

Guide to Pricing, Payment and the Pain/Gain Mechanism

in the delivery of the

Artificial Grass Pitch (AGP) Framework 2020

1.0 Introduction

1.1 About the “Guide to Pricing, Payment and the Pain/Gain Mechanism”

This guide is intended to provide all users of the Framework with a useful guide in how the commercial elements of the framework operate and in particular, how prices are developed, payments administered and how the “pain/gain” mechanism operates.

This guide is NOT a contractual document; the mechanism for how prices are developed and payments made are set out in the contract (JCT Design & Build Contract 2016 Edition), contained in **Schedule 5 – Template Documents, Part 1 – Call-off Contracts**, of the **Framework Alliance Agreement, FAC-1**. It is however, a practical guide to how pricing and payments should be managed and therefore, should be followed by all those involved in the Framework.

1.2 What does this Guide cover?

This Guide covers the following:-

1. How initial prices are obtained under a competitive award procedure;
2. How the Guaranteed Maximum Price (GMP) is developed during “Design Development” stage;
3. How the “Pain/Gain” mechanism shall operate;
4. How the incentive mechanism shall operate.

Where appropriate, reference shall be made to the Call-Off Contract and Framework Alliance Contract throughout.

2.0 How initial prices are obtained under a competitive award procedure

2.1 Competitive Award Procedure

Initial prices shall be obtained through a competitive award procedure in accordance with the processes set out at **Schedule 4 – Award Procedures** of FAC-1. Applicants may use the Direct Award method under certain circumstances, but for the most part, the Competitive Award Procedure will be used. In any event, the Tenderer shall complete a Contract Sum Analysis, as provided within **Schedule 5 – Template Project Documents** of FAC-1.

The Framework Managing Consultant (FMC), shall prepare the tender documents which shall comprise of the following:-

1. The Project Brief
2. Employer's Requirements
3. Drawings
4. Contract Sum Analysis

Tenderers shall complete the Contract Sum Analysis with their prices for both Part 1 and Part 2 cost components, as further described in the Price Framework, incorporated into **Schedule 9 – Framework Proposals** of FAC-1.

2.2 Completing the Contract Sum Analysis

Tenderers are required to complete the Contract Sum Analysis as part of the "Competitive Award Procedure" as follows:-

2.2.1 Net Works Cost

The Contract Sum Analysis is provided with two columns:-

Part 1: GMP for below ground works and other "risk" items

Part 2: Fixed Price for above ground pitch installation and "non-risk" items

Tenderers shall determine the costs associated with each major cost component against either Part 1 or Part 2 costs. In some cases, a cost component could be made up of both Part 1 and Part 2 costs. All costs are to be expressed as "Lump Sum" costs for each cost component.

2.2.2 On Costs

There are a series of "on-costs" to be added to the total of the net cost of works. These are described in more detail at 2.3 of the Price Framework but are repeated here for clarity:-

On-cost	How it is calculated
Regional Adjustment	To be taken from the Tenderer's "Framework Rates" and is expressed as a percentage on-cost to be applied to the Contract Sum Analysis.
Design Fees	To be taken from the Tenderer's "Framework Rates" and is expressed as a fixed sum on-cost to be applied to the Contract Sum Analysis.
Central Office Overheads	To be taken from the Tenderer's "Framework Rates" and is expressed as a percentage on-cost to be applied to the Contract Sum Analysis.
Profit	To be taken from the Tenderer's "Framework Rates" and is expressed as a percentage on-cost to be applied to the Contract Sum Analysis.

An example "Contract Sum Analysis" is set out below:-

Ref	Net Works Cost		Part 1 Cost (£)	Part 2 Cost (£)	TOTAL (£)
A	Preliminaries (Site Overheads)		£0.00	£70,000.00	£70,000.00
B	Site Clearance, Excavations and Groundworks		£5,000.00	£10,000.00	£15,000.00
C	Drainage		£15,000.00	£15,000.00	£30,000.00
D	Pitch Foundations and Base		£50,000.00	£25,000.00	£75,000.00
E	Artificial Grass Surface		£0.00	£125,000.00	£125,000.00
F	Perimeter Fencing		£0.00	£60,000.00	£60,000.00
G	Sports Equipment		£0.00	£20,000.00	£20,000.00
H	Floodlighting		£0.00	£30,000.00	£30,000.00
J	Hardstanding and Prefabricated Base		£15,000.00	£60,000.00	£75,000.00
K	Reinstatement		£0.00	£10,000.00	£10,000.00
L	Contractor's Other Items		£0.00	£5,000.00	£5,000.00
Total Net Cost of Works			£85,000.00	£430,000.00	£515,000.00
M	Regional Adjustment	1.00%			£5,150.00
Sub Total					£520,150.00
N	Design Fees				£31,209.00
Sub Total					£551,359.00
P	Central Office Overheads	4.00%			£22,054.36
Sub Total					£573,413.36
R	Profit	6.00%			£34,404.80
Total Tender Price					£607,818.16

The "Total Tender Price" set out above is also the "Guaranteed Maximum Price". However, the Part 1 costs, making up the GMP shall be adjusted based on further "Design Development" activity during the pre-construction stage.

3.0 Developing the “GMP” during “Design Development” stage

3.1 What the Contract Says

Article 15: Agreement of Construction Phase Terms describes how the GMP shall be developed during “Design Development”. In particular, 15.1 states:-

During the Pre-Construction Phase the Employer and the Contractor shall negotiate in good faith and endeavour to agree:

1. *the amount of the Contract Sum attributable to the Sub-Structure Works and such amount and the Contract Sum shall be agreed prior to the Contractor commencing any part of the Supply & Installation Works; and*
2. *those further matters referred to in this Article 15 which are not agreed at the date of this Contract.*

3.2 Developing the “GMP” in Practice

In practice, the development of the GMP into a final Contract Sum, will be a collaborative exercise between all parties, including the FMC (Employer’s Agent), the AGP Supplier (Contractor), the Employer (Applicant) and also, the Football Foundation. The activities to develop the GMP shall be led by the FMC in their role as “Employer’s Agent”.

3.3 Finalising the Contract Sum

Once the “Design Development” activities are complete, a final “Contract Sum” shall be agreed and an updated “Contract Sum Analysis” provided. The next section, [4.0 How the “Pain/Gain” mechanism shall operate](#) details how the Pain/Gain mechanism operates and provided examples of the Contract Sum Analysis at Contract Sum stage.

4.0 How the “Pain/Gain” mechanism shall operate

4.1 The Basic Principle

The basic principle as already described under [2.0 How initial prices are obtained under a competitive award procedure](#) is that the “tender price” obtained in a competitive award exercise shall be the Guaranteed Maximum Price (GMP). This is further described in **Article 15 – Agreement of Construction Phase Terms** of JCT DB2016. The “tender price” is made up of 3 components:-

1. Part 1: GMP for below ground works and other “risk” items
2. Part 2: Fixed Price for above ground pitch installation and “non-risk” items
3. Client specified “Provisional Sums”

The above shall be adjusted during “Design Development” as follows:-

Price Component	How the price is adjusted
Part 1: GMP for below ground works and other “risk” items	<p>The Contractor shall adhere strictly to Article 15 of JCT DB2016 and shall develop a final Contract Sum that shall not exceed the GMP provided with the original “Tender Price”.</p> <p>If the actual cost exceeds the GMP, then this shall be at the Contractor’s risk unless the Employer directs otherwise.</p> <p>If the actual costs are lower than the GMP, then the difference between the actual cost and the GMP shall be adjusted in accordance with the Pain/Gain mechanism.</p>
Part 2: Fixed Price for above ground pitch installation and “non-risk” items	No adjustment. Final “Contract Sum” price shall be the same as the “Tender Price” for all Part 2 elements
Client specified “Provisional Sums”	Provisional Sums shall be adjusted based on omitting the provisional sum and replacing with the agreed actual cost of the relevant component. In essence, the actual sum becomes part of Part 2: Fixed Costs.

It should be noted that only “Part 1 Costs” shall be subject to the Pain/Gain mechanism as all other costs are fixed at the point at which the Contract Sum is finalised.

4.2 What does the Contract say?

4.2.1 Within FAC-1 (The Framework Agreement)

The Pain/Gain mechanism is covered in the Framework Alliance Contract, FAC-1, at **Schedule 1, Part 3 – Incentives**, which states:-

“A process of value engineering with a shared pain/gain mechanism (with incentivisation) to manage the difference between the guaranteed maximum price (“GMP”) and the contract sum referred to in the particular Project Contract. The pain/gain mechanism will work as follows: the

GMP shall not be exceeded during the design development stage of any Project so that any cost overruns (save for any changes or agreed "provisional" items) shall be borne completely by the Alliance Member (appointed as the contractor under the Project Contract). If the actual cost of the Project is less than the GMP, any such cost savings will be shared 50:50 between the parties to such Project Contract."

FAC-1 includes additional "Guidance Notes" in relation to the above:-

- *additional payments including shares of savings achieved through Supply Chain Collaboration and other Alliance Activities described in the Framework Alliance Contract and clause 6 of the Contract Terms (stating whether payable under a Project Contract or clause 8 of the Contract Terms);*
- *adjustment of any exclusivity in the award of Project Contracts (under clause 5.7 of the Contract Terms and Part 2 of this Schedule 1);*
- *extension of the scope of the Framework Programme and/or the duration of the Framework Alliance Contract (linked to clause 9.1 and clause 14.1 of the Contract Terms).*

4.2.2 Within the Project Contract (JCT DB2016)

Article 15 covers the way in which the GMP is developed up to the point at which the Contract Sum is agreed. In particular, 15.2 states:-

The Employer and the Contractor have agreed to a guaranteed maximum price of £[] (excluding VAT) for the Works ('GMP') subject to both parties adhering to the requirements of Appendix 7 to this Contract. The [Framework Managing Consultant] shall produce the first version of the GMP Cost Plan (as defined in the Conditions) for review and agreement with the Contractor.

Appendix 7 – Route to Contract and Incentives is where the specific details of the incentive scheme described in FAC-1, Schedule 1, Part 3 – **Incentives** shall be incorporated.

Appendix 7 should therefore include the "Pain/Gain" mechanism described in **FAC-1, Schedule 1, Part 3 – Incentives** together with any other specific items to note.

Finally, Article 15.7 of the Project Contract states:-

The GMP shall be capable of adjustment at the written direction or with the prior written approval of the Employer in its sole discretion but not otherwise.

This permits the Employer to make adjustments to the GMP through changes instructed by the Employer.

4.2.3 Within the Price Framework

The Price Framework is incorporated into **Schedule 9 – Framework Proposals**. This document describes the way in which the Pain/Gain mechanism is developed. Clauses 2.2.6-2.2.8 relate to the management of the Pain/Gain mechanism:-

- 2.2.6. If there is a reduction between the final "Contract Sum" and the "GMP", then this shall be shared 50:50 between the Contracting Authority and the AGP Supplier. This is referred to as the "Gain Share".*
- 2.2.7. If the "Contract Sum" exceeds the value of the "GMP", then the GMP cost will be used as the "Contract Sum". This is referred to as the "Pain" and there will be no share of the "Pain" under these circumstances. The only exception will be where the Contracting Authority changes the scope of the project or client defined provisional sums are adjusted when the actual costs are known.*
- 2.2.8. Any adjustment to the GMP, arising from client changes and/or adjustments to client defined provisional sums will not be subject to any "Gain Share" outlined in para 2.2.6 above.*

4.3 How will this operate in practice?

The starting point is the "Tender Price", submitted by the Contractor following a Competitive Award Procedure. The "Tender Price" contains the Part 1 and Part 2 costs. Part 2 costs are fixed, unless the Employer issues an instruction to change any element of the project.

Part 1 costs submitted at tender stage are a GMP and shall not be exceeded. The team will work together to value engineer the project and reduce the GMP, with the incentive of the Contractor taking a share of the "gain" as described above.

Set out overleaf is a worked example of a "gain" scenario:-

Tender Price

Ref	Net Works Cost		Part 1 Cost (£)	Part 2 Cost (£)	TOTAL (£)
A	Preliminaries (Site Overheads)		£0.00	£70,000.00	£70,000.00
B	Site Clearance, Excavations and Groundworks		£5,000.00	£10,000.00	£15,000.00
C	Drainage		£15,000.00	£15,000.00	£30,000.00
D	Pitch Foundations and Base		£50,000.00	£25,000.00	£75,000.00
E	Artificial Grass Surface		£0.00	£125,000.00	£125,000.00
F	Perimeter Fencing		£0.00	£60,000.00	£60,000.00
G	Sports Equipment		£0.00	£20,000.00	£20,000.00
H	Floodlighting		£0.00	£30,000.00	£30,000.00
J	Hardstanding and Prefabricated Base		£15,000.00	£60,000.00	£75,000.00
K	Reinstatement		£0.00	£10,000.00	£10,000.00
L	Contractor's Other Items		£0.00	£5,000.00	£5,000.00
Total Net Cost of Works			£85,000.00	£430,000.00	£515,000.00
M	Regional Adjustment	1.00%			£5,150.00
Sub Total					£520,150.00
N	Design Fees				£31,209.00
Sub Total					£551,359.00
P	Central Office Overheads	4.00%			£22,054.36
Sub Total					£573,413.36
R	Profit	6.00%			£34,404.80
Total Tender Price					£607,818.16

Contract Sum

Ref	Net Works Cost		Part 1 Cost (£)	Part 2 Cost (£)	TOTAL (£)
S	Savings generated from Value Engineering/Supply Chain		(£20,000.00)	£0.00	-£20,000.00
T	50% share of gain				-£10,000.00
Adjusted Net Cost of Works					£505,000.00
U	Regional Adjustment	1.00%			£5,050.00
Sub Total					£510,050.00
V	Design Fees*				£31,209.00
Sub Total					£541,259.00
W	Central Office Overheads*	4.00%			£22,054.36
Sub Total					£563,313.36
X	Profit*	6.00%			£34,404.80
Contract Sum					£597,718.16

* Design Fees, Central Office Overheads and Profit shall all be based on the original Tender Price and carried forward to the Contract Sum

Set out below is a worked example of a "pain" scenario:-

Tender Price

Ref	Net Works Cost		Part 1 Cost (£)	Part 2 Cost (£)	TOTAL (£)
A	Preliminaries (Site Overheads)		£0.00	£70,000.00	£70,000.00
B	Site Clearance, Excavations and Groundworks		£5,000.00	£10,000.00	£15,000.00
C	Drainage		£15,000.00	£15,000.00	£30,000.00
D	Pitch Foundations and Base		£50,000.00	£25,000.00	£75,000.00
E	Artificial Grass Surface		£0.00	£125,000.00	£125,000.00
F	Perimeter Fencing		£0.00	£60,000.00	£60,000.00
G	Sports Equipment		£0.00	£20,000.00	£20,000.00
H	Floodlighting		£0.00	£30,000.00	£30,000.00
J	Hardstanding and Prefabricated Base		£15,000.00	£60,000.00	£75,000.00
K	Reinstatement		£0.00	£10,000.00	£10,000.00
L	Contractor's Other Items		£0.00	£5,000.00	£5,000.00
Total Net Cost of Works			£85,000.00	£430,000.00	£515,000.00
M	Regional Adjustment	1.00%			£5,150.00
Sub Total					£520,150.00
N	Design Fees				£31,209.00
Sub Total					£551,359.00
P	Central Office Overheads	4.00%			£22,054.36
Sub Total					£573,413.36
R	Profit	6.00%			£34,404.80
Total Tender Price					£607,818.16

Contract Sum

Ref	Net Works Cost		Part 1 Cost (£)	Part 2 Cost (£)	TOTAL (£)
S	Savings generated from Value Engineering/Supply Chain		£20,000.00	£0.00	£20,000.00
T	100% share of pain				£20,000.00
Adjusted Net Cost of Works**					£515,000.00
U	Regional Adjustment	1.00%			£5,150.00
Sub Total					£520,150.00
V	Design Fees*				£31,209.00
Sub Total					£551,359.00
W	Central Office Overheads*	4.00%			£22,054.36
Sub Total					£573,413.36
X	Profit*	6.00%			£34,404.80
Contract Sum					£607,818.16

* Design Fees, Central Office Overheads and Profit shall all be based on the original Tender Price and carried forward to the Contract Sum

** No change to Tender Price

5.0 How the incentive mechanism shall operate

5.1 What the Contract says?

5.1.1 Schedule 1, Part 3 – Incentives

Schedule 1, Part 3 – Incentives of FAC-1 states the following:-

A retention equivalent to 3% of the contract sum for the works/services referred to in the particular Project Contract held in an 'Incentive Pot' until completion of the relevant works/services. The "Incentive Pot" will be released on satisfactory achievement of the "Qualifying (Project Measures & Targets) Measures" in Part 2 – Success Measures.

It also includes the incentivisation scheme for the pain/gain mechanism as further described at [4.2.1 Within FAC-1 \(The Framework Agreement\)](#) but this section is only concerned with the first incentive scheme.

5.1.2 Schedule 1, Part 2 – Success Measures and Targets

As referenced in the incentive scheme, the incentive is linked to "Qualifying Measures" as set out in **Schedule 1, Part 2 – Success Measures and Targets**. The qualifying "Success Measures and Targets" are as follows:-

- PM-02 Client Satisfaction – Quality of the completed facility
- PM-06 Time Predictability – Construction Period
- PM-07 Cost Predictability of the Project
- PM-08 End User Satisfaction – At Handover

Since these all relate to "Post Contract" activities, the incentive scheme shall only apply during construction. In essence, this means that the Pre-Construction stage will not involve the inclusion of the "incentive pot" in any payments made by the Employer to the Contractor for pre-construction services.

5.2 Applying the Incentive Scheme to Payments

As set out above, the incentive scheme shall only apply during the Construction Stage. A retained sum (incentive pot) of 3% of the Contract Sum shall be withheld on valuations throughout the project. Within 3 months of practical completion, an assessment of the performance of the Contractor shall be made, as measured against the "Success Measures and Targets". Subject to the Contractor meeting or exceeding ALL of the "Qualifying Measures", the FMC shall certify a payment to release the "incentive pot" to the Contractor. In addition, the Final Account must be agreed before certifying the release of the incentive pot.

The "incentive pot" does not relate in any way to any other retained sums in accordance with the contract.

An example payment mechanism is set out below:-

<u>Contract Sum Analysis</u>						
Ref	Net Works Cost	Part 1 Cost (£)	Part 2 Cost (£)	TOTAL (£)	Percentage applied for (%)	Total Claimed (£)
A	Preliminaries (Site Overheads)	£0.00	£70,000.00	£70,000.00	20%	£14,000.00
B	Site Clearance, Excavations and Groundworks	£5,000.00	£10,000.00	£15,000.00	100%	£15,000.00
C	Drainage	£15,000.00	£15,000.00	£30,000.00	50%	£15,000.00
D	Pitch Foundations and Base	£50,000.00	£25,000.00	£75,000.00	25%	£18,750.00
E	Artificial Grass Surface	£0.00	£125,000.00	£125,000.00	0%	£0.00
F	Perimeter Fencing	£0.00	£60,000.00	£60,000.00	0%	£0.00
G	Sports Equipment	£0.00	£20,000.00	£20,000.00	0%	£0.00
H	Floodlighting	£0.00	£30,000.00	£30,000.00	0%	£0.00
J	Hardstanding and Prefabricated Base	£15,000.00	£60,000.00	£75,000.00	20%	£15,000.00
K	Reinstatement	£0.00	£10,000.00	£10,000.00	0%	£0.00
L	Contractor's Other Items	£0.00	£5,000.00	£5,000.00	0%	£0.00
M	Provisional Sums/Variations	£10,000.00	£0.00	£10,000.00	0%	£0.00
Total Net Cost of Works		£95,000.00	£430,000.00	£525,000.00		£77,750.00
N	Regional Adjustment	1.00%		£5,250.00		£777.50
Sub Total				£530,250.00		£78,527.50
P	Design Fees			£31,209.00	100.00%	£31,209.00
Sub Total				£561,459.00		£109,736.50
R	Central Office Overheads	4.00%		£22,458.36		£4,389.46
Sub Total				£583,917.36		£114,125.96
S	Profit	6.00%		£35,035.04		£6,847.56
Contract Sum				£618,952.40		£120,973.52
<u>Payment Application #2</u>						
Ref	Net Works Cost	Part 1 Cost (£)	Part 2 Cost (£)	TOTAL (£)	Percentage applied for (%)	Total Claimed (£)
T	Application for Payment Amount (from above)					£120,973.52
Retained Sums						
U	Contract Retention	3.00%		£18,568.57		£3,629.21
V	Incentive Pot	3.00%		£18,568.57		£3,629.21
Net Application for Payment						
W	Net Application for Payment					£113,715.11
X	Less Previous Applied (Application #1)					£31,209.00
Total Due for Payment						£82,506.11

In the example above (Payment Application #2), this is the first valuation of the works on site. It reflects the fact that a previous payment has been made in respect of the "Design Fees". Retention and the Incentive pot are both retained sums at this stage of the project. It also includes for "Provisional Sums" unexpended at this stage, though forming part of the Contract Sum.

The example overleaf, shows a valuation on satisfactory conclusion of the Final Account (Payment Application #5) and the Contractor meeting the qualifying measures in the "Success Measures and Targets". In this example, the incentive pot is released. The only amount now outstanding, being the contract retention (3% of the Final Account figure). It also includes for variations issued against provisional sums throughout the contract.

Contract Sum Analysis

Ref	Net Works Cost		Part 1 Cost (£)	Part 2 Cost (£)	TOTAL (£)	Percentage applied for (%)	Total Claimed (£)
A	Preliminaries (Site Overheads)		£0.00	£70,000.00	£70,000.00	100%	£70,000.00
B	Site Clearance, Excavations and Groundworks		£5,000.00	£10,000.00	£15,000.00	100%	£15,000.00
C	Drainage		£15,000.00	£15,000.00	£30,000.00	100%	£30,000.00
D	Pitch Foundations and Base		£50,000.00	£25,000.00	£75,000.00	100%	£75,000.00
E	Artificial Grass Surface		£0.00	£125,000.00	£125,000.00	100%	£125,000.00
F	Perimeter Fencing		£0.00	£60,000.00	£60,000.00	100%	£60,000.00
G	Sports Equipment		£0.00	£20,000.00	£20,000.00	100%	£20,000.00
H	Floodlighting		£0.00	£30,000.00	£30,000.00	100%	£30,000.00
J	Hardstanding and Prefabricated Base		£15,000.00	£60,000.00	£75,000.00	100%	£75,000.00
K	Reinstatement		£0.00	£10,000.00	£10,000.00	100%	£10,000.00
L	Contractor's Other Items		£0.00	£5,000.00	£5,000.00	100%	£5,000.00
M	Provisional Sums/Variations		£8,750.00	£0.00	£8,750.00	100%	£8,750.00
Total Net Cost of Works			£93,750.00	£430,000.00	£523,750.00		£523,750.00
N	Regional Adjustment	1.00%			£5,237.50		£5,237.50
Sub Total					£528,987.50		£528,987.50
P	Design Fees				£31,209.00	100.00%	£31,209.00
Sub Total					£560,196.50		£560,196.50
R	Central Office Overheads	4.00%			£22,407.86		£22,407.86
Sub Total					£582,604.36		£582,604.36
S	Profit	6.00%			£34,956.26		£34,956.26
Final Account Sum					£617,560.62		£617,560.62

Payment Application #5

Ref	Net Works Cost		Part 1 Cost (£)	Part 2 Cost (£)	TOTAL (£)	Percentage applied for (%)	Total Claimed (£)
T	Application for Payment Amount (from above)						£617,560.62
Retained Sums							
U	Contract Retention	3.00%			£18,526.82		£18,526.82
V	Incentive Pot	3.00%			£18,526.82		£0.00
Net Application for Payment							
W	Net Application for Payment						£599,033.80
X	Less Previous Applied (Application #1)						£576,606.33
Total Due for Payment							£22,427.47

In both examples above it is assumed that the Contract Sum has already been adjusted to reflect any application of the Pain/Gain mechanism.