## IWM Logo_Turquoise

#### Tender Documentation

**Contract No.**

**IWM/Exh/1551**

**Framework Agreement:**

###### Exhibition Lighting Designer

## Tender Submission Return Date:

## 2pm on 16 September 2016

**Schedule 1 – Contract Conditions**

1.0 **Introduction to Imperial War Museums**

1.1 IWM (Imperial War Museums) is operated by the Trustees of the Imperial War Museum, a charitable corporation established by statute.

 Founded in 1917 to record the story of the Great War and the contributions to it made by the peoples of the Empire, IWM is now the world’s leading authority on conflict and its impact, **telling the story of people who have lived, fought and died in conflicts involving Britain and the Commonwealth** from the First World War to the present day.

Our unique Collections, made up of the everyday and the exceptional, reveal stories of people, places, ideas and events across our five museums. We challenge people to look at conflict from different perspectives, enriching their understanding of the causes, course and consequences of war and its impact on people’s lives.

IWM’s five branches are:

* IWM London;
* Churchill War Rooms;
* HMS *Belfast* moored in the Pool of London;
* IWM Duxford, Cambridge;
* IWM North, Trafford, Manchester.

Each Branch provides a comprehensive range of permanent and temporary exhibitions consisting of exhibits from the permanent collections integrated with audio-visual interactive displays.

IWM is, in addition to its conventional museum role, a major national art gallery, a major national archive of written and audio-visual records, and a research centre. Our activities include display, education, publishing, research, trading, conferences, as well as the acquisition, documentation, study and conservation of collections.

1.2 IWM is a non–departmental public body (NDPB) overseen by a Board of Trustees and its Chairman. Its sponsor department is the Department of Culture, Media & Sport (DCMS).

1.3 Further information about IWM and all of our branches can be obtained from our website on [www.iwm.org.uk](http://www.iwm.org.uk).

1.4 IWM is an exempt charity under the terms of the Charities Act 1993 Schedule 2 (u) and (w), and therefore IWM does not have a Charity Registration No.

2.0 **Contract Requirements**

2.1 This Contract covers the appointment under a framework agreement of a lighting designer to provide their services for all temporary exhibitions to be held at IWM London, Lambeth Road, London SE1 6HZ and IWM North, The Quays, Trafford Park, Manchester M17 1TZ, only for an Initial Period from **1 October 2016** until **30 September 2019**, or a minimum of six exhibitions in total across the two branches, with an option to extend for an additional one year period, or one additional exhibition.

2.2 The current exhibition programme at IWM London is as follows:

Exhibition Title: **People Power**

Location: Galleries D30 & D36. IWM London

Exhibition Dates: 23 March – 28 August 2017

Exhibition Title: **Syria**

Location: Gallery D-East, IWM London

Exhibition Dates: 27 April – 30 July 2017

Exhibition Title: **Sergey Ponomarev**

Location: Gallery D40, IWM London

Exhibition Dates: 23 April – 3 September 2017

Exhibition Title: **States of Emergency**

Location: Galleries D30; D36; D40; D-East & D-West, IWM London

Exhibition Dates: 12 October 2017 – 2 April 2018

Exhibition Title: **Making a new World**

Location: Gallery D36. IWM London

Exhibition Dates: 21 June 2018 – 5 January 2019

Exhibition Title: **Cultural Property**

Location: Galleries D30 & D36. IWM London

Exhibition Dates: April – August 2019

2.3 The current exhibition programme at IWM North is as follows:

Exhibition Title: **Wyndham Lewis**

Location: Special Exhibition Gallery, IWM North

Exhibition Dates: June 2017 – May 2018

Exhibition Title: **Poppies Exhibition**

Location: Special Exhibition Gallery, IWM North

Exhibition Dates: September 2018 – March 2019

2.4 However, the exhibition programme at both sites is subject to amendment, hence the provisions identified at 2.1, and IWM accepts no liability should the actual exhibition programme not conform to the information provided in this tender.

3.0 **Management of Contract**

3.1 Although the Contract covers a four year period, if the Designer fails to provide the quality of performance for any one project, then the Contract will be terminated with immediate effect.

3.2 Upon appointment, the Designer will be required to sign a Contract of appointment based upon the terms of contract and subject to the costs agreed, which will act as the basis of all future appointments.

3.3 Prior to each project, IWM will contact the Designer and provide information on the project, indicating any changes in the fulfilment of their duties, the projected budget and timetable for the project build. The Designer will be required to confirm their costs for the provision of all requirements, based upon their rates as included in the Contract.

3.4 For each individual project, the Designer will be issued with an IWM Purchase Order, which will clarify the costs associated with the award for that project, and records any changes in requirement for that specific project.

3.5 Upon the completion of each project, IWM will review the overall performance of the Designer in the delivery of their services against the indicated service levels, whether as indicated in the main contract or as a specific requirement as listed against the specific Purchase Order.

3.6 IWM retains the right to amend/reduce the project programme for the remainder of the contract period, and any such changes do not affect the liability of the Designer.

3.7 In the event that the Designer fails to deliver on the required standards during the delivery of the fulfilment of their duties, the standard conditions of termination will apply. In the event that IWM has to invoke the termination clause under such circumstances, the remainder of the Contract will automatically be cancelled.

4.0 **Service Level Agreement**

 Upon the completion of each project, IWM will review the overall performance of the Designer, against the following criteria:

* the quality of the lighting design provided and the issue of the required design drawings etc;
* attendance and a proactive presence at all required meetings;
* that all deadlines required for the submission of documentation etc. were hit and the work of the Designer did not lead to any delay in project delivery;
* the final fee invoiced is based upon the initial contract fee agreed (based upon table at x.x and any subsequent amendments); and
* the Designer has liaised with IWM throughout the project, and kept IWM informed of any issues that could affect project delivery.

IWM will advise the Designer of their performance after each project, and will either advise of any criterion where they have not achieved the required standard, and will expect the Designer to achieve the required standard on the next project. However, if the Designer fails to fulfil the majority of these criteria, then IWM reserves the right to terminate the Contract. If IWM decide not to terminate the Contract in such circumstances, this does not mean that such levels of performance are considered as acceptable by IWM, and may result in termination should they be repeated.

5.0 **Expenses**

All fees should include all expenses in regards to any site visits to IWM London & IWM North and all disbursements.

6.0 **Invoices**

6.1 The framework for the payment of invoices against this Contract is to be agreed after discussion between IWM and the Designer.

6.2 All invoices are to be forwarded directly to:

Department of Finance

IWM London

Lambeth Road

London

SE1 6HZ

6.3 All invoices must quote IWM Purchase Order No, otherwise payment may be delayed.

6.4 All invoices are to be paid within 30 days of their receipt.

**Schedule 2 – Scope of Service Specification**

1.1 Lighting will consist of external lighting from the existing track in all areas, showcase lighting. Showcase lighting and lighting for objects on external display must comply with IWM Department of Collections Management (DCM) guidelines (issued on appointment or request) in order to limit damage to exhibits.

1.2 The lighting design will need to compliment the overall exhibition design and content and provide atmosphere, drama and a sense of theatre where required.

1.3 The Department of Exhibitions store has a number of existing fittings and stock lamps which should be used where possible (details available upon appointment). It is anticipated that these will need to be supplemented with newly purchased fittings and lamps, from the construction budget for the exhibition.

1.4 **The scope of work will be as follows:**

* Discussions with the exhibition designer and IWM exhibitions team about the nature of the lighting required for the exhibition.
* Provide an agreed scheme for external lighting, showcase lighting and lighting for interactive areas and supply drawings in a paper and electronic format.
* Provide an agreed schedule of light fittings to be purchased via the appointed electrical contractor.
* Utilise, wherever possible, light fittings held in the Department of Exhibitions store (see below).
* Discussions with IWM technical staff regarding power supply and switching and provision of any necessary data/specifications.
* Attendance at design/construction meetings as required.
* Attendance on site when necessary to deal with any queries.
* Focusing on site as per schedule.
* Provide two sets of As Built Drawings/specifications and focusing notes in a paper and electronic format.
* Dealing with any snagging queries that arise pre-completion and within two weeks of opening.

2.0 **Lighting Brief**

2.1 **Scheme Design**

* Attend such meetings as necessary with the design team and museum staff
* Provide detailed lighting layouts and specifications for the areas defined including sketch design details where applicable
* Co-ordinate the lighting design with the architectural, electrical, structural and mechanical design
* Provide a method statement and outline lighting schedule
* Provide advice and assistance to the design team and any relevant specialist contractors with regard to the lighting design
* In conjunction with the other consultants assist the designer in the preparation of a report and cost plan in respect of the final scheme design

2.2 **Detailed Design**

* Coordinate the lighting design with the architectural, electrical, structural and mechanical design.
* Provide advice and assistance to the design team and any relevant special contractors with regard to the lighting design
* In conjunction with the other consultant assist the designer in the preparation of a report and cost plan in respect of the final detail design.

2.3 **Production information and tender drawings**

* Produce tender drawing clearly itemising what fixtures are new and which are supplied from stock, with a clear demarcation of lighting installed by the contractor and that installed by appointed lighting designer
* Provide assistance in soliciting and evaluating qualified bidders for Lighting Designer’s portion of the work.

2.4 **Construction Coordination Phase**

* Review all sub-contractors’ and manufacturers’ shop drawing for conformance to the extent of the designs and specifications
* Review all contract documentation relating to the design scope
* Coordinate with the designer and contractor the final installation details of all luminaries
* Attend site to review the installation of lighting within the design scope

2.5 **Supervision and Commissioning**

* Installation and focus of all light fittings and fixtures as part of the exhibition fit-out.
* Supervise upon completion of construction, the final targeting and adjustment of all permanently installed adjustable fixtures, including all integral case lighting. This targeting and adjustment is to be carried out by Lighting Designers themselves.
* Re-visiting site for snagging queries both pre-completion and within two weeks of opening.
* Ensure that the maintenance and running procedures of the final installation are clearly documented and communicated upon hand-over, via two sets of as-build drawings with focusing notes.

**Schedule 3 – Tender Information**

Tenderers are requested to include all of the following information within their tender submission. Failure to submit any information may result in your tender being rejected.

1.0 **Costs**

1.1 Tenderers are asked to complete the following table to indicate their percentage fee based upon the project costs as shown.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Project Cost****IWM London** | **Percentage Fee (%)** | **Minimum Fee** | **Meetings****(3 No.)** | **Fee for additional site meeting** |
| Up to £10,000 |  |  |  |  |
| £10,001 - £20,000 |  |  |  |  |
| £20,001 - £30,000 |  |  |  |  |
| £30,001 - £50,000 |  |  |  |  |
| Over £50,000 |  |  |  |  |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Project Cost****IWM North** | **Percentage Fee (%)** | **Minimum Fee** | **Meetings****(3 No.)** | **Fee for additional site meeting** |
| Up to £10,000 |  |  |  |  |
| £10,001 - £20,000 |  |  |  |  |
| £20,001 - £30,000 |  |  |  |  |
| £30,001 - £50,000 |  |  |  |  |
| Over £50,000 |  |  |  |  |

1.2 Tenderers are also required to submit their daily and hourly fees for any additional work outside the project scope. Fees should be provided for each grade of post in the provision of these services.

1.3 Rates submitted will be deemed to apply for the full period of the Contract unless otherwise indicated.

2.0 **Contract Management**

2.1 Please provide particulars of the management within your organisation you propose to use for the programming of the work detailing key staff and including their CV’s.

2.2 Please include an organisational chart which details your company organisational structure in relation to this project.

 Please provide the following details of all personnel who will be allocated to this project:

* Role
* Name
* Qualifications
* Hourly/Day Rate

2.3 A detailed CV must be included for each member of the project team.

 The CV must include projects on which the individual has been fully involved, from the inception to completion, the value of the project, specific tasks undertaken on the project with reference to key competencies required for delivery of a high quality customer focused service.

3.0 **Additional Information**

3.1 **Questionnaire**

 Tenderers are required to complete in full the Company Questionnaire, enclosed as Schedule 4 to this tender and submit all the additional documentation requested within the Questionnaire.

3.2 **Financial**

 Tenderers are required to provide one copy of their last three sets of fully audited accounts. Failure to provide this information, or to explain why this information cannot be supplied, will automatically result in the non-consideration of your tender.

 If you are not required to provide such documentation due to the size of your company please clearly indicate in your tender.

4.0 **Contract Award Criteria**

4.1 Tenders will be assessed on the following criteria:

* Fees (**4**)
* Contract Management (**4**)
* References & Individual Experience (**4**)
* Questionnaire (**2**)

The figure in brackets is the weighting allocated to each criteria, which will be marked out of 5.

4.2 Each tender will be assessed within the categories covered in the tender, and if required, interviews will be held at IWM London during **wc 12 September 2016** to discuss your tender.

5.0 **Tender Return**

 Tenderers should submit two hard copies of their tender and one copy on memory stick, in English, clearly marked as “**Tender Documents – IWM/Exh/1551**” by no later than **2pm** on **5 September 2016** to:

Simon Bourne

Head of Procurement & Compliance

Imperial War Museums

Lambeth Road

London

SE1 6HZ

Tenderers must ensure that their submission arrives on time. We regret that tenders received after this deadline will not be considered.

#### Schedule 4 - Questionnaire

|  |
| --- |
| **COMPANY QUESTIONNAIRE – Exhibition Lighting Designer Framework Agreement** |
| All information supplied will be treated as strictly private and confidential and will not be divulged to any other parties other than those directly involved in the project. |
|  |
| **Section 1 – General Company Information** |
| 1 Name of Company: |
| 2 Registered Office Address: |
| 3 Company Registration Number: |
| 4 Year of Registration: |
| 5 Telephone No: |
| 6 E-mail Address: |
| 7 Nature of Business and Range of Services: |
| 8 Please indicate, if applicable, any subsidiary companies run by your company: |
| 9 If part of a group, please indicate the details of the ultimate holding company: |
| 10 VAT Registration No: |
| 11 Address of Office to support the Contract: |
| 12 Please illustrate diagrammatically, the structure of your company, showing the inter-relationships with other members of the group, and how the management of this contract fits into the company’s management structure: |
| **Section 2: Staffing/Management** |
| 13 Please identify the number of staff employed. * full-time
* part-time staff:

  |
| 14 Annual Staff Turnover (in percentage format): |
| 15 Name of Employee responsible for the management of the Contract: |
| 16 Please identify whether you plan to use any sub-contractors to deliver any services within the Contract. If so, please:* identify any services that would be undertaken by the sub-contractor(s)?;
* the name of any nominated sub-contractor(s)?, and;
* your methodology of appointment and management of the sub-contractor(s)?
 |
| **Section 3: Policy/Procedures** |
| 17 If you are registered under BS5750/ISO 9000 or any other scheme, please provide a copy of your registration certificate and a summary of your Quality Management (QM) procedures. |
| 18 Please provide copies of the following policies:* your **outline** health & safety policy
* your **outline** environmental policy, inclusive of your sustainability policy
* your equal opportunities policy
 |
| 19 Please complete the following with regards to your company’s insurance policies:**Employer’s Liability (to £1m)**: Policy No:Expiry Date:Limit of Indemnity:**Third Party Liability (to £1m)**: Policy No:Expiry Date:Limit of Indemnity:**Professional Liability (to £2m)**:Policy No:Expiry Date:Limit of Indemnity: Please include a copy of the insurance certificate for each policy. |
| 20 Have you been prosecuted under any relevant health & safety legislation in the last five years? If the answer is Yes, please provide details of the incidence and the outcome. |
| 21 Have you been prosecuted under any relevant employment legislation in the last five years? If the answer is Yes, please provide details of the incidence and the outcome. |
| 22 Do you have a Business Continuity Plan (BCP), or equivalently titled document? If so;* what are the key risks and what are the control mechanisms in place?;
* how often and to what extent is the BCP tested?;
* how is the BCP managed and reviewed by your Board of Directors?
 |
| 23 Please provide a statement of assurance that you are committed to counter bribery, and please advise of any cases or convictions for bribery made against the company?  |
| **Section 4 - References** |
| 24 Please provide reference information for three locations where you provide similar services |

I declare that to the best of my knowledge the answers submitted in response to this questionnaire and within any supporting documentation are correct, as at the time that they are issued.

|  |  |
| --- | --- |
| Signed |  |
| Job Title |  |
| For |  |
| Date |  |

**Schedule 5 – Terms & Conditions**

This Contract is between:

* **Imperial War Museums** (as operated by the **Trustees of the Imperial War Museum**, a charitable corporation established by statute) whose office is situated at: Lambeth Road, London SE1 6HZ, hereby referred to as “**IWM**”, and;
* **Insert Company Name**, whose office is situated at: xxxx, company reg. no. xxxxx, hereby referred to as “**the Designer**”.

To hereby be referred to individually as “**a Party**” and collectively as “**the Parties**”.

1.0 **Definitions**

1.1 In these conditions "**the Contract**" means the agreement concluded between IWM and the Designer including all specifications, plans, drawings and other documents, materials and other content produced by the Contract in fulfilling the terms of this Contract (the “**Materials**”) and also such of these Conditions as are included in these terms and conditions of the Contract.

1.2 The following provisions shall have effect with respect to the interpretation of the Contract except where the context otherwise requires:

* "**Client Representative**" means the individual appointed by IWM as the responsible official for the purposes of this Contract;
* "**Contract Price**" means the price exclusive of Value Added Tax, payable to the Designer by IWM under the Contract for the full and proper performance by the Designer of his part of the Contract as determined under the provision of the Contract;
* "**Employees of IWM**" includes persons (and the personal representative of any person) who are employees of IWM when any relevant Personal Injury or Loss of Property occurred, even if he has ceased to be such before any payment in respect of the Personal Injury or Loss of Property is made, and where they have ceased to be such by reason of their deaths, include their personal representatives;
* “**Premises**” means IWM London, Lambeth Road, London SE1 6HZ, or IWM North, The Quays, Trafford Park, Manchester M17 1TZ;
* "**Services**" means the delivery of the Exhibition Lighting Designer services;
* "**Specification**" means the scope of services required to deliver the Services;
* “**Intellectual Property Rights**” means patents, Trade Marks, trade names, design rights, copyright (including rights in computer software and moral rights), performers’ rights, database rights, and other Intellectual Property Rights, in each case whether registered or unregistered and including applications for the grant of any of the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world.
* “**Background IPR**” means all Intellectual Property Rights excluding Foreground IPR, owned by either IWM or the Designer prior to their accession to this Contract, as well as any Intellectual Property Rights pertaining to such information, the application for which has been filed before their accession to this Contract, and which is needed for creating the Materials or for using Foreground IPR in accordance with this Contract.
* “**Foreground IPR**” means all Intellectual Property Rights in the Materials arising as a direct result of and in the performance of this Contract.
* “**Third Party IPR**”meansIntellectual Property Rights, not owned by Parties subject to this Contract and any other consents or permissions acquired by the Designer to fulfil the terms of the Contract.
* "**Sub-contractor**" means any person, firm or company under contract to the Designer to perform work or provide professional services and/or supply goods and includes any other person or persons taken as a partner or director by such person, firm or company during the currency of the Contract and the surviving member or members of any such firm or company.

1.3 The headings to these Conditions shall not affect the interpretation thereof.

1.4 Any notice or other communication whatsoever which IWM are required or authorised by the Contract to give or make to the Designer shall be seen to be given if sent by post in a prepaid letter addressed to the last known address of the Designer and that the letter is not returned undelivered by the Royal Mail shall be deemed for the purposes of the Contract to have given or made at the time at which the letter would in the ordinary course of post be delivered.

1.5 The masculine includes the feminine.

1.6 The singular includes the plural and vice versa.

1.7 Reference to any enactment, order, regulation or similar instrument, shall be construed as a reference to the enactment, order, regulation or instrument as amended by any subsequent enactment, order, regulation or instrument.

2.0 **Service**

Subject to the provisions of the Contract, the Designer agrees to provide the Services set out in the Specification in consideration of the Fee payable.

3.0 **Recovery of Sums Due**

 Whenever under the Contract any sums of money shall be recoverable from or payable by the Designer, the same may be deducted from any sum then due, or which at any time thereafter may become due, to the Designer under the Contract.

4.0 **Value Added Tax**

 IWM shall pay to the Designer, in addition to the Contract Fee, a sum equal to the Value Added Tax chargeable on the value of the supply of Services provided in accordance with the Contract.

5.0 **Bankruptcy**

5.1 IWM may terminate the Contract by written notice having immediate effect if:

a) the Designer undergoes a change of control, within the meaning of Section 416 of the Income and Corporation Taxes Act 1988, impacting adversely and materially on the performance of the Contract; or

b) where the Designer is an individual or a firm, any partner in the firm becomes bankrupt or has a receiving order or administration order made against him; or makes any compromise or arrangement with or for the benefit of his creditors; or appears unable to pay a debt within the meaning of Section 268 of the Insolvency Act 1986; or any similar event occurs under the law of any jurisdiction within the United Kingdom; or

c) where the Designer is a company, and shall pass a resolution or the Court makes an order that the Designer shall be wound up otherwise than for the purpose of solvent reconstruction or amalgamation; or a receiver, manager or administrator is appointed on behalf of a creditor in respect of the Designer’s business or any part of it; or the Designer is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; or any similar event occurs under the law of any other jurisdiction within the United Kingdom.

5.2 IWM may only exercise its right under clause 5.1(a) within 3 months after a change of control occurs and shall not be permitted to do so where it is agreed in advance to the particular change of control that occurs. The Designer shall notify IWM immediately when any change of control occurs.

5.3 The rights and obligations of the parties upon termination under this clause shall be the same as those for termination for default under clause 22 and provisions in clauses 22.6 and 22.7 shall apply.

6.0 **Equal Opportunities Policy**

6.1 The Designer shall not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010 or any statutory modification or re-enactment thereof relating to discrimination in employment.

6.2 The Designer shall take all reasonable steps to secure the observance of the provisions pursuant to clause 6.1, hereof by all employees or agents of the Designer and all sub-contractors employed in the execution of the Contract.

7.0 **Transfer & Sub-Letting**

 The Designer shall not give, bargain, sell, assign, sub-let, sub-contract or otherwise dispose of the Contract or any part thereof of the benefit or advantage of the Contract or any part thereof without the prior written consent of IWM.

8.0 **Corrupt Gifts and Payment of Commission**

8.1 The Designer shall not:

(a) offer; or give; or agree to give to any person in the service of IWM any gift or consideration of any kind as an inducement or reward for doing of forbearing to do; or for having done or forborne to do any act in relation to the obtaining or execution of this or any other contract for IWM's service or for showing or forbearing to show favour or disfavour to any person in relation to this or any other contract for the service of IWM, or;

(b) enter into this Contract in connection with which commission has been paid or agreed to be paid by him or on his behalf or to his knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to IWM.

8.2 Any breach of this clause by the Designer or by anyone employed by him or acting on his behalf (whether with or without the knowledge of the Designer) or the commission of any offence by the Designer or by anyone employed by him or acting on his behalf under the Prevention of Corruption Acts, 1889 to 1916, in relation to this Contract shall entitle IWM to determine the Contract and recover from the Designer the amount of any loss resulting from such determination and/or to recover from the Designer the amount or value of any such gift, consideration or commission.

8.3 In any dispute, difference or question arising in respect of:

(a) the interpretation of this Condition (except so far as the same may relate to the amount recoverable from the Designer pursuant to clause 8.2 in respect of any loss resulting from such determination of the Contract), or;

(b) the right of IWM to determine the Contract, or;

(c) the amount or value of any such gift, consideration or commission.

the decision of IWM shall be final and conclusive.

9.0 **Use of the Materials**

9.1 Except with the consent in writing of IWM, the Designer shall not disclose the Contract or any provision thereof to any person other than a person employed by the Designer in the carrying out of the Contract or any other person concerned with the same. Such disclosure shall be made in confidence and extend so far as may be necessary for the purposes of the Contract.

9.2 Except with the consent in writing of IWM, the Designer shall not make use of the Contract or any information issued or furnished by or on behalf of IWM otherwise than for the purpose of the Contract.

10.0 **Intellectual Property Rights (“IPR”)**

10.1 Each Party shall retain the IPR in any Materials that they issue to the other Party in relation to this Contract, and agree to provide the other Party with an exclusive licence to use these Materials in the delivery of the Contract.

10.2 Both Parties warrant that all Background IPR is owned by that Party, or in the case of any Third Party IPR is licensed to that Party to be used in the Materials, and that the Materials do not infringe the Intellectual Property Rights of any third party. Either Party shall provide the other Party with copies of any licences, permissions or model consents acquired by that Party to fulfil the terms of the Contract which permit that Party to use Third Party IPR in the Materials. Such licences, permissions or model consents shall be in writing.

10.3 Each Party agrees that the other Party shall have no liability and shall indemnify, defend and hold the other Party harmless against any and all damages, liabilities, claims, causes of action, legal fees and costs incurred by the other Party in defending against any third-party claim of Intellectual Property Rights infringements or threats of claims thereof with respect of their use of the Materials, provided that:

(1) the use of the Materials has been in full compliance with the terms and conditions of this Contract;

(2) there is prompt notification of any such claim or threat of claim to the rights owning Party;

(3) the Party owning the IPR has sole and complete control over the defence or settlement of such claim.

10.4 The Designer is to ensure that they have obtained all appropriate licences for any software used under this Contract, and IWM accepts no liable if the terms of the licence are infringed by the Designer.

10.5 If the Designer use software developed by themselves, no rights in the software are transferred to IWM as a result of its use in the Contract.

11.0 **Disclosure of Information**

11.1 The Designer shall take every precaution to ensure that information about the Contract, or arising from or connected with the Contract, is divulged only to the minimum number of employees and then only to the extent essential to each person's action in carrying out the Contract. No information regarding the Services being provided under the Contract or facilities to photograph or film shall be given or permitted by the Designer except with the written permission of IWM to whom any press or other enquiry or other such matter should be referred.

11.2 The Designer shall fully indemnify IWM, his employees or agents against the costs of dealing with any claims made in respect of information subject to the Data Protection Act 1998, which claims would not have arisen but for some act, omission or negligence on the part of the Designer, his sub-contractors, agents or staff.

12.0 **English Law**

The Contract shall be considered as a Contract made in England and subject to the law of England.

13.0 **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 IWM is under the Contract to be final and conclusive and except to the extent to which special provision for arbitration is made elsewhere in the Contract, shall be referred to the arbitration of 2 persons, one to be appointed by IWM and one by the Designer, or their Umpire, in accordance with the provisions of the Arbitration Acts 1950, 1975 and 1979, or any statutory modification or re-enactment thereof for the time being in force.

14.0 **Safety**

 The Designer shall be responsible for the observance by himself, his employees and sub-contractors of all safety precautions necessary for the protection of himself, his employees, sub-contractors and any other person including all precautions required to be taken by or under any Act of Parliament including any regulations or bye-law of any local or other authority. He shall co-operate fully with IWM to ensure the proper discharge of these duties.

15.0 **Accidents to Designer's Employees or Agents**

 Accidents to the Designer's employees, sub-contractors or agents which ordinarily require to be reported in accordance with the Health & Safety at Work Act 1974, shall be reported at the earliest opportunity to the Client Representative, or his authorised representative at the time.

16.0 **Security Vetting**

16.1 The Designer is responsible for the ensuring that all their employees and any sub-contractors, agents etc. who are due to work at the Premises, for longer than four weeks in duration in the delivery of the Contract, whether in a continuous period, or over the duration of the Contract, have been security vetted to Basic level, as defined by Disclosure Scotland1.

1 Please note that Disclosure Scotland is the agency that all security vetting providers will approach to undertake the security vetting.

16.2 For Designer’s with a small employee base, IWM will be prepared to undertake the security clearance on behalf of the Designer, provided that this is made known at the time of the appointment, and that this agreed by IWM, and that the Designer agrees to pay the administration charge of £41 per clearance, that IWM is charged for this service.

16.3 This requirement will apply to an employee who has not worked at an IWM branch, within the previous 12 months.

16.4 A minimum of 48 hours before any individual commences work on the Premises, the Designer is required to complete and submit the Security Notification Form (see Appendix 2) to the Technical Security Manager at IWM London.

16.5 Upon arrival at the Premises, each new employee must report individually to the Control Room with a copy of their certificate of proof of vetting, and some form of ID. IWM will note the details of the certificate of proof of vetting, but will not retain any documents.

16.6 IWM will accept a certificate of proof of vetting which is dated within 12 months of the date of their site commencement at IWM, although IWM reserves the right to request they are security vetted, at its discretion, which IWM agrees not to action unreasonably.

16.7 Failure to comply with this requirement could result In the employee not being granted access to IWM.

17.0 **Designer's Property**

 All property of the Designer, his sub-contractors and agents whilst at the Premises shall be at the risk of the Designer and IWM shall accept no liability for any loss or damage howsoever occurring thereto or caused thereby except where any such loss or damage was caused or contributed to by any act, neglect or default of any employee of IWM at the Premises acting in the course of his employment. IWM shall accept liability to the extent to which such loss or damage is so caused or contributed to as aforesaid.

18.0 **Insurance**

18.1 The Designer shall effect and maintain insurance to the following sums until the expiration of six years from the date of completion:

* Employers Liability - £1m
* Public Liability - £1m
* Professional Liability - £2m

18.2 The Designer shall ensure that any person or organisation commissioned as a consultant by him takes out and maintains appropriate professional indemnity insurance in respect of their businesses generally throughout the period from the date of commencement of their services under the Contract or Commission until the expiration of two years from the date of completion of each project, which insurance may be limited in respect of any one claim (but shall not be limited in any other respect): provided that any such limit under this clause shall in any event be at least £2m.

18.3 The Designer shall, whenever required by IWM, produce copies of his and/or his sub-contractors insurance certificates stating that their insurance complies with the requirements pursuant to clauses 18.1 and 18.2, and is/are currently in date.

18.4 If, for whatever reason, the Designer fails to comply with this clause, or without the approval of IWM obtains a different policy of insurance from that required by IWM at the time when he submitted his tender, IWM may make alternative arrangements necessary to protect their interests and recover loss and damages from the Designer.

18.5 The terms of any insurance or the amount of cover shall not relieve the Designer or his sub-contractors or consultants of any liabilities under the Contract, their sub-contracts or their terms of this Contract.

19.0 **Duty of Care**

 The Designer shall be responsible for ensuring that reasonable skill, care and diligence are exercised in carrying out the Services properly and efficiently in accordance with the Contract.

20.0 **Leave blank**

21.0 **Observance of Regulations**

21.1 The Designer's representatives, when employed within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to Security arrangements) as may be in force for the conduct of personnel at the Premises. Details of such rules, regulations and requirements shall be provided, on request, by the Client Representative.

21.2 Except as provided in this Contract neither the Designer nor any of his employees or agents shall carry out any business or trading activity within the confines of the Premises and no advertisement, sign or notice of any description shall be exhibited without prior approval, in writing, from the Client Representative.

22.0 **Break**

22.1 Notwithstanding IWM’s rights of termination of the Contract, in the event that the Designer fails to fulfil their duties in line with the SLA (see section 3 of Schedule), if either Party is in breach of the terms and/or their obligations under this Contract which is capable of remedy, the Party suffering the breach may at any time give the Party in breach written notice specifying details of the breach and requiring it to be remedied, or a solution to remedy to be submitted to them within 14 working days of their notification of the breach. If after the specified time given, the breach has not been remedied, or a solution to remedy has not been agreed, this Contract may be terminated by the Party suffering the breach, on giving not less than **one week’s notice** in writing to the other Party.

22.2 In the event of such notice being given, IWM shall at any time before the expiration of the notice be entitled to exercise and shall as soon as may be reasonably practicable within that period exercise such of the following powers as he considers expedient:

(a) to direct the Designer, where work has not been commenced, to refrain from commencing work;

(b) to direct the Designer to complete in accordance with the Contract all or any of the Services, or any part or component thereof, which shall be paid for at the agreed contract price, or, where no agreement exists, a fair and reasonable price.

22.3 IWM shall indemnify the Designer against any commitments, liabilities or expenditure which are reasonably and properly chargeable to the extent to which the said commitments, liabilities or expenditure would otherwise represent an unavoidable loss by the Designer by reason of the determination of the Contract.

22.4 IWM shall not in any case be liable to pay under the provisions of this Condition any sum which, when taken together with any sums paid or due or becoming due to the Designer under the Contract, shall exceed the total contract price.

22.5 If the Designer is convicted under a charge of bribery, then this Contract will be terminated with immediate effect, and the Designer will be required to immediately terminate any works/services under this contract, to ensure that all paperwork is completed and forwarded to IWM with immediate effect, and payment will only be made for works completed at the time of the termination.

22.6 Following termination of the Contract neither Party shall have any further rights or obligations in relation to the other Party except those stated in this clause, and in the clauses listed in clause 22.7 which shall continue to have full effect. Subject to the other provisions of this clause, termination shall not however affect the rights of action and remedies of the Parties which shall have accrued at the date of termination or shall thereafter accrue.

22.7 Clauses which shall apply under 22.6 shall be:

* Confidentiality
* Intellectual Property Rights
* Insurance
* Governing Law and Jurisdiction
* Freedom of Information Act 2000
* Anti-Bribery Act

23.0 **Leave Blank**

24.0 **Designer's Organisation**

24.1 The Designer shall provide and maintain an organisation having the necessary facilities and employees of appropriate qualifications and experience to undertake the tasks identified in the specification.

24.2 All personnel deployed on work relating to the Contract must have appropriate qualifications and competence and in all respects be acceptable to IWM.

25.0 **Contract Documents**

 In any case of discrepancy between these terms and other documents forming part of the Contract, these terms shall prevail unless the inconsistent provision of such document is expressed to be, or if the context indicates it to be, an amendment of these terms and the same, shall have been effected in accordance with clause 26.

26.0 **Variations of Contract**

Any variation of any provision of this Contract must be effected in writing issued by the Client Representative, and no purported variation by any other means shall bind IWM. All variations to this Contract will be submitted in writing to the Designer using the Variation Notice shown as Appendix 1 to these terms and conditions of contract.

27.0 **Contract Fee**

 Unless otherwise stated in the Contract, the Contract Fee shall be the total fee for the Services including the cost of all labour, materials, equipment, holiday relief or substitute as and when necessary, overheads and all other costs of the Designer in connection with the Contract for full and proper performance by the Designer.

28.0 **Availability of Information**

28.1 the Designer shall at all times during the course of the Contract and for a period of two years after final payment of all sums due under the Contract maintain in accordance with his normal procedures, a record of the costs incurred by him in the execution of the Contract including, for example, details of times taken and of wage rates paid, and such further particulars reasonably specified by the IWM as being necessary for the purpose of determining such costs with reasonable accuracy.

28.2 At the time before the expiry of the period pursuant to clause 28.1, the Designer shall, when requested by IWM, furnish a summary of any such costs mentioned in such form and detail as IWM may reasonably require, and afford such facilities as IWM may reasonably require for his representatives to visit the Designer's premises and examine the records under this clause.

29.0 **Transfer of Responsibility**

29.1 In the event that a different organisation is required to take on the Service at the expiry or termination or the Contract, the Designer shall co-operate in the transfer under arrangements to be notified to him by IWM.

29.2 The transfer shall be arranged between IWM and the Designer so as to reduce to a minimum any interruption to the Services

30.0 **Quality Assurance**

 The Designer shall ensure that all Services carried out under the Contract and performed by suitable qualified persons and that British Standards, or equivalent Specifications where such exist, are used unless otherwise agreed in writing by IWM.

31.0 **Freedom of Information Act 2000**

31.1 The Designer acknowledges that IWM is subject to the requirements of the Freedom of Information Act (“**FOIA**”) and the Environmental Information Regulations (“**EIRs**”). the Designer shall, at its own expense, assist and cooperate with IWM to enable IWM to comply with its information disclosure obligations.

31.2 Where the Designer holds on behalf of IWM information that is subject to the FOIA and EIR, the Designer shall and shall procure that its sub-contractors shall:

1. transfer any request for information received by the Designer to IWM as soon as practicable after receipt and in any event within two working days of receiving a request for information;
2. provide IWM with a copy of all Information in its possession, or power in the form that IWM requires within five Working Days (or such other period as IWM may specify) of IWM’s request; and,

(c) provide all necessary assistance, as reasonably requested by IWM to enable IWM to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

31.3 IWM shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other contract whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations

31.4 The Designer shall only respond to a Request for Information unless this has been submitted by a nominated representative of IWM.

31.5 The Designer acknowledges that (notwithstanding the provisions of clause 31) IWM may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (**“the Code”**), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Designer or the Services in certain circumstances:

1. without consulting the Designer; or
2. following consultation with the Designer and having taken their views into account;

provided always that where clause 31.5(a) applies IWM shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Designer advanced notice, or failing that, to draw the disclosure to the Designer’s attention after any such disclosure.

31.6 The Designer shall ensure that all Information is retained for disclosure and shall permit IWM to inspect such records as requested from time to time.

31.7 The Designer acknowledges that the Commercially Sensitive Information listed in the Commercially Sensitive Information Schedule is of indicative value only and that IWM may be obliged to disclose it in accordance with this clause 31.

32.0 **Waiver**

No whole or partial waiver of any breach of this Contract shall be held to be a waiver of any other or any subsequent breach. The whole or partial failure of either party to enforce at any time the provisions within this Contract shall no way be construed to be a waiver of such provisions nor in any way affect the validity of this Contract or any part of it, or the right of either Party to enforce subsequently each and every provision.

33.0 **Force Majeure**

33.1 Neither Party shall be liable to the other Party by reason of any failure or delay in performing its obligations under the Contract which is due to Force Majeure, where there is no practicable means available to the Party concerned to avoid such failure or delay.

33.2 If either Party becomes aware of any circumstances of Force Majeure which give rise to any such failure or delay, or which appear likely to do so, that Party shall promptly give notice of those circumstances as soon as practicable after becoming aware of them and shall inform the other Party of the period for which it estimates that the failure or delay will continue.

33.3 For the purpose of this Contract “**Force Majeure**”’ means any event or occurrence which is outside the control of the Party concerned and which is not attributable to any act or failure to take preventive action by the Party concerned, but shall not include industrial action occurring within the Designer’s organisation or within any sub-contractor’s organisation.

33.4 Any failure or delay by the Designer in performing his obligations under the Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded in complying with an obligation to the Designer by Force Majeure.

34.0 **Severance**

If any part of this Contract, is found by a court of competent jurisdiction or other competent authority to be invalid, unlawful or unenforceable then such part will be severed from the remainder of this Contract, which will continue to be valid and enforceable to the fullest extent permitted by law. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Parties shall promptly commence good faith negotiations to remedy such invalidity.

35.0 **Assignability and Transferability**

Neither Party may assign any rights under this Contract without the written consent of the other Party, which is not be unreasonably withheld, and any attempt to do without that consent shall be void.

36.0 **Entire Contract**

36.1 This Contract is the complete and exclusive statement of the Contract between the Parties relating to the subject matter of this Contract which supersedes all previous communications, contracts and other arrangements, written or oral.

36.2 The Parties hereto are independent organisations, and nothing herein contained shall constitute to create a partnership, agency or joint venture between the Parties.

37.0 **Anti-Bribery**

37.1 The Designer is aware of IWM’s obligation to comply with the anti-bribery rules relevant to the contracting Parties, and represents that it will not use money or other consideration, paid by IWM for unlawful purposes, including purposes violating anti-bribery laws including the Bribery Act 2010, such as make or cause to be made direct or indirect payments to any public official in order to assist IWM or any group member organisation or anyone acting on their behalf in obtaining or retaining business with, or directing business to, any person, or securing any improper advantage.

37.2 The Designer hereby declares that:

* its members, officers, owners or employees are not public officials;
* it does not and will not employ or otherwise compensate any public officials or make or cause another to make any direct or indirect offers of payments to any public officials, for the purpose of influencing or inducing any decision for the benefit of IWM and it will not employ any sub-contractor, consultant, agent or representative in connection with this Contract without a documented examination of his person, reputation and integrity, and;
* it will not employ any sub-contractor, consultant, agent or representative who does not comply with the anti-corruption rules and if such a violation comes to its attention to inform IWM immediately.

37.3 IWM may immediately terminate this Contract if the Designer violates any of the anti-corruption laws and the provisions as defined in this clause.

37.4 The Designer agrees to comply fully with all applicable anti-bribery laws, including those in the jurisdiction where they are registered and the jurisdiction where the relevant contract will be performed (if different), and to comply with IWM’s Anti-Bribery Policy.

37.5 The Designer represents that:

* he or she or, as the case may be, the authorised representatives of the Designer presently is/are not, and during the life of the Contract will not become, an official or employee of the relevant country’s government or of a political party in the country;
* he/she/they will disclose any such appointment immediately to IWM, and;
* such appointment may result in the termination of the Contract.

37.6 The Designer agrees that all payments made to the Designer will be made only after receipt by IWM of a detailed and accurate invoice supported by detailed records. IWM will make all payments under this Contract in Pounds Sterling, only by bank transfer to the account of the Designer at a financial institution within the United Kingdom.

37.7 The Designer agrees to keep accurate books, accounts, records and invoices and agrees that IWM is entitled, with the help of outside auditors if it deems necessary, to audit all books, accounts, records and invoices and accompanying documentation of the Designer for compliance with any applicable anti-bribery laws and that the Designer will cooperate fully in any such audit.

37.8 The Designer’s failure to comply with all applicable anti-bribery laws or IWM’s Anti-Bribery Policy will be deemed to be a material breach of the Contract entitling IWM to terminate the Contract. In the event the Designer will surrender any claim for payment under the Contract including payment for savvies previously performed.

37.9 IWM may also terminate the Contract or suspend or withhold payment if it has a good faith belief that the Designer has violated, intends to violate, or has caused a violation of any anti-bribery laws. IWM will not be liable for any claims, losses or damages arising from or related to failure by the Designer of the Contract under this clause, and the Designer will indemnify and hold IWM harmless against any such claims, losses or damages.

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| **Signed on behalf of the Trustees of the Imperial War Museum** |  | **Signed on behalf of the Designer** |

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| Signed |  |  | Signed |  |
| Print |  |  | Print |  |
| Title |  |  | Title |  |
| Date |  |  | Date |  |

**Appendix 1 – Variation Notice**

**VARIATION TO CONTRACT**

**Contract Title:**  **Exhibition Lighting Designer Framework Agreement**

**Contract Ref: IWM/Exh/1551 Variation no: Date:**

**Between:**

|  |
| --- |
| The Trustees of the Imperial War Museums (hereinafter called “**IWM**”) and xxxxxx (hereinafter called (“**the Designer**”) |

1. The Contract is varied as follows:

|  |
| --- |
| **Details of Variation:**. |
| **Variation effective from:**  |

**1**

 2. Words and expressions in this Variation shall have the meaning given to them in the Contract.

3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

**SIGNED:**

|  |  |
| --- | --- |
| For: **IWM** | For: **The Designer** |
| By:  | By:  |
| Full Name:  | Full Name:  |
| Position:  | Position:  |

**Schedule 6 - Tender Timetable**

# Action Date

Place Notice on Contracts Finder 16 August 2016

Tender Return Date 2pm on 16 September 2016

Tender Evaluations & Bid Clarification wc 19 September 2016

Short-list Interviews (if applicable) wc 19 September 2016

Confirm Appointment 23 September 2016

Contract Start Date 1 October 2016

# Schedule 7 – IWM Contract Selection Personnel

The following IWM staff are responsible for the appointment of the Designer:

Rawiya Jenkins

Exhibitions Manager

IWM London

Lambeth Road

London

SE1 6HZ

T: 020 416 5358

E; rjenkins@iwm.org.uk

Sarah Gilbert

Head of Exhibitions Production & Delivery

IWM London

Lambeth Road

London

SE1 6HZ

T: 020 7416 5423

E: sgilbert@iwm.org.uk

Hilary Shorthouse

Part-time Head of Exhibitions Production & Delivery

IWM London

Lambeth Road

London

SE1 6HZ

T: 020 7416 5358

E: hshorthouse@iwm.org.uk

Simon Bourne

Head of Procurement & Compliance

IWM London

Lambeth Road

London

SE1 6HZ

T: 020 7416 5257

E: sbourne@iwm.org.uk

Chris Cast

Procurement & Compliance Manager

IWM London

Lambeth Road

London

SE1 6HZ

T: 020 7091 3060

E: ccast@iwm.org.uk

**Appendix 2**

**STAFF SECURITY CLEARANCE**

 **NOTIFICATION FORM**

**DESIGNER:**

|  |
| --- |
| **Level of CRB** |
| **IWM Branch** | **Start Date** | **Staff Name** | **Basic** | **Standard** | **Enhanced** |
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| --- | --- |
| Signed |  |
| Name |  |
| Job Title |  |
| Date |  |

Please complete all sections of the Form and forward to IWM’s Technical Security Manager at jpawley@iwm.org.uk or addressed to Technical Security Manager, CWR, Clive Steps, King Charles Street, London SW1A 2AQ, a minimum of 48 hours prior to the individual(s) commencing work at IWM.