



14-18-NOW

WW1 CENTENARY ART COMMISSIONS

Tender Documentation

**Contract No.
IWM/NOW/1980**

**Executive Consultant
14-18 NOW**

Tender Submission Return Date:

19 April 2018 10:00hrs

Schedule 1 – Contract Requirements

Background

14-18 NOW is the UK's arts programme for the First World War centenary. Working with arts and heritage partners all across the UK, we commission new artworks from leading contemporary artists, musicians, designers and performers, inspired by the period 1914-18.

Since the start of the First World War centenary in 2014, 14-18 NOW has commissioned over 325 artworks, which have been seen by more than 30 million people.

Among many other projects, we are responsible for the UK tour of the iconic poppy sculptures by artist Paul Cummins and designer Tom Piper, and the Somme memorial 'We're here because we're here' by Jeremy Deller in collaboration with Rufus Norris.

14-18 NOW is supported by the National Lottery through the Heritage Lottery Fund and Arts Council England, by the Department for Digital, Culture, Media and Sport, and by additional fundraising. The offices are based at the Imperial War Museum in London.

The brief

14-18 NOW is embarking on its final and largest season of commissions across the UK, and wishes to add resilience and capacity to the senior executive during the season by engaging a freelance part-time Executive Consultant.

www.1418now.org.uk/season/2018/

The Executive Consultant will support the Director and the Executive Producer across the range of their responsibilities, as appropriate, including:

- As required by the Director, supporting the producers, curator and other team members on major strategic and project issues
- Managing the process of preparing papers for the 14-18 NOW Board and the Board's Finance & Planning Committee, including drafting papers. Both bodies meet on a quarterly cycle
- Managing the process of preparing 14-18 NOW's quarterly and biannual reports to funders, including drafting reports

The contract will run from May 1 2018 to January 11 2019. The Executive Consultant will provide their own workspace and equipment, and 14-18 NOW will provide meeting rooms as required. The contract may require travel outside London, for which expenses will be reimbursed in line with 14-18 NOW's standard policies.

The Executive Consultant will be highly skilled in their field, with particular experience of:

- successfully managing large-scale projects and budgets in a variety of artforms and settings
- working with a range of different arts organisations in various parts of the UK
- reporting to and supporting high-level Boards
- reporting on large-scale projects to a range of public and lottery funders

Response to the Brief

Prospective Executive Consultants are invited to submit proposals that detail:

- Relevant experience giving examples of similar work undertaken
- What approach the Executive Consultant would bring to the work, including how the work will fit with the Executive Consultant's other professional commitments
- Proposed fees
- Two appropriate referees
- Complete the Company Questionnaire attached as Schedule 1

All tenders returns will be evaluated equally in accordance with the above criteria.

Shortlisted Executive Consultants will be invited to meet with 14-18 NOW to discuss the contract further.

Budget

The budget for the fee is between £16,000 and £18,000.

Programme for IWM/NOW/1980

Upload to Contracts Finder: 29th March 2018

Tender Returns: 19th April 10:00hrs

Tender Evaluations: 20th – 23rd April 2018

Shortlist Interviews: 26th - 27th April 2018

Award: by end of April 2018

Schedule 1 – Questionnaire

COMPANY QUESTIONNAIRE –

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/Individual:

2 Registered Office Address:

3 Company Registration Number (if applicable):

4 Year of Registration (if applicable):

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:

Section 2: Staffing/Management

13 Please identify the number of staff employed. Please indicate numbers of full-time and part-time staff:

- Director(s):
- Managers:
- Technical:
- Administration:

<ul style="list-style-type: none"> • Operations:
14 Name of Employee responsible for the management of the Contract:
15 Please identify whether you plan to use any sub-contractors to deliver any services within the Contract. If so, please: <ul style="list-style-type: none"> • identify those 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)?
16 Please provide copies of the following policies: <ul style="list-style-type: none"> • your outline health & safety policy • your outline environmental policy, inclusive of your sustainability policy • your equal opportunities policy
17 Please complete the following with regards to your company's insurance policies: <p>Employee Liability (to £2m): Policy No: Expiry Date: Limit of Indemnity:</p> <p>Public Liability (to £2m): Policy No: Expiry Date: Limit of Indemnity:</p> <p>Professional Indemnity Liability (to £2m): Policy No: Expiry Date: Limit of Indemnity:</p> <p>Please include a copy of the insurance certificate for each policy.</p>
18 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.
19 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.
20 Do you have a Business Continuity Plan (BCP), or equivalently titled document? If so; <ul style="list-style-type: none"> • what are the key risks and what are the control mechanisms in place?; • how often and to what extent is the BCP tested?;

<ul style="list-style-type: none">• how is the BCP managed and reviewed by your Board of Directors?
21 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 3 - References
See Tender document

Schedule 2 – Terms & Conditions

The following represent the terms and conditions that will apply to this contract.

1.0 Definitions

1.1 In these terms "**the Contract**" means the agreement concluded between IWM and the Contractor including all specifications, plans, drawings and other documents which are relevant to the Contract and also such of these terms 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:

- "**Contract Price**" means the price exclusive of Value Added Tax, payable to the Contractor by IWM;
- "**Services**" mean all services which the Contractor is required under the Contract to supply;
- "**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 Contractor 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 Deliverables or for using Foreground IPR in accordance with this Contract.
- "**Foreground IPR**" means all Intellectual Property Rights in the Deliverables arising as a direct result of and in the performance of this Contract.
- "**Third Party IPR**" means Intellectual Property Rights, not owned by the Parties subject to this Contract.
- "**Deliverables**" refers to any materials produced as a result of this Contract;
- "**Sub-Contractor**" means any person, firm or company under contract to the Contractor 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;
- "**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 Contractor's organisation or within any sub-contractor's organisation.

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 Contractor shall be seen to be given if sent by post in a prepaid letter addressed to the last known address of the Contractor 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, and the singular includes the plural and vice versa.

2.0 **Non-Disclosure**

2.1 Except with the consent in writing of IWM, the Contractor shall not disclose the Contract or any provision thereof to any person other than a person employed by the Contractor 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.

2.2 Except with the consent in writing of IWM, the Contractor 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.

3.0 **Intellectual Property Rights**

3.1 Any specification, plans, drawings, or any other documents issued by or on behalf of IWM to the Contractor remain the property of IWM.

3.2 The Contractor shall assign all Foreground IPR to IWM with full title guaranteed together with any renewals thereof throughout the world in all circumstances and in perpetuity.

3.3 Each Party shall grant the other Party a non-exclusive royalty free worldwide licence to use the Background IPR within the context of creating the Deliverables and for granting any rights and permissions in 3.2.

3.4 While the Contractor shall retain the moral right of association and credit with the Deliverables, IWM shall retain the ability to edit the Deliverables as required and wherever reasonable practical

3.5 The Contractor shall be credited in association with the Deliverables where reasonably practical.

3.6 The Contractor warrants that all Intellectual Property Rights are owned by the Contractor, or in the case of Third Party IPR are licensed to the Contractor for use in the Deliverables, and that the Deliverables do not infringe the Intellectual Property Rights of any third party.

3.7 The Contractor agrees that IWM shall have no liability and the Contractor shall indemnify, defend and hold IWM harmless against any and all damages, liabilities, claims, causes of action, legal fees and costs relating to any third-party claim of Intellectual Property Rights infringements or threats of claims thereof with respect of IWM's use of the Deliverables, provided that:

- the use of the Deliverables has been in full compliance with the terms and conditions of this Contract;

- IWM provides the Contractor with prompt notice of any such claim or threat of claim;
- the Contractor has sole and complete control over the defence or settlement of such claim.

4.0 **Anti-Bribery Act**

4.1 The Contractor 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.

4.2 The Contractor 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.

4.3 IWM will immediately terminate this Contract if the Contractor violates any of the anti-corruption laws and the provisions as defined in this clause.

4.4 The Contractor 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 (once implemented).

4.5 The Contractor represents that:

- he or she or, as the case may be, the authorised representatives of the Contractor 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.

4.6 The Contractor agrees that all payments made to the Contractor 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 Contractor at a financial institution within the United Kingdom.

- 4.7 The Contractor 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 Contractor for compliance with any applicable anti-bribery laws and that the Contractor will cooperate fully in any such audit.
- 4.8 The Contractor'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 Contractor will surrender any claim for payment under the Contract including payment for savvies previously performed.
- 4.9 IWM may also terminate the Contract or suspend or withhold payment if it has a good faith belief that the Contractor 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 Contractor of the Contract under this clause, and the Contractor will indemnify and hold IWM harmless against any such claims, losses or damages.

5.0 **Bankruptcy**

IWM may at any time by notice in writing summarily determine the Contract without compensation to the Producer in the event that the Producer shall at any time become bankrupt, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do.

6.0 **Variations of Contract**

Any variation of any provision of this Contract must be effected in writing issued by IWM Designated Officer, and no purported variation by any other means shall bind IWM. All variations to this Contract will be submitted in writing to the Producer.

7.0 **Price**

Unless otherwise stated in the Contract, the Price shall be the total price 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 Producer in connection with the Contract for full and proper performance by the Producer.

8.0 **Availability of Information**

- 8.1 The Contractor 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.
- 8.2 At the time before the expiry of the period pursuant to sub-clause 8.2, the Producer 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 Producer's premises and examine the records under that Clause.

9.0 **Break**

9.1 If either Party breaches an essential condition of 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 5 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.

9.2 Upon the end or early termination of this Contract, the Intellectual Property Rights clause, clause 3, survives the termination of the Contract.

10.0 **Contractor's Organisation**

The Contractor 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.

11.0 **Contract Documents**

11.1 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 11.2.

11.2 Any variation of any provision of this Contract must be effected in writing between the Parties, and no purported variation by any other means shall bind the Parties.

12.0 **Freedom of Information Act 2000**

12.1 IWM is subject to the provisions of the Freedom of Information Act 2000 ("**FoIA**"). FoIA obliges IWM to release certain information to third parties upon written request, unless subject to one of the exemptions under FoIA.

12.2 The Parties agree that all information pertaining to the Contract shall be released to third parties upon request.

12.3 Under the terms of FoIA IWM may be ordered by the Information Commissioner to release information to a third party.

13.0 **General Clauses**

13.1 IWM shall pay to the Contractor, in addition to the Contract Price, a sum equal to the Value Added Tax chargeable on the value of the supply of services provided in accordance with the Contract.

- 13.2 The Contractor 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.
- 13.3 The Contract shall be considered as a Contract made in England and subject to the law of England.
- 13.4 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 Contractor, 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.
- 13.5 In the event that a different organisation is required to take on the Service at the expiry or termination of the Contract, the Contractor shall co-operate in the transfer under arrangements to be notified to him by IWM.

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

- 13.6 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.
- 13.7 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.

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.

Any failure or delay by the Contractor 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 Contractor by Force Majeure.

- 13.8 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.

13.9 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.

13.10 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.

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