



Ministry
of Defence

[REDACTED]
SO3 Commercial Officer 2A BFG

MOD Head Office Commercial C&C Catterick
Barracks Bielefeld
BFPO 39

Tel: [REDACTED]
Email: [REDACTED]
[REDACTED]

Family Lives
15-17 The Broadway
Old Hatfield
AL9 5HZ

Your Reference:

Our Reference:
CB/BFG/0106
Date: 03 June 2015

For the attention of: [REDACTED] (London &
Northern Home Counties)

Dear [REDACTED],

Invitation To Tender (ITT) Reference No. CB/BFG/0106

1. You are invited to tender for the Provision of Family Support Services to BFG and EJSU in competition in accordance with the attached documentation.
2. The requirement is for the provision of guidance to the HQ BFG G1 Community Support branch and for training and support to the Locally Employed Family Support Services Director on an enabling basis. Also, for HQ BFG to obtain a licence to use the company's name whilst delivering the service in accordance with the Statement of Requirement.
3. Funding has been approved. The budget is £44,500 ex VAT.
4. The anticipated date for the contract award decision is 22 September 2015, please note that this is an indicative date and may change.
5. You must submit your Tender to arrive no later than **24 July 2015 at 10:00**. You must attach the enclosed Tender Return Label (DEFFORM 28) to the outer packaging of your Tender when you submit it to the Authority.

Yours sincerely

[REDACTED]

List of Suppliers Invited to Submit a Tender for ITT No. CB/BFG/0106

Supplier Name	Supplier Address and Phone No	Supplier Point of Contact
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Home-Start UK	The Home Start Centre, 8-10 West Walk Leicester LE1 7NA Tel: [REDACTED]	[REDACTED]
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Core Assets	Senate House Saxon Business Park Hanbury Road Stoke Prior Bromsgrove B60 4AD Tel: [REDACTED]	[REDACTED] [REDACTED]
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Family Lives	15-17 The Broadway Old Hatfield AL9 5HZ Tel: [REDACTED]	[REDACTED] (London & Northern Home Counties)
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**Invitation to Tender for
Provision of Family Support Services to BFG and EJSU
CB/BFG/0106**

Contents

This invitation consists of the following documentation:

- DEFFORM 47 – Invitation to Tender. The DEFFORM 47 sets out the key requirements that Tenderers need to meet in submitting a valid Tender. It also sets out the conditions relating to this competition. For ease it is broken into:
 - Section A – Introduction Page 6
 - Definitions
 - Purpose
 - ITT Documentation and ITT Material
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 - Remedies for Breach of Contract
 - Reportable Requirements
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 - DEFFORM 47 Annex A – Tender Submission Document (Offer) Page A1
 - Appendix 1 to DEFFORM 47 Annex A (Offer) – Information on Mandatory Declarations
- Schedule of Requirements – see Schedule 2 of SC3.
- Statement of Requirement - see Schedule 5 of SC3.
- Contract Conditions
- DEFFORM 111 – Appendix to Contract – Addresses and Other Information

- Tenderers' Commercially Sensitive Information Form (DEFFORM 539A) Schedule 6 of the Contract document, p.39.
- DEFFORM 28 – Tender Return Label
- ANNEX B to DEFFORM 47 - DEFFORM 30 – The Electronic Transactions Agreement
- ANNEX C to DEFFORM 47 - Statement of Good Standing

Section A – Introduction

Definitions

A1. This requirement is issued on behalf of the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland, (referred to in this document as “the Authority”). In this Agreement, the Authority is acting as part of the Crown.

A2. “You / Tenderer” means the economic operator or group of operators in the form of a consortium, including sub-contractors, which has been invited to submit a response to this Invitation to Tender.

A3. “Invitation to Tender” (ITT) refers to the first document that the Authority sends out to potential Tenderers that initiates a tender response, competitive dialogue or negotiation.

A4. A “Tender” is the offer that you are making to the Authority.

A5. “Contractor Deliverables” means the work, goods and / or the services, including packaging (and Certificate(s) of Conformity) supplied in accordance with any Quality Assurance (QA requirements if specified, which the contractor is required to provide under the contract in accordance with the Schedule of Requirements, but excluding incidentals outside the Schedule of Requirements such as progress reports.

A6. “Schedule of Requirements” Schedule 2 – 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.

A7. The “Statement of Requirement” Schedule 5 details the technical requirements and acceptance criteria of the Contractor Deliverables. The Statement of Requirement is attached at Schedule 5 to the Invitation to Tender. This may include the System Requirements Document (SRD).

A8. “Conditions of Tendering” means the conditions set out in the DEFFORM 47 that govern the competition.

A9. “Contract Conditions” means the attached conditions that will govern any resultant contract.

A10. A “Third Party” is any person who is not an employee of the Tenderer as defined at A2.

Purpose

A11. The purpose of this ITT is to invite you to propose a solution / best price to our requirement. This documentation explains and sets out the:

- a. tender process and timetable for the next stages of the procurement;
- b. instructions and conditions that govern this competition;
- c. information you must include in your Tender and the required format;
- d. administrative arrangements for the receipt and evaluation of Tenders; and
- e. Contract Conditions that shall apply in the event that the Authority awards a contract following this competition.

A12. The sections in this ITT and associated documents are structured in line with a generic tendering process and do not indicate importance/precedence.

A13. This ITT has been issued to all potential Tenderers chosen during the supplier selection stage, listed on page 2 of this DEFFORM 47.

A14. This ITT is exempt from the Public Contracts Regulations 2015 as it is below the threshold. The requirement was advertised by the Authority in the DCO /Contracts Finder dated 30/04/2015 (anticipated).

ITT Documentation and ITT Material

A15. ITT Documentation means any information in any medium or form (for example drawings, handbooks, manuals, instructions, specifications and notes of pre-tender clarification meetings), issued to you, or to which you have been granted access, by the Authority for the purposes of responding to this ITT. ITT Material means any other material (including patterns or samples), equipment or software issued to you, or to which you have been granted access by the Authority, for the purposes of responding to this ITT. ITT Documentation, ITT Material and any intellectual property rights (IPR) in them shall remain the property of the Authority or other Third Party owners and is released solely for the purposes of enabling you to submit a Tender. You must:

- a. take responsibility for the safe custody of the ITT Documentation and ITT Material and for all loss and damage sustained to it while in your care;
- b. not copy or disclose the ITT Documentation or any part of it to anyone other than the bid team involved in preparing your Tender, and not use it except for the purpose of responding to this ITT;
- c. seek 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 A15.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 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. immediately destroy all ITT documentation, ITT Material and derived information of an unmarked nature, should you decide not to participate in responding to this ITT, or you are notified by the Authority that your Tender has been unsuccessful; and
- g. 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'.

A16. 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 A15 above.

Tender Expenses

A17. You will bear all costs associated with preparing and submitting your Tender. If the Tender process is terminated or amended by the Authority, the Authority will not reimburse you.

Material Change of Control from Supplier Selection

A18. You must inform the Authority in writing if there is any material change in control, composition or membership of your organisation and/or consortium members, including any sub-contractors at any time during the procurement process. This may affect your right to stay in the competition.

Contract Conditions



A19. Standardised Contracting (SC3) conditions are attached. These are non-negotiable.

Consultation with Credit Reference Agencies

A20. The Authority may consult with credit reference agencies to assess your creditworthiness. This information may be used to support and influence decisions to enter into a contract with you.

Section B – Key Activities

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

Stage	Date and Time	Initiated By	Submit to:
Invitation to Bidders Conference ¹		NOT USED	N/A
Date for Confirmation of attendance at Bidders Conference ¹		NOT USED	N/A
Final Date for Clarification Questions/Requests for additional information	17/07/15	Tenderers	
Final Date for Requests for Extension	14/07/15	Tenderers	
The Authority issues Answers and Clarifications	19/07/15	The Authority	All Tenderers ³
Tender Return	24/07/15 by 10:00	Tenderers	The Tender Board, using DEFFORM 28
Tender Evaluation	31/08/15	The Authority	N/A
Negotiations ⁴		NOT USED	N/A
Reverse Auction		NOT USED	N/A
Trials/Testing		NOT USED	N/A

Notes

1. The Tenderer must make requests for an extension in writing (email is sufficient) to the above named contact, by the date and time shown. Any extension is at the sole discretion of the Authority and if granted, will be granted to all Tenderers.
2. The Authority will automatically copy questions and answers to all Tenderers, removing the names of those who have raised the questions. If you do not want your question disclosed you must inform the Authority of this and the reason why when submitting the question. The Authority may choose to discuss with you whether it is appropriate to disclose the question or response, or both, to the bidders. If the Authority decides to disclose, you will be given the opportunity to withdraw your question. Where a question reveals a piece of information that could significantly impact the Tenderers responses this may result in an extension of the Tender return date.
3. Negotiations are only permitted under the Negotiated procedures, unless the procurement is exempt from advertising under the Public Contracts Regulations 2015 or Defence and Security Public Contracts Regulations 2011.

Section C – Instructions on Preparing Tenders

Tenders for Selected Contractor Deliverables

C1. You must Tender for all the Contractor Deliverables listed in the attached Schedule of Requirements. The Authority reserves the right to reject your Tender where you have not tendered for all of the Contractor Deliverables.

Construction of Tenders

C2. Your Tender must be written in English, using Arial font size 11. Prices must be in £GBP. Prices must be Firm Price and price breakdowns must be included in the Tender.

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

Validity

C4. In accordance with F3 your Tender must be valid/open for acceptance for one hundred and eighty (180) calendar days from the Tender return date. If successful, your Tender must be open for acceptance for a further thirty (30) calendar days.

Variant Bids

C5. You may only submit a variant bid where the Contract Notice states that variant bids will be considered (or where the requirement is exempt from the EU Regulations). A variant bid is a Tender that offers an alternative approach to, or method of, meeting the Authority's requirements as set out in the ITT Documentation. The Authority will give full and careful consideration to any permitted variant bids received. Any variant bid should, as far as possible, meet the attached Conditions of Tendering and Contract Conditions.

C6. Where variant bids are permitted, and you submit a variant bid, you are required to submit two Tenders one against the Statement of Requirement and one variant bid. The standard Tender must meet the 'minimum' tender evaluation criteria as set out in Section D (Tender Evaluation), and must be submitted in accordance with the Conditions of Tendering. Variant bids will be evaluated in accordance with the Tender evaluation criteria as set out in Section D (Tender Evaluation) and must be submitted in accordance with the Conditions of Tendering.

C7. Any Tender made subject to additional or alternative Contract Conditions alone is not a variant bid. Where the tender evaluation has a pass / fail for the Contract Conditions the Authority may reject the Tender on the grounds of such additional or alternative Contract Conditions.

Section D – Tender Evaluation

D.1 This section details how your Tender will be evaluated, the tools used to evaluate the Tender and the evaluation criteria.

The Tender Evaluation will be on the basis of:

Most Economically Advantageous Tender (MEAT)

MEAT Ratio 70% Technical / 30% Price

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

This Tender will be evaluated using the MEAT method. This is a comparative score and the scoring method is worked out using the ratio and calculation above. The optimum is the highest technical score and lowest price, this together would get the highest total score. If you had the highest technical score but your price was double than that of the lowest priced compliant Tender, this would receive a lower total score.

Mandatory Criteria:				
Minimum Technical Requirements met		60/100		
Criterion Scores:				
Each individual Technical criterion will be evaluated against the following scoring mechanism:				
High Confidence 100%	<ul style="list-style-type: none">Described a solution that meets all and more the needs of the Authority, is compliant with all standards and recognises all of the issues involved.Demonstrated strong evidence that all aspects of their solution are feasible and robust.			
Good Confidence 70%	<ul style="list-style-type: none">Described a solution that meets the needs of the Authority, is compliant with all standards and recognises all of the issues involved.Demonstrated evidence that all aspects of their solution are feasible and robust.			
Low Confidence 30%	<ul style="list-style-type: none">Described a solution that meets most of the needs of the Authority, or it is not clear if it is compliant with all standards and recognises all of the issues involved .Demonstrated evidence that most aspects of their solution are feasible and robust.			
Concerns 0%	<ul style="list-style-type: none">Described a solution that does not meet the needs of the Authority, is not compliant with all standards or does not recognise all of the issues involved.Demonstrated evidence that does not indicate that their solution is feasible and robust.			
Technical Criteria		Score	Weighting	Minimum expected evidence to be considered acceptable
Training				See Para D.5.7
Support to G1 Community Support				
Support to BFG Service Director				
Licence Agreement				
Professional Indemnity Insurance				

TENDER EVALUATION PROCESS

D.2 The tender evaluation process is split into 3 parts as outlined below.

Part	Name	Evaluation	Result
1	Commercial Evaluation	<p>The Commercial Evaluation will check to ensure all Forms of Response have been provided as defined within para D.7 below and are acceptable and there is confirmation within the tender that the Authority's Terms and Conditions are complied with and accepted, whilst reviewing any qualifications submitted by Tenderers.</p> <p>This will be judged for 'tender compliancy' issue (i.e. Pass/Fail). A bidder's tender will be deemed 'non-compliant' and therefore excluded from the remainder of the evaluation process if marked as a 'Fail' on this aspect.</p> <p>A nil response to any of the Forms of Response requirements will result in automatic disqualification from the evaluation process, unless through clarification a reasonable explanation is provided.</p>	Pass/Fail
2	Quality/Technical Evaluation	The qualitative evaluation by the Authority's Subject Matter Experts will be undertaken independently without sight of pricing information. Qualitative includes, but is not restricted to, technical, delivery and quality aspects and shall be conducted by scoring the Technical Requirement of Response (see para D.5 below) provided by Tenderers within the Technical volume. The evaluation Methodology for the Quality/technical is detailed in para D.5.2	A mark that comprises 70% of overall score.
3	Price Evaluation	Assessment conducted by the Authority to ensure a fair and reasonable overall price has been submitted by the Tenderer. The evaluation Methodology for the Price is detailed in para D.6.3	A mark that comprises 30% of overall score.

D.3 Not Used

D.4 Not Used

D.5 Evaluation of Quality/Technical

D.5.1 70 'points' (referred to as Total Technical Points) will be allocated to the bidder who achieves the highest quality/technical mark (referred to as the Highest Tendered Technical Mark). Subsequent points will then be awarded to the remaining bidders based on their technical mark (referred to as the Tendered Technical Mark) as a percentage of the Highest Tendered Technical Mark. This calculation is subsequently converted to a Technical Evaluation Score to reflect that this carries 70% of the total score.

D.5.2 The quality/technical evaluation will assess the technical effectiveness of each bid. The evaluators will allocate a score against each of the Requirements of Response (ROR) based upon the evaluator's individual assessment. The RORs have been structured using the following generic format:

- Aim - to define the purpose of the question.
- Background - rationale for the question.
- Confidence Characteristics - as appropriate to the question, the evaluators will assess the evidence provided to assign a level of confidence in accordance with the characteristics detailed in the scoring guidance table at paragraph D.5.5
- Evidence Required - Evidence the Tenderer needs to provide to meet the confidence characteristics.

D.5.3 Marking against each of the RORs shall be carried out in accordance with Section D of this Deform 47.

D.5.4 The Technical Evaluation Team shall consist of MoD subject matter experts, who will each conduct a separate technical evaluation in isolation. Following the individual assessments, the Technical Evaluation Team will be convened for the overall consensus scores to be agreed and allocated to each ROR response. These agreed scores will then be adjusted by the weighed score detailed below to represent a weighted 'effectiveness' score.

D.5.5 The evidence requirements and weightings for the Quality Technical evaluation are as follows:

ROR No.	Subject	Weight
1	<p><u>TRAINING</u></p> <p>Aim: To select a Supplier who will deliver training courses, developmental opportunities and supervision to HQ BFG LEC when required.</p> <p>Background: Training is required to promote and develop high standards of practice which will enable HQ BFG LEC to deliver a high quality family support service.</p> <p>Confidence Characteristics – Provide in your response:</p> <ul style="list-style-type: none"> • An understanding of the need for developmental training. • Details of experience in the delivery of developmental training. <p>Evidence Required – Demonstrate in your response:</p> <ul style="list-style-type: none"> • What resources and processes your organisation has in place to enable it to deliver this requirement. • A clear solution as to how this requirement will be delivered in accordance with the Statement of Requirement (SOR). 	20

2	<p><u>SUPPORT TO HQ BFG G1 COMMUNITY SUPPORT BRANCH</u></p> <p>Aim: To select a Supplier who will be able to provide ongoing professional advice, information support and guidance to the HG BFG G1 Community Support from Monday-Friday and between the hours of 09:00-17.00 GMT.</p> <p>Background: HQ BFG G1 Community Support branch will oversee the service to ensure its delivery is in accordance with HQ BFG Policy and procedures.</p> <p>Confidence Characteristics – Provide in your response:</p> <ul style="list-style-type: none"> • Details of a robust process that will ensure delivery of this requirement. <p>Evidence Required – Demonstrate in your response:</p> <ul style="list-style-type: none"> • The resources and processes your organisation has in place that will enable it to deliver this requirement. • A clear solution as to how this requirement will be delivered in accordance with the Statement of Requirement (SOR). 	20
3	<p><u>SUPPORT TO BFG SERVICE DIRECTOR</u></p> <p>Aim: To select a Supplier who will be able to provide a dedicated Senior Manager to offer ongoing professional advice, information, support and guidance to the Locally Employed Civilian (LEC) Service Director from Monday-Friday and between the hours of 09:00-17:00 GMT.</p> <p>Background: To enable the Service Director to ensure that staff and volunteers meet the required standards and deliver a quality service which is comparable to the one that the supplier offers in the UK and in accordance with the geographical area outlined in the Statement of Requirement (SOR).</p> <p>Confidence Characteristics – Provide in your response:</p> <ul style="list-style-type: none"> • An understanding that this service will be delivered by a LEC. • An understanding of this requirement and the geographical area that it covers. • Experience of providing this service within a military environment. • Details of a robust process that will ensure delivery of this requirement. <p>Evidence Required – Demonstrate in your response:</p> <ul style="list-style-type: none"> • The resources and processes your organisation has in place that will enable it to deliver this requirement. • A clear solution as to how this requirement will be delivered in accordance with the Statement of Requirement (SOR). 	40

4	<p><u>LICENCE AGREEMENT</u></p> <p>Aim: To select a Supplier who will enable HQ BFG to deliver the service under the Supplier's name in the geographical area outlined in the Statement of Requirement (SOR).</p> <p>Background: Service users must be assured of the credibility of the service provider and that, for confidentiality purposes, it is not considered to be part of the Military Chain of Command (CoC).</p> <p>Confidence Characteristics – Provide in your response:</p> <ul style="list-style-type: none"> An understanding of the need for this requirement. <p>Evidence Required – Demonstrate in your response:</p> <ul style="list-style-type: none"> A willingness for the service to be delivered under your organisation's name in the geographical area outlined in the Statement of Requirement (SOR). 	10
5	<p><u>PROFESSIONAL INDEMNITY INSURANCE</u></p> <p>Aim: To select a Supplier who will hold a valid Professional Indemnity Insurance policy at all times.</p> <p>Background: HQ BFG requires this to ensure that all training, supervision and client services are delivered in accordance with the Contractor's fully approved service specifications.</p> <p>Confidence Characteristics – Provide in your response:</p> <ul style="list-style-type: none"> An understanding of the need for this requirement, and A commitment to ensuring that such a policy is maintained by your organisation throughout the period of service delivery. <p>Evidence Required:</p> <ul style="list-style-type: none"> That your organisation currently holds a valid Professional Indemnity Insurance policy. 	10

Example:

ROR No	Subject	Weighed Score	Measure/ weighting	Mark
01	Training	70%	20	14
02	Support to G1 Community Support	70%	20	14
03	Support to BFG Service Director	100%	40	40
04	Licence Agreement	30%	10	03
05	Professional Indemnity Insurance	100%	10	10
				81.0

D.5.6 Not used.

D.5.7 Tenderers are required to reach a total technical mark of at least 60; referred to as 'minimum technical threshold'.

D.5.8 Failure to achieve the minimum technical threshold at the consensus marking round may render the tender non-compliant and the tender may not be considered further.

Evaluation of Price

D.6.1 30 'points' (Referred to as Total Price Points) will be allocated to the bidder that has passed evaluation parts 1 and 2, and who submits the lowest total price (Referred to as Lowest Tendered Price) in accordance with the pricing construct at D9 of this ITT. Subsequent points will then be awarded to the remaining bidders who have passed evaluation parts 1 and 2 based on their total price (Referred to as Tendered Price) as a percentage of the Lowest Tendered Price. This calculation is subsequently converted to a Price Evaluation Score to reflect that this carries 30% of the total score.

D.6.2 Bidders are required to read and fully understand this methodology. Should a bidder require any further clarification, they are requested to contact the POC at the letter heading in the first instance prior to submission of their bid.

D.6.3 The price for evaluation purposes shall consist of the price submitted at Schedule 2 of this ITT.

Commercial Evaluation

D.7 The requirements of the Commercial Evaluation are as follows:

ROR No	Subject - Commercial	Weight
1	A signed completed DEFFORM 47 Offer - Tender Certificate	Pass or Fail
2	A statement within the ITT submission that the Terms and Conditions of Contract are accepted by the Tenderer	Pass or Fail
3	A completed response to the Commercial Questions as follows:	
	Firm Prices for the services details at Schedule 2 of this ITT. Including option years.	Pass or Fail
	Copies of all relevant insurance documents (i.e. Public, employers and liability etc)	Pass or Fail
	Acceptance of Key performance Indicators	Pass or Fail
	Has the Tenderer accepted the validity of their offer of at least 180 calendar days from Tender return date.	Pass or Fail
	Has the Tenderer identified any IPR and provided assurance for the proposed contract	Pass or Fail
	Has the Tenderer identified any element of work as part of the Contract that will be sub-contracted	Pass or Fail

Non Competition Value for Money Analysis

D.8 In the event that the Authority receives only one Tender, the Authority reserves the right to consult the MoD Cost Assurance and Analysis Team based in the UK in order to conduct an independent Value for Money Assessment.

MEAT Evaluation worked Example

D.9 Below is a MEAT evaluation example¹ in order to illustrate how the percentage split of overall marks will be operated:

The Technical Evaluation Score for this example is worked out using the following calculation.

Technical Evaluation Score = Total Technical Points x (Tendered Technical Mark ÷ Highest Tendered Technical Mark)

$$= 70 \times (72 \div 81)^2$$

$$= 70 \times 0.88 = 62.22$$

Therefore, Tenderer B achieves the maximum score of 70 and Tenderer A achieves a score of 62.22 on the Technical Evaluation.

The Price Evaluation Score for this example is worked out using the following calculation.

Price Evaluation Score = Total Price Points x (Lowest Commercially and Technically Compliant Tendered Price ÷ Tendered Price)

$$= 30 \times (37,000 \div 42,000)$$

$$= 30 \times 0.88 = 26.42$$

Total Evaluation Score for this example is worked out using the following calculation.

Technical Evaluation Score + Price Evaluation Score

$$= 62.22 + 26.42 = 88.64$$

$$= 70 + 30 = 100$$

¹ Example for illustrative purposes only

² Where Tenderer B has the highest score of 81 and Tenderer A has the lower score of 72

Section E – Instructions on Submitting Tenders

Submission of your Tender

- E1. Tenders must be sent to the Tender Board by the date and time stated in the covering letter to this DEFFORM 47. You must provide 2 unpriced paper copies and 1 unpriced CD and 2 priced paper copies and 1 priced CD of your Tender. You must not email electronic copies until after the Tender Board has taken place. If you email your Tender before the Tender Board date, your Tender may be excluded from the competition.
- E2. Please ensure you include the electronic copies of the priced and unpriced Tender with the associated paper copies only. You must label CDs containing electronic copies of the Tender with "Includes Prices" or "Unpriced". The electronic copies of the Tenders must be compatible with Microsoft Office Word 2003 and other MS Office 2003 applications. If you submit pdf files, password protect or encrypt any information on CDs containing prices you must supply the password so that the Authority can undertake a pricing evaluation.
- E3. You must complete and include DEFFORM 47 Annex A (Offer) (excluding Appendix 1) with your Tender. Where you select 'Yes' to any questions you must attach the relevant information.
- E4. You must include the original signed DEFFORM 47 Annex A (Offer) with one paper copy of your priced Tender.
- E5. You must submit your paper and CD copies in a sealed envelope or box. For health and safety reasons, no individual envelope or box should weigh more than 11 kilos.
- E6. You must attach the enclosed Tender Return Label (DEFFORM 28) to the outer packaging of each envelope or box that contains your Tender.
- E7. If you intend to hand deliver your Tender you must inform the named Commercial Officer of your intention and seek further delivery instructions. Failure to do so may result in your Tender being refused and / or returned.
- E8. You must ensure you include all relevant information in your Tender. The Authority can only evaluate information that you include in your Tender.

Samples

- ~~E9. Where samples are required for evaluation purposes you must be prepared to submit them without charge. You should clearly label samples with the following particulars:~~
- ~~a. your name and address;~~
 - ~~b. the Tender Reference Number and due date for return of the Tender; and~~
 - ~~c. the Description and Item Number as shown in the Schedule of Requirements.~~
- ~~E10. You should send any samples to the named Commercial Officer after the Tender return date.~~
- ~~E11. The Authority may retain all samples for twelve (12) months from the Tender return date. After this period, the Authority will destroy the samples unless you specifically state you require their return. The Authority may keep samples associated with a successful Tender indefinitely.~~
- ~~E12. Samples that are consumed will not be returned.~~

Section F – Conditions of Tendering

F1. The issue of ITT Documentation is not a commitment by the Authority to place a contract as a result of this competition or at a later stage. Any expenditure, work or effort undertaken prior to an offer of contract and acceptance of that, is a matter solely for your commercial judgement. The Authority reserves the right to:

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

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

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

Conforming to the Law

F4. You must comply with the UK competition Act 1998, the UK Bribery Act 2010, applicable EU and UK legislation and any equivalent legislation in a third state.

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

Bid Rigging and Other Illegal Practices

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

Defence Regulatory Reporting Cell Hotline 0800 161 3665 (UK) or
+44 1371 85 4881 (Overseas)

Conflicts of Interest

F7. You must notify the Authority immediately of any Conflicts of Interest (COI) that have arisen or that arise at any point prior to contract award decision.

F8. Where there is an existing or potential Conflict of Interest (COI) you must include a proposed Compliance Regime in your Tender. As a minimum this must include:

- a. manner of operation and management;
- b. roles and responsibilities;
- c. standards for integrity and fair dealing;
- d. levels of access to and protection of competitors sensitive information and Government Furnished Information;
- e. confidentiality / non-disclosure agreements (e.g. DEFFORM 702);
- f. the Authority's rights of audit; and
- g. physical and managerial separation.

Should your Tender be accepted your proposed Compliance Regime will become part of the Contract Conditions and shall be legally binding.

Government Furnished Assets

F9. 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 05-99. If unsuccessful in this competition, you must seek disposal instructions for that GFA from the named Commercial Officer.

Standstill Period

F10. The Authority is obliged under certain circumstances to allow a space of ten (10) calendar days between the date of dispatch of its notice to Tenderers before entering into a contract, known as the standstill period. This period is to give unsuccessful Tenderers an opportunity to make a legal challenge before the contract is entered into if there has been, or it is alleged that there has been, a breach of the Regulations. The standstill period ends at midnight at the end of the 10th day after the date the DEFFORM 158 is sent. Where this is not a working day, it extends to midnight of the next working day.

Publicity Announcement

F11. The Authority will publish notification of the contract and may publish contract documents under the FOI Act except where publishing such information would hinder law enforcement; would otherwise be contrary to the public interest; would prejudice the legitimate commercial interest of any person, or might prejudice fair competition between suppliers. You should complete and return DEFFORM 539A as explained in the DEFFORM 47 Annex A and associated Appendix 1.

F12. If you wish to make a similar announcement, you must seek approval from the named Commercial Officer.

F13. Under no circumstances should you confirm to any Third Party the Authority's acceptance of an offer of contract prior to either informing the Authority of your acceptance or the Authority's announcement of the award of contract, whichever occurs first.

Sensitive Information

F14. All Central Government Departments and their Executive Agencies and Non Departmental Public Bodies are subject to control and reporting within Government. In particular, they report to the Cabinet Office and HM Treasury for all expenditure. Further, the Cabinet Office has a cross- governmental role delivering overall Government policy on public procurement, including ensuring value for money and related aspects of good procurement practice.

F15. For these purposes, the Authority may share within Government any of the Contractor's documentation / information (including any that the Contractor considers to be confidential and / or commercially sensitive such as specific bid information) submitted by the Contractor to the Authority during this Procurement. Contractors taking part in this competition must identify any sensitive material in the DEFFORM 539A and consent to these terms as part of the competition process. This allows the

MOD to share information with other Government departments while complying with our obligations to maintain confidentiality.

Remedies for Breach of Contract

F16. If using Standardised Contracting conditions you should be aware of the contractual remedies set out in the Contract Conditions which may apply in the event of a breach of contract by the contractor. Damages for breach of contract are not limited under the contract. However, you should also note that in exercising its rights and remedies under the contract the Authority must act in a reasonable and proportionate manner having regard to the nature and consequences of the breach of contract. If you are unsure about the potential liability under the contract, you should seek advice from the named Commercial Officer.

Reportable Requirements

F17. 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.

F18. This is not a test of your answers but failure to complete this part of the Annex makes your Tender non-compliant.

Ministry of Defence

Tender Ref No:
CB/BFG/0106

Tender Submission Document (Offer)

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

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

Applicable Law					
I agree that any contract resulting from this competition shall be subject to English Law *Where 'No' is selected, Scots Law will apply.					Yes / No*
Total Value of Tender (excluding VAT)					
€					
WORDS					
UK Value Added Tax					
If registered for Value Added Tax purposes, please insert: a. Registration No					
b. Total amount of Value Added Tax payable his Tender 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 Comp	Name	Town / City to be Performed	Contractor Deliverables	Estimated Value	SME Yes / No
Mandatory Declarations (further details are contained in Appendix 1 to DEFFORM 47 Annex A (Offer)):				Tenderer's Declaration	
Is the offer subject to the Authority contracting for all the Contractor Deliverables?				Yes* / No	
Is the offer made subject to a Minimum Order Quantity?				Yes* / No	
Are the Contractor Deliverables subject to Registered Designs or Patents?				Yes* / No	
Are the Contractor Deliverables subject to Foreign Export Control and Security Restrict				Yes* / No	
Are the Contractor Deliverables subject to Overseas Expenditure?				Yes* / No	
Have you complied with all regulations relating to the operation of the collection of custom import duties?				Yes / No	
Have you completed Form 1686 for sub-contracts?				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 Commercially Sensitive Information Form (DEFFORM 539A)?				Yes / No	

If you have not already signed a corporate level DEFFORM 30 have you attached one?	Yes / No		
Have circumstances changed since Supplier Selection Stage? If so have you attached a revised Statement Relating to Good Standing?	Yes* / No		
Do the Contractor Deliverables contain Asbestos, as defined by the control of Asbestos Regulations 2012?	Yes* / No		
Do the Contractor Deliverables contain hazardous items, materials or substances?	Yes* / No		
Do the Contractor Deliverables (including Packaging) use Substances that deplete the Ozone Layer, as defined in Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000? http://ozone.unep.org/new_site/en/montreal_protocol.php	Yes* / No		
Are you able to support the objectives of Reservist and other supplier support to the Armed Forces?	Yes* / No		
Have you attached The Bank / Parent Company Guarantee?	Yes* No / Not Required		
Have you complied with the requirements of the Military Aviation Authority Regulatory Articles?	Yes/No Not Required		
*If selecting Yes to any of the above questions, please attach the information detailed in Appendix 1 to DEFFORM 47 Annex A (Offer).			
Tenderer's Declaration of Compliance with Competition Law			
<p>We certify that the offer made is intended to be genuinely competitive. No aspect of the price has been fixed or adjusted by any arrangement with any Third Party. Arrangement in this context includes any transaction, or agreement, private or open, or collusion, formal or informal, and whether or not legally binding. In particular:</p> <ul style="list-style-type: none"> a. the offered price has not been divulged to any Third Party, b. no arrangement has been made with any Third Party that they should refrain from tendering, c. no arrangement with any Third Party has been made to the effect that we will refrain from bidding on a future occasion, d. no discussion with any Third Party has taken place concerning the details of either's proposed price, and e. no arrangement has been made with any Third Party otherwise to limit genuine competition. <p>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.</p> <p>We understand that any misrepresentations may also be subject of criminal investigation or used as the basis for civil action.</p> <p>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 DEFFORM 539A.</p>			
Dated this..... day of Year			
<table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> Signature: (Must be original) </td> <td style="width: 50%; vertical-align: top;"> In the capacity of (State official position e.g. Director, Manager, Secretary etc.) </td> </tr> </table>		Signature: (Must be original)	In the capacity of (State official position e.g. Director, Manager, Secretary etc.)
Signature: (Must be original)	In the capacity of (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:		

Information on Mandatory Declarations

Part Tender

1. Under Condition of Tendering F1, the Authority reserves the right to order some or part of your Tender. If your offer is subject to the Authority contracting for all the Contractor Deliverables select 'Yes' and provide further details in your Tender.

Minimum Order Quantities

2. Where your offer is subject to minimum order quantities select 'Yes' and provide further details in your Tender.

Notification of Inventions etc.

3. Where the Contractor Deliverables are subject to any Registered intellectual Property Rights select 'Yes'.

4. You must clearly state in your Tender any Contractor Deliverable to be produced under any resultant contract that is, or is likely to be, the subject of a Patent, a Registered Design right or an application for either, or an unregistered design right, owned by either yourself or a Third Party. This includes anything of this nature affecting the performance of any resultant contract or subsequent use of any Contractor Deliverable by the Authority. You must specifically draw attention to:

- a. any Patent or Registered Design (or application for either) or unregistered design right you own or control which is or appears to be relevant to the Contractor Deliverables, the use of which by or on behalf of the Authority may give rise to a claim under Sections 55 or 56 of the Patents Act 1977, or Section 12 of the Registered Designs Act 1949, or Section 240 of the Copyright, Designs and Patents Act 1988;
- b. any allegation made against you, whether by claim or otherwise, of an infringement of an intellectual property right (whether a patent, Registered Design, unregistered design right, copyright or otherwise) or of a breach of confidence, which relates to the performance of any resultant contract or subsequent use by or for the Authority of any Contractor Deliverables;
- c. the nature of any allegation referred to under sub-paragraph 4.b., including any obligation to make payments in respect of the Intellectual Property Right of any confidential information and or;
- d. any action you need to take or the Authority is required to take to deal with the consequences of any allegation referred to under sub-paragraph 4.b.

5. You must, when requested, give the Authority details of every restriction and obligation referred to in paragraph 4. You must also provide, on request, any information required for authorisation to be given under Section 2 of the Defence Contracts Act 1958.

6. If you have previously provided information under paragraphs 4 and 5 you can provide details of the previous notification, updated as necessary to confirm their validity.

Notification of Foreign Export Control Restrictions

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

- a. Whether all or part of any Contractor Deliverables are or will be subject to:
 - (1) a non-UK export licence, authorisation or exemption; or
 - (2) any other related transfer control that restricts or will restrict end use, end user, re-transfer or disclosure.

b. If requested, a summary of every existing, expected or known licence and restriction referred to in paragraph 7.a. This includes any related obligation or restriction and the extent they place an obligation or restriction on the Authority, including:

- (1) the exporting nation and the export licence number, where known;
- (2) the Contractor Deliverables affected;
- (3) the nature of the restriction and obligation;
- (4) the authorised end use and end users;
- (5) any specific restrictions on access by Third Parties, or by individuals based on their nationality, to the Contractor Deliverables; and
- (6) any specific restrictions on re-transfer or re-export to Third Parties of the Contractor Deliverables or anything delivered or used in the performance or fulfilment of them.

c. If requested, you must provide an outline of your mitigation plan to manage performance risks on any resultant contract based on paragraph 7.a.

8. You must use reasonable endeavours to obtain sufficient information from your potential supply chain to enable a full response to paragraphs 7.a and 7.b. If you are unable to obtain adequate information, you must state this in your Tender when responding to paragraph 7.a and 7.b.

9. 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.

10. If you have previously provided information under paragraph 7 you can provide details of the previous notification and confirm the validity.

11. This does not include any Intellectual Property specific restrictions mentioned in paragraph 4.

12. It is the Winning Tenderer(s) responsibility to ensure they comply with any restrictions stated in paragraph 7 during the life of the contract. This includes any restrictions the Authority has explicitly stated / clarified in any ITT documentation.

13. You must notify the named Commercial Office immediately if you are unable for whatever reason to abide by any restriction of the type referred to in paragraph 7.

Overseas Expenditure

14. You must provide details in your Tender of any expenditure outside the UK, including:

- a. Country in which sub-contract is placed / to be placed;
- b. name, division and full postal address of sub-contractor;
- c. value of sub-contract; and
- d. date sub-contract placed / to be placed.

15. Should you propose the supply of Articles of US origin the export of which from the USA are subject to control under the US International Traffic in Arms Regulations (ITAR), you must include details in your Tender. This will allow the Authority to make a decision whether the export can or cannot be made under the auspices of 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

16. Council Regulation (EC) No 150/2003 suspends Custom duties on a range of military weapons and equipment. For the purposes of this competition for any Contractor Deliverables eligible for suspension of import duties and not yet imported into the European Union, you must provide prices excluding **and** including Import Duty.

17. Where the Contractor Deliverables are exempt under Council Regulation (EC) No. 150/2003, the Authority will issue a certificate for those Contractor Deliverables eligible for suspension of import duties.

18. You should note that it is your responsibility to ensure compliance with all regulations relating to the operation of the collection of import duties. This includes but is not limited to obtaining Her Majesty's Revenue and Customs (HMRC) end use relief authorisation.

Sub-contracts Form 1686

19. Form 1686 (also known as Appendix 5) is to be used in all circumstances where contractors wish to place a sub-contract with a contractor where the release of either Reportable OFFICIAL or OFFICIAL-SENSITIVE information is involved. 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. You can find further information in the Security Policy Framework – Contractual Process chapter. You can access a word version of Form 1686 on GOV.UK

at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/367494/Contractual_Process_-_Appendix_5_form.doc.

Small and Medium Enterprises

20. The Authority is committed to supporting the Government's small and medium-sized enterprise (SME) initiative; its aspiration is that 25% of spend, direct and through the supply chain, should go to SMEs by 2015. The MOD uses the EU definition of an SME.

21. 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 at: <http://www.promptpaymentcode.org.uk>

22. Suppliers are also encouraged to work with the Authority to support the wider SME initiative. The link below to the Cabinet Office website provides information on the Government's Crown Representative for SMEs, a link to the definition of an SME and details on the SME initiative. <https://www.gov.uk/government/policies/buying-and-managing-government-goods-and-services-more-efficiently-and-effectively/supporting-pages/making-sure-government-gets-full-value-from-small-and-medium-sized-enterprises>

23. The opportunity also exists for Tenderers to advertise any sub-contract valued at over £10,000 in the MOD Contracts Bulletin and further details can be obtained directly from:

BiP Solutions Ltd

Web address: www.contracts.mod.uk No: 0845 270 7099

Transparency, Freedom of Information and Environmental Information Regulations

24. You should be aware that the contents of any resultant contract may be published in line with government policy set out in the Prime Minister's letter of May 2010

(<https://www.gov.uk/government/policies/improving-the-transparency-and-accountability-of-government-and-its-services>) and the information contained within DEFCON 539

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

26. You should complete the attached Tenderer's Commercially Sensitive Information Form (DEFFORM 539A) explaining which parts of your Tender you consider are commercially sensitive. This includes providing a named individual who may be contacted with regard to FOIA and EIR.

27. 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

28. Tenderers must note that use of the Authority's Purchase to Payment (P2P) system is a mandatory requirement for this contract. You can view information on the P2P system and the methods to connect at www.d2btrade.com. Please feel free to consult the service provider on connectivity options. The Winning Tenderer will be required to sign DEFFORM 30 (Electronic Transaction Agreements) at a corporate level - if you have not done so before - and unconditionally accept DEFCON 5J (Unique Identifiers), DEFCON 129J (The Use of Electronic Business Delivery Form); and DEFCON 522J (Payment under P2P). Where ~~Standardised Contracting 2 (SC2)~~ or Standardised Contracting 3 (SC3) conditions are used, unconditional acceptance of all references to P2P in clause G1 is required. A failure to do so will result in your Tender being non-compliant.

Change of Circumstances

29. Where circumstances have changed with regard to a Statement Relating to Good Standing or you have not previously submitted a Statement Relating to Good Standing select 'Yes' and submit a Statement Relating to Good Standing with your Tender.

Asbestos, Hazardous Items and Depletion of the Ozone Layer

30. The Authority is required to report any items that use asbestos, that are hazardous or where there is an impact on the Ozone. Where any Contractor Deliverables fall into one of these categories select 'Yes' and provide further details in your Tender.

Reservist and other Supplier Support to the Armed Forces

31. The 2010 Strategic Defence and Security review set out what our Armed Forces will look like and outlined the role the Reserve Forces within that Future Force. Reserves will have a greater role, providing both a larger proportion of the force and Defence capabilities in certain specialist areas that are not practical or cost effective to maintain full time.

32. The MoD wishes to have a more sustained and enduring relationship with suppliers, on Reservist and other military personnel objectives, based on mutual benefit. The personnel objectives include

- a. Employment of service leavers
- b. Employment of wounded, injured or sick veterans
- c. Employment of the partners of service personnel
- d. Helping local cadet units
- e. Support to Reservist employees
- f. Encouragement of Reserve service

33. Of particular interest to Defence is the need to have more Reservists employed by reserves supportive employers as described in Chapter 4 of the White Paper, 'Reserves in the Future Force 2020; Valuable and Valued' available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/210470/Cm8655-web_FINAL.pdf

34. The Authority therefore encourages all Tenderers, and their suppliers, to:

- a. consider whether they are able to support these objectives; and, if they are
- b. sign the Corporate Covenant, declaring their support for the Armed Forces community.

35. Guidance on the various ways you can demonstrate your support through the Corporate Covenant is at [The corporate covenant - Detailed guidance - GOV.UK](#).

36. Specific guidance on how you can support the Reserve Forces, what your support means in practice, and what the potential benefits are for you can be found at: www.sabre.mod.uk.

37. Please provide a point of contact for your company on this issue to the Armed Forces Covenant Team at the address below, so that the MOD 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 in the websites.

Email address: covenant-mailbox@mod.uk

Address: Armed Forces Covenant Team
Zone D, 6th Floor, Ministry of Defence,
Main Building, Whitehall, London, SW1A 2HB

38. Where you decide to contribute to meeting the personnel objectives above, you should also report the outcomes of such contributions to the above address so they can be recorded and acknowledged.

39. Paragraphs 31 – 38 above are not a condition of working with the Authority now or in the future, nor will this issue form any part of the tender evaluation, contract award procedure or any resulting contract. However, the Authority very much hopes you will want to provide your support and we are committed to working with you to this end.

Military Aviation Authority (MAA) Requirements

40. There are no MAA Requirements.

Bank or Parent Company Guarantee

41. A Parent Company Guarantee is not required.

DEFFORM28

Not to be used for General
Correspondence with the
Ministry

Affix
Stamp
Here

THE TENDER BOARD
HOCS
BFG Commercial
Catterick Kaserne
Block 5
Detmolder Str. 440
33605 Bielefeld

Tender No: CB/BFG/0106
Due: 10:00am, 24th July 2015

DEFFORM 28BFG

DEFFORM 30 Edn 04/15

THE ELECTRONIC TRANSACTIONS AGREEMENT

Between

And

SECRETARY OF STATE FOR DEFENCE

MINISTRY OF DEFENCE
Electronic Transactions Agreement

THIS AGREEMENT comprises the General Clauses for electronic transactions.

The terms of this Agreement shall govern the conduct and methods of operation between the parties in relation to the electronic exchange of data for the purposes of or associated with the supply of Contractor Deliverables pursuant to those contracts which reference it. Except as otherwise provided in the appended terms, the terms do not apply to the substance of the data transfer. This Agreement shall have the date of and be effective from the date of the last signature hereunder.

AGREED

For and on behalf of:

For and on behalf of:

Secretary of State for Defence

Signature: _____

Signature: _____

Name: _____

Name: _____

Position: _____

Position: _____

Date: _____

Date: _____

Whose Registered Office is at:

Whose Address is:

Agreement reference number:

DEFFORM 30 Edn 04/15
DEFFORM 30
Contents
Electronic Transactions
General Clauses

CLAUSE 1	Definitions
CLAUSE 2	Scope
CLAUSE 3	Security of Data
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CLAUSE 9	Term and Termination
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CLAUSE 14	Virus Control
CLAUSE 15	Limit of Liability
CLAUSE 16	Entire Agreement
 Annex A	 Message Implementation Guidelines (MIGs) and additional requirements and information applicable to this Agreement

1. *Definitions*

- a. In this Agreement, in addition to the definitions in DEFCON 501 (or Schedule 1 of Standardised Contracting Templates 2 (SC2) or 3 (SC3)):
- i. **"Acknowledgement of Receipt"** means the procedure by which, on receipt of a Message, the logical presentation or form are checked, and a corresponding acknowledgement or rejection is sent by the receiver;
 - ii. **"Adopted Protocol"** means the method(s) for the Interchange of Messages between the respective Parties and an intermediary appointed pursuant to Clause 8 for the presentation and structuring of the transmission of Messages as defined in Annex A
 - iii. **"Associated Data"** means that data which accompanies a Message but may not be in the Adopted Protocol; such data may include header information, protective markings, designations, Electronic Signatures, date and time of transmission and of receipt;
 - iv. **"Data"** means all Messages and Associated Data transmitted, received or stored in a digital form;
 - v. **"Data File"** means a single record or collection of data records that are logically related to each other, and are handled as a unit;
 - vi. **"Data Log"** means a complete record of all Data Interchanged representing the Messages and their Associated Data between the parties;
 - vii. **"Purchase to Payment Gateway" or "ePurchasing"** mean the service provided by the party under contract to the Authority to manage the electronic receipt, transmission and translation of messages exchanged between the Authority and its suppliers;
 - viii. **"Electronic Signature"** means anything in electronic or digital form incorporated into or otherwise logically associated with an electronic communication for the purpose of establishing the authenticity of the communication or its integrity, or both;
 - ix. **"Expunge"** means the removal of the information contained in a Message document such that the content of the Message is removed from the system in a manner which precludes its retrieval (but with no obligation in respect of the record of its receipt);
 - x. **"Functional Acknowledgement"** means an acknowledgement Message by the receiving party's computer software application which automatically confirms the receipt of a Message at the moment of receipt;
 - xi. **"Interchange"** means the electronic exchange of Data between the Parties using the Adopted Protocol;

- xii. "**Message**" means Data structured in accordance with the Adopted Protocol and transmitted electronically between the parties including where the context admits any part of such Data.

2. Scope

- a. The Messages to be exchanged under this Agreement are detailed in the Message Implementation Guidelines referred to in Annex A, which also includes guidance on how these should be profiled.
- b. This Agreement shall apply to all Messages passed between the parties using the Adopted Protocol. The parties agree that all such Messages shall be transmitted in accordance with the provisions of this Agreement.
- c. The parties may agree additional or alternative terms to reflect additional or different requirements which they may have for the Interchange of Messages, which terms shall form part of this Agreement.

3. Security of Data

- a. Each of the parties shall:
 - i. ensure as far as reasonably practicable, that Data is properly stored, is not accessible to unauthorised persons, is not altered, lost or destroyed and is capable of being retrieved only by properly authorised persons;
 - ii. subject to the provisions of Sub-Clause 8.a. ensure that, in addition to any security, proprietary and other information disclosure provision contained in the Contract, Messages and Associated Data are maintained in confidence, are not disclosed or transmitted to any unauthorised person and are not used for any purpose other than that communicated by the sending party or permitted by the Contract;
 - iii. protect further transmission to the same degree as the originally transmitted Message and Associated Data when further transmissions of Messages and Associated Data are permitted by the Contract or expressly authorised by the sending party.
- b. The sending party shall ensure that Messages are marked in accordance with the requirements of the Contract. If a further transmission is made pursuant to Sub-Clause 3. a. iii. the sender shall ensure that such markings are repeated in the further transmission.
- c. The parties may apply special protection to Messages by encryption or by other agreed means, and may apply designations to the Messages for protective Interchange, handling and storage procedures. Unless the parties otherwise agree, the party receiving a Message so protected or designated shall use at least the same level of protection and protective procedures for any further transmission of the Message and its Associated Data for all responses to the Message and for all other communications by Interchange or otherwise to any other person relating to the Message.

- d. If either party becomes aware of a security breach or breach of confidence in relation to any Message or in relation to its procedures or systems (including, without limitation, unauthorised access to their systems for generation, authentication, authorisation, processing, transmission, storage, protection and file management of Messages) then it shall immediately inform the other party of such breach. On being informed or becoming aware of a breach the party concerned shall:
 - i. immediately investigate the cause, effect and extent of such breach;
 - ii. report the results of the investigation to the other party;
 - iii. use all reasonable endeavours to rectify the cause of such breach.
- e. Each party shall ensure that the contents of Messages that are sent or received are not inconsistent with the law, the application of which could restrict the content of a Message or limit its use, and shall take all necessary measures to inform without delay the other party if such an inconsistency arises.

4. Authenticity of Messages

- a. Each Message shall identify the sending party and receiving party and its authenticity shall be verified by the means specified in the Adopted Protocol.
- b. The parties agree not to contest the authenticity, admissibility or enforceability of Messages under the provisions of any applicable law relating to whether certain agreements are in writing and signed by the party to be bound thereby. Messages, when printed from electronic files and records established and maintained in the normal course of business will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form.

5. Integrity of Messages

- a. The sending party shall ensure as far as is reasonably practicable that all Messages are complete, accurate and secure against being altered in the course of transmission and, subject to Sub-Clauses 5.b. 5.d. and 15, shall be liable for the direct consequences of any failure to perform its obligations under this Sub-Clause 5.a.
- b. Each party will accord all Messages the same status as would be applicable to a document or to information sent other than by electronic means, unless a Message can be shown to have been corrupted as a result of technical failure on the part of a machine, system or transmission line involved in the process of Interchange.
- c. Upon either party becoming aware that a Message has been corrupted or if any Message is identified as incorrect then that party shall inform the other and the sending party shall re-transmit the Message as soon as practicable with a clear indication that it is a corrected Message. Any liability of the sending party which would otherwise accrue from its failure to comply with the provisions of this Sub-Clause 5.c. shall not accrue if Sub-Clause 5.d. applies.

- d. Notwithstanding Sub-Clauses 5.a. and 5.c. the sending party shall not be liable for the consequences of a corrupted or incorrect transmission or any failure to re-transmit if the error is or should in all the circumstances be reasonably obvious to the receiving party. In such event the receiving party shall immediately notify the sending party thereof.
- e. If the receiving party has reason to believe that a Message is not intended for them they shall notify the sending party and if so requested by the sending party shall, so far as is reasonably possible, Expunge from its system the information contained in such Message.

6. Acknowledgement of Receipt of Messages

- a. Except where the Interchange of Messages takes place solely within ePurchasing, immediately upon receipt of a Message at its receipt computer, the receiving party's receipt computer shall automatically transmit a Functional Acknowledgement in return and additionally the sender may request an Acknowledgement of Receipt.
- b. An Acknowledgement of Receipt is required unless stipulated in the Contract to the contrary.
- c. Where an Acknowledgement of Receipt is required, the receiver of the Message to be acknowledged shall ensure that the acknowledgement or a rejection is sent within the time limit specified in the Contract or in Annex A to this Agreement if applicable or, if no limit is specified, within a reasonable period of time.
- d. Where an Acknowledgement of Receipt is required, if the sender does not receive the Acknowledgement of Receipt or rejection within the time limit applicable, or, if no time limit is specified, within a reasonable time, the sender may, upon giving notice to the receiver, treat the message as having no force or effect.
- e. Acknowledgement in accordance with this clause shall not be deemed to constitute acceptance of any offer contained in any Message. Acceptance of an offer contained in any Message which is intended to create a legally binding obligation shall be in accordance with the provisions of the Contract.
- f. A Message shall be understood to have been received from the sender:
 - i. if transmitted between 09.00 and 17.00 hours on a business day (recipient's time) on receipt by the sender of a Functional Acknowledgement; or
 - ii. if transmitted at any other time, at 09.00 on the first business day (recipient's time) on receipt by the sender of a Functional Acknowledgement; or
 - iii. if the Interchange of Messages takes place solely within ePurchasing, at the moment a Message is completed by pressing the submit button if transmitted between 09.00 and 17.00 hours on a business day (recipient's time) or if transmitted at any other time, at 09.00 on the first business day (recipient's time).

7. Storage of Data

- a. Each party shall maintain a Data Log or shall cause an intermediary to maintain a Data Log recording all Messages and Associated Data as sent and received without modification.
- b. The Data Logs may be maintained as Data Files on computer or by other suitable means provided that a copy of the Data can be readily retrieved and presented in human readable form. Procedures to enable a secure means of archiving Data Logs shall be detailed in the Contract or agreed between the parties.
- c. Each party shall be responsible for making such arrangements as may be necessary for the Data contained in its Data Log to be prepared as a correct record of the Messages and Associated Data as sent or received by that party. In the event that a party has destroyed its Data Log, the other party shall have no obligation to furnish it with any information recorded in its Data Log.
- d. Each party shall ensure that:
 - i. it has appointed an identifiable person responsible for the operation and management of that party's data processing system concerned with the interchange of Messages; and
 - ii. the person responsible for the data processing system concerned with the Interchange of Messages, or such other person as may be agreed by the parties or required by law, shall certify that the Data Log and any reproduction made from it is correct and complete.

8. Intermediaries

- a. Subject to Clause 15 if either party uses the services of an intermediary to transmit, log, store or process Messages, that party shall be responsible for any acts, failures or omissions by that intermediary in its provision of the said services as though they were his own acts, failures or omissions. The Authority shall be liable as between the Authority and the Contractor for any acts, failures or omissions of ePurchasing in its provision of the services of an intermediary as though they were the acts, failures or omissions of the Authority.
- b. Any party using an intermediary shall ensure that it is a contractual responsibility of the intermediary that no change in the substantive data content of the Messages to be transmitted is made and that such Messages are not disclosed to any unauthorised person.

9. Term and Termination

- a. This Agreement shall take effect as of the date of last signature and shall remain in full force and effect until terminated by either party upon giving one month's notice to the other. Any termination of this Agreement shall not affect contracts that call it up by reference prior to that termination.

- b. Notwithstanding termination for any reason, Clauses 3, 7 and 8 shall survive termination of this Agreement.
- c. Termination of this Agreement shall not affect any action required to complete or implement Messages which are sent prior to such termination.

10. Interruption of Service

- a. The parties acknowledge that service may be interrupted at times during the course of this Agreement. In such circumstances, the parties shall immediately consult each other on the use of alternative forms of communication to be used, including facsimile, telephone or paper. Any alternative forms of communication shall not be controlled by this Agreement.
- b. Applicable only in the absence of a relevant clause in the Contract:
 - i. Subject to Sub-Clause 10. a., a party shall not be deemed to be in breach of this Agreement by reason of any delay in performance, or non-performance, of any of its obligations hereunder to the extent that such delay or non-performance is due to any interruption of service or incident of Force Majeure as described in Sub-Clause 10.b.iii. below, of which he has notified the other party without delay
 - ii. The time for performance of that obligation shall then be extended accordingly. Sub-Clause 10. b. i. shall not operate so as to relieve liability for any matter which is a breach of Clause 3 of this Agreement
 - iii. For the purposes of this Agreement, Force Majeure means, in relation to either party, any circumstances beyond the reasonable control of that party.

11. Invalidity and Severability

In the event of a conflict between any provision of this Agreement and any law, regulation or decree affecting this Agreement, the provisions of this Agreement so affected shall be regarded as null and void or shall, where practicable, be curtailed and limited to the extent necessary to bring it within the requirements of such law, regulation or decree but otherwise it shall not render null and void other provisions of this Agreement.

12. Notices

The provisions of DEFCON 526 (or Condition H3 if you are using SC2 / SC3) shall apply.

13. Precedence

In the event of any conflict between the terms of this Agreement and the Contract, then the terms of the Contract shall prevail in relation to the substance of the Messages in connection with the Contract.

14. Virus Control

Each party and its intermediary (if any) shall operate at all times a virus control check for all Interchange of Messages.

15. Limit of Liability

- a. Each party agrees that, in relation to any claim, or series of connected claims, including claims for negligence but excluding claims resulting from wilful misconduct, arising from any delay or omission or error in the electronic transmission or receipt of any message pursuant to this Agreement, the liability of either party to the other shall be limited to £10,000 (exclusive of VAT), or where the Contract provides otherwise, to such other amount as is specified in the Contract.
- b. For the avoidance of doubt, liability in relation to any claim arising under the Contract shall be determined in accordance with the Contract.
- c. In the event that a delay, omission or error as referred to in Clause 15a occurs, which causes a delay in the performance of an obligation by either party under the Contract, the period for the performance of that obligation by the affected party shall be extended by a period of time equal to the period of any such delay, omission or error.

16. Entire Agreement

This Agreement, including Annex A and any documents expressly referred to in this Agreement, represents the entire agreement between the parties and supersedes all other agreements oral or written, and all other communications between the parties relating to the subject matter hereof provided that nothing in this Clause shall exclude any liability for fraudulent misrepresentation.

Appendix 1 to ANNEX B to DEFFORM 30

Message Implementation Guidelines (MIGs)

The current and applicable MIG as approved by the MOD within this agreement can be viewed on the D2BTrade Website: <http://www.d2btrade.com>