

Schedule 5
Price and Payment



MINISTRY OF DEFENCE

**AIR SUPPORT TO DEFENCE OPERATIONAL TRAINING
(ASDOT)**

CONTRACT NO. UKMFTS/2017/03

This is Schedule 5 (Price and Payment) referred to in the ASDOT Contract between the Secretary of State for Defence and [*Insert name of Contractor*].

SCHEDULE 5

PRICE AND PAYMENT

1. Price

Schedule of Requirements Item 1 and Option Items 5, 6 and 7 If Taken Up.

1.1 The firm prices (not subject to variation) to be paid by the Authority for the work completed under SOR Item 1 of the Contract for the period *[To be agreed]* shall be as specified at Annex 1 to this Schedule 5 (*Price and Payment*).

1.2 For the Contract period *[To be agreed]*, which is post the firm price period in clause 1.1 above, the fixed prices to be paid by the Authority for the work completed under SOR Item 1 shall be P+V, where P shall be the fixed price(s) as stated in SOR item 1 for the Contract Year 3 (three) and V shall be calculated in accordance with Paragraph 1.3 below.

1.3 Variation of Price (VOP)

1.3.1 The prices stated in the SOR are fixed at *[insert date – will be contract award]* price levels. The prices do not include provision beyond this date for increases or decreases in the market price of the Articles being purchased. Any such variation shall be calculated in accordance with the following formula, such calculations shall be made and agreed between the Authority and the Contractor 3 (three) Calendar Months prior to the start of each Contract Year subject to a price to be agreed in accordance with the formula below. For the purposes of P in the formula below the fixed price(s) as stated in SOR Item 1 shall be the Contract Year 3 (three) price for SOR Item 1

$$V = P (a+b(O_i/O_0)) - P$$

Where:

V represents the variation of price

P represents the FIXED price(s) as stated in the SOR

O represents the index - See below

O₀ represents the average OUTPUT Price Index figure for the base period [...] to [...] (As above- shall be Contract Year 3 (three))

O_i represents the average OUTPUT Price Index figure for the period [...] to [...]

a represents the Non- Variable Element (NVE)

b represents the Variable Element

$$a+b=1$$

The Index referred to in O above shall be taken from the following Tables:

OUTPUT Price Index - Top – Level SPPI – All Services GSO (SIC 2007) CDID K8ZU.

1.3.2 In respect of SOR Items 5, 6 and 7, P in the formula at Paragraph 1.3.1 shall be the firm price agreed for the first of the option years, Contract Year 11 (eleven). The Annual Contract Price for Contract Years 12 (twelve) to 15 (fifteen) shall be determined utilizing the agreed firm price as the baseline for the application of the VOP formula at Schedule 5 (Price and Payment) Paragraph 1.3.1.

1.3.3 Indices published with a 'B' or 'F' marker, or a suppressed value, in the last 3 (three) years are not valid for VOP clauses and shall not be used. Where the price index has an 'F' marker or suppression applied to it during the term of the Contract, the Authority and the Contractor shall agree an appropriate replacement index or indices. The replacement index or indices shall cover, to the maximum extent possible, the same economic activities as the original index or indices.

1.3.4 In the event that any material changes are made to the indices (e.g. a revised statistical base date) during the period of the Contract and before final adjustment of the final Contract price then the re-basing methodology outlined by the Office for National Statistics (ONS, the series providers) to match the original index to the new series shall be applied.

1.3.5 In the event the agreed index or indices cease to be published (e.g. because of a change in the Standard Industrial Classification) the Authority and the Contractor shall agree an appropriate replacement index or indices, which shall cover to the maximum extent possible the same economic activities as the original index or indices. The methodology outlined by the Office for National Statistics used for rebasing indices (as in Paragraph 1.3.4 above) shall then be applied.

1.3.6 Notwithstanding the above, any extant index / indices agreed in the Contract shall continue to be used as long as it is / they are available and subject to ONS revisions policy. Payments calculated using the extant index / indices during its / their currency shall not be amended retrospectively as a result of any change to the index or indices.

1.3.7 The Contractor shall notify the Authority of any significant changes in the purchasing / manufacturing plan on the basis of which these provisions were drawn up and agreed, or of any other factor having a material bearing on the operation of these provisions such as to cause a significant divergence from their intended purpose, in order that both Parties may consider whether any change in this provision would be appropriate.

1.3.8 Prices shall be adjusted taking into account the effect of the above formula as soon as possible after publication of the relevant indices or at a later date if so agreed between the Authority and the Contractor. Where an index value is subsequently amended, the Authority and the Contractor shall agree a fair and reasonable adjustment to the price as necessary.

1.3.9 Claims under this Schedule 5 (Price and Payment) shall be submitted to the Bill Paying Branch, certified to the effect that the "requirements of Schedule 5 (Price and Payment) Paragraph 1.3.1 (VOP) have been met.

Schedule of Requirements Item 2

1.4 The prices to be paid by the Authority for the work completed under SOR Item 2 of the Contract shall be a firm, non-revisable price Ex VAT.

Schedule of Requirements Item 3

1.5 The price for any work agreed to be over and above the scope of the work at Schedule 3 (SOW) shall be in accordance with Schedule 4 (*Additional Work*) utilising the rates and charges at Schedule 5 Annex B (*Charging Rates for Additional work*)).

Schedule of Requirements Item 4

1.6 The Authority shall reimburse the Contractor for fuel costs incurred that are directly and solely associated with undertaking the ASDOT service requirement and which has been tasked by the ASTA in a tasking instruction in accordance with SOR Item 1. The Authority will accept no general and administration costs or profit in respect of claims for fuel costs.

1.7 In the event that the Authority provides the Contractor with fuel at any of its military bases, then this will be on a free of charge basis. The Authority shall not make any payments (including general and administrative overheads and profit) for fuel to the Contractor in relation to Authority supplied fuel taken by the Contractor. In the event that invoices are received for fuel uplifted at the Authority's airfields the Contractor shall return them to the appropriate airfield.

1.8 The Contractor shall account for all fuel provided by the Authority to ensure that the Authority is not charged for fuel which it has supplied to the Contractor free of charge. To effect this the Contractor shall maintain a log of fuel consumed on MOD tasks and deduct from this the total fuel uplifted from all MOD sources.

Schedule of Requirements – All Items

1.9 All prices to be paid to the Contractor under the Contract shall be subject to the provisions of Schedule 6 Paragraph 9 (*Remedy for the Contractor's Failure to Perform*). The Contract Prices shall be inclusive of any United Kingdom (UK) custom and excise or other duty payable. The Contractor shall not make any claim for drawback of UK import duty on any part of the Contract Deliverables supplied which may be for shipment outside of the UK.

2. Payment

2.1 The Authority shall make payments to the Contractor in accordance with the payment plan(s) at Schedule 5 Annex C (*Milestone Payment Plans*) subject to this Paragraph 2 and satisfactory completion of the events detailed herein. Such payments shall be regarded as advances against the Contract Price.

2.2 Save as hereby provided, the entitlement of the Contractor to retain all payments in the form of interim payments against the Contract price shall be conditional on continuing satisfactory performance of all activities required under the Contract. Where the Authority terminates the Contract otherwise than in accordance with DEFCON 656B (*Termination for Convenience – Over £5M*), the Authority shall, without prejudice to any other right/remedy of either Party, be entitled to recover in full all interim payments made before such termination.

Schedule of Requirements Item 3

2.3 The Contractor shall be entitled to claim payment for Additional Work on satisfactory completion of the task as authorised in accordance with Schedule 4 (*Additional Work*) on the form at Schedule 4 Annex 1 (*Additional Work Task Approval Form*)

Schedule of Requirements Item 4

2.4 The Authority shall make payments to the Contractor for fuel costs on a monthly, in arrears basis. Claims are to be made to the Authority in accordance with Paragraphs 2.5 to 2.11 below and shall be fully supported by receipted evidence. Such evidence to be provided to the Authority's ASDOT Programme Manager.

Compliance with the Electronic Transaction Agreement

2.5 The Contractor shall make claims for payment in accordance with Paragraphs 2.5 to 2.11

2.6 The Authority and the Contractor shall comply with the Contracting, Purchasing and Finance (CP&F) electronic procurement tool.

2.7 Where an offer and acceptance has already taken place off-line to establish the Contract, the Authority shall issue a Purchase Order Message in order to establish Unique Order Identifiers for the Items on the SOR for the purpose of subsequent CP&F transactions. The Contractor shall respond with an Acknowledgement Message. In these circumstances, Purchase Order Messages serve only to convey to the Contractor the information necessary against which to supply an item prepare a delivery label and to submit an Invoice Message; the Purchase Order Acknowledgement Message serves only to confirm receipt of a Purchase Order Message. No new Contract is understood to be formed by this Purchase Order transaction.

2.8 The Authority shall hold the Contractor harmless for any delay or failure by the Authority to issue a Purchase Order. However, any delay or failure to issue a Purchase Order shall not relieve the Contractor of his obligations under the Contract.

2.9 All payments to be made by the Authority to the Contractor under the Contract shall be subject to the provisions of Schedule 6 (*Performance Management*), and before submitting any claims for payments, the Contractor shall adjust those claims to take into account any adjustments required by the remedy

provisions set out in Schedule 5 Paragraph 9 (*Remedy for the Contractor's Failure to Perform*).

2.10 The Contractor shall not be entitled to claim payments as described in this Paragraph 2 if it has not complied with specific obligations that impinge on the progress of work covered by the Contract, including, but not limited to, provision of information required by the Authority for the purposes of assessing contractual performance or amending the Contract.

2.11 Payment to the Contractor 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 the Contract.

Overpayments

2.12 Any overpayment made against the Contract Price by the Authority to the Contractor (which is agreed by the Contractor or determined under DEFCON 530 (Dispute Resolution (English Law)), whether of the monthly payment or of any Tax, shall be a sum of money recoverable by the Authority from the Contractor.

Disputed amounts

2.13 The Authority may withhold payment of any amount it believes, acting reasonably, the Contractor is not entitled to pursuant to the Contract ("**Disputed Amount**") pending agreement or determination of the Contractor's entitlement in relation to the Disputed Amount. The Authority shall notify the Contractor in writing of the reasons for withholding the Disputed Amount (together with supporting evidence) on or before the day on which the Disputed Amount would (but for this Paragraph 2.13) otherwise fall due.

2.14 The Authority shall pay any undisputed amounts on the Business Day on which they fall due.

2.15 Within 5 (five) Business Days following receipt by the Contractor of any notice served by the Authority pursuant to Paragraph 2.12 (or such other notice regarding the existence of a Disputed Amount as may be served by the Authority pursuant to the Contract), the Contractor shall respond by notifying the Authority as to whether or not it agrees with the statements made in that notice and the grounds for such agreement or disagreement. If the Contractor indicates that it does agree, then, to the extent agreed, the Authority shall be entitled:

2.15.1 to retain on a permanent basis any such agreed amounts withheld pursuant to Paragraph 2.13; and

2.15.2 to reclaim from the Contractor the amount of any such agreed over-payment which may have been made to the Contractor, and reserves the right to claim interest on any such amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which the over-payment was made until that amount has been paid in full and whether before or after judgment.

2.16 If the Contractor responds pursuant to Paragraph 2.15 that it does not agree with all or any of the statements made in any notice served by the Authority pursuant to Paragraph 2.13 (or such other notice regarding the existence of a Disputed Amount as may be served by the Authority pursuant to the Contract), the matter or matters in question shall be determined under DEFCON 530 (*Dispute Resolution (English Law)*).

2.17 If the determination of any Dispute conducted pursuant to Paragraph 2.16 shows that:

2.17.1 The Authority has withheld any amount which the Contractor was entitled to be paid; or

2.17.2 The Contractor has claimed under this Paragraph 2 - Payment any amount which it was not entitled to be paid,

the Authority shall pay such amount to the Contractor or the Contractor shall repay such amount to the Authority (as relevant) with interest (if applicable) in each case on that amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which payment should have been made (in the case of a failure to pay by the Authority) or from the date on which the over payment was made (in the case of excessive claims by the Contractor) until all relevant monies have been paid in full and whether before or after judgment.

3.0 Travel and Subsidence

3.1 Travel and subsidence expenses can only be claimed for tasks raised via the additional tasking process as described with Schedule 4 (*Additional Work*). Expenses cannot be claimed for any activity in support of the day to day operations of the Contract, additionally any costs associated with support activity for additional tasks raised via schedule 4 (*Additional Work*) which the Contractor would have incurred as part of normal operations are not eligible for expenses to be reclaimed.

3.2 The expenses claimed from the Authority shall be in line with the MOD Travel and Subsidence policy. Any payment made by the Contractor to their employees or Sub-Contractors over and above the MOD limits it does so at the Contractor's own expense.

{ HYPERLINK "<https://www.gov.uk/government/publications/scale-rate-expenses-payments-employee-travelling-outside-the-uk>" }

PRICES FOR SCHEDULE OF REQUIREMENTS ITEM 1

[Agreed prices to be inserted prior to contract award or alternative pricing table provided, see commercial evaluation criteria [XX.XX]]

[Pricing schedule to be inserted]

RATES FOR ADDITIONAL WORK

The hourly rates in the table below shall be used for pricing Additional Work under Item 3 of the SOR. The hourly rates detailed below shall be firm, non-revisable and inclusive of all charges (overheads, admin, etc) and include profit.

[Rates table to be agreed prior to contract award]

MILESTONE PAYMENT PLANS

[To be agreed prior to contract award]