



Ministry  
of Defence

Army Commercial BFG Proc Team  
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Email: [REDACTED]  
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Potential Tenderer

Your Reference:

Our Reference: 700002294

Date: 26 March 2019

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Dear Sir/Madam,

Invitation To Tender: Tender Reference Number: 700002294 - Provision of Occupational Medical Services to the Directly Employed Labour (DEL) workforce of the British Forces in Germany

1. You are invited to tender for the above requirement in competition in accordance with the attached documentation.
2. The anticipated date for the contract award decision is 04-JUNE-2019, please note that this is an indicative date and may change.
3. You must submit your Tender no later than **03-MAY-2019 11:00** Central European Time (CET). You must attach the enclosed Tender Return Label (DEFFORM 28) to the outer packaging of your Tender when you submit it to the Authority.

Yours faithfully

[REDACTED]

# Invitation to Tender (ITT)

## Contents

This invitation consists of the following documentation:

- Invitation to Tender document. This sets out the key requirements that Tenderers need to meet in submitting a valid Tender. It also sets out the conditions relating to this competition. For ease it is broken into:
  - o Section A - Introduction
    - Tender Definitions
    - Purpose
    - ITT Documentation and ITT Material
    - Tender Expenses
    - Material Change of Control from Supplier Selection
    - Contract Conditions
    - Consultation with Credit Reference Agencies
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- Contract Conditions
- Annex 1 – Tenderer's Commercially Sensitive Information Form
- Annex 2 – Personal Data Particulars
- Annex 3 – Schedule of Prices/Fees
- Annex 4 – Statement of Requirement
- Annex 5 – List of Occupational Medical Examinations
- Annex 6 – Key Performance Indicators (KPIs)
- Annex 7 – Contract Data Sheet
- Annex 8 – DEFFORM 111 - Appendix to Contract - Addresses and Other Information
- DEFFORM 28 - Tender Return Label

## Section A - Introduction

A1. Funding has been approved on 15 February 2019.

### Tender Definitions

A2. "The Authority" means the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland, (referred to in this document 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, competitive dialogue or negotiation.

A5. A "Tender" is the offer that you are making to the Authority.

A6. "Contractor Deliverables" means the works, goods and / or the services, including packaging (and Certificates(s) of Conformity supplied in accordance with any Quality Assurance (QA) requirements, if specified) and any associated technical data which the contractor is required to provide under the contract in accordance with the Schedule of Prices and Fees, but excluding incidentals outside the Schedule of Prices and Fees such as progress reports.

A7. "Schedule of Prices/Fees" 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.

A8. The "Statement of Requirement" at Annex 4 details the technical requirements and acceptance criteria of the Contractor Deliverables.

A9. "Conditions of Tendering" means the conditions set out in the ITT that govern the competition.

A10. "Contract Conditions" means the conditions at Schedule 1 that will govern any resultant contract.

A11. A "Third Party" is any person who is not an employee of the Authority or Tenderer, as defined at A3.

### Purpose

A12. 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 competition;
- c. information you must include in your Tender and the required format;
- d. administrative arrangements for the receipt and evaluation of Tenders; and
- e. Contract Conditions that shall apply in the event that the Authority awards a contract following this competition.

A13. The sections in this ITT and associated documents are structured in line with a generic tendering process and do not indicate importance / precedence.

A14. **NOT USED.**

A15. This Requirement is advertised in the Official Journal of the European Union and is in accordance with the Public Contract Regulations 2015.

### ITT Documentation and ITT Material

A16. 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 while 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 A16.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 if you decide not to submit a Tender;
- g. immediately return all ITT Documentation, ITT Material and derived information of an unmarked nature, should you decide not to respond 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 'OFFICIAL-SENSITIVE' or 'SECRET'.

A17. 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 A16 above.

### **Tender Expenses**

A18. You will bear all costs associated with preparing and submitting your Tender. If the Tender process is terminated or amended by the Authority, the Authority will not reimburse you.

### **Material Change of Control from Supplier Selection**

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 your right to stay in the competition.

### **Contract Conditions**

A20. The Contract conditions are attached to this ITT.

### **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. Cyber Risk. The cyber risk level for this requirement has been assessed as 'Very Low'. The cyber risk reference is: **RAR-P8R63FAC**. You must complete the Supplier Assurance Questionnaire via the Supplier Cyber Protection Service (Octavian) to demonstrate your compliance with the required cyber risk level. You can find further information on this by searching for DCPD on the GOV.UK website. The cyber risk response must be completed before the tender return date.

## 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	23 April 2019	Tenderers	Army Commercial BFG Proc 4
Final Date for Requests for Extension to return date <sup>1</sup>	23 April 2019	Tenderers	Army Commercial BFG Proc 4
The Authority issues Final Clarification Answers	29 April 2019	The Authority	All Tenderers <sup>2</sup>
Tender Return	03 May 2019	Tenderers	The Tender Board, using DEFFORM 28
Tender Evaluation	06-16 May 2019	The Authority	N/A

### Notes

1. The Tenderer must make requests for an extension in writing (email is sufficient) to the above named contact, by the date and time shown. Any extension is at the sole discretion of the Authority and if granted will be granted to all Tenderers.

2. The Authority will automatically copy questions and answers to all Tenderers, removing the names of those who have raised the questions. If you do not want your question disclosed you must inform the Authority of this and the reason why when submitting the question. The Authority may choose to discuss with you whether it is appropriate to disclose the question or response, or both, to other Tenderers. If the Authority decides to disclose, you will be given the opportunity to withdraw your question. Where a question reveals a piece of information that could significantly impact the Tenderers responses this may result in an extension of the Tender return date. The Authority will endeavour to ensure that you have at least 10 working days to submit your Tender.

## **Section C – Instructions on Preparing Tenders**

### **Tenders for Selected Contractor Deliverables**

C1. The Authority reserves the right to reject all or part of your Tender where you have not tendered for all of the Contractor Deliverables.

### **Construction of Tenders**

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

C3. To assist the Authority's evaluation please set out your Tender response in accordance with Section D (Tender Evaluation).

### **Validity**

C4. In accordance with F3 your Tender must be valid / open for acceptance for 90 calendar days from the Tender return date. If successful, your Tender must be open for acceptance for a further thirty (30) calendar days.

## Section D – Tender Evaluation

D1. This section details how your Tender will be evaluated, including the evaluation criteria to be used.

**The Tender Evaluation will be on the basis of: Most Economically Advantageous Tender (MEAT)**

MEAT ratio: 60% Technical, 40% Price

To give a total score the following methodology shall be used:

This Tender will be evaluated using the MEAT method. This is a comparative score and the scoring method is worked out using the ratio above. The optimum is the highest technical score and lowest price, this together would get the highest total score. If you had the highest technical score but your price was double that of the lowest compliant Tender, this would receive a lower total score. The score will be calculated to two decimal places. In the event of two or more Tenders being awarded the same total, the Tender with the lowest price will be selected.

### Evaluation Process

D2. The Tender evaluation process is split into a number of phases and shall be conducted separately for Commercial, Technical and Price aspects as described in the following paragraphs.

### Evaluation Overview

D3. An overview of the evaluation phases for this requirement is as follows:

Phase	Name	Evaluation	Evaluation Criteria
1	SAQ Evaluation	Evaluation of the Suitability Assessment Questionnaire (SAQ) responses. Should the tenderer fail to pass the SAQ evaluation then the tenderer's tender will not be considered further. You must register your company to complete the SAQ online at <a href="https://www.contracts.mod.uk">https://www.contracts.mod.uk</a>	Pass or Fail
2	Commercial Evaluation	The Commercial evaluation will check whether the tenderer has submitted all of the required information as described at paragraph D4.  These will be judged as a 'tender compliance' issue (i.e. Pass/Fail). Any suggested adjustments to the MOD Terms and Conditions by the tenderer will be subject to a 'risk assessment', to assess their acceptability, and may therefore be rejected if the associated risk is evaluated as being too high for the Authority to accept.  A bidder's tender will be deemed 'non-compliant' and therefore excluded from the remainder of the evaluation process if marked as a 'Fail' on the Commercial Evaluation.	Pass or Fail

3	Technical Evaluation	The qualitative evaluation by the Authority's Subject Matter Experts, which will be undertaken independently without sight of pricing information. It will be conducted by scoring the tenderer's responses to the Technical RORs at paragraph D11.	A mark that comprises 60% of overall score
4	Price Evaluation	Assessment conducted by the Authority to ensure a fair and reasonable overall price has been submitted by the Tenderer.	A mark that comprises 40% of overall score

### Commercial Evaluation Responses Required

D4. Tenderers should submit the following in order to comply with the Commercial requirements of this tender:

ROR No	Subject - Commercial	Evaluation Criteria
1	A signed completed Tender Submission Document - Offer	Pass or Fail
2	A statement within the ITT submission that the Terms and Conditions of Contract are accepted by the Tenderer	Pass or Fail
3	Confirmation that the Tender is open for at least 90 calendar days.	Pass or Fail
4	A completed Tenderer's Commercially Sensitive Information Form (Annex 1 to Contract).	Pass or Fail
5	A Firm Price for all items on the Contract Annex 3 Prices and Fees for each year of the Contract.	Pass or Fail
6	Confirmation that the Suitability Assessment Questionnaire has been completed online at <a href="https://www.contracts.mod.uk">https://www.contracts.mod.uk</a> <i>Note: for the Cyber section, if you cannot meet the required level of security controls by the Contract start date, you may submit a Cyber Implementation Plan as part of your Tender submission. The Authority will then decide whether or not this is acceptable. If you need to complete a CIP, please contact the responsible Commercial Officer to receive a template for completion.</i>	Pass or Fail
7	A statement confirming that the Tender is based on the latest published version of the ITT, and that any additional information published by the Authority has been taken into account in your Tender.	Pass or Fail
8	Confirmation that the Cyber Risk Supplier Assurance Questionnaire has been completed (see paragraph A22 of the ITT.)	Pass or Fail

D5: The Commercial Evaluation will be carried out in accordance with the Evaluation Criteria specified in the table above. Failure to meet all of these criteria will result in your tender being marked as a "Fail" and therefore declared non-compliant.

### Technical Evaluation

D6. Those tenders assessed as commercially compliant in accordance with the guidance provided in this Section D, will be scored in terms of their Technical proposal. The Technical Evaluation is the qualitative evaluation carried out by the Authority's Subject Matter Experts; undertaken independently, without sight of pricing information. It will be conducted by scoring the tenderer's responses to the Technical ROR at paragraph D12.

D7. The Technical Evaluation will assess the technical effectiveness of each bid. A score will be allocated against each of the Requirements of Response (ROR) specified at paragraph D12 below, based upon the evaluator's individual assessment. Following the individual assessments, the Technical Evaluation Team will be convened for a single set of overall consensus scores to be agreed and allocated to each ROR response.

D8. In accordance with the MEAT ratio provided above, the maximum number of points allocated to the Technical Evaluation is 60. The Technical Evaluation score shall be calculated as a proportion of the total marks achieved by the tenderer against the maximum number of marks available. For example, if a tenderer is awarded a total of 800 marks out of the maximum of 900 achievable, then they will be allocated a Technical Evaluation score of 53.33 points  $((800/900) \times 60)$ .

D9. Tenderers should note that a failure to achieve a minimum score of '6' (Satisfactory and acceptable response) against any of the Technical ROR will automatically render a tender non-compliant, to be excluded from the remainder of the evaluation process regardless of the total score attained.

D10. The scoring guide characteristics applicable to all ROR are as follows:

Outstanding response (fully compliant, with some areas exceeding requirements)	10	Submission sets out a robust solution (as for an 8 score) and, in addition, provides or proposes additional value and/or elements of the solution which exceed the requirements in substance and outcomes in a manner acceptable to the contracting authority; provides full confidence as to the relevant ability, understanding, expertise, skills and/or resources not only to deliver the requirements, but also exceed it as described. Low/no risk solution for the contracting authority.
Fully satisfactory /very good response (fully compliant with requirements).	8	Submission sets out a robust solution that fully addresses and meets the requirements, with full details (and, where evidence is required or necessary, full and relevant evidence) provided to support the solution; provides full confidence as to the relevant ability, understanding, expertise, skills and/or resources to deliver the requirements. Low/no risk solution for the contracting authority.
Satisfactory and acceptable response (compliant with no major concerns)	6	Submission sets out a solution that largely addresses and meets the requirements, with some detail (or, where evidence is required or necessary, some relevant evidence) provided to support the solution; minor reservations or weakness in a few areas of the solution in respect of relevant ability, understanding, expertise, skills and/or resources to deliver the requirements. Medium, acceptable risk solution to the contracting authority.
Partially acceptable response (one or more areas of major weakness)	4	Weak submission which does not set out a solution that fully addresses and meets the requirements: response may be basic/ minimal with little or no detail (and, where evidence is required or necessary, with insufficient evidence) provided to support the solution and demonstrate that the tenderer will be able to provide the services and/or some reservations as to the tenderer's solution in respect of relevant ability, understanding, expertise, skills and/or resources to deliver the requirements. May represent a high risk solution for the contracting authority.

Unsatisfactory response (potential for some compliance but very major areas of weakness)	2	Substantially unacceptable submission which fails in several significant areas to set out a solution that addresses and meets the requirements: little or no detail may (and, where evidence is required or necessary, no evidence) have been provided to support and demonstrate that the tenderer will be able to provide the services and/or considerable reservations as to the tenderer's proposals in respect of relevant ability, understanding, expertise, skills and/or resources to deliver the requirements. Would represent a very high risk solution for the contracting authority.
No response (complete non-compliance)	0	No response at all or insufficient information provided in the response such that the solution is totally un-assessable and/or incomprehensible.

D11. Scoring against each of the ROR shall be carried out in accordance with the following:

ROR No.	Subject	Weighting	Score	Maximum Marks achievable
ROR 1	Service Delivery: Communication	20	10/8/6/4/2/0	200
ROR 2	Service Delivery: Provide Guidance	25	10/8/6/4/2/0	250
ROR 3	Service Delivery: Examination of the workers	25	10/8/6/4/2/0	250
ROR 4	Service Delivery: Other Services	20	10/8/6/4/2/0	200
<b>MAXIMUM MARKS AVAILABLE</b>				<b>900</b>

D.12 Details of the Technical RORs are as follows, tenderers must complete a full response against each of the requirements:

ROR No.	Subject	SOR References	Weighting
1	<b>Service Delivery: Communication</b>		20
<p>1. <b>Aim:</b> To select a Supplier with effective communication pathways to allow the Authority to fully engage with the Supplier in order to fulfil its duty to deliver the Occupational Medical Services to its Directly Employed Labour (DEL) workforce in Germany.</p> <p>2. <b>Background:</b> The Authority requires to be able to contact the future Supplier easily, through all means.</p> <p>3. <b>Evidence Required:</b></p> <p>a. Indicate how the Authority will be able to communicate with your service deliverer to obtain guidance and advice and make arrangements for the visits, examinations and meetings, as indicated in the Statement of Requirement (SOR) at Annex 4;</p> <p>b. Provide a detailed proposal of the model you will have in place to meet the service requirements of the SOR at Annex 4;</p> <p>c. Indicate whether you are able to communicate in both German and English.</p>			

ROR No.	Subject	SOR References	Weighting
2	<b>Service Delivery: Provide Guidance</b>	Paragraph 3.a.	25
<p>1. <b>Aim.</b> To select a Supplier who can provide guidance to the Authority, and other persons responsible for the occupational safety, health and accident prevention of the DEL of the British Forces in Germany, in order to meet the needs described in paragraph 3.a. of the SOR at Annex 4;</p> <p>2. <b>Background.</b> The Authority requires the support of a qualified and recognised German occupational physician (or physicians), in all matters of health protection in connection with occupational health and safety, as well as accident prevention.</p> <p>3. <b>Evidence Required.</b></p> <p>a. Describe your capability to provide any guidance as listed in paragraph 3.a. of the SOR at Annex 4. The Authority would also be interested in any additions to this list that may benefit the Authority's duty in this matter;</p> <p>b. Confirm your understanding of the requirements as listed in the SOR and detailed in the Arbeitssicherheitsgesetz (ASiG) of Dec 1973, Verordnung zur Arbeitsmedizinischen Vorsorge (ArbMedVV) and the German accident insurance regulations (DGUV);</p> <p>c. Indicate that your proposal takes account of the need for the Occupational Medical Practitioners (OMP) to be qualified and recognised German occupational physicians;</p>			

- d. Confirm your understanding of the geographical spread of the British Forces DEL workforce in Germany and the need to travel to those locations;
- e. Indicate that you can provide reports on request of the Authority.

ROR No.	Subject	SOR References	Weighting
3	Service Delivery: Examination of the Workers	Paragraphs 2, 3.b. and 4	25

1. **Aim.** To select a Supplier who will be able to examine the DEL workforce of the British Forces in Germany, assess them and offer them guidance in terms of occupational medicine and record and evaluate the results of such examinations in order to meet the needs described in paragraphs 3.b and 4 of the SOR, Annex 4.
2. **Background.** As part of its legal employer responsibilities, the Authority requires to make available a variety of occupational health examinations, as listed in paragraphs 3.b and 4 of the SOR, Annex. To complete these, the support of a qualified and recognised German occupational physician (or physicians), is required for the DEL workforce at the locations as listed in the SOR, Annex 4, paragraph 2.
3. **Evidence Required.**
- a. Describe the service that you can provide to undertake the full range of occupational health examinations listed in the SOR Annex 4, to prescribed timelines for the mandatory examinations (SOR paragraph 3.b. (1).(a)) and any ad hoc requests (SOR paragraph 3.b.(1).(b) and (c), 3.b.(2) and (4));
- b. Confirm your understanding of the geographical spread of the DEL workforce in Germany and your capability and capacity to conduct examinations in these locations as listed in paragraph 2 of the SOR, Annex 4;
- c. Identify any issues related to the implementation of your proposal and how they could be resolved.

ROR No.	Subject	SOR References	Weighting
4	Service Delivery: Other Services	Paragraph 5	20

1. **Aim.** To select a Supplier who can deliver all the Occupational Medical Services, at all times, to meet the needs as described in the SOR, Annex 4, to the DEL workforce of the British Forces in Germany.
2. **Background.** The Authority requires the support of a qualified and recognised German occupational physician (or physicians), for other associated services as listed in the SOR, Annex 4 in connection with occupational health and safety and accident prevention.
3. **Evidence Required.**
- a. Indicate how the Authority will communicate with your service deliverer to make arrangements for the visits, inspections and meetings, as indicated in the SOR, Annex 4 at paragraph 5 and detailed in Section 3 of the Arbeitssicherheitsgesetz (ASiG) of Dec 1973;

- b. Confirm your understanding of the geographical spread of the British Forces' DEL workforce in Germany and your capacity to undertake the number of visits proposed, per year and at the locations as indicated in Annex 5;
- c. Identify any issues related to the implementation of your proposal and how they could be resolved.

### **Evaluation of Price**

D13. Following the Commercial and Technical Evaluations, those tenders considered compliant in accordance with the guidance provided in this section D will be scored in terms of their Price proposal. Maximum 'points' will be allocated to the commercially and technically compliant bidder who submits the lowest tender price. Subsequent points will then be awarded to the remaining compliant bidders based on their total price as a percentage of the lowest tender price. This calculation is subsequently converted to a price score to reflect that this carries 40% of the total score.

D14. The Price for evaluation purposes, shall be the total of the tenderer's price against each item on the Annex 3 Schedule of Prices/Fees, multiplied by the estimated quantities shown for each item in Schedule 5, for each year of the Contract. **Please note that the quantities shown in Schedule 5 are indicative only and do not constitute a guarantee of requirement.**

### **Non-Competition Value for Money Analysis**

D15. In the event that only one Tender is received, the Authority reserves the right to consult the MOD Cost Assurance and Analysis Team in order to conduct an independent Value for Money Assessment.

## Section E – Instructions on Submitting Tenders

### Submission of your Tender

- E1. Tenders must be sent to the Tender Board by the date and time stated in the covering letter to this ITT. The Authority reserve the right to reject any Tender received after the stated date and time. You must provide 3 unpriced and 1 priced copies of your Tender. You must not email electronic copies until after the Tender Board has taken place. If you email your Tender before the Tender Board date, your Tender may be excluded from the competition.
- E2. You must include the electronic copies of the priced and unpriced Tender with the associated paper copies only. You must label CDs containing electronic copies of the Tender with "Includes Prices" or "Unpriced". The electronic copies of the Tenders must be compatible with Microsoft Office Word 2010 and other MS Office 2010 applications. If you, password protect or encrypt any information on CDs containing prices you must supply the password / use compatible encryption methods so that the Authority can undertake a pricing evaluation.
- E3. You must complete and include the ITT Annex A (Offer) with your Tender. Where you select 'Yes' to any questions you must attach the relevant information.
- E4. You must include the original signed ITT Annex A (Offer) with one paper copy of your priced Tender.
- E5. You must submit your paper and CD copies in a sealed envelope or box. For health and safety reasons, no individual envelope or box should weigh more than 11 kilos.
- E6. You must attach the enclosed Tender Return Label (DEFFORM 28) to the outer packaging of each envelope or box that contains your Tender.
- E7. If you intend to hand deliver your Tender you must inform the named Commercial Officer of your intention and seek further delivery instructions. Failure to do so may result in your Tender being refused and / or returned.
- E8. You must ensure you include all relevant information in your Tender. The Authority can only evaluate information that you include in your Tender.
- Samples** (not applicable to this requirement)
- E9. 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 Prices and Fees.
- E10. You should send any samples to the named Commercial Officer after the Tender return date.
- E11. 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.
- E12. 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 competition or at a later stage. Any expenditure, work or effort undertaken prior to any offer and subsequent acceptance of contract, is a matter solely for your commercial judgement. The Authority reserves the right to:

- a. seek clarification or additional documents in respect of a Tenderer's submission;
- b. visit your site;
- c. disqualify any Tenderer that does not submit a compliant Tender in accordance with the instructions in this ITT;
- d. disqualify any Tenderer that is guilty of misrepresentation in relation to its Tender, expression of interest, the dynamic Pre-Qualification Questionnaire (PQQ) or the tender process;
- e. re-assess your suitability to remain in the competition, for example where there is a material change of control from supplier selection;
- f. withdraw this ITT at any time, or re-invite Tenders on the same or any alternative basis;
- g. 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;
- h. choose not to award any contract as a result of the current procurement process;
- i. award a contract for some of the Contractor Deliverables, unless you specifically oppose this in your Tender or state any minimum order quantities; and / or:
- j. ask for an explanation of the costs or price proposed in the tender where the tender appears to be abnormally low.

F2. The contract will be entered into when the Authority sends written notification of its entry into the contract, via a DEFFORM 159. Written notification will be issued, to the address you provide, on or before the end of the validity period specified in paragraph C4 and subject to paragraph F3.

F3. It is a Condition of Tendering that the winning Tenderer holds their Tender open for acceptance for the period stated in C4. This period starts on the day the Authority announces its decision to award the contract to the winning Tenderer in accordance with the Tender. In the event that legal proceedings are instigated, challenging the award of the contract, prior to entry into contract, it is a condition of this ITT that you hold your Tender open for acceptance during this period, and up to fourteen (14) days after the result of the legal proceedings. In the event of such legal challenge, the Authority agrees to use all reasonable measures to accelerate proceedings.

### **Conforming to the Law**

F4. You must comply with the UK Competition Act 1998, the UK Bribery Act 2010, applicable EU and 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 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.

### **Bid Rigging and Other Illegal Practices**

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

F8. 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.

### **Standstill Period**

F9. The Authority is obliged under certain circumstances to allow a space of ten (10) calendar days between the date of dispatch of its notice to Tenderers before entering into a contract, known as the standstill period. This period is to give unsuccessful Tenderers an opportunity to make a legal challenge before the contract is entered into if there has been, or it is alleged that there has been, a breach of the Regulations. The standstill period ends at midnight at the end of the 10th day after the date the DEFFORM 158 is sent. Where this is not a working day, it extends to midnight at the end of the next working day.

### **Publicity Announcements**

F10. The Authority will publish notification of the contract and shall publish contract documents under the UK 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 between suppliers. You should complete and return Schedule 4 as explained in the ITT Annex A and associated Appendix 1.

F11. If you wish to make a similar announcement, you must seek approval from the named Commercial Officer.

F12. 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**

F13. 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.

F14. For these purposes, the Authority may share within the UK Government any of the Contractor's documentation / information (including any that the Contractor considers to be confidential and / or commercially sensitive such as specific bid information) submitted by the Contractor to the Authority during this procurement. Contractors taking part in this competition must identify any sensitive material in the Contractor's Commercially Sensitive Information Form (Schedule 4) and consent to these terms as part of the competition process. This allows the MOD to share information with other Government Departments while complying with our obligations to maintain confidentiality.

F15. The Authority reserves the right to disclose on a confidential basis any information it receives from Tenderers during the procurement process (including information identified by the Tenderer as Commercially 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**

F16. Listed in the ITT 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.

Ministry of Defence

Tender Ref No. 70002294.....

**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 shall apply.

<b>Applicable Law</b>				
I agree that any contract resulting from this competition shall be subject to German Law				Yes / No*
<b>Total Value of Tender (excluding tax)</b>				
€				
WORDS				
<b>Location of work (town / city) where contract will be performed by Prime:</b>				
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
<b>Mandatory Declarations</b> (further details are contained in Appendix 1 to ITT Annex A (Offer)):			<b>Tenderer's Declaration</b>	
Is the offer subject to the Authority contracting for all the Contractor Deliverables?			Yes* / No	
Is the offer made subject to a Minimum Order Quantity?			Yes* / No	
Are you a Small Medium Sized Enterprise (SME)?			Yes / No	
Have you completed and attached the Tenderer's Commercially Sensitive Information Form (DEFFORM 539A), Annex 4 to Contract			Yes/No	
*If selecting Yes to any of the above questions, please attach the information detailed in Appendix 1 to ITT Annex A (Offer).				
<b>Tenderer's Declaration of Compliance with Competition Law</b>				
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:				

- 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.

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 UK Competition and Markets Authority for investigation and may be subject to action under the UK Competition Act 1998 and the UK Enterprise Act 2002.

We understand that any misrepresentations may also be the subject of criminal investigation or used as the basis for civil action.

We agree that the Authority may share the Contractor's information / documentation (submitted to the Authority during this Procurement) more widely within UK Government for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes. We certify that we have identified any sensitive material in the Contractor's Commercially Sensitive Information Form (Schedule 4).

**Dated this..... day of ..... Year .....**

**Signature:**

**In the capacity of**

(Must be original)  
Secretary etc.)

(State official position e.g. Director, Manager,

**Name: (in BLOCK CAPITALS)**

**Postal Address:**

**duly authorised to sign this Tender for and on behalf of:**

**Telephone No:**

(Tenderer's Name)

**Registered Company Number:**

**Dunn And Bradstreet number:**

## Information on Mandatory Declarations

### Part Tender

1. Under Condition 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 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 4.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 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 UK 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.

### Small and Medium Enterprises

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

8. 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.

9. 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 policies and our SME policy can be found at [Gov.UK](http://Gov.UK).

10. 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)

Tel No: 0845 270 7099

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

11. You should be aware that the contents of any resultant contract may be published in line with government policy set out in the UK Prime Minister's letter of May 2010 ([Government Transparency and Accountability](#)) and the information contained within .

12. Before publishing the contract, the Authority will redact any information which is exempt from disclosure under the UK Freedom of Information Act 2000 ("the FOIA") or the Environmental Information Regulations 2002 ("the EIR").

13. You should complete the attached Tenderer's Commercially Sensitive Information Form (Schedule 4) 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.

14. 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.

## DEFFORM 28 Tender Return Label

Not to be used for General  
Correspondence with the  
Ministry

Affix  
Stamp  
Here

THE TENDER BOARD  
Army Commercial  
Block 5  
Catterick Kaserne  
Detmolder Strasse 440  
33605 Bielefeld

FAO [REDACTED]

Tender No: 700002294

Due 11 am CET: 03 May 2019

DEFFORM 28

Edn 6/09

