

SCHEDULE 5

OTHER CONTRACTUAL TERMS

PART 8

Variation and Termination of Contracts

Variation of a contract: general

94.—(1) Subject to Schedule 2, paragraphs 62(8), 63(8) and 105 of this Schedule and paragraph 3 of Schedule 6, no amendment or variation shall have effect unless it is in writing and signed by or on behalf of the Health Board and the contractor.

(2) In addition to the specific provision made in paragraph 105 the Health Board may vary the contract without the contractor’s consent where it—

- (a) is reasonably satisfied that it is necessary to vary the contract so as to comply with the Act, any regulations made pursuant to that Act, or any direction given by the Scottish Ministers pursuant to that Act; and
- (b) notifies the contractor in writing of the wording of the proposed variation and the date upon which that variation is to take effect,

and, where it is reasonably practicable to do so, the date that the proposed variation is to take effect shall be not less than 14 days after the date on which the notice under paragraph (b) is served on the contractor.

(3) In sub-paragraph (1), “writing” does not include transmission by electronic means.

Termination by agreement

95. The Health Board and the contractor may agree in writing to terminate the contract, and if the parties so agree, they shall agree the date upon which that termination should take effect and any further terms upon which the contract should be terminated.

Termination by the contractor

96.—(1) A contractor may terminate the contract by serving notice in writing on the Health Board at any time.

(2) Where the contractor serves notice pursuant to sub-paragraph (1), the contract shall, subject to sub-paragraph (3), terminate six months after the date on which the notice is served (“the termination date”), save that if the termination date is not the last calendar day of a month, the contract shall instead terminate on the last calendar day of the month in which the termination date falls.

(3) Where the contractor is an individual medical practitioner, sub-paragraph (2) shall apply to the contractor, save that the reference to “six months” shall instead be to “three months”.

(4) This paragraph and paragraph 97 are without prejudice to any other rights to terminate the contract that the contractor may have.

Late payment notices

97.—(1) The contractor may give notice in writing (a “late payment notice”) to the Health Board if the Board has failed to make any payments due to the contractor in accordance with a term of the contract that has the effect specified in regulation 22 and the contractor shall specify in the late payment notice the payments that the Board has failed to make in accordance with that regulation.

(2) Subject to sub-paragraph (3), the contractor may, at least 28 days after having served a late payment notice, terminate the contract by a further written notice if the Health Board has still failed to make the payments due to the contractor, and that were specified in the late payment notice served on the Health Board pursuant to sub-paragraph (1).

(3) If, following receipt of a late payment notice, the Health Board refers the matter to the NHS dispute resolution procedure within 28 days of the date upon which it is served with the late payment notice, and it notifies the contractor in writing that it has done so within that period of time, the contractor may not terminate the contract pursuant to sub-paragraph (2) until—

- (a) there has been a determination of the dispute pursuant to paragraph 92 and that determination permits the contractor to terminate the contract; or
- (b) the Health Board ceases to pursue the NHS dispute resolution procedure,

whichever is the sooner.

Termination by the Health Board: general

98. The Health Board may only terminate the contract in accordance with the provision in this Part.

Termination by the Health Board for breach of conditions in regulation 4

99.—(1) The Health Board shall serve notice in writing on the contractor terminating the contract forthwith if the contractor is an individual medical practitioner and the medical practitioner no longer satisfies the condition specified in regulation 4(1).

(2) Where the contractor is—

- (a) a partnership and the condition specified in regulation 4(2)(a) is no longer satisfied; or
- (b) a company limited by shares, and the condition specified in regulation 4(3)(a) is no longer satisfied,

sub-paragraph (3) shall apply.

(3) Where this sub-paragraph applies, the Health Board shall—

- (a) serve notice in writing on the contractor terminating the contract forthwith; or
- (b) serve notice in writing on the contractor confirming that the Health Board will allow the contract to continue, for a period specified by the Health Board of up to six months (the “interim period”), during which time the Health Board shall, with the consent of the contractor, employ or supply one or more general medical practitioners to the contractor for the interim period to assist the contractor in the provision of clinical services under the contract.

(4) Before deciding which of the options in sub-paragraph (3) to pursue, the Health Board shall, whenever it is reasonably practicable to do so, consult the area medical committee (if any) for its area.

(5) If the contractor does not, pursuant to sub-paragraph (3)(b), consent to the Health Board employing or supplying a general medical practitioner during the interim period, the Health Board shall serve notice in writing on the contractor terminating the contract forthwith.

(6) If, at the end of the interim period, the contractor still falls within sub-paragraph (2)(a) or (b), the Health Board shall serve notice in writing on the contractor terminating the contract forthwith.

Termination by the Health Board for the provision of untrue etc. information

100. The Health Board may serve notice in writing on the contractor terminating the contract forthwith, or from such date as may be specified in the notice if, after the contract has been entered into, it comes to the attention of the Health Board that written information provided to the Health

Board by the contractor before the contract was entered into in relation to the conditions set out in regulations 4 and 5 (and compliance with those conditions) was, when given, untrue or inaccurate in a material respect.

Other grounds for termination by the Health Board

101.—(1) The Health Board may serve notice in writing on the contractor terminating the contract forthwith, or from such date as may be specified in the notice if—

- (a) in the case of a contract with a medical practitioner, that medical practitioner;
- (b) in the case of a contract with a partnership, any partner or the partnership; and
- (c) in the case of a contract with a company limited by shares—
 - (i) the company,
 - (ii) any person legally and beneficially owning a share in the company, or
 - (iii) any director or secretary of the company,

falls within sub-paragraph (2) during the existence of the contract.

(2) A person falls within this sub-paragraph if—

- (a) the person does not satisfy the conditions prescribed in section 17L(2)(c) or (3)(b) of the Act⁽¹⁾;
- (b) the person has been or is the subject of a national disqualification;
- (c) subject to sub-paragraph (3), the person is disqualified or suspended (other than by an interim suspension order or direction pending an investigation or a suspension on the grounds of ill-health) from practising by any licensing body anywhere in the world;
- (d) subject to sub-paragraph (4), the person has been dismissed (otherwise than by reason of redundancy) from any employment by a health service body unless before the Health Board has served a notice terminating the contract pursuant to this paragraph, the person is employed by the health service body that dismissed the person or by another health service body;
- (e) the person is disqualified from a list unless the person's name has subsequently been included in such a list;
- (f) the person has been convicted in the United Kingdom of murder;
- (g) the person has been convicted in the United Kingdom of a criminal offence, other than of murder, and has been sentenced to a term of imprisonment of over six months;
- (h) subject to sub-paragraph (5), the person has been convicted elsewhere of an offence—
 - (i) which would, if committed in Scotland, constitute murder; or
 - (ii) constitute a criminal offence other than murder, and been sentenced to a term of imprisonment of over six months;
- (i) the person has been convicted of an offence referred to in Schedule 1 to the Criminal Procedure (Scotland) Act 1995⁽²⁾ (offences against children under the age of 17 to which special provisions apply) or Schedule 1 to the Children and Young Persons Act 1933⁽³⁾ (offences against children and young persons with respect to which special provisions apply);

(1) Section 17L was inserted by the 2004 Act, section 4.

(2) 1995 c. 46.

(3) 1933 c. 12 as amended by the Criminal Justice Act 1988 (c. 33), section 170, Schedule 15, paragraph 8 and Schedule 16, paragraph 16; the Sexual Offences Act 1956 (c. 69), sections 48 and 51 and Schedules 3 and 4 and as modified by the Criminal Justice Act 1988, section 170(1), Schedule 15, paragraph 9.

- (j) the person has—
 - (i) had sequestration of the person’s estate awarded been adjudged bankrupt unless (in either case) the person has been discharged or the bankruptcy order has been annulled,
 - (ii) been made the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986⁽⁴⁾, unless that order has ceased to have effect or has been annulled,
 - (iii) made a composition or arrangement with, or granted a trust deed for, the person’s creditors unless the person has been discharged in respect of it, or
 - (iv) been wound up under Part IV of the Insolvency Act 1986;
- (k) there is—
 - (i) an administrator, administrative receiver or receiver appointed in respect of it, or
 - (ii) an administration order made in respect of it under Schedule B1 to the Insolvency Act 1986⁽⁵⁾;
- (l) that person is a partnership and—
 - (i) a dissolution of the partnership is ordered by any competent court, tribunal or arbitrator, or
 - (ii) an event happens that makes it unlawful for the business of the partnership to continue, or for members of the partnership to carry on in partnership;
- (m) the person has been—
 - (i) removed under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990⁽⁶⁾ (powers of the Court of Session to deal with management of charities), from being concerned in the management or control of any body; or
 - (ii) removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which the person was responsible or to which the person was privy, or which the person by the person’s conduct contributed to or facilitated;
- (n) the person is subject to a disqualification order under the company Directors Disqualification Act 1986⁽⁷⁾ (failure to pay under county court administration order), the Companies (Northern Ireland) Order 1986⁽⁸⁾ or to an order made under section 429(2)(b) of the Insolvency Act 1986 (failure to pay under county court administration order); or
- (o) that person has refused to comply with a request by the Health Board for that person to be medically examined on the grounds that it is concerned that the person is incapable of adequately providing services under the contract and, in a case where the contract is with a partnership or with a company, the Health Board is not satisfied that the contractor is taking adequate steps to deal with the matter; or
- (p) the person would otherwise fall within paragraph 113(2)(e) of Schedule 6 to the National Health Service (General Medical Services Contracts) Regulations 2004⁽⁹⁾.

⁽⁴⁾ 1986 c. 45. Schedule 4A was inserted by section 257 of and Schedule 2 to the Enterprise Act 2002 (c. 40).

⁽⁵⁾ Schedule B1 was inserted by section 248 of and Schedule 16 to the Enterprise Act 2002.

⁽⁶⁾ 1990 c. 40.

⁽⁷⁾ 1986 c. 46 as amended by the Insolvency Act 2000 (2000 c. 39).

⁽⁸⁾ S.I. 1986/1032 (N.I.6).

⁽⁹⁾ S.I.2004/291.

(3) A Health Board shall not terminate the contract pursuant to sub-paragraph (2)(c) where the Health Board is satisfied that the disqualification or suspension imposed by a licensing body outside the United Kingdom does not make the person unsuitable to be—

- (a) a contractor;
- (b) in the case of a contract with a partnership, a partner; or
- (c) in the case of a contract with a company limited by shares—
 - (i) a person legally and beneficially holding a share in the company, or
 - (ii) a director or secretary of the company,as the case may be.

(4) A Health Board shall not terminate the contract pursuant to sub-paragraph (2)(d)—

- (a) until a period of at least three months has elapsed since the date of the dismissal of the person concerned; or
- (b) if, during the period of time specified in paragraph (a), the person concerned brings proceedings in any competent tribunal or court in respect of the person's dismissal, until proceedings before that tribunal or court are concluded,

and the Health Board may only terminate the contract at the end of the period specified in paragraph (b) if there is no finding of unfair dismissal at the end of those proceedings.

(5) A Health Board shall not terminate the contract pursuant to sub-paragraph (2)(h) where the Health Board is satisfied that the conviction does not make the person unsuitable to be—

- (a) a contractor;
- (b) in the case of a contract with a partnership a partner;
- (c) in the case of a contract with a company limited by shares—
 - (i) a person legally and beneficially holding a share in the company; or
 - (ii) a director or secretary of the company,as the case may be.

(6) In this paragraph, "health service body" does not include any person who is to be regarded as a health service body in accordance with regulation 10.

Other grounds for termination by the Health Board

102. The Health Board may serve notice in writing on the contractor terminating the contract forthwith or with effect from such date as may be specified in the notice if—

- (a) the contractor has breached the contract and, as a result of that breach, the safety of the contractor's patients is at serious risk if the contract is not terminated; or
- (b) the contractor's financial situation is such that the Health Board considers that the Health Board is at risk of material financial loss.

Termination by the Health Board: remedial notices and breach notices

103.—(1) Where a contractor has breached the contract other than as specified in paragraphs 99 to 102 and the breach is capable of remedy, the Health Board shall, before taking any action it is otherwise entitled to take by virtue of the contract, serve a notice on the contractor requiring it to remedy the breach ("remedial notice").

- (2) A remedial notice shall specify—
 - (a) details of the breach;

- (b) the steps the contractor must take to the satisfaction of the Health Board in order to remedy the breach; and
 - (c) the period during which the steps must be taken (“the notice period”).
- (3) The notice period shall, unless the Health Board is satisfied that a shorter period is necessary to—

- (a) protect the safety of the contractor’s patients; or
- (b) protect itself from material financial loss,

be no less than 28 days from the date that notice is given.

(4) Where a Health Board is satisfied that the contractor has not taken the required steps to remedy the breach by the end of the notice period, the Health Board may terminate the contract with effect from such date as the Health Board may specify in a further notice to the contractor.

(5) Where a contractor has breached the contract other than as specified in paragraphs 99 to 102 and the breach is not capable of remedy, the Health Board may serve notice on the contractor requiring the contractor not to repeat the breach (“breach notice”).

(6) If, following a breach notice or a remedial notice, the contractor—

- (a) repeats the breach that was the subject of the breach notice or the remedial notice; or
- (b) otherwise breaches the contract resulting in either a remedial notice or a further breach notice,

the Health Board may serve notice on the contractor terminating the contract with effect from such date as may be specified in that notice.

(7) The Health Board shall not exercise its right to terminate the contract under sub-paragraph (6) unless it is satisfied that the cumulative effect of the breaches is such that the Health Board considers that to allow the contract to continue would be prejudicial to the efficiency of the services to be provided under the contract.

(8) If the contractor is in breach of any obligation and a breach notice or a remedial notice in respect of that default has been given to the contractor, the Health Board may withhold or deduct monies which would otherwise be payable under the contract in respect of that obligation which is the subject of the default.

Termination by the Health Board: additional provision specific to contracts with a partnership and companies limited by shares

104.—(1) Where the contractor is a company limited by shares, if the Health Board becomes aware that the contractor is carrying on any business which the Health Board considers to be detrimental to the contractor’s performance of its obligations under the contract—

- (a) the Health Board shall be entitled to give notice to the contractor requiring that it ceases carrying on that business before the end of a period of not less than 28 days beginning on the day on which the notice is given (“the notice period”); and
- (b) if the contractor has not satisfied the Health Board that it has ceased carrying on that business by the end of the notice period, the Health Board may, by a further written notice, terminate the contract forthwith or from such date as may be specified in the notice.

(2) Where the contractor is a partnership, the Health Board shall be entitled to terminate the contract by notice in writing on such dates as may be specified in that notice where one or more partners have left the practice during the existence of the contract if in its reasonable opinion, the Health Board considers that the change in membership of the partnership is likely to have a serious adverse impact on the ability of the contractor or the Health Board to perform its obligations under the contract.

- (3) A notice given to the contractor pursuant to sub-paragraph (2) shall specify—
 - (a) the date upon which the contract is to be terminated; and
 - (b) the Health Board’s reasons for considering that the change in the membership of the partnership is likely to have a serious adverse impact on the ability of the contractor or the Health Board to perform its obligations under the contract.

Contract sanctions

- 105.**—(1) In this paragraph and paragraph 106 , “contract sanction” means—
- (a) the termination of specified reciprocal obligations under the contract;
 - (b) the suspension of specified reciprocal obligations under the contract for a period of up to six months; or
 - (c) the withholding or deducting of monies otherwise payable under the contract.

(2) Where the Health Board is entitled to terminate the contract pursuant to paragraph 100,101,102,103(4) or (6) or 104 , it may instead impose any of the contract sanctions if the Health Board is reasonably satisfied that the contract sanction to be imposed is appropriate and proportionate to the circumstances giving rise to the Health Board’s entitlement to terminate the contract.

(3) The Health Board shall not, under sub-paragraph (2), be entitled to impose any contract sanction that has the effect of terminating or suspending any obligation to provide, or any obligation that relates to, essential services.

(4) If the Health Board decides to impose a contract sanction, it must notify the contractor of the contract sanction that it proposes to impose, the date upon which that sanction will be imposed and provide in that notice an explanation of the effect of the imposition of that sanction.

(5) Subject to paragraph 106, the Health Board shall not impose the contract sanction until at least 28 days after it has served notice on the contractor pursuant to sub-paragraph (4) unless the Health Board is satisfied that it is necessary to do so in order to—

- (a) protect the safety of the contractor’s patients; or
- (b) protect itself from material financial loss.

(6) Where the Health Board imposes a contract sanction, the Health Board shall be entitled to charge the contractor the reasonable costs of additional administration that the Health Board has incurred in order to impose, or as a result of imposing, the contract sanction.

Contract sanctions and the dispute resolution procedure

106.—(1) If there is a dispute between the Health Board and the contractor in relation to a contract sanction that the Health Board is proposing to impose, the Health Board shall not, subject to sub-paragraph (4), impose the proposed contract sanction except in the circumstances specified in sub-paragraph (2)(a) or (b).

(2) If the contractor refers the dispute relating to the contract sanction to the NHS dispute resolution procedure within 28 days beginning on the date on which the Health Board served notice on the contractor in accordance with paragraph 105(4) (or such longer period as may be agreed in writing with the Health Board), and notifies the Health Board in writing that it has done so, the Health Board shall not impose the contract sanction unless—

- (a) there has been a determination of the dispute pursuant to paragraph 92 and that determination permits the Health Board to impose the contract sanction; or
- (b) the contractor ceases to pursue the NHS dispute resolution procedure,

whichever is the sooner.

(3) If the contractor does not invoke the NHS dispute resolution procedure within the time specified in sub-paragraph (2), the Health Board shall be entitled to impose the contract sanction forthwith.

(4) If the Health Board is satisfied that it is necessary to impose the contract sanction before the NHS dispute resolution procedure is concluded in order to—

- (a) protect the safety of the contractor’s patients; or
- (b) protect itself from material financial loss,

the Health Board shall be entitled to impose the contract sanction forthwith, pending the outcome of that procedure.

Termination and the NHS dispute resolution procedure

107.—(1) Where the Health Board is entitled to serve written notice on the contractor terminating the contract pursuant to paragraph 100,101,102 or 103(4) or (6) the Health Board shall, in the notice served on the contractor pursuant to those provisions, specify a date on which the contract terminates that is not less than 28 days after the date on which the Health Board has served that notice on the contractor unless sub-paragraph (2) applies.

(2) This sub-paragraph applies if the Health Board is satisfied that a period less than 28 days is necessary in order to—

- (a) protect the safety of the contractor’s patients; or
- (b) protect itself from material financial loss.

(3) In a case falling within sub-paragraph (1), where the exceptions in sub-paragraph (2) do not apply, where the contractor invokes the NHS dispute resolution procedure before the end of the period of notice referred to in sub-paragraph (1), and it notifies the Health Board in writing that it has done so, the contract shall not terminate at the end of the notice period but instead shall only terminate in the circumstances specified in sub-paragraph (4).

(4) The contract shall only terminate if and when—

- (a) there has been a determination of the dispute pursuant to paragraph 92 and that determination permits the Health Board to terminate the contract; or
- (b) the contractor ceases to pursue the NHS dispute resolution procedure,

whichever is the sooner.

(5) If the Health Board is satisfied that it is necessary to impose the contract sanction before the NHS dispute resolution procedure is concluded in order to—

- (a) protect the safety of the contractor’s patients; or
- (b) protect itself from material financial loss,

sub-paragraphs (3) and (4) shall not apply and the Health Board shall be entitled to confirm, by written notice to be served on the contractor, that the contract will nevertheless terminate at the end of the period of the notice it served pursuant to paragraph 100,101,102,103(4) or (6) or 104.

Consultation with the area medical committee

108.—(1) Whenever the Health Board is considering—

- (a) terminating the contract pursuant to paragraph 100,101,102,103(4) or (6) or 104;
- (b) imposing a contract sanction,

it shall, whenever it is reasonably practicable to do so, consult the area medical committee for its area before it terminates the contract or imposes a contract sanction.

(2) Whether or not the area medical committee has been consulted pursuant to sub-paragraph (1), whenever the Health Board imposes a contract sanction on a contractor or terminates a contract pursuant to this Part, it shall, as soon as reasonably practicable, notify the area medical committee in writing of the contract sanction imposed or of the termination of the contract (as the case may be).

Where the contractor changes from being an individual to a partnership

109.—(1) If—

- (a) a contractor is an individual medical practitioner who proposes to practise in partnership (“the proposed partnership”) with one or more persons (“the proposed partners”);
- (b) the proposed partners propose that the proposed partnership should enter into a new contract (“the new contract”) with the Health Board on as similar terms as possible to the contractor’s contract (“the old contract”) and, as a consequence;
- (c) the contractor proposes to terminate the old contract,

the contractor and the proposed partners may give written notice of those matters to the Health Board which shall state—

- (i) the name and address of the proposed partnership and of the proposed partners;
- (ii) the date on which it is proposed that the partnership should be formed and become the contractor, which shall not be less than 28 days after the date of service of the notice;
- (iii) that when the proposed partnership is formed, the requirements of regulations 4(2) and 5(1)(b) will be satisfied; and
- (iv) whether or not the proposed partnership is to be a limited partnership and, if so, who will be a limited and who a general partner,

and the notice shall be signed by the contractor and by the proposed partners as proposed partners of the proposed partnership.

(2) If the Health Board is satisfied as to the accuracy of the matters specified in the notice under sub-paragraph (1), it shall give written notice to the contractor and the proposed partners that it is prepared—

- (a) to terminate the old contract with effect from a specified date; and
- (b) to enter into a new contract with the proposed partnership with effect from that date which shall be on the same terms as the old contract, with only such changes as are necessary to reflect the fact that the contractor will be a partnership and not an individual medical practitioner,

and the notice shall specify the changes which the Health Board considers are necessary in terms of paragraph (b).

(3) Where it is reasonably practicable, the date specified by the Health Board in the notice under sub-paragraph (2) shall be the date proposed in the notice served under sub-paragraph (1) or, where that date is not reasonably practicable, the date specified shall be a date after that proposed date that is as close to it as is reasonably practicable.

(4) If the contractor and the proposed partners agree with what is contained in the notice by the Health Board under sub-paragraph (2)—

- (a) the Health Board and the contractor shall agree in writing to terminate the old contract with effect from the date specified in that notice; and
- (b) the Health Board and the partnership shall enter into a new contract with the Health Board with effect from that date on the terms mentioned in paragraph (b) of that sub-paragraph but subject to the changes specified in that notice.

(5) This paragraph is without prejudice to any other way in which the old contract may be terminated and a new contract entered into with the partnership.

Where the contractor changes from being a partnership to an individual

110.—(1) If a contractor is a partnership which it is proposed will be terminated or dissolved and as a consequence the contractor's contract ("the old contract") will be terminated and one of the partners wishes to enter into a new contract ("the new contract") with the Health Board as an individual medical practitioner ("the proposed contractor") on as similar terms as possible as the old contract, the partnership and the proposed contractor may give written notice thereof to the Health Board which shall state—

- (a) the name and address of the partnership, of the partners in that partnership and of the proposed contractor;
- (b) the date on which it is proposed that the proposed contractor should become the contractor, which shall not be less than 28 days after the date of service of the notice; and
- (c) that the proposed contractor meets the requirements of regulations 4(1) and 5(1)(a),

and the notice shall be signed by the partnership, the partners in that partnership and the proposed contractor.

(2) If the Health Board is satisfied as to the accuracy of the matters specified in the notice under sub-paragraph (1), it shall give written notice to the partnership and the proposed contractor that it is prepared—

- (a) to terminate the old contract with effect from a specified date; and
- (b) to enter into a new contract with the proposed contractor with effect from that date which shall be on the same terms as the old contract, with only such changes as are necessary to reflect the fact that the contractor will be an individual medical practitioner and not a partnership,

and the notice shall specify the changes which the Health Board consider are necessary in terms of paragraph (b).

(3) Where it is reasonably practicable, the date specified by the Health Board in the notice under sub-paragraph (2) shall be the date proposed in the notice served under sub-paragraph (1) or, where that date is not reasonably practicable, the date specified shall be a date after that proposed date that is as close to it as is reasonably practicable.

(4) If the partnership and the proposed contractor agree with what is contained in the notice by the Health Board under sub-paragraph (2)—

- (a) the Health Board and the partnership shall agree in writing to terminate the old contract with effect from the date specified in that notice; and
- (b) the Health Board and the proposed contractor shall enter into a new contract with the Health Board with effect from that date on the terms mentioned in paragraph (b) of that sub-paragraph but subject to the changes specified in that notice.

(5) This paragraph is without prejudice to any other way in which the old contract may be terminated and a new contract entered into with the proposed contractor.