Canadian Museum for Human Rights: Standard Terms and Conditions (2019)

Contents

Canadian Museum for Human Rights: Standard Terms and Conditions (2019) 1

General Conditions 3

GC 1 Interpretation 3

GC 2 Successors and Assigns 3

GC 3 Assignment 4

GC 4 New Supplier 4

GC 5 Indemnification 4

GC 6 Waiver of Rights 5

GC 7 Canadian Labour and Materials 5

GC 8 Termination or Suspension 5

GC 9 Termination Due to Default of the Contractor 6

GC 10 Security Clearance 8

GC 11 Records to be Kept by the Contractor 8

GC 12 Conflict of Interest 9

GC 13 Contractor Status 9

GC 14 Warranty by Contractor 9

GC 15 Confidentiality 10

GC 16 Gender 10

GC 17 Insurance 10

GC 18 Amendments 11
GC 19 Entire Agreement 11
GC 20 Intellectual and Other Property Including Copyright 11
GC 21 Errors and Omissions 12
GC 22 Governing Law and Compliance with Applicable Laws 12
GC 23 Disclosure, Access to Information 13
GC 24 Language of Agreements 13
GC 25 Notices 13
GC 26 Invoicing 14
GC 27 Respectful Workplace/Code of Ethics 15
GC 28 No Promotion of Relationship 15
GC 29 Force Majeure 15
Supplementary Conditions 16
SC 1 Resolution of Disagreements 16
SC 2 Health and Safety 17
SC 3 Withholding of Payment 18

General Conditions

GC 1 Interpretation

1.1 In this contract:

a. “Museum” means the Canadian Museum for Human Rights.

b. “Contract” means the agreement to be entered into between the Supplier and the Museum for the provision of goods or services. This can include a Standing Offer, a Memorandum of Agreement, a Memorandum of Understanding or a Purchase Order;

c. “Invention” means any new and useful art, process, machine, manufacture or composition of matter, or any new and useful improvement thereof;

d. “Work,” unless otherwise expressed in this contract, means everything that is necessary to be done, furnished or delivered by the Contractor to perform the Contractor's obligations under the contract;

e. “Prototypes” includes models, patterns and samples;

f. “Technical Documentation” means designs, reports, photographs, drawings, plans, specifications, computer software, surveys, calculations and other data, information and material collected, computed, drawn or produced, including computer printouts.

g. “Contractor” or “Supplier” means the vendor who is working with the Museum under an Agreement.

h. “Subcontractor” means those permitted persons who perform part of the Work on behalf of the Contractor.

GC 2 Successors and Assigns

2.1 This contract shall ensure to the benefit of and be binding upon the parties hereto and their lawful heirs, executors, administrators, successors and

assigns.

GC 3 Assignment

3.1 A Contract shall not be assigned in whole or in part by the Contractor without the prior written consent of the Museum and any assignment made without that consent is void and of no effect.

3.2 No assignment of this contract shall relieve the Contractor from any obligation under this contract or impose any liability upon Her Majesty or the Museum.

GC 4 New Supplier

4.1 Any new suppliers to the Museum must fill out and submit the following forms prior to any Contract being executed:

- EFT Application Form
- Supplier Information Form

GC 5 Indemnification

5.1 The Contractor shall indemnify and save harmless Her Majesty and the Museum from and against all claims, losses, damages, costs, expenses, actions and other proceedings made, sustained, brought, prosecuted, threatened to be brought or prosecuted, in any manner based upon occasioned by, or attributable to any injury to or death of a person, damage to or loss of property, or any consequential or economic loss arising from any wilful or negligent act, omission or delay on the part of the Contractor, the Contractor's servants, or agents in performing the Work or as a result of the Work or the performance or purported performance of this contract.

5.2 The Contractor shall indemnify Her Majesty and the Museum from all costs, charges and expenses whatsoever that Her Majesty sustains or incurs in or about all claims, actions, suits and proceedings for the use of the invention claimed in a patent, or infringement or alleged infringement of any patent or any registered industrial design or any copyright resulting from the performance of the Contractor's obligations under this contract, and in respect

of the use of or disposal by Her Majesty of anything furnished pursuant to this contract.

5.3 The Contractor's liability to indemnify or reimburse Her Majesty and the Museum under this contract shall not affect or prejudice Her Majesty or the Museum from exercising any other rights under law or equity.

GC 6 Waiver of Rights

6.1 The failure by the Museum to exercise or enforce any right conferred upon it under this Contract shall not be deemed to be a waiver of any such right or operate to bar the exercise and enforcement thereof at any time or times thereafter unless such waiver is evidenced by writing.

GC 7 Canadian Labour and Materials

7.1 The Contractor shall use Canadian labour and materials in the performance of the Work to the full extent to which they are procurable, consistent with proper economy and the expeditious carrying out of the Work.

GC 8 Termination or Suspension

8.1 The Museum may, by giving notice to the Contractor, terminate or suspend this contract with respect to all or any part or parts of the Work not completed.

8.2 All Work completed by the Contractor to the satisfaction of the Museum before the giving of such notice shall be paid for by the Museum in accordance with the provisions of this contract and, for all Work not completed before the giving of such notice, the Museum shall pay the Contractor's costs as determined under the provisions, if any, of this contract relating thereto, and, in addition, an amount representing a fair and reasonable fee in respect of such Work. Where there are no provisions in this contract respecting the Contractor's costs, the Museum shall pay such sum as the Museum shall determine to be the Contractor's reasonable costs.

8.3 In addition to the amount which the Contractor shall be paid under GC8.2, the Contractor shall be reimbursed for the Contractor’s cost of and incidental to the cancellation of obligations incurred by the Contractor pursuant to such

notice and obligations incurred by or to which the Contractor is subject with respect to this contract.

8.4 Payment and reimbursement under the provisions of GC8 shall be made only to the extent that it is established to the satisfaction of the Museum that the costs and expenses were actually incurred by the Contractor and that the same are fair and reasonable and are properly attributable to the termination or suspension of this contract or the part thereof so terminated.

8.5 The Contractor shall not be entitled to be reimbursed any amount which, taken together with any amounts paid or becoming due to the Contractor under this contract, exceeds the contract price applicable to the Work or the particular part thereof.

8.6 The Contractor shall have no claim for damages, compensation, loss of profit, allowance or otherwise by reason of or directly or indirectly arising out of any action taken or notice given by the Museum under the provisions of GC8 except as expressly provided herein.

GC 9 Termination Due to Default of the Contractor

9.1 The Museum may, by written notice to the Contractor, terminate the whole or any part of this contract if:

a. the Contractor becomes bankrupt or insolvent, or a receiving order is made against the Contractor, or an assignment is made for the benefit of creditors, or if an order is made or resolution passed for the winding up of the Contractor, or if the Contractor takes the benefit of any statute for the time being in force relating to bankrupt or insolvent debtors, or;

b. the Contractor fails to perform any of the Contractor's obligations under this contract, or, in the Museums view, so fails to make progress as to endanger performance of this contract in accordance with its terms, or;

c. Public Services and Procurement Canada (PSPC) has determined the Contractor to be ineligible or suspended pursuant to the PSPC Integrity Regime, or;

d. the Contractor fails to respect human dignity and value every person by:
   - not treating every person with respect and fairness; and/or
   - not helping to create and maintain safe and healthy workplaces that are free from harassment and discrimination.

9.2 In the event that the Museum terminates this contract in whole or in part under GC9.1, the Corporation may arrange, upon such terms and conditions and in such manner as the Museum deems appropriate, for the Work to be completed, and the Contractor shall be liable to the Museum for any costs relating to the completion of the Work.

9.3 Upon termination of this contract under GC9.1, the Museum may require the Contractor to deliver and transfer title to the Museum, in the manner and to the extent directed by the Museum, any finished Work which has not been delivered and accepted prior to such termination and any materials or work-in-process which the Contractor has specifically acquired or produced for the fulfilment of this contract. The Museum shall pay the Contractor for all such finished Work delivered pursuant to such direction and accepted by the Museum, the cost to the Contractor of such finished Work plus the proportionate part of any fee fixed by this contract and shall pay or reimburse the Contractor the fair and reasonable cost to the Contractor of all materials or work-in-process delivered to the Museum pursuant to such direction. The Museum may withhold from the amounts due to the Contractor such sums as the Corporation determines to be necessary to protect the Museum against excess costs for the completion of the Work.

9.4 If, after the Museum issues a notice of termination under GC9.1, it is determined by the Museum that the default of the Contractor is due to causes beyond the control of the Contractor, such notice of termination shall be deemed to have been issued pursuant to GC8.1 and the rights and obligations of the parties hereto shall be governed by GC8.

9.5 The Contractor shall not be entitled to be reimbursed any amount which, taken together with any amounts paid or becoming due to the Contractor under this contract, exceeds the contract price applicable to the Work or the particular part thereof.

9.6 Further to 9.1 (b), prior to Termination, the Museum will endeavor to give the Contractor feedback and guidance to equip the Contractor with the tools to remedy any performance issues in accordance with the CMHR SERVICE QUALITY PROGRAM (SQP).

9.7 The Supplier will have an ongoing requirement, during the Term of service, to disclose any criminal charges and human rights complaints made against them and any resolution thereof. The Museum reserves the right to terminate any resulting agreement in the event of a human rights complaint/finding or criminal charge/conviction which would be contrary to the objects and purposes of the Museum.

GC 10 Security Clearance

10.1 The Contractor will be responsible for providing proof that all of its personnel, including those of its Subcontractors, assigned to this Contract, are security cleared at the Reliability Status. This screening will be in accordance with Security requirements for contracting with the Government of Canada and the Public Services and Procurement Canada (PSPC) Industrial Contract Security Program. The Company Security Officer (CSO) or designate shall be solely responsible to have its staff appropriately screened prior to being assigned to the Museum. This screening includes a criminal record check, digital fingerprinting and may include a credit check. The Contractor is responsible for all costs associated with the security clearance of its employees and for ensuring that the Subcontractors employees have the appropriate security clearances prior to obtaining facility access.

GC 11 Records to be Kept by the Contractor

11.1 The Contractor shall keep proper accounts and records of the cost of the Work and of all expenditures or commitments made by the Contractor including the invoices, receipts and vouchers, which shall at all reasonable times be open to audit and inspection by the authorized representatives of

the Museum who may make copies and take extracts therefrom.

11.2 The Contractor shall afford facilities for audit and inspection and shall furnish the authorized representatives of the Museum with such information as the Museum or they may from time to time require with reference to the documents referred to herein.

11.3 The Contractor shall not dispose of the documents referred to herein without the written consent of the Museum but shall preserve and keep them available for audit and inspection for such period of time as may be specified elsewhere in the contract or, in the absence of such specification, for a period of two years following completion of the Work.

GC 12 Conflict of Interest

12.1 The Contractor declares that the Contractor has no pecuniary interest in the business of any third party that would cause a conflict of interest or seem to cause a conflict of interest in carrying out the Work. Should such an interest be acquired during the life of this contract, the Contractor shall declare it immediately to the Museum for review.

GC 13 Contractor Status

13.1 This is a contract for the performance of a service and the Contractor is engaged under this contract as an independent contractor for the sole purpose of providing a service. Neither the Contractor nor any of the Contractor's personnel is engaged under this contract as an employee, servant or agent of the Corporation or of Her Majesty. The Contractor shall be solely responsible for any and all payments and/or deductions required to be made including those required for Canada or Quebec Pension Plans, Unemployment Insurance, Workers Compensation or Income Tax.

GC 14 Warranty by Contractor

14.1 The Contractor warrants that the Contractor is competent to perform the Work required under this contract in that the Contractor has the necessary qualifications including the knowledge, skill and ability to perform the Work.

14.2 The Contractor warrants that the Contractor shall provide under this contract a quality of service at least equal to that which contractors generally would expect of a competent contractor in a like situation.

GC 15 Confidentiality

15.1 When handling any type of information from the Museum, the Supplier shall comply with the following:

a. any information received from the Museum remains the property of the Museum, will be used only for the purpose for which it was intended, will not be disposed, transferred, sold or made available to any other party or parties without the written approval of the Museum and will be retained only for the limited time necessary for the performance of its functions and/or until the end of this contract;

b. the Supplier will ensure at all times that the handling of the Museum's information by its employees is in accordance with the principle outlined above and will secure all information in a reasonable way against theft or abuse of any kind, and will restrict the use to those employees who require it to fulfill the obligations to the Museum;

c. the Museum reserves the right to request that any information it provides be returned to it; and

d. the term of this Article shall survive the completion of the obligations or any termination of the contract for a period of five (5) years.

GC 16 Gender

16.1 In this Contract, unless the context otherwise requires, words importing gender include all genders.

GC 17 Insurance

17.1 The Contractor shall obtain and maintain during the term of this Agreement insurance coverage in an amount of not less than TWO MILLION DOLLARS ($2,000,000.00 aggregate) per claim and per policy period under its

Professional Liability Insurance Coverage Policy to compensate the Museum up to $2,000,000.00 for any loss or damage incurred by the Museum as a result of the negligence of the Contractor, its servants, sub-contractors, or agents for whom the Contractor may be responsible. The Contractor shall provide a Certificate of Insurance and such additional evidence as the Museum may from time to time request confirming that the said insurance policy is in good standing. The Contractor shall keep such policy in force (at the expense of the Contractor) throughout the term of this Agreement and for a period of five (5) years after the date of final completion.

17.2 The Contractor shall obtain and maintain during the term of this Agreement Public Liability and Property Damage Insurance - including coverage for owned or non-owned vehicles used by the Contractor. The limits of such insurance shall not be less than $2,000,000.00.

GC 18 Amendments

18.1 No amendment of this contract nor waiver of any of the terms and provisions shall be deemed valid unless effected by a written amendment.

GC 19 Entire Agreement

19.1 The contract constitutes the entire agreement between the parties with respect to the subject matter of this contract and supersedes all previous negotiations, communications and other agreements relating to it unless they are incorporated by reference to this contract.

GC 20 Intellectual and Other Property Including Copyright

20.1 Technical documentation and prototypes produced by the Contractor in the performance of the Work under this contract shall vest in and remain the property of the Museum, and the Contractor shall account fully to the Museum in respect of the foregoing in such manner as the Museum shall direct.

20.2 Technical documentation shall contain the following copyright notice:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

as represented by the CANADIAN MUSEUM FOR HUMAN RIGHTS

20.3 Technical information and inventions conceived or developed or first actually reduced to practice in performing the Work under this contract shall be the property of the Museum. The Contractor shall have no rights in and to the same.

20.4 The Contractor shall not divulge or use such technical information and inventions, other than in performing the Work under this contract, and shall not sell, other than to the Museum, any articles or thing embodying such technical information and inventions.

20.5 Technical information developed by the Contractor outside of this contract but included in the project documentation shall remain the property of the Contractor.

20.6 The parties hereto agree that the Museum shall be the owner of the copyrights and all literary, dramatic, musical and/or artistic works created pursuant to contract and such copyrights are hereby assigned to the Museum. The assignor shall, at no additional cost, execute such further assurances and assignment as the Museum may reasonably require to evidence such assignments and to vest full equitable and legal title to such copyrights in the Museum. The Museum shall have the right to withhold final payment under the contract until the assignor has delivered such assurances and assignments.

GC 21 Errors and Omissions

21.1 Notwithstanding any other provision of this contract, no payment shall be made by Her Majesty to the Contractor in respect of the costs incurred by the contractor in remedying errors and omissions in the performance of the service that are attributable to the Contractor, the contractor's servants or agents, or persons for whom the Contractor has assumed responsibility.

GC 22 Governing Law and Compliance with Applicable Laws

22.1 The contract and/or purchase order shall be construed, interpreted and governed by the applicable laws in force in the Province of Manitoba and the laws of Canada applicable therein and the Courts of the Province of Manitoba shall have exclusive jurisdiction with respect to all matters relating to this contract and/ or purchase order.

22.2 The Supplier shall comply with all legislative and regulatory provisions whether federal, provincial or municipal applicable to the performance of the obligations or any part thereof including, without limitation, all laws concerning health and labour conditions and the protection of the environment and shall require compliance therewith by all of its subcontractors.

22.3 Unless otherwise provided in the contract, the Supplier shall obtain all permits and hold all certificates and licenses for the performance of the obligation.

22.4 From time to time, the Museum may request the Supplier provide evidence that it complies with the applicable legislative and regulatory provisions and that it holds all the required permits, certificates and licenses. Such evidence shall be provided within the time set to the request or otherwise stipulated in the contract.

GC 23 Disclosure, Access to Information

23.1 The disclosure of information received relevant to the issue of bid solicitations or the award of contracts shall be made by the appropriate CMHR officers in accordance with the provisions of the *Access to Information Act*, the *Privacy Act*, edicts/acts related to this subject issued by the Crown, and as amended.

GC 24 Language of Agreements

24.1 The Contract will be drawn up in English and/or French, depending on the language requested by the Contractor.

GC 25 Notices

25.1 Any Notices required or permitted to be given by the Supplier shall be deemed to have been properly and effectively given if delivered personally or sent by registered prepaid mail to the party whom the Notice is to be given. Such Notice shall be deemed to have been received:

a. If delivered personally, on the day that it was received, or

b. If forwarded by mail, on the earlier of the day it was received or the sixth business day after it was mailed.

25.2 The business address of the Museum is:
Canadian Museum for Human Rights
85 Israel Asper Way
Winnipeg, MB Canada R3C 0L5

GC 26 Invoicing

26.1 Invoices must be submitted to accountspayable@humanrights.ca and must reference either a purchase order number and/or contract number.

26.2 Invoices and progress claims for taxable goods supplied or work performed. The Museum agrees to pay this amount to the contractor who, in turn, agrees to remit the GST to Revenue Canada – Customs and Excise.

26.3 Payment shall be made after final acceptance by the Museum of the goods and services, notwithstanding any previous passing of title of the goods.

26.4 Unless otherwise stated, payment terms are net thirty (30) days. The payment period may be adjusted in consideration of any payment discounts in for 'early payment' or 'electronic funds transfer' that are in the contract.

26.5 The Contractor's appropriate tax registration numbers shall be clearly displayed on every invoice. The Museum is responsible for paying Canadian Goods and Services Tax (GST) and Manitoba Retail Sales Tax (PST) on the goods or services defined in the applicable legislation.

26.6 If CMHR has any objection to the content of the invoice or the substantiating documentation, CMHR shall, within thirty (30) days of its receipt, notify the

Contractor of the nature of the objection. The Contractor agrees to provide clarifications as soon as reasonably possible after receipt of the objection. The Contractor acknowledges that CMHR may withhold payment until such time as the objection has been cleared to the satisfaction of CMHR.

GC 27 Respectful Workplace/Code of Ethics

27.1 The Museum has as objectives the maintaining a respectful workplace and the instilling a sound code of ethics. The personnel from the Supplier's staff who interact with employees, volunteers and other contractors to the Museum must adhere to the concepts and practices outlined in the Museum's related policies or to similar policies in effect in the Supplier's organization.

GC 28 No Promotion of Relationship

28.1 Any publicity or publications related to this contract and/or purchase order shall be at the sole discretion of the Museum. Without limiting the foregoing, the Supplier shall not:

a. make use of its association with the Museum or directly or indirectly communicate with the media in relation to the contract, the subject matter, the deliverables or content to be used in association therewith, or;

b. Undertake any communication with the Museum that in the opinion of the Museum is unsolicited promotional communication relating to the contract, without the prior written consent of the Museum.

GC 29 Force Majeure

29.1 The Supplier is not liable for failure to perform the obligations as set out in the contract and/or purchase order as a result of acts of God (including fire, flood, earthquake, storm, hurricane or other natural disasters), war, invasion, act of foreign enemies, labour dispute, strike or lockout. If the Supplier asserts Force Majeure as an excuse for failure to perform their obligations, they must prove that reasonable steps were taken to minimize delay or damages caused by foreseeable events, that the Supplier substantially

fulfilled all non-excused obligations and the Museum was timely notified of the likelihood or actual occurrence of the event which invoked the Force Majeure.

Supplementary Conditions

SC 1 Resolution of Disagreements

1.1 In the event of a disagreement brought forth by the Contractor or any instructions given under this Agreement:

a. the Contractor may give a notice of disagreement to the Museum. Such notice shall be promptly given and contain the particulars of the disagreement, any changes in time or amounts claimed, and reference to the relevant clauses of the Agreement;

b. the Contractor shall continue to perform the services in accordance with the instructions of the Museum; and

c. the Contractor and the Museum shall attempt to resolve the disagreement by negotiations conducted in good faith. The negotiations shall be conducted, first, at the level of the Contractor's project representative and the project representative of the Museum and secondly and if necessary, at the level of a principal of the Contractor firm and a representative of the Museum.

1.2 The Contractor's continued performance of the services in accordance with the instructions of the Museum shall not jeopardize the legal position of the Contractor in any disagreement.

1.3 If it was subsequently agreed or determined that the instructions given were in error or contrary to the Agreement, the Museum shall pay the Contractor those fees the Contractor shall have earned as a result of the change(s) in the services provided, together with those reasonable disbursements arising from the change(s) and which has been authorized by the Museum.

1.4 If the disagreement is not settled, the Contractor may make a request to the Museum for a written corporate decision and the Museum shall give notice of

the corporate decision within 14 days of receiving the request, setting out the particulars of the response and any relevant clauses of the Agreement.

1.5 Within 14 days of receipt of the written corporate decision, the Contractor shall notify the Museum if the Contractor accepts or rejects the decision.

1.6 If the Contractor rejects the corporate decision, the Contractor by notice may refer the disagreement to mediation.

1.7 If the disagreement is referred to mediation, the mediation shall be conducted with the assistance of a skilled and experienced mediator chosen by the Contractor from a list of mediators proposed by the Museum, and the Museum's mediation procedures shall be used unless the parties agree otherwise.

1.8 Negotiations conducted under this Agreement, including those conducted during mediation, shall be without prejudice.

SC 2 Health and Safety

2.1 Notwithstanding the applicable health and construction safety legislation at the Place of the Work, the Contractor shall comply with all and/or any of the Museum's Health and Safety requirements, as determined at the sole discretion of the Museum, that become in force during the performance of the Work and which relate to the Work, to the preservation of the public health and to construction safety, even if the requirements exceed provincially mandated workplace health and safety requirements and legislation.

2.2 Upon the determination by Museum that the Contractor is not in compliance with all and/or any of the Museum's Health and Safety requirements, as determined at the sole discretion of the Museum, the following shall take effect:

- Immediate suspension of the Work with a maximum cure period of four (4) hours. The cure period may be extended by the Museum for an additional four (4) hours upon request in writing by the Contractor and such request shall not be unreasonably withheld.

SC 3 Withholding of Payment

3.1 Notwithstanding any other provision of the Contract, the Museum may withhold any payment, including payment holdback and any other payment of the Contract price, or for the price of changes to the Contract Price, in whole or in part, to the extent necessary to protect the Museum, against any damage, cost or loss, including legal or other expenses, whatsoever, arising from the Contractor's performance of the Work and, without limiting this right, as may be required to offset any previous payment made to the Contractor and to such extent as may be necessary to protect the Museum from any loss, claim or damage.

3.2 Without restricting right of set off given or implied by law, the Museum may, where it has withheld payment of any portion of the Contract price, set off against any amount otherwise payable to the Contractor under the Contract and apply such portion of the Contract price withheld toward the costs of any required remedial work, or for damages, or as indemnification with respect to any third party claims, legal or other expenses, or any other loss arising under the contract.