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The Secretary of State for Defence
Position Paper
relating to Part 1 and Part 2 of the Contract for the
Royal Air Force Centre of Aviation Medicine Relocation
Contract Number 701577386
10 June 2022

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14 June 2022

1 Introduction

- 1.1 This Position Paper explains to shortlisted Tenderers the approach that The Secretary of State for Defence (“the Authority”) has taken in relation to the drafting of the Contract for the Royal Air Force Centre of Aviation Medicine Relocation (“RAF CAM”) (“the Contract”).
- 1.2 The Contract is fronted by Terms and Conditions applicable to the entire Contract and is thereafter divided into two Parts:
- 1.2.1 Part 1 of the Contract addresses the design, construction, relocation and purchase of equipment and equipment commissioning;
 - 1.2.2 Part 2 of the Contract addresses on-going equipment maintenance and support during in-service.
- 1.3 The purpose of this Position Paper is to allay any concerns that Tenderers may have regarding the volume of the Contract. This is necessarily the outcome of dividing the construction and operational aspects of the Contract into two Parts and using different forms of Contract bases.
- 1.4 The length of both Part 1 and Part 2 is largely due to the Authority’s preference to include mandatory and project-specific DEFCONs in narrative format.
- 1.5 The following provisions add more detail to the comments above.

2 Terms and Conditions applicable to Part 1 and Part 2 of the Contract

2.1 Conditionality

A key requirement of the Authority is that the RAF CAM centre is built on time. The Authority’s current programme envisages Completion by 30th November 2025. The Authority requires flexibility on whether to proceed to Part 2. If the Authority elects to proceed to Part 2, Part 2 of the Contract becomes effective on Completion, although the Authority reserves the right to waive or extend the 30th November 2025 condition date.

2.2 Parent Company Guarantee

The Authority may require the successful Tenderer or each member of the consortium that is formed to deliver the Contract to provide a guarantee in the form of the Parent Company Guarantee that is set out in the Terms and Conditions applicable to Part 1

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and Part 2. Where a Parent Company Guarantee is not appropriate (as a result of the legal constitution of the successful Bidder/any participating member of the consortium), then equivalent security may be required to be provided in support of the Contractor's obligations under the Contract in the form of a performance bond or other security.

2.3 Security Conditions

The Authority will require the successful tenderer to observe and comply with the Authority's model Security Conditions set out in the Terms and Conditions applicable to Part 1 and Part 2, which include a Security Aspects Letter.

2.4 Execution

The Contract will not be executed as a deed but will be signed under hand. However, a twelve-year limitation period for commencing an action for breach of contract will expressly apply to the Contract.

3 Part 1 - NEC4 and Z Clauses (Construction)

3.1 Part 1 of the Contract is based on NEC4 Option C with Z clauses. The Z clauses predominantly include narrative based DEFCONs.

3.2 There is a separate Scope which, as with all NEC4 contracts, is of fundamental importance to understanding the obligations in, and requirements of, Part 1.

3.3 A summary table setting out the genesis of the Z clause numbers and DEFCONs is attached for the Tenderers' assistance.

3.4 Stage 1 of Part 1 addresses early contractor involvement in relation to the design of the new RAF CAM centre at RAF Cranwell using option X22. Tenderers are to propose a firm price for developing design up to RIBA stage 3. Any additional design done during this stage will be at the Tenderer's own risk. There is no project bank account or pain/gain mechanism for Stage 1 of Part 1.

3.5 Stage 2 of Part 1 addresses the further design and construction of the RAF CAM centre with all necessary infrastructure, relocation of equipment from RAF Henlow, the purchase of new equipment and commissioning of all equipment when installed at the RAF CAM centre.

3.6 In Stage 2 of Part 1, payment is dealt with as follows:

3.6.1 There is a project bank account and pain/gain mechanism in relation to the design and construction of the infrastructure. Savings of up to 5% of the contract price will be shared 50/50 between the successful Tenderer and the Authority. Should there be a saving of over 5%, there is no share of the saving because the Tenderer will be deemed to have overstated its original contract price. All of the risks of cost overrun (cost having been adjusted for compensation events) rests with the successful Tenderer since that additional cost will not be an item covered by a compensation event.

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- 3.6.2 The project bank account and pain/gain mechanism do not apply to the relocation of existing equipment, the purchase of new equipment and the commission of all equipment. Payment will only be made in relation to this element when all equipment has been certified as having been relocated, installed and commissioned as required by the Scope.
- 3.6.3 The Tenderers are to provide for a retention bond in lieu of retention being deducted from payments under Part 1. The form of bond proposed is in the Scope and the Authority would ask the Tenderers to meet the cost of providing this.

4 Part 2 - In-Service

- 4.1 The Terms and Conditions of Part 2 of the Contract are in a form that have been widely used by the Authority on other projects that are now operational.
- 4.2 The main body of Part 2 contains key contractual Terms and Conditions, supported by a number of Schedules that deal with technical aspects.
- 4.3 Narrative-based DEFCONs are included in the main body of Part 2, which explains the length of Part 2. A table identifying the clause numbers and their genesis is attached.
- 4.4 The Authority has developed a separate Scope for Part 2, which governs the Contractor Deliverables that the successful Tenderer is required to perform during in-service.
- 4.5 The Schedules also contain, for example:
 - 4.5.1 an assurance and acceptance process for the approval of Contract Data Deliverables required by the Scope;
 - 4.5.2 a regime for monitoring the Contractor's performance measured by Key Performance Indicators ("KPIs"). KPIs are publishable and may lead to Deductions being made from the monthly payment;
 - 4.5.3 detailed Pricing and Payment provisions which set out, for example, how the monthly payment is calculated, the impact of a Change on the Contract Price and the mechanisms for varying the Firm and Fixed Prices;
 - 4.5.4 detailed provisions relating to the placing of Task Orders. The Authority does not however anticipate that tasking will be a significant part of the Contract;
 - 4.5.5 detailed provisions relating to a Contract Change;
 - 4.5.6 staff transfer provisions at the end of the Contract and a mechanism for governing Exit.
- 4.6 This form of Contract has been scrutinised and approved internally by the Authority. Importantly, it has also been accepted by industry.

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The Authority welcomes the opportunity to meet with the shortlisted Tenderers on 16 June in order to discuss this project in more detail.