*DF47 Edn 09/21*

|  |  |
| --- | --- |
|  |   |
|  Dear Sir/Madam, | Your reference:  Our reference: C17SAE/708796450 Date: 05/01/2024 |

Invitation To: Tender Reference Number: 708796450 - Supply of David Clark ONE-XM Headsets and Associated Spares for C-17

1. You are invited to tender for Supply of David Clark ONE-XM Headsets (43102G-09) and Associated Spares for C-17 in competition in accordance with the attached documentation.
2. The requirement is for Procurement of David Clark ONE-XM Headsets and Associated Spares for C-17
3. The anticipated date for the contract award decision is 01/03/2024, please note that this is an indicative date and may change.
4. You must submit your Tender to the Defence Sourcing Portal by 09-Feb-2024 17:00:00 (GMT).

Yours faithfully

**[Redacted]**

**[Redacted]**

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**DEFFORM 47**

This Invitation to Tender sets out the requirements that Tenderers must meet to submit a valid Tender. It also contains the draft Contract, further related documents and forms and sets out the Authority’s position with respect to the competition.

This invitation consists of the following documentation:

**DEFFORM 47** – Invitation to Tender. The DEFFORM 47 sets out the key requirements that Tenderers must meet to submit a valid Tender. It also sets out the conditions relating to this competition. For ease it is broken into:

* Section A – Introduction…………………………………………………………….……….….Page 3
* Section B – Key Tendering Activities……………………………………………………...…..Page 7
* Section C – Instructions on Preparing Tenders………………………………………………Page 8
* Section D – Tender Evaluation………………………………………………………………....Page 9
* Section E – Instructions on Submitting Tenders…………………………………………...... Page 11
* Section F – Conditions of Tendering…………………………………………………………..Page 12
* DEFFORM 47 Annex A – Tender Submission Document (Offer)…………………………. Page 15
* Appendix 1 to DEFFORM 47 Annex A (Offer) – Information on Mandatory Declarations

**Contract Documents** (As per the contents table in the Terms and Conditions)

* Terms & Conditions which includes the Schedule of Requirements and any additional Schedules, Annexes and/or Appendices
	+ DEFFORM 111 – Appendix to Contract - Addresses and Other Information
	+ DEFFORM 539A – Tenderer’s Sensitive Information (or SC1B Schedule 4 or SC2 Schedule 5)

DEFFORM 47

(Edn 11/22)

**Section A - Introduction**

**DEFFORM 47 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 this DEFFORM 47 that govern the competition.

A4. A “Consortium Arrangement” means two or more economic operators who have come together specifically for the purpose of bidding for this Contract and who establish a consortium agreement or special purpose vehicle to contract with the Authority.

A5. “Contract” means a Contract entered between the successful Tenderer or consortium members and the Authority, should the Authority award a Contract because of this competition.

A6. “Contract Terms & Conditions” means the attached conditions including any schedules, annexes and appendices that will govern the Contract entered between the successful Tenderer and the Authority, should the Authority award a Contract because of this competition.

A7. “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 the Contract.

A8. “Cyber Security Model” means the model defined in DEFCON 658.

A9. “Defence Sourcing Portal” means the electronic platform in which Tenders are submitted to the Authority.

A10. “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.

A11. “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

A12. “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.

A13. “Schedule of Requirements” (Section 1 in Terms and Conditions, Schedule 2 in Standardised Contracting Template 1B (SC1B) or Schedule 2 in Standardised Contracting Template 2 (SC2)) 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.

A14. The “Statement of Requirement” means that part of the Contract which details the technical requirements and acceptance criteria of the Contractor Deliverables.

A15. 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 this Contract.

A16. A “Sub-Contracting Arrangement” means a group of economic operators who have come together specifically for the purpose of bidding for this Contract, where one of their number will be the party to the Contract with the Authority, the remaining members of that group being Sub-Contractors to the lead economic operator.

A17. A “Tender” is the offer that you are making to the Authority.

A18. “Tenderer” means the economic operator submitting a response to this Invitation to Tender. Where “you” is used this means an action on you the Tenderer.

A19. A “Third Party” is any person (including a natural person, corporate or unincorporated body (whether having separate legal personality)), other than the Authority, the Tenderer, or their respective employees.

**Purpose**

A20. 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 governs this competition.

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

d.     administrative arrangements for the receipt and evaluation of Tenders.

e.     criteria and methodology for the evaluation of Tenders; and

f. Contract Terms & Conditions

A21.   The sections in this ITT and associated documents are structured in line with a generic tendering process and do not indicate importance / precedence.

A22. NOT USED

A23.   This procurement is published under Public Contracts Regulations 2015 (PCR).

A24.   This ITT utilises the PCR Open Procedure and is open for response by any appropriate suppliers.

A25. NOT USED

A26. NOT USED

**ITT Documentation and ITT Material**

A27. ITT Documentation, ITT Material, and any Intellectual Property Rights (IPR) in them shall remain the property of the Authority or other Third-Party owners and is released solely for the purposes of enabling you to submit a Tender. You must:

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

b.    not copy or disclose the ITT Documentation or any part of it to anyone other than the bid team

involved in preparing your Tender, and not use it except for the purpose of responding to this ITT.

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

d.     abide by any reasonable conditions imposed by the Authority in giving its approval under sub-paragraph A27.c, which at a minimum will require you to ensure any disclosure to a Third Party is made by you in confidence.  Alternatively, due to IPR issues for example, the disclosure may be made, in confidence, directly by the Authority.

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

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

g.     immediately 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’.

A28.  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 A27 above.

**Tender Expenses**

A29. You will bear all costs associated with preparing and submitting your Tender. The Authority will not be liable for the costs of any Tender, work or effort incurred by you participating in this tender process, including where the tender process is terminated or amended by the Authority, where the Authority decides not to award a Contract or where you withdraw from the tender process either directly or indirectly as costs under any other Contract with the Authority.

**Consortia and Sub-Contracting Arrangements**

A30. The Authority requires all Tenderers to identify whether any and/or which Consortium Arrangements or Sub-Contracting Arrangements will apply in the case of their Tender and specify the Consortium Arrangement or Sub-Contracting Arrangement entity or both and their workshare. In the case of a Sub-Contracting Arrangement, the Authority requires all Tenderers to identify the entity that will be the party to the Contract with the Authority.

**Material Change of Control**

A31. You must inform the Authority in writing as soon as you become aware of:

a. any material changes to any of the information, representations or other matters of fact communicated to the Authority as part of your PQQ response or in connection with the submission of your PQQ response.

b. any material adverse change in your circumstances which may affect the truth, completeness or accuracy of any information provided as part of your PQQ response or in connection with the submission of your PQQ response or in your financial health or that of any Consortium Arrangement member or Sub-Contracting Arrangement member; or

c. any material changes to your financial health or that of a party to the Consortium Arrangement or Sub-Contracting Arrangement; and

d. any material changes to the makeup of the Consortium Arrangement or Sub-Contracting Arrangement, including:

i. the form of legal arrangement by which the Consortium Arrangement or Sub-Contracting Arrangement will be structured.

ii. the identity of Consortium Arrangement or Sub-Contracting Arrangement.

iii. the intended division or allocation of work or responsibilities within or between the Consortium Arrangement or Sub-Contracting Arrangement; and

iv. any change of control of any Consortium Arrangement or Sub-Contracting Arrangement.

A32. If a change described in paragraph A31 occurs, the Authority may reassess you against the PQQ selection criteria. The Authority reserves the right to require you to submit an updated/amended PQQ response (or parts thereof) to reflect the revised circumstances so that the Authority can make a further assessment by applying the published selection criteria to the new information provided. The outcome of this further assessment may affect your suitability to proceed with the procurement.

A33. In relation to a change described in paragraph A31, as far as is reasonably practicable, you must discuss any such proposed changes with the Authority before they occur and you must additionally highlight any changes from your PQQ response relating to any change in the Consortium Arrangement or Sub-Contracting Arrangement or any change relating to conflicts of interest following a change, directly or indirectly in your ownership or control or of any Consortium Arrangement or Sub-Contracting Arrangement

A34. The Authority reserves the right, at its sole discretion to disqualify any Tenderer who makes any material change to any aspects of its responses to the PQQ if:

a. it fails to re-submit to the Authority the updated relevant section of its PQQ response providing details of such change in accordance with paragraph A33 as soon as is reasonably practicable and in any event no later than business days following request from the Authority; or

b. having notified the Authority of such change, the Authority considers that the effect of the change is such that based on the evaluation undertaken by the Authority for the purpose of selecting potential providers to participate in the procurement, the Tenderer would not have pre-qualified.

**Contract Terms &Conditions**

A35. The Contract Terms & Conditions include all attachments listed in the contents of the Terms & Conditions, such as the Schedule of Requirements, any additional Schedules, Annexes and/or Appendices. The full text of Defence Conditions (DEFCONs) and Defence Forms (DEFFORMS) are available electronically via the [Knowledge in Defence (KiD) website.](https://www.gov.uk/guidance/knowledge-in-defence-kid)

A36. The Contract Terms & Conditions are attached.

**Other Information**

**The Armed Forces Covenant**

a. 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, because of their service.

b. The Covenant is based on two principles:

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

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

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

c. 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.

d. 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

e. Paragraph A37 a to d 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.

DEFFORM 47

(Edn 11/22)

**Section B - Key Tendering Activities**

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

| **Stage** | **Date and Time**  | **Initiated By** | **Submit to:** |
| --- | --- | --- | --- |
| Final date for Clarification Questions / Requests for additional information | 24/01/2024 | Tenderers | Defence Sourcing Portal |
| The Authority issues Final Clarification Answers  | 31/01/2024 | The Authority | All Tenderers |
| Tender Return | 09/02/2024 | Tenderers | Defence Sourcing Portal |
| Tender Evaluation | 10/02/2024-29/02/2024 | The Authority | N/A |
| Estimated contract award date  | 01/03/2024 | The Authority  | N/A |

**Clarification Questions**

B1. The Authority will automatically copy clarification questions and answers to all Tenderers, removing the names of those who have raised the clarification questions. If you wish the Authority to treat the clarification as confidential and not issue the response to all Tenderers, you must state this when submitting the clarification question and provide justification. If in the opinion of the Authority, the clarification is not confidential, the Authority will inform the Tenderer, who will have an opportunity to withdraw the question. If the clarification question is not withdrawn, the response will be issued to all Tenderers.

**Tender Return**

B2. The Authority may, in its own absolute discretion extend the deadline for receipt of tenders and in such circumstances the Authority will notify all Tenderers of any change.

DEFFORM 47

(Edn 11/22)

**Section C - Instructions on Preparing Tenders**

**Construction of Tenders**

C1. Your Tender must be written in English, using Arial font size 11. Prices must be in £GBP ex VAT. Prices must be Firm. A price breakdown is to accompany the Tender response.

C2. To assist the Authority’s evaluation, you must set out your Tender response in accordance with Section D (Tender Evaluation).

**Validity**

C3. Your Tender must be valid and open for acceptance for 90 calendar days from the Tender return date. In addition, the winning Tender must be open for acceptance for a further thirty (30) calendar days once the Authority announces its decision to award the Contract. If legal proceedings challenging the award of the Contract are instituted, before entry into Contract, you must hold your Tender open for acceptance during this period, and for up to fourteen (14) calendar days after any legal proceedings have concluded.

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(Edn 11/22)

**Section D - Tender Evaluation**

D1. The contract will be awarded to the lowest price tender that is commercially and technically compliant. Should any tenderer receive a NON-COMPLIANT result, the Tenderer will be deemed unsuccessful, and they will be disqualified from this competition.

**Commercial compliance**

D2. The Tenderer must confirm that they comply with the terms and conditions of Contract by completing and returning the following commercial compliance matrix with their tender. Tenderers should annotate 'Compliant' or 'Non-compliant' in column c for each of the Contract elements in column b. The Contractor shall also return with their tender a copy of the contract (including all Schedules and Conditions) ensuring all elements marked [ ] have been completed.

|  |  |  |
| --- | --- | --- |
| **(a)**   | **(b)**   | **(c)**   |
| **Condition No.**   | **Condition Description**   | **Compliant/Non- compliant YES/NO**  |
| 1   | Definitions – In the Contract | [ ] |
| 2   | General  | [ ] |
| 3   | Application of Conditions  | [ ] |
| 4   | Disclosure of Information  | [ ] |
| 5   | Transparency   | [ ] |
| 6   | Notices | [ ] |
| 7   | Intellectual Property  | [ ] |
| 8   | Supply of Contractor Deliverables and Quality Assurance  | [ ] |
| 9   | Supply of Hazardous Substances, Mixtures and Articles in Contractor Deliverables | [ ] |
| 10   | Delivery/Collection | [ ] |
| 11   | Marking of Contractor Deliverables  | [ ] |
| 12   | Packaging and Labelling of Contractor Deliverables (Excluding Contractor Deliverables Containing Ammunition or Explosives) | [ ] |
| 13   | Plastic Packaging Tax  | [ ] |
| 14   | Progress Monitoring, Meetings and Reports  | [ ] |
| 15   | Payment  | [ ] |
| 16   | Dispute Resolution | [ ] |
| 17   | Termination for Corrupt Gifts  | [ ] |
| 18   | Material Breach  | [ ] |
| 19   | Insolvency | [ ] |
| 20  | Limitation of Contractors Liability | [ ] |
| 21 | DEFCON 113 (Edn 02/17) - Diversion Orders | [ ] |
|  | DEFCON 117 (SC1) (Edn. 07/21) - Supply of Documentation For NATO Codification Purposes | [ ] |
|  | DEFCON 503 (SC1) (Edn. 06/22) - Formal Amendments to the Contract | [ ] |
|  | DEFCON 524A (SC1) (Edn. 12/22) – Counterfeit Materiel | [ ] |
|  | DEFCON 531 (SC1) (Edn. 09/21) - Disclosure of Information | [ ] |
|  | DEFCON 532A (Edn. 12/22) - 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 602B (Edn 04/23) - Quality Assurance (Without Deliverable Quality Plan) | [ ] |
|  | DEFCON 627 (Edn 11/21) - Quality Assurance - Requirement for a Certificate of Conformity | [ ] |
|  | DEFCON 630 (SC1) (Edn. 02/18) - Framework Agreements | [ ] |
|  | DEFCON 637 (Edn 05/17) - Defect Investigation and Liability Application | [ ] |
|  | DEFCON 646 (Edn 10/98) - Law and Jurisdiction (Foreign Suppliers) Application | [ ] |
|  | DEFCON 656A (Edn 08/16) - Termination for Convenience – Under £5m Application | [ ] |
| Schedule 2  | Schedule of Requirements for Contract 708796450 | [ ] |
| Schedule 3  | Contract Data Sheet | [ ] |
| Schedule 4  | Contractors Sensitive Information Form | [ ] |
| Schedule 5  | DEFFORM 711 - Notification of IPR Restrictions | [ ] |
| Schedule 6 | DEFFORM 68 – Supply of Hazard Data for Articles, Materials and Substances | [ ] |
| Schedule 7 | Headset Pricing for Item 1  | [ ] |
| Schedule 8 | Spares Pricing List | [ ] |
| Schedule 9 | Warranty Details  | [ ] |
| Attachment within Defence Sourcing Portal | Statement Relating to Good Standing | [ ] |

**Technical Compliance**

D.3 In addition to confirming compliance with the terms and conditions of Contract, the Tenderer must confirm that they comply with the technical standards of contract by completing and returning the following standards compliance matrix with their tender and providing the associated evidence. Tenderers should annotate 'Compliant' or 'Non-compliant' in column c for the standard in column b:

|  |  |  |
| --- | --- | --- |
| **(a)** | **(b)** | **(c)** |
| **Description**   | **Evidence Required**  | **Compliant/Non-compliant (YES/NO)**  |
| Evidence of Certified Quality Management System   | ISO9001:2015, AS9100 (etc). Scope of ISO9001 approval is to be broadly commensurate with the scope of the contract | [ ]  |

**Lowest Priced Tender**

To determine the Lowest Priced tender, the Contractor shall provide their Priced Tender in the Defence Sourcing Portal (DSP) as the unit price of 1 (one) David Clark ONE-XM Electronic Noise Cancelling Headset with 5ft Extended Coil Cord and a Single U-174/U Plug (43102G-09) headset in accordance with their completed pricing tables found at Schedule 7 and 8. For the avoidance of doubt, the authority wishes to purchase a Minimum Order Quantity (MOQ) of 50 and therefore the price entered into DSP shall be the price entered into schedule 7 (inclusive of all delivery charges) divided by 50.

For the avoidance of doubt, a Framework Agreement is expected be offered by the Authority to the preferred Tenderer at a value of £1 (one pound), in accordance with DEFCON 630. However, as per contract advert, our forecast is to purchase 50 per year.

DEFFORM 47

(Edn11/22)

**Section E - Instructions on Submitting Tenders**

**Submission of your Tender**

E1. Your Tender and any ITT Documentation must be submitted electronically via the Defence Sourcing Portal (DSP) **by 17:00 BST on 9th February 2023**. The Authority reserves the right to reject any Tender received after the stated date and time.  Hard copy, paper or delivered digital Tenders (e.g., email, DVD) at OFFICIAL SENSITIVE classification are no longer required and will not be accepted by the Authority. Tenderers are required to submit an electronic online Tender response to ITT 708796450.

E2. Your priced Tender and priced ITT Documentation must only be submitted to the commercial envelope of the DSP ITT. You must ensure that there are no prices present in the technical or qualification (if applicable) envelopes of the DSP ITT. The Authority has the right to request, at its discretion, that any pricing information found in the technical or qualification (if applicable) envelopes is redacted in accordance with paragraph E3.

E3. The Authority may, in its own absolute discretion allow the Tenderer to rectify any irregularities identified in the Tender by the Authority or provide clarification after the Tender return date. For example, this may include, but is not limited to, redacting pricing information in the unpriced copy of the tender, rectifying, or providing clarification in relation to a corrupt or blank document. Tenderers will be provided with instructions via the DSP on how they can correct such irregularities which must be completed by the deadline set. The Authority will cross reference the amended Tender with the original Tender submitted to the DSP before the Tender return date to ensure that no other amendments, other than in relation to the specific irregularity/clarification communicated by the Authority, have been made. Should Tenderers make additional amendments to the Tender other than those relating to the specific irregularity/clarification communicated to the Tenderer by the Authority, this will result in a non-compliant bid.

E4. The DSP is accredited to OFFICIAL SENSITIVE. Material that is protectively marked above this classification must not be uploaded to the DSP. Please contact theo.tonkin100@mod.gov.uk if you have a requirement to submit documents above OFFICIAL SENSITIVE

E5. You must not upload any ITAR or Export Controlled information as part of your Tender or ITT documentation into the DSP. You must contact **[Redacted]** 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.

E6. You must ensure that your DEFFORM 47 Annex A is signed, scanned, and uploaded to DSP with your Tender as a PDF (it must be a scanned original). The remainder of your Tender must be compatible with MS Word and other MS Office applications.

DEFFORM 47

(Edn 11/22)

**Section F - Conditions of Tendering**

F1. The issue of ITT Documentation or ITT Material is not a commitment by the Authority to place a Contract because of this competition or at a later stage. Neither does the issue of this ITT or subsequent Tender submission create any implied Contract between the Authority and any Tenderer and any such implied Contract is expressly excluded.

F2. The Authority reserves the right, but is not obliged to:

a. vary the terms of this ITT in accordance with applicable law.

b. seek clarification or additional documents in respect of a Tenderer’s submission during the Tender evaluation where necessary for the purpose of carrying out a fair evaluation. Tenderers are asked to respond to such requests promptly.

c. visit your site.

d. disqualify any Tenderer that submits a non-compliant Tender in accordance with the instructions or conditions of this ITT.

e. disqualify any Tenderer that is guilty of misrepresentation in relation to its Tender, expression of interest, the dynamic PQQ or the tender process.

f. re-assess your suitability to remain in the competition, for example where there is a material change in the information submitted in and relating to the PQQ response, see paragraphs A31 to A34.

g. withdraw this ITT at any time or choose not to award any Contract as a result of this tender process, or re-invite Tenders on the same or any alternative basis.

h. re-issue this ITT on a single source basis, if this procurement does not result in a ‘competitive process’ as defined in the Single Source Contract Regulations 2014, making such adjustments as would be required by the application of the Defence Reform Act 2014 and/or the Single Source Contract Regulations 2014.

i. choose not to award any Contract because of the current tender process.

j. where it is considered appropriate, ask for an explanation of the costs or price proposed in the Tender where the Tender appears to be abnormally low.

F3. The Contract will be effective when both parties sign the Contract. The Contract will be issued by the Authority via a DEFFORM 8, to the address you provide, on or before the end of the validity period specified in paragraph C3.

**Conforming to the Law**

F4. You must comply with all applicable UK legislation and any equivalent legislation in a third state.

F5. Your attention is drawn to legislation relating to the canvassing of a public official, collusive behaviour and bribery. If you act in breach of this legislation your Tender may be disqualified from this procurement. Disqualification will be without prejudice to any civil remedy available to the Authority or any criminal liability that your conduct may attract.

**Bid Rigging and Other Illegal Practices**

F6. You must report any bid rigging, fraud, bribery, corruption, or any other dishonest irregularity in connection to this tendering exercise to:

Defence Regulatory Reporting Cell Hotline

0800 161 3665 (UK) or

+44 1371 85 4881 (Overseas)

**Conflicts of Interest**

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

· Devise or amend the content of their Tender in accordance with any agreement or arrangement with any other person, other than in good faith with a person who is a proposed partner, supplier, consortium member or provider of finance.

· Enter into any agreement or arrangement with any other person as to the form or content of any other Tender or offer to pay any sum of money or valuable consideration to any person to effect changes to the form or content of any other Tender.

· Enter into any agreement or arrangement with any other person that has the effect of prohibiting or excluding that person from submitting a Tender.

· Canvass the Authority or any employees or agents of the Authority in relation to this procurement; or

· Attempt to obtain information from any of the employees or agents of the Authority or their advisors concerning another Tenderer or Tender.

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

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

a. the manner of operation and management.

b. roles and responsibilities.

c. standards for integrity and fair dealing.

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

e. confidentiality and/or non-disclosure agreements (e.g., DEFFORM 702).

f. the Authority’s rights of audit; and

g. physical and managerial separation.

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

**Government Furnished Assets**

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

**Standstill Period**

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

**Publicity Announcements**

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

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

**Sensitive Information**

F15. All Central Government Departments and their Executive Agencies and Non-Departmental Public Bodies are subject to control and reporting within Government. They report to the Cabinet Office and HM Treasury for all expenditure. Further, the Cabinet Office has a cross-governmental role delivering overall Government policy on public procurement, including ensuring value for money, related aspects of good procurement practice and answering Freedom of Information requests.

F16. For these purposes, the Authority may share within Government any of the Tenderer’s documentation/information (including any that the Tenderer considers to be confidential and/or commercially sensitive such as specific bid information) submitted by the Tenderer to the Authority during this procurement. Tenderers taking part in this competition must identify any Sensitive Information (as defined in DEFCON 539) in the DEFFORM 539A (or SC1B Schedule 4 or SC2 Schedule 5) and consent to these terms as part of the competition process. This allows the Authority to share information with other Government Departments while complying with our obligations to maintain confidentiality.

F17. Where required, the Authority will disclose on a confidential basis any information it receives from Tenderers during the tender process (including information identified by the Tenderer as Sensitive Information in accordance with the provisions of this ITT) to any Third Party engaged by the Authority for the specific purpose of evaluating or assisting the Authority in the evaluation of the Tenderer’s Tender. In providing such information the Tenderer consents to such disclosure.

**Reportable Requirements**

F18. Listed in the DEFFORM 47 Annex A (Offer) are the Mandatory Declarations. It is a Condition of Tendering that you complete and attach the returns listed in the Annex and, where you select yes, you attach the relevant information.

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

**Specific Conditions of Tendering**

F20. Not Used.

DEFFORM 47 Annex A

(Edn 11/22)

**Ministry of Defence**

**Tender Submission Document (Offer) – Ref Number 708796450**

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

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

|  |
| --- |
| **Applicable Law**  |
| I agree that any contract resulting from this competition shall be subject to English Law | Yes / No |
| **Total Value of Tender (excluding VAT)** |
| £1………………………………………………………………………………………………………………… WORDS One Pound........................................................................................................................... |
| **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 contract will be performed by Prime:**  |
| Where items which are subject of your Tender are not supplied or provided by you, state location in town / city to be performed column (continue on another page if required) |
| Tier 1 Sub-contractor Company Name | Town / city to bePerformed | Contractor Deliverables | Estimated Value | SMEYes / No |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
| **Mandatory Declarations** (further details are contained in Appendix 1 to DEFFORM 47 Annex A (Offer)):  | **Tenderer’s Declaration** |
| Are the Contractor Deliverables subject to Foreign Export Control and Security Restrictions? If the answer is Yes, please complete and attach DEFFORM 528. | Yes\* / No  |
| Have you completed and attached a DEFFORM 711 – Notification of Intellectual Property Rights (IPR) Restrictions? | Yes\* / No  |
| Have you obtained the foreign export approval necessary to secure IP user rights in the Contractor Deliverables for the Authority, including technical data, as determined in the Contract Terms & Conditions? | Yes\* / No  |
| Have you provided details of how you will comply with all regulations relating to the operation of the collection of custom import duties, including the proposed Customs procedure to be used and an estimate of duties to be incurred or suspended? | Yes / No |
| Have you completed a Supplier Assurance Questionnaire on the Supplier Cyber Protection Service? | Yes\* / No / N/A |
| Have you completed Form 1686 for sub-contracts? | Yes / No |
| Have you completed the compliance matrix/ matrices? | Yes / No / Not Required |
| Are you a Small Medium Sized Enterprise (SME)? | Yes / No |
| Have you and your sub-contractors registered with the Prompt Payment Code with regards to SMEs?  | Yes / No |
| Have you completed and attached Tenderer’s Sensitive Information Form?  | Yes / No |
| If you have not previously submitted a Statement Relating to Good Standing, within the last 12 months, or circumstances have changed have you attached a revised version? | Yes\* / No / N/A  |
| Do the Contractor Deliverables or any item provided in accordance with the Terms and Conditions of the Contract contain Asbestos, as defined by the control of Asbestos Regulations 2012? | Yes\* / No  |
| Have you completed and attached a DEFFORM 68 - Hazardous Articles, Deliverables materials or substances statement?  | Yes\* / No  |
| Do the Contractor Deliverables or any item provided in accordance with the Terms and Conditions of the Contract (including Packaging) use Substances that deplete the Ozone Layer, as defined in Regulation (EC) 1005/2009, as it applies in Great Britain as retained EU law, and as it applies in Northern Ireland directly |  |
| Do the Contractor 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  |
| Where you have been informed that a Bank or Parent Company Guarantee is required, will you provide one during the standstill period, before Contract award, if you are identified as the winning Tenderer? | Yes / No / Not Required |
| Have you complied with the requirements of the Defence Safety Authority Regulatory Articles?  | Yes / No / Not Required |
| Have you completed the additional Mandatory Requirements (as per paragraph F18) stated in this ITT? | Yes / No / Not Required |
| \*If selecting Yes to any of the above questions, attach the information detailed in Appendix 1 to DEFFORM 47 Annex A (Offer). |
| **Tenderer’s Declaration of Compliance with Competition Law** |
| We certify that the offer made is intended to be genuinely competitive. No aspect of the price has been fixed or adjusted by any arrangement with any Third Party. Arrangement in this context includes any transaction, or agreement, private or open, or collusion, formal or informal, and whether legally binding. In particular:a. the offered price has not been divulged to any Third Party,b. no arrangement has been made with any Third Party that they should refrain from tendering,c. no arrangement with any Third Party has been made to the effect that we will refrain from bidding on a future occasion,d. no discussion with any Third Party has taken place concerning the details of either’s proposed price, ande. no arrangement has been made with any Third Party otherwise to limit genuine competition.We understand that any instances of illegal cartels or market sharing arrangements, or other anti-competitive practices, suspected by the Authority will be referred to the Competition and Markets Authority for investigation and may be subject to action under the Competition Act 1998 and the Enterprise Act 2002.We understand that any misrepresentations may also be the subject of criminal investigation or used as the basis for civil action.We agree that the Authority may share the Contractor’s information / documentation (submitted to the Authority during this Procurement) more widely within Government for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes. We certify that we have identified any sensitive material in the Tenderer’s Sensitive Information Form (DEFFORM 539A). |
| **Dated this.................. day of ................................................................... Year ........................** |
| **Signature: In the capacity of**  (Must be scanned original) (State official position e.g. Director, Manager, Secretary etc.) |
| **Name:** (in BLOCK CAPITALS)**duly authorised to sign this Tender for and on behalf of:**(Tenderer's Name) | **Postal Address:****Telephone No:****Registered Company Number:****Dun And Bradstreet number:** |

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**Information on Mandatory Declarations**

**IPR Restrictions**

1. You must complete and attach DEFFORM 711 (Notification of Intellectual Property Rights (IPR) Restrictions) as part of your Tender. You must provide details of any information / technical data that is deliverable or delivered under the Contract where it is, or may be, subject to any IPR restrictions (or any other type of restriction which may include export restrictions) affecting the Authority’s ability to use or disclose the Information / technical data in accordance with the conditions of any resulting Contract. You must also identify any Contractor Deliverables subject to IPR which have been funded exclusively or in part by private venture, foreign investment or otherwise than by the Authority.

2. In particular, you must identify:

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

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

c.        the nature of any allegation referred to under sub-paragraph 2.b., including any obligation to make payments in respect of the Intellectual Property Right of any confidential information; and / or

d.        any action you need to take, or the Authority is required to take to deal with the consequences of any allegation referred to under sub-paragraph 2.b.

3. You must provide the Authority with details of every restriction and obligation referred to in paragraphs 1 and 2. The Authority will not acknowledge any such restriction unless so notified using DEFFORM 711 or as otherwise agreed under any resultant Contract. You must also provide, on request, any information required for authorisation to be given under Section 2 of the Defence Contracts Act 1958.

4. You should refer to the DEFFORM 711 Explanatory Notes for further information on how to complete the form.

**Notification of Foreign Export Control Restrictions**

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

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

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

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

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

You must complete DEFFORM 528 (or other mutually agreed alternative format) in respect of any Contractor Deliverables identified at paragraph 6 and return it as part of your Tender. If you have previously provided this information, you can provide details of the previous notification and confirm the validity.

7. You must use reasonable endeavours to obtain sufficient information from your potential supply chain to enable a full response to paragraph 6. If you are unable to obtain adequate information, you must state this in your Tender. If you become aware at any time during the competition that all or part of any proposed Contractor Deliverable is likely to become subject to a non-UK Government Control through a Government-to-Government sale only, you must inform the Authority immediately by updating your previously submitted DEFFORM 528 or completing a new DEFFORM 528.

8. This does not include any Intellectual Property specific restrictions mentioned in paragraph 2.

9. You must notify the named Commercial Officer immediately if you are unable for whatever reason to abide by any restriction of the type referred to in paragraph 6.

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

**Import Duty**

11. United Kingdom (UK) legislation permits the use of various procedures to suspend customs duties.

12. For the purpose of this competition, for any deliverables not yet imported into the UK, you are required to provide details of your plans to address customs compliance, including the Customs procedures to be applied (together with the procedure code) and the estimated Import Duty to be incurred and / or suspended [see explanatory note 41].

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

**Cyber Risk**

14. Cyber risk has been considered and a Cyber Security Model resulted in a ‘Not Applicable’ outcome.

**Sub-contracts Form 1686**

15. [Form 1686](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/710891/2018_May_Contractual_process.pdf) (also known as Appendix 5) is to be used in all circumstances where contractors wish to place a Sub-Contract at OFFICIAL-SENSITIVE with a contractor outside of the UK, or where the release of SECRET or above information is involved within the UK or overseas. The process will require submission of the single page document either directly to the MOD Project Team or, where specified, to the DE&S Security Advice Centre. Form 1686 and further guidance can be found in the Cabinet Office’s [Contractual Process](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/710891/2018_May_Contractual_process.pdf).

**Small and Medium Enterprises**

16. 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.

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

18. 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 policies and our SME policy can be found at [Gov.UK](https://www.gov.uk/government/organisations/ministry-of-defence/about/procurement). and the DSP.

19. 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: DefComrclSSM-Suppliers@mod.gov.uk.

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

20. 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.

21. 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 DEFCON 539, SC1B Conditions of Contract Clause 5 or SC2 Conditions of Contract Clause 12.

22. Before publishing the Contract, the Authority will redact any information which is exempt from disclosure under the Freedom of Information Act 2000 (“the FOIA”) or the Environmental Information Regulations 2004 (“the EIR”).

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

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

**Electronic Purchasing**

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

**Change of Circumstances**

26. In accordance with paragraph A31, if your circumstances have changed, please select ‘Yes’ to the appropriate question on DEFFORM 47 Annex A and submit a Statement Relating to Good Standing with your Tender.

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

27. The Authority is required to report any items that use asbestos, that are hazardous or where there is an impact on the Ozone. Where any Contractor Deliverables fall into one of these categories select ‘Yes’ to the appropriate question on DEFFORM 47 Annex A and provide further details in your Tender.

**Defence Safety Authority (DSA) Requirements** [see explanatory note 42]

28. There are no DSA Requirements.

**Bank or Parent Company Guarantee** [see explanatory note 43]

29. A Bank or Parent Company Guarantee is not required.

**Standardised Contracting Terms**

**(Edn10/22)**

* + - 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.

**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 during 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 another 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) considering 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 disposing 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 the 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 regarding 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 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 the 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 the required particulars, the required information should be included on the package or carton in which the Contractor Deliverable is packed, in accordance with condition 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, if 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; and

 (4) 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 on-boarding) on the Contracting, Purchasing and Finance (CP&F) electronic procurement tool.

b. Where the Contractor submits an invoice to the Authority in accordance with clause 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. If 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 because 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 based on 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 Contract C17SAE/708796450**

DEFCON 113 (Edn 02/17) - Diversion Orders

DEFCON 117 (SC1) (Edn. 07/21) - Supply of Documentation for NATO Codification Purposes

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

DEFCON 524A (SC1) (Edn. 12/22) – Counterfeit Materiel

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

DEFCON 532A (Edn. 12/22) - 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 602B (Edn 04/23) - Quality Assurance (Without Deliverable Quality Plan)

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

DEFCON 630 (SC1) (Edn. 02/18) - Framework Agreements

DEFCON 637 (Edn 05/17) - Defect Investigation and Liability Application

DEFCON 646 (Edn 10/98) - Law and Jurisdiction (Foreign Suppliers) Application

DEFCON 656A (Edn 08/16) - Termination for Convenience – Under £5m Application

**22 The special conditions that apply to Contract C17SAE/708796450:**

a. **Delivery**

(1) Following each delivery, the Contractor shall provide the individual at Box 2 of the DEFFORM 111 a delivery summary that contains the following information:

         (i) Item Quantity.

 (ii) Serial Number.

(2) Any delivery that is rejected due to Packaging, Labelling or item marking requirements shall be returned to the Contractor and re-delivered at the Contractor’s expense.

(3) Any remedial work that is required following Clause 22a(2) in order to bring the item up to the standards identified in the Contract shall be completed within ten (10) Business Days of receipt of the item back at the Contractor’s premises.

(4) If unable to complete the remedial work within the period of ten (10) Business Days, the Contractor shall contact the individual at Box 2 of the DEFFORM 111 to agree a new timeframe.

(5) All costs of remedial work shall be paid by the Contractor.

(6) Each delivery shall be accompanied by a Certificate of Conformity (CoC).

(7) In the event that the Contractor is unable to meet the delivery date agreed in Schedule 3, they shall notify the individual at Box 2 of the DEFFORM 111 within one (1) Business Day of becoming aware of the change in the delivery forecast.

b. **Quality Assurance Requirements**

The Contractor shall comply with any applicable quality assurance requirements specified in Schedule 3 (Contract Data Sheet) in providing the Contractor Deliverables.

c. **Warranty**

Any items that qualify for the OEM Warranty under this Contract will be processed in accordance with the Warranty and turnaround times passed on by the Contractor at Schedule 9. This Warranty can be utilised by the Authority for a period of 1 year from the acceptance of the item(s).

d. **Regulatory Articles**

The Contractor shall comply with the latest edition of the Regulatory Articles detailed in the table below:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **(a)** | **(b)** | **(c)** | **(d)** | **(e)** | **(f)** | **(g)** |
| **RA No** | **Title**  | **Regulation** | **RA Issue Number** | **Date of Latest Issue** | **Contractors Responsibility** | **Contractors Statement of Compliance** |
| RA5855 | Parts and Appliances (MRP Part 21 Subpart K) | 5855(1): Compliance with Applicable Requirements5855(2): Release of Newly Produced Parts and Appliances for Installation | 5 | 25/05/2023 | [ ] | [ ] |

e. **Russian and Belarusian Exclusion Condition for Inclusion in Contracts**

(1) The Contractor shall, and shall procure that their Sub-contractors shall, notify the Authority in writing as soon as they become aware that:

(i) the Contract Deliverables and/or Services contain any Russian/Belarussian products and/or services; or

(ii) that the Contractor or any part of the Contractor’s supply chain is linked to entities who are constituted or organised under the law of Russia or Belarus, or under the control (full or partial) of a Russian/Belarusian person or entity. Please note that this does not include companies:

(iii) registered in the UK or in a country with which the UK has a relevant international agreement providing reciprocal rights of access in the relevant field of public procurement; and/or

(iv) which have significant business operations in the UK or in a country with which the UK has a relevant international agreement providing reciprocal rights of access in the relevant field of public procurement.

(2) The Contractor shall, and shall procure that their Sub-contractors shall, include in such notification (or as soon as reasonably practicable following the notification) full details of the Russian products, services and/or entities and shall provide all reasonable assistance to the Authority to understand the nature, scope and impact of any such products, services and/or entities on the provision of the Contract Deliverables and/or Services.

(3) The Authority shall consider the notification and information provided by the Contractor and advise the Contractor in writing of any concerns the Authority may have and/or any action which the Authority will require the Contractor to take. The Contractor shall be required to submit a response to the concerns raised by the Authority, including any plans to mitigate those concerns, within 14 business days of receipt of the Authority’s written concerns, for the Authority’s consideration.

(4) The Contractor shall include provisions equivalent to those set out in this clause in all relevant Sub-contracts.

**23 The processes that apply to Contract C17SAE/708796450:**

a. Articles listed in Schedule 7 and 8 can be ordered as and when required by the Authority via an CP&F Purchase Order issued by the Authority’s Supply Chain Manager (Box 4 of DEFCON 111 Appendix to Contract refers).

b. The Contractor shall acknowledge receipt of the Purchase Order and deliver the items in accordance with the lead times specified in Schedules 7 and 8. In exceptional circumstances where an item is likely to be delayed the Contractor shall notify the Authority’s Supply Chain Manager within 3 working days, stipulating the newly anticipated lead-time and the reason for the delay.

c. The delivery address for articles will be specified within schedule 3, Clause 10.

d. Any packaging requirements will be stipulated within the CP&F order and carried out in accordance with Conditions 11 and 12.

e. The Authority is not obligated to purchase items from Schedules 7 and 8, in accordance with DEFCON 630. All purchases under the contract shall be added via amendment, in accordance with DEFCON 503, and shall be priced in accordance with Schedules 7 and 8 and added as a new line item in Schedule 2.

**BELOW ONLY TO BE COMPLETED UPON AUTHORITY ACCEPTANCE OF OFFER**

708796450 - Procurement of David Clark ONE-XM Headsets and Associated Spares for C-17

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 |  |

**Schedule 1 - Additional Definitions of Contract**

N/A

**Schedule 2 - Schedule of Requirements**

|  |
| --- |
| **Contractor Deliverables** |
| **Item No** | **MOD Stock Ref. No** | **Part No.** | **Specification** | **Consignee** **Address** **Code** (full address is detailed in DEFFORM 96) | **Packaging Requirements inc. PPQ and DofQ** (as detailed in DEFFORM 96) | **Lead Time** | **Total Qty** | **Price (£) Ex VAT** |
| **Per Item** | **Total inc. Packaging (and Delivery if specified in Schedule 3 (Contract Data Sheet))** |
| 1 | To be completed as orders placed. In accordance with Condition 23(e) |  |  |  |  |  |  |  |  |
| 2 |  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  | **Total Price** |  |

**Schedule 3 - Contract Data Sheet**

|  |  |
| --- | --- |
| **Contract Period** | Effective date of Contract: 1st April 2024The Contract expiry date shall be: 31st March 2027 |
| **Clause 6 - Notices** | Notices served under the Contract shall be sent to the following address:Authority: Box 2 (as per DEFFORM 111)Contractor: [ ]Notices served under the Contract can be transmitted by electronic mail |
| **Clause 8 –** **Supply of Contractor Deliverables and Quality Assurance** | Is a Deliverable Quality Plan is required for this Contract: NoOther Quality Requirements:**DEFSTAN 05-135**Avoidance of Counterfeit materiel**DEFSTAN 59-411**Parts 1-5 – Electromagnetic Compatibility (EMC)**DEFSTAN 00-251**Human Factors Integration for Defence Systems Parts 0-3 |
| **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, 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:a) The Authority’s Representative (Commercial)b) Defence Safety Authority – DSA-DLSR-MovTpt-DGHSIS@mod.ukto be delivered no later than (1) month prior to the delivery date for the contract deliverable.  |
| **Clause 10 – Delivery/Collection** | Delivery of all Contract items should be strictly in accordance with Contract Condition 10. The items shall be shipped to the Contractor, any damage suffered during transit must be reported to the Authority. All units are to be accompanied by a DEFFORM 129J and comply with Clause 10 of the Contract Terms and Conditions   The following Line Items are to be Delivered by the Contractor:  1 and 2          The Line Items are to be Delivered by the Contractor to the following Address:  99 Squadron Stores RAF Brize Norton Carterton Oxfordshire OX18 3LX  Special Delivery Instructions:   Business Hours: 9am-5pm Driver will require photo identification and to be escorted from the gate to 99 Sqn Stores. Contact Number: 01993 867923 **/** 01993 867913 |
| **Clause 12 – Packaging and Labelling of Contractor Deliverables** | Additional packaging requirements: |
| **Clause 14a – Progress Meetings** | The Contractor shall be required to attend the following meetings:N/A - Notwithstanding the required delivery communications identified in Condition 22(a)       |
| **Clause 14b – Progress Reports** | The Contractor is required to submit the following Reports:N/A |

**Annex A to Schedule 3 - DEFFORM 111**

**DEFFORM 111**

**Appendix - Addresses and Other Information**

**1. Commercial Officer**

Name: **[Redacted]**

Address: **[Redacted]**

Email: **[Redacted]**

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

Name: **[Redacted]**

Address: **[Redacted]**

Email: **[Redacted]**

**3. Packaging Design Authority** Organisation & point of contact:

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

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

Name: **[Redacted]**

Address: **[Redacted]**

Email: **[Redacted]**

**(b) U.I.N.**  P1016A

**5. Drawings/Specifications are available from**

**6.** **Intentionally Blank**

**7.** **Quality Assurance Representative:** Jonathan.Lewis246@mod.gov.uk

Commercial staff are reminded that all Quality Assurance requirements should be listed under the General Contract Conditions.

8. **AQAPS** and **DEF STANs** are available from UK Defence Standardization, for access to the documents and details of the helpdesk visit http://dstan.uwh.diif.r.mil.uk/  [intranet] or https://www.dstan.mod.uk/ [extranet, registration needed].

**9. Consignment Instructions** The items are to be consigned as follows:

**10. Transport.** The appropriate Ministry of Defence Transport Offices are:

**A. DSCOM**, DE&S, DSCOM, MoD Abbey Wood, Cedar 3c, Mail Point 3351, BRISTOL BS34 8JH

Air Freight Centre

IMPORTS 030 679 81113 / 81114 Fax 0117 913 8943

EXPORTS 030 679 81113 / 81114 Fax 0117 913 8943

Surface Freight Centre

IMPORTS 030 679 81129 / 81133 / 81138 Fax 0117 913 8946

EXPORTS 030 679 81129 / 81133 / 81138 Fax 0117 913 8946

**B.JSCS**

JSCS Helpdesk No. 01869 256052 (select option 2, then option 3)

JSCS Fax No. 01869 256837

[www.freightcollection.com](http://www.freightcollection.com/)

**11. The Invoice Paying Authority**

Ministry of Defence, DBS Finance, Walker House, Exchange Flags Liverpool, L2 3YL

0151-242-2000 Fax: 0151-242-2809

**Website is:** [https://www.gov.uk/government/organisations/ministry-of-defence/about/procurement#invoice-processing](#https://www.gov.uk/government/organisations/ministry_of_defence/about/procurement)

**12. Forms and Documentation are available through \*:**

Ministry of Defence, Forms and Pubs Commodity Management PO Box 2, Building C16, C Site, Lower Arncott, Bicester, OX25 1LP (Tel. 01869 256197 Fax: 01869 256824)

**Applications via fax or email:** [Leidos-FormsPublications@teamleidos.mod.uk](https://modgovuk.sharepoint.com/u07/appmprod/log/Leidos-FormsPublications%40teamleidos.mod.uk)

**\* 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 4 - Contractor's Sensitive Information Form (i.a.w. 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: 708796450       |
| 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**

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 | 708796450 |
| 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 | [Complete or N/A] |  |  |  |
| 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

DEFFORM 711 (Edn 11/22)

**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 sub-system level. This is to enable the Authority to 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.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. |
| Block 5 | This is a freeform narrative field to allow a short explanation justifying why this information / technical data has limited rights applying to it. |
| Block 6 | 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. |

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**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.

**Schedule 6 -** **Hazardous and Non-Hazardous Substances, Mixtures or Articles Statement by the Contractor**

**DEFFORM 68**

(Edn 09/22)

Contract Number: 708796450

Contract Title: Procurement of David Clark ONE-XM Headsets and Associated Spares for C-17

Contractor: [ ]

Date of Contract: [ ]

\* To the best of our knowledge there are no hazardous Substances, Mixtures or Articles to be supplied. [ ] ; or

\* To the best of our knowledge the hazards associated with Substances, Mixtures or Articles to be supplied under the Contract are identified in the Safety Data Sheets or UK REACH Article 33 Communication attached in accordance with either:

DEFCON 68 [ ] ; or

Condition 9 of Standardised Contract 1A/B Conditions [ ] .

Contractor’s Signature: [ ]

Name: [ ]

Job Title: [ ]

Date: [ ]

\* Check box (☒) as appropriate

**To be completed by the Authority**

DMC:

NATO Stock Number:

Contact Name:

Contact Address:

Contact Phone Number:

Contact Email Address:

Copy to be forwarded to:

Hazardous Stores Information System (HSIS)

Spruce 2C, #1260

MOD Abbey Wood (South)

Bristol, BS34 8JH

Email: DESEngSfty-QSEPSEP-HSISMulti@mod.gov.uk

**Schedule 7 -** **Headset Pricing for Item 1 of Schedule 2**

1. In accordance with the terms and conditions of C17SAE/ 708796450 Contract you are invited to offer a firm, non-revisable price and lead time for the supply of the Article detailed below.
2. Your response to this requirement must be submitted via the Defence Sourcing portal in accordance with Section D of DEFFORM 47.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Item No.**  | **NSN**  | **Part Number**  | **Description**  | **MOQ**  | **Lead Time (Working Days)**  | **Firm Price Each (£) Ex VAT Including Packaging and Delivery**  |
| **01/04/2024- 31/03/2025**  | **01/04/2025- 31/03/2026**  | **01/04/2026- 31/03/2027**  |
| 1  |   | 43102G-09 | David Clark ONE-XM Electronic Noise Cancelling Headset with 5ft Extended Coil Cord and a Single U-174/U Plug  | 50 | [ ] | [ ] | [ ] | [ ] |

**Schedule 8 -** **Spares Pricing List for Item 2 of Schedule 2**

1. In accordance with the terms and conditions of C17SAE/ 708796450 Contract you are invited to offer a firm, non-revisable price and lead time for the supply of the Article detailed below.

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Item No.**  | **NSN**  | **Part Number**  | **Description**  | **DOQ**  | **MOQ (Minimum Order Quantity)**  | **Lead Time (Working Days)**  | **Firm Price Each (£) Ex VAT Including Packaging and Delivery**  |
| **01/04/2024- 31/03/2025** | **01/04/2025- 31/03/2026** | **01/04/2026- 31/03/2027** |
| 1  |   | 09168P-85  | M-5B Microphone  | EA  | 1  | [ ] | [ ] | [ ] | [ ] |
| 2  |   | 40062G-02  | Microphone Foam Cover  | EA  | 1  | [ ] | [ ] | [ ] | [ ] |
| 3  |   | 15976P-07  | Leatherette Ear Seals, Pair  | EA  | 1  | [ ] | [ ] | [ ] | [ ] |
| 4  |   | 15977P-04  | Outlast Fabric Vented Head Pad  | EA  | 1  | [ ] | [ ] | [ ] | [ ] |
| 5  |   | 41068G-03  | Control Module Mounting Clip  | EA  | 1  | [ ] | [ ] | [ ] | [ ] |

**Schedule 9 - Details of Warranty** **(Condition 22[e])**

[ ]

Warranty Conditions.

[ ]

Liability Limitations

[ ]

Warranty Repair Turnaround Times

[ ]