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| --- | --- |
|  |  |
| Royal Air Forces Association |  |
| Atlas House |  |
| Wembley road | Our Reference: 700995378 |
| Leicester  |  |
| LE3 1UT | Date:22 October 2020 |
|  |  |
| FAO: Nick Bunting |  |

Dear Sir/Madam,

Invitation To: Tender Reference Number: 700995378- Royal Air Force Families Federation Services

1. You are invited to tender for Royal Air Force Families Federation Services in accordance with the attached documentation.

2. The anticipated date for the contract award decision is January 15th 2021, please note that this is an indicative date and may change.

3. You must submit your Tender no later than Monday 23rd November at 11am.

4. Please confirm receipt of this tender to Mrs. Caroline Razavi using the following E-mail address: caroline.razavi750@mod.uk.

Yours faithfully

Caroline Razavi

Air Commercial General Acquisition Manager

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**Terms and Conditions**

**DEFFORM 47ST**

**Contents**

This invitation consists of the following documentation:

 DEFFORM 47ST – Invitation To Tender. The DEFFORM 47ST is the document that sets out the key requirements that you need to meet in submitting a valid Tender in advance of any negotiations. It also sets out the conditions relating to this procurement. For ease it is broken into:

o Section A – Introduction

Funding

DEFFORM 47 Definitions

Purpose

ITT Documentation and ITT Material

Material Change of Control

Contract Conditions

Consultation with Credit Reference Agencies

Other Information

o Section B – Key Tendering Activities

o Section C – Instructions on Preparing Tenders

Tenders for Selected Contractor Deliverables

Construction of Tenders

Validity

Variant Bids

Qualifying Defence Contracts (Defence Reform Act 2014)

o Section D – Details of Price Breakdown and Mandatory Criteria

o Section E – Instructions on Submitting Your Tender

Submission of your Tender

Samples

o Section F – Conditions of Tendering

Conforming to the Law

Fraud and Other Illegal Practices

Conflicts of Interest

Government Furnished Assets

Publicity Announcement

Sensitive Information

Remedies for Actionable Contraventions under the Defence Reform Act 2014

Reportable Requirements

Specific Conditions of Tendering

o DEFFORM 47ST Annex A – Tender Submission Document (Offer)

Appendix 1 to DEFFORM 47ST Annex A (Offer) – Information on Mandatory Declaration Returns

 Schedule of Requirements: Schedule 2

 Statement of Requirement: Schedule 2

 Contract Conditions

 DEFFORM 111 – Appendix to Contract - Addresses and Other Information

 Tenderer’s Commercially Sensitive Information Form (DEFFORM 539A)

 Any other relevant documentation: Not applicable

**Section A - Introduction**

 **Funding**

A1.    Funding has been approved on 2020/08/27

**DEFFORM 47 Definitions**

A2.    “The Authority” means the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland (hereafter referred to as "the Authority"), acting  as part of the Crown.

A3.    “Tenderer” means the economic operator or group of operators in the form of a consortium, including sub-contractors, who have been invited to submit a response to this Invitation to Tender.  Where “you” is used this means an action on you the Tenderer.

A4.    “Invitation to Tender” (ITT) refers to the first document that the Authority sends out to potential Tenderers that initiates a tender response or negotiation.

A5.    “Schedule of Requirements” Schedule 2 means that part of the contract which identifies, either directly or by reference, the Contractor Deliverables to be supplied or carried out, the quantities involved and the price or pricing terms in relation to each Contractor Deliverable.

A6.    “Single Source” means a situation where the Authority has invited a response from only one Tenderer.

A7.    A “Tender” is the offer that you are making to the Authority.

A8.    “Contractor Deliverables” means the goods and / or the services, including packaging (and Certificates(s) of Conformity and supplied in accordance with any Quality Assurance (QA) requirements, if specified) and any associated technical data which the contractor is required to provide under any resultant contract in accordance with the Schedule of Requirements, but excluding incidentals outside the Schedule of Requirements such as progress reports.

A9.    The “Statement of Requirement” Schedule 2 details the technical requirements and acceptance criteria [Schedule 8 in SC2] of the Contractor Deliverables.  The Statement of Requirement is attached Schedule 2 to this DEFFORM 47ST. This may include the Systems Requirements Document (SRD).

A10. “Conditions of Tendering” means the conditions set out in the DEFFORM 47ST that govern the procurement.

A11. “Contract Conditions” means the attached conditions that will govern any resultant contract.

A12. A “Third Party” is anyone who is not an employee of the Authority or Tenderer, as defined at paragraph A3.

A13. “Voluntary Ex Ante Transparency Notice” means a mandatory notice used to announce a procurement decision that the Authority intends to place a non-competitive contract under OJEU procedures.  This also appears in the DCO as a “Voluntary Transparency Notice”.  This allows industry to challenge the decision not to compete.

**Purpose**

A14. The purpose of this ITT is to invite you to propose a solution / best price to meet the Authority’s requirement.  This documentation explains and sets out the:

a.        Tender process and timetable for the next stages of the procurement;

b.        instructions and conditions that govern this invitation;

c.        information you must include in your Tender and the required format;

d.        administrative arrangements for the receipt and review of your Tender; and

e.        Contract Conditions that shall apply in the event that the Authority awards a

contract following this invitation.

A15. The sections in this ITT and associated documents are structured in line with a generic tendering process and do not indicate importance / precedence.

A16. This ITT is Published and advertised under the Public Contracts Regulations 2015. A Voluntary Ex Ante Transparency Notice (VEAT) in the OJEU and / or a Voluntary Transparency Notice in the DCO will be published

**ITT Documentation and ITT Material**

A17. ITT Documentation means any information in any medium or form (for example drawings, handbooks, manuals, instructions, specifications and notes of pre-tender clarification meetings), issued to you or to which you have been granted access, by the Authority for the purposes of responding to this ITT.  ITT Material means any other material (including patterns and samples), equipment or software issued to you or to which you have been granted access, by the Authority for the purposes of responding to this ITT.  ITT Documentation, ITT Material and any Intellectual Property Rights (IPR) in them shall remain the property of the Authority or other Third Party owners and is released solely for the purposes of enabling you to submit a Tender.  You must:

a.               take responsibility for the safe custody of the ITT Documentation and ITT Material and for all loss and damage sustained to it whilst in your care;

b.               not copy or disclose the ITT Documentation or any part of it to anyone other than the bid team involved in preparing your Tender, and not use it except for the purpose of responding to this ITT;

c.                seek written approval from the Authority if you need to provide access to any ITT Documentation or ITT Material to any Third Party;

d.               abide by any reasonable conditions imposed by the Authority in giving its approval under sub-paragraph A17.c, which at a minimum will require you to ensure any disclosure to a Third Party is made by you in confidence.  Alternatively, due to IPR issues for example, the disclosure may be made, in confidence, directly by the Authority;

e.               accept that any further disclosure of ITT Documentation or ITT Material (or use beyond the original purpose), or further use of ITT Documentation or ITT Material, without the Authority’s written approval may make you liable for a claim for breach of confidence and / or infringement of IPR, a remedy which may involve a claim for compensation;

f. inform the named Commercial Officer immediately if you decide not to submit a Tender;

g.               immediately destroy all ITT Documentation, ITT Material and derived information of an unmarked nature, should you decide not to participate in responding to this ITT, or you are notified by the Authority that your Tender has been unsuccessful; and

h.               consult the named Commercial Officer to agree the appropriate destruction process if you are in receipt of ITT Documentation and ITT Material marked ‘OFFICAL SENSITIVE’ or ‘SECRET’.

A18.     Some or all of the ITT Documentation and ITT Material may be subject to one or more Confidentiality Agreements made between you and either the Authority or a Third Party, for example a Confidentiality Agreement established in the form of DEFFORM 94.  The obligations contained in any such agreement will be in addition to, and not derogate from, your obligations under paragraph A17above.

**Material Change of Control**

A19.     You must inform the Authority in writing if there is any material change in control, composition or membership of your organisation and / or consortium members, including any sub-contractors at any time during the procurement process.  This may affect our decision to award a contract to you.

**Contract Conditions**

A20.  The Contract Conditions can be found at Page.

**Consultation with Credit Reference Agencies**

A21.The Authority may consult with credit reference agencies to assess your creditworthiness.  This information may be used to support and influence decisions to enter into a contract with you.

**Other Information**

A22.  Not applicable.

**Section B - Key Tendering Activities**

The key dates for this procurement are currently anticipated to be as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| **Stage**             | **Date and Time**  | **Initiated By** | **Submit to:** |
| Final date for Clarification Questions / Requests for additional information | Monday 9th November at 11am | Tenderer | General Acquisition Manager |
| Final Date for Requests for Extension to return date | Monday 16th November at 11:00 | Tenderer | General Acquisition Manager |
| The Authority issues Final Answers and Clarifications | Thursday 12th November at 11:00 | The Authority | Tenderer  |
| Tender Return | Monday 23rd November at 11:00 | Tenderer | AWARD® |
| Value For Money (VFM) Assessment in accordance with NAPNOC – see Section D of this DEFFORM 47ST | Wednesday 25th November 2020 | The Authority | N/A |
| The following are indicative timescales for planning purposes only |
| Revise Or Confirm Offer | TBC | The Authority  |  |
| Start of Negotiation | TBC | The Authority  |  |
| Best And Final Offer | TBC | The Authority  |  |

**Section C - Instructions on Preparing Tenders**

**Tenders for Selected Contractor Deliverables**

C1. You must respond to the requirement for all the Contractor Deliverables listed in the attached Schedule of Requirements.

**Construction of Tenders**

C2. Your Tender must be written in English, using Arial font size 11. Prices must be in GBP. Prices must be Firm Price.

C3. To enable the Authority to complete its Value For Money (VFM) assessment, your price must be broken down. If the resultant contract is a Qualifying Defence Contract (QDC) under the Defence Reform Act (DRA) and Single Source Contract Regulations (SSCR) you must price your bid accordingly. Please set out your Tender response in accordance with Section D.

**Validity**

C4. Your Tender must be valid / open for acceptance for 90 calendar days from the Tender return date.

**Variant Bids**

C5. The decision to invite a Single Source response is based on the scope of the requirement. Where you submit a variant bid that is outside the scope of the requirement the Authority may be obliged to compete the requirement.

**Qualifying Defence Contracts**

**Defence Reform Act 2014 – Part 2, Single Source Contracts**

C6. This ITT may result in a Qualifying Defence Contract (QDC) under the provisions of the [Defence Reform Act 2014 (DRA)](http://services.parliament.uk/bills/2013-14/defencereform.html). You should therefore understand the implications in the event that it does result in a QDC.

C7. The DRA enables secondary legislation, called Single Source Contract Regulations 2014 (SSCR), which applies:

a. to new contracts with a value of £5M (ex VAT) or above;

b. to amended contracts where the amended contract has a value of £5M (ex VAT) or above, and both parties agree that the amended contract should be a QDC.

C8. The DRA and SSCR set out the criteria for determining when a single source contract is a Qualifying Defence Contract (QDC). Any new single source contract which meets the criteria will be a QDC, unless exempt by the Secretary of State for Defence. Exemptions will only be granted in exceptional circumstances.

C9. The DRA and SSCR cover such matters as the pricing of QDCs, the information, openness and transparency that the parties must provide to each other, and the rights and obligations of both parties to a QDC once on contract.

C10. The DRA requires a primary contractor to be satisfied that the costs proposed for inclusion in the price of a QDC are Allowable Costs, in that they are appropriate, attributable to the contract and reasonable in the circumstances. The MOD is obliged to ensure that you meet the criteria and at any time you may be required to show that this is the case in relation to any particular cost. The Single Source Regulations Office (SSRO) has issued Statutory Guidance on Allowable Costs (SGAC) which can be found on their website and which the parties to a QDC will be expected to adhere to, other than in exceptional circumstances. Either party to a QDC may subsequently make a referral to the SSRO for an adjustment of the contract price, if that party believes the price agreed was not in accordance with the requirements of the DRA / SSCR.

C11. The DRA requires that the contract Profit Rate agreed between the parties for QDCs must be agreed in accordance with the provisions of the DRA and SSCR.

C12. The DRA also sets out the criteria for determining when a contract is a Qualifying Sub-Contract (QSC) to which the DRA and SSCR will apply. Any single source sub-contract in excess of £25M, placed in support of a QDC or another QSC and which meets the criteria in the DRA and SSCR, is potentially a QSC. Responsibility for assessing whether a sub-contract is a QSC lies with the party placing the sub-contract. The Tenderer therefore has an obligation to determine whether any planned sub-contract is a QSC. The Tenderer must keep a record of any determinations and notify both the Secretary of State for Defence and the sub-contractor in writing when a sub-contract is determined to be a QSC.

The [MOD Commercial Toolkit](https://www.aof.mod.uk/aofcontent/tactical/toolkit/index.htm) provides further information about the new single source legal framework.

**Section D - Details of Price Breakdown and Mandatory Criteria**

1. When placing any contract the Authority is required to satisfy itself that the agreed price represents Value for Money (VFM). In single source contracting you must provide to the Authority sufficient information in support of your price proposal and during subsequent price negotiation, to enable the Authority to fulfil its obligation to assure VFM. The Authority approaches all contract pricing on the basis of the NAPNOC principle (No Acceptable Price, No Contract). We will not enter into any contract that is unacceptably priced. Details can be found on MOD Commercial Toolkit.

2. **Price breakdown requirements for a Qualifying Defence Contract**

If the contract is expected to be a QDC - it will be your responsibility to decide the level of information you need to provide to the Authority in support of your price proposal and subsequent price negotiation, in order to satisfy the statutory obligations placed upon you by the DRA and the SSCR, and in compliance with the Statutory Guidance on Allowable Costs published by the Single Source Regulations Office (SSRO). Although you will need to understand all the requirements of the DRA/SSCR your particular attention is drawn to the DRA Section 20 (Allowable Costs) and the SSCR Clause 23 (Contract Pricing Statement - CPS). Although not a legal requirement at the tendering stage, please note the Authority’s preference that you submit a draft CPS with your price proposal, using the CPS template provided on the SSRO website.

**OR**

2. **Price breakdown requirements for a non-qualifying contract**

If the contract expected to be a non-QDC. The contract is therefore not subject to the provisions of the DRA/SSCR 2014. It is your responsibility to decide the level of information you need to provide to the Authority in support of your price proposal and subsequent price negotiation, to enable the Authority to fulfil its obligation to assure VFM and sign the contract. The following table shows the Authority’s suggestion of the minimum level of information you must provide

|  |
| --- |
| **For a non-qualifying contract, as a minimum your Offer** should detail **the following:**  |
| **Hours / Days**  | The number of hours / days it takes to complete the requirement.  |
| **Hourly / Day Rates**  | The rate used. Where available these should be agreed CAAS (Cost Assurance and Analysis Services) rates and Grades.  |
| **Materials**  | The cost of any raw materials. Please provide a copy of any quotes or invoices with your Tender.  |
| **Significant Sub-contractor Costs, e.g. >£50k**  | The cost of bought in facilities, services and / or parts. Please provide a copy of the sub-contractor quotation / invoice with your Tender. You are encouraged to run a competition at sub-contractor level and advertise opportunities in the MOD Defence Contracts Bulletin, where appropriate.  |
| **Other costs**  | List any rates used to recover overhead costs not otherwise recovered through the activity-based hourly and daily rates stated above. These rates are usually recovered by the application of a percentage uplift to a base cost (e.g. Material Handling is often recovered as a percentage uplift applied to material costs). Where you have an agreed QMAC (Questionnaire on the Method and Allocation of Costs) you must quote the reference. Where you do not have an agreed QMAC please include a list of what is included in the overhead rate(s). Provide a sub-total that the overhead will apply to.  |
| **Profit Rate**  | State the Profit Rate you are proposing to apply to the contract costs. |
| **Risk / Opportunities**  | State whether you have included any contingency for risks and the details on how this has been calculated. State any opportunities that you foresee, for example, exchange rate movement.  |
| **T&S**  | When including Travel and Subsistence you must include details of the assumptions you have made about travel and the rates used. Claims for T&S should be in line with the Civil Service Code which states civil servants must ensure “public money and other resources are used efficiently” for example, travel should be the most economic option available.  |
| **Assumptions**  | State any assumptions made about your proposal, such as the process, when decisions will be made etc.  |
| **Exclusions**  | State any matters that are excluded which, if they subsequently occur, you would expect the MOD to share cost liability.  |

|  |
| --- |
| **Mandatory Criteria, applicable to QDCs and non-qualifying contracts**  |
| Full completion of the table in DEFFORM 47ST Annex A (Offer) (See section F, paragraph 19)  | Pass / Fail  |
| Minimum Technical Requirements met (see Annex A technical Evaluation Methodology) | Pass / Fail  |
| Commercial Evaluation – See Annex B | Pass/Fail |

Failure to meet the Mandatory Criteria will result in the Authority being unable to award a contract.

**Note** that for a non-qualifying contract (i.e. a contract that is **not** a QDC subject to DRA/SSCR) it is the Authority’s policy that a DEFFORM 815 - Contract Pricing Statement should be completed by you on or around contract signature. It is the Authority’s preference that you submit a draft DEFFORM 815 with your price proposal. Instructions on completion of the DEFFORM 815 are available on the commercial toolkit.

**Annex A - Technical Evaluation Methodology**

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# Purpose

* 1. This Annex details the process which the technical elements of the Tender submitted in response to this Invitation to Negotiate (ITN) will be evaluated, including the criteria the Tenderer is required to address and the weightings of these criteria. The technical elements consist of the solution proposed by the Tenderer to deliver the outputs detailed within the Statement of Requirement (SoR) within the limitations described within the SoR and associated Terms and Conditions.

# Evaluators

* 1. The response to the technical elements of this ITN will be assessed by a team of Subject Matter Experts (SMEs) deemed appropriate by the Authority. These SMEs will evaluate each Tender and will be referred to further in this Annex as the evaluators.

# Criteria

* 1. The technical evaluation criteria are set out at Appendix 1 and Appendix 2 including the marking method and any weighting applied to the criteria.

# Marking of Responses

* 1. All criteria will be marked using the relevant marking matrices detailed below:
		1. **Pass / Fail** - Where the marking method for a criterion is **Pass or Fail** then the Tender will be marked in accordance with Table 1 detailed below:

Table - Technical Evaluation Marking for Pass / Fail Criteria

| **Mark** | **Proposed Solution** |
| --- | --- |
| Pass  | The Tender shows **all** of the following:1. The Tenderer has demonstrated that the solution is fully deliverable; evidence for this:* Details how the capability will be delivered.
* Complies with necessary standards detailed in the criteria and recognises key constraints.
* Shows efficiencies in the use of resources.

2. Any effects on the Authority resulting from the Tenderer’s solution are acceptable. |
| Fail | The Tender shows **any** of the following:1. The Tenderer has failed, or only partially, demonstrated that the solution is deliverable; evidence for this:* Vaguely details how the capability will be delivered.
* Only complies with necessary standards detailed in the criteria but does not recognise key constraints.
* Does not clearly show efficiencies in the use of resources.

2. Some effects on the Authority resulting from the Tenderer’s solution are undesirable. |

* + 1. **Scored** - Where the marking method for a criterion is **Scored** then the tender will be marked in accordance with Table 2 detailed below:

Table - Technical Evaluation Marking for Scored Criteria

| **Mark** | **Proposed Solution** |
| --- | --- |
| 5 | High ConfidenceThe Tender shows **all** of the following:1. The Tenderer has demonstrated that the solution is fully deliverable; evidence for this:* Clearly and comprehensively details how the capability will be delivered.
* Complies with all standards detailed in the criteria whilst recognising and mitigating all constraints.
* Shows effective and efficient use of resources.

2. Any effects on the Authority resulting from the Tenderer’s solution are acceptable. |
| 4 | Good ConfidenceThe Tender shows **all** of the following:1. The Tenderer has demonstrated that the solution is fully deliverable; evidence for this:* Highly details how the capability will be delivered.
* Complies with necessary standards detailed in the criteria whilst recognising and mitigating key constraints.
* Show efficiencies in the use of resources.

2. Any effects on the Authority resulting from the Tenderer’s solution are acceptable. |
| 3 | SatisfactoryThe Tender shows **all** of the following:1. The Tenderer has demonstrated that the solution is fully deliverable; evidence for this:* Details how the capability will be delivered.
* Complies with necessary standards detailed in the criteria and recognises key constraints.
* Shows limited efficiencies in the use of resources.

2. Any effects on the Authority resulting from the Tenderer’s solution are acceptable. |
| 2 | Minor ConcernsThe Tender shows **any** of the following:1. The Tenderer has only partially demonstrated that the solution is deliverable; evidence for this:* Incomplete details how the capability will be delivered.
* Only complies with necessary standards detailed in the criteria but does not recognise key constraints.
* Does not clearly show efficiencies in the use of resources.

2. Some effects on the Authority resulting from the Tenderer’s solution are undesirable. |
| 1 | Major ConcernsThe Tender shows **any** of the following:1. The Tenderer has failed, or only partially, demonstrated that the solution is deliverable; evidence for this:* Fails to detail how the capability will be delivered.
* Fails to comply with minimum necessary standards detailed in the criteria and does not recognise key constraints.
* Fails to identify any efficiency in the use of resources.

2. Any effects on the Authority resulting from the Tenderer’s solution are unacceptable. |
| 0 | FailNo response provided. |

* 1. The Tenderer is to respond using the Requirements of Response format found at Appendix 2. The responses to the criteria detailed within the Appendix are to be clear and concise; responses that are unclear or unstructured may result in the Tenderer receiving a lower mark due to the difficulty for the evaluators to identify the information. Where the Tenderer does not use the Requirements of Response format at Appendix 2, or a similar duplication of the Appendix, then the Tenderer’s response will not be evaluated and be deemed non-compliant. Where the Tenderer has additional information, such as: certificates; specification documents; or, annexes, to support their response then they are to detail the location of this further evidence within the Requirement of Response.

# The Technical Evaluation Process

* 1. The Tenderers solution to the technical elements of this ITT are to address all of the responses required and detailed in Appendix 2. These responses will be assessed by a team brought together by the Authority as detailed at Section 2. The Tenderer’s solution to each technical criterion will be assessed for compliance by the evaluators.
	2. Once each response has been fully considered then either a Pass or Fail mark or a Score ranging from 5 to 0, in integers of 1, will be awarded depending on marking detailed for that criterion.

# Moderation of Evaluations

* 1. Once all evaluators have completed their evaluations then a moderation exercise will be undertaken. The moderation will review disparities between the markings awarded by the evaluators.
	2. The moderation may result in evaluators being requested to reconsider the original mark awarded.
	3. Where the moderation determines that a Tenderer’s response is found to have areas of minor uncertainty the evaluators may request, via the relevant Commercial Officer, a Clarification Question (CQ) to be raised. On the return of the response of the CQ by the Tenderer, the evaluators will re-evaluate the relevant criteria using the response to the CQ in a reiteration of the Technical Evaluation Process detailed above at Section 5.
	4. CQs will only be raised if there seems to be areas of minor misunderstanding as to the meaning of the Tender by the evaluators or where the evaluators perceive there to have been a genuine mistake by the Tenderer. Where a Tenderer has not submitted a response, omits responses to criteria, or has significant areas of non-compliance then a CQ will not be raised.

# Results from Scored Criteria

* 1. For those criteria, which will be marked on a Scored basis, then the following will apply.
	2. Where multiple evaluators are assigned to assess the Tenderer’s response then the average (mean) of the results of the evaluators shall be used and termed the Average Score. This shall be a rational number displayed to 2 decimal places and shall be average of the score awarded by all evaluators against each criterion using the following equation:

Average Score =

Where:

*n* = Number of evaluators

*e1* = Score awarded by first evaluator against the criterion

*e2* = Score awarded by second evaluator against the criterion

*ex* = Score awarded by subsequent evaluators against the criterion

* 1. The Weighting detailed against the criterion will then be applied to the Average Score to create the Weighted Score. This shall be a rational number displayed to 2 decimal places, calculated using the following equation:

Weighted Score =

Where:

A = Average Score generated for the criterion

W = Weighting to be applied to the criterion

Worked examples of this are shown below at Figure 1.

Figure - Worked Examples of the Application of Weightings

**Example 1**

|  |  |
| --- | --- |
| Criterion Number: | X. |
| Criterion: | Demonstrate how you will comply with the mandated security accreditation stipulated. |
| Statement of Requirement (SoR) Reference: | x.x |
| Marking Method: | Scored |
| Weighting: | 10 % |

The solution to the criterion provided by Tenderer A has been marked with an Average Score of 4 whilst Tenderer B has been marked with an Average Score of 2.

|  |  |
| --- | --- |
| For Tenderer A:Weighted Score = (4 x 20) x (10 / 100) = 80 x 0.1 = 8 | For Tenderer B:Weighted Score = (2 x 20) x (10 / 100) = 40 x 0.1 = 4 |

**Example 2**

|  |  |
| --- | --- |
| Criterion Number: | Y. |
| Criterion: | Detail how you have the capability to handle and comply with the quality standards for delivery. |
| SoR Reference: | x.y |
| Marking Method: | Scored |
| Weighting: | 12.5 % |

The solution to the criterion provided by Tenderer A has an Average Score of 3.66 whilst Tenderer B has an Average Score of 2.

|  |  |
| --- | --- |
| For Tenderer A:Weighted Score = (3.66 x 20) x (12.5 / 100) = 73.33 x 0.125 = 9.16 | For Tenderer B:Weighted Score = (2 x 20) x (12.5 / 100) = 40 x 0.125 = 5 |

* 1. The sum of the Weighted Scores shall be used to calculate the Final Technical Score. This shall be a rational number displayed to 2 decimal places.
	2. The highest possible Final Technical Score is 100. This can be achieved if, in the opinion of all of the evaluators, that the Tenderer has provided a response that achieves a score of 5 (High Confidence) to all of the criteria where the marking method is Scored.

# Results from Pass / Fail Criteria

* 1. For those criteria, which will be marked on a Pass / Fail basis, then the following will apply.
	2. Where multiple evaluators are assigned to assess the Tenderer’s response then a consensus of the result of each criteria from each evaluator will be used to create a Consensus Result. Where any one evaluator marks the criteria as a Fail then the Consensus Result will default to Fail.
	3. No Weightings will be applied to those criteria marked on a Pass / Fail basis.

# Technical Compliance

* 1. Unless otherwise stated against a particular criterion, the material detailed in this Section shall be used to determine if a Tenderer’s bid is deemed to be technically compliant or non-compliant.
	2. Where there is a Fail in any part of those criteria marked as Pass or Fail then the Tenderer’s bid will be considered to be technically non-compliant.
	3. Where the Score to any element is 2 (Minor Concerns) or less then the Tenderer’s bid will be considered to be technically non-compliant.
	4. Where the Final Technical Score from the Technical evaluation is below 60 then the Tenderer’s bid will be considered to be technically non-compliant.
	5. Where a Tenderer’s bid is deemed to be technically non-compliant, the Tenderer’s bid will not be taken forward for a Commercial score to be awarded.
	6. Where a Tenderer’s bid is deemed to be technically compliant, then the Final Technical Score shall be the measure that will be used for reconciliation with the Commercial score to determine the “Winning Tenderer” in accordance with the weightings detailed at Appendix 1.

# Provision of Results to Tenderers

* 1. The Successful Tenderer or Tenderers will not, by default, be provided with a breakdown of the technical evaluation. Such a breakdown of their results may be requested through the relevant Commercial Officer.
	2. Unsuccessful Tenderer or Tenderers will be provided with the following level of breakdown of the technical evaluation provided in the Notification of Contract Award Decision letters issued following completion of the competition:
		1. For criteria marked on a Scored basis, the Tenderer will be provided with the Average Score along with the Weighted Score. The Average Score will be displayed as whole numbers in integers between 0 and 5 in accordance with the marking matrix at Section 4. The whole number will be determined by using the bracket within the marking matrix that the Tenderer’s Average Score falls within.
		2. For criteria marked on a Pass / Fail basis, the Tenderer will be provided with the Consensus Result displaying if the Tenderer has achieved a Pass or Fail mark in accordance with the marking matrix at Section 4.
		3. For all criteria, the reasons for the mark provided to the Tenderer.
		4. For all criteria, the relative mark of the Successful Tenderer(s) and the Successful Tenderer(s)’s relative characteristics and advantages.

**Appendix 1**

**Tender Evaluation Details**

**The Provision of Royal Air Force Families Federation Services**

1. **Weighting for Technical Evaluation Criteria**
	1. The weightings for the Technical evaluation criterion are detailed in Table 1 below:

Table 1 - Marking Method and Weightings

| **Criteria** | **Marking Method** | **Weighting (%)** |
| --- | --- | --- |
| 1 | Scored | 12.5 |
| 2 | Scored | 12.5 |
| 3 | Pass / Fail | N/A |
| 4 | Scored | 12.5 |
| 5 | Pass / Fail | N/A |
| 6 | Scored | 12.5 |
| 7 | Scored | 12.5 |
| 8 | Scored | 12.5 |
| 9 | Scored | 12.5 |
| 10 | Pass / Fail | N/A |
| 11 | Pass / Fail | N/A |
| 12 | Scored | 12.5 |

**Appendix 2**

**Technical Evaluation Criterion**

**The Provision of Royal Air Force Families Federation Services**

The Technical bid will be assessed against the following criterion:

| Criterion Number: |  |
| --- | --- |
| Criterion: | Detail how your company proposes to meet the engagement strategy at Annex B of the SoR, considering the deliverable requirements in the SoR for representation of RAF Families Federation views at an appropriate level at meetings and events, and the requirement to undertake an annual visit programme to RAF units. |
| Statement of Requirement (SoR) Reference: | Annex B, B.12, B.13 |
| Marking Method: | Scored |
| Weighting: | 12.5 % |
| Tenderer’s Response: |  |
|  |
| Location of Further Evidence: |  |

| Criterion Number: |  |
| --- | --- |
| Criterion: | Demonstrated how your company will comply with the Security Check (SC) clearance for all personnel working under this contract. This should include how your company will handle onboarding of new personnel and ensuring the clearance of current personnel remains extant and valid. |
| SoR Reference: | A.6.a |
| Marking Method: | Scored |
| Weighting: | 12.5 % |
| Tenderer’s Response: |  |
|  |
| Location of Further Evidence: |  |

| Criterion Number: |  |
| --- | --- |
| Criterion: | Confirm that, and detail how, your company will protect data and material under this contract in accordance with the Government Security Classifications that the materials hold, and the Data Protection Act and GDPR. |
| SoR Reference: | A.6.b, A.6.c, B.7, B.8,  |
| Marking Method: | Pass / Fail |
| Weighting: | N/A |
| Tenderer’s Response: |  |
|  |
| Location of Further Evidence: |  |

| Criterion Number: |  |
| --- | --- |
| Criterion: | Demonstrate that the person you company is proposing for the Director post for the Federation service has the appropriate qualifications and experience, as defined in Annex A of the SoR. Also demonstrate your company’s proposed process for replacement of such person, with no more than a month period of the post being vacant, should the incumbent leave. |
| SoR Reference: | B.1, Annex A |
| Marking Method: | Scored |
| Weighting: | 12.5 % |
| Tenderer’s Response: |  |
|  |
| Location of Further Evidence: |  |

| Criterion Number: |  |
| --- | --- |
| Criterion: | Confirm if your company will require the use of the facility proposed by the Authority at RAF Wittering or, if not using said facility, detail where your company will be operating the RAF Families Federation office from. |
| SoR Reference: | B.2 |
| Marking Method: | Pass / Fail |
| Weighting: | N/A |
| Tenderer’s Response: |  |
|  |
| Location of Further Evidence: |  |

| Criterion Number: |  |
| --- | --- |
| Criterion: | Detail how your company will provide an advice, support and signposting service to RAF personnel (Regular, Reserves and RAuxAF) and their families, and how your company will action appropriate turnaround times for responses. |
| SoR Reference: | B.3 |
| Marking Method: | Scored |
| Weighting: | 12.5 % |
| Tenderer’s Response: |  |
|  |
| Location of Further Evidence: |  |

| Criterion Number: |  |
| --- | --- |
| Criterion: | Detail how your company will develop and improve communication between RAF personnel (Regular, Reserves and RAuxAF), as well as evidence capture, through the life of this contract. |
| SoR Reference: | B.4, B.5, B.6 |
| Marking Method: | Scored |
| Weighting: | 12.5 % |
| Tenderer’s Response: |  |
|  |
| Location of Further Evidence: |  |

| Criterion Number: |  |
| --- | --- |
| Criterion: | Detail how your company will establish and maintain appropriate databases for recording evidence gather from RAF families, and from which reports can be generated. Also demonstrate the safeguarding your company will put in place to protect this data. |
| SoR Reference: | B.7 |
| Marking Method: | Scored |
| Weighting: | 12.5 % |
| Tenderer’s Response: |  |
|  |
| Location of Further Evidence: |  |

| Criterion Number: |  |
| --- | --- |
| Criterion: | Detail how your company will retain accurate records of evidence gather and ensure that all casework is monitor and closed down effectively. |
| SoR Reference: | B.8 |
| Marking Method: | Scored |
| Weighting: | 12.5 % |
| Tenderer’s Response: |  |
|  |
| Location of Further Evidence: |  |

| Criterion Number: |  |
| --- | --- |
| Criterion: | Confirm that you company will be publishing a periodic magazine (or similar) in accordance with SoR item B.10. Detail how often this will be published and what Code of Practise your company will have in place to ensure all advertising in the magazine is ethical and would be to the satisfaction of the Authority. |
| SoR Reference: | B.10 |
| Marking Method: | Pass / Fail |
| Weighting: | N/A |
| Tenderer’s Response: |  |
|  |
| Location of Further Evidence: |  |

| Criterion Number: |  |
| --- | --- |
| Criterion: | Confirm that your company will conduct assessment of Covenant Trust Fund bids to ensure they meet with the broader intent of the RAF and meet the Covenant Trust Fund requirements. Also demonstrate that the personnel your company will be using for this are suitably qualified to undertake such assessments. |
| SoR Reference: | B.22 |
| Marking Method: | Pass / Fail |
| Weighting: | N/A |
| Tenderer’s Response: |  |
|  |
| Location of Further Evidence: |  |

| Criterion Number: |  |
| --- | --- |
| Criterion: | Detail how your company proposes to establish and maintain a website for the RAF Families Federation, including how this will host: direct interaction with RAF Families; on-line surveys; discussion forums; social media; links to other relevant websites of value to RAF personnel and RAF families; and an Information Hub for informing all RAF personnel and RAF families on welfare / community support availability information at locations both overseas and in the UK. |
| SoR Reference: | B.9, B.23 |
| Marking Method: | Scored |
| Weighting: | 12.5 % |
| Tenderer’s Response: |  |
|  |
| Location of Further Evidence: |  |

**Commercial Evaluation**

**Annex B - Commercial Evaluation Methodology**

1. The response to the Commercial element of this Invitation to Tender (ITT) will be assessed by Defence Commercial Officers and other relevant specialists deemed appropriate by the Authority.

2. The Tenderer’s response to the ITT is to be clear and concise; responses that are unclear or unstructured may result in the Tender being rejected by the Authority.

**3.** **Acceptance of Terms and Conditions and Compliance with DEFFORM 47ST**

a. Tenderers must accept all Terms and Conditions set out in the Contract document. Acceptance, or otherwise, must be indicated at Appendix 1 to this Annex.

b. Bids must contain all requirements detailed within the DEFFORM 47 ST and Annexes.

c. The above shall be assessed on a **Pass or Fail** basis as follows:

|  |  |
| --- | --- |
| **Mark** | **Proposed Solution** |
| Pass | The Tenderer accepts all of the Authority’s Terms and Conditions, and complies with all requirements of the DEFFORM 47ST and Annexes including pricing in line with the pricing schedule and provide breakdowns as requested.  |
| Fail | The Tenderer fails to accept, or attempts to amend, any of the Authority’s Terms or Conditions, or omits any requirement of the DEFFORM 47 and Annexes within their response including pricing the proposal not in line with the pricing schedule. |

d. **Evaluation Process**

i. The Tenderers response to the Commercial elements of this ITT should address all of the requirements detailed in Appendix 1.

ii. This response shall be assessed by Defence Commercial Officers as detailed at Paragraph 1.

iii. Once the response has been fully considered, either a Pass or Fail mark will be awarded.

e. **Commercial Compliance**

i. Where a Tenderer’s Bid fails as above, then the Tenderer will be considered Commercially non-compliant.

Annex B to DEFFORM 47ST 700995378

**Appendix 1 - Commercial Compliance**

The Tenderer should scrutinise the Conditions, DEFCONs, Special Conditions and the Special Processes, together with the relevant Annexes, extremely carefully.

The Commercial Compliance Table shown below should be marked by the Tenderer according to whether each Condition, DEFCON or Process can be fully met or not.

If a Tenderer is not able to meet in full the demands of an item, the reasons for this should be given on a separate sheet, and clearly cross referenced to the item concerned.

Tenderers should be aware that no item should be ticked as being offered unless the condition can be met.

If a Contract were to be awarded, the Authority would expect the Contract to be performed under the required Conditions.

| **Tenderer’s Compliance with Terms and Conditions** |
| --- |
|  | **Title** | **Full Acceptance of Condition** | **Notes** |
| **Yes** | **No** |
| **General Conditions** |
| 1 | General |  |  |  |
| 2 | Duration of Contract |  |  |  |
| 3 | Entire Agreement |  |  |  |
| 4 | Governing Law |  |  |  |
| 5 | Precedence |  |  |  |
| 6 | Amendments to Contract |  |  |  |
| 7 | Variations to Specification |  |  |  |
| 8 | Authority Representatives |  |  |  |
| 9 | Severability |  |  |  |
| 10 | Waiver |  |  |  |
| 11 | Assignment of Contract |  |  |  |
| 12 | Third Party Rights |  |  |  |
| 13 | Transparency |  |  |  |
| 14 | Disclosure of Information |  |  |  |
| 15 | Publicity and Communication with the Media |  |  |  |
| 16 | Change of Control of Contractor |  |  |  |
| 17 | Environmental Requirements |  |  |  |
| 18 | Contractor’s Records |  |  |  |
| 19 | Notices |  |  |  |
| 20 | Progress Monitoring, Meeting and Reports |  |  |  |
| **Supply of Contract Deliverables** |
| 21 | Supply of Contractor Deliverables and Quality Assurance |  |  |  |
| 22 | Marking of Contractor Deliverables |  |  |  |
| 23 | Packaging and Labelling (Excluding Contractor Deliverables Containing Munitions) |  |  |  |
| 24 | Supply of Hazardous Materials or Substances in Contractor Deliverables |  |  |  |
| 25 | Timber and Wood-Derived Products |  |  |  |
| 26 | Certificate of Conformity |  |  |  |
| 27 | Access to Contractor’s Premises |  |  |  |
| 28 | Delivery / Collection |  |  |  |
| 29 | Acceptance |  |  |  |
| 30 | Rejection |  |  |  |
| 31 | Diversion Orders |  |  |  |
| 32 | Self-to-Self Delivery |  |  |  |
| **Licences and Intellectual Property** |
| 33 | Import and Export Licences |  |  |  |
| 34 | Third Party Intellectual Property – Rights and Restrictions |  |  |  |
| **Pricing and Payment** |
| 35 | Contract Price |  |  |  |
| 36 | Payment and Recovery of Sums Due |  |  |  |
| 37 | Value Added Tax |  |  |  |
| 38 | Debt Factoring |  |  |  |
| 39 | Subcontracting and Prompt Payment |  |  |  |
| **Termination** |
| 40 | Dispute Resolution |  |  |  |
| 41 | Termination for Insolvency or Corrupt Gifts |  |  |  |
| 42 | Termination for Convenience |  |  |  |
| 43 | Material Breach |  |  |  |
| 44 | Consequences of Termination |  |  |  |
| **45. The Project Specific DEFCONS and DEFCON SC Variants That Apply to this Contract are:** |
| DEFCON76 |  |  |  |
| DEFCON 90 |  |  |  |
| DEFCON 532 |  |  |  |
| DEFCON 532B |  |  |  |
| DEFCON 647 |  |  |  |
| DEFCON 658 (SC2) (Edn. 11/17) - Cyber |  |  |  |
| DEFCON694 |  |  |  |
|  DEFCON 660 |  |  |  |
| DEFCON 812 |  |  |  |
| DEFCON 815 |  |  |  |
|  |  |  |  |
| **46. The special conditions that apply to this contract are:** |  |  |  |
| Option periods |  |  |  |
| Protection of image, reputation and goodwill associated with RAF |  |  |  |
| Contractors personnel |  |  |  |
|  |  |  |  |

A Supplier Assurance Questionnaire **must** be completed ensuring that the minimum cyber risk profile is met which is linked to reference number -RAR-QEAA893C. This must be completed via the internet based DCPP Cyber Security Model online: <https://suppliercyberprotection.service.xgov.uk/>**.** Where you cannot demonstrate that you have achieved the proportionate security requirements associated with this requirement, a Cyber Implementation Plan (CIP) must be submitted. Where a bidder has produced a CIP which is deemed unacceptable by the RAF Senior Information Risk Owner (SIRO) to accept then they will be declared non-compliant for this requirement. Further guidance is provided on the DCPP website, once you commence the Supplier Assurance Questionnaire please note that you must include the above RAR reference at the start of this process.

**Section E - Instructions on Submitting Tenders**

**Submission of your Tender**

E1. Your Tender must be submitted electronically via the AWARD® Virtual Tender Board by Monday 23rd November at 11am. The Authority reserve the right to reject any Tender received after the stated date and time. Hard copy, paper or delivered digital Tenders (e.g. DVD) are no longer required and will not be accepted by the Authority. Tenderers are required to submit an electronic online Tender response to 700995378. You must provide one priced copy of your Tender and one unpriced copy. You should ensure that there are no prices present in your unpriced copy.

E2. You must ensure that your DEFFORM 47ST Annex A is signed, scanned and uploaded to AWARD® with your Tender as a PDF. Your Tender must be compatible with MSWord and other MSOffice applications.

E3. Tenderers will receive AWARD® login details no later than 5 working days before the Tender submission date. Once logged into the AWARD® service, uploading and submission instructions will be readily available. Login details will be sent via two separate automatically generated emails. Tenderers should ensure their local mail application settings allow receipt of computer-generated emails.

E4. AWARD® is security accredited to OFFICIAL-SENSITIVE. Material that is protectively marked above this classification must not be uploaded.

E5. If you intend to upload any ITAR or Export Controlled information as part of your Tender, you must notify the Commercial Officer before you upload your Tender to AWARD®.

E6. If you have any difficulty accessing the AWARD® service or if you have any questions with regards to the tendering exercise itself, please contact caroline.razavi750@mod.gov.uk

**Samples**

E7. Where samples are required for evaluation purposes you must be prepared to submit them without charge. You should clearly label samples with the following particulars:

a. your name and address;

b. the Tender Reference Number and due date for return of the Tender; and

c. the Description and Item Number as shown in the Schedule of Requirements.

E8. You should send any samples to the named Commercial Officer after the Tender return date.

E9. The Authority may retain all samples for twelve (12) months from the Tender return date. After this period, the Authority will destroy the samples unless you specifically state you require their return. The Authority may keep samples associated with a successful Tender indefinitely.

E10. Samples that are consumed will not be returned.

**Section F - Conditions of Tendering**

F1. The issue of ITT Documentation or ITT Material is not a commitment by the Authority to place a contract as a result of this ITT or at a later stage. Any expenditure, work or effort undertaken by you prior to an offer and subsequent acceptance of contract, is a matter solely for your commercial judgement. In addition to its legal rights in relation to qualifying contracts, under the Defence Reform Act 2014 the Authority reserves the right to:

a. seek clarification or additional documents in respect of your submission;

b. visit your site;

c. not enter into a contract if you are found guilty of serious misrepresentation in relation to your Tender or the Tender process;

d. re-assess your suitability. For example, where there is a material change of control from supplier selection;

e. reject / negotiate your Tender or part of your Tender;

f. withdraw this ITT at any time, or invite other Tenders on the same or any alternative basis;

g. choose not to award any contract as a result of the current procurement process;

h. award a contract for some of the Contractor Deliverables, unless you specifically oppose this in your Tender or state any minimum order quantities.

F2. The contract will be entered into when the Authority sends written notification of its entry into the contract, either accepting your offer via DEFFORM 159 or by issuing an offer via DEFFORM 8 and you accept via a DEFFORM 10. Written notification will be issued, to the address you provide, on or before the end of the validity period specified in paragraph C4.

**Conforming to the Law**

F3. You must comply with the UK Bribery Act 2010, applicable EU and UK legislation and any equivalent legislation in a third state.

F4. Your attention is drawn to legislation relating to canvassing of a public official, collusive behaviour and bribery. If you act in breach of this legislation your Tender may be disqualified from this procurement. Disqualification will be without prejudice to any civil remedy available to the Authority or any criminal liability that your conduct may attract.

**Fraud and Other Illegal Practices**

F5. You must report any, fraud, bribery, corruption, or any other dishonest irregularity in connection to this tendering exercise to:

Defence Regulatory Reporting Cell Hotline

0800 161 3665 (UK) or

+44 1371 85 4881 (Overseas)

**Conflicts of Interest**

F6. You must notify the Authority immediately of any new Conflicts of Interest (COI) that have arisen or that arise at any point prior to the contract award decision. There may be instances where it is essential that you do not have a conflict of interest.

F7. Where there is an existing or potential Conflict of Interest (COI) you must include a proposed Compliance Regime in your Tender. As a minimum this must include:

a. manner of operation and management;

b. roles and responsibilities;

c. standards for integrity and fair dealing;

d. levels of access to and protection of competitors sensitive information and Government Furnished Information;

e. confidentiality / non-disclosure agreements (e.g. DEFFORM 702);

f. the Authority’s rights of audit; and

g. physical and managerial separation.

Should your Tender be accepted your proposed Compliance Regime will become part of the Contract Conditions and shall be legally binding.

**Government Furnished Assets**

F8. Where the Authority provides Government Furnished Assets (GFA) in support of this procurement, you must include details of the GFA in your Public Store Account and treat it in accordance with Def Stan 05-099. If the Authority decides not to proceed with this procurement, you must seek instructions for the GFA from the named Commercial Officer.

**Publicity Announcement**

F9. The Authority will publish notification of the contract and shall publish contract documents under the FOI Act except where publishing such information would hinder law enforcement; would otherwise be contrary to the public interest; would prejudice the legitimate commercial interest of any person, or might prejudice fair competition in the supply chain. You should complete and return DEFFORM 539A as explained in the DEFFORM 47ST Annex A and associated Appendix 1.

F10. If you wish to make a similar announcement you must seek approval from the named Commercial Officer.

F11. Under no circumstances should you confirm to any Third Party the Authority’s acceptance of an offer of contract prior to either informing the Authority of your acceptance or the Authority’s announcement of the award of contract, whichever occurs first.

**Sensitive Information**

F12. All Central Government Departments and their Executive Agencies and Non Departmental Public Bodies are subject to control and reporting within Government. In particular, they report to the Cabinet Office and HM Treasury for all expenditure. Further, the Cabinet Office has a cross-governmental role delivering overall Government policy on public procurement, including ensuring value for money and related aspects of good procurement practice and answering Freedom of Information requests.

F13. For these purposes, the Authority may share within Government any of your documentation / information (including any that you consider to be confidential and / or commercially sensitive such as specific bid information) submitted by you to the Authority during this procurement. The information will not be disclosed outside Government. You must identify any sensitive material in the DEFFORM 539A (or SC1B Schedule 4 or SC2 Schedule 5) and consent to these terms as part of the tendering process. This allows the MOD to share information with other Government Departments while complying with our obligations to maintain confidentiality.

F14. The Authority reserves the right to disclose on a confidential basis any information it receives from you during the procurement process (including information identified by you as Commercially Sensitive Information in accordance with the provisions of this ITT/ITN) to any third party engaged by the Authority for the specific purpose of evaluating or assisting the Authority in the evaluation of your Tender. In providing such information the you consent to such disclosure.

**Remedies for Actionable Contraventions under the Defence Reform Act 2014**

F15. If you have a Qualifying Defence Contract under the DRA 2014 you should be aware that if you fail to comply with certain aspects of the legislation then the Authority may issue a Compliance Notice to you. If you continue to fail to comply, the Authority may serve you with a Civil Penalty, as provided in the Single Source Contract Regulations 2015. If you believe either a Compliance Notice or a Civil Penalty is unjustified, you may appeal the matter to the independent Single Source Regulations Office.

**Reportable Requirements**

F16. Listed in the DEFFORM 47ST Annex A (Offer) are the Mandatory Declarations. It is a Condition of Tendering that you complete and attach the returns listed in the Annex and, where you select “Yes”, you attach the relevant information.

F17. Failure to complete this part of the Annex in full makes your Tender non-compliant. Additional information provided in response to Appendix 1 may be used to support the Authority’s evaluation of your tender, as detailed in Section D.

F18. If you are an overseas Contractor and your Tender is successful you will be required to provide the name and address of your bank and the relevant bank account number on contract award.

**DEFFORM 47ST Annex A - Edn 07/18**

**Ministry of Defence**

**Tender Ref No. 700995378**

**Tender Submission Document (Offer)**

**To the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland (hereafter called “the Authority”)**

The undersigned Tenderer, having read the ITT Documentation, offers to supply the Contractor Deliverables at the stated price(s), in accordance with any referenced drawings and / or specifications, subject to the Conditions of Tendering. It is agreed that only the Contract Conditions or any amendments issued by the Authority will apply.

|  |
| --- |
| **Applicable Law**  |
| I agree that any contract resulting from this procurement shall be subject to English Law\*Where ‘no’ is selected, Scots Law will apply.  | Yes / No\*  |
| **Value of Tender (excluding VAT)** |
| £...............................................................................................................................................................................................WORDS………………………………………………………………………………………………………………….. |
| **UK Value Added Tax** |
| If registered for Value Added Tax purposes, please insert:a. Registration No ..........................................b.                                                                Total amount of Value Added Tax payable on this Tender (at current rate(s)) £........................... |
| **Location of work (town / city) where the contract will be performed by Prime:**  |
| Where items which are subject of your Tender are not supplied or provided by you, state location in town / city to be performed column (continue on another page if required) |
| Tier 1 Sub-contractor Company Name | Town / city to beperformed | Contractor Deliverables | Estimated Value | SME Yes / No |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
| **Mandatory Declarations (further details are contained in Appendix 1 to DEFFORM 47ST ST Annex A (Offer)):**  | **Tenderer’s Declaration** |
| Is the offer subject to the Authority contracting for all the Contractor Deliverables? | Yes\* / No  |
| Have you completed and attached a Contract Pricing Statement? | Yes / No |
| Is the offer made subject to a Minimum Order Quantity? | Yes\* / No  |
| Are the Contractor Deliverables subject to IPR that has been exclusively or part funded by Private Venture, Foreign Investment or otherwise than by Authority funding? | Yes\* / No  |
| Are the Contractor Deliverables subject to Foreign Export Control and Security Restrictions? If the answer is yes, please complete and attach DEFFORM 528. | Yes\* / No  |
| Have you obtained prior foreign export approval necessary to secure IP user rights for the Authority in Contract Deliverables, including technical data, as determined in the Contract Conditions? | Yes\* / No  |
| Have you provided details of how you willcomply with all regulations relating to the operation of the collection of custom import duties, including the proposed Customs procedures to be used and estimates of duties to be incurred or suspended? | Yes / No |
| Have you completed Form 1686 for sub-contracts? | Yes / No |
| Are you a Small Medium Sized Enterprise (SME)? | Yes / No |
| Have you and your sub-contractors registered with the Prompt Payment Code with regards to SMEs?  | Yes / No |
| Have you completed and attached DEFFORM 539A (Tenderer’s Commercially Sensitive Information Form)? | Yes / No |
| If you have not previously submitted a Statement Relating to Good Standing, or circumstances have changed, have you attached a revised version? | Yes / No / N/A |
| Do the Contractor Deliverables contain Asbestos, as defined by the control of Asbestos Regulations 2012? | Yes\* / No  |
| Have you completed and attached a DEFFORM 68 - Hazardous Articles, Deliverables materials or substances statement?  | Yes\* / No  |
| Do the Contractor Deliverables (including Packaging) use Substances that deplete the Ozone Layer, as defined in Regulation (EC) 1005/2009 (as amended by [EC 744/2010](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010R0744)) of the European Parliament and of the Council.  | Yes\* / No  |
| Have you attached The Bank / Parent Company Guarantee? | Yes\* / No / Not Required |
| Have you complied with the requirements of the Military Aviation Authority Regulatory Articles? | Yes / No / Not Required |
| Have you completed the Project Specific Declarations? | Yes / No / Not Required |
| \*If selecting Yes to any of the above questions, please attach the information detailed in Appendix 1. |
| **Tenderer’s Declaration**  |
| We understand that any misrepresentations may also be the subject of criminal investigation or used as the basis for civil action.  |
| **Dated this ................................. day of .............................................................................................Year ...................** |
| **Signature:**                    **In the capacity of**         **.......................................................................................................**(Must be original)                    (State official position e.g. Director, Manager, Secretary etc.) |
| **Name:** (in BLOCK CAPITALS)**duly authorised to sign this Tender for and on behalf of:**(Tenderer's Name) | **Postal Address:****Telephone No:****Registered Company Number:****Dunn and Bradstreet Number:** |

**Appendix 1 to Annex A (Offer)**

**Edn07/18**

**Information on Mandatory Declaration Returns**

**Part Tender**

1. Under Conditions of Tendering F1, the Authority reserves the right to order some or part of your Tender. If your offer is subject to the Authority contracting for all the Contractor Deliverables, select ‘Yes’ and provide further details in your Tender.

**Minimum Order Quantities**

2. Where your offer is subject to minimum order quantities, select ‘Yes’ and provide further details in your Tender.

**IPR Restrictions**

3. Where the Contractor Deliverables are subject to IPR that has been exclusively or part funded by private venture, foreign investment or otherwise than by Authority funding you must select ‘Yes’ in Annex A (Are the Contractor Deliverables subject to IPR that has been exclusively or part funded by Private Venture, Foreign Investment or otherwise than by Authority funding).

4. If you have answered ‘Yes’ in Annex A (Offer) as directed by paragraph 3 above, you must provide details in your Tender of any Contractor Deliverable which will be, or is likely to be, subject to any IPR restrictions or any other restriction on the Authority’s ability to use or disclose the Contractor Deliverable, including export restrictions. In particular you must identify:

a. any restriction on the provision of information to the Authority; any restriction on disclosure or the use of information by the Authority; any obligations to make payments in respect of IPR, and any Patent or Registered Design (or application for either) or other IPR (including unregistered Design Right) owned or controlled by you or a Third Party;

b. any allegation made against you, whether by claim or otherwise, of an infringement of an Intellectual Property Right (whether a Patent, Registered Design, unregistered Design Right, Copyright or otherwise) or of a breach of confidence, which relates to the performance of any resultant contract or subsequent use by or for the Authority of any Contractor Deliverables;

c. the nature of any allegation referred to under sub-paragraph 4.b., including any obligation to make payments in respect of the intellectual property right any confidential information and / or;

d. any action you need to take or the Authority is required to take to deal with the consequences of any allegation referred to under sub-paragraph 4.b.

5. You must, when requested, give the Authority details of every restriction and obligation referred to in paragraph 4. The Authority will not acknowledge any such restriction unless so notified under paragraph 4 or as otherwise agreed under any resultant Contract. You must also provide, on request, any information required for authorisation to be given under Section 2 of the Defence Contracts Act 1958.

6. If you have previously provided information under paragraphs 4 and 5 you can provide details of the previous notification, updated as necessary to confirm their validity.

**Notification of Foreign Export Control Restrictions**

7.
If, in the performance of the Contract, you need to import into the UK or export out of the UK anything not supplied by or on behalf of the Authority and for which a UK import or export licence is required, you will be responsible for applying for the licence. The Authority will provide you with all reasonable assistance in obtaining any necessary UK import or export licence.

8. In respect of any Contractor Deliverables, likely to be required for the performance of any resultant contract, you must provide the following information in your Tender:

a. Whether all or part of any Contractor Deliverables are or will be subject to:

(1) a non-UK export licence, authorisation or exemption; or

(2) any other related transfer control that restricts or will restrict end use, end user, re-transfer or disclosure.

You must complete DEFFORM 528 (or other mutually agreed alternative format) in respect of any Contractor Deliverables identified at paragraph 8 and return it as part of your Tender. If you have previously provided this information you can provide details of the previous notification and confirm the validity.

9. You must use reasonable endeavours to obtain sufficient information from your potential supply chain to enable a full response to paragraph 8. If you are unable to obtain

adequate information, you must state this in your Tender. If you become aware at any time during the procurement that all or part of any proposed Contractor Deliverable is likely to become subject to a non-UK Government Control through a Government-to-Government sale only, you must inform the Authority immediately by updating your previously submitted DEFFORM 528 or completing a new DEFFORM 528.

10. This does not include any Intellectual Property specific restrictions mentioned in paragraph 4.

11. You must notify the named Commercial Officer immediately if you are unable for whatever reason to abide by any restriction of the type referred to in paragraph 8.

12. Should you propose the supply of Contractor Deliverables of US origin the export of which from the USA is subject to control under the US International Traffic in Arms Regulations (ITAR), you must include details on the DEFFORM 528. This will allow the Authority to make a decision whether the export can or cannot be made under the US-UK Defense Trade Co-operation Treaty. The Authority shall then convey its decision to you. If the Authority decides that use of the Treaty for the export is permissible, it is your responsibility to make a final decision whether you want to use that route for the export concerned if you are awarded the contract.

**Import Duty**

13. European Union (EU) legislation permits the use of various procedures to suspend customs duties.

14. For the purpose of this procurement, for any deliverables not yet imported into the EU, you are required to provide details of your plans to address customs compliance, including the Customs procedures to be applied (together with the procedure code) and the estimated Import Duty to be incurred and / or suspended.

15. You should note that it is your responsibility to ensure compliance with all regulations relating to the operation of the accounting for import duties. This includes but is not limited to obtaining the appropriate Her Majesty’s Revenue & Customs (HMRC) authorisations.

**Sub-contracts Form 1686**

16. [Form 1686](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/367494/Contractual_Process_-_Appendix_5_form.doc) (also known as Appendix 5) is to be used in all circumstances where contractors wish to place a sub-contract with a contractor where the release of OFFICIAL-SENSITIVE information is involved. The process will require submission of the single page document either directly to the MOD Project Team or, where specified, to the DE&S Security Advice Centre. You can find further information in the [Security Policy Framework – Contractual Process](https://www.gov.uk/government/publications/security-policy-framework).

**Small and Medium Enterprises**

17. The Authority is committed to supporting the Government’s small and medium-sized enterprise (SME) initiative; its ambitious target is that £1 in every £3 that the Government spends should be with small businesses by 2020. Our goal is that 25% of Authority spending should be spent with SMEs by 2020; this applies to the money which the Authority spends directly with SMEs, and through the supply chain. The Authority uses the European Commission definition of SME.

18. A key aspect of the Government’s SME Policy is ensuring that its suppliers throughout the supply chain are paid promptly.  All suppliers to the Authority and their sub-contractors are encouraged to make their own commitment and register with the [Prompt Payment Code](http://www.promptpaymentcode.org.uk/).

19. Suppliers are also encouraged to work with the Authority to support the Authority’s SME initiative. Information on the Authority’s purchasing arrangements, our commercial policy priorities and our SME policy can be found at [Gov.UK](https://www.gov.uk/government/organisations/ministry-of-defence/about/procurement).

20. The opportunity also exists for Tenderers to advertise any sub-contract valued at over £10,000 in the MOD Contracts Bulletin and further details can be obtained directly from:

BiP Solutions Ltd

Web address: [www.contracts.mod.uk](http://www.contracts.mod.uk/feed)

Tel No: 0845 270 7099

**Transparency, Freedom of Information and Environmental Information Regulations**

21. You should be aware that the contents of any resultant Contract may be published in line with government policy set out in the Prime Minister’s letter of May 2010 ([Government Transparency and Accountability](https://www.gov.uk/government/policies/government-transparency-and-accountability)) and the information contained within SC2 Conditions of Contract Clause.

22. Before publishing the Contract, the Authority will redact any information which is exempt from disclosure under the Freedom of Information Act 2000 (“the FOIA”) or the Environmental Information Regulations 2002 (“the EIR”).

23. You should complete the attached Tenderer’s Commercially Sensitive Information Form (DEFFORM 539A or SC1B Schedule 4 or SC2 Schedule 5) explaining which parts of your Tender you consider to be commercially sensitive. This includes providing a named individual who can be contacted with regard to FOIA and EIR.

24. You should note that, while your views will be taken into consideration, the ultimate decision whether to publish or disclose information lies with the Authority. You are advised to provide as much detail as possible on the form. It is highly unlikely that a Tender will be exempt from disclosure in its entirety. Should the Authority decide to publish or disclose information against your wishes, you will be given prior notification.

**Electronic Purchasing**

25. You must note that use of the [Contracting, Purchasing and Finance (CP&F)](https://www.gov.uk/government/publications/mod-contracting-purchasing-and-finance-e-procurement-system) electronic procurement tool is a mandatory requirement for any resultant contract awarded following this Tender. By submitting this Tender you agree to electronic payment. Please feel free to consult the service provider on connectivity options. Failure to accept electronic payment will result in your Tender being non-compliant.

**Change of Circumstances**

26. If you have not previously submitted a Statement Relating to Good Standing or circumstances have changed please, select ‘Yes’ and submit a Statement Relating to Good Standing with your Tender.

**Asbestos, Hazardous Items and Depletion of the Ozone Layer**

27. The Authority is required to report any items that use asbestos, that are hazardous or where there is an impact on the Ozone. Where any Contractor Deliverables fall into one of these categories select ‘Yes’ and provide further details in your Tender.

**Military Aviation Authority (MAA)**

28.        In July 2011 the Military Aviation Authority (MAA) launched a new set of Regulatory Publications. Key to these is the Regulatory Articles (RA), which prescribe Acceptable Means of Compliance (AMC) for each separate Regulation. Where there is a MAA requirement and you wish to propose an alternative means of compliance you must obtain agreement in principle from the MAA (through the Project team) in advance of submitting your Tender. AMC are strongly recommended practices and a justification will be required if they are not followed. You must consult the MAA where there is more than one AMC. You must confirm how you intend to comply with the RA, and the date you consulted with the MAA.

**Bank or Parent Company Guarantee**

29.        A parent Company or bank Guarantee may be required in the form of DEFFORM 24 / 24A as appropriate. No contract will be awarded until a suitable Parent Company or Bank Guarantee, is in place.

**The Armed Forces Covenant**

30. The Armed Forces Covenant is a promise from the nation to those who serve, or who have served, and their families, to ensure that they are treated fairly and are not disadvantaged in their day to day lives as a result of their service.

31. The Covenant is based on two principles:

a. the Armed Forces community would not face disadvantages when compared to other citizens in the provision of public and commercial services; and

b. special consideration is appropriate in some cases, especially for those who have given most such as the injured and the bereaved.

The Authority encourages all Tenderers, and their suppliers, to sign the Armed Forces Covenant, declaring their support for the Armed Forces community by displaying the values and behaviours set out therein.

32. [The Armed Forces Covenant](https://www.gov.uk/government/policies/armed-forces-covenant) provides guidance on the various ways you can demonstrate your support through your Covenant pledges and how by engaging with the Covenant and Armed Forces such as employing Reservists, a company or organization can also see real benefits in their business.

33. If you wish to register your support you can provide a point of contact for your company on this issue to the Armed Forces Covenant Team at the address below, so that the MOD can alert you to any events or initiatives in which you may wish to participate. The Covenant Team can also provide any information you require in addition to that included on the website.

Email address: employerrelations@rfca.mod.uk

Address:         Defence Relationship Management

Ministry of Defence

Holderness House

51-61 Clifton Street

London, EC2A 4EY

34. Paragraphs 30 – 33 above are not a condition of working with the Authority now or in the future, nor will this issue form any part of the tender review, contract award procedure or any resulting contract. However, the Authority very much hopes you will want to provide your support.

**Standardised Contracting Terms**

**SC2**

**GENERAL CONDITIONS**

**1.** **General**

a. The defined terms in the Contract shall be as set out in Schedule 1.

b. The Contractor shall comply with all applicable Legislation, whether specifically referenced in this Contract or not.

c. The Contractor warrants and represents, that:

(1) it has the full capacity and authority to enter into, and to exercise its rights and perform its obligations under, the Contract;

(2) from the Effective Date of Contract and for so long as the Contract remains in force it shall give the Authority Notice of any litigation, arbitration (unless expressly prohibited from doing so in accordance with the terms of the arbitration), administrative or adjudication or mediation proceedings before any court, tribunal, arbitrator, administrator or adjudicator or mediator or relevant authority against itself or a Subcontractor which would adversely affect the Contractor's ability to perform its obligations under the Contract;

(3) as at the Effective Date of Contract no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;

(4) for so long as the Contract remains in force it shall give the Authority Notice of any proceedings or other steps that have been taken but not discharged (nor to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues.

d. Unless the context otherwise requires:

(1) The singular includes the plural and vice versa, and the masculine includes the feminine and vice versa.

(2) The words “include”, “includes”, “including” and “included” are to be construed as if they were immediately followed by the words “without limitation”, except where explicitly stated otherwise.

(3) The expression “person” means any individual, firm, body corporate, unincorporated association or partnership, government, state or agency of a state or joint venture.

(4) References to any statute, enactment, order, regulation, or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation, or instrument as amended, supplemented, replaced or consolidated by any subsequent statute, enactment, order, regulation, or instrument.

(5) The heading to any Contract provision shall not affect the interpretation of that provision.

(6) Any decision, act or thing which the Authority is required or authorised to take or do under the Contract may be taken or done only by the person (or their nominated deputy) authorised in Schedule 3 (Contract Data Sheet) to take or do that decision, act, or thing on behalf of the Authority.

(7) Unless excluded within the Conditions of the Contract or required by law, references to submission of documents in writing shall include electronic submission.

**2.** **Duration of Contract**

This Contract comes into effect on the Effective Date of Contract and will expire automatically on the date identified in Schedule 3 (Contract Data Sheet) unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated.

**3.** **Entire Agreement**

This Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes, and neither Party has relied upon, any prior negotiations, representations and undertakings, whether written or oral, except that this condition shall not exclude liability in respect of any fraudulent misrepresentation.

**4.** **Governing Law**

a. Subject to clause 4.d, the Contract shall be considered as a contract made in England and subject to English Law.

b. Subject to clause 4.d and 40 (Dispute Resolution) and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of the Courts of England to resolve, and the laws of England to govern, any actions proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.

c. Subject to clause 4.d any dispute arising out of or in connection with the Contract shall be determined within the English jurisdiction and to the exclusion of all other jurisdictions save that other jurisdictions may apply solely for the purpose of giving effect to this condition 4 and for the enforcement of any judgment, order or award given under English jurisdiction.

d. If the Parties agree pursuant to the Contract that Scots Law should apply then the following amendments shall apply to the Contract:

(1) Clause 4.a, 4.b and 4.c shall be amended to read:

“a. The Contract shall be considered as a contract made in Scotland and subject to Scots Law.

b. Subject to condition 40 (Dispute Resolution) and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of the Courts of Scotland to resolve, and the laws of Scotland to govern, any actions, proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.

c. Any dispute arising out of or in connection with the Contract shall be determined within the Scottish jurisdiction and to the exclusion of all other jurisdictions save that other jurisdictions may apply solely for the purpose of giving effect to this condition 4 and for the enforcement of any judgment, order or award given under Scottish jurisdiction.”

Clause 40.b shall be amended to read:

“In the event that the dispute or claim is not resolved pursuant to clause 40.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this clause 40.b shall be governed by the Arbitration (Scotland) Act 2010. The seat of the arbitration shall be Scotland. For the avoidance of doubt, for the purpose of arbitration the tribunal shall have the power to make provisional awards pursuant to Rule 53 of the Scottish Arbitration Rules, as set out in Schedule 1 to the Arbitration (Scotland) Act 2010.”

e. Each Party warrants to each other that entry into the Contract does not, and the performance of the Contract will not, in any way violate or conflict with any provision of law, statute, rule, regulation, judgement, writ, injunction, decree or order applicable to it. Each Party also warrants that the Contract does not conflict with or result in a breach or termination of any provision of, or constitute a default under, any mortgage, contract or other liability, charge or encumbrance upon any of its properties or other assets.

f. Each Party agrees with each other Party that the provisions of this condition 4 shall survive any termination of the Contract for any reason whatsoever and shall remain fully enforceable as between the Parties notwithstanding such a termination.

g. Where the Contractor’s place of business is not in England or Wales (or Scotland where the Parties agree pursuant to this Contract that Scots Law should apply), the Contractor irrevocably appoints the solicitors or other persons in England and Wales (or Scotland where the Parties agree pursuant to the Contract that Scots Law should apply) detailed in Schedule 3 (Contract Data Sheet) as its agents to accept on its behalf service of all process and other documents of whatever description to be served on the Contractor in connection with any litigation or arbitration within the English jurisdiction (or Scottish jurisdiction where the Parties agree pursuant to this Contract that Scots Law should apply) arising out of or relating to the Contract or any issue connected therewith.

**5.** **Precedence**

a. If there is any inconsistency between the different provisions of the Contract the inconsistency shall be resolved according to the following descending order of precedence:

(1) Conditions 1 - 44 (and 45 - 47, if included in this Contract) of the Conditions of the Contract shall be given equal precedence with Schedule 1 (Definitions of Contract) and Schedule 3 (Contract Data Sheet);

(2) Schedule 2 (Schedule of Requirements) and Schedule 8 (Acceptance Procedure);

(3) the remaining Schedules; and

(4) any other documents expressly referred to in the Contract.

b. If either Party becomes aware of any inconsistency within or between the documents referred to in clause 5.a such Party shall notify the other Party forthwith and the Parties will seek to resolve that inconsistency on the basis of the order of precedence set out in clause 5.a. Where the Parties fail to reach agreement, and if either Party considers the inconsistency to be material to its rights and obligations under the Contract, then the matter will be referred to the dispute resolution procedure in accordance with condition 40 (Dispute Resolution).

**6.** **Amendments to Contract**

a. Except as provided in condition 31 all amendments to this Contract shall be serially numbered, in writing, issued only by the Authority’s Representative (Commercial), and agreed by both Parties.

b. Where the Authority or the Contractor wishes to introduce a change which is not minor or which is likely to involve a change to the Contract Price, the provisions of Schedule 4 (Contract Change Control Procedure) shall apply. The Contractor shall not carry out any work until any necessary change to the Contract Price has been agreed and a written amendment in accordance with clause 6.a above has been issued.

**7.** **Variations to Specification**

a. The Authority’s Representative may, by Notice (following consultation with the Contractor as necessary), alter the Specification as from a date agreed by both Parties and to the extent specified by the Authority, provided that any such variations shall be limited to the extent that they do not alter the fit, form, function or characteristics of the Contractor Deliverables to be supplied under the Contract. The Contractor shall ensure that the Contractor Deliverables take account of any such variations. Such variations shall not require formal amendment of the Contract in accordance with the process set out in condition 6 (Amendments to Contract) and shall be implemented upon receipt, or at the date specified in the Authority’s Notice, unless otherwise specified.

b. Any variations that cause a change to:

(1) fit, form, function or characteristics of the Contractor Deliverables;

(2) the cost;

(3) Delivery Dates;

(4) the period required for the production or completion; or

(5) other work caused by the alteration,

shall be the subject to condition 6 (Amendments to Contract). Each amendment under condition 6 shall be classed as a formal change.

**8.** **Authority Representatives**

a. Any reference to the Authority in respect of:

(1) the giving of consent;

(2) the delivering of any Notices; or

(3) the doing of any other thing that may reasonably be undertaken by an individual acting on behalf of the Authority, shall be deemed to be references to the Authority's Representatives in accordance with this condition 8.

b. The Authority’s Representatives detailed in Schedule 3 (Contract Data Sheet) (or their nominated deputy) shall have full authority to act on behalf of the Authority for all purposes of the Contract. Unless notified in writing before such act or instruction, the Contractor shall be entitled to treat any act of the Authority’s Representatives which is authorised by the Contract as being expressly authorised by the Authority and the Contractor shall not be required to determine whether authority has in fact been given.

c. In the event of any change to the identity of the Authority’s Representatives, the Authority shall provide written confirmation to the Contractor, and shall update Schedule 3 (Contract Data Sheet) in accordance with condition 6 (Amendments to Contract).

**9.** **Severability**

a. If any provision of the Contract is held to be invalid, illegal or unenforceable to any extent then:

(1) such provision shall (to the extent that it is invalid, illegal or unenforceable) be given no effect and shall be deemed not to be included in the Contract but without invalidating any of the remaining provisions of the Contract; and

(2) the Parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid, illegal or unenforceable provision.

**10.** **Waiver**

a. No act or omission of either Party shall by itself amount to a waiver of any right or remedy unless expressly stated by that Party in writing. In particular, no reasonable delay in exercising any right or remedy shall by itself constitute a waiver of that right or remedy.

b. No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy.

**11.** **Assignment of Contract**

Neither Party shall be entitled to assign the Contract (or any part thereof) without the prior written consent of the other Party.

**12.** **Third Party Rights**

Notwithstanding anything to the contrary elsewhere in the Contract, no right is granted to any person who is not a Party to the Contract to enforce any term of the Contract in its own right and the Parties to the Contract declare that they have no intention to grant any such right.

**13.** **Transparency**

a. Subject to clause 13.b but notwithstanding condition 14 (Disclosure of Information), the Contractor understands that the Authority may publish the Transparency Information to the general public. The Contractor shall assist and cooperate with the Authority to enable the Authority to publish the Transparency Information.

b. Before publishing the Transparency Information to the general public in accordance with clause 13.a, the Authority shall redact any Information that would be exempt from disclosure if it was the subject of a request for Information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, and any Information which has been acknowledged by the Authority at Schedule 5 – Contractor’s Commercially Sensitive Information.

c. The Authority may consult with the Contractor before redacting any Information from the Transparency Information in accordance with clause 13.b. The Contractor acknowledges and accepts that its representations on redactions during consultation may not be determinative and that the decision whether to redact Information is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

d. For the avoidance of doubt, nothing in this condition 13 shall affect the Contractor’s rights at law.

**14.** **Disclosure of Information**

a. Subject to clauses 14.d, 14.e, 14.h and condition 13 each Party:

(1) shall treat in confidence all Information it receives from the other;

(2) shall not disclose any of that Information to any third party without the prior written consent of the other Party, which consent shall not unreasonably be withheld, except that the Contractor may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of the Contract;

(3) shall not use any of that Information otherwise than for the purpose of the Contract; and

(4) shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under the Contract.

b. The Contractor shall take all reasonable precautions necessary to ensure that all Information disclosed to the Contractor by or on behalf of the Authority under or in connection with the Contract:

(1) is disclosed to its employees and Subcontractors, only to the extent necessary for the performance of the Contract; and

(2) is treated in confidence by them and not disclosed except with the prior written consent of the Authority or used otherwise than for the purpose of performing work or having work performed for the Authority under the Contract or any subcontract.

c. The Contractor shall ensure that its employees are aware of the Contractor’s arrangements for discharging the obligations at clauses 14.a and 14.b before receiving Information and shall take such steps as may be reasonably practical to enforce such arrangements.

d. Clauses 14.a and 14.b shall not apply to any Information to the extent that either Party:

(1) exercises rights of use or disclosure granted otherwise than in consequence of, or under, the Contract;

(2) has the right to use or disclose the Information in accordance with other Conditions of the Contract; or

(3) can show:

(a) that the Information was or has become published or publicly available for use otherwise than in breach of any provision of the Contract or any other agreement between the Parties;

(b) that the Information was already known to it (without restrictions on disclosure or use) prior to receiving the Information under or in connection with the Contract;

(c) that the Information was received without restriction on further disclosure from a third party which lawfully acquired the Information without any restriction on disclosure; or

(d) from its records that the same Information was derived independently of that received under or in connection with the Contract;

provided that the relationship to any other Information is not revealed.

e. Neither Party shall be in breach of this condition where it can show that any disclosure of Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the Party making the disclosure shall ensure that the recipient of the Information is made aware of and asked to respect its confidentiality. Such disclosure shall in no way diminish the obligations of the Parties under this condition.

f. The Authority may disclose the Information:

(1) on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body, which shall include: disclosure to the Cabinet Office and/or HM Treasury for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes;

(2) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

(3) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

(4) on a confidential basis to a professional adviser, consultant or other person engaged by any of the entities defined in Schedule 1 (including benchmarking organisations) for any purpose relating to or connected with this Contract;

(5) on a confidential basis for the purpose of the exercise of its rights under the Contract; or

(6) on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under the Contract;

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this condition.

g. Before sharing any Information in accordance with clause 14.f, the Authority may redact the Information. Any decision to redact Information made by the Authority shall be final.

h. The Authority shall not be in breach of the Contract where disclosure of Information is made solely and to the extent necessary to comply with the Freedom of Information Act 2000 (the “Act”) or the Environmental Information Regulations 2004 (the “Regulations”). To the extent permitted by the time for compliance under the Act or the Regulations, the Authority shall consult the Contractor where the Authority is considering the disclosure of Information under the Act or the Regulations and, in any event, shall provide prior notification to the Contractor of any decision to disclose the Information. The Contractor acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose Information in order to comply with the Act or the Regulations is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Act or the Regulations.

i. Nothing in this condition shall affect the Parties' obligations of confidentiality where Information is disclosed orally in confidence.

**15.** **Publicity and Communications with the Media**

The Contractor shall not and shall ensure that any employee or Subcontractor shall not communicate with representatives of the press, television, radio or other media on any matter concerning the Contract unless the Authority has given its prior written consent.

**16.** **Change of Control of Contractor**

a. The Contractor shall notify the Representative of the Authority at the address given in clause 16.b, as soon as practicable, in writing of any intended, planned or actual change in control of the Contractor. The Contractor shall not be required to submit any notice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the conduct of the Contractor in the UK or other jurisdictions where the Contractor may be subject to legal sanction arising from issuing such a notice.

b. Each notice of change of control shall be taken to apply to all contracts with the Authority. Notices shall be submitted to:

Mergers & Acquisitions Section

Strategic Supplier Management Team

Spruce 3b # 1301

MOD Abbey Wood,

Bristol, BS34 8JH

The Representative of the Authority shall consider the notice of change of control and advise the Contractor in writing of any concerns the Authority may have. Such concerns may include but are not limited to potential threats to national security, the ability of the Authority to comply with its statutory obligations or matters covered by the declarations made by the Contractor prior to Contract Award.

c. The Authority may terminate the Contract by giving written notice to the Contractor within six months of the Authority being notified in accordance with clause 16.a. The Authority shall act reasonably in exercising its right of termination under this condition.

d. If the Authority exercises its right to terminate in accordance with clause 16.c the Contractor shall be entitled to request the Authority to consider making a payment representing any commitments, liabilities or expenditure incurred by the Contractor in connection with the Contract up to the point of termination. Such commitments, liabilities or expenditure shall be reasonably and properly chargeable by the Contractor, and shall otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract. Any payment under this clause 16.d must be fully supported by documentary evidence. The decision whether to make such a payment shall be at the Authority’s sole discretion.

e. Notification by the Contractor of any intended, planned or actual change of control shall not prejudice the existing rights of the Authority or the Contractor under the Contract nor create or imply any rights of either the Contractor or the Authority additional to the Authority’s rights set out in this condition.

**17.** **Environmental Requirements**

The Contractor shall in all its operations to perform the Contract, adopt a sound proactive environmental approach that identifies, considers, and where possible, mitigates the environmental impacts of its supply chain. The Contractor shall provide evidence of so doing to the Authority on demand.

**18.** **Contractor’s Records**

a. The Contractor and its sub-contractors shall maintain all records specified in and connected with the Contract (expressly or otherwise) and make them available to the Authority when requested on reasonable notice.

b. The Contractor and its sub-contractors shall also permit access to relevant records that relate to the contractual obligations to supply goods or services under the Contract, held by or controlled by them and reasonably required by the Comptroller and Auditor General, their staff and any appointed representative of the National Audit Office, and provide such explanations and information as reasonably necessary for the following purposes:

(1) to enable the National Audit Office to carry out the Authority’s statutory audits and to examine and/or certify the Authority’s annual and interim report and accounts; and

(2) to enable the National Audit Office to carry out an examination pursuant to Part II of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.

c. With regard to the records made available to the Authority under clause 1 of this Condition, and subject to the provisions of SC2 conditions of contract clause 14, the Contractor shall permit records to be examined and if necessary copied, by the Authority, or Representative of the Authority, as the Authority may require.

d. Unless the Contract specifies otherwise the records referred to in this Condition shall be retained for a period of at least 6 years from:

(1) the end of the Contract term;

(2) termination of the Contract; or

(3) the final payment

whichever occurs latest.

**19.** **Notices**

a. A Notice served under the Contract shall be:

(1) in writing in the English Language;

(2) authenticated by signature or such other method as may be agreed between the Parties;

(3) sent for the attention of the other Party’s Representative, and to the address set out in Schedule 3 (Contract Data Sheet);

(4) marked with the number of the Contract; and

(5) delivered by hand, prepaid post (or airmail), facsimile transmission or, if agreed in Schedule 3 (Contract Data Sheet), by electronic mail.

b. Notices shall be deemed to have been received:

(1) if delivered by hand, on the day of delivery if it is the recipient’s Business and otherwise on the first Business Day of the recipient immediately following the day of delivery;

(2) if sent by prepaid post, on the fourth Business Day (or the tenth Business Day in the case of airmail) after the day of posting;

(3) if sent by facsimile or electronic means:

(a) if transmitted between 09:00 and 17:00 hours on a Business Day (recipient’s time) on completion of receipt by the sender of verification of the transmission from the receiving instrument; or

(b) if transmitted at any other time, at 09:00 on the first Business Day (recipient’s time) following the completion of receipt by the sender of verification of transmission from the receiving instrument.

**20.** **Progress Monitoring, Meetings and Reports**

a. The Contractor shall attend progress meetings at the frequency or times (if any) specified in Schedule 3 (Contract Data Sheet) and shall ensure that its Contractor’s Representatives are suitably qualified to attend such meetings.

b. The Contractor shall submit progress reports to the Authority’s Representatives at the times and in the format (if any) specified in Schedule 3 (Contract Data Sheet). The reports shall detail as a minimum:

(1) performance/Delivery of the Contractor Deliverables;

(2) risks and opportunities;

(3) any other information specified in Schedule 3 (Contract Data Sheet); and

(4) any other information reasonably requested by the Authority.

**SUPPLY OF CONTRACTOR DELIVERABLES**

**21.** **Supply of Contractor Deliverables and Quality Assurance**

a. The Contractor shall provide the Contractor Deliverables to the Authority, in accordance with the Schedule of Requirements and the Specification, and shall allocate sufficient resource to the provision of the Contractor Deliverables to enable it to comply with this obligation.

b. The Contractor shall:

(1) comply with any applicable quality assurance requirements specified in Schedule 3 (Contract Data Sheet) in providing the Contractor Deliverables; and

(2) discharge its obligations under the Contract with all due skill, care, diligence and operating practice by appropriately experienced, qualified and trained personnel.

c. The provisions of clause 21.b. shall survive any performance, acceptance or payment pursuant to the Contract and shall extend to any remedial services provided by the Contractor.

d. The Contractor shall:

(1) observe, and ensure that the Contractor’s Team observe, all health and safety rules and regulations and any other security requirements that apply at any of the Authority’s premises;

(2) notify the Authority as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Contractor Deliverables; and

(3) before the date on which the Contractor Deliverables are to start, obtain, and at all times maintain, all necessary licences and consents in relation to the Contractor Deliverables.

**22.** **Marking of Contractor Deliverables**

a. Each Contractor Deliverable shall be marked in accordance with the requirements specified in Schedule 3 (Contract Data Sheet), if no such requirement is specified, the Contractor shall mark each Contractor Deliverable clearly and indelibly in accordance with the requirements of the relevant DEF-STAN 05-132 as specified in the contract or specification. In the absence of such requirements, the Contractor Deliverables shall be marked with the MOD stock reference, NATO Stock Number (NSN) or alternative reference number specified in Schedule 2 (Schedule of Requirements).

b. Any marking method used shall not have a detrimental effect on the strength, serviceability or corrosion resistance of the Contractor Deliverables.

c. The marking shall include any serial numbers allocated to the Contractor Deliverable.

d. Where because of its size or nature it is not possible to mark a Contractor Deliverable with the required particulars, the required information should be included on the package or carton in which the Contractor Deliverable is packed, in accordance with condition 23 (Packaging and Labelling (excluding Contractor Deliverables containing Munitions)).

**23.** **Packaging and Labelling (excluding Contractor Deliverables containing Munitions)**

a. Packaging responsibilities are as follows:

(1) The Contractor shall be responsible for providing Packaging which fully complies with the requirements of the Contract.

(2) The Authority shall indicate in the Contract the standard or level of Packaging required for each Contractor Deliverable, including the PPQ. If a standard or level of Packaging (including the PPQ) is not indicated in the Contract, the Contractor shall request such instructions from the Authority before proceeding further.

(3) The Contractor shall ensure all relevant information necessary for the effective performance of the Contract is made available to all subcontractors.

(4) Where the Contractor or any of their subcontractors have concerns relating to the appropriateness of the Packaging design and or MPL prior to manufacture or supply of the Contractor Deliverables they shall use DEFFORM 129B to feedback these concerns to the Contractor or Authority, as appropriate.

b. The Contractor shall supply Commercial Packaging meeting the standards and requirements of Def Stan 81-041 (Part 1). In addition the following requirements apply:

(1) The Contractor shall provide Packaging which:

(a) will ensure that each Contractor Deliverable may be transported and delivered to the consignee named in the Contract in an undamaged and serviceable condition; and

(b) is labelled to enable the contents to be identified without need to breach the package; and

(c) is compliant with statutory requirements and this Condition.

(2) The Packaging used by the Contractor to supply identical or similar Contractor Deliverables to commercial customers or to the general public (i.e. point of sale packaging) will be acceptable, provided that it complies with the following criteria:

(a) reference in the Contract to a PPQ means the quantity of a Contractor Deliverable to be contained in an individual package, which has been selected as being the most suitable for issue(s) to the ultimate user;

(b) Robust Contractor Deliverables, which by their nature require minimal or no packaging for commercial deliveries, shall be regarded as "PPQ packages" and shall be marked in accordance with Clauses 23.i to 23.l. References to "PPQ packages" in subsequent text shall be taken to include Robust Contractor Deliverables; and

(c) for ease of handling, transportation and delivery, packages which contain identical Contractor Deliverables may be bulked and overpacked, in accordance with clauses 23.i to 23.k.

c. The Contractor shall ascertain whether the Contractor Deliverables being supplied are, or contain, Dangerous Goods, and shall supply the Dangerous Goods in accordance with:

(1) The Health and Safety At Work Act 1974 (as amended);

(2) The Classification Hazard Information and Packaging for Supply Regulations (CHIP4) 2009 (as amended);

(3) The REACH Regulations 2007 (as amended); and

(4) The Classification, Labelling and Packaging Regulations (CLP) 2009 (as amended).

d. The Contractor shall package the Dangerous Goods as limited quantities, excepted quantities or similar derogations, for UK or worldwide shipment by all modes of transport in accordance with the regulations relating to the Dangerous Goods and:

(1) The Safety Of Lives At Sea Regulations (SOLAS) 1974 (as amended); and

(2) The Air Navigation (Amendment) Order 2019.

e. As soon as possible, and in any event no later than one month before delivery is due, the Contractor shall provide a Safety Data Sheet in respect of each Dangerous Good in accordance with the REACH Regulations 2007 (as amended) and the Health and Safety At Work Act 1974 (as amended) and in accordance with condition 24 (Supply of Hazardous Materials or Substances in Contractor Deliverables).

f. The Contractor shall comply with the requirements for the design of MLP which include clauses 23.f and 23.g as follows:

(1) Where there is a requirement to design UK or NATO MLP, the work shall be undertaken by an MPAS registered organisation, or one that although non-registered is able to demonstrate to the Authority that its quality systems and military package design expertise are of an equivalent standard.

(a) The MPAS certification (for individual designers) and registration (for organisations) scheme details are available from:

DES SEOC SCP-SptEng-Pkg

MOD Abbey Wood

Bristol, BS34 8JH

Tel. +44(0)30679-35353

DESSEOCSCP-SptEng-PKg@mod.uk

(b) The MPAS Documentation is also available on the DStan website.

(2) MLP shall be designed to comply with the relevant requirements of Def Stan 81-041, and be capable of meeting the appropriate test requirements of Def Stan 81-041 (Part 3). Packaging designs shall be prepared on a SPIS, in accordance with Def Stan 81-041 (Part 4).

(3) The Contractor shall ensure a search of the SPIS index (the ‘SPIN’) is carried out to establish the SPIS status of each requirement (using DEFFORM 129a ‘Application for Packaging Designs or their Status’).

(4) New designs shall not be made where there is an existing usable SPIS, or one that may be easily modified.

(5) Where there is a usable SFS, it shall be used in place of a SPIS design unless otherwise stated by the Contract. When an SFS is used or replaces a SPIS design, the Contractor shall upload this information on to SPIN in Adobe PDF.

(6) All SPIS, new or modified (and associated documentation), shall, on completion, be uploaded by the Contractor on to SPIN. The format shall be Adobe PDF.

(7) Where it is necessary to use an existing SPIS design, the Contractor shall ensure the Packaging manufacturer is a registered organisation in accordance with clause 23.f(1) above, or if un-registered, is compliant with MPAS ANNEX A Supplement (Code) M. The Contractor shall ensure, as far as possible, that the SPIS is up to date.

(8) The documents supplied under clause 23.f(6) shall be considered as a contract data requirement and be subject to the terms of DEFCON 15 and DEFCON 21.

g. Unless otherwise stated in the Contract, one of the following procedures for the production of new or modified SPIS designs shall be applied:

(1) If the Contractor or their subcontractor is the PDA they shall:

(a) On receipt of instructions received from the Authority’s representative nominated in Box 2 of DEFFORM 111 at Annex A to Schedule 3 (Contract Data Sheet), prepare the required package design in accordance with clause 23.f.

(b) Where the Contractor or their subcontractor is registered they shall, on completion of any design work, provide the Authority with the following documents electronically:

i. a list of all SPIS which have been prepared or revised against the Contract; and

ii. a copy of all new / revised SPIS, complete with all continuation sheets and associated drawings, where applicable, to be uploaded onto SPIN.

(c) Where the PDA is not a registered organisation, then they shall obtain approval for their design from a registered organisation before proceeding, then follow clause 23.g(1)(b).

(2) Where the Contractor or their subcontractor is not the PDA and is un-registered, they shall not produce, modify, or update SPIS designs. They shall obtain current SPIS design(s) from the Authority or a registered organisation before proceeding with manufacture of Packaging. To allow designs to be provided in ample time, they should apply for SPIS designs as soon as practicable.

(3) Where the Contractor or their subcontractor is un-registered and has been given authority to produce, modify, and update SPIS designs by the Contract, he shall obtain approval for their design from a registered organisation using DEFFORM 129a before proceeding, then follow clause 23.g(1)(b).

(4) Where the Contractor or their subcontractor is not a PDA but is registered, he shall follow clauses 23.g(1)(a) and 23.g(1)(b).

h. If special jigs, tooling etc., are required for the production of MLP, the Contractor shall obtain written approval from the Commercial Officer before providing them. Any approval given will be subject to the terms of DEFCON 23 (SC2) or equivalent condition, as appropriate.

i. In addition to any marking required by international or national legislation or regulations, the following package labelling and marking requirements apply:

(1) If the Contract specifies UK or NATO MPL, labelling and marking of the packages shall be in accordance with Def Stan 81-041 (Part 6) and this Condition as follows:

(a) Labels giving the mass of the package, in kilograms, shall be placed such that they may be clearly seen when the items are stacked during storage.

(b) Each consignment package shall be marked with details as follows:

i. name and address of consignor;

ii. name and address of consignee (as stated in the Contract or order);

iii. destination where it differs from the consignee's address, normally either:

(i). delivery destination / address; or

(ii). transit destination, where delivery address is a point for aggregation / disaggregation and / or onward shipment elsewhere, e.g. railway station, where that mode of transport is used;

iv. the unique order identifiers and the CP&F Delivery Label / Form which shall be prepared in accordance with DEFFORM 129J.

(i). If aggregated packages are used, their consignment marking and identification requirements are stated at clause 23.l.

(2) If the Contract specifies Commercial Packaging, an external surface of each PPQ package and each consignment package, if it contains identical PPQ packages, shall be marked, using details of the Contractor Deliverables as shown in the Contract schedule, to state the following:

(a) description of the Contractor Deliverable;

(b) the full thirteen digit NATO Stock Number (NSN);

(c) the PPQ;

(d) maker's part / catalogue, serial and / or batch number, as appropriate;

(e) the Contract and order number when applicable;

(f) the words “Trade Package” in bold lettering, marked in BLUE in respect of trade packages, and BLACK in respect of export trade packages;

(g) shelf life of item where applicable;

(h) for rubber items or items containing rubber, the quarter and year of vulcanisation or manufacture of the rubber product or component (marked in accordance with Def Stan 81-041);

(i) any statutory hazard markings and any handling markings, including the mass of any package which exceeds 3kg gross; and

(j) any additional markings specified in the Contract.

j. Bar code marking shall be applied to the external surface of each consignment package and to each PPQ package contained therein. The default symbology shall be as specified in Def Stan 81-041 (Part 6). As a minimum the following information shall be marked on packages:

(1) the full 13-digit NSN;

(2) denomination of quantity (D of Q);

(3) actual quantity (quantity in package);

(4) manufacturer's serial number and / or batch number, if one has been allocated; and

(5) the CP&F-generated unique order identifier.

k. Requirements for positioning bar codes in relation to related text, as well as positioning on package etc., are defined in Def Stan 81-041 (Part 6). If size of the bar code does not allow a label to be directly attached, then a tag may be used. Any difficulties over size or positioning of barcode markings shall initially be referred to the organisation nominated in Box 3 of DEFFORM 111 at Annex A to Schedule 3 (Contract Data Sheet).

l. The requirements for the consignment of aggregated packages are as follows:

(1) With the exception of packages containing Dangerous Goods, over-packing for delivery to the consignee shown in the Contract may be used by the consignor to aggregate a number of packages to different Packaging levels, provided that the package contains Contractor Deliverables of only one NSN or class group. Over-packing shall be in the cheapest commercial form consistent with ease of handling and protection of over-packed items.

(2) Two adjacent sides of the outer container shall be clearly marked to show the following:

(a) class group number;

(b) name and address of consignor;

(c) name and address of consignee (as stated on the Contract or Order);

(d) destination if it differs from the consignee's address, normally either:

i. delivery destination / address; or

ii. transit destination, if the delivery address is a point of aggregation / disaggregation and / or onward shipment e.g. railway station, where that mode of transport is used;

(e) where applicable, the reference number of the delivery note produced by CP&F relating to the contents. The consignee's copy of each delivery note shall be placed in the case / container. If the Contractor Deliverables listed in the delivery note are packed in several cases, the consignee's copy shall be placed in the first case and a separate list detailing the contents shall be prepared for each case after the first and placed in the case to which it relates. Each case is to be numbered to indicate both the number of the case and the total number of cases concerned e.g. 1/3, 2/3, 3/3;

(f) the CP&F-generated shipping label; and

(g) any statutory hazard markings and any handling markings.

m. Authorisation of the Contractor to undertake Packaging design, or to use a packaging design, that was not part of the original requirement under the Contract, shall be considered as an alteration to the specification in accordance with condition 7 (Variations to Specification).

n. The Contractor shall ensure that timber and wood-containing products supplied under the Contract comply with the provisions of condition 25 (Timber and Wood-Derived Products) and Annex I and Annex II of the International Standards for Phytosanitary Measures, "Guidelines for Regulating Wood Packaging Material in International Trade", Publication No 15 (ISPM 15).

o. All Packaging shall meet the requirements of the Packaging (Essential Requirements) Regulations 2003 (as amended) where applicable.

p. In any design work the Contractor shall comply with the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (as amended) or equivalent legislation. Evidence of compliance shall be a contractor record in accordance with condition 18 (Contractor’s Records).

q. This Condition is concerned with the supply of Packaging suitable to protect and ease handling, transport and storage of specified items. Where there is a failure of suitable Packaging (a design failure), or Packaging fails and this is attributed to the Packaging supplier, then the supplier shall be liable for the cost of replacing the Packaging.

r. Liability for other losses resulting from Packaging failure or resulting from damage to Packaging, (such as damage to the packaged item etc.), shall be specified elsewhere in the Contract.

s. General requirements for service Packaging, including details of UK and NATO MLP and Commercial Packaging descriptions, are contained in Def Stan 81-041 (Part 1) "Packaging of Defence Materiel". Def Stans, NATO Standardisation Agreements (STANAGs), and further information are available from the DStan internet site at: https://www.dstan.mod.uk/

t. Unless specifically stated otherwise in the invitation to tender or the Contract, reference to any standard including Def Stans or STANAGs in any invitation to tender or Contract document means the edition and all amendments extant at the date of such tender or Contract.

u. In the event of conflict between the Contract and Def Stan 81-041, the Contract shall take precedence.

**24.** **Supply of Hazardous Materials or Substances in Contractor Deliverables**

a. The Contractor shall provide to the Authority:

(1) for each hazardous material or substance supplied, a Safety Data Sheet (SDS) in accordance with the extant Chemicals (Hazard Information and Packaging for Supply) Regulations (CHIP) and / or the Classification, Labelling and Packaging (CLP) Regulation 1272/2008 (whichever is applicable), and

(2) for each Contractor Deliverable containing hazardous materials or substances, safety information as required by the Health and Safety at Work, etc Act 1974, at the time of supply.

Nothing in this Condition shall reduce or limit any statutory duty or legal obligation of the Authority or the Contractor.

b. If the Contractor Deliverable contains hazardous materials or substances, or is a substance falling within the scope of the REACH Regulation (EC) No 1907/2006:

(1) the Contractor shall provide to the Authority an SDS for the substance in accordance with the Regulation. If the Contractor becomes aware of new information which may affect the risk management measures or new information on the hazard, the Contractor shall update the SDS and forward it to the Authority and to the address listed in clause 24.h below, and

(2) the Authority, if it becomes aware of new information regarding the hazardous properties of the substance, or any other information that might call into question the appropriateness of the risk management measures identified in the SDS supplied, shall report this information in writing to the Contractor.

c. If the Contractor is required, under, or in connection with the contract, to supply Contractor Deliverables or components of Contractor Deliverables that, in the course of their use, maintenance, disposal, or in the event of an accident, may release hazardous materials or substances, they shall provide to the Authority a list of those hazardous materials or substances, and for each hazardous material or substance listed, provide an SDS.

d. The Contractor shall provide to the Authority a completed Schedule 6 (Hazardous Contractor Deliverables, Materials or Substances Supplied under the Contract: Data Requirements) in accordance with Schedule 3 (Contract Data Sheet).

e. If the Contractor Deliverables, materials or substances are ordnance, munitions or explosives, in addition to the requirements of CHIP and / or the CLP Regulation 1272/2008 (whichever is applicable) and REACH the Contractor shall comply with hazard reporting requirements of DEF STAN 07-085 Design Requirements for Weapons and Associated Systems.

f. If the Contractor Deliverables, materials or substances are or contain or embody a radioactive substance as defined in the Ionising Radiation Regulations SI 1999/3232, the Contractor shall additionally provide details of:

(1) activity;

(2) the substance and form (including any isotope);

g. If the Contractor Deliverables, materials or substances have magnetic properties, the Contractor shall additionally provide details of the magnetic flux density at a defined distance, for the condition in which it is packed.

h. Any SDS to be provided in accordance with this Condition, including any related information to be supplied in compliance with the Contractor’s statutory duties under Clause 24.a, any information arising from the provisions of Clauses 24.e, 24.f and 24.g and the completed Schedule 6, shall be sent directly to the Authority’s Representative (Commercial) as soon as practicable, and no later than one (1) month prior to the Contract delivery date, unless otherwise stated in Schedule 3 (Contract Data Sheet). In addition, so that the safety information can reach users without delay, a copy shall be sent preferably as an email with attachment(s) in Adobe PDF or MS WORD format, or, if only hardcopy is available, to the addresses below:

(1) Hard copies to be sent to:

Hazardous Stores Information System (HSIS)

Department of Safety & Environment, Quality and Technology (DS & EQT)

Spruce 2C, #1260,

MOD Abbey Wood (South)

Bristol BS34 8JH

(2) Emails to be sent to:

DESTECH-QSEPEnv-HSISMulti@mod.gov.uk Failure by the Contractor to comply with the requirements of this Condition shall be grounds for rejecting the affected Contractor Deliverables. Any withholding of information concerning hazardous Contractor Deliverables, materials or substances shall be regarded as a material breach of Contract under Condition 43 (Material Breach) for which the Authority reserves the right to require the Contractor to rectify the breach immediately at no additional cost to the Authority or to terminate the Contract in accordance with Condition 43.

i. Where delivery is made to the Defence Fulfilment Centre (DFC) and / or other Team Leidos location / building, the Contractor must comply with the Logistic Commodities and Services Transformation (LCST) Supplier Manual.

**25.** **Timber and Wood-Derived Products**

a. All Timber and Wood-Derived Products supplied by the Contractor under the Contract:

(1) shall comply with the Contract Specification; and

(2) must originate either:

(a) from a Legal and Sustainable source; or

(b) from a FLEGT-licensed or equivalent source.

b. In addition to the requirements of clause 25.a, all Timber and Wood-Derived Products supplied by the Contractor under the Contract shall originate from a forest source where management of the forest has full regard for:

(1) identification, documentation and respect of legal, customary and traditional tenure and use rights related to the forest;

(2) mechanisms for resolving grievances and disputes including those relating to tenure and use rights, to forest management practices and to work conditions; and

(3) safeguarding the basic labour rights and health and safety of forest workers.

c. If requested by the Authority, the Contractor shall provide to the Authority Evidence that the Timber and Wood-Derived Products supplied to the Authority under the Contract comply with the requirements of clause 25.a or 25.b or both.

d. The Authority reserves the right at any time during the execution of the Contract and for a period of five (5) years from final Delivery under the Contract to require the Contractor to produce the Evidence required for the Authority’s inspection within fourteen (14) days of the Authority’s request.

e. If the Contractor has already provided the Authority with the Evidence required under clause 25.c, the Contractor may satisfy these requirements by giving details of the previous notification and confirming the Evidence remains valid and satisfies the provisions of clauses 25.a or 25.b or both.

f. The Contractor shall maintain records of all Timber and Wood-Derived Products delivered to and accepted by the Authority, in accordance with condition 18 (Contractor’s Records).

g. Notwithstanding clause 25.c, if exceptional circumstances render it strictly impractical for the Contractor to record Evidence of proof of timber origin for previously used Recycled Timber, the Contractor shall support the use of this Recycled Timber with:

(1) a record tracing the Recycled Timber to its previous end use as a standalone object or as part of a structure; and

(2) an explanation of the circumstances that rendered it impractical to record Evidence of proof of timber origin.

h. The Authority may disclose the Information:

(1) The Authority reserves the right to decide, except where in the Authority’s opinion the timber supplied is incidental to the requirement and from a low risk source, whether the Evidence submitted to it demonstrates compliance with clause 25.a or 25.b, or both. In the event that the Authority is not satisfied, the Contractor shall commission and meet the costs of an Independent Verification and resulting report that will:

(2) verify the forest source of the timber or wood; and

(3) assess whether the source meets the relevant criteria of clause 25.b.

i. The statistical reporting requirement at clause 25.j applies to all Timber and Wood-Derived Products delivered under the Contract. The Authority reserves the right to amend the requirement for statistical reporting, in the event that the UK Government changes the requirement for reporting compliance with the Government Timber Procurement Policy. Amendments to the statistical reporting requirement will be made in accordance with condition 6 (Amendments to Contract).

j. The Contractor shall provide to the Authority, a completed Schedule 7 (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements), the data or Information the Authority requires in respect of Timber and Wood-Derived Products delivered to the Authority under the Contract, or in respect of each Order in the case of a Framework Agreement, or at such other frequency as stated in the Contract. The Contractor shall send all completed Schedule 7s (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements), including Nil Returns where appropriate, to the Authority’s Representative (Commercial).

k. The Schedule 7 (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements) may be amended by the Authority from time to time, in accordance with condition 6 (Amendments to Contract).

l. The Contractor shall obtain any wood, other than processed wood, used in Packaging from:

(1) companies that have a full registered status under the Forestry Commission and Timber Packaging and Pallet Confederation’s UK Wood Packaging Material Marking Programme (more detailed information can be accessed at www.forestry.gov.uk) and all such wood shall be treated for the elimination of raw wood pests and marked in accordance with that Programme; or

(2) sources supplying wood treated and marked so as to conform to Annex I and Annex II of the International Standard for Phytosanitary Measures, “Guidelines for Regulating Wood Packaging Material in International Trade”, Publication No 15 published by the Food and Agricultural Organisation of the United Nations (ISPM15) (more detailed information can be accessed at www.fao.org).

**26.** **Certificate of Conformity**

a. Where required in Schedule 3 (Contract Data Sheet) the Contractor shall provide a Certificate of Conformity (CofC) in accordance with Schedule 2 (Schedule of Requirements) and any applicable Quality Plan. One copy of the CofC shall be sent to the Authority’s Representative (Commercial) upon Delivery, and one copy shall be provided to the Consignee upon Delivery.

b. The Contractor shall consider the CofC to be a record in accordance with condition 18 (Contractor’s Records).

c. The Information provided on the CofC shall include:

(1) Contractor’s name and address;

(2) Contractor unique CofC number;

(3) Contract number and where applicable Contract amendment number;

(4) details of any approved concessions;

(5) acquirer name and organisation;

(6) Delivery address;

(7) Contract Item Number from Schedule 2 (Schedule of Requirements);

(8) description of Contractor Deliverable, including part number, specification and configuration status;

(9) identification marks, batch and serial numbers in accordance with the Specification;

(10) quantities;

(11) a signed and dated statement by the Contractor that the Contractor Deliverables comply with the requirements of the Contract and approved concessions.

Exceptions or additions to the above are to be documented.

d. Where Schedule 2 (Schedule of Requirements) and any applicable Quality Plan require demonstration of traceability and design provenance through the supply chain the Contractor shall include in any relevant subcontract the requirement for the Information called for at clause 26.c. The Contractor shall ensure that this Information is available to the Authority through the supply chain upon request in accordance with condition 18 (Contractor Records).

**27.** **Access to Contractor’s Premises**

a. The Contractor shall provide to the Authority’s Representatives following reasonable Notice, relevant accommodation/facilities, at no direct cost to the Authority, and all reasonable access to its premises for the purpose of monitoring the Contractor’s progress and quality standards in performing the Contract.

b. As far as reasonably practical, the Contractor shall ensure that the provisions of clause 1 are included in their subcontracts with those suppliers identified in the Contract. The Authority, through the Contractor, shall arrange access to such subcontractors.

**28.** **Delivery / Collection**

a. Schedule 3 (Contract Data Sheet) shall specify whether the Contractor Deliverables are to be Delivered to the Consignee by the Contractor or Collected from the Consignor by the Authority.

b. Where the Contractor Deliverables are to be Delivered by the Contractor (or a third party acting on behalf of the Contractor), the Contractor shall, unless otherwise stated in writing:

(1) contact the Authority’s Representative as detailed in Schedule 3 (Contract Data Sheet) in advance of the Delivery Date in order to agree administrative arrangements for Delivery and provide any Information pertinent to Delivery requested;

(2) comply with any special instructions for arranging Delivery in Schedule 3 (Contract Data Sheet);

(3) ensure that each consignment of the Contractor Deliverables is accompanied by, (as specified in Schedule 3 (Contract Data Sheet)), a DEFFORM 129J in accordance with the instructions;

(4) be responsible for all costs of Delivery; and

(5) Deliver the Contractor Deliverables to the Consignee at the address stated in Schedule 2 (Schedule of Requirements) by the Delivery Date between the hours agreed by the Parties.

c. Where the Contractor Deliverables are to be Collected by the Authority (or a third party acting on behalf of the Authority), the Contractor shall, unless otherwise stated in writing:

(1) contact the Authority’s Representative (Transport) as detailed in box 10 of DEFFORM 111 at Annex A to Schedule 3 (Contract Data Sheet) in advance of the Delivery Date in order to agree specific arrangements for Collection and provide any Information pertinent to the Collection requested;

(2) comply with any special instructions for arranging Collection in Schedule 3 (Contract Data Sheet);

(3) ensure that each consignment of the Contractor Deliverables is accompanied by, (as specified in Schedule 3 (Contract Data Sheet)), a DEFFORM 129J in accordance with the instructions;

(4) ensure that the Contractor Deliverables are available for Collection by the Authority from the Consignor (as specified in Schedule 3 (Contract Data Sheet)) by the Delivery Date between the hours agreed by the Parties; and

(5) in the case of Overseas consignments, ensure that the Contractor Deliverables are accompanied by the necessary transit documentation. All Customs clearance shall be the responsibility of the Authority’s Representative (Transport).

d. Title and risk in the Contractor Deliverables shall only pass from the Contractor to the Authority:

(1) on the Delivery of the Contractor Deliverables by the Contractor to the Consignee in accordance with clause 28.b; or

(2) on the Collection of the Contractor Deliverables from the Consignor by the Authority once they have been made available for Collection by the Contractor in accordance with clause 28.c.

**29.** **Acceptance**

a. Acceptance of the Contractor Deliverables shall occur in accordance with any acceptance procedure specified in Schedule 8 (Acceptance Procedure). If no acceptance procedure is so specified acceptance shall occur when either:

(1) the Authority does any act in relation to the Contractor Deliverable which is inconsistent with the Contractor’s ownership; or

(2) the time limit in which to reject the Contractor Deliverables defined in clause 30.b has elapsed.

**30.** **Rejection and Counterfeit Materiel**

**Rejection:**

a. If any of the Contractor Deliverables Delivered to the Authority do not conform to the Specification or any other terms of this Contract, then (without limiting any other right or remedy that the Authority may have) the Authority may reject the Contractor Deliverables (in whole or in part). The Authority shall return these Contractor Deliverables to the Contractor at the Contractor’s risk and cost.

b. Rejection of any of the Contractor Deliverables under clause 30.a shall take place by the time limit for rejection specified in Schedule 3 (Contract Data Sheet), or if no such period is specified, the Contractor Deliverables shall be deemed to be accepted within a reasonable period of time.

**Counterfeit Materiel:**

c. Where the Authority suspects that any Contractor Deliverable or consignment of Contractor Deliverables contains Counterfeit Materiel, it shall:

(1) notify the Contractor of its suspicion and reasons therefore;

(2) where reasonably possible, and if requested by the Contractor within 10 business days of such notification, (at the Contractor’s own risk and expense and subject to any reasonable controls specified by the Authority) afford the Contractor the facility to (i) inspect the Contractor Deliverable or consignment and/or (ii) obtain a sample thereof for validation or testing purposes.

(3) give the Contractor a further 20 business days or such other reasonable period agreed by the Authority, from the date of the inspection at 30.c.(2).(i) or the provision of a sample at 30.c.(2).(ii), to comment on whether the Contractor Deliverable or consignment meets the definition of Counterfeit Materiel; and

(4) determine, on the balance of probabilities and strictly on the evidence available to it at the time, whether the Contractor Deliverable or consignment meets the definition of Counterfeit Materiel

Where the Authority has determined that the Contractor Deliverable, part or consignment of Contractor Deliverables contain Counterfeit Material then it may reject the Contractor Deliverable, part or consignment under 30.a-30.b (Rejection).

d. In addition to its rights under 30.a and 30.b (Rejection), where the Authority reasonably believes that any Contractor Deliverable or consignment of Contractor Deliverables contains Counterfeit Materiel, it shall be entitled to:

(1) Retain any Counterfeit Materiel; and/or

(2) retain the whole or any part of such Contractor Deliverable or consignment where it is not possible to separate the Counterfeit Materiel from the rest of the Contractor Deliverable, or consignment;

and such retention shall not constitute acceptance under condition 29 (Acceptance).

e. Where the Authority intends to exercise its rights under clause 30.d, it shall where reasonable permit the Contractor, within a period specified by the Authority, to arrange at its own risk and expense and subject to any reasonable controls specified by the Authority, for:

(1) The separation of Counterfeit Materiel from any Contractor Deliverable or part of a Contractor Deliverable; and/or

(2) the removal of any Contractor Deliverable or part of a Contractor Deliverable that the Authority is satisfied does not contain Counterfeit Materiel.

f. In respect of any Contractor Deliverable, consignment or part thereof that is retained in accordance with clause 30.d, including where the Authority permits the Contractor to remove non-Counterfeit Materiel under clause 30.e but the Contractor fails to do so within the period specified by the Authority and subject to clause 30.j, the Authority shall be entitled to exercise any, all, or any combination of, the following rights:

(1) To         dispose of it responsible, and in a manner that does not permit its reintroduction into the supply chain or market;

(2) to pass it to a relevant investigatory or regulatory authority;

(3) to retain conduct or have conducted further testing including destructive testing, for further investigatory, regulatory or risk management purposes. Results from any such tests shall be shared with the Contractor; and/or

(4) to recover the reasonable costs of testing, storage, access, and/or disposal of it from the Contractor.

Exercise of the rights granted at clauses 30.f.(1) to 30.f.(3) shall not constitute acceptance under condition 29 (Acceptance).

g. Any scrap or other disposal payment received by the Authority shall be off set against any amount due to the Authority under clause 30.f.(4). If the value of the scrap or other disposal payment exceeds the amount due to the Authority under clause 30.f.(4) then the balance shall accrue to the Contractor.

h. The Authority shall not use a retained Article or consignment other than as permitted in this condition 30.c – 30.k.

i. The Authority may without restriction report a discovery of Counterfeit Materiel and disclose information necessary for the identification of similar materiel and its possible sources.

j. The Contractor shall not be entitled to any payment or compensation from the Authority as a result of the Authority exercising the rights set out in this condition 30.c – 30.k except where it has been determined in accordance with condition 40 (Dispute Resolution) that the Authority has made an incorrect determination in accordance with clause 30.c.(4). In such circumstances the Authority shall reimburse the Contractors reasonable costs of complying with clause 30.c.

**31.** **Diversion Orders**

a. The Authority shall notify the Contractor at the earliest practicable opportunity if it becomes aware that a Contractor Deliverable is likely to be subject to a Diversion Order.

b. The Authority may issue a Diversion Order for the urgent delivery of the Contractor Deliverables identified in it. These Contractor Deliverables are to be delivered by the Contractor using the quickest means available as agreed by the Authority.

c. The Authority reserves the right to cancel the Diversion Order.

d. If the terms of the Diversion Order are unclear, the Contractor shall immediately contact the Representative of the Authority who issued it for clarification and/or further instruction.

e. If the Diversion Order increases the quantity of Contractor Deliverables beyond the scope of the Contract, it is to be returned immediately to the Authority’s Commercial Officer with an appropriate explanation.

f. The Contractor shall be entitled to reasonable additional delivery and packaging costs incurred in complying with the Diversion Order or cancellation. Claims are to be submitted by the Contractor to the Authority’s Commercial Officer together with applicable receipts and agreed as an amendment to the Contract in accordance with condition 6 (Amendments to Contract). The Contractor shall comply with the requirements of the Diversion Order upon receipt of the Diversion Order.

**32.** **Self-to-Self Delivery**

Where it is stated in Schedule 3 (Contract Data Sheet) that any Contractor Deliverable is to be Delivered by the Contractor to its own premises, or to those of a Subcontractor (‘self-to-self delivery’), the risk in such a Contractor Deliverable shall remain vested in the Contractor until such time as it is handed over to the Authority.

**LICENCES AND INTELLECTUAL PROPERTY**

**33.** **Import and Export Licences**

a. If, in the performance of the Contract, the Contractor needs to import into the UK or export out of the UK anything not supplied by or on behalf of the Authority and for which a UK import or export licence is required, the responsibility for applying for the licence shall rest with the Contractor. The Authority shall provide the Contractor with sufficient information, certification, documentation and other reasonable assistance in obtaining any necessary UK import or export licence.

b. When an export licence or import licence or authorisation either singularly or in combination is required from a foreign government for the performance of the Contract, the Contractor shall as soon as reasonably practicable consult with the Authority on the licence requirements. Where the Contractor is the applicant for the licence or authorisation the Contractor shall:

(1) ensure that when end use or end user restrictions, or both, apply to all or part of any Contractor Deliverable (which for the purposes of this Condition shall also include information, technical data and software), the Contractor, unless otherwise agreed with the Authority, shall identify in the application:

(a) the end user as: Her Britannic Majesty’s Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter “HM Government”); and

(b) the end use as: For the Purposes of HM Government; and

(2) include in the submission for the licence or authorisation a statement that "information on the status of processing this application may be shared with the Ministry of Defence of the United Kingdom".

c. If the Contractor or any subcontractor in the performance of the Contract needs to export materiel not previously supplied by or on behalf of the Authority for which an export licence or import licence or authorisation from a foreign government is required, the responsibility for instituting expeditious action to apply for and obtain the licence shall rest with the Contractor or that subcontractor. For the purposes of this Condition materiel shall mean information, technical data and items, including Contractor Deliverables, components of Contractor Deliverables and software.

d. Where the Contract performance requires the export of materiel for which a foreign export licence or import licence or authorisation is required, the Contractor shall include the dependencies for the export licence or import licence or authorisation application, grant and maintenance in the Contract risk register and in the risk management plan for the Contract, with appropriate review points. Where there is no requirement under the Contract for a risk management plan the Contractor shall submit this information to the Authority’s representative.

e. During the term of the Contract and for a period of up to 2 years from completion of the Contract, the Authority may make a written request to the Contractor to seek a variation to the conditions to a foreign export licence or import licence or authorisation to enable the Authority to re-export or re-transfer a licensed or authorised item or licensed or authorised information from the UK to a non-licensed or unauthorised third party. If the Authority makes such a request it will consult with the Contractor before making a determination of whether the Authority or the Contractor is best placed in all the circumstance to make the request. Where, subsequent to such consultation the Authority notifies the Contractor that the Contractor is best placed to make such request:

(1) the Contractor shall, or procure that the Contractor’s subcontractor shall, expeditiously consider whether or not there is any reason why it should object to making the request and, where it has no objection, file an application to seek a variation of the applicable export licence or import licence or authorisation in accordance with the procedures of the licensing authority. Where the contractor has an objection, the Parties shall meet within five (5) working days to resolve the issue and should they fail the matter shall be escalated to an appropriate level within both Parties’ organisations, to include their respective export licensing subject matter experts; and

(2) the Authority shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the application for the requested variation.

f. Where the Authority determines that it is best placed to make such request the Contractor shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the Authority to make the application for the requested variation.

g. Where the Authority invokes clause 33.e or 33.f the Authority will pay the Contractor a fair and reasonable charge for this service based on the cost of providing it.

h. Where the Contractor subcontracts work under the Contract, which is likely to be subject to foreign export control, import control or both the Contractor shall use reasonable endeavours to incorporate in each subcontract equivalent obligations to those set out in this Condition. Where it is not possible to include equivalent terms to those set out in this Condition, the Contractor shall report that fact and the circumstances to the Authority.

i. Without prejudice to HM Government's position on the validity of any claim by a foreign government to extra-territoriality, the Authority shall provide the Contractor with sufficient information, certification, documentation and other reasonable assistance to facilitate the granting of export licences or import licences or authorisations by a foreign Government in respect of the performance of the Contract.

j. The Authority shall provide such assistance as the Contractor may reasonably require in obtaining any UK export licences necessary for the performance of the Contract.

k. The Contractor shall use reasonable endeavours to identify whether any Contractor Deliverable is subject to:

(1) a non-UK export licence, authorisation or exemption; or

(2) any other related transfer or export control,

that imposes or will impose end use, end user or re-transfer or re-export restrictions, or restrictions on disclosure to individuals based upon their nationality. This does not include the Intellectual Property-specific restrictions of the type referred to in condition 34 (Third Party Intellectual Property – Rights and Restrictions).

l. If at any time during the term of the Contract the Contractor becomes aware that all or any part of the Contractor Deliverables are subject to Clause 33.k(1) or 33.k(2), it shall notify the Authority of this as soon as reasonably practicable by providing details in the DEFFORM 528 or other mutually agreed alternative format. Such notification shall be no later than thirty (30) days of knowledge of any affected Contractor Deliverable and in any event such notification shall be not less than thirty (30) days prior to delivery of the Contractor Deliverables.

m. If the information to be provided under Clause 33.l has been provided previously to the Authority by the Contractor under the Contract, the Contractor may satisfy these requirements by giving details of the previous notification and confirming they remain valid and satisfy the provisions of Clause 33.l.

n. During the term of the Contract, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under clauses 33.l or 33.m of which it becomes or is aware that would affect the Authority’s ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those Clauses by issuing an updated DEFFORM 528 to the Authority.

o. For a period of up to 2 years from completion of the Contract and in response to a specific request by the Authority, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under Clause 33.l or 33.m of which it becomes aware that would affect the Authority’s ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those Clauses by issuing an updated DEFFORM 528 to the Authority.

p. Where following receipt of materiel from a subcontractor or any of its other suppliers restrictions are notified to the Contractor by that subcontractor, supplier or other third party or are identified by the Contractor, the Contractor shall immediately inform the Authority by issuing an updated DEFFORM 528. Within days of such notification, the Contractor shall propose to the Authority actions to mitigate the impact of such restrictions. Such proposals may include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. The Authority shall notify the contractor within days of receipt of a proposal whether it is acceptable and where appropriate the Contract shall be modified in accordance with its terms to implement the proposal.

q. If the restrictions prevent the Contractor from performing its obligations under the Contract and have not been removed, modified or otherwise satisfactorily managed within a reasonable time, the Authority may at its absolute discretion elect to amend the contract in accordance with condition 6 or 7 or as otherwise may be provided by the Contract, or to terminate the Contract. Except as set out in clause 33.r, in the event of termination in these circumstances termination shall be on fair and reasonable terms having regard to all the circumstances including payments already made and that would otherwise be due under the Contract, costs incurred by the Contractor and benefits received by the Authority. The Parties, acting in good faith, will use all reasonable endeavours to agree such fair and reasonable terms failing which either Party may refer the matter to dispute resolution in accordance with the provisions in the Contract.

r. In the event that the restrictions notified to the Authority pursuant to Clause 33.l were known or ought reasonably have been known by the Contractor (but were not disclosed) at contract award or if restrictions notified to the Authority pursuant to clauses 33.n or 33.p were known or ought reasonably to have been known by the Contractor at the date of submission of the most recent DEFFORM 528 submitted to the Authority in accordance with Clause 33.l, termination under Clause 33.q will be in accordance with condition 43 (Material Breach) and the provisions of clause 33.v will not apply.

s. The Authority shall use reasonable endeavours to identify any export control restrictions applying to materiel to be provided to the Contractor as Government Furnished Assets (GFA). Where the Authority is to provide materiel necessary to enable the Contractor to perform the Contract or in respect of which the Services are to be provided, and that materiel is subject to a non-UK export licence, authorisation, exemption or other related transfer or export control as described in the provisions of Clause 33.k, the Authority shall provide a completed DEFFORM 528 or will provide a new or updated DEFFORM 528 to the Contractor within thirty (30) days of the date of knowledge and in any case not later than thirty (30) days prior to the delivery of such materiel to the Contractor.

t. In the event that the Authority becomes aware that the DEFFORM 528 disclosure was incomplete or inaccurate or in the event additional such materiel is identified then the Authority shall provide, as soon as reasonably practicable a new or revised DEFFORM 528. In the event that the Authority becomes aware that a prior disclosure included in DEFFORM 528 submitted to the Contractor was incomplete or inaccurate less than thirty (30) days prior to the delivery to the Contractor of any material to which the updated or new disclosure relates, the Parties will meet as soon as reasonably practicable to discuss how to mitigate the impact of the incomplete or inaccurate disclosure.

u. Where:

(1) restrictions are advised by the Authority to the Contractor in a DEFFORM 528 provided pursuant to Clauses 33.s or 33.t or both; or

(2) any of the information provided by the Authority in any DEFFORM 528 proves to be incorrect or inaccurate;

the Authority and the Contractor shall act promptly to mitigate the impact of such restrictions or incorrect or inaccurate information. Such mitigation shall include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. If the restrictions or incorrect or inaccurate information adversely affect the ability of the Contractor to perform its obligations under the Contract, the matter shall be handled under the terms of condition 6 (Amendments to Contract) or condition 7 (Variations to Specification) or as may otherwise be provided by the Contract as appropriate and if no alternative solution satisfies the essential terms of the Contract and the restrictions have not been removed, modified or otherwise satisfactorily managed within a reasonable time the Authority may terminate the Contract. Termination under these circumstances will be under the terms of condition 42 (Termination for Convenience) and as referenced in the Contract.

v. Pending agreement of any amendment of the Contract as set out in clause 33.q or 33.u, provided the Contractor takes such steps as are reasonable to mitigate the impact, the Contractor shall be relieved from its obligations to perform those elements of the Contract directly affected by the restrictions or provision of incorrect or incomplete information.

**34.** **Third Party Intellectual Property – Rights and Restrictions**

a. The Contractor and, where applicable any Subcontractor, shall promptly notify the Authority as soon as they become aware of:

(1) any invention or design the subject of patent or registered Design Rights (or application thereof) owned by a third party which appears to be relevant to the performance of the Contract or to use by the Authority of anything required to be done or delivered under the Contract;

(2) any restriction as to disclosure or use, or obligation to make payments in respect of any other intellectual property (including technical Information) required for the purposes of the Contract or subsequent use by the Authority of anything delivered under the Contract and, where appropriate, the notification shall include such Information as is required by Section 2 of the Defence Contracts Act 1958;

(3) any allegation of infringement of intellectual property rights made against the Contractor and which pertains to the performance of the Contract or subsequent use by the Authority of anything required to be done or delivered under the Contract.

Clause 34.a does not apply in respect of Contractor Deliverables normally available from the Contractor as a Commercial Off The Shelf (COTS) item or service.

b. If the Information required under clause 34.a has been notified previously, the Contractor may meet its obligations by giving details of the previous notification.

c. For COTS Contractor Deliverables patents and registered designs in the UK, in respect of any question arising (by way of an allegation made to the Authority or Contractor, or otherwise) that the manufacture or provision under the Contract of Contractor Deliverables normally available from the Contractor as a COTS item or service is an infringement of a UK patent or registered design not owned or controlled by the Contractor or the Authority, the Contractor shall, subject to the agreement of the third party owning such patent or registered design, be given exclusive conduct of any and all negotiations for the settlement of any claim or the conduct of any litigation arising out of such question. The Contractor shall indemnify the Authority, its officers, agents and employees against any liability and cost arising from such allegation. This condition shall not apply if:

(1) the Authority has made or makes an admission of any sort relevant to such question;

(2) the Authority has entered or enters into any discussions on such question with any third party without the prior written agreement of the Contractor;

(3) the Authority has entered or enters into negotiations in respect of any relevant claim for compensation in respect of Crown Use under Section 55 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1977;

(4) legal proceedings have been commenced against the Authority or the Contractor in respect of Crown Use, but only to the extent of such Crown Use that has been properly authorised.

d. The indemnity in clause 34.c does not extend to use by the Authority of anything supplied under the Contract where that use was not reasonably foreseeable at the time of the Contract.

e. In the event that the Authority has entered into negotiation in respect of a claim for compensation, or legal proceedings in respect of the Crown Use have commenced, the Authority shall forthwith authorise the Contractor for the purposes of performing the Contract (but not otherwise) to utilise a relevant invention or design in accordance with Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949 and to use any model, document or information relating to any such invention or design which may be required for that purpose.

f. For all other Contractor Deliverables patents and registered designs in the UK, if a relevant invention or design has been notified to the Authority by the Contractor prior to the Effective Date of Contract, then unless it has been otherwise agreed, under the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, the Contractor is hereby authorised to utilise that invention or design, notwithstanding the fact that it is the subject of a UK Patent or UK Registered Design, for the purpose of performing the Contract.

g. If, under clause 34.a, a relevant invention or design is notified to the Authority by the Contractor after the Effective Date of Contract, then:

(1) if the owner (or its exclusive licensee) takes or threatens in writing to take any relevant action against the Contractor, the Authority shall issue to the Contractor a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, and

(2) in any event, unless the Contractor and the Authority can agree an alternative course of action, the Authority shall not unreasonably delay the issue of a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949.

h. The Authority shall assume all liability and shall indemnify the Contractor, its officers, agents and employees against liability, including the Contractor’s costs, as a result of infringement by the Contractor or their suppliers of any patent, utility model, registered design or like protection outside the United Kingdom in the performance of the Contract when such infringement arises from or is incurred by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.

i. The Contractor shall assume all liability and shall indemnify the Authority, its officers, agents and employees against liability, including the Authority’s costs, as a result of infringement by the Contractor or their suppliers of any patent, utility model, registered design or like protection outside the UK in the performance of the Contract when such infringement arises from or is incurred otherwise than by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.

j. The Contractor shall not be entitled to any reimbursement of any royalty, licence fee or similar expense incurred in respect of anything to be done under the Contract, where:

(1) a relevant discharge has been given under Section 2 of the Defence Contracts Act 1958, or relevant authorisation in accordance with Sections 55 or 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988 in respect of any intellectual property; or

(2) any obligation to make payments for intellectual property has not been promptly notified to the Authority under clause 34.a.

k. Where authorisation is given by the Authority under clause 34.e, 34.f or 34.g, to the extent permitted by Section 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988, the Contractor shall also be:

(1) released from payment whether by way of royalties, licence fees or similar expenses in respect of the Contractor's use of the relevant invention or design, or the use of any relevant model, document or information for the purpose of performing the Contract; and

(2) authorised to use any model, document or information relating to any such invention or design which may be required for that purpose.

l. The Contractor shall assume all liability and indemnify the Authority and its officers, agents and employees against liability, including costs as a result of:

(1) infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, Design Right or the like protection in any part of the world in respect of any item to be supplied under the Contract or otherwise in the performance of the Contract;

(2) misuse of any confidential information, trade secret or the like by the Contractor in performing the Contract;

(3) provision to the Authority of any Information or material which the Contractor does not have the right to provide for the purpose of the Contract.

m. The Authority shall assume all liability and indemnify the Contractor, its officers, agents and employees against liability, including costs as a result of:

(1) infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, Design Right or the like protection in any part of the world in respect of any item provided by the Authority for the purpose of the Contract but only to the extent that the item is used for the purpose of the Contract;

(2) alleged misuse of any confidential Information, trade secret or the like by the Contractor as a result of use of Information provided by the Authority for the purposes of the Contract, but only to the extent that Contractor’s use of that Information is for the purposes intended when it was disclosed by the Authority.

n. The general authorisation and indemnity is:

(1) clauses 34.a – 34.m represents the total liability of each Party to the other under the Contract in respect of any infringement or alleged infringement of patent or other Intellectual Property Right (IPR) owned by a third party;

(2) neither Party shall be liable, one to the other, for any consequential loss or damage arising as a result, directly or indirectly, of a claim for infringement or alleged infringement of any patent or other IPR owned by a third party;

(3) a Party against whom a claim is made or action brought, shall promptly notify the other Party in writing if such claim or action appears to relate to an infringement which is the subject of an indemnity or authorisation given under this Condition by such other Party. The notification shall include particulars of the demands, damages and liabilities claimed or made of which the notifying Party has notice;

(4) the party benefiting from the indemnity or authorisation shall allow the other Party, at its own expense, to conduct any negotiations for the settlement of the same, and any litigation that may arise therefrom and shall provide such information as the other Party may reasonably require;

(5) following a notification under clause 34.n(3), the Party notified shall advise the other Party in writing within thirty (30) Business Days whether or not it is assuming conduct of the negotiations or litigation. In that case the Party against whom a claim is made or action brought shall not make any statement which might be prejudicial to the settlement or defence of such a claim without the written consent of the other Party;

(6) the Party conducting negotiations for the settlement of a claim or any related litigation shall, if requested, keep the other Party fully informed of the conduct and progress of such negotiations.

o. If at any time a claim or allegation of infringement arises in respect of copyright, database right, Design Right or breach of confidence as a result of the provision of any Contractor Deliverable by the Contractor to the Authority, the Contractor may at its own expense replace the item with an item of equivalent functionality and performance so as to avoid infringement or breach. The Parties will co-operate with one another to mitigate any claim or damage which may arise from use of third party IPR.

p. Nothing in condition 34 shall be taken as an authorisation or promise of an authorisation under Section 240 of the Copyright, Designs and Patents Act 1988.

q. Notwithstanding any other provisions of the Contract and for the avoidance of doubt, award of the Contract by the Authority and placement of any contract task under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The Contractor acknowledges that any such authorisation by the Authority under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific intellectual property involved.

**PRICING AND PAYMENT**

**35.** **Contract Price**

a. The Contractor shall provide the Contractor Deliverables to the Authority at the Contract Price. The Contract Price shall be a Firm Price unless otherwise stated in Schedule 3 (Contract Data Sheet).

b. Subject to condition 35.a the Contract Price shall be inclusive of any UK custom and excise or other duty payable. The Contractor shall not make any claim for drawback of UK import duty on any part of the Contract Deliverables supplied which may be for shipment outside of the UK.

**36.** **Payment and Recovery of Sums Due**

a. Payment for Contractor Deliverables will be made by electronic transfer and prior to submitting any claims for payment under clause 36b the Contractor will be required to register their details (Supplier on-boarding) on the Contracting, Purchasing and Finance (CP&F) electronic procurement tool.

b. Where the Contractor submits an invoice to the Authority in accordance with clause 36a, the Authority will consider and verify that invoice in a timely fashion.

c. The Authority shall pay the Contractor any sums due under such an invoice no later than a period of 30 days from the date on which the Authority has determined that the invoice is valid and undisputed.

d. Where the Authority fails to comply with clause 36b and there is undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purpose of clause 36c after a reasonable time has passed.

e. The approval for payment of a valid and undisputed invoice by the Authority shall not be construed as acceptance by the Authority of the performance of the Contractor’s obligations nor as a waiver of its rights and remedies under this Contract.

f. Without prejudice to any other right or remedy, the Authority reserves the right to set off any amount owing at any time from the Contractor to the Authority against any amount payable by the Authority to the Contractor under the Contract or under any other contract with the Authority, or with any other Government Department.

**37.** **Value Added Tax**

a. The Contract Price excludes any UK output Value Added Tax (VAT) and any similar EU (or non-EU) taxes chargeable on the supply of Contractor Deliverables by the Contractor to the Authority.

b. If the Contractor is required by UK VAT law to be registered for UK VAT (or has registered voluntarily) in respect of his business activities at the time of any supply, and the circumstances of any supply are such that the Contractor is liable to pay the tax due to HM Revenue and Customs (HMRC), the Authority shall pay to the Contractor in addition to the Contract Price (or any other sum due to the Contractor) a sum equal to the output VAT chargeable on the tax value of the supply of Contractor Deliverables, and all other payments under the Contract according to the law at the relevant tax point.

c. The Contractor is responsible for the determination of VAT liability. The Contractor shall consult its Client Relationship Manager or the HMRC Enquiries Desk (and not the Authority’s Representative (Commercial)) in cases of doubt. The Contractor shall notify the Authority’s Representative (Commercial) of the Authority’s VAT liability under the Contract, and any changes to it, within twenty (20) Business Days of becoming aware the liability is other than at the standard rate of VAT. In the event of any doubt about the applicability of the tax in such cases, the Authority may require the Contractor to obtain, and pass to the Authority, a formal ruling from HMRC. The Contractor shall comply promptly with any such requirement. Where the Contractor obtains a ruling from HMRC, it shall supply a copy to the Authority within three (3) Business Days of receiving that ruling unless it proposes to challenge the ruling. Where the Contractor challenges the ruling it shall supply to the Authority a copy of any final decisions issued by HMRC on completion of the challenge within three (3) Business Days of receiving the decision.

d. Where supply of Contractor Deliverables comes within the scope of UK VAT, but the Contractor is not required by UK VAT law to be registered for UK VAT (and has not registered voluntarily), the Authority shall be responsible for assessing and paying over directly to HMRC any UK output VAT due in respect of the Contractor Deliverables. The Contractor shall be responsible for ensuring it takes into account any changes in VAT law regarding registration.

e. Where Contractor Deliverables are deemed to be supplied to the Authority outside the UK, the Contractor may be required by the laws of the country where the supply takes place to register there for EU (or non-EU) turnover or similar tax. In that event, the Authority shall pay to the Contractor in addition to the Contract Price (and any other sum due to the Contractor under the Contract) a sum equal to the tax the Contractor is liable to pay to the tax authorities of the country in question in relation to the Contractor Deliverables within thirty (30) calendar days of a written request for payment of any such sum by the Contractor.

f. In relation to the Contractor Deliverables supplied under the Contract the Authority shall not be required to pay any sum in respect of the Contractor’s input VAT (or similar EU or non-EU or both input taxes). However, these input taxes will be allowed where it is established that, despite the Contractor having taken all reasonable steps to recover them, it has not been possible to do so. Where there is any doubt that the Contractor has complied with this requirement the matter shall be resolved in accordance with condition 40 (Dispute Resolution).

g. Should HMRC decide that the Contractor has incorrectly determined the VAT liability, in accordance with clause 37.b above, the Authority will pay the VAT assessed by HMRC. In the event that HMRC so determines, the Contractor shall pay any interest charged on any assessment or penalties or both directly to HMRC. Such interest or penalties or both shall not be recoverable from the Authority under this Contract or any other contract. The Contractor shall supply the Authority with a copy of all correspondence between HMRC and the Contractor’s advisors regarding the VAT assessment within three (3) Business Days of a written request from the Authority for such correspondence.

**38.** **Debt Factoring**

a. Subject to the Contractor obtaining the prior written consent of the Authority in accordance with condition 11 (Assignment of Contract), the Contractor may assign to a third Party (“the Assignee”) the right to receive payment of the Contract Price or any part thereof due to the Contractor under the Contract (including interest which the Authority incurred through late payment under the Late Payment of Commercial Debts (Interest) Act 1998 (“the Act”)). Any assignment of the right to receive payment of the Contract Price (or any part thereof) under this condition 38 shall be subject to:

(1) reduction of any sums in respect of which the Authority exercises its right of recovery under clause 36.f

(2) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and

(3) the Authority receiving notification under both clauses 38.b and 38.c(2).

b. In the event that the Contractor obtains from the Authority the consent to assign the right to receive the Contract Price (or any part thereof) under clause 38.a, the Contractor shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.

c. The Contractor shall ensure that the Assignee:

(1) is made aware of the Authority’s continuing rights under clauses 38.a(1) and 38.a(2); and

(2) notifies the Authority of the Assignee’s contact Information and bank account details to which the Authority shall make payment, subject to any reduction made by the Authority in accordance with clauses 38.a(1) and 38.a(2).

d. The provisions of condition 36 (Payment and Recovery of Sums Due) shall continue to apply in all other respects after the assignment and shall not be amended without the prior approval of the Authority.

**39.** **Subcontracting and Prompt Payment**

a. Subcontracting any part of the Contract shall not relieve the Contractor of any of the Contractor’s obligations, duties or liabilities under the Contract.

b. Where the Contractor enters into a Subcontract he shall cause a term to be included in such Subcontract:

(1) providing that where the Subcontractor submits an invoice to the Contractor, the Contractor will consider and verify that invoice in a timely fashion;

(2) providing that the Contractor shall pay the Subcontractor any sums due under such an invoice no later than a period of thirty (30) days from the date on which the Contractor has determined that the invoice is valid and undisputed;

(3) providing that where the Contractor fails to comply with clause 39.b(1) above, and there is an undue delay in considering and verifying the invoice, that the invoice shall be regarded as valid and undisputed for the purposes of clause 39.b(2) after a reasonable time has passed; and

(4) requiring the counterparty to that Subcontract to include in any Subcontract which it awards, provisions having the same effect as clauses 39.b(1) to 39.b(4).

**TERMINATION**

**40.** **Dispute Resolution**

a. The Parties will attempt in good faith to resolve any dispute or claim arising out of or relating to the Contract through negotiations between the respective representatives of the Parties having authority to settle the matter, which attempts may include the use of any alternative dispute resolution procedure on which the Parties may agree.

b. In the event that the dispute or claim is not resolved pursuant to clause 40.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this clause 40.b shall be governed by the Arbitration Act 1996. For the purposes of the arbitration, the arbitrator shall have the power to make provisional awards pursuant to Section 39 of the Arbitration Act 1996.

c. For the avoidance of doubt, anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise.

**41.** **Termination for Insolvency or Corrupt Gifts**

**Insolvency:**

a. The Authority may terminate the Contract, without paying compensation to the Contractor, by giving written Notice of such termination to the Contractor at any time after any of the following events:

Where the Contractor is an individual or a firm:

(1) the application by the individual or, in the case of a firm constituted under English law, any partner of the firm to the court for an interim order pursuant to Section 253 of the Insolvency Act 1986; or

(2) the court making an interim order pursuant to Section 252 of the Insolvency Act 1986; or

(3) the individual, the firm or, in the case of a firm constituted under English law, any partner of the firm making a composition or a scheme of arrangement with his or its creditors; or

(4) the presentation of a petition for bankruptcy order against the individual or, in the case of a firm constituted under English law, any partner of the firm unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or

(5) the court making a bankruptcy order in respect of the individual or, in the case of a firm constituted under English law, any partner of the firm; or

(6) where the Contractor is either unable to pay his debts as they fall due or has no reasonable prospect of being able to pay debts which are not immediately payable. The Authority shall regard the Contractor as being unable to pay his debts if:

(a) he has failed to comply with or to set aside a Statutory demand under Section 268 of the Insolvency Act 1986 within twenty-one (21) days of service of the Statutory Demand on him; or

(b) execution or other process to enforce a debt due under a judgement or order of the court has been returned unsatisfied in whole or in part.

(7) the presentation of a petition for sequestration in relation to the Contractor's estates unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or

(8) the court making an award of sequestration in relation to the Contractor’s estates.

Where the Contractor is a company registered in England:

(9) the presentation of a petition for the appointment of an administrator; unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or

(10) the court making an administration order in relation to the company; or

(11) the presentation of a petition for the winding-up of the company unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or

(12) the company passing a resolution that the company shall be wound-up; or

(13) the court making an order that the company shall be wound-up; or

(14) the appointment of a Receiver or manager or administrative Receiver.

Where the Contractor is a company registered other than in England, events occur or are carried out which, within the jurisdiction to which it is subject, are similar in nature or effect to those specified in clauses 41.a(9) to 41.a(14) inclusive above.

b. Such termination shall be without prejudice to and shall not affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Authority and the Contractor.

**Corrupt Gifts:**

c. The Contractor shall not do, and warrants that in entering the Contract it has not done any of the following (hereafter referred to as 'prohibited acts'):

(1) offer, promise or give to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward;

(a) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this or any other contract with the Crown; or

(b) for showing or not showing favour or disfavour to any person in relation to this or any other Contract with the Crown.

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

d. If the Contractor, its employees, agents or any subcontractor (or anyone acting on its behalf or any of its or their employees) does any of the prohibited acts or commits any offence under the Bribery Act 2010 with or without the knowledge or authority of the Contractor in relation to this Contract or any other contract with the Crown, the Authority shall be entitled:

(1) to terminate the Contract and recover from the Contractor the amount of any loss resulting from the termination;

(2) to recover from the Contractor the amount or value of any such gift, consideration or commission; and

(3) to recover from the Contractor any other loss sustained in consequence of any breach of this condition, where the Contract has not been terminated.

e. In exercising its rights or remedies under this condition, the Authority shall:

(1) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the prohibited act;

(2) give all due consideration, where appropriate, to action other than termination of the Contract, including (without being limited to):

(a) requiring the Contractor to procure the termination of a subcontract where the prohibited act is that of a Subcontractor or anyone acting on its or their behalf;

(b) requiring the Contractor to procure the dismissal of an employee (whether its own or that of a Subcontractor or anyone acting on its behalf) where the prohibited act is that of such employee.

f. Recovery action taken against any person in Her Majesty's service shall be without prejudice to any recovery action taken against the Contractor pursuant to this Condition.

**42.** **Termination for Convenience**

a. The Authority shall have the right to terminate the Contract in whole or in part at any time by giving the Contractor at least twenty (20) business days written notice (or such other period as may be stated in Schedule 3 (Contract Data Sheet)). Upon expiry of the notice period the Contract, or relevant part thereof, shall terminate without prejudice to the rights of the parties already accrued up to the date of termination. Where only part of the Contract is being terminated, the Authority and the Contractor shall owe each other no further obligations in respect of the part of the Contract being terminated, but will continue to fulfil their respective obligations on all other parts of the Contract not being terminated.

b. Following the above notification the Authority shall be entitled to exercise any of the following rights in relation to the Contract (or part being terminated) to direct the Contractor to:

(1) not start work on any element of the Contractor Deliverables not yet started;

(2) complete in accordance with the Contract the provision of any element of the Contractor Deliverables;

(3) as soon as may be reasonably practicable take such steps to ensure that the production rate of the Contractor Deliverables is reduced as quickly as possible;

(4) terminate on the best possible terms any subcontracts in support of the Contractor Deliverables that have not been completed, taking into account any direction given under clauses 42.b(2) and 42.b(3) of this condition.

c. Where this condition applies (and subject always to the Contractor’s compliance with any direction given by the Authority under clause 42.b):

(1) The Authority shall take over from the Contractor at a fair and reasonable price all unused and undamaged materiel and any Contractor Deliverables in the course of manufacture that are:

(a) in the possession of the Contractor at the date of termination; and

(b) provided by or supplied to the Contractor for the performance of the Contract,

except such materiel and Contractor Deliverables in the course of manufacture as the Contractor shall, with the agreement of the Authority, choose to retain;

(2) the Contractor shall deliver to the Authority within an agreed period, or in absence of such agreement within a period as the Authority may specify, a list of:

(c) all such unused and undamaged materiel; and

(d) Contractor Deliverables in the course of manufacture,

that are liable to be taken over by, or previously belonging to the Authority, and shall deliver such materiel and Contractor Deliverables in accordance with the directions of the Authority;

(3) in respect of Services, the Authority shall pay the Contractor fair and reasonable prices for each Service performed, or partially performed, in accordance with the Contract.

d. The Authority shall (subject to clause 42.e below and to the Contractor’s compliance with any direction given by the Authority in clause 42.b above) indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract, subject to:

(1) the Contractor taking all reasonable steps to mitigate such loss; and

(2) the Contractor submitting a fully itemised and costed list of such loss, with supporting evidence, reasonably and actually incurred by the Contractor as a result of the termination of the Contract or relevant part.

e. The Authority’s total liability under the provisions of this Condition shall be limited to the total price of the Contractor Deliverables payable under the contract (or relevant part), including any sums paid, due or becoming due to the Contractor at the date of termination.

f. The Contractor shall include in any subcontract over £250,000 which it may enter into for the purpose of the Contract, the right to terminate the subcontract under the terms of clauses 42.a to 42.e except that:

(1) the name of the Contractor shall be substituted for the Authority except in clause 42.c(1);

(2) the notice period for termination shall be as specified in the subcontract, or if no period is specified twenty (20) business days; and

(3) the Contractor’s right to terminate the subcontract shall not be exercised unless the main Contract, or relevant part, has been terminated by the Authority in accordance with the provisions of this condition 42.

g. Claims for payment under this condition shall be submitted in accordance with the Authority’s direction.

**43.** **Material Breach**

a. In addition to any other rights and remedies, the Authority shall have the right to terminate the Contract (in whole or in part) with immediate effect by giving written Notice to the Contractor where the Contractor is in material breach of its obligations under the Contract.

b. Where the Authority has terminated the Contract under clause 43.a the Authority shall have the right to claim such damages as may have been sustained as a result of the Contractor’s material breach of the Contract, including but not limited to any costs and expenses incurred by the Authority in:

(1) carrying out any work that may be required to make the Contractor Deliverables comply with the Contract; or

(2) obtaining the Contractor Deliverable in substitution from another supplier.

**44.** **Consequences of Termination**

The termination of the Contract, however arising, shall be without prejudice to the rights and duties of either Party accrued prior to termination. The Conditions that expressly or by implication have effect after termination shall continue to be enforceable even after termination.

**45 Project specific DEFCONs and DEFCON SC variants that apply to this contract**

**DEFCON 076 (SC2)**

DEFCON 076 (SC2) (Edn. 11/17) - Contractor's Personnel at Government Establishments

**DEFCON 532B**

DEFCON 532B (Edn. 04/20) - Protection Of Personal Data (Where Personal Data is being processed on behalf of the Authority)

**DEFCON 658 (SC2)**

DEFCON 658 (SC2) (Edn. 11/17) - Cyber

**DEFCON 660**

DEFCON 660 (Edn. 12/15) - Official-Sensitive Security Requirements

**DEFCON 694 (SC2)**

DEFCON 694 (SC2) (Edn. 08/18) - Accounting For Property of the Authority

**DEFCON 812**

DEFCON 812 (Edn. 04/15) - Single Source Open Book

**DEFCON 815**

DEFCON 815 (Edn. 04/15) - Contract Pricing Statement – Single Source Non-Qualifying Contracts

**DEFFORM 532**

|  |  |
| --- | --- |
| **Personal Data Particulars** | **DEFFORM 532**Edn 10/19 |

This Form forms part of the Contract and must be completed and attached to each Contract containing DEFCON 532B.

|  |  |
| --- | --- |
| **Data Controller** | The Data Controller is the Secretary of State for Defence (the Authority).The Personal Data will be provided by:*[insert the delivery team name (or equivalent source), address and contact details]* |
| **Data Processor** | The Data Processor is the Contractor.The Personal Data will be processed at: *[insert location(s), address and contact details]* |
| **Data Subjects** | The Personal Data to be processed under the Contract concern the following Data Subjects or categories of Data Subjects: *[please specify]**[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]* |
| **Categories of Data**  | The Personal Data to be processed under the Contract concern the following categories of data: *[please specify]**[Examples include name, address, telephone number, medical records etc]* |
| **Special Categories of data (if appropriate)** | The Personal Data to be processed under the Contract concern the following Special Categories of data: *[A Special Category of Personal Data is anything that reveals racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, sex life or sexual orientation or genetic or biometric data]* |
| **Subject matter of the processing** | The processing activities to be performed under the contract are as follows: *[please specify]* *[This should be a high-level, short description of what processing will be taking place and its overall outcome i.e. its subject matter]* |
| **Nature and the purposes of the Processing**  | The Personal Data to be processed under the Contract will be processed as follows: *[please specify]**[The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether by automated means or not) etc. The purpose might include: employment processing, statutory obligation, recruitment assessment etc]* |
| **Technical and organisational measures** | The following technical and organisational measures to safeguard the Personal Data are required for the performance of this Contract: *[please specify]* *[Provide an overview of the measures described in the System Requirements, Statement of Work and/or the controls required in accordance with the Cyber Risk Profile relevant to the Contract, as detailed in Annex A to Def Stan 05-138. Examples include anonymisation, authorised access, data processed on closed/restricted systems]* |
| **Instructions for disposal of Personal Data**  | The disposal instructions for the Personal Data to be processed under the Contract are as follows (where Disposal Instructions are available at the commencement of Contract): *[please specify]**[Describe how long the data will be retained for and how it will bereturned or destroyed]* |
| **Date from which Personal Data is to be processed** | Where the date from which the Personal Data will be processed is different from the Contract commencement date this should be specified here: *[please specify if applicable]* |

The capitalised terms used in this form shall have the same meanings as in the General Data Protection Regulations.

**DEFCON 647 (SC2)**

DEFCON 647 (SC2) (Edn. 11/17) - Financial Management Information

**DEFCON 658 - Cyber Risk Profile - Moderate**

Note: Further to DEFCON 658 the Cyber Risk Profile of the Contract is Moderate, as defined in Def Stan 05-138.

**General Conditions**

**Third Party IPR Authorisation**

AUTHORISATIONBY THE CROWN FOR USE OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS

Notwithstanding any other provisions of theContract and for the avoidance of doubt, award of the Contract by the Authorityand placement of any contract task under it does not constitute anauthorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 orSection 12 of the Registered Designs Act 1949. The Contractor acknowledges thatany such authorisation by the Authority under its statutory powers must be expressly provided in writing, with reference to the acts authorisedand the specific intellectual property involved.

**Intellectual Property Rights**

**DEFCON 90**

DEFCON 090 (Edn. 11/06) - Copyright

**Payment Terms**

Payments

Payments will be made monthly in arrears in line with Conditions 35 - 39 of the Contract.

**COVID-19: Extension of time and relief from performance**

1. The parties recognise that the continuance of the COVID-19 pandemic may have an adverse impact on the ability of the Contractor to perform its obligations under this Contract. The Contractor shall not therefore be in breach of its obligations under this Contract, nor liable for late or non-performance of any of its obligations under this Contract, if such delay or failure is a sole and direct result of the continuance of the COVID-19 pandemic.

2. The Contractor shall immediately notify the Authority in writing that the continuance of the COVID-19 pandemic has solely and directly resulted or is likely to solely and directly result in a delay or failure to perform its obligations under the Contract, which obligations are adversely impacted, and the actions proposed to mitigate such adverse impact.

3. Subject to clause 4 below, the Contractor shall be entitled to request an appropriate period of:

a. additional time for performing; and/or

b. relief from other contractual consequences, of late or non-performance of

such obligations provided always that the Contractor has used, to the satisfaction of the Authority, all reasonable endeavours, both to mitigate the adverse impact of the continuance of the COVID-19 pandemic, and to facilitate the continued performance of its obligations under the Contract.

4. The maximum period of additional time and/or for which relief will be granted under this clause shall be limited to 6 months, after which the Authority may terminate the Contract on giving 30 days’ notice in writing to the Contractor. On termination of the Contract, the Contractor shall be entitled to be paid an amount equal to any and all charges payable (but as yet unpaid) for Contractor Deliverables delivered up to the date of termination but shall otherwise have no claim against the Authority in relation to such termination.

**46 Special conditions that apply to this Contract**

**Special Conditions**

**Contract Option Periods**

a. The Option Periods detailed in the pricing Schedule will be subject to a Firm Price not subject to variation.

b. The Contractor hereby grants the Authority the irrevocable Option to purchase the above service in accordance with the Terms and Conditions set out in the Contract.

c. The Authority shall have the right to exercise each Option Period up to 3 months prior to the tasking completion date. The Authority shall have the right to exercise all 2 Option Periods at the same time or by one Option Period at a time.

d. The Authority shall not be obliged, or under any obligation, to exercise any of the Option Periods detailed.

**PROTECTION OF THE IMAGE, REPUTATION AND GOODWILL ASSOCIATED WITH THE ROYAL AIR FORCE**

a        The Contractor acknowledges that the Royal Air Force has a strong reputation to preserve. The Contractor, therefore, undertakes that in its performance of this Contract the image, reputation and goodwill associated with the Royal Air Force shall be protected.

b        If, in the sole opinion of the Authority, the Contractor acts in a way which reduces or diminishes (or is likely to reduce or diminish) the reputation, image or prestige of the Royal Air Force, then the Contractor will be informed immediately so that remedial action can be taken. If the situation is not remedied to the satisfaction of the Authority, the Authority may determine the Contract forthwith in accordance with Failure of Performance.

c        The Authority respects the need for the Contractor to retain its own corporate identity as an established and highly respected organisation committed to the welfare of Service personnel and their families in the broadest sense. The added value to the Royal Air Force of this prestigious reputation is recognised by the Authority.

**CONTRACTOR’S PERSONNEL**

General

8.1        Personnel employed under the Contract must have appropriate qualifications, skills and experience.

8.2        The Contactor shall take all reasonable steps to avoid changes of personnel assigned to and accepted for work under the Contract. Except where changes are of

a temporary nature caused by sickness etc., the Contractor shall advise the Designated Officer of any necessary changes of personnel.

Director

8.3        The Contractor acknowledges the particular importance that the Authority attaches to the proper selection and recruitment of the Director. Full particulars of the proposed Director shall be forwarded in advance to the Designated Officer. The Authority will have the right to challenge the appointment.

8.4        Condition 8.3 (above) shall also apply to any replacement Director.

**ALLOTMENT, USE AND MAINTENANCE OF OFFICES, EQUIPMENT AND FACILITIES**

Any offices and utilities/equipment made available to the Contractor by the Authority in connection with this Contract shall be made available to the Contractor free of charge and shall be used by the Contractor solely for the purpose of performing his obligations under this Contract. The Contractor shall have the use of such offices as licensee and shall vacate the same upon completion of the Contract (or earlier termination if invoked under any other conditions herein). The Authority shall have free and unrestricted access to offices used by the Contractor under this Contract.

**IR 35 Off-Payroll Rules**

1.  The Off-Payroll Rules (Intermediaries Legislation – IR35) for working in the Public Sector are in place to ensure that where a worker would have been an employee if they were providing their services directly, they are broadly paying the same tax and National Insurance Contributions (NICs) as an employee.

2. The Authority has decided that the provision of this service is **out of scope** of this legislation, for this particular requirement.

3. Where the worker is supplied through a contractor rather than being employed directly then the provisions of these conditions must be included in any terms between the Contractor and the Off Payroll Employee.

4. Periodic reviews will be implemented to re-assess determination. These will be undertaken if any part of the requirement changes from in-scope to out of scope or vice versa and prior to contract amendments being issued.

**SC2 Schedules**

**Schedule 1 - Definitions of Contract**

|  |  |
| --- | --- |
| **Articles** | means the Contractor Deliverables (goods and/or the services), including Packaging (and Certificate(s) of Conformity and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract in accordance with Schedule 2 (Schedule of Requirements), but excluding incidentals outside Schedule 2 (Schedule of Requirements) such as progress reports. (**This definition only applies when DEFCONs are added to these Conditions**); |
| **Authority** | means the Secretary of State for Defence acting on behalf of the Crown; |
| **Authority’sRepresentative(s)** | shall be those person(s) defined in Schedule 3 (Contract Data Sheet) who will act as the Authority’s Representative(s) in connection with the Contract. Where the term “Authority’s Representative(s)” in the Conditions is immediately followed by a functional description in brackets, the appropriate Authority’s Representative(s) shall be the designated person(s) for the purposes of condition 8; |
| **Business Day** | means 09:00 to 17:00 Monday to Friday, excluding public and statutory holidays; |
| **Central Government Body** | a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:a. Government Department;b. Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);c. Non-Ministerial Department; orExecutive Agency; |
| **Collect** | means pick up the Contractor Deliverables from the Consignor. This shall include loading, and any other specific arrangements, agreed in accordance with clause 28.c and Collected and Collection shall be construed accordingly; |
| **Commercial Packaging** | means commercial Packaging for military use as described in Def Stan 81-041 (Part 1) |
| **Conditions** | means the terms and conditions set out in this document; |
| **Consignee** | means that part of the Authority identified in Schedule 3 (Contract Data Sheet) to whom the Contractor Deliverables are to be Delivered or on whose behalf they are to be Collected at the address specified in Schedule 3 (Contract Data Sheet) or such other part of the Authority as may be instructed by the Authority by means of a Diversion Order; |
| **Consignor** | means the name and address specified in Schedule 3 (Contract Data Sheet) from whom the Contractor Deliverables will be dispatched or Collected; |
| **Contract** | means the Contract including its Schedules and any amendments agreed by the Parties in accordance with condition 6 (Amendments to Contract); |
| **Contract Price** | means the amount set out in Schedule 2 (Schedule of Requirements) to be paid (inclusive of Packaging and exclusive of any applicable VAT) by the Authority to the Contractor, for the full and proper performance by the Contractor of its obligations under the Contract. |
| **Contractor** | means the person who, by the Contract, undertakes to supply the Contractor Deliverables, for the Authority as is provided by the Contract. Where the Contractor is an individual or a partnership, the expression shall include the personal representatives of the individual or of the partners, as the case may be, and the expression shall also include any person to whom the benefit of the Contract may be assigned by the Contractor with the consent of the Authority; |
| **Contractor Commercially Sensitive Information** | means the Information listed in the completed Schedule 5 (Contractor’s Commercially Sensitive Information Form), which is Information notified by the Contractor to the Authority, which is acknowledged by the Authority as being commercially sensitive; |
| **Contractor Deliverables** | means the goods and/or the services, including Packaging (and Certificate(s) of Conformity and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract; |
| **Control** | means the power of a person to secure that the affairs of the Contractor are conducted in accordance with the wishes of that person:a. by means of the holding of shares, or the possession of voting powers in, or in relation to, the Contractor; orb. by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the Contractor;and a change of Control occurs if a person who Controls the Contractor ceases to do so or if another person acquires Control of the Contractor; |
| **CPET** | means the UK Government’s Central Point of Expertise on Timber, which provides a free telephone helpline and website to support implementation of the UK Government timber procurement policy; |
| **Crown Use** | in relation to a patent means the doing of anything by virtue of Sections 55 to 57 of the Patents Act 1977 which otherwise would be an infringement of the patent and in relation to a Registered Design has the meaning given in paragraph 2A(6) of the First Schedule to the Registered Designs Act 1949;  |
| **Dangerous Goods** | means those substances, preparations and articles that are capable of posing a risk to health, safety, property or the environment which are prohibited by regulation, or classified and authorised only under the conditions prescribed by the:a. Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 (CDG) (as amended 2011);b. European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR);c. Regulations Concerning the International Carriage of Dangerous Goods by Rail (RID);d. International Maritime Dangerous Goods (IMDG) Code;e. International Civil Aviation Organisation (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air;f. International Air Transport Association (IATA) Dangerous Goods Regulations. |
| **DBS Finance** | means Defence Business Services Finance, at the address stated in Schedule 3 (Contract Data Sheet); |
| **DEFFORM** | means the MOD DEFFORM series which can be found at <https://www.aof.mod.uk>; |
| **DEF STAN** | means Defence Standards which can be accessed at [https://www.dstan.mod.uk](http://www.dstan.mod.uk); |
| **Deliver** | means hand over the Contractor Deliverables to the Consignee. This shall include unloading, and any other specific arrangements, agreed in accordance with condition 28 and Delivered and Delivery shall be construed accordingly; |
| **DeliveryDate** | means the date as specified in Schedule 2 (Schedule of Requirements) on which the Contractor Deliverables or the relevant portion of them are to be Delivered or made available for Collection; |
| **Denomination of Quantity (D of Q)** | means the quantity or measure by which an item of material is managed; |
| **Design Right(s)** | has the meaning ascribed to it by Section 213 of the Copyright, Designs and Patents Act 1988; |
| **Diversion Order** | means the Authority’s written instruction (typically given by MOD Form 199) for urgent Delivery of specified quantities of Contractor Deliverables to a Consignee other than the Consignee stated in Schedule 3 (Contract Data Sheet); |
| **EffectiveDate of Contract** | means the date specified on the Authority’s acceptance letter; |
| **Evidence** | means either:a. an invoice or delivery note from the timber supplier or Subcontractor to the Contractor specifying that the product supplied to the Authority is FSC or PEFC certified; orb. other robust Evidence of sustainability or FLEGT licensed origin, as advised by CPET; |
| **Firm Price** | means a price (excluding VAT) which is not subject to variation; |
| **FLEGT** | means the Forest Law Enforcement, Governance and Trade initiative by the European Union to use the power of timber-consuming countries to reduce the extent of illegal logging; |
| **Government Furnished Assets (GFA)** | is a generic term for any MOD asset such as equipment, information or resources issued or made available to the Contractor in connection with the Contract by or on behalf of the Authority; |
| **Hazardous Contractor Deliverable** | means a Contractor Deliverable or a component of a Contractor Deliverable that is itself a hazardous material or substance or that may in the course of its use, maintenance, disposal, or in the event of an accident, release one or more hazardous materials or substances and each material or substance that may be so released; |
| **Independent Verification** | means that an evaluation is undertaken and reported by an individual or body whose organisation, systems and procedures conform to “ISO Guide 65:1996 (EN 45011:1998) General requirements for bodies operating product certification systems or equivalent”, and who is accredited to audit against forest management standards by a body whose organisation, systems and procedures conform to “ISO 17011: 2004 General Requirements for Providing Assessment and Accreditation of Conformity Assessment Bodies or equivalent”; |
| **Information** | means any Information in any written or other tangible form disclosed to one Party by or on behalf of the other Party under or in connection with the Contract; |
| **Issued Property** | means any item of Government Furnished Assets (GFA), including any materiel issued or otherwise furnished to the Contractor in connection with the Contract by or on behalf of the Authority; |
| **Legal and Sustainable** | means production and process methods, also referred to as timber production standards, as defined by the document titled “UK Government Timber Production Policy: Definition of legal and sustainable for timber procurement". The edition current on the day the Contract documents are issued by the Authority shall apply; |
| **Legislation** | means in relation to the United Kingdom any Act of Parliament, any subordinate legislation within the meaning of section 21 of the Interpretation Act 1978, any exercise of Royal Prerogative or any enforceable community right within the meaning of Section 2 of the European Communities Act 1972; |
| **Military Level Packaging (MLP)** | means Packaging that provides enhanced protection in accordance with Def Stan 81-041 (Part 1), beyond that which Commercial Packaging normally provides for the military supply chain; |
| **Military Packager Approval Scheme (MPAS)** | is a MOD sponsored scheme to certify military Packaging designers and register organisations, as capable of producing acceptable Services Packaging Instruction Sheet (SPIS) designs in accordance with Defence Standard (Def Stan) 81-041 (Part 4); |
| **Military Packaging Level (MPL)** | shall have the meaning described in Def Stan 81-041 (Part 1); |
| **MPAS Registered Organisation** | is a packaging organisation having one or more MPAS Certificated Designers capable of Military Level designs. A company capable of both Military Level and commercial Packaging designs including MOD labelling requirements; |
| **MPAS Certificated Designer** | shall mean an experienced Packaging designer trained and certified to MPAS requirements; |
| **NATO** | means the North Atlantic Treaty Organisation which is an inter-governmental military alliance based on the North Atlantic Treaty which was signed on 4 April 1949; |
| **Notices** | shall mean all Notices, orders, or other forms of communication required to be given in writing under or in connection with the Contract; |
| **Overseas** | shall mean non UK or foreign; |
| **Packaging** | Verb. The operations involved in the preparation of materiel for; transportation, handling, storage and Delivery to the user; Noun. The materials and components used for the preparation of the Contractor Deliverables for transportation and storage in accordance with the Contract; |
| **Packaging Design Authority (PDA)** | shall mean the organisation that is responsible for the original design of the Packaging except where transferred by agreement. The PDA shall be identified in the Contract, see Annex A to Schedule 3 (Appendix – Addresses and Other Information), Box 3; |
| **Parties** | means the Contractor and the Authority, and Party shall be construed accordingly; |
| **Primary Packaging Quantity(PPQ)** | means the quantity of an item of material to be contained in an individual package, which has been selected as being the most suitable for issue(s) to the ultimate user, as described in Def Stan 81-041 (Part 1); |
| **Recycled Timber** | means recovered wood that prior to being supplied to the Authority had an end use as a standalone object or as part of a structure. Recycled Timber covers:a. pre-consumer reclaimed wood and wood fibre and industrial by-products; b. post-consumer reclaimed wood and wood fibre, and driftwood; c. reclaimed timber abandoned or confiscated at least ten years previously;it excludes sawmill co-products; |
| **Safety Data Sheet** | has the meaning as defined in the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) Regulations 2007 (as amended); |
| **Schedule of Requirements** | means Schedule 2 (Schedule of Requirements), which identifies, either directly or by reference, Contractor Deliverables to be provided, the quantities and dates involved and the price or pricing terms in relation to each Contractor Deliverable; |
| **Short-Rotation Coppice** | means a specific management regime whereby the poles of trees are cut every one to two years and which is aimed at producing biomass for energy. It is exempt from the UK Government timber procurement policy. For avoidance of doubt, Short-Rotation Coppice is not conventional coppice, which is subject to the timber policy; |
| **Specification** | means the description of the Contractor Deliverables, including any specifications, drawings, samples and / or patterns, referred to in Schedule 2 (Schedule of Requirements); |
| **STANAG4329** | means the publication NATO Standard Bar Code Symbologies which can be sourced at [https://www.dstan.mod.uk/faqs.html](http://www.dstan.mod.uk/faqs.html); |
| **Subcontractor** | means any subcontractor engaged by the Contractor or by any other subcontractor of the Contractor at any level of subcontracting to provide Contractor Deliverables wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract and ‘Subcontract’ shall be interpreted accordingly; |
| **Timber and Wood-Derived Products** | means timber (including Recycled Timber and Virgin Timber but excluding Short-Rotation Coppice) and any products that contain wood or wood fibre derived from those timbers. Such products range from solid wood to those where the manufacturing processes obscure the wood element; |
| **TransparencyInformation** | means the content of this Contract in its entirety, including from time to time agreed changes to the Contract, and details of any payments made by the Authority to the Contractor under the Contract; |
| **Virgin Timber** | means Timber and Wood-Derived Products that do not include Recycled Timber. |

**Schedule 2 - Schedule of Requirements**

**ITT No: 700995378**

**PRICING SCHEDULE FOR THE PROVISION OF RAF FAMILIES’ FEDERATION SERVICES IN ACCORDANCE WITH THE STATEMENT OF REQUIREMENT AT SCHEDULE 2**

|  |
| --- |
|  Firm Prices (EX VAT) |
|   |   |   |   |   |   |   |   |   |
| Description |   | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | Option Year 1 | Option year 2 |
|   |   |   |   |   |   |   |   |   |
| Provision of RAF Families Federation Services in accordance with the Statement of Requirement |   |   |   |   |   |   |   |   |
| Travel and Subsistence |   |   |   |   |   |   |   |   |
| Total |   |   |   |   |   |   |   |   |
| Total Firm Price (Years 1 - 5 only) Ex Vat **£** |

**Statement of Requirement**

**Statement of Requirement**

**The Provision of Royal Air Force Families Federation Services**

| Ref | Requirement |
| --- | --- |
| **A** | **General Requirements** |
| **A.1** | **Scope of Requirement** |
| A.1.a | The Armed Forces Covenant, published in 2010, recognised the unique nature of life in the Armed Forces and highlighted the fact that Service families can suffer disadvantage arising from the fact they are members of the Armed Forces community. There is recognition at Ministerial level that Armed Forces life has a significant impact on Service personnel and their families and that the operational effectiveness of those in uniform can be enhanced and maintained by providing appropriate support to them and their families. |
| A.1.b | In line with the Army and Royal Navy, the RAF will have an independent RAF Families Federation to represent the collective concerns of RAF personnel, RAF Reserves, RAuxAF (to be known as ‘RAF personnel’) and their families and to enhance 2-way communication between the Service and its families. Details of the requirement are contained within this document which forms Schedule 2 of the resulting Contract. |
| A.1.c | The key objectives of this requirement, and hence those of the Contractor, shall be to:a) Gather evidence from Serving personnel and their families regarding issues of concern to them, analyse the outcomes, and produce independent, evidence-based reports to inform Ministers, senior MOD and RAF officials, and interested external agencies.b) Provide an independent voice which enables the views of RAF personnel and their family members to be represented at all levels.c) Provide effective 2-way communication between RAF personnel and their families and RAF/MOD policy staffs.d) Liaise and, where appropriate, work with organisations both inside and outside the RAF to enhance awareness of the particular needs of RAF personnel and their families and shape future support services, be they provided by the Government / Devolved Administrations or via the charitable sector.e) The Authority would welcome alternative ways of working and solutions that maximise modern and efficient ways of working. Furthermore, the Authority welcomes bids that demonstrates an awareness of the evolving future construct of the RAF and the implications for its Service personnel and their families. The Authority is open to novel ideas for developing the role that the RAF Families Federation would take in the future of the RAF.f) Provide / host an online Information Repository for RAF Personnel and Families, including and focussing on those serving overseas.g) Provide an SME to input and influence issues relating to the Armed Forces Covenant. |
| **A.2** | **Definitions** |
| A.2.a | In addition to the definitions detailed in the Terms and Conditions of the Contract the following definitions shall also apply. Where the definitions below contrast to those detailed in the Terms and Conditions of the Contract then the definitions within the Terms and Conditions of the Contract shall take precedence. |
|  | Definition | Interpretation |
|  | Contractor’s Personal Use | Any use of MOD furnished property, facilities or equipment intended for the primary benefit of the Contractor or the Contractor’s Personnel which is contrary to the MOD’s interests is considered personal use. |
|  | Contractor’s Personnel | Any employees, including sub-contractors or other agents working on behalf of the Contractor, shall be deemed the Contractor’s Personnel. |
|  | Designated Officer | The Designated Officer is the MOD representative responsible for the Requirement and is as defined at Box 2 of DEFFORM 111 of this Contract. |
|  | RAF personnel | This term shall mean any serving RAF Regular, RAF Reserves or RAuxAF personnel. |
| **A.3** | **Abbreviations and Acronyms** |
| A.3.a | In addition to the abbreviations and acronyms detailed in the Terms and Conditions of the Contract the following abbreviations and acronyms will be used. |
|  | Abbreviation or Acronym | Interpretation |
|  | AFC | Armed Forces Covenant |
|  | AOC | Air Officer Commanding |
|  | Cmd | Command |
|  | DE&S | Defence Equipment and Support |
|  | DIO | Defence Infrastructure Organisation |
|  | DMC | Directorate Media and Communications |
|  | DO | Designated Officer |
|  | GDPR | General Data Protection Regulation |
|  | H&S | Health and Safety |
|  | HIO | HIVE Information Officers |
|  | HIVE | Help Information Volunteer Exchange |
|  | HQ | Headquarters |
|  | MOD | Ministry of Defence |
|  | OC | Officer Commanding |
|  | PR | Public Relations |
|  | RAF | Royal Air Force |
|  | RAuxAF | Royal Auxiliary Air Force |
|  | SC | Security Check |
|  | SME | Subject Matter Expert |
|  | SoR | Statement of Requirement |
|  | SP | Service Personnel |
|  | TLB | Top Level Budget |
|  | VfM | Value for Money |
| **A.4** | **References** |
| A.4.a | In addition to the references detailed in the Terms and Conditions of the Contract the following references shall also apply as well as any subsequent revisions and amendments to the references. This list does not absolve the Contractor from conforming to any other relevant publications. |
|  | Reference | Version | Source |
|  | Armed Forces Covenant | 3 June 2016 | https://www.gov.uk/government/publications/armed-forces-covenant-2015-to-2020/armed-forces-covenant |
|  | Data Protection Act 2018 | 2018 c. 12 | http://www.legislation.gov.uk/ukpga/2018/12/contents/enacted |
|  | Government Security Classifications | 1.1 | https://www.gov.uk/government/publications/government-security-classifications |
| **A.5** | **Site** |
| A.5.a | The Services delivered through the contract will cover all RAF locations, including overseas, and liaison with Reserve and RAuxAF Sqns. |
| **A.6** | **Security** |
| A.6.a | The Contractor is to ensure that all of the Contractor’s Personnel have Security Check (SC) clearance. Where the Contractor’s Personnel does not have SC clearance that individual will not be allowed access to MOD facilities. |
| A.6.b | All information related to or generated by this Contract is to be treated in the appropriate manner in accordance with Government Security Classifications. The classification of the material to be handled shall not exceed OFFICIAL-SENSITIVE PERSONAL in nature. |
| A.6.c | All personal data processed under this Contract is to be treated in accordance with the Data Protection Act 2018. |
| **A.7** | **Site Access** |
| A.7.a | The Contractor’s staff will be informed of any needed identification or other documentation required to access the Sites covered by this contract, in line with the requirements of that particular Site. |
| **A.8** | **Safety and Environmental Provisions** |
| A.8.a | When on the Site the Contractor is to comply with all MOD Safety, Health and Environmental Protection regulations and policy. |
| **A.9** | **Hours of Operation and Times of Delivery** |
| A.9.a | All services to the Sites covered at A.5.a shall be delivered between the hours of 08:00 - 17:00 on weekdays with exception of recognised UK Bank Holidays and Public Holidays. These times shall be the local time related to the Site concerned. |
| **A.10** | **Contract Monitoring** |
| A.10.a | For the purposes of contract monitoring, representatives of the Contractor will routinely report to the Designated Officer on the performance of the Contract. |
| A.10.b | The Contractor is responsible for the performance of the Contract by any sub-contractors or other agents working on behalf of the Contractor. The Contractor is to deal with any issues relating to any sub-contractors or other agents working on behalf of the Contractor, this however does not exclude sub-contractors or other agents working on behalf of the Contractor from attending any Contract Monitoring meeting or contributing to any report where it is appropriate for such sub-contractors or other agents to do so. |
| A.10.c | If any sub-contractors or other agents working on behalf of the Contractor are found unsuitable, for whatever reason, the Contractor is to engage with the relevant sub-contractors or other agents to broker a resolution. |
| **A.11** | **Government Furnished Assets** |
| A.11.b | The Contractor is to report to the Designated Officer any failures of Government Furnished Assets (GFA) at the first instance for repair or replacement, as appropriate. |
| **A.12** | **Personnel Qualification Requirements and Training** |
| A.12.a | Specific experience, abilities and qualities of the post of Director RAF Fam Fed are at Annex A. Any mid-contract changes to this post are to be mutually agreed with the Authority. All other posts recruited to meet the deliverables in the contract are at the discretion and cost of the Contractor.  |
| A.12.b | The Contractor is responsible for the sourcing of the appropriate training for the Contractor’s Personnel unless otherwise noted at Annex A. Where the MOD is delivering the training then the Contractor and Contractor’s Personnel are to quote the Contract Reference Number and relevant Commercial Officer when booking any training for verification of the validity of training need under the Contract. |
| A.12.c | The Contractor is responsible for all costs for training of the Contractor’s Personnel in order to meet their obligations under the Contract unless otherwise noted at Annex A. |

| Ref | Requirement | Additional Information | Standard of Performance |
| --- | --- | --- | --- |
| **B** | **Deliverable Requirements** |  |  |
| B.1 | Employ sufficient staff with appropriate skills and experience to deliver Federation services. | Director post subject to liaison with the Authority. | Where possible in light of employment market conditions, no Federation posts gapped in excess of 1 month (Director) and other staff (2 months). |
| B.2 | Establish and manage a RAF Families Federation office facility. | The Authority may continue to provide office facilities at RAF Wittering however there is scope for the Federation office to be located somewhere new at the Contractors own cost. | Contractor to pass all RAF Wittering required H&S and fire safety inspections to satisfaction of Authority. |
| B.3 | Provide an advice, support and signposting service to all RAF personnel (Regulars, Reserves and RAuxAF) and their family members. | Service users must be able to contact RAF Families Federation staff Mon-Fri (excluding Bank Holidays) between 1000-1500. This may be in the form of ‘web-chat’ live online services and other technologies that become available throughout the duration of the Contract. | Phone calls / answerphone messages / emails answered within 1 working day. |
| B.4 | Develop and improve two-way communication with members of the RAF Reserves, including those in the Auxiliary force and their families. | The Whole Force Concept includes Reserves and RAuxAF as an integral part of the RAF Community and as such their concerns and opinions need capturing and analysing. RAuxAF work weekends and evenings and this will need to be factored into the Contactor’s working practises. | Authority requires evidence of engagement and feedback that can be used to inform and validate policy development and analysed for Reserve specific issues. |
| B.5 | Develop and improve two-way communication with single Service Personnel. | Single Service Personnel are part of the RAF’s Family and thus have issues to raise that are often not raised through the chain of command. Develop a strand of the Federation’s Comms Strategy that considers single personnel. | Authority requires data from engagement, surveys and similar that can be analysed for policy validation and development to inform single Service Personnel specific issues. |
| B.6 | Capture evidence from customers through the best use of technology (both remotely and face-to-face workshops). Ensure that the evidence gathered is able to be analysed. | Ensure that modern ways of working and efficient data capture methods are employed. For example, information should be captured once but be capable of being utilised many times. Ensure that all question sets, answers and documents are validated by 3rd party experts. | Reported evidence must include statistical information on sample size and / or number of respondents. |
| B.7 | Establish and maintain appropriate databases in which to record all evidence gathered from RAF families and from which reports can be generated. Ensure all data is safeguarded. | Databases to be independent of others within parent organisation in order to maintain confidentiality of personal casework. All data held to be GDPR compliant. | The Authority may periodically review and audit database functionality (but without access to personal data). |
| B.8 | Retain accurate records of all evidence gathered from family members and ensure that all casework is monitored and closed down effectively on completion. | Confidential case files to be maintained and the database monitored to ensure timely appropriate follow-up action.Casework to be categorised to best effect in order to feed into wider RAF evidence-gathering activity. All data held to be GDPR compliant. | The Authority may periodically review and audit database functionality (but without access to personal data). |
| B.9 | Establish and maintain a dedicated internet website to provide effective communications to and from RAF family members worldwide. | Website to be interactive in order to receive evidence direct from families and to host on-line surveys and discussions forums as appropriate.Website to make best use of emerging technology, including social media.Website to provide appropriate links to MOD, RAF and other websites of interest and value to RAF families and service personnel, including information related to the Armed Forces Covenant and location specific provision of Services. | Website to be updated as necessary in terms of news items and content to ensure accuracy and relevance. |
| B.10 | Publish a periodic magazine or similar publication for distribution to all RAF units to enhance communications on relevant issues, ensuring that personnel and families within the Diaspora and overseas are reached. | The Authority currently has an agreement with DE&S Logs Services to distribute 25,000 copies per quarter. The Authority is willing to continue to provide this facility but there is scope for contractor to provide own distribution method at own cost.Publication to also be available on-line.Contract is to ensure all advertising is ethical and to the satisfaction of the Authority and to demonstrate this as such through the development and publication of a ‘Code of Practise’ which will ensure any publisher / 3rd party utilised accords with this requirement. | Quality and quantity of publication to be to reviewed and agreed with the Authority; content remains a matter for the independent team to source. Authority to retain 2 pages for RAF Community Support input each Edition. |
| B.11 | Provide an effective media-handling service (during normal working hours only, as defined at A.5.a) to deal with any press enquiries relating to RAF families or family-related policy announcements. | RAF Families Federation will not speak as a spokesman of the RAF but as the RAF Families Federation only.RAF Families Federation to draw upon the media experience of Directorate Media and Communications (DMC) and / or HQ Air Media & Communications and seek advice as necessary. | Authority to be given prior notice of any media engagements, with 24 hours notice of press statements or interviews in national media where practicable. |
| B.12 | Ensure representation of RAF Families Federation views at an appropriate level at the meetings and events listed at Annex B. (Note some meetings are mandated but others are optional). | This list may be amended in light of changing requirements during the contract period***.*** All amendments must be sanctioned by the Authority. Not all meetings require attendance in person. Video Teleconferencing and other methods (e.g. written comments or use of another Service Federation as an authorised spokesperson) can be utilised.Consider other organisations that the Authority should engage with to mutual benefit and make such recommendations as they arise. | RAF Families Federation input at key meetings as agreed between Director RAF Families Federation and Designated Officer. |
| B.13 | Undertake an annual visit programme to RAF units to be agreed with the Authority and at a frequency agreed with the Authority. | To include evidence-gathering and PR/communications activity. | Minimum of 10 RAF units to be visited each year. |
| B.14 | Deliver progress reports as required by the Authority. | Progress reports (including one to inform the Armed Forces Pay Review Body report) and one Annual Report. | Quarterly reports as at 1 Mar, 1 Jun, and 1 Sep to be published within 4 weeks of due date (both hard copy and on-line). Quarterly report as at 1 Dec to be subsumed into Annual Report, to be published by end Feb of following year. Reports to be distributed to key posts agreed with the Authority. |
| B.15 | Deliver Evidence Reports as required by the Authority. | Production of subject specific Evidence Reports, subjects determined in consultation with the Authority. Additionally, Federation to provide input for the Statutory Armed Forces Covenant Annual Report. Evidence Reports to be validated through 3rd party experts. | Produced on an ad hoc basis and validated. AF Covenant Report to accord with timescales set by MOD. |
| B.16 | Develop and maintain effective working relations with internal and external agencies and key stakeholders to ensure Federation staffs are kept up-to-date on relevant policy developments. | The Authority will facilitate periodic policy updates with relevant Subject Matter Experts/Policy leads, including at least 2 hosted visits at Air Cmd per year and others, as required, plus an annual visit to the Federation offices. Stakeholders to include the Defence Infrastructure Organisation (DIO) and other TLBs. | Authority to seek external validation of effectiveness of relations established by Federation at all levels. |
| B.17 | Develop and maintain effective working relations with the staff of the other Service Families Federations (Army Families Federation and Navy Families Federation). | To share best practice, support each other to mutual benefit and present, where appropriate an independent, tri-Service voice on behalf of all military families. | Authority to seek assurance from Army, Navy and Deputy Chief of DefenceStaff(Personnel and Training) that RAF Families Federation is working effectively with its sister Federations. |
| B.18 | Develop and maintain effective working relations with HIVE staff. | Ensure that HIOs have up-to-date material to advertise the RAF Families Federation on stations. | HIVEs to have updated material from RAF Families Federation as required. |
| B.19 | Act as an External member of the Armed Forces Covenant Reference Group by representing the views of the RAF Family to influence, inform and monitor progress in the implementation of the principles of the Armed Forces Covenant enshrined in the Armed Forces Act 2011. | Raise awareness amongst RAF personnel and their families of the Armed Forces Covenant. | Authority endorses the attendance of the RAF Families Federation at Covenant Reference Group meetings and at House of Commons Defence Committees. |
| B.20 | Briefing / Training. Brief RAF internal audiences to inform and educate key RAF personnel on the role of the RAF Families Federation. | Briefs to include, but not limited to, Future Commanders Course and Senior Executives’ Partner’s course at Defence Academy Shrivenham (list at Annex B) | RAF Families Federation input into courses as agreed by the Authority. |
| B.21 | Engage with Service and RAF charities, in conjunction with RAF Community Support, HQ Air, in order to shape and inform the charities’ understanding of RAF personnel and their families’ needs and issues. | RAF personnel and their families receive significant support from Charities and as such the RAF Families Federation must shape and influence the charitable sector’s priorities for assistance. | Authority to confirm that there is effective communication and information exchange with the Service charities. |
| B.22 | Conduct an assessment of Covenant Trust Fund bids to ensure they meet with Covenant Trust Fund requirements and broader intent of the RAF, in conjunction with the Authority. | The Covenant Trust Fund relies on SME input from the Families’ Feds to ensure that any perceived benefits articulated within bids for funding received from 3rd parties are consistent with Authority intent and represent VfM. |  |
| B.23 | Host an Information Hub within the RAF Fam Fed website to inform all SP and families on welfare / community support availability information at locations both overseas and in the UK. | Additional to construct of current website which offers generic information only. | Customer access to be enabled by an efficient and effective online search engine. |

Statement of Requirement

**Annex A**

**Personnel Qualification Requirements and Training**

| **Qualification or Training** | **Relevant Item(s) of the SoR** | **Responsibility for Delivery of the Qualification or Training** | **Responsibility for Payment of the Qualification or Training** |
| --- | --- | --- | --- |
| **Post of Director RAF Fam Fed:** |  |  |  |
|  Has previously held a Director post for at least 3 years  | B.1 and B.11 | Contractor | Contractor |
|  At Least 10 Years of Project Management experience | B.6, B.7, and B.8 | Contractor | Contractor |
|  Proven track record of leading a team  | B.2, B.3, and B.9 | Contractor | Contractor |
|  Well-developed communication skills (written and verbal) | B.4, B.5, B.10, and B.11 | Contractor | Contractor |
|  Proven ability to communicate / influence at Board level (ideally at ministerial level) | B.11, B.12, B.15, B.16, B.17, B.18, and B.19 | Contractor | Contractor |
|  A good understanding of the UK Armed Forces strategies and policies | B.20, B.21, B.22, and B.23 | Contractor | Contractor |
|  A good understanding of issues that military (in particular RAF families and serving personnel) face | B.20, B.21, B.22, and B.23 | Contractor | Contractor |
|  Proven analytical skills | B 6 and B.7 | Contractor | Contractor |

**Annex B**

**RAF Families Federation List of Meetings and Engagements**

|  |
| --- |
|  **Meetings** |
|  | **Location** | **No**  |
| AFPRB | London | 1 |
| AMP  | HQ Air | 2 |
| CanDid (The Armed Forces Chronic Conditions and Disabilities Network) | London | 4 |
| CEAS Customer Board | Upavon |  |
| COBSEO Education Cluster | London | TBC |
| Covenant Champions Seminars | Various | 3 |
| Covenant Partnership Boards - County based | Nationwide | 8 |
| Community Support Meetings | HQ Air/Witt | 4 |
| Dept of Health Partnership Board | London | 3 |
| DCYP Trust | Andover | 1 |
| DIO CE / AMEY Director of Ops | London | 1 |
| DIO Accommodation Delivery Forum | London | 2 |
| DIO CAAS Continuous Improvement Working Group (CIWG),  | Wyton | 3 |
| FDIS/FAM development (plus comms) | London | 6 |
| Expert Group on AF Community in Wales/Scottish Government Military Support Group | Cardiff/Edinburgh | 4 |
| Family Feds - Mtg with minister | London | 4 |
| Forces Additional Needs and Disabilities Forum (FANDF) | London | 4 |
| FWG - MOD. Oversight of family strategy | London | 4 |
| HCDC - as required | London | 2 |
| Health of our Service Families UK wide working group | London | 4 |
| NHS England Armed Forces Public Patient Participation Involvement Group (AFPPPIG) | Various | 4 |
| NHS England Armed Force Clinical Reference Group | London | 3 |
| RAF Charitable Stakeholders Family  | London | 2 |
| RAF Domestic Violence Meetings | Air Command | 2 |
| MOD/UK Departments of Health Partnership Board | London | 4 |
| MOD Domestic Abuse Working Group (DAWG) | London | 4 |
| SSCE - Welsh Service Chilsren;s Education Forum | Wales | 3 |
| MOD Service Spousal Employment | London | 3 |
| Service Children in State Schools Conference | Various | 1 |
| Service Children's Progression  | Winchester | 4 |
| CASWO Update | Wittering | 4 |
| AMPBT Update  | Wittering | 2 |
| COBSEO Annual Meeting | London | 1 |
| Forces Disability Forum | London | 2 |
| Armed Forces Chronic Disabilities in Defence | London | 3 |
| Forces Pension Society  | London | 4 |
| **Presentations/Workshops** |  |  |
| CAS NCO Leadership Workshops | Various | 3 |
| FCSP  | Shrivenham | 4 |
| SEPs – presentations | Shrivenham | 3 |
| CS Course – presentations | Cranwell | 4 |
| IOT - presentations | Cranwell | 4 |
| CDOs conference | Cosford | 1 |
| Annual MOD Welfare Conference | Various | 1 |
| AF Covenant Conf | London | 1 |
| AFF Conf - Bi-annual | Various | 1 |
| ACS | Halton | 22 |
| HMLC/Family workshop | Halton | 12 |
| RTS | Halton | 24 |
| CAS Conf of WOs | Cranwell | 1 |
| SCSOs Conference | Various | 1 |
| Station visits | Various | 8 |
|  |  |  |
| Stn Family Days | Various | 12 |

**Schedule 3 - Contract Data Sheet**

|  |
| --- |
| **General Conditions** |
| **Condition 2 – Duration of Contract:**        The Contract expiry date shall be: 2026/03/31 00:00:00 |
| **Condition 4 – Governing Law:**Contract to be governed and construed in accordance with: Scots Law (Clause 4.d shall apply)Solicitors or other persons based in England and Wales (or Scotland if Scots Law applies) irrevocably appointed for Contractors without a place of business in England (or Scotland, if Scots Law applies) in accordance with clause 4.g (if applicable) are as follows:N/A |
| **Condition 8 – Authority’s Representatives:**The Authority’s Representatives for the Contract are as follows:Commercial: Caroline Razavi (as per DEFFORM 111)Project Manager: Baljit Khepar (as per DEFFORM 111) |
| **Condition 19 – Notices:**Notices served under the Contract shall be sent to the following address:Authority: Air Commerical, NIMROD, 3 Site, RAF High Wycombe. HP14 3UE (as per DEFFORM 111)Contractor: Atlas House, Wembley Road, Leicester LE3 1UTNotices can be sent by electronic mail? Yes |
| **Condition 20.a – Progress Meetings:**The Contractor shall be required to attend the following meetings:see SOR |
| **Condition 20.b – Progress Reports:**The Contractor is required to submit the following Reports:see SORReports shall be Delivered to the following address:HQ AIR Cmd, Hurricane Building, RAF High Wycombe, Bucks HP14 4UE |

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| **Supply of Contractor Deliverables** |
| **Condition 21 – Quality Assurance:**Is a Deliverable Quality Plan required for this Contract? NoIf required, the Deliverable Quality Plan must be set out as defined in AQAP 2105 and delivered to the Authority (Quality) within 0 Business Days of Contract Award. Once agreed by the Authority the Quality Plan shall be incorporated into the Contract. The Contractor shall remain at all times solely responsible for the accuracy, suitability and applicability of the Deliverable Quality Plan.Other Quality Assurance Requirements:N/A |
| **Condition 22 – Marking of Contractor Deliverables:**        Special Marking requirements: N/A |
| **Condition 24 - Supply of Data for Hazardous Contractor Deliverables, Materials and Substances:**A completed Schedule 6 (Hazardous Contractor Deliverables, Materials or Substance Statement), and if applicable, Safety Data Sheet(s) are to be provided by e-mail with attachments in Adobe PDF or MS WORD format to:a) The Authority’s Representative (Commercial)b) Defence Safety Authority – DSA-DLSR-MovTpt-DGHSIS@mod.ukto be Delivered no later than one (1) month prior to the Delivery Date for the Contract Deliverable or by the following date: 2020/11/23 00:00:00 |
| **Condition 25 – Timber and Wood-Derived Products:**A completed Schedule 7 (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements) is to be provided by e-mail with attachments in Adobe PDF or MS WORD format to the Authority’s Representative (Commercial)to be Delivered by the following date: 2020/11/23 00:00:00 |
| **Condition 26 – Certificate of Conformity:**Is a Certificate of Conformity required for this Contract? NoApplicable to Line Items: N/AIf required, does the Contractor Deliverables require traceability throughout the supply chain? NoApplicable to Line Items: |
| **Condition 28.b – Delivery by the Contractor:**The following Line Items are to be Delivered by the Contractor:All        Special Delivery Instructions:N/AEach consignment is to be accompanied by a DEFFORM 129J. |
| **Condition 28.c - Collection by the Authority:**The following Line Items are to be Collected by the Authority:N/ASpecial Delivery Instructions:        N/AEach consignment is to be accompanied by a DEFFORM 129J.Consignor details (in accordance with 28.c.(4)):Line Items: NA Address: NALine Items: NA Address: NAConsignee details (in accordance with condition 23):Line Items: N/A Address: N/ALine Items: N/A Address: N/A |
| **Condition 30 – Rejection:**The default time limit for rejection of the Contractor Deliverables is thirty (30) days unless otherwise specified here:The time limit for rejection shall be 30 Business Days. |
| **Condition 32 – Self-to-Self Delivery:**Self-to-Self Delivery required? NoIf required, Delivery address applicable:N/A |

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| **Pricing and Payment** |
| **Condition 35 – Contract Price:**All Schedule 2 line items shall be FIRM Price other than those stated below:N/AClause 46. NA refers |

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| --- |
| **Termination** |
| **Condition 42 – Termination for Convenience:**The Notice period for terminating the Contract shall be twenty (20) days unless otherwise specified here:The Notice period for termination shall be 30 Business Days |

|  |
| --- |
| **Other Addresses and Other Information** *(forms and publications addresses and official use information)* |
| See Annex A to Schedule 3 (DEFFORM 111) |

 **Schedule 4 - Contract Change Control Procedure (i.a.w. Clause 6b)**

**Contract No:**

**1.** **Authority Changes**

Subject always to Condition 6 (Amendments to Contract), the Authority shall be entitled, acting reasonably, to require changes to the Contractor Deliverables (a " Change") in accordance with this Schedule 4.

**2.** **Notice of Change**

a. If the Authority requires a Change, it shall serve a Notice (an "Authority Notice of Change") on the Contractor.

b. The Authority Notice of Change shall set out the change required to the Contractor Deliverables in sufficient detail to enable the Contractor to provide a written proposal (a "Contractor Change Proposal") in accordance with clause 3 below.

**3.** **Contractor Change Proposal**

a. As soon as practicable, and in any event within fifteen (15) Business Days (or such other period as the Parties may agree) after having received the Authority Notice of Change, the Contractor shall deliver to the Authority a Contractor Change Proposal.

b. The Contractor Change Proposal shall include:

1. the effect of the Change on the Contractor’s obligations under the Contract;

2. a detailed breakdown of any costs which result from the Change;

3. the programme for implementing the Change;

4. any amendment required to this Contract as a result of the Change, including, where appropriate, to the Contract Price; and

5. such other information as the Authority may reasonably require.

c. The price for any Change shall be based on the prices (including all rates) already agreed for the Contract and shall include, without double recovery, only such charges that are fairly and properly attributable to the Change.

**4.** **Contractor Change Proposal – Process and Implementation**

a. As soon as practicable after the Authority receives a Contractor Change Proposal, the Authority shall:

1. evaluate the Contractor Change Proposal;

2. where necessary, discuss with the Contractor any issues arising and following such discussions the Authority may modify the Authority Notice of Change and the Contractor shall as soon as practicable, and in any event not more than ten (10) Business Days (or such other period as the Parties may agree) after receipt of such modification, submit an amended Contractor Change Proposal.

b. As soon as practicable after the Authority has evaluated the Contractor Change Proposal (amended as necessary) the Authority shall:

1. indicate its acceptance of the Change Proposal by issuing an amendment to the Contract in accordance with Condition 6 (Amendments to Contract); or

2. serve a Notice on the Contractor rejecting the Contractor Change Proposal and withdrawing (where issued) the Authority Notice of Change.

c. If the Authority rejects the Change Proposal it shall not be obliged to give its reasons for such rejection.

d. The Authority shall not be liable to the Contractor for any additional work undertaken or expense incurred unless a Contractor Change Proposal has been accepted in accordance with Clause 4b.(1) above.

**5.** **Contractor Changes**

If the Contractor wishes to propose a Change, it shall serve a Contractor Change Proposal on the Authority, which shall include all of the information required by Clause 3b above, and the process at Clause 4 above shall apply.

**Schedule 5 - Contractor's Commercial Sensitive Information Form (i.a.w. condition 13)**

**Contract No:**

|  |
| --- |
| Contract No:        |
| Description of Contractor’s Commercially Sensitive Information:       |
| Cross Reference(s) to location of sensitive information:       |
| Explanation of Sensitivity:       |
| Details of potential harm resulting from disclosure:       |
| Period of Confidence (if applicable):       |
| Contact Details for Transparency / Freedom of Information matters:Name:      Position:      Address:      Telephone Number:      Email Address:       |

**Schedule 6 - Hazardous Contractor Deliverables, Materials or Substances Supplied under the Contract**

**Data Requirementsfor Contract No:**

**Hazardous Contractor Deliverables, Materials or Substances**

**Statement by the Contractor**

Contract No:

Contract Title:

Contractor:

Date of Contract:

\* To the best of our knowledge there are no hazardous Contractor Deliverables, materials or substances to be supplied.

\* To the best of our knowledge the hazards associated with materials or substances to be supplied under the Contract are identified in the Safety Data Sheets (Qty:     ) attached in accordance with condition 24.

Contractor’s Signature:

Name:

Job Title:

Date:

\* check box () as appropriate

To be completed by the Authority

Domestic Management Code (DMC):

NATO Stock Number:

Contact Name:

Contact Address:

Copy to be forwarded to:

Hazardous Stores Information System (HSIS)

Department of Safety & Environment, Quality and Technology (D S & EQT)

Spruce 2C, #1260

MOD Abbey Wood (South)

Bristol BS34 8JH

Emails to be sent to:

DESTECH-QSEPEnv-HSISMulti@mod.gov.uk

**Schedule 7 - Timber and Wood- Derived Products Supplied under the Contract**

**Data Requirements for Contract No:**

The following information is provided in respect of condition 25 (Timber and Wood-Derived Products):

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Schedule of Requirements item and timber product type** | **Volume of timber Delivered to the Authority with FSC, PEFC or equivalent evidence** | **Volume of timber Delivered to the Authority with other evidence** | **Volume (as Delivered to the Authority) of timber without evidence of compliance with Government Timber Procurement Policy** | **Total volume of timber Delivered to the Authority under the Contract** |
|  |  |  |  |  |
|  |  |  |  |  |
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**Schedule 8 - Acceptance Procedure (i.a.w. condition 29)**

Not Applicable

**Schedule 9 TUPE**

**Schedule 9**

**TRANSFER REGULATIONS**

**EMPLOYEE TRANSFER ARRANGEMENTS ON EXIT**

1. **DEFINITIONS**

1.1 In this Schedule 9, save where otherwise provided, words and terms defined in Schedule 1 (Definitions) of the Contract shall have the meaning ascribed to them in Schedule 1 (Definitions) of the Contract.

1.2 Without prejudice to Schedule 1 (Definitions) of the Contract unless the context otherwise requires:

"**Data Protection Legislation**" means: (i) Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the "**General Data Protection Regulation**"); (ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; and (iii) all applicable Law about the processing of personal data and privacy;

"**Employee Liability Information**" has the same meaning as in Regulation 11(2) of the Transfer Regulations;

"**Employing Sub-Contractor**" means any sub-contractor of the Contractor providing all or any part of the Services who employs or engages any person in providing the Services;

"**New Provider**" means any replacement service provider or providers engaged to provide the Services (or part thereof) or substantially similar services or the Authority itself where the Services or substantially similar services or part thereof continue to be provided by the Authority after partial termination, termination or expiry of this Contract;

"**Relevant Transfer**" means a transfer of the employment of Transferring Employees from the Contractor or any Employing Sub-Contractor to a New Provider or the Authority under the Transfer Regulations;

"**Transfer Date**" means the date on which the transfer of a Transferring Employee takes place under the Transfer Regulations;

"**Transferring Employee**" means an employee wholly or mainly employed or otherwise assigned to the Services (or in respect of partial termination, the relevant part of the Services) whose employment transfers under the Transfer Regulations from the Contractor or any Employing Sub-Contractor to a New Provider;

"**Transfer Regulations**" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to and/or the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (as amended from time to time), as appropriate.

2.

**EMPLOYMENT**

**2.1**
**Information on Re-tender, Partial Termination, Termination or Expiry**

2.1.1
No earlier than [two years] preceding the termination, partial termination or Expiry of this Contract or a potential Transfer Date or at any time after the service of a notice to terminate this Contract or the provision of any of the Services (whether in whole or part) or on receipt of a written request by the Authority, the Contractor shall (and shall procure that any Employing Sub-Contractor shall):

(a)
supply to the Authority such information as the Authority may reasonably require in order to consider the applicaton of the Transfer Regulations on the termination, partial termination or expiry of this Contract;

(b) supply to the Authority such full and accurate and up-to-date information as may be requested by the Authority including the information listed in Appendix 1 to this Schedule 9 relating to the employees who are wholly or mainly employed, assigned or engaged in providing the Services or part of the Services under this Contract who may be subject to a Relevant Transfer;

(c) provide the information promptly and in any event not later than three months from the date when a request for such information is made and at no cost to the Authority;

(d)
acknowledge that the Authority will use the information for informing any prospective New Provider for any services which are substantially the same as the Services or part of the Services provided pursuant to this Contract;

(e) inform the Authority of any changes to the information provided under paragraph 2.1.1(a) or 2.1.1(b) up to the Transfer Date as soon as reasonably practicable.

2.1.2

Three months preceding the termination, partial termination or expiry of this Contract or on receipt of a written request from the Authority the Contractor shall:

(a) ensure that Employee Liability Information and such information listed in Part A of Appendix 2 of this Schedule 9 (Personnel Information) relating to the Transferring Employees is provided to the Authority and/or any New Provider;

(b) inform the Authority and/or any New Provider of any changes to the information provided under this Paragraph 2.1.2 up to any Transfer Date as soon as reasonably practicable;

(c) enable and assist the Authority and/or any New Provider or any sub-contractor of a New Provider to communicate with and meet those employees and their trade union or other employee representatives.

2.1.3

No later than 28 days prior to the Transfer Date the Contractor shall provide the Authority and/or any New Provider with a final list of the Transferring Employees together with the information listed in Part B of Appendix 2 of this Schedule 9 (Personnel Information) relating to the Transferring Employees. The Contractor shall inform the Authority and/or New Provider of any changes to this list or information up to the Transfer Date.

2.1.4 Within 14 days following the relevant Transfer Date the Contractor shall provide to the Authority and/or any New Provider the information set out in Part C of Appendix 2 of this Schedule 9 in respect of Transferring Employees.

2.1.5
Paragraphs 2.1.1 and 2.1.2 of this Appendix are subject to the Contractor's obligations in respect of the Data Protection Legislation and the Contractor shall use its best endeavours to obtain the consent of its employees (and shall procure that its Sub-Contractors use their best endeavours to obtain the consent of their employees) to the extent necessary under the Data Protection Legislation or provide the data in an anonymous form in order to enable disclosure of the information required under paragraphs 2.1.1 and 2.1.2. Notwithstanding this paragraph 2.1.4, the Contractor acknowledges (and shall procure that its Sub-Contractors acknowledge) that they are required to provide sufficient information to the Authority to enable the Authority to determine the nature of the activities being undertaken by employees engaged in providing the Services, to assess whether there is an organised grouping for the purposes of the Transfer Regulations and to assess who is assigned to such organised grouping. To the extent that anonymous data has been provided by the Contractor pursuant to its obligations under Paragraph 2.1.1 or 2.1.2 above, the Contractor shall provide full data to the Authority no later than 28 days prior to the Transfer Date.

2.1.6
On notification to the Contractor by the Authority of a New Provider or within the period of six months prior to the Termination Date or after service of a notice to terminate this Contract (whether in whole or in part), whichever is earlier and in any event on receipt of a written request by the Authority, the Contractor shall not and shall procure that an Employing Sub-Contractor shall not:

(a) materially amend or promise to amend the rates of remuneration or other terms and conditions of employment of any person wholly or mainly employed or engaged in providing the Services under this Contract; or

(b) replace or re-deploy from the Services any person wholly or mainly employed or engaged in providing the Services, or materially increase or decrease the number of persons performing the Services under this Contract or the working time spent on the Services (or any part thereof); or

(c) reorganise any working methods or assign to any person wholly or mainly employed or engaged in providing the Services (or any part thereof) any duties unconnected with the Services (or any part thereof) under this Contract; or

(d) terminate or give notice to terminate the employment of any person wholly or mainly employed or engaged in providing the Services (or any part thereof) under this Contract other than in the case of serious misconduct or for poor performance,

save in the ordinary course of business and with the prior written consent of the Authority (not to be unreasonably withheld or delayed) and the Contractor shall indemnify and keep indemnified the Authority in respect of any reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any breach of paragraphs 2.1.1, 2.1.2, 2.1.3, 2.1.4 or 2.1.6 of this Schedule 9.

2.1.7 The Authority may at any time prior to the period set out in paragraph 2.1.5 of this Schedule 9 request from the Contractor any of the information in sections 1(a) to (d) of Appendix 1 and the Contractor shall and shall procure any Sub-Contractor will provide the information requested within 28 days of receipt of that request.

**2.2**
**Obligations in Respect of Transferring Employees**

2.2.1 To the extent that the Transfer Regulations apply on expiry, termination or partial termination of this contract, the Contractor shall and shall procure any Employing Sub-Contractor shall and the Authority shall and shall procure that a New Provider shall in such circumstances:

(a) before and in relation to the Transfer Date liaise with each other and shall co-operate with each other in order to implement effectively the smooth transfer of the Transferring Employees to the Authority and/or a New Provider; and

(b) comply with their respective obligations under the Transfer Regulations including their obligations to inform and consult under Regulation 13 of the Transfer Regulations.

**2.3**

**Unexpected Transferring Employees**

2.3.1 If a claim or allegation is made by an employee or former employee of the Contractor or any Employing Sub-Contractor who is not named on the list of Transferring Employees provided under paragraph 2.1.3 (an "**Unexpected Transferring Employee**") that he has or should have transferred to the Authority and/or New Provider by virtue of the Transfer Regulations, the Party receiving the claim or allegation shall notify the other Party (or the Contractor shall notify the Authority on the Sub-Contractor’s behalf and the Authority shall notify the Contractor on the New Provider’s behalf) in writing as soon as reasonably practicable and no later than ten Business Days after receiving notification of the Unexpected Transferring Employee's claim or allegation, whereupon:

(a) the Contractor shall (or shall procure that the Employing Sub-Contractor shall), as soon as reasonably practicable, offer and/or confirm continued employment to the Unexpected Transferring Employee or take such other steps so as to effect a written withdrawal of the claim or allegation; and

(b)
if the Unexpected Transferring Employee's claim or allegation is not withdrawn or resolved the Contractor shall notify the Authority (who will notify any New Provider who is a party to such claim or allegation), and the Authority (insofar as it is permitted) and/or New Provider (as appropriate) shall employ the Unexpected Transferring Employee or as soon as reasonably practicable, (subject to compliance with its obligations at paragraph 2.3.1(c)(iii)), serve notice to terminate the Unexpected Transferring Employee's employment in accordance with his contract of employment; and

(c)
the Contractor shall indemnify the Authority against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any of the following liabilities incurred by the Authority or New Provider in dealing with or disposing of the Unexpected Transferring Employee's claim or allegation:

(i) any additional costs of employing the Unexpected Transferring Employee up to the date of dismissal where the Unexpected Transferring Employee has been dismissed in accordance with paragraph 2.3.1(b);

(ii) any liabilities acquired by virtue of the Transfer Regulations in relation to the Unexpected Transferring Employee;

(iii) any liabilities relating to the termination of the Unexpected Transferring Employee's employment but excluding such proportion or amount of any liability for unfair dismissal, breach of contract or discrimination attributable:

(A) to a failure by the Authority or a New Provider to act reasonably to mitigate the costs of dismissing such person);

(B) directly or indirectly to the procedure followed by the Authority or a New Provider in dismissing the Unexpected Transferee; or

(C) to the acts/omissions of the Authority or a New Provider not wholly connected to the dismissal of that person;

(iv) any liabilities incurred under a settlement of the Unexpected Transferring Employee's claim which was reached with the express permission of the Contractor (not to be unreasonably withheld or delayed);

(v) reasonable administrative costs incurred by the Authority or New Provider in dealing with the Unexpected Transferring Employee's claim or allegation, subject to a cap per Unexpected Transferring Employee of £5,000; and

(vi) legal and other professional costs reasonably incurred;

2.3.2 the Authority shall be deemed to have waived its right to an indemnity under paragraph 2.3.1(c) if it fails without reasonable cause to take, or fails to procure any New Provider takes, any action in accordance with any of the timescales referred to in this paragraph 2.3.

**2.4**
**Indemnities on transfer under the Transfer Regulations on Partial Termination, Termination or Expiry of the Contract**

2.4.1 If on the expiry, termination or partial termination of the Contract there is a Relevant Transfer, the Contractor shall indemnify the Authority and any New Provider against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any claim by any employee or trade union representative or employee representative arising whether before or after the Transfer Date out of any failure by the Contractor or any Sub-Contractor to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Transferring Employee or any other employee of the Contractor or any Sub-Contractor affected by the Relevant Transfer (as defined by Regulation 13 of the Transfer Regulations), save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities are a result of the act or omission of the Authority or the New Provider.

2.4.2
If there is a Relevant Transfer, the Authority shall indemnify the Contractor against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of, or in connection with:

(a) any claim or claims by a Transferring Employee at any time on or after the Transfer Date which arise as a result of an act or omission of the Authority or a New Provider or a sub-contractor of a New Provider during the period from and including the Transfer Date;

(b) subject to paragraph 2.4.1 any claim by any employee or trade union representative or employee representative arising whether before or after the Transfer Date out of any failure by the Authority or a New Provider or a sub-contractor of a New Provider to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Transferring Employee or any other employee engaged wholly or mainly in connection with the Services by the New Provider or any other employee of the Authority or any New Provider affected by the Relevant Transfer effected by this Contract (as defined by Regulation 13 of the Transfer Regulations),

save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities are a result of the act or omission of the Contractor or any Employing Sub-Contractor.

2.4.3
In the event of a Relevant Transfer, the Authority shall indemnify the Contractor in respect of all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and other liabilities arising out of or in connection with or as a result of a substantial change by the Authority [or a New Provider or any sub-contractor of a New Provider] on or after the Transfer Date to the working conditions of any Transferring Employee to the material detriment of any such Transferring Employee. For the purposes of this paragraph 2.4.3, the expressions "substantial change" and "material detriment" shall have the meanings as are ascribed to them for the purposes of Regulation 4(9) of the Transfer Regulations.

**2.5**
**Contracts (Rights of Third Parties) Act 1999**

2.5.1 A New Provider may enforce the terms of paragraph 2.3 and 2.4 against the Contractor in accordance with the Contracts (Rights of Third Parties) Act 1999.

2.5.2 The consent of a New Provider (save where the New Provider is the Authority) is not required to rescind, vary or terminate this Contract.

2.5.3 Nothing in this paragraph 2.5 shall affect the accrued rights of the New Provider prior to the rescission, variation, expiry or termination of this Contract.

**2.6** **General**

2.6.1 The Contractor shall not recover any Costs and/or other losses under this Schedule 9 where such Costs and/or losses are recoverable by the Contractor elsewhere in this Contract and/or are recoverable under the Transfer Regulations or otherwise.

**Appendix 1**

**CONTRACTOR PERSONNEL-RELATED INFORMATION TO BE RELEASED UPON RE-TENDERING WHERE THE TRANSFER REGULATIONS APPLIES**

1.Pursuant to paragraph 2.1.1(b) of this Schedule 9, the following information will be provided:

a)The total number of individual employees (including any employees of Sub-Contractors) that are currently engaged, assigned or employed in providing the Services and who may therefore be transferred. Alternatively the Contractor should provide information why any of their employees or those of their Sub-Contractors will not transfer;

b)The total number of posts or proportion of posts expressed as a full-time equivalent value that currently undertakes the work that is to transfer;

c)The preceding 12 months total pay costs – (Pay, benefits employee/employer national insurance contributions and overtime);

d)Total redundancy liability including any enhanced contractual payments;

2.In respect of those employees included in the total at 1(a), the following information:

a) Age (not date of Birth);

b) Employment Status (i.e. Fixed Term, Casual, Permanent);

c )Length of current period of continuous employment (in years, months) and notice entitlement;

d) Weekly conditioned hours of attendance (gross);

e) Standard Annual Holiday Entitlement (not "in year" holiday entitlement that may contain carry over or deficit from previous leave years);

f) Pension Scheme Membership:

g) Pension and redundancy liability information;

h) Annual Salary;

i) Details of any regular overtime commitments (these may be weekly, monthly or annual commitments for which staff may receive an overtime payment);

j) Details of attendance patterns that attract enhanced rates of pay or allowances;

k) Regular/recurring allowances;

l) Outstanding financial claims arising from employment (i.e. season ticket loans, transfer grants);

3. The information to be provided under this Appendix 1 should not identify an individual employee by name or other unique personal identifier unless such information is being provided 28 days prior to the Transfer Date.

4.        The Contractor will provide (and will procure that the Sub-Contractors provide) the Authority/tenderers with access to the Contractor's and Sub-Contractor’s general employment terms and conditions applicable to those employees identified at paragraph 1(a) of this Appendix 1.

**Appendix 2**

**PERSONNEL INFORMATION TO BE RELEASED PURSUANT TO THIS CONTRACT**

**Part A**

1. Pursuant to paragraph 2.1.2 of this Schedule 9, the written statement of employment particulars as required by section 1 of the Employment Rights Act 1996 together with the following information (save where that information is included within that statement) which will be provided to the extent it is not included within the written statement of employment particulars:

**1.1** **Personal, Employment and Career**

a) Age;

b) Security Vetting Clearance;

c) Job title;

d)Work location;

e)Conditioned hours of work;

f) Employment Status;

g) Details of training and operating licensing required for Statutory and Health and Safety reasons;

h) Details of training or sponsorship commitments;

i) Standard Annual leave entitlement and current leave year entitlement and record;

j) Annual leave reckonable service date;

k) Details of disciplinary or grievance proceedings taken by or against transferring employees in the last two years;

l) Information of any legal proceedings between employees and their employer within the previous two years or such proceedings that the transferor has reasonable grounds to believe that an employee may bring against the transferee arising out of their employment with the transferor;

m) Issue of Uniform/Protective Clothing;

n) Working Time Directive opt-out forms; and

o) Date from which the latest period of continuous employment began.

**1.2** **Superannuation and Pay**

a)Maternity leave or other long-term leave of absence (meaning more than 4 weeks) planned or taken during the last two years;

b) Annual salary and rates of pay band/grade;

c) Shifts, unsociable hours or other premium rates of pay;

d) Overtime history for the preceding twelve-month period;

e) Allowances and bonuses for the preceding twelve-month period;

f) Details of outstanding loan, advances on salary or debts;

g) Pension Scheme Membership;

h) For pension purposes, the notional reckonable service date;

i) Pensionable pay history for three years to date of transfer;

j) Percentage of any pay currently contributed under additional voluntary contribution arrangements; and

k) Percentage of pay currently contributed under any added years arrangements.

**1.3** **Medical**

a) Details of any period of sickness absence of 3 months or more in the preceding period of 12 months; and

b) Details of any active restoring efficiency case for health purposes.

**1.4** **Disciplinary**

a) Details of any active restoring efficiency case for reasons of performance; and

b) Details of any active disciplinary cases where corrective action is on going.

**1.5** **Further information**

a) Information about specific adjustments that have been made for an individual under the Equality Act 2010;

b) Short term variations to attendance hours to accommodate a domestic situation;

c) Individuals that are members of the Reserves, or staff that may have been granted special leave for public duties such as a School Governor; and;

d)Information about any current or expected maternity or other statutory leave or other absence from work.

**Part B**

**1.6** **Information to be provided 28 days prior to the Transfer Date:**

a)Employee's full name;

b)Date of Birth

c) Home address;

d) Bank/building society account details for payroll purposes Tax Code.

**PART C**

**1.7** **Information to be provided within 14 days following a Transfer Date:**

1.7.1 Performance Appraisal

The current year's Performance Appraisal;

Current year’s training plan (if it exists); and

Performance Pay Recommendations (PPR) forms completed in the current reporting year, or where relevant, any bonus entitlements;

Superannuation and Pay

Cumulative pay for tax and pension purposes;

Cumulative tax paid;

National Insurance Number;

National Insurance contribution rate;

Other payments or deductions being made for statutory reasons;

Any other voluntary deductions from pay;

**DEFFORM 111**

**DEFFORM 111**

**Appendix - Addresses and Other Information**

**1. Commercial Officer**

Name: Caroline Razavi

Address: RAF High Wycombe., 3 Site, NIMROD, High Wycombe. HP14 4UE

Email: caroline.razavi750@mod.gov.uk         01494 494358

**2. Project Manager, Equipment Support Manager or PT Leader** (from whom technical information is available)

Name: Baljit Khepar

Address HQ Air Command, Hurricane Building, RAF High Wycombe. HP14 4UE

Email: Baljit.Khepar727@mod.gov.u                 01494 497599

**3. Packaging Design Authority** Organisation & point of contact:

N/A

(Where no address is shown please contact the Project Team in Box 2)

 N/A

**4. (a) Supply / Support Management Branch or Order Manager:**

**Branch/Name:** N/A

N/A

**(b) U.I.N.** N/A

**5. Drawings/Specifications are available from** N/A

**6.** **Intentionally Blank**

**7.** **Quality Assurance Representative:** Alan Eyre

Commercial staff are reminded that all Quality Assurance requirements should be listed under the General Contract Conditions.

**AQAPS** and **DEF STANs** are available from UK Defence Standardization, for access to the documents and details of the helpdesk visit http://dstan.uwh.diif.r.mil.uk/  [intranet] or https://www.dstan.mod.uk/ [extranet, registration needed].

**8. Public Accounting Authority**

1. Returns under DEFCON 694 (or SC equivalent) should be sent to DBS Finance ADMT – Assets In Industry 1, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD

 44 (0) 161 233 5397

2. For all other enquiries contact DES Fin FA-AMET Policy, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD

 44 (0) 161 233 5394

**9. Consignment Instructions** The items are to be consigned as follows: N/A

**10. Transport.** The appropriate Ministry of Defence Transport Offices are:

**A. DSCOM**, DE&S, DSCOM, MoD Abbey Wood, Cedar 3c, Mail Point 3351, BRISTOL BS34 8JH

Air Freight Centre

IMPORTS  030 679 81113 / 81114 Fax 0117 913 8943

EXPORTS  030 679 81113 / 81114 Fax 0117 913 8943

Surface Freight Centre

IMPORTS  030 679 81129 / 81133 / 81138 Fax 0117 913 8946

EXPORTS  030 679 81129 / 81133 / 81138 Fax 0117 913 8946

**B.JSCS**

JSCS Helpdesk No. 01869 256052 (select option 2, then option 3)

JSCS Fax No. 01869 256837

[www.freightcollection.com](http://www.freightcollection.com/)

**11. The Invoice Paying Authority**

Ministry of Defence, DBS Finance, Walker House, Exchange Flags Liverpool, L2 3YL

 0151-242-2000 Fax: 0151-242-2809

**Website is:** [https://www.gov.uk/government/organisations/ministry-of-defence/about/procurement#invoice-processing](#https://www.gov.uk/government/organisations/ministry_of_defence/about/procurement)

**12. Forms and Documentation are available through \*:**

Ministry of Defence, Forms and Pubs Commodity Management PO Box 2, Building C16, C Site, Lower Arncott, Bicester, OX25 1LP (Tel. 01869 256197 Fax: 01869 256824)

**Applications via fax or email:** Leidos-FormsPublications@teamleidos.mod.uk

**\* NOTE**

**1.** Many **DEFCONs** and **DEFFORMs** can be obtained from the MOD Internet Site: <https://www.aof.mod.uk/aofcontent/tactical/toolkit/index.htm>

2. If the required forms or documentation are not available on the MOD Internet site requests should be submitted through the Commercial Officer named in Section 1.

**Deliverables**

**Deliverables Note**

This matrix is intended to provide an overview of the parties’ contractual obligations to assist with contract management. It does not form part of the contract and should not be relied upon to aid interpretation of the contract. In the event of any conflict, inconsistency or discrepancy between this matrix and the contract, the terms of the contract shall take precedence.

**Supplier Contractual Deliverables**

Supplier Contractual Deliverables

|  |  |  |  |
| --- | --- | --- | --- |
| Name | Description | Due | Responsible Party |
| Obligation Condition 36.c - Payment | Payment of sums due |  | Supplier Organization |
| Obligation Condition 20.a - Attendance at Progress Meetings | attend progress meetings at the frequency or times specified in the contract |  | Supplier Organization |

**Buyer Contractual Deliverables**

Buyer Contractual Deliverables

|  |  |  |  |
| --- | --- | --- | --- |
| Name | Description | Due | Responsible Party |
| Obligation Condition 42.a - Termination | Written notice of Termination of part or whole of contract |  | Buyer Organization |

**Pricing**

Firm prices are to be used.

A breakdown is to be provided as per SECTION D – Price Breakdown for Non Qualifying Contract.

**Travel and Subsistence**

A full breakdown is to be provided

Travel and Subsistence should be firm priced in accordance with the limits listed below:

|  |  |
| --- | --- |
| Item |  |
| Accommodation | £100 per night |
| Lunch | £5 |
| Evening | £22.50 |
| Mileage | 30p per mile |

The limits listed are **inclusive** of VAT.

**Key Performance Indicators**

Please refer to performance in the deliverables section of the Statement of Requirement.

**Quality Assurance Conditions**

**No Specific QMS**

No Specific Quality Management System requirements are defined. This does not relieve the Supplier of providing conforming Products under this Contract.

**DEFSTAN 05-061 Pt 4**

Quality Assurance Procedural Requirements - Contractor Working Parties

Issue 3