated but such provisions and such rights and obligations shall cease to be enforceable following the 12th



anniversary of Completion save to the extent that they are the subject of any action or proceedings which have commenced or claim intimated prior to such anniversary.

10 **Jurisdiction**

This Agreement shall be governed by and construed in all respects in accordance with Scots Law and the parties hereto agree to submit to the non-exclusive jurisdiction of the Scottish Courts: IN WITNESS WHEREOF

Subscribed for and on behalf of the Employer

by

*Authorised Signatory/Director/Company Secretary

Full Name (Please Print)

at

on

before

Witness

Full Name (Please Print)

Address

*Please delete as applicable

Subscribed for and on behalf of the Contractor

by

*Authorised Signatory/Director/Company Secretary

Full Name (Please Print)

at

on

before

Witness

Full Name (Please Print)

Address

*Please delete as applicable

Appendix A2 - Works Information and Site Information



With its headquarters in Amersfoort, The Netherlands, Royal HaskoningDHV is an independent, international project management, engineering and consultancy service provider. Ranking globally in the top 10 of independently owned, nonlisted companies and top 40 overall, the Company's 6,500 staff provide services across the world from more than 100 offices in over 35 countries.

Our connections

Innovation is a collaborative process, which is why Royal HaskoningDHV works in association with clients, project partners, universities, government agencies, NGOs and many other organisations to develop and introduce new ways of living and working to enhance society together, now and in the future.

Memberships

Royal HaskoningDHV is a member of the recognised engineering and environmental bodies in those countries where it has a permanent office base.

All Royal HaskoningDHV consultants, architects and engineers are members of their individual branch organisations in their various countries.