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Our ref [REDACTED]
Date 4th August 2021

Dear [REDACTED]

Contract for Legal Services - Civil Claims Litigation for the Environment Agency

With reference to the above, please find enclosed the following documents which will all form the contract:

1. Specification of our requirements
2. Pricing Schedule
3. Annex 1 Data Protection Schedule

It is intended that the contract shall run for a period of two years with the option to extend at the discretion of the Authority for two further periods of plus one years (2+1+1).

The initial contract period shall be the 6th August 2021 to 5th August 2023 with the option to extend up to 5th August 2025.

This contract will be subject to the terms and conditions of the EM Lawshare framework.

It is intended that this contract be executed by electronic means using the Bravo eTendering system.

Yours sincerely

[REDACTED]

[REDACTED]



Specification

CIVIL LITIGATION CLAIMS HANDLING - EXTERNAL LEGAL ADVICE

The Environment Agency is primarily self-insured in relation to Employers' Liability, Public Liability and Professional Negligence claims that may be made against it.

A Defra team based in Peterborough deals with all such claims in liaison with relevant Defra, Environment Agency Area and Head Office Employees.

The purpose of this Contract is for the provision of specialist claims handling and legal services in civil litigation and pre litigation cases for Employers' Liability and Public Liability claims, whether being pursued within or outside of the MOJ's Claims Portal.

The contract is intended to run for a period of two years with the option to renew at the discretion of the Authority for a further one plus one years (2+1+1). We are using the EM Lawshare framework to run this mini-competition and the framework terms will apply with the addition of the data protection schedule Appendix D.

The Supplier will provide legal, claims handling, loss adjusting and costs draughtsman-based services to the Environment Agency as and when instructed by a member of the Environment Agency's/Defra's central Claims Team (based in Peterborough) or other nominated representatives.

The Claims Team exclusively deals with claims (as referred to within this Specification) on behalf of the Environment Agency. It is feasible that following future internal restructure/s that this service could be made available to other areas across Defra or more widely. At this time, this Contract is exclusively for the management of Environment Agency claims, however, should the team be asked to manage claims for other departments, then some scaling up may be required along with increased instructions in the areas discussed in this specification.

The nature of these services will include, but may not be limited to, advising on and handling pre-litigated Employers' Liability and Public Liability claims; conducting litigation in defending claims brought against the Environment Agency by employees, members of the public, insurers or other third parties and or their representatives; plus pursuing the recovery of damages/costs from appropriate parties, such as claimants, contractors, third parties, co-defendants and predecessor Insurers.

Claims may arise from various sources typically including, but not limited to:

- Disease; for example, Hand Arm Vibration Syndrome (HAVS) and Noise Induced Hearing Loss (NIHL);
- Injuries caused through the use and/or failure of Plant, equipment and tools
- Manual handling resulting in injury
- Failure of PPE and/or exposure to hazardous substances resulting in injury
- Slip, trip and fall incidents in the course of an employee's work, resulting in injury

- Vicarious liability of employees whilst undertaking their roles and injury/damage to colleagues or others and their property
- Personal injury claims from multiple potential causes, to non-employees, for example, such as slips, trips and falls where Occupiers Liability responsibilities may apply, or relating to Environment Agency's works and or responsibilities as a navigation authority, or any other role the Environment Agency undertakes;
- Advice or guidance provided and whether it is alleged to have been incorrect
- Claims relating to personal injury and property damage as a result of flooding (excluding statutory compensation claims);
- Employers' Liability and Public Liability claims which may include seeking an indemnity or contribution from third parties e.g. contractors;
- Inclusion of third parties in litigation where they have contributed to the damage and/or loss claimed;
- Personal Accident claims pursued under the Environment Agency's discretionary cover
- There may occasionally be a requirement for litigation and pre-litigation services related to the recovery of losses caused where a third-party damages Environment Agency property

The majority of the work provided under this Contract will relate to pre-litigated investigation and handling of Employers' Liability and Public Liability claims, including the provision of loss adjusting services, plus the conduct of litigated Employers' Liability and Public Liability claims, either to a negotiated resolution, or defended to trial.

This work will include consideration of any investigation files, information and evidence before (infrequently on an ad-hoc basis) and after commencement of a claim or proceedings. From this information we would require an early assessment on liability, quantum and tactics with your recommendation of future enquiries. We do not provide delegated authority and shall expect the Supplier to report upon and seek our instructions upon decisions surrounding liability, quantum and tactics. We will also require the Supplier to keep us updated on crucial dates and developments during the management of the case, ensuring Court and Claims Portal timetables and protocols are adhered to.

Work prior to the commencement of proceedings, such as claims handling, loss adjusting and costs draughtsman services are covered by this arrangement, albeit, some pre-litigated property claims, or matters that simply require early redirection are handled in house. There are occasions where we consider it prudent to obtain legal advice during the handling of these cases pre-commencement of proceedings and we will expect the Supplier to be prepared to provide this service. We expect the Supplier to engage proactively with any instructed Loss Adjusters, experts or our in-house Claims Team to ensure a smooth transition of work when a matter becomes litigated.

We may instruct the Supplier to take conduct of Employers' Liability and Public Liability claims before proceedings commence, typically where a claim is pursued via the Claims Portal, or either from the outset of the dispute or at some juncture during the course of the claim. This may likely require the investigation and consideration of liability, quantum and tactics ensuring all pre-action protocol and Claims Portal dates are complied with.

We do not provide delegated authority to negotiate claims either before or during proceedings. The Supplier must seek Environment Agency instructions upon any recommended decisions surrounding liability, quantum and tactics.

There may be occasions when cases develop that are of significant importance to the Environment Agency. The Environment Agency reserves the right to not instruct the winning bidder to take conduct of high-profile cases and/or cases involving major incidents and or of significant importance. This right will be exercised at the Environment Agency's sole discretion.

As a guide to claim numbers received since 1st April 2011 until 31st March 2021 and those that have litigated within that period, please see Appendix B 'Litigated claims by date claim first received' which provides statistics relating to both Employers' Liability and Public Liability claims.

Nature of the Work

The nature of the work will generally include, but is not necessarily limited to, the following:

- Providing a claims handling service for Employers' Liability and Public Liability claims, pre-litigation, whether via the Claims Portal or otherwise;
- Providing legal advice and opinions before commencement of and during proceedings;
- Taking conduct of litigation from instruction to conclusion of a case by order of the Court or otherwise;
- Representing the Environment Agency in court to defend claims brought against the Environment Agency;
- Where appropriate and following receipt of appropriate authority, negotiating settlement of a claim including engaging in or facilitating Alternative Dispute Resolution;
- Excellent cost management of both the Supplier's costs, disbursements and expenses and where possible the Claimant's costs;
- Sourcing appropriate Counsel, where required, should be via the Attorney General Office's list of Treasury approved Counsel and Counsel must be agreed with Environment Agency before instruction;
- Attending regular contractual meetings to review performance and claims management and provide supporting documentation, plus any ad-hoc meetings as required (usually in Peterborough);
- As part of the service we seek, Environment Agency will receive the added value from the Supplier in line with the EM Lawshare Framework e.g. forums, seminars, meeting room bookings, training, and any lessons learned relating to specific claims
- Providing Environment Agency with staff training in the specialist areas comprised in this contract, if so instructed;
- Dealing with all procedural aspects of litigation from instruction, in accordance with the prevailing protocols/Court's Rules (i.e. the Civil Procedure Rules).

Other Areas for Consideration

A key area for inclusion is the provision of information for both contract management and case management purposes as well as agreement of service levels and terms of working.

Case Management

We would expect the Supplier to be able to provide, on a regular basis, key data relating to their case management. To include but not exclusively the following types of information/reports:

- Inclusion of relevant reference numbers from both the supplier and the claims handling team;
- Inclusion of relevant location/structure identifier required for the Environment Agency;
- A range of claim details, e.g. date of incident, name of parties involved, description of event, classification of claim etc;
- Fee structure applicable to the case;
- Financial details – costs incurred, balance outstanding, estimated reserve etc.
- Claim status and/or latest or last activity; and
- Key future diary dates – defence and Claim Portal dates, trial dates, limitation etc.

In addition please provide details of any electronic systems that you have in place to support case management (e.g. reporting gateways or online case review systems), with details of any claims management dashboards available and how information therein is kept secure and managed to maintain confidentiality.

Contract Management

Regular contract meetings will be held to assess performance. In addition we would expect the Supplier to be able to provide on a regular basis key data relating to their performance. To include, but not exclusively, the following types of information/reports;

- Analysis and breakdown of claim costs (see the pricing section). Giving an overall position and breakdown by category charges
- Reports against any agreed SLAs, e.g. the tight timelines in relation to cases that may fall under the MoJ Claims Portal route.
- Cost and Claim Type analysis
- Costs and location analysis
- Reporting on areas of claim risk for the EA and lessons learnt
- Providing details of any internal control processes/audits and share any findings.

Commitment to the Environment and Diversity

We are committed to making our organisation as diverse as the environment and expect our suppliers to share this commitment and to be able to demonstrate this. The Environment Agency's commitment to diversity is helped by their engagement with organisations such as Employers Forums on Age, Belief and Disability; Opportunity Now; Race for Opportunity; Stonewall and Mind.

Service Levels

The supplier shall comply with Civil Procedure Rules,

The Environment Agency envisages that those legal issues categorised as urgent will have a response time of within one working day. Those enquiries deemed as non-urgent will have a response time of within 5 working days. It is envisaged that the majority of the Environment Agency's demands will fall into the non-urgent category. An example of an urgent query would be supplying us with information so that we can respond to a Freedom of Information Act request.

Payment details

The Environment Agency will raise orders to cover the cost of pre-litigated and litigated claims handling and any training delivery. The EA should be invoiced monthly for claims handling costs on a per claim basis, with a breakdown of work leading to the charges claimed and any training provided during the previous month (or earlier if requested).

All invoices must quote the purchase order number and both the suppliers and Environment Agencies claim numbers in order to be processed. A file copy invoice must be provided on request.

Management Information

The Supplier will provide up to date and accurate management information reports (e.g. on number of delegates trained) to the EA nominated representative. The details and timing of these management reports will be agreed with the Supplier. In addition, the Supplier must promptly provide such other statistics relating to the contract as the EA shall reasonably require.

Award of Contract

This Specification is issued in good faith but the EA reserves the right not to award any or all of this work. This Contract will be awarded for a period of two years with the option at the discretion of the authority to renew for up to a further two years and prices must be fixed for its duration.

The Data Protection Act Addendum to Specification covering GDPR - Protection of Personal Data at Annex 1 will form part of the final contract.

Please see Civil Litigation Claims Handling and LA Data Protection Schedule.

Cyber Security

It is a requirement for all suppliers bidding for Government contracts involving the handling of sensitive and personal information to be certified against the Cyber Essentials scheme. Please provide evidence of Certification of [REDACTED] assessment – Cyber Essentials Plus.

Pricing Schedule for Bevan Brittan

1. Litigation/Legal work

| | Partner | Senior Solicitor | Solicitor | Junior | Trainee | Paralegal | Cost Draughtsman |
|-------------------------------|---------|------------------|-----------|--------|---------|-----------|------------------|
| Weighting | ■ | ■ | ■ | ■ | ■ | ■ | ■ |
| Litigation, Legal work | ■ | ■ | ■ | ■ | ■ | ■ | ■ |

2. Pre-Litigation Claims Portal Injury Claims

| Stage 1 Claims handling & investigation of portal claims: Portal Stage 1 To include desktop investigations/site visits. | Fixed Fee of ■ + VAT | ■ |
|--|----------------------|---|
| Stage 2 Claims handling: Portal claims stage 2 | Fixed Fee of ■ + VAT | ■ |
| Stage 3 Portal claims stage 3 representations & advocacy | Fixed Fee of ■ + VAT | ■ |

* The fixed fee for all sites visits or loss adjuster's reports includes travel costs and subsistence.

**The fixed fee does not include VAT and disbursements such as medical record fees, experts' fees and Counsel's fees – all additional costs to be agreed with the Agency in advance.

3. Pre-Litigation Legal work

| | Partner | Senior Solicitor | Solicitor | Junior | Trainee | Paralegal | Cost Draughtsman |
|---|---------|------------------|-----------|--------|---------|-----------|------------------|
| Weighting | ■ | ■ | ■ | ■ | ■ | ■ | ■ |
| Hourly rate for Claims handling: Pre-Litigated | ■ | ■ | ■ | ■ | ■ | ■ | ■ |

| | | | | | | | |
|--|--|--|--|--|--|--|--|
| cases, multi-track pre litigation claims & exceptional cases e.g. reputational risk, novel or special interest. | | | | | | | |
|--|--|--|--|--|--|--|--|

Data Protection Schedule

Definitions – the definitions in this Schedule and the Contract shall apply:

Annex 1: The Schedule of Processing, Personal Data and Data Subjects attached to this Data Protection Schedule.

Party: A Party to this Contract.

Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer: takes the meaning given in the GDPR.

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.

Data Subject Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

Joint Controllers: where two or more Controllers jointly determine the purposes and means of processing. **Protective Measures:** appropriate technical and organisational measures which may include: the use of pseudonyms and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in Annex 1 (Security).

Sub-processor: any third Party appointed to process Personal Data on behalf of the Processor related to this Contract.

1. DATA PROTECTION

- 1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Agency is the Controller and the Contractor is the Processor unless otherwise specified in Annex 1. The only processing that the Processor is authorised to do is listed in Annex 1 by the Controller and may not be determined by the Processor.
- 1.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

1.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

1.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

- (a) process that Personal Data only in accordance with Annex 1, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) ensure that:
 - (i) the Contractor Personnel do not process Personal Data except in accordance with this Contract (and in particular Annex 1);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Processor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;

- (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.

1.5 Subject to clause 1.6, the Processor shall notify the Controller immediately if it:

- (a) receives a Data Subject Request (or purported Data Subject Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;

- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (f) becomes aware of a Data Loss Event.
- 1.6 The Processor's obligation to notify under clause 1.5 shall include the provision of further information to the Controller in phases, as details become available.
- 1.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
 - (a) the Controller with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Controller following any Data Loss Event;
 - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 1.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
 - (a) the Controller determines that the processing is not occasional;
 - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
 - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 1.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.

- 1.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 1.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Processor must:
- (a) notify the Controller in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Controller;
 - (c) enter into a written agreement with the Sub-processor which gives effect to the terms set out in this Schedule such that they apply to the Sub-processor; and
 - (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 1.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 1.13 The Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 1.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 1.15 Where the Parties include two or more Joint Controllers as identified in Annex 1 in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in Annex 2 in replacement of Clauses 1.1-1.14 for the Personal Data under Joint Control.

Annex 1 - Schedule of Processing, Personal Data and Data Subjects

Processing, Personal Data and Data Subjects

This Schedule shall be completed by the Agency, who may take account of the view of the

Contractor, however the final decision as to the content of this Schedule shall be with the Agency at its absolute discretion.

1. The contact details of the Agency's Data Protection Officer are:

[REDACTED]

Horizon House, Deanery Road, Bristol BS1 5AH

2. The contact details of the Contractor's Data Protection Officer are:

[REDACTED]

3. Any such further instructions shall be incorporated into this Annex 1.

| Description | Details |
|---------------------------------------|---|
| Identity of the Controllers | The Parties acknowledge that for the purposes of the Data Protection Legislation, both the Agency and the Contractor are Controllers. |
| Subject matter of the processing | The transfer of data from the Agency to the Contractor is needed to ensure that the Contractor can effectively deliver the contract to provide the external support for Employer's Liability Claims and Public Liability Claims |
| Duration of the processing | 6 th August 2021 to 5 th August 2025 |
| Nature and purposes of the processing | The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means). |

| | |
|--|---|
| | <p>The purpose of the processing carried out by both the Agency and the Contractor are:</p> <p>Claims against Environment Agency and the management thereof.</p> |
| Type of Personal Data being Processed | Name, address, date of birth, NI number, telephone number, pay, images, occupational health information and records, medical records, and HR records. |
| Categories of Data Subject | Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, members of the public. In addition, the staff of the Agency and the Contractor will have access to the personal data of those persons involved in the management of the claims against the Agency (in order to administer the claims). |
| Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data | <p>The Contractor's standard retention period for matter files (whether electronic or hard copy) is 15 years, after the file has been closed. Further information about this is its Privacy policy Bevan Brittan LLP (please go to paragraph 13).</p> <p>The Contractor's professional indemnity insurers require it to keep matter files in line with the retention period, in order to deal with any notifiable circumstances that may arise on matters. The Contractor would therefore not be in a position to return data/matter files at the conclusion of its work.</p> <p>In terms of the destruction of data – in relation to electronic data, this is something that the Contractor's IT dept. would handle in-house (on a rolling basis). Hard copy records would be destroyed securely on a rolling basis by the Contractor's off-site storage provider.</p> |