

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 competition or at a later stage. Neither does the issue of this ITT or subsequent Tender submission create any implied Contract between the Authority and any Tenderer and any such implied Contract is expressly excluded.
- F2. The Authority reserves the right, but is not obliged to:
- a. vary the terms of this ITT in accordance with applicable law;
 - b. seek clarification or additional documents in respect of a Tenderer's submission during the Tender evaluation where necessary for the purpose of carrying out a fair evaluation. Tenderers are asked to respond to such requests promptly;
 - c. visit your site;
 - d. disqualify any Tenderer that submits a non-compliant Tender in accordance with the instructions or conditions of this ITT;
 - e. disqualify any Tenderer that is guilty of misrepresentation in relation to their Tender, expression of interest, the dynamic PQQ or the tender process;
 - f. re-assess your suitability to remain in the competition, for example where there is a material change in the information submitted in and relating to the PQQ response, see paragraphs A31 to A34;
 - g. withdraw this ITT at any time, or choose not to award any Contract as a result of this tender process, or re-invite Tenders on the same or any alternative basis;
 - h. re-issue this ITT on a single source basis, in the event that this procurement does not result in a 'competitive process' as defined in the Single Source Contract Regulations 2014, making such adjustments as would be required by the application of the Defence Reform Act 2014 and/or the Single Source Contract Regulations 2014;
 - i. choose not to award any Contract as a result of the current tender process;
 - j. where it is considered appropriate, ask for an explanation of the costs or price proposed in the Tender where the Tender appears to be abnormally low;
- F3. The Contract will be effective when both parties sign the Contract. The Contract will be issued by the Authority via a DEFFORM 8, to the address you provide, on or before the end of the validity period specified in paragraph C3.

Conforming to the Law

- F4. You must comply with all applicable UK legislation and any equivalent legislation in a third state.
- F5. Your attention is drawn to legislation relating to the canvassing of a public official, collusive behaviour and bribery. If you act in breach of this legislation your Tender will 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.

Bid Rigging and Other Illegal Practices

- F6. You must report any suspected or actual bid rigging, 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

F7. Any attempt by Tenderers or their advisors to influence the contract award process in any way may result in the Tenderer being disqualified. Specifically, Tenderers shall not directly or indirectly at any time:

- devise or amend the content of their Tender in accordance with any agreement or arrangement with any other person, other than in good faith with a person who is a proposed partner, supplier, consortium member or provider of finance;
- enter into any agreement or arrangement with any other person as to the form or content of any other Tender, or offer to pay any sum of money or valuable consideration to any person to effect changes to the form or content of any other Tender;
- enter into any agreement or arrangement with any other person that has the effect of prohibiting or excluding that person from submitting a Tender;
- canvass the Authority or any employees or agents of the Authority in relation to this procurement; or
- attempt to obtain information from any of the employees or agents of the Authority or their advisors concerning another Tenderer or Tender.

F8. Where you have provided advice to the Authority in relation to this procurement procedure or otherwise have been or are involved in any way in the preparation or conduct of this procurement procedure or where any other actual or potential Conflict of Interest (COI) exists, arises or may arise or any situation arises that might give the perception of a COI at any point before the Contract award decision, you must notify the Authority immediately.

F9. Where an actual or potential COI exists or arises or any situation arises that might give the perception of a COI at any point before the Contract award decision, you must provide a proposed Compliance Regime within seven (7) calendar days of notifying the Authority of the actual, potential or perceived COI. The proposal must be of a standard which, in the Authority's sole opinion, appropriately manages the conflict, provides sufficient separation to prevent distortion of competition and provides full details listed at F9 a to g below. Where the Contract is awarded and the COI is still relevant post-Contract award decision, your proposed Compliance Regime will become part of the Contract Terms and Conditions. As a minimum, the Compliance Regime must include:

- a. the 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 and/or non-disclosure agreements (e.g. DEFFORM 702);
- f. the Authority's rights of audit; and
- g. physical and managerial separation.

F10. Tenderers are ultimately responsible for ensuring that no Conflicts of Interest exist between the Tenderer and their advisors, and the Authority and its advisors. Any Tenderer who fails to comply with the requirements described at paragraphs F7 to F10 (including where the Authority does not deem the proposed Compliance Regime to be of a standard which appropriately manages the conflict) may be disqualified from the procurement at the discretion of the Authority.

Government Furnished Assets

F11. Where the Authority provides Government Furnished Assets (GFA) in support of this competition, you must include details of the GFA in your Public Store Account and treat it in accordance with Def Stan 05-099. If unsuccessful in this competition, you must seek instructions for the GFA from the named Commercial Officer.

Standstill Period

F12. The Authority is allowing a space of ten (10) calendar days between the date of dispatch of the electronic notice of its decision to award a Contract to the successful Tenderer before entering into a Contract, known as the standstill period. The standstill period ends at 23:59 on the 10th day after the date the DEFFORM 158s are sent. If the 10th day is not a business day, the standstill period ends at 23:59 of the next business day.

Publicity Announcement

F13. If you wish to make an announcement regarding this procurement, you must seek approval from the named Commercial Officer and Press Office and such permission will only be given at the sole discretion of the Authority. Requests must be made in writing to the named Commercial Officer and a copy of the draft announcement provided. This shall then be forwarded to the Press Office and their contact details will be provided for further follow up.

F14. Under no circumstances should you confirm to any Third Party the Authority's Contract award decision before the Authority's announcement of the award of Contract.

Sensitive Information

F15. 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, related aspects of good procurement practice and answering Freedom of Information requests.

F16. For these purposes, the Authority may share within Government any of the Tenderer's documentation/information (including any that the Tenderer considers to be confidential and/or commercially sensitive such as specific bid information) submitted by the Tenderer to the Authority during this procurement. Tenderers taking part in this competition must identify any Sensitive Information in the DEFFORM 539A (or SC1B Schedule 4 or SC2 Schedule 5) and consent to these terms as part of the competition process. This allows the Authority to share information with other Government Departments while complying with our obligations to maintain confidentiality. F17. Where required, the Authority will disclose on a confidential basis any information it receives from Tenderers during the tender process (including information identified by the Tenderer as Sensitive Information in accordance with the provisions of this ITT) to any Third Party engaged by the Authority for the specific purpose of evaluating or assisting the Authority in the evaluation of the Tenderer's Tender. In providing such information the Tenderer consents to such disclosure.

Reportable Requirements

F18. Listed in the DEFFORM 47 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 must attach the relevant information with the tender submission.

F19. Your Tender will be deemed non-compliant and excluded from the tender process if you fail to complete the Annex in full and attach relevant information where required.

Specific Conditions of Tendering

F20. Please refer to Clause 69 Limitation of Contractor's Liability to Schedule 00 Terms and Conditions of the ITN which contains the Contractor's total liability in respect of losses caused by the default of the Contractor.

Ministry of Defence

Tender Submission Document (Offer) – Ref Number [ITT -]

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 and ITT Material, 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 Terms & Conditions or any amendments issued by the Authority shall apply.

Applicable Law				
I agree that any Contract resulting from this competition shall be subject to English Law				Yes / No
Total Value of Tender (excluding VAT)				
£				
WORDS:				
UK Value Added Tax				
If registered for Value Added Tax purposes, 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 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 be Performed	Contractor Deliverables	Estimated Value	SME Yes / No
Mandatory Declarations (further details are contained in Appendix 1 to DEFFORM 47 Annex A (Offer)):			Tenderer's Declaration	
Are the Contractor Deliverables subject to Foreign Export Control and Security Restrictions? If the answer is Yes, complete and attach DEFFORM 528.			Yes* / No	
Have you completed and attached a DEFFORM 711 – Notification of Intellectual Property Rights (IPR) Restrictions?			Yes*/No	
Have you obtained the foreign export approval necessary to secure IP user rights in the Contractor Deliverables for the Authority, including technical data, as determined in the Contract Terms & Conditions?			Yes* / No	
Have you provided details of how you will comply with all regulations relating to the operation of the collection of custom import duties, including the proposed Customs procedure to be used and an estimate of duties to be incurred or suspended?			Yes / No	
Have you completed a Supplier Assurance Questionnaire on the Supplier Cyber Protection Service?			Yes* / No / N/A	
Have you completed Form 1686 for Sub-Contracts?			Yes* / No	
Have you completed the compliance matrix / matrices?			Yes / No / N/A	

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 Tenderer's Sensitive Information form?	Yes* / No
If you have not previously submitted a Statement Relating to Good Standing within the last 12 months, or circumstances have changed have you attached a revised version?	Yes* / No / N/A
Do the Contractor Deliverables, or any item provided in accordance with the Terms and Conditions of the Contract 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 or any item provided in accordance with the Terms and Conditions of the Contract (including Packaging) use Substances that deplete the Ozone Layer, as defined in Regulation (EC) 1005/2009, as it applies in Great Britain as retained EU law, and as it applies in Northern Ireland directly	Yes* / No
Where you have been informed that a Bank or Parent Company Guarantee is required, will you provide one during the standstill period, before Contract award, if you are identified as the winning Tenderer?	Yes / No / Not Required
Have you complied with the requirements of the Defence Safety Authority Regulatory Articles?	Yes / No / Not Required
Have you completed all Mandatory Requirements (as per paragraph F18) stated in this ITT?	Yes / No
*If selecting Yes to any of the above questions, attach the information detailed in Appendix 1 to DEFFORM 47 Annex A (Offer).	
Tenderer's Declaration of Compliance with Competition Law	
<p>We certify that the offer made is intended to be genuinely competitive. No aspect of the price has been fixed or adjusted by any arrangement with any Third Party. Arrangement in this context includes any transaction, or agreement, private or open, or collusion, formal or informal, and whether or not legally binding. In particular:</p> <ul style="list-style-type: none"> a. the offered price has not been divulged to any Third Party; b. no arrangement has been made with any Third Party that they should refrain from tendering; c. no arrangement with any Third Party has been made to the effect that we will refrain from bidding on a future occasion; d. no discussion with any Third Party has taken place concerning the details of either's proposed price; and e. no arrangement has been made with any Third Party otherwise to limit genuine competition. <p>We understand that any instances of illegal cartels or market sharing arrangements, or other anti-competitive practices, suspected by the Authority will be referred to the Competition and Markets Authority for investigation and may be subject to action under the Competition Act 1998 and the Enterprise Act 2002.</p> <p>We understand that any misrepresentations may also be the subject of criminal investigation or used as the basis for civil action.</p> <p>We agree that the Authority may share the Contractor's information/documentation (submitted to the Authority during this Procurement) more widely within Government for the purpose of ensuring effective cross-Government tender processes, including value for money and related purposes. We certify that we have identified any Sensitive Information in the Tenderer's Sensitive Information form (DEFFORM 539A).</p>	
Dated this..... day of Year	
Signature:	In the capacity of
(Must be scanned 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:
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Information on Mandatory Declarations

IPR Restrictions

1. You must complete and attach DEFFORM 711 (Notification of Intellectual Property Rights (IPR) Restrictions) as part of your Tender. You must provide details of any information / technical data that is deliverable or delivered under the Contract where it is, or may be, subject to any IPR restrictions (or any other type of restriction which may include export restrictions) affecting the Authority's ability to use or disclose the Information / technical data in accordance with the conditions of any resulting Contract. You must also identify any Contractor Deliverables subject to IPR which have been funded exclusively or in part by private venture, foreign investment or otherwise than by the Authority.
2. 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, or on behalf of, 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 Intellectual Property Rights (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 2.b., including any obligation to make payments in respect of the Intellectual Property Right of 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 2.b.
3. You must provide the Authority with details of every restriction and obligation referred to in paragraphs 1 and 2. The Authority will not acknowledge any such restriction unless so notified using DEFFORM 711 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.
4. You should refer to the DEFFORM 711 Explanatory Notes for further information on how to complete the form.

Notification of Foreign Export Control Restrictions

5. 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.
6. 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:

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

- a. a non-UK export licence, authorisation or exemption; or

- b. any other related transfer control that restricts or will restrict end use, end user, retransfer or disclosure.

You must complete DEFFORM 528 (or other mutually agreed alternative format) in respect of any Contractor Deliverables identified at paragraph 6 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.

7. You must use reasonable endeavours to obtain sufficient information from your potential supply chain to enable a full response to paragraph 6. If you are unable to obtain adequate information, you must state this in your Tender. If you become aware at any time during the competition 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.
8. This does not include any Intellectual Property specific restrictions mentioned in paragraph 2.
9. 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 6.
10. 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 the Tenderer. 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

11. United Kingdom (UK) legislation permits the use of various procedures to suspend customs duties.
12. For the purpose of this competition, for any deliverables not yet imported into the UK, 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
13. 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 His Majesty's Revenue & Customs (HMRC) authorisations.

Cyber Risk

14. Cyber risk has been considered and in accordance with the Cyber Security Model resulted in a Cyber Risk Profile of **Very Low**. The Risk Assessment Reference is RAR-992606140. Tenderers are required to complete the Supplier Assurance Questionnaire on the Supplier Cyber Protection Service and submit this as part of their Tender response, together with a Cyber Implementation Plan as appropriate.

Sub-Contracts Form 1686

15. Form 1686 (also known as Appendix 5) is to be used in all circumstances where contractors wish to place a Sub-Contract at OFFICIAL-SENSITIVE with a contractor outside of the UK, or where the release of SECRET or above information is involved within the UK or overseas. 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. Form 1686 and further guidance can be found in the Cabinet Office's Contractual Process.