



# **CONDITIONS OF CONTRACT FOR THE HUMAN REMAINS CALL-OFF CONTRACT 2008**

**HS reference: HS/C/53031/3503**

**OJEU reference: 2007/S 163-202841**

**NOVEMBER 2007**

**These Conditions may only be varied with the written agreement of the Employer. No terms or conditions put forward at any time by the Contractor shall form any part of the Contract unless specifically agreed in writing by the Employer.**

## **SCOPE OF CONTRACT**

1. The Contractor shall carry out the service described in the Project Outline.

## **PERIOD OF CONTRACT**

2. The contract period shall be the period stated in the Project Outline, subject to the due performance by the Contractor of his obligations under the contract and without prejudice to the specific rights of the parties of determination thereunder.

## **DETERMINATION**

- 3.1 The contract may be determined:-

- a. by the Employer at any time, by his giving to the Contractor one month's prior written notice of termination or

- b. by the Contractor giving to the Employer written notice expressed to expire on the last day of the month following that in which such notice is given.

- 3.2 The Employer may, but not unreasonably or vexatiously, by notice by registered post or recorded delivery to the Contractor forthwith determine the employment of the Contractor under this contract if the Contractor shall make default in any one or more of the following respects, that is to say:-

- a. if the Contractor without reasonable cause fails to proceed diligently with the Works or wholly suspends the carrying out of the works before completion;

- b. if the Contractor becomes bankrupt or makes a composition or arrangement with his creditors or has his estate sequestrated or is rendered notour bankrupt or enters into a Trust Deed for his creditors or has a winding up order made or (except for the purposes of reconstruction) a Resolution for voluntary winding up passed a Receiver or Manager of his business or undertaking appointed or possession taken by or on behalf of the holders of any Debenture secured by a Floating Charge.

Provided always that the right of the determination shall be without prejudice to any other rights or remedies which the Employer may possess.

## **MANNER OF CARRYING OUT WORK**

4. The work shall be carried out to the satisfaction of the Historic Scotland Project Manager (the commissioning member of the Historic Scotland Inspectorate). Historic Scotland may, by notice in writing to the Contractor, vary the contract by ordering an addition or reduction to the work set out in the Project Outline and in the event of such variation, where necessary, a fair and reasonable adjustment of the price payable to the Contractor shall be made.

If the Contractor shall be prevented by circumstances beyond his control and unavoidable by him from executing any of or wholly completing the work or any occasion he shall at once give written notice therefore to Historic Scotland specifying such circumstances.

## **SUB-CONTRACTING**

5. The Contractor shall not sub-contract the Works or any part thereof without the written consent of the Project Manager which consent shall not unreasonably be withheld.

## **INDEMNITY AND LIABILITY**

6.1 Without prejudice to any other right or remedy the Employer may have, the Contractor shall indemnify and keep indemnified the Employer against all actions, claims, demands, costs, expenses and losses incurred by or made against the Employer in respect of any loss or damage or personal injury (including disease, illness and death, whether by virtue of disease, illness, injury or otherwise) which arises out of or in connection with and is caused directly by the negligence, breach or negligent performance or failure in performance of any obligation of this contract, breach of duty (whether statutory, contractual or otherwise) or any other wrongful act or omission, in all cases of or by the Contractor or any of the Contractors agents, employees or representatives. This indemnity shall not apply to the extent that any loss, damage or personal injury is caused by the negligence of the Employer.

6.2 The Contractor must have in force and require any Sub-contractor to have in force:-

(i) Employer's liability insurance in accordance with any legal requirements for the time being in force;

(ii) Public liability insurance for such sum and range of cover as the Contractor deems appropriate but covering at least all matters which are the subject of indemnities or compensation obligations under these conditions and not less than £1m.

6.3 The policy or policies of insurance referred to above must be shown to the HS Project Manager whenever requested, together with satisfactory evidence of payment of premiums.

## **PAYMENT**

7. Detailed accounts, in accordance with the rates contained in the Pricing Schedule shall be rendered by the Contractor to the Employer after the completion of each service. Stage payments may be made at the option of the Project Manager, reflecting actual work satisfactorily completed. The Contractor shall be paid within 30 days following receipt and approval by the Employer of a valid invoice. Where, with the agreement of the Employer, the Contractor has entered into a sub-contract for the purposes of performing the Contract, the Contractor will cause a term to be included in such sub-contract which requires payment to be made to the supplier or sub-contractor within 30 days from receipt of a valid invoice as defined by the sub-contract requirements. The Contractor shall be responsible for the payment of all sub-contractors and all other costs incurred during the course of the contract.

## **PREVENTION OF CORRUPTION**

8. The Employer shall be entitled to cancel this contract and to recover from the Contractor the amount of any loss resulting from such cancellation if the Contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind or if the Contractor shall have committed any offence under the Prevention of Corruption Acts

1889 to 1916 or shall have given any fee or reward the receipt of which is an offence under Section 68 Local Government (Scotland) Act 1973 or any re-enactment thereof.

## **ARBITRATION**

9.1 If any dispute or difference concerning this contract shall arise between the Employer or the Supervising Officer on his behalf and the Contractor such dispute or difference shall be and is hereby referred to the arbitration and final decision of a person to be agreed between the parties or, failing agreement within 14 days after either party has given the other a written request to concur in the appointment of an arbiter, a person to be appointed on the request of either party by the Sheriff of any Sheriffdom in which the Works or any part thereof are situated.

9.2 The Arbiter shall have power to award compensation or damages and expenses or against any of the parties to the arbitration.

9.3 The Arbiter shall be entitled to remuneration and reimbursement of his outlays.

## **VALUE ADDED TAX**

10. The Employer shall pay the Contractor any Value Added Tax, introduced by the Finance Act 1972, properly chargeable by the Commissioners of Customs and Excise on the supply to the Employer of any goods and services by the Contractor under this contract.

## **HEALTH AND WELFARE**

11. The Contractor shall throughout the progress of the Contract have full regard for the safety of all persons entitled to be upon the site and shall keep the site so far as the same is under his control in an orderly state and shall conform in all respects with the provisions of the Health and Safety at Work Act 1974, any amendments thereto and any relevant associated legislation.

## **COPYRIGHT AND SECURITY**

12. The copyright of all work executed in accordance with the Contract shall be the property of and vest in the Crown.

The Contractors attention is drawn to the provision of the Official Secrets Acts 1911-1989 and Government Security Regulations affecting any official information to which the Contractor may have access during the course of the Contract. The Contractor will not publish or issue any written statement, or allow any interview to be broadcast without the express approval of the Employer.

## **FREEDOM OF INFORMATION**

13. All information submitted to the Scottish Ministers may need to be disclosed and/or published by the Scottish Ministers. Without prejudice to the foregoing generality, the Scottish Ministers may disclose information in compliance with the Freedom of Information (Scotland) Act 2002, (the decisions of the Scottish Ministers in the interpretation thereof shall be final and conclusive in any dispute, difference or question arising in respect of disclosure under its terms), any other law, or, as a consequence of judicial order, or order by any court or tribunal with the authority to order disclosure. Further the Scottish Ministers may also may disclose all information submitted to them to the Scottish or United Kingdom Parliament or any other department, office or agency of Her Majesty's Government in Scotland or the United Kingdom, and their servants or agents. When disclosing such information to either

the Scottish Parliament or the United Kingdom Parliament it is recognised and agreed by both parties that the Scottish Ministers shall if they see fit disclose such information but are unable to impose any restriction upon the information that it provides to Members of the Scottish Parliament, or Members of the United Kingdom Parliament; such disclosure shall not be treated as a breach of this Contract.

FOR INFORMATION ONLY – INVOICE QUERIES
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All queries regarding late payment of invoices should be addressed in the first instance to the addressee of the invoice and, in the second instance to the Historic Scotland Procurement Unit. The contents of this box do not form part of the contract.