



Submarine
Delivery Agency

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Submarine Delivery Agency

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24 November 2023

Our Reference: SDA/NP/709826453

Dear 

Invitation To Negotiate: SDA/NP/709826453 - Entity in Charge of Maintenance 2 (second round)

1. You are invited to tender for Entity in Charge of Maintenance 2 in competition in accordance with the attached documentation.
2. The anticipated date for the contract award decision is 8 March 2024, please note that this is an indicative date and may change.
3. You must submit your Tender no later than 12:00 5 January 2024.
4. Please confirm receipt of this invitation to tender to myself at the above e-mail address.

Yours Sincerely

James Fletcher

DEFFORM 47ST	2
DEFFORM 47ST - Contents.....	3
DEFFORM 47ST - Section A	5
DEFFORM 47ST - Section B - Key Tendering Activities	10
DEFFORM 47ST - Section C - Instructions on Preparing Tenders.....	12
DEFFORM 47ST - Section D - Details of Cost Breakdown and Mandatory Criteria	14
DEFFORM 47ST - Section E - Instructions on Submitting Tenders.....	18
DEFFORM 47ST - Section F - Conditions of Tendering.....	19
DEFFORM 47ST Annex A - Edn 06/23.....	22
DEFFORM 47ST - Appendix 1 to Annex A (Offer)	26
Standardised Contracting (SC1B)Terms	30
21 The project specific DEFCONs and SC variants that apply to this Contract.....	40
DEFCON 127	40
DEFCON 503 (SC1)	40
DEFCON 531 (SC1)	40
DEFCON 532A (SC1)	40
DEFCON 534	40
DEFCON 537	40
DEFCON 538	40
DEFCON 566	40
DEFCON 606 (SC1)	40
DEFCON 608	40
DEFCON 609 (SC1)	40
DEFCON 620.....	40
DEFCON 627.....	40
DEFCON 658 (SC1) - Cyber Risk Profile - Very Low	40
DEFCON 660	40
General Conditions	40
Third Party IPR Authorisation	41
Payment Terms	41
Special Indemnity Conditions	41
The special conditions that apply to this Contract are	41
22 The processes that apply to this Contract are:	42
Offer and Acceptance.....	43
SC1B Schedules.....	44
Schedule 1 - Additional Definitions of Contract	44
Schedule 2a - Statement of Requirement	45
Schedule 2b – Schedule of Requirements.....	46
Schedule 3 - Contract Data Sheet	47
Schedule 4 - Contractor's Sensitive Information Form (i.a.w. Clause 5)	51
Schedule 5 - Notification of IPR restrictions (IAW Clause 7)	52
Schedule 6 - DEFFORM 315	58
Schedule 7 - DEFFORM 111	59
Schedule 8 -Deliverables.....	61
Schedule 9 - Security Aspects Letter.....	63
Schedule 10 - Statement Relating to Good Standing.....	74
Russian and Belarusian Exclusion Condition for Inclusion in Contracts	77
Quality Assurance Conditions.....	77

Contents

This invitation consists of the following documentation:

- DEFFORM 47ST – Invitation To Negotiate. The DEFFORM 47ST is the document that sets out the key requirements that you must 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:
 - Section A – Introduction Page 5
 - DEFFORM 47 Definitions
 - Purpose
 - Tender Expenses / Bid Preparation Costs
 - ITT Documentation and ITT Material
 - Material Change of Control
 - Contract Conditions
 - Consultation with Credit Reference Agencies
 - The Armed Forces Covenant
 - Other Information
 - Section B – Key Tendering Activities Page 10
 - Section C – Instructions on Preparing Tenders Page 12
 - Tenders for Selected Contractor Deliverables
 - Construction of Tenders
 - Validity
 - Variant Bids
 - Qualifying Defence Contracts (Defence Reform Act 2014)
 - Non-qualifying Contracts
 - Section D – Details of Cost Breakdown and Mandatory Criteria Page 14
 - Cost Breakdown Requirements
 - Contractor Databook
 - Work Breakdown Structure
 - Organisation Breakdown Structure
 - Make or Buy Plan
 - Questionnaire on Method of Allocation of Costs (QMAC)
 - Cost Breakdown
 - Profit Breakdown Requirements for a Qualifying Defence Contract
 - Profit Breakdown Requirements for a Non-qualifying Contract
 - Requirement for DEFFORM 815 for a Non-qualifying Contract
 - Mandatory Criteria
 - Section E – Instructions on Submitting Tenders Page 18
 - Submission of your Tender
 - Samples
 - Section F – Conditions of Tendering Page 19
 - 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
 - DEFFORM 47ST Annex A – Tender Submission Document (Offer) Page 22
 - Appendix 1 to DEFFORM 47ST Annex A (Offer) –

- Contract Conditions – page 30
- Additional Definitions of Contract (Schedule 1) – page 44
- Statement of Requirement – (Schedule 2a) – page 45
- Schedule of Requirements - (Schedule 2b) – page 46
- Contract Data Sheet (Schedule 3) – page 47
- Contractor's Commercially Sensitive Information (Schedule 4) – page 51
- DEFFORM 711 - Notification of IPR Restrictions (Schedule 5) – page 52
- DEFFORM 315 – Contract Data Requirement (Schedule 6) – page 58
- DEFFORM 111 - Addresses and Other Information (Schedule 7) – page 59
- Deliverables (Schedule 8) – page 61
- Security Aspects Letter (Schedule 9) – page 63
- Statement Relating to Good Standing (Schedule 10) – page 74

DEFFORM 47ST Definitions

In this ITT the following words and expressions shall have the meanings given to them below:

A1. "The Authority" means the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland, acting as part of the Crown.

A2. "Compliance Regime" is a legally enforceable set of rules, procedures, physical barriers and controls that, together, act to prevent the flow of sensitive or protected information to parties to whom it may give an unfair advantage.

A3. "Conditions of Tendering" means the conditions set out in the DEFFORM 47ST that govern the procurement.

A4. "Contract Terms and Conditions" means the attached conditions including any schedules, annexes and appendices that will govern any resultant contract.

A5. "Contractor Deliverables" means the works, goods and / or the services, including packaging (and Certificate(s) of Conformity and supplied in accordance with any Quality Assurance (QA) requirements, if specified) which the contractor is required to provide under any resultant contract.

A6. "Cyber Security Model" means the model defined in DEFCON 658.

A7. "Defence Sourcing Portal" (DSP) means the electronic platform in which Tenders are submitted to the Authority.

A8. "Government Furnished Information" means information or data issued or made available to the Tenderer in connection with the Contract by or on behalf of the Authority.

A9. "Invitation to Tender" (ITT) refers to the first document that the Authority sends out to potential Tenderers that initiates a Tender response or negotiation.

A10. "ITT Documentation" means this ITT and 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.

A11. "ITT Material" means any other material (including patterns and samples), equipment or software, in any medium or form issued to you, or to which you have been granted access, by the Authority for the purposes of responding to this ITT.

A12. "NAPNOC" is an Authority pricing policy meaning "No Acceptable Price, No Contract".

A13. A "Qualifying Defence Contract" (QDC) is a contract subject to Part 2 of the Defence Reform Act 2014 (DRA) and associated regulations and statutory guidance. A single source contract of £5M (ex VAT) or above is likely to be a QDC, subject to fulfilling the other criteria set out in the DRA.

A14. "Schedule of Requirements" Page 45 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.

A15. "Single Source" means a situation where the Authority has invited a response from only one Tenderer.

A16. The "Statement of Requirement" Page 45 means that part of the Contract which details the technical requirements and acceptance criteria of the Contractor Deliverables.

A17. A 'Sub-contractor' means any party engaged or intended to be engaged by the Contractor at any level of sub-contracting to provide Contractor Deliverables for the purpose of performing any resultant contract.

A18. A "Tender" is the offer that you are making to the Authority.

A19. "Tenderer" means the economic operator. Where "you" is used this means an action on you the Tenderer.

A20. A "Third Party" is any person (including a natural person, corporate or unincorporated body (whether or not having separate legal personality)), other than the Authority, the Tenderer or their respective employees.

A21. "Voluntary Ex Ante Transparency Notice" means a mandatory notice used to announce in Find a Tender a procurement decision that the Authority intends to place a non-competitive contract under the procurement procedures. This also appears in the Defence Sourcing Portal as a "Voluntary Transparency Notice". This allows industry to challenge the decision not to compete.

Purpose

A22. The purpose of this ITT is to invite you to submit a Tender, in accordance with the instructions set out in this ITT, to propose a solution and best price to meet the Authority's requirement. This documentation explains and sets out the:

- a. timetable for the next stages of the procurement;
- b. instructions, conditions and processes that govern this invitation;
- c. information you must include in your Tender and the required format;
- d. arrangements for the receipt and review of your Tender; and
- e. Contract Terms and Conditions that shall apply in the event the Authority awards a contract following this invitation.

A23. The sections in this ITT and associated documents are structured in line with a generic tendering process and do not indicate importance and / or precedence.

A24. This ITT is exempt from the Defence and Security Public Contracts Regulations 2011. The decision to conduct single source procurement for this requirement was advertised by the Authority by publishing a Voluntary Ex Ante Transparency Notice (VEAT) in Find a Tender and / or a Voluntary Transparency Notice in the Defence Sourcing Portal. This was previously issued for the first round dated 10 March 2021 reference: 2021/S 000-004902. It is planned to issue an updated version at some point in the new year.

Tender Expenses / Bid Preparation Costs

A25. Where a non-competitive Tender leads to a new contract, the Authority will reimburse your reasonable bid preparation costs subject to any Limit of Liability made known to you in writing by the Authority, either in this Tender documentation or elsewhere. Any such costs must be charged as direct costs to the contract to which they relate.

A26. Where a non-competitive Tender does not lead to a new contract, the Authority's position in relation to your bid preparation costs will depend on the reason the contract does not proceed.

A27. Where the Tender does not proceed for reasons of the contractor's decision not to proceed, the Authority will not reimburse any of your bid preparation costs, either directly or through indirect cost recovery methods.

A28. Where the Tender process is terminated or amended by the Authority, the Authority will reimburse your reasonable bid preparation costs, subject to any Limit of Liability made known to you in writing by the Authority, either in this Tender documentation or elsewhere. Because such costs are not permitted to be recovered indirectly against other non-competitive contracts, the Authority will in these circumstances request you to submit a cost statement detailing your reasonably incurred costs, which the Authority will have the right to review, before agreeing with you the means of making the finally agreed settlement.

ITT Documentation and ITT Material

A29. 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 ITT Material 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 A29.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 confirm destruction of (or in the case of software, that it is beyond use) 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'.

A30. 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 A29 above.

Material Change of Control

A31. 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.

Terms and Conditions

A32. Standardised Contract 1B (SC1B) conditions are attached.

Consultation with Credit Reference Agencies

A33. Not Used.

The Armed Forces Covenant

A34. 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.

A35. The Covenant is based on two principles:

- a. that the Armed Forces community would not face disadvantages when compared to other citizens in the provision of public and commercial services; and
- b. that special consideration is appropriate in some cases, especially for those who have given most such as the injured and the bereaved.

A36. 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.

A37. [The 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 organisation can also see real benefits in their business.

A38. 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 Authority 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

A39. Paragraphs 34 to 38 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 evaluation, contract award procedure or any resulting contract. However, the Authority very much hopes you will want to provide your support.

Other Information

A40. 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 via:
Final date for Clarification Questions / Requests for additional information	14-12-2023	Tenderer	Email to james.fletcher130@mod.gov.uk
Final Date for Requests for Extension to return date	14-12-2023	Tenderer	Email to james.fletcher130@mod.gov.uk
The Authority issues Final Answers and Clarifications	19-12-2023	The Authority	Tenderer
Tender Return	05-01-2024 12:00	Tenderer	Email to james.fletcher130@mod.gov.uk
Value For Money (VFM) Assessment in accordance with NAPNOC – see Section D of this DEFFORM 47ST	05-01-2024 12:00	The Authority	N/A
The following are indicative timescales for planning purposes only			
Revise Or Confirm Offer	N/A	The Authority	N/A
Start of Clarification/ Negotiation	05-01-2024	The Authority	N/A
Best And Final Offer	N/A	The Authority	N/A
Trials / Testing	N/A	The Authority	N/A

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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 (ex VAT). Prices must be Firm/ Fixed (as applicable).

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 and 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 \(DRA\)](#). 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 to:

- a. new contracts with a value of £5M (ex VAT) or above; and
- b. 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 also sets out the criteria for determining when a sub-contract is a Qualifying Sub Contract (QSC) to which the DRA and SSCR will apply. Any single source sub-contract in excess of £25M (ex VAT),

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, set out in SSCR 2014 Regulation 61, to determine whether any planned sub-contract is a QSC. For any sub-contract of £15M (ex VAT) or over, the Tenderer must keep a record of their assessment and notify the Authority in writing that an assessment has been made, prior to contract award.

C10. 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.

C11. QDC Pricing - The DRA requires a 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 and Reasonable (AAR). The Authority is obliged to ensure that your costs are AAR 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.

C12. 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.

C13. QDC Reporting - If this Tender leads to a QDC you will be obliged, under the DRA 2014 & associated regulations, to submit QDC Contract Reports to the Authority and the Single Source Regulations Office. The Authority will require you to use the SSRO's online reporting system Defence Contract Analysis & Reporting System (DefCARS) to submit your reports. The reports that will be required are:

- a. the Contract Initiation Report (comprising the Contract Pricing Statement, the Contract Notification Report and the Contract Reporting Plan), within one month of contract award;
- b. Quarterly Contract Reports (where the contract value is £50M (ex VAT) or above); Interim Contract Reports and any other 'on demand' reports as specified elsewhere in this Tender; and

- c. a Contract Completion Report and a Contract Costs Statement, at the end of the contract.

Details of reporting requirements can be found on the [SSRO website](#), see their document [Reporting guidance and DefCARS](#).

C14. You must agree with the Authority which Defined Pricing Structure (DPS) will be used for your reporting, if not already specified by the Authority in this Tender. The DPS is published by the SSRO and used as the basis of reporting your forecast and actual costs through DefCARS. (Note: for Quarterly Contract Reports (QCRs) you may report costs using your own reporting structure, rather than the agreed DPS).

C15. [The MOD Commercial Toolkit](#) provides further information about the new single source legal framework.

Non-qualifying Contracts

C16. A single source contract that does not meet the criteria to be a QDC is a “non-qualifying contract”. While recognising the provisions of the DRA and SSCR do not apply in law to non-qualifying contracts, the Authority’s policy is to apply the same pricing principles and guidance to assure the process of a non-qualifying contract, as for a QDC.

DEFFORM 47ST

(Edn 06/23)

Section D - Details of Cost Breakdown and Mandatory Criteria

D1. When placing any contract, the Authority is required to satisfy 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.

Cost Breakdown Requirements

D2. Detailed below is the information and evidence the Authority requires to enable the assessment of the contract and Sub-contract proposals submitted in response to the Authority's Tender dated 24 November 23. Subject to paragraphs D3 to D5, or unless otherwise agreed with the Authority, the information detailed must be submitted as part of your Tender response.

D3. You may have already provided some of the information detailed below as part of a separate investigation / agreement with the Authority (e.g. the methodology used to determine overhead cost recovery rates). If so, you must provide details and dates of any such agreements.

D4. If the Tender is expected to lead to a Qualifying Defence Contract (QDC), you must provide sufficiently detailed information to the Authority to support your price proposal, to satisfy the statutory obligations placed on you by the [Defence Reform Act 2014 \(DRA\)](#) and the [Single Source Contract Regulations 2014 \(SSCR\)](#). Or, if any resultant contract is not a QDC (a non-qualifying contract), to meet the Authority's pricing policy indicated at paragraph C16 of this DEFFORM 47ST, the costs you propose within your price must be compliant with the latest version of the statutory [Allowable Costs Guidance](#) (ACG) published by the Single Source Regulations Office (SSRO). Further information about the DRA and SSCR provisions can be found on the MOD Commercial Toolkit and on the [SSRO website](#).

D5. The aim of the Authority's assessment is to satisfy itself that your proposed costs are AAR. For a QDC you will be legally required to submit a Contract Pricing Statement within one month of contract award,

detailing the facts, assumptions and calculations underpinning the contract price, as indicated at paragraph C13. You should therefore aim to supply a similar level of detail to support your tendered price. The Authority may request further supporting information, in the event the information supplied with your Tender is insufficient to enable the Authority's assessment to be completed.

Contractor Databook

D6. You are not required to provide a Contractor Databook.

Work Breakdown Structure

D7. You must provide a Work Breakdown Structure (WBS), representing a hierarchical breakdown of the work packages / activities that need to be performed to deliver the required Contractor Deliverables. The WBS when completed should provide detail proportionate to the value and complexity of the requirement covered by the Tender.

Organisation Breakdown Structure

D8. You must provide an Organisation Breakdown Structure (OBS) that maps across to your WBS.

D9. The OBS must be supported by a resource plan detailing the personnel that will be assigned to the delivery of any resultant contract, specifically identifying any additional personnel not currently available, that will need to be acquired, together with the assumed timescales for their introduction.

Make or Buy Plan

D10. Your Tender must provide a Make or Buy Plan defining the criteria and rationale used for the apportionment of work within the proposed supply network. The plan must identify each sub-system, package of work, service or purchase of components and raw materials etc. whether or not you intend to seek competitive tenders. You must indicate your reasons for not seeking competition (i.e. competition not practicable or not reasonable for other reasons which must be stated). For contracts valued at £5M (ex VAT) and above, the Make or Buy Plan must provide the following information for each sub-system, package of work, service, purchase of components and raw materials:

- a. the name and address of the proposed sub-contractor(s); or
- b. the list of tenderers and timeline that is being considered for competitively placed requirements
- c. the approximate value of the sub-contract or order;
- d. the means by which prices are to be determined as fair and reasonable (e.g. by incorporation into the sub-contract or order the text of the relevant Appendix of DEFCONs 802, 804, 811, 812, 814 and 815, as applicable);
- e. the delivery programme; and

- f. other relevant factors.

Questionnaire on Method of Allocation of Costs

D11. Your Tender must identify the Questionnaire on Method of Allocation of Costs (QMAC) on which your cost estimate is based, together with its status. If you have never agreed a QMAC with the Authority, you must provide details of the method and rationale used for the allocation and apportionment of costs, and the means you use to determine your overhead recovery rates.

Cost Breakdown

D12. Your Tender must provide a cost breakdown that clearly indicates the way in which the proposed costs for the work described in the proposal have been derived. If your company agrees Cost Recovery Rates with the Authority, you must use the latest Promulgated Rates and provide the date and reference of the agreement letter. If your Company does not regularly agree Cost Recovery Rates with the Authority, you must explain the basis of the rates applied.

D13. Your cost breakdown must be constructed to enable the Authority to understand the relationship between the costs you have estimated and the Contract Terms and Conditions. Any assumptions and dependencies that have a bearing on the allocation of commercial risk must be detailed.

D14. Your cost breakdown should indicate the amounts quoted for each of the main cost types broken down by cost centre / department / division and by planned spend per your Accounting Period.

D15. Your cost breakdown must provide sufficient detail to enable the Authority to assess whether the cost allocated to each of the key work packages, within the WBS down to the level specified in paragraph D7, are Allowable Costs (see sub-paragraph D16.h).

D16. Your Tender must provide the following detail, for each work package in the WBS:

- a. the direct costs associated with each work package. In this respect, a direct cost is one that can be completely attributed to the delivery of the work package concerned, including materials costs, labour costs, sub-contract costs, other direct costs and any capital costs relating to expenditure on special type equipment. You must also include spend profiles for labour and materials broken down by Financial Year;
- b. the direct labour hours used to estimate the cost of each work package, broken down by band / grade and indicating the charging rates applied. Where applied, the annual utilisation rates used to derive the direct labour hour estimates. Any annual escalation applied to the rates must be detailed separately and the rationale provided;
- c. any overhead and / or indirect costs relating to the general conduct of your business and which have been attributed to each work package. You must provide the methodology used to attribute indirect costs to work packages, if not already provided (e.g. under paragraph D13);
- d. any risk contingencies associated with each work package must be quantified and substantiated. You must conduct a detailed risk assessment covering: schedule, technical performance, cost and commercial risks and supply a Risk Register with Risk Analysis, along with the Risk Analysis rationale. You must also identify the methodology for managing and eliminating / minimising risks off-set against the Risk Analysis and its impact on cost growth and programme. The register must also include an assessment of costed opportunities relating to applying improved techniques / practices, exploiting technology or pursuing other approaches that would yield VFM;
- e. a statement detailing the rationale that underpins the estimate for each work package together with evidence that demonstrates the estimated costs are Allowable. The statement must include:

- (1) details of any historic / recorded costs used to inform the development of the estimate supported by the rationale for any adjustments that may have been applied to the data to reflect different circumstances. Where no adjustments have been made, you must provide the rationale for applying historic / recorded costs;
- (2) details of any scrap and rework costs included in the historical costs provided in response to sub-paragraph D16.h.(1) above, specifically identifying the reasons why the scrap and rework occurred; and
- (3) any particular processes and / or techniques that are reflected within the estimate for the work package concerned;
- (4) details of your estimating policy (e.g. estimating handbooks or guidance material) that have been applied to determine the tendered price(s), together with confirmation that the Authority will be afforded unrestricted access to such documentation, if requested.

D17. You must provide copies of any quotes for purchase of materials valued in and sub-contracted work with an estimated value in excess of: **£N/A**

D18. You must annotate all relevant economic and other assumptions on which the costs identified in the cost breakdown are dependent (e.g. inflation, interest rates, and taxation rates). Any elements for which the application of a Variation of Price (VOP) mechanism is proposed, must be supported by the rationale and details of the suggested VOP mechanism.

D19. If applicable you should provide details of any quantified productivity improvements / efficiency gains (including any cost benefit from company re-organisation) expected to be realised over the life of the contract, detailing the Financial Year they are expected to apply. You should identify separately, any costs included with the estimate that are expected to contribute to the realisation of those improvements. Any proposed investments should be supported by a quantitative analysis demonstrating the benefits.

D20. Your cost estimate must reflect the assumptions you have made, including those concerning the anticipated percentage split of Authority / commercial workload for the duration of the contract, which you must provide with your tender, profiled by year.

Profit Breakdown Requirements for a QDC

D21. You must identify the profit rate(s) used to determine the tendered price(s), together with details of how each rate has been derived. For a QDC the agreement of the Contract Profit Rate is a six-step process, described in the [SSRO Baseline Profit Rate Guidance](#). Step 1, the Baseline Profit Rate (BPR), must be the BPR in force at 1 April in the period 1 Apr – 31 Mar in the year in which any resultant contract is signed. The same applies to step 4 - SSRO funding adjustment and step 6 - Capital Servicing Allowance – CSA. Your tender may propose adjustments for step 2 - risk adjustment, step 3 - Profit on Cost Once (POCO) and step 6 - Capital Servicing Allowance (CSA), provided you show they are in accordance with SSRO Statutory Guidance on profit rate adjustments. Whether or not you propose adjustments for steps 2, 3 and 6 in your tender response, these will need to be negotiated with you during the price negotiation. Step 5 is an incentive adjustment which is solely for inclusion at the Authority's discretion. If the Authority decides there is justification to include step 5, the amount will be negotiated with you during the price negotiation.

Profit Breakdown Requirements for a Non-qualifying Contract

D22. It is the Authority's policy to use the current SSRO published BPR and CSA when negotiating the contract profit rate for a non-qualifying contract. It may also be appropriate to consider the other 'steps' of the

profit rate calculation (e.g. step 2 - risk adjustment and step 3 - POCO) although step 4 - SSRO funding adjustment, will never be applied to a non-qualifying contract.

D23. You must explain and justify, within your Tender response, a profit rate that is not derived from the current SSRO BPR and CSA.

Requirement for DEFFORM 815 for a Non-qualifying Contract

D24. If your Tender will result in a non-qualifying contract over £1m (ex VAT), you must complete a DEFFORM 815 – Contract Pricing Statement on or around contract signature. It is the Authority's preference that you submit a draft DEFFORM 815 with your Tender response. Instructions on completion of the DEFFORM 815 are available on the Authority's Commercial Toolkit.

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

Mandatory Criteria, applicable to QDCs and non-qualifying contracts	
Full completion of the table in DEFFORM 47ST Annex A (Offer)(See paragraph F20)	Pass/Fail
Minimum Technical Requirements met	Pass/Fail
[Insert any relevant Mandatory Criteria]	Pass/Fail

Section E - Instructions on Submitting Tenders**Submission of your Tender**

E1. Your Tender and any other ITT Documentation must be submitted electronically via the Defence Sourcing Portal as stated in the covering letter to this DEFFORM 47ST. **For this Tender Round we are requesting via James.Fletcher130@mod.gov.uk unless informed otherwise.** The following items are expected in your return:

- Your Tender
- Completed DEFFORM 47ST Annex A
- Schedule 10 Statement of Good Standing
- Your responses to paragraph 4 of the Security Aspects Letter (ITN version)
- A short statement of what the Entity In Charge of Maintenance contract covers to help us distinguish between this and the work DRS conducts as a sub-contractor to the Nuclear Decommissioning Authority

E2. Your Tender must be compatible with MS Office Word and other MS Office applications. If you password protect or encrypt any information containing prices, you must supply the password / use compatible encryption methods so that the Authority can undertake a pricing evaluation.

E3. The DSP is accredited to OFFICIAL SENSITIVE. Material that is protectively marked above this classification must not be uploaded to the DSP. Please contact james.fletcher130@mod.gov.uk or 0300 1577 484 if you have a requirement to submit documents above OFFICIAL SENSITIVE.

E4. You must not upload any ITAR or Export Controlled information as part of your Tender or ITT documentation into the DSP. You must contact james.fletcher130@mod.gov.uk or 0300 1577 484 to discuss any exchange of ITAR or Export Controlled information. You must ensure that you have the relevant permissions to transfer information to the Authority.

E5. You must ensure that your DEFFORM 47ST Annex A (Offer) is signed, scanned and uploaded to the DSP with your Tender as a PDF (it must be a scanned original). Where you select 'Yes' to any questions you must upload the relevant information to the DSP. **For this Tender Round we are requesting via James.Fletcher130@mod.gov.uk unless informed otherwise.**

Samples

E7. Where samples are required for testing 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. 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 them to be returned. The samples associated with a successful Tender may be kept by the Authority indefinitely.

E9. Samples that are consumed will not be returned.

**DEFFORM 4ST
(Edn06/23)**

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. 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.

- 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. In addition to its legal rights in relation to qualifying contracts, under the Defence Reform Act 2014 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 your submission during Tender evaluation where necessary for the purpose of carrying out a fair evaluation. You are asked to respond to such requests promptly;

F3. The contract will be effective when both parties have signed the contract. The contract will be issued by the Authority via DEFFORM 8, to the address you provide, on or before the end of the validity period specified in paragraph C4.

Conforming to the Law

F4. You must comply with the UK Bribery Act 2010, all applicable UK legislation and any equivalent legislation in a third state.

F5. 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.

Fraud and Other Illegal Practices

F6. You must report any suspected or actual, 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 that have arisen or may arise at any point before the contract award decision. You should be aware that withholding knowledge of such interests may prevent the Authority from awarding the Contract.

Disqualification will be without prejudice to any civil remedy available to the Authority or any criminal liability that your conduct may attract.

F8. Where an actual or potential Conflict of Interest (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 and provides full details listed at F8 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. 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.

Government Furnished Assets

F9. 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

F10. 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.

F11. 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.

F12. 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

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

F14. 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. You 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 tendering process. This allows the Authority to share information with other Government Departments while complying with our obligations to maintain confidentiality.

F15. Where required, 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 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 you consent to such disclosure.

Remedies for Actionable Contraventions under the Defence Reform Act 2014

F16. 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 2014. 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

F17. 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 must attach the relevant information with your tender submission.

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.

F19. 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.

Specific Conditions of Tendering F20. None

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				Yes/ No *	
*Where 'no' is selected, Scots Law will apply.					
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 the Contractor:					
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 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
Have you completed and attached a DEFFORM 711 – Notification of Intellectual Property Rights (IPR) Restrictions?	Yes* / No
DEFFORM 528. 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 will comply 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 Sensitive Information)?	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 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
Have you attached The Bank / Parent Company Guarantee?	Yes* / No / Not Required
Have you complied with the requirements of the Defence Safety Authority?	Yes / No / Not Required
Have you completed all Mandatory Requirements (as per paragraph F17) stated in this ITT?	Yes / No
*If selecting Yes to any of the above questions, please attach the information detailed in Appendix 1 to DEFFORM 47ST Annex A (Offer).	

Tenderer's Declaration

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 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 material in the Contractor's Sensitive Information form (Schedule 4).

Dated

Name: (in BLOCK CAPITALS)

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

(Tenderer's Name)

Signature: **In the capacity of**

.....

(Must be original)

(State official position e.g. Director, Manager, Secretary etc.)

Postal Address:

Telephone No:

Registered Company Number:

Dunn and Bradstreet Number:

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. 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.
4. 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 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, provide the Authority with details of every restriction and obligation referred to in paragraphs 3 and 4. 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.
6. You should refer to the DEFFORM 711 Explanatory Notes for further information on how to complete the form.

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, retransfer 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. United Kingdom (UK) 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 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.
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 His Majesty's Revenue & Customs (HMRC) authorisations.

Sub-contracts Form 1686

16. 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 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 delivery 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](#). Small and Medium Enterprises
17. The Authority is committed to supporting the Government's small and medium-sized enterprise (SME) policy, and we want to encourage wider SME participation throughout our supply chain. Our goal is that 25% of the Authority's spending should be spent with SMEs by 2022; 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](#).
19. Suppliers are also encouraged to work with the Authority to support the Authority's SME initiative, however this is not a condition of working with the Authority now or in the future, nor will this issue form any part of the Tender evaluation. Information on the Authority's purchasing arrangements, our commercial policy priorities and our SME policy can be found at [Gov.UK](#) and the [Defence Sourcing Portal](#).
20. The opportunity also exists for Tenderers to advertise any sub-contract valued at over £10,000 on the Defence Sourcing Portal and further details can be obtained directly from: <https://www.gov.uk/guidance/subcontract-advertising>. This process is managed by the Strategic Supplier Management team who can be contacted at: DefComrcISSM-Suppliers@mod.gov.uk.

Transparency, Freedom of Information and Environmental Information Regulations

21. The Authority shall publish notification of the Contract and publish Contract documents where required following a request 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 between suppliers.
22. The Authority may publish the contents of any resultant Contract in line with government policy set out in the Government's [Transparency Principles](#) and in accordance with the provisions of either SC1B Conditions of Contract Clause 5.
23. 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").
24. You should complete the attached Tenderer's Sensitive Information form (Schedule 4) explaining which parts of your Tender you consider to be Sensitive Information. This includes providing a named individual who can be contacted with regard to FOIA and EIR.
25. 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

26. You must note that use of the [Contracting, Purchasing and Finance \(CP&F\)](#) 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

27. If you have not previously submitted a Statement Relating to Good Standing or circumstances have changed please, select 'Yes' to the appropriate question on DEFFORM 47ST Annex A and submit a Statement Relating to Good Standing with your Tender.

Asbestos, Hazardous Items and Depletion of the Ozone Layer

28. 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.

Defence Safety Authority (DSA) Requirements

29. There are no DSA Requirements.

Bank or Parent Company Guarantee

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

Standardised Contracting Terms and Conditions**1 Definitions – In the Contract:**

Articles means, in relation to Clause 9 and Schedule 3 only, an object which during production is given a special shape, surface or design which determines its function to a greater degree than does its chemical composition;

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;

Business Day means 09:00 to 17:00 Monday to Friday, excluding public and statutory holidays;

Contract means the agreement concluded between the Authority and the Contractor, including all terms and conditions, , specifications, plans, drawings, schedules and other documentation, expressly made part of the agreement in accordance with Clause 2.c;

Contractor means the person, firm or company specified as such in 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;

Contractor Deliverables means the goods and / or services including packaging (and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract in accordance with the schedule of requirements.

Effective Date of Contract means the date stated on the Contract or, if there is no such date stated, the date upon which both Parties have signed the Contract;

Firm Price means a price excluding Value Added Tax (VAT) which is not subject to variation;

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;

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;

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.

Mixture means a mixture or solution composed of two or more substances;

Notices means all notices, orders, or other forms of communication required to be given in writing under or in connection with the Contract;

Parties means the Contractor and the Authority, and Party shall be construed accordingly;

PPT means a tax called “plastic packaging tax” charged in accordance with Part 2 of the Finance Act 2021;

PPT Legislation means the legislative provisions set out in Part 2 and Schedules 9-15 of the Finance Act 2021 together with any secondary legislation made under powers contained in Part 2 of the Finance Act

2021. This includes, but is not limited to, The Plastic Packaging Tax (Descriptions of Products) Regulations 2021 and The Plastic Packaging Tax (General) Regulations 2022;

Plastic Packaging Component(s) shall have the same meaning as set out in Part 2 of the Finance Act 2021 together with any associated secondary legislation;

Sensitive Information means the information listed as such in Schedule 4 , being information notified by the Contractor to the Authority, which is acknowledged by the Authority as being sensitive, at the point at which the Contract is entered into or amended (as relevant) and remains sensitive information at the time of publication;

Substance means a chemical element and its compounds in the natural state or obtained by any manufacturing process, including any additive necessary to preserve its stability and any impurity deriving from the process used, but excluding any solvent which may be separated without affecting the stability of the substance or changing its composition;

Transparency Information means the content of this Contract in its entirety, including from time to time agreed changes to this Contract, except for (i) any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations Act 2004 (EIR), which shall be determined by the Authority, and (ii) any Sensitive Information.

2 General

- a. The Contractor shall comply with all applicable Legislation, whether specifically referenced in this Contract or not.
- b. Any variation to the Contract shall have no effect unless expressly agreed in writing and signed by both Parties.
- c. If there is any inconsistency between these terms and conditions and the associated documents expressly referred to therein, the conflict shall be resolved according to the following descending order of priority:
 - (1) the terms and conditions;
 - (2) the schedules; and
 - (3) the documents expressly referred to in the agreement.
- d. Neither Party shall be entitled to assign the Contract (or any part thereof) without the prior written consent of the other Party.
- e. Failure or delay by either Party in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of its rights under the Contract.
- f. The Parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a Party to it.
- g. The Contract and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English Law, and subject to Clause 15 and without prejudice to the dispute resolution procedure set out therein, the Parties submit to the exclusive jurisdiction of the English courts. Other jurisdictions may apply solely for the purpose of giving effect to this Clause 2.g and for enforcement of any judgement, order or award given under English jurisdiction.

3 Application of Conditions

- a. These terms and conditions, schedules and the specification govern the Contract to the entire exclusion of all other terms and conditions. No other terms or conditions are implied.
- b. The Contract constitutes the entire agreement and understanding and supersedes any previous agreement between the Parties relating to the subject matter of the Contract.

4 Disclosure of Information

Information received or in connection with the Contract shall be managed in accordance with DEFCON 531 (SC1) and Clause 5.

5 Transparency

- a. Notwithstanding any other condition of this Contract, including 531 (SC1), the Contractor understands that the Authority may publish the Transparency Information to the general public.
- b. Subject to Clause 5.c, the Authority shall publish and maintain an up-to-date version of the Transparency Information in a format readily accessible and reusable by the general public under an open licence where applicable.
- c. If, in the Authority's reasonable opinion, publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority acknowledges that it shall only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication on that basis, it will provide a clear statement to the general public explaining the categories of information that have been excluded from publication and reasons for withholding that information.
- d. The Contractor shall assist and co-operate with the Authority as reasonably required to enable the Authority to publish the Transparency Information, in accordance with the principles set out above. Where the Authority publishes Transparency Information, it shall:
 - (1) before publishing redact any information that would be exempt from disclosure if it was the subject of a request for information under the FOIA and/or the EIR, for the avoidance of doubt, including the Sensitive Information.
 - (2) taking into account the Sensitive Information set out in Schedule 4, consult with the Contractor where the Authority intends to publish information which has been identified as Sensitive Information. For the avoidance of doubt the Authority, acting reasonably, shall have absolute discretion to decide what information shall be published or be exempt from disclosure in accordance with the FOIA and/or the EIR; and
 - (3) present information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how this Contract is being performed.

6. 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 the Contract;
 - (4) marked with the number of the Contract; and
 - (5) delivered by hand, prepaid post (or airmail), facsimile transmission or, if agreed in the Contract, 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 a Business Day in the place of receipt, and otherwise on the first Business Day in the place of receipt 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.

7. Intellectual Property

- a. The Contractor shall as its sole liability keep the Authority fully indemnified against an infringement or alleged infringement of any intellectual property rights or a claim for Crown use of a UK patent or registered design caused by the use, manufacture or supply of the Contractor Deliverables.
- b. The Authority shall promptly notify the Contractor of any infringement claim made against it relating to any Contractor Deliverable and, subject to any statutory obligation requiring the Authority to respond, shall permit the Contractor to have the right, at its sole discretion to assume, defend, settle or otherwise dispose of such claim. The Authority shall give the Contractor such assistance as it may reasonably require to dispose of the claim and will not make any statement which might be prejudicial to the settlement or defence of the claim.
- c. 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.

Notification of Intellectual Property Rights (IPR) Restrictions

- d. Where any of the Conditions listed below (1 to 3) have been added to these Conditions of the Contract as Project Specific DEFCONs at Clause 21, the Contractor warrants and confirms that all Intellectual Property Rights restrictions and associated export restrictions relating to the use or disclosure of the Contractor Deliverables that are notifiable under those Conditions, or of which the

Contractor is or should reasonably be aware as at Effective Date of Contract, are disclosed in Schedule 5 (Notification of Intellectual Property Rights (IPR) Restrictions):

- (1) DEFCON 15 – including notification of any self-standing background Intellectual Property;
- (2) DEFCON 90 – including copyright material supplied under clause 5;
- (3) DEFCON 91 – limitations of Deliverable Software under clause 3b;

e. The Contractor shall promptly notify the Authority in writing if they become aware during performance of the Contract of any required additions, inaccuracies or omissions in Schedule 5. F. Any amendment to Schedule 5 shall be made in accordance with DEFCON 503 (SC1).

8 Supply of Contractor Deliverables and Quality Assurance

- a. This Contract comes into effect on the Effective Date of Contract.
- b. The Contractor shall supply the Contractor Deliverables to the Authority at the Firm Price stated in the Contract.
- c. The Contractor shall ensure that the Contractor Deliverables:
 - (1) correspond with the specification;
 - (2) are of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) except that fitness for purpose shall be limited to the goods being fit for the particular purpose held out expressly by or made known expressly to the Contractor and in this respect the Authority relies on the Contractor's skill and judgement; and
 - (3) comply with any applicable Quality Assurance Requirements specified in the Contract.
- d. The Contractor shall apply for and obtain any licences required to import any material required for the performance of the Contract in the UK. The Authority shall provide to the Contractor reasonable assistance with regard to any relevant defence or security matter arising in the application for any such licence.

9 Supply of Hazardous Substances, Mixtures and Articles in Contractor Deliverables

- a. Nothing in this Clause 9 shall reduce or limit any statutory duty or legal obligation of the Authority or the Contractor.
- b. As soon as possible and in any event within the period specified in the Contract (or if no such period is specified no later than one month prior to the delivery date), the Contractor shall provide to the Authority's representatives in the manner and format prescribed in the Contract:
 - (1) confirmation as to whether or not to the best of its knowledge any of the Contractor Deliverables contain hazardous Substances, Mixtures or Articles; and
 - (2) for each Substance, Mixture or Article supplied in meeting the criteria of classification as hazardous in accordance with the GB Classification, Labelling and Packaging (GB CLP) a UK REACH compliant Safety Data Sheet (SDS);

- (3) where Mixtures supplied do not meet the criteria for classification as hazardous according to GB CLP but contain a hazardous Substance an SDS is to be made available on request; and
 - (4) for each Article whether supplied on its own or part of an assembly that contains a Substance on the UK REACH Authorisation List, Restriction List and / or the Candidate List of Substances of Very High Concern (SVHC) in a proportion greater than 0.1% w/w of the Article, sufficient information, available to the supplier, to allow safe use of the Article including, as a minimum, the name of that Substance.
- c. For substances, Mixtures or Articles that meet the criteria list in clause 9.b above:
- (1) 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/safety Information and forward it to the Authority and to the address listed in Schedule 3; and
 - (2) if the Authority becomes aware of new information that might call into question appropriateness of the risk management measures identified in the safety information supplied, shall report this information in writing to the Contractor.
- d. If the Substances, Mixtures or Articles in Contractor Deliverables are Ordnance, Munitions or Explosives (OME), in addition to the requirements of the GB CLP and UK REACH the Contractor shall comply with hazard reporting requirements of DEF STAN 07-085 Design Requirements for Weapons and Associated Systems.
- e. If the Substances, Mixtures or Articles in Contractor Deliverables, are or contain or embody a radioactive substance as defined in the Ionising Radiation Regulations SI 2017/1075, the Contractor shall additionally provide details on DEFFORM 68 of:
- (1) activity; and
 - (2) the substance and form (including any isotope).
- f. If the Substances, Mixtures and Articles in Contractor Deliverables have magnetic properties which emit a magnetic field, the Contractor shall additionally provide details on DEFFORM 68 of the magnetic flux density at a defined distance, for the condition in which it is packed.
- g. Failure by the Contractor to comply with the requirements of this Condition shall be grounds for rejecting the affected Substances, Mixtures and Articles in Contractor Deliverables. Any withholding of information concerning hazardous Substance, Mixtures or Articles in Contractor Deliverables shall be regarded as a material breach of Contract under Condition 18 (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 18.
- h. 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.

10 Delivery / Collection

- a. The Contract 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. Title and risk in the Contractor Deliverables shall pass from the Contractor to the Authority on delivery or on collection in accordance with Clause 10.a.

c. The Authority shall be deemed to have accepted the Contractor Deliverables thirty (30) days after title and risk has passed to the Authority unless it has rejected the Contractor Deliverables within the same period.

11 Marking of Contractor Deliverables

- a. Each Contractor Deliverable shall be marked in accordance with the requirements specified in Contract, or 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 the 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 required particulars, the required information should be included on the package or carton in which the Contractor Deliverable is packed, in accordance with condition 12 (Packaging and Labelling (excluding Contractor Deliverables containing Ammunition or Explosives)).

12 Packaging and Labelling of Contractor Deliverables (Excluding Contractor Deliverables Containing Ammunition or Explosives)

- a. The Contractor shall pack or have packed the Contractor Deliverables in accordance with any requirements specified in the Contract and Def Stan 81-041 (Part 1 and Part 6).
- b. The Contractor shall establish if the Contractor Deliverables are, or contain, Dangerous Goods as defined in the Regulations set out in this Clause 12. Any that do shall be packaged for UK or worldwide shipment by all modes of transport in accordance with the following unless otherwise specified in the Contract.:
 - (1) the Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO), IATA Dangerous Goods Regulations;
 - (2) the International Maritime Dangerous Goods (IMDG) Code;
 - (3) the Regulations Concerning the International Carriage of Dangerous Goods by Rail (RID); and
 - (4) the European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR).

- c. Certification markings, incorporating the UN logo, the package code and other prescribed information indicating that the package corresponds to the successfully designed type shall be marked on the packaging in accordance with the relevant regulation.

13 Plastic Packaging Tax

- a. The Contractor shall ensure that any PPT due in relation to this Contract is paid in accordance with the PPT Legislation.
- b. The Contract Price includes any PPT that may be payable by the Contractor in relation to the Contract.
- c. On reasonable notice being provided by the Authority, the Contractor shall provide and make available to the Authority details of any PPT they have paid that relates to the Contract.
- d. The Contractor shall notify the Authority, in writing, in the event that there is any adjustment required to the Contract Price in accordance with section 70 of the Finance Act 2021 and, on reasonable notice being provided by the Authority, the Contractor shall provide any such information that the Authority requires in relation to any such adjustment.
- e. In accordance with DEFCON 609 (SC1) the Contractor (and their sub-contractors) shall maintain all records relating to PPT and make them available to the Authority when requested on reasonable notice for reasons related to the Contract.
- f. Where the Contractor manufactures, purchases or imports into the UK any Plastic Packaging Component in relation to the Contract the Contractor shall, on reasonable notice being given, provide the Authority with such information and documentation that it requires to enable the Authority to carry out due diligence checks and satisfy itself that the Contractor has complied with the requirements of the PPT Legislation. This shall include, but is not limited to the Contractor providing:
 - (1) confirmation of the tax status of any Plastic Packaging Component;
 - (2) documents to confirm that PPT has been properly accounted for;
 - (3) product specifications for the packaging components, including, but not limited to, the weight and composition of the products and any other product specifications that may be required;
 - (4) and copies of any certifications or audits that have been obtained or conducted in relation to the provision of Plastic Packaging Components.
- g. The Authority shall have the right, on providing reasonable notice, to physically inspect or conduct an audit on the Contractor, to ensure any information that has been provided in accordance with clause 13.f above is accurate.
- h. In the event the Contractor is not required to register for PPT they (and to the extent applicable, their sub-contractors) shall provide the Authority with a statement to this effect and, to the extent reasonably required by the Authority on reasonable notice, supporting evidence for that statement.
- i. The Contractor shall provide, on the Authority providing reasonable notice, any information that the Authority may require from the Contractor for the Authority to comply with any obligations it may have under the PPT Legislation.

14 Progress Monitoring, Meetings and Reports

The Contractor shall attend progress meetings and deliver reports at the frequency or times (if any) specified in the Contract and shall ensure that its Contractor's representatives are suitably qualified to attend such meetings. Any additional meetings reasonably required shall be at no cost to the Authority.

15 Payment

- a. Payment for Contractor Deliverables will be made by electronic transfer and prior to submitting any claims for payment under clause 15b the Contractor will be required to register their details (Supplier onboarding) 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 15a, 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 15b 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 15c 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.

16 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 16.a the dispute shall be referred to arbitration and 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 it is agreed between the Parties that the arbitration process and anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential as between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise. No report relating to anything said, done or produced in or in relation to the arbitration process may be made beyond the tribunal, the Parties, their legal representatives and any person necessary to the conduct of the proceedings, without the concurrence of all the Parties to the arbitration.

17 Termination for Corrupt Gifts

The Authority may terminate the Contract with immediate effect, without compensation, by giving written notice to the Contractor at any time after any of the following events:

- a. where the Authority becomes aware that the Contractor, its employees, agents or any sub-contractor (or anyone acting on its behalf or any of its or their employees):
 - (1) has offered, promised or given to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward;
 - (2) commits or has committed any prohibited act or 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;
 - (3) has entered 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.
- b. In exercising its rights or remedies to terminate the Contract under Clause 17.a. 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 committing the prohibited act;
 - (2) give 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.
- c. Where the Contract has been terminated under Clause 17.a. the Authority shall be entitled to purchase substitute Contractor Deliverables from elsewhere and recover from the Contractor any costs and expenses incurred by the Authority in obtaining the Contractor Deliverables in substitution from another supplier.

18 Material Breach

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 their obligations under the Contract. Where the Authority has terminated the Contract under Clause 18 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.

19 Insolvency

The Authority shall have the right to terminate the contract if the Contractor is declared bankrupt or goes into liquidation or administration. This is without prejudice to any other rights or remedies under this Contract.

20 Limitation of Contractor's Liability

- a. Subject to Clause 20.b the Contractor's liability to the Authority in connection with this Contract shall be limited to £5m (five million pounds).
- b. Nothing in this Contract shall operate to limit or exclude the Contractor's liability:
 - (1) for:
 - a. any liquidated damages (to the extent expressly provided for under this Contract);
 - b. any amount(s) which the Authority is entitled to claim, retain or withhold in relation to the Contractor's failure to perform or under-perform its obligations under this Contract, including service credits or other deductions (to the extent expressly provided for under this Contract);
 - c. any interest payable in relation to the late payment of any sum due and payable by the Contractor to the Authority under this Contract;
 - d. any amount payable by the Contractor to the Authority in relation to TUPE or pensions to the extent expressly provided for under this Contract;
 - (2) under Condition 7 of the Contract (Intellectual Property), and DEFCONs 91 or 638 (SC1) where specified in the contract;
 - (3) for death or personal injury caused by the Contractor's negligence or the negligence of any of its personnel, agents, consultants or sub-contractors;
 - (4) For fraud, fraudulent misrepresentation, wilful misconduct or negligence;
 - (5) in relation to the termination of this Contract on the basis of abandonment by the Contractor;
 - (6) for breach of the terms implied by Section 2 of the Supply of Goods and Services Act 1982; or
 - (7) for any other liability which cannot be limited or excluded under general (including statute and common) law.
- c. The rights of the Authority under this Contract are in addition to, and not exclusive of, any rights or remedies provided by general (including statute and common) law.

21 The project specific DEFCONs and SC variants that apply to this Contract

DEFCON 127 (Edn 08/21) - Price Fixing Condition for Contracts of Lesser Value

DEFCON 503 (SC1) (Edn. 06/22) – Formal Amendments to the Contract

DEFCON 531 (SC1) (Edn. 09/21) – Disclosure of Information

DEFCON 532A (SC1) (Edn. 05/22) – Protection of Personal Data
(Where Personal Data is not being processed on behalf of the Authority)

DEFCON 534 (Edn 06/21) – Subcontracting and Prompt Payment

DEFCON 537 (Edn 12/21) – Rights of Third Parties

DEFCON 538 (Edn 06/02) – Severability

DEFCON 566 (Edn 10/20) – Change of Control of Contractor

DEFCON 606 (SC1) (Edn 07/21) - Change and Configuration Control Procedure

DEFCON 608 (Edn. 07/21) – Access and Facilities to be Provided by the Contractor

DEFCON 609 (SC1) (Edn. 08/18) – Contractor's Records

DEFCON 620 (SC1) (Edn. 06/22) – Contract Change Control Procedure

DEFCON 627 (SC1) (Edn. 11/21) – Quality Assurance –
Requirement for a Certificate of Conformity

DEFCON 658 (SC1) (Edn. 10/22) – Cyber
Cyber Risk Profile = very low
Risk Assessment Reference (RAR) = RAR-5VRA7ZFS

General Conditions

AUTHORISATION BY THE CROWN FOR USE OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS

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.

Payment Terms

- a. Payments shall be made in arrears for on an annual basis for Line Items 1- 6 (included at Schedule 2b Schedule of Requirements).
- b. All payments shall be in accordance with condition 15 above.

Special Indemnity Conditions

N/A

22 The special conditions that apply to this Contract are

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

The processes that apply to this Contract are:

AQAP 2110 NATO Quality Assurance Requirements for Design, Development and Production. Edition D Version 1

Def Stan 05-57 Configuration Management of Defence Materiel issue 8

Def Stan 05-61 Pt 4 Quality Assurance Procedural Requirements – Contractor Working Parties issue 4

Def Stan 05-61 Pt 1 Quality Assurance Procedural Requirements – Concessions issue 7

Def Stan 05-135 Avoidance of Counterfeit materiel Issue 2

DS 05-099 Part 1 Managing Government Furnished Assets in Industry Jigs, tools, etc. as provided on Contract NPC1A/2064 with the Nuclear Decommissioning Authority under the terms of DEFCON 23 are to be used on this Contract.'

Offer and Acceptance**Entity in Charge of Maintenance 2**

This Contract shall come into effect on the date of signature by both parties.

For and on behalf of the Contractor:

Name and Title	
Signature	
Date	

For and on behalf of the Secretary of State for Defence:

Name and Title	
Signature	
Date	

SC1B Schedules

Schedule 1 – Additional Definitions of Contract

Further to Condition 1, the following words and expressions shall have the meanings given to them, except where the context requires a different meaning:

DRS – means Direct Rail Services Ltd a wholly owned subsidiary of the NDA

ECM – means the Entity In Charge of Maintenance which is people or organisations who are responsible for the maintenance of vehicles used on the mainline railway.

NDA – means the Nuclear Decommissioning Authority an executive non-departmental public body, sponsored by the Department for Business, Energy & Industrial Strategy

Schedule 2a – Statement of Requirement**1. Introduction**

- 1.1. MoD has a programme of work to safely and securely transport Irradiated Nuclear Fuel by rail between Licenced and Authorised Sites, within the United Kingdom. Sites included HMNB Devonport, Sellafield Ltd Cumbria and Naval Reactor Test Establishment at Vulcan.
- 1.2. As part of this enduring capability locomotives and escort coaches are provided by DRS under existing contract NPC1A/2064.
- 1.3. There are two in number 146t GLW Nuclear Flask Transporter wagons (hereby referred to as 'the transport wagons or MODAs') MODA95770 and MODA95771, used to carry the Used Fuel Flasks which are owned by the Authority.
- 1.4. The ECM needs to be confirmed for both Transporter Wagons used in support of the Irradiated Fuel programme. This will ensure continued adherence to the rail regulations with a nominated ECM and a direct link between the wagon owner and wagon operator.

2. Requirement

- 2.1. The general requirement is for the contractor to enable the MoD transport wagons (2 of) to be used on the rail network to support the MOD programme deliverables.

In pursuit of this requirement, the contractor shall, for each of the MoD transport wagons MODA95770 and MODA95771:

Requirement	Deliverable	Acceptance Criteria	Due Date
1. Be registered as the ECM	Written confirmation to the Authority's Project Manager that: <ol style="list-style-type: none"> a. It is registered as the ECM for each vehicle in the National Vehicle Register (please evidence); b. It is a competent body to be the ECM for the vehicles c. It is a certified Railway Undertaking and therefore deemed to be a certified ECM by the UK National Safety Authority; d. It shall, as and when the ECM certification process becomes due and it is required to apply, make the appropriate applications and obtain certified ECM status. 	Written acceptance of the information by the Authority's project manager.	On or before 25 February annually.
2. Have a system of maintenance in place for the vehicles and take all necessary actions to perform the role of ECM;	Safety Performance Reports and subsequent follow-up meetings or written explanations as requested by the Authority, to include written confirmation that: <ol style="list-style-type: none"> b. It has undertaken all steps necessary to comply with the responsibilities of an ECM under Regulation 2008/110/EC, Annex III of Regulation EU/445/2011 and Railways and Other Guided Transport Systems (Safety) (Amendment) Regulations 2011; 	Written acceptance of the information by the Authority's project manager.	On or before 25 February annually

	c. It has a system of maintenance in place for the vehicles.		
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Schedule 2b – Schedule of Requirements**6. Line Items: 1 April 2024 to 31 March 2030**

Line Item	Description	Output	Firm price (Ex VAT)	Indicative invoice date
1	Performance of Entity In Charge of Maintenance (ECM) for MoD Owned KUA MODA95770 and KUA MOD95771 – Covering the period 1 April 2024 to 31 March 2025	The satisfactory performance of ECM role in accordance with “Schedule 2a Statement of Requirements” above, including the satisfactory delivery of progress reports and attendance at Safety Performance Meetings.		April/ May 2025
2	Performance of Entity In Charge of Maintenance (ECM) for MoD Owned KUA MODA95770 and KUA MOD95771 – Covering the period 1 April 2025 to 31 March 2026	The satisfactory performance of ECM role in accordance with “Schedule 2a Statement of Requirements” above, including the satisfactory delivery of progress reports and attendance at Safety Performance Meetings.		April/ May 2026
3	Performance of Entity In Charge of Maintenance (ECM) for MoD Owned KUA MODA95770 and KUA MOD95771 – Covering the period 1 April 2026 to 31 March 2027	The satisfactory performance of ECM role in accordance with “Schedule 2a Statement of Requirements” above, including the satisfactory delivery of progress reports and attendance at Safety Performance Meetings.		April/ May 2027
4	Performance of Entity In Charge of Maintenance (ECM) for MoD Owned KUA MODA95770 and KUA MOD95771 – Covering the period 1 April 2027 to 31 March 2028	The satisfactory performance of ECM role in accordance with “Schedule 2a Statement of Requirements” above, including the satisfactory delivery of progress reports and attendance at Safety Performance Meetings.		April/ May 2028
5	Performance of Entity In Charge of Maintenance (ECM) for MoD Owned KUA MODA95770 and KUA MOD95771 – Covering the period 1 April 2028 to 31 March 2029	The satisfactory performance of ECM role in accordance with “Schedule 2a Statement of Requirements” above, including the satisfactory delivery of progress reports and attendance at Safety Performance Meetings.		April/ May 2029
6	Performance of Entity In Charge of Maintenance (ECM) for MoD Owned KUA MODA95770 and KUA MOD95771 – Covering the period 1 April 2029 to 31 March 2030	The satisfactory performance of ECM role in accordance with “Schedule 2a Statement of Requirements” above, including the satisfactory delivery of progress reports and attendance at Safety Performance Meetings.		April/ May 2030
		Total (Ex VAT)		

Schedule 3 - Contract Data Sheet

Contract Period	<p>Effective date of Contract: 1 April 2024</p> <p>The Contract expiry date shall be: 31 March 2030</p>
Clause 6 – Notices	<p>Notices served under the Contract can be transmitted by electronic mail</p> <p>Yes</p> <p>Notices served under the Contract shall be sent to the following address:</p> <p>Authority: Nuclear Propulsion NH3 Ash 3b #3301 MoD Abbey Wood Bristol BS34 8JH</p> <p>Contractor: Direct Rail Services, Regents Court, Baron Way, Carlisle, CA6 4SJ</p>
Clause 8 – Assurance Supply of Contractor Deliverables & Quality	<p>Is a Deliverable Quality Plan required for this Contract? (delete as appropriate)</p> <p>No</p> <p>Other Quality Requirements:</p> <p>See condition 23</p>

Clause 9 – Supply of Data for Hazardous Substance, Articles and Materials in Contractor Materials

A completed DEFFORM 68 (Hazardous and Non-Hazardous Substances, Mixtures or Articles Statement), and if applicable, UK REACH Article 31 compliant Safety Data Sheet(s) (SDS) including any related information to be supplied in compliance with the Contractor's statutory duties under Clauses 9.b, and any information arising from the provisions of Clause 9 are to be provided by e-mail with attachments in Adobe PDF or MS WORD format to:

The Authority's Representative (Commercial) by the following date:
So that the safety information can reach users without delay, the Authority shall send a copy preferably as an email with attachment(s) in Adobe PDF or MS WORD format.

(1) Hard copies to be sent to:

Hazardous Stores Information System (HSIS)
Spruce 2C, #1260
MOD Abbey Wood (South)
Bristol, BS34 8JH

(2) Emails to be sent to: DESEngSfty-QSEPSEP-HSISMulti@mod.gov.uk

SDS which are classified above OFFICIAL including Explosive Hazard Data Sheets (EHDS) for Ordnance, Munitions or Explosives (OME) are not to be sent to HSIS and must be held by the respective Authority Delivery Team.:

Clause 10 – Delivery/Collection	Contract Deliverables are to be: Delivered by the Contractor: Yes Special Instructions: N/A Collected by the Authority: No Special Instructions (including consignor address if Contractor's registered address): N/A
Clause 12 – Packaging and Labelling of Contractor Deliverables	Additional packaging requirements: N/A
Clause 14 – Progress Meetings	The Contractor shall be required to attend the following meetings: Type: Safety Performance Monitoring Frequency: Quarterly Location: TBC

Clause 14 – Progress Reports

The Contractor is required to submit the following Reports:

Type: Safety Performance Monitoring reports
Frequency: Quarterly

Method of Delivery:

MoDDocumentControl@cavendish.r.mil.uk

Delivery Address:

Cavendish Nuclear Limited,
Fleswick Court,
Westlakes Science & Technology Park,
Crow Park Way,
Moor Row,
Cumbria,
CA24 3HZ

**Schedule 4 - Contractor's Commercially Sensitive Information Form
(in accordance with Clause 5)**

This list shall be agreed in consultation with the Authority and the Contractor and may be reviewed and amended by agreement. The Authority shall review the list before publication of any information.

Contract No: SDA/NP/709826453
Description of Contractor's 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 5 - Notification of IPR restrictions (IAW Clause 7)**DEFFORM 711 (Edn 11/22)****Ministry of Defence****DEFFORM 711 – NOTIFICATION OF INTELLECTUAL PROPERTY RIGHTS (IPR) RESTRICTIONS****DEFFORM 711 - PART A – Notification of IPR Restrictions**

1, ITT/Contract Number				
2. ID#	3. Unique Technical Data Reference Number / Label	4. Unique Article(s) Identification Number / Label	5. Statement Describing IPR Restriction	6. Ownership of the Intellectual Property Rights
1				
2				
3				
4				
5				

6				
7				
8				
9				
10				

Please continue on additional sheets where necessary

DEFFORM 711 - PART B – System / Product Breakdown Structure (PBS)

The Contractor should insert their PBS here. For Software, please provide a Modular Breakdown Structure

Completion Notes**Part A**

If any information / technical data that is deliverable or delivered under the relevant Contract conditions 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, then the Contractor must identify this restricted information / technical data in this Part A. Otherwise, the Authority shall treat such information in accordance with the same rights under the Contract it would enjoy should no restrictions exist.

For example, any of the following must be disclosed:

- a) any restriction on the provision of information / technical data 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 the Contractor, whether by claim or otherwise, of an infringement of IPR (whether a patent, registered design, unregistered design right, copyright or otherwise) or of a breach of confidence, which relates to the performance of the Contract or subsequent use by or for the Authority of any Contract deliverables;
- c) the nature of any allegation referred to under sub-paragraph (b) above, including any request or obligation to make payments in respect of the IPR of any confidential information and / or;
- d) action the Contractor needs to take, or the Authority is requested to take, to deal with the consequences of any allegation referred to under sub-paragraph (b) above.

Block 1	Enter the associated Invitation to Tender (ITT) or Contract number as appropriate.
Block 2	No action – This sequential numbering is to assist isolation and discussion of any line item
Block 3	Identify a unique reference number for the information / technical data (i.e. a Contractor's document or file reference number) including any dates and version numbers. Documents may only be grouped and listed as a single entry where they relate to the same Article and where the restrictions and IPR owner are the same.
Block 4	Identify the Article(s) associated with the information / technical data by entering a unique identification number / label for the Article(s). This may range from platform level down to subsystem level. This is to enable the Authority to

	<p>quickly identify the approximate technical boundary to any user rights limitation (e.g. The RADAR or Defensive Aid Sub-System etc). This identification shall be at the lowest level of replaceability of the Article(s) or part of it to which the restrictions apply (i.e. if the restrictions apply to a sub-system the parent system should not be used to identify the restriction boundary). Any entry without a unique identifier shall be treated as a nil entry.</p> <p>NOTE: The Authority does not accept any IPR restrictions in respect of the physical Articles themselves. Block 4 is solely to provide an applied picture to any technical data stated under Block 3 as having IPR restrictions.</p>
Block 5	<p>This is a freeform narrative field to allow a short explanation justifying why this information / technical data has limited rights applying to it.</p>
Block 6	<p>Identify who is the owner of the IPR in the information / technical data (i.e. copyright, design right etc). If it is a sub-contractor or supplier, please identify this also.</p>

Part B

If neither hardware nor software is proposed to be designed, developed or delivered as part of the Contract, Part B should be marked "NIL RETURN".

Otherwise, the Contractor must include a System / Product Breakdown Structure (PBS) in a format which is consistent with ISO 21511 and / or the configuration requirements of DEFSTAN 05-057, unless an alternative format better represents your design configuration. For software, a modular breakdown structure must be provided. For reasons of clarity, it is acceptable to provide several levels of breakdown if this assists in organising the configuration of the Articles.

Details provided under Part B shall not imply any restriction of use over the Contract Articles, nor any restriction on associated technical data to be delivered under the Contract. Any restrictions of such technical data must be identified within Part A.

Against each unique item within the PBS / module breakdown, one of the following categories shall be recorded:

- a) (PVF) - Private Venture Funded - where the article existed prior to the proposed Contract and its design was created through funding otherwise than from Her Majesty's Government (HMG).
- b) (PAF) - Previous Authority Funded (inc. HMG Funded) - where the article existed prior to the proposed Contract and its design was created through Previous Authority Funding.
- c) (CAF) - Contract Authority Funded (inc. HMG Funded) - where the article did not exist prior to the Contract and its design will be created through Contract Authority Funding under this Contract.
- d) (DNM) Design Not Mature - where the article / design configuration is not yet fixed.

In combination with one of categories (a) to (d) above, the Contractor shall further identify where an item has, or will have, foreign export control applying to it, through use of the further following category:

- e) (FEX) Foreign Export Controlled Notes:

1. During the term of the Contract the Contractor may transition any items identified as category (d) above into category (b) or (c). Transitions from category (d) into category (a) may only be made with the express written agreement of the Authority's Senior Commercial Officer, and by following the amendment process set out in the Contract.
2. It is acceptable to specify the highest level of structure to which the category (a), (b) or (c) applies (i.e. there is no need to specify each sub-system / componentry if the entirety of the parent system was for example, Private Venture Funded). See guidance examples overleaf.
3. For the avoidance of doubt, where a parent system did not exist prior to the Contract yet makes use of Private Venture Funded Articles, it must be identified as (CAF). The Private Venture Funded sub-components / sub-systems can be identified as PVF.
4. Where items are identified as category (b), the Contractor should provide the number(s) of the previous Contract(s) under which the design was created and the Previous Authority Funding was applied.

Example PBS

The DEFFORM 711 on the Commercial Toolkit

http://aof.uwh.diif.r.mil.uk/aofcontent/tactical/toolkit/downloads/defforms/word/711_0422.doc contains

a theoretical pictorial example but it is to be noted that the configuration may equally be dealt with in a hierarchal tabularised format.

Ministry of Defence**Schedule 6****CONTRACT DATA REQUIREMENT**

1. <u>ITT/ Contract Number</u> SDA/NP/709826453	2. <u>CDR Number</u> 1	3. <u>Data Category</u> Maintenance Confirmation	4. <u>Contract Delivery Date</u> 31 March 2030
5. <u>Equipment/ Equipment Subsystem Description</u> 2 X MOD MODAs		6. <u>General Description of Data Deliverable</u> Entity in Charge of Maintenance Certificate(s) Safety Performance Reports and subsequent follow-up meetings or written explanations as requested by the Authority	
7. <u>Purpose for which data is required</u> Confirmation of the Entity in Charge of Maintenance		8. <u>Intellectual Property Rights</u> a. <u>Applicable DEFCONs</u> DEFCON 15 (06/21) b. <u>Special IP Conditions</u>	
9. <u>Update/Further Submission Requirements</u> None			
10. <u>Medium of Delivery</u> Electronic		11. <u>Number of Copies</u> 1	

Schedule 7 - Addresses and Other Information**1. Commercial Officer**

Name: Jason Prichard

Address: Nuclear Propulsion NH3 Ash 3b #3301 MoD
Abbey Wood Bristol BS34 8JH

Email: jason.prichard102@mod.gov.uk

☐**2. Project Manager, Equipment Support Manager or PT Leader** (from whom technical information is available)

Name: [REDACTED]

Address: Nuclear Propulsion NH3 Ash 3b #3301 MoD
Abbey Wood Bristol BS34 8JH

Email: [REDACTED]

☐**3. Packaging Design Authority**

Organisation & point of contact: N/A

(Where no address is shown please contact the Project Team in Box 2)

☐**4. (a) Supply / Support Management Branch or Order Manager: N/A**

Branch/Name:

☐

(b) U.I.N.

5. Drawings/Specifications are available from the Commercial Officer shown above**6. Intentionally Blank****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 8JHAir Freight CentreIMPORTS ☐ 030 679 81113 / 81114 Fax 0117 913 8943EXPORTS ☐ 030 679 81113 / 81114 Fax 0117 913 8943Surface Freight CentreIMPORTS ☐ 030 679 81129 / 81133 / 81138 Fax 0117 913 8946EXPORTS ☐ 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

Users requiring an account to use the MOD Freight Collection Service should contact UKStratCom-DefSp-RAMP@mod.gov.uk in the first instance.**11. The Invoice Paying Authority**

Ministry of Defence

☐ 0151-242-2000

DBS Finance

Walker House, Exchange Flags

Fax: 0151-242-2809

Liverpool, L2 3YL

Website is:<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

7. Quality Assurance Representative:

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.gateway.isg-r.r.mil.uk/index.html> [intranet] or <https://www.dstan.mod.uk/> [extranet, registration needed].

*** NOTE**

1. Many **DEFCONs** and **DEFFORMs** can be obtained from the MOD Internet Site:
<https://www.kid.mod.uk/maincontent/business/commercial/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.

Schedule 8 - Deliverables

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.

All Negotiation Deliverables**Supplier Contractual Deliverables**

Name	Description	Due	Responsible Party
Obligation DEFCON 21 (Edn 06/21) Clause - 3a - Maintenance of Deliverables (reminder)	To maintain at least one copy of all deliverable information to which DEFCON 21 applies during the period of the Contract and for at least two years after the Contract, or period as may be specified in the contract.	Due 1 month before Contract Agreement End Date	Supplier Organization
Obligation DEFCON 91 (Edn 06/21) Clause - 5b - Software as required	A copy of the Software as is required for performance of obligations to be retained.	Due 3 days before Contract Agreement Start Date	Supplier Organization
Obligation DEFCON 117 (Edn 07/21) Clause - 3a - Technical Data to Codification Authority or representative	Provision of Technical Data to the Codification Authority or the Authority's Agent specified by the Codification Authority.	Due 3 months before Contract Agreement Start Date	Supplier Organization
Import Licences Condition 8.d	Apply for and obtain all necessary licences		Supplier Organization
Marking of Hazardous Deliverables Condition 9.b	Ensure packaging is marked in accordance with the contract		Supplier Organization
Contract Data Sheet Condition 9.c	provide a Safety Data Sheet in respect of each Dangerous/Hazardous Material or substance supplied or deliverable containing such.	Due 1 month before Contract Agreement Start Date	Supplier Organization
Marking of Articles Condition 11	Articles to be marked in accordance with the contract.	Due 1 month after Contract Agreement Start Date	Supplier Organization

Request for Quotation SDA/NP/709826453

Progress Meetings Condition 13	Attendance at progress meetings in accordance with the contract	Repeats every 3 months on the First Day of the Month starting 1 month after Contract	Supplier Organization
Payment Condition 14.b	Submission of Invoices		Supplier Organization
Payment Condition 14.c	Payment		Supplier Organization
Termination Condition 16, 17, 18	Written notice of Termination due to corrupt Gifts as stipulated in the contract		Supplier Organization
Commercial Exploitation Levy - Reminder that Statements of Sales and Auditor Certificate are required annually	Applicable to contracts with Commercial Exploitation Agreements. A reminder to Suppliers that Statements of Sales along with Auditor Certificate are required annually.	Repeats every 12 months on the First Day of the Month Starting on 01 April 2024 until 12 months after Contract Agreement End Date	Supplier Organization