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Browne Jacobson LLP
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Our ref 62253
Date 10th November 2021

Dear [REDACTED]

Contract for Legal Services - Civil Claims Litigation

We would like to offer you a contract for legal services for civil claims litigation to complete the cases you have already been instructed to undertake.

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 one year (2+1+1).

The initial contract period shall be the 1st August 2021 to 31st July 2023 with the option to extend up to 1st August 2025.

With reference to the above, please find enclosed the following documents:

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

These will all form the basis of the contract which will be subject to the terms and conditions in the EM Lawshare framework.

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

Yours sincerely

[REDACTED]
Category Lead for [REDACTED]

Direct Line [REDACTED]

Email [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. This contract is for the completion of cases already started only.

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 Browne Jacobson's assessment – Cyber Essentials Plus.

CIVIL LITIGATION CLAIMS HANDLING AND LA – FEES MATRIX FOR BROWNE JACOBSON VIA EM LAWSHARE

Grade Category	Paragal	Trainee	Junior Solicitor	Solicitor	Senior Solicitor	Partner
	hourly rate £	hourly rate £	hourly rate £	hourly rate £	hourly rate £	hourly rate £
Investigations of Portal claims: To include desktop investigations/ site visit	CAPPED FEE OF [REDACTED]					
Claims Handling: Portal claims stages 1 and 2	CAPPED FEE OF [REDACTED]					
Portal claims stage 3 representations & advocacy	FIXED FEE OF [REDACTED]					
Claims Handling: Claims exiting the Portal following a repudiation or property/non- injury claims	COMPOSITE HOURLY RATE OF [REDACTED]					
Claims handling: Litigated cases, multi-track pre- litigation claims and exceptional cases e.g. reputational risk, novel or special interest	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

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

**The capped 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.

Data Protection Schedule

1. Definitions

Annex 1: The Schedule attached to this Data Protection Schedule;

Data Controller, Data Processor, Data Protection Impact Assessment, Data Protection Officer, Data Subject, Personal Data, Personal Data Breach. Subject Access Request have the meanings set out in the UK GDPR (and related terms, such as “process” have corresponding meanings);

Data Protection Legislation: means all applicable privacy and data protection laws relating to the processing of Personal Data and the privacy of electronic communications including the UK GDPR, Data Protection Act 2018, the Privacy and Electronic Communications Directive (2002/58/EC) and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426), and any laws that replace, extend, re-enact, consolidate or amend any of the foregoing;

Disclosing Party shall mean the Party providing Relevant Personal Data to the Receiving Party to Process it for the Processing Purposes;

Party: A Party to this Contract;

Processor: any third party appointed to process Personal Data on behalf of the Controller related to this Contract;

Processing Purposes means those purposes for Processing the Relevant Personal Data as set out in this Contract, to include Annex 1;

Receiving Party shall mean the Party receiving Personal Data from the Disclosing Party for it to Process for the Processing Purposes;

Relevant Personal Data means the Personal Data set out in Annex 1, which is transferred between the Parties;

Standard Contractual Clauses mean the standard contractual clauses issued under Commission Decision 2010/87/EU, subject to any new standard contractual clauses being issued or approved by the Information Commissioner for the United Kingdom in which case the latter will apply;

Services: means the services to be provided, as set out in in this Contract, to include Annex 1;

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

2. Data Protection

2.1. The Parties acknowledge that for the purposes of providing the Services under this Agreement and in compliance of the Data Protection Legislation, each Party:

2.1.1. is a Data Controller of the Relevant Personal Data;

- 2.1.2. shall comply with its obligations as a Data Controller under the Data Protection Legislation and the requirements set out in this Contract including but not limited to Annex 1;
- 2.1.3. will use its reasonable endeavours to ensure that it will not perform its obligations under this Contract in such a way as to result in the other Party breaching its obligations under Data Protection Legislation;
- 2.1.4. will provide all such co-operation and information as the other Party may reasonably require in order to enable that Party to comply with its obligations under Data Protection Legislation; and
- 2.1.5. will ensure the Relevant Personal Data is accurate and up to date.
- 2.2. Without prejudice to clause 2.1, the Disclosing Party shall ensure that:
 - 2.2.1. all Relevant Personal Data has been collected and disclosed to the Receiving Party in accordance with Data Protection Legislation;
 - 2.2.2. the Relevant Personal Data is accurate and up to date;
 - 2.2.3. the Relevant Personal Data contains contact details of the Data Subjects to enable the Receiving Party to provide them with its Privacy Notice.
- 2.3. When either Party first engages with the Data Subjects, it shall ensure that:
 - 2.3.1. appropriate transparency information, including a Privacy Notice, has been provided to the Data Subjects;
- 2.4. Neither party shall Process Relevant Personal Data other than for the Processing Purposes and in accordance with the terms of this Contract.
- 2.5. Where the Receiving Party transfers Relevant Personal Data outside of the United Kingdom, it shall take all such further actions as the Disclosing Party directs (including entering into the Standard Contractual Clauses) to ensure that the transfer is subject to adequate safeguarding measures.
- 2.6. Both Parties to the extent applicable, taking into account the nature of the processing, will assist the other if it receives:
 - 2.6.1. a request from a Data Subject to have access to that Data Subject's Personal Data which relates to either both or one of the Parties;
 - 2.6.2. a complaint or request relating to obligations under the Data Protection Legislation; or
 - 2.6.3. any other communication directly relating to the processing of any Personal Data in connection with this Contract.

Both Parties will bear their own costs in complying with their respective obligations under clauses 2.6.1 - 2.6.3.

2.7. If, during the Term, the Data Protection Legislation changes, and any such change requires amendments to this Contract in order to enable one or both of the Parties to achieve compliance with the changed Data Protection Legislation, the Parties, acting reasonably, will discuss and agree appropriate amendments as necessary to achieve that compliance. Each Party will bear its own costs in so doing.

2.8. Disclosing Party obligations

Without prejudice to clause 2.1, the Disclosing Party shall transfer Relevant Personal Data using appropriate technical and organisational security measures as required by Data Protection Legislation including, but not limited to, encryption and password protection.

2.9. Receiving Party obligations

2.9.1. Without prejudice to clause 2.1, the Receiving Party shall:

2.9.1.1 implement and maintain appropriate technical and organisational measures to preserve the confidentiality, integrity and availability of the Relevant Personal Data and prevent any unlawful Processing or disclosure or damage, taking into account the state of the art, the costs of implementation, the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of the Data Subjects;

2.9.1.2 take all steps set out below in respect of its Personnel who have access to the Relevant Personal Data:

- ensure that only those personnel who need to have access to the Relevant Personal Data are granted such access and only for the purposes of performing their respective obligations under this Contract;
- take all reasonable steps to ensure the reliability of its personnel;
- ensure that all personnel have completed training in Data Protection Legislation and in the care and handling of Personal Data;
- ensure that all personnel are informed of the confidential nature of the Relevant Personal Data and are subject to appropriate contractual obligations of confidentiality; and

2.9.1.3 not disclose any Relevant Personal Data to any third party in any circumstances except as required by law or permitted by this Contract;

- 2.9.1.4 notify the Disclosing Party's DPO, by email sent to the address set out in Annex 1 of this Agreement, without undue delay, and in any event within 48 hours, of becoming aware of a breach of technical and organisational Security Measures or any Data Protection Legislation where the breach has affected or could have affected the Relevant Personal Data ("Data Breach"); and
- 2.9.1.5 notify the Disclosing Party's DPO, by email sent to the address set out in Annex 1 of this Contract, without undue delay, and in any event, within 48 hours of becoming aware of a request or enquiry from the Information Commissioner's Office or Data Subject about the Relevant Personal Data, and agree to keep the Disclosing Party regularly updated as to how the handling of such request or enquiry.