



Defence
Infrastructure
Organisation

Call-Off Schedule 14

Performance Management

Built Estate

REF: RM6089

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CALL-OFF SCHEDULE 14

PERFORMANCE MANAGEMENT

1. PERFORMANCE MANAGEMENT MECHANISM

1.1 The Performance Management Mechanism is described in Figure 14.1. The Supplier's declared Fixed Profit and Variable Profit (as per the Order Form) is to be paid subject to this Performance Management Mechanism. The elements are as follows:

1.1.1 Performance Measures are grouped into Categories.

- (a) Each Category has a weighting, which sets out the percentage of the total Fixed Profit and total Variable Profit (the Credits) which are to be paid per performance in that Category.
- (b) Within a Category, each Performance Measure has a weighting, which sets out the Credits which are to be paid per performance of that Performance Measure.

1.1.2 Achieving or exceeding the Acceptable Level of Performance (the "ALP") for a given Performance Measure will result in payment of the Fixed Profit that is due for achievement of that Performance Measure.

1.1.3 Achieving or exceeding the Target level of performance for a given Performance Measure will result in payment of the Variable Profit that is due for achievement of that Performance Measure.

1.1.4 Performance above the ALP and below the Target performance level will result in payment of part of the Variable Profit on a pro-rated basis per the Performance Calculator (as at Annex A), providing that the ALP is achieved in every Establishment.

1.2 The Performance Credit Model, at Part A of this Schedule, sets out the Categories, Weights, Performance Measures and performance levels (ALPs and Targets) to be used within the Performance Management Mechanism.

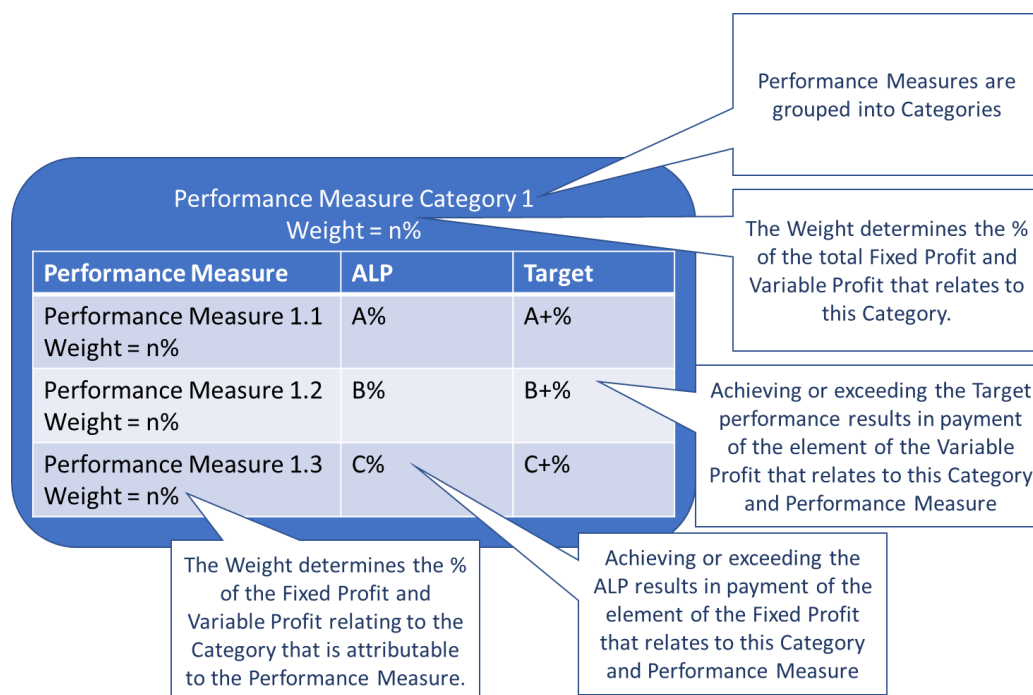


FIGURE 14.1. PERFORMANCE MANAGEMENT MECHANISM.

2. MEASUREMENT

- 2.1 The Supplier shall always from the In-Service Date provide the Deliverables to meet or exceed the ALP for each Performance Measure.
- 2.2 The Supplier shall measure and record performance levels for each of the Performance Measures, and send Performance Monitoring Reports to the Buyer that detail the level of service performance which was achieved by the Supplier, in accordance with the provisions of Part B (Performance Monitoring) of this Schedule.
- 2.3 The Buyer shall pay Credits where the Supplier's performance in a Service Period, achieves or exceeds an ALP up to the Target, in accordance with the Performance Management Mechanism. For the avoidance of doubt, no further Credit will be paid for performance achieved that exceeds the Target.
- 2.4 The Supplier acknowledges that any Performance Failure shall entitle the Buyer to the rights set out in this Schedule.
- 2.5 The Supplier acknowledges the withholding of any or all the Fixed or Variable Profit is a price adjustment and not an estimate of the Loss that may be suffered by the Buyer because of the Supplier's failure to meet any Performance Measure.
- 2.6 The rights set out in this Schedule shall be the Buyer's exclusive financial remedy for a Performance Failure except where:
 - 2.6.1. the Performance Failure:
 - (a) has arisen due to a Prohibited Act or wilful Default by the Supplier;
 - (b) results in the corruption or loss of any Government Data; and/or

(c) results in the Buyer being required to make a compensation payment to one or more third parties; and/or

2.6.2. a Persistent Performance Failure occurs and/or the Buyer is otherwise entitled to or does terminate this Contract.

2.7 Not more than once in each Contract Year, either Party may, on giving the other Party at least three (3) Months' notice, propose additions or changes to the Performance Measure Categories, Weights, Performance Measures, ALPs and Targets – the "Performance Credit Model". Such proposed changes shall explain the business case for the change and shall follow the Change process set out in Call-Off Schedule 15 (Contract Management).

2.8 At the Buyer's absolute discretion, a Performance Failure relating to one or more Performance Measure may be disregarded in exceptional circumstances. Such circumstances may include, for example, but not be limited to:

2.8.1 the effect that a declaration of a civil emergency has on the Supplier's ability to provide the Deliverables;

2.8.2 an agreed and time bound instance of extreme weather conditions that make the achievement of required performance levels unachievable.

3. HONEYMOON PERIOD

3.1 During the first two Service Periods of this Contract – the "Honeymoon Period":

3.1.1 the Supplier shall report on its performance and both Parties shall operate the management processes and cycle of the Performance Management Mechanism, but

3.1.2 the Buyer shall pay all Credits regardless of any Performance Failures.

3.2 A Performance Failure in the first Service Period after the Honeymoon Period, of a Performance Measure that was measured as below ALP during the Honeymoon Period, shall be treated as a Persistent Performance Failure.

4. CREDITS

4.1 The Buyer shall use the Performance Monitoring Reports as agreed with the Supplier to verify the calculation and accuracy of the Credits, if any, applicable to each Service Period.

4.2 The Buyer shall pay the value of any Credits in accordance with Call-Off Schedule 5 (Pricing).

5. PERFORMANCE FAILURE PROCESS

5.1 The rights set out in this Schedule are in addition to the Buyer's other rights in the Contract in relation to any Default.

5.2 If the level of performance of the Supplier:

5.2.1 is likely to or fails to meet any ALP; or

- 5.2.2 is likely to cause or causes a Persistent Performance Failure to occur,
 - the Supplier shall immediately notify the Buyer in writing and the Buyer, in its absolute discretion and without limiting any other of its rights, may:
- 5.2.3 require the Supplier to immediately take all preventative and/or remedial action that is reasonable to mitigate the impact on the Buyer and to rectify or prevent a Persistent Performance Failure from taking place or recurring;
- 5.2.4 instruct the Supplier to comply with the Rectification Plan Process as set out in Core Terms clause 10.4.3 (Rectification Plan Process);
- 5.3 If in the Buyer's reasonable opinion Deliverables have not been delivered in accordance with this Contract, then a Performance Failure will be deemed to have occurred and:
 - 5.3.1 A Recompense Request will be generated to recover the associated direct costs; and
 - 5.3.2 The Buyer will consider if a Rectification Plan is needed; and
 - 5.3.3 If an agreed Rectification Plan is in place and is being delivered to the satisfaction of the Buyer, then the Buyer shall pay the Fixed Profit for the related Performance Measure for that Service Period.
- 5.4 If it is agreed by the Buyer that Deliverables cannot be delivered in the Service Period in accordance with this Contract, but could be delivered in the next Service Period, then:
 - 5.4.1 The associated direct costs – the part of the Baseline Monthly Payment that applies to those Deliverables - will be withheld;
 - 5.4.2 The Buyer will consider if a Rectification Plan is needed;
 - 5.4.3 If an agreed Rectification Plan is in place and is being delivered to the satisfaction of the Buyer, then the Buyer shall pay the Fixed Profit for the related Performance Measure for that Service Period.
 - 5.4.4 The Buyer and Supplier shall agree a revised due date when the Deliverables are to be delivered; and:
 - (a) When the Deliverables are then delivered to the revised due date, the withheld costs will be paid; or
 - (b) If the Deliverables are delivered later than the revised due date, this will constitute a Persistent Performance Failure.

6. PERSISTENT PERFORMANCE FAILURE

- 6.1 Performance below the ALP for any Performance Measure that persists for more than one Service Period, unless an agreed Rectification Plan is in place and being enacted, is considered a Persistent Performance Failure.
- 6.2 The result of a Persistent Performance Failure is that a range of remedies shall be available to the Buyer, and it is intended that they will be used progressively to encourage speedy resolution. The remedies are as follows:
 - 6.2.1 No Credits are paid or accrued for Fixed or Variable Profit for the Performance Measure in question;

6.2.2 No Credits are paid or accrued for Fixed or Variable Profit for the Performance Measure Category of which the Performance Measure in question is part;

6.2.3 A proportion of the Overhead may be withheld;

6.2.4 The Buyer shall be entitled to invoice the Supplier for reasonable costs incurred, including a sum equal to the Charges due for the Deliverables that are not being delivered, which would otherwise have been due to the Supplier in respect of that Service Period ("Compensation for Persistent Performance Failure").

6.2.5 The operation of this paragraph 6 shall be without prejudice to the right of the Buyer to terminate this Contract and/or to claim damages from the Supplier for material Default.

7. BUYER REMEDIES FOR DEFAULT

7.1 Without prejudice to any other right or remedy of the Buyer howsoever arising, if the Supplier commits any Default of this Contract then the Buyer may (whether or not any part of the Deliverables have been Delivered) do any of the following:

7.1.1 at the Buyer's option, give the Supplier the opportunity (at the Supplier's expense) to remedy the Default together with any damage resulting from such Default (where such Default is capable of remedy) or to supply replacement Deliverables and carry out any other necessary work to ensure that the terms of this Contract are fulfilled, in accordance with the Buyer's instructions;

7.1.2 where the option to remedy has been provided but the Supplier failed to remedy the Default the Buyer may itself carry out, at the Supplier's expense, any work necessary to make the provision of the Deliverables comply with this Contract;

7.1.3 if the Default is a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults - whether of the same or different obligations and regardless of whether such Defaults are remedied - which taken together constitute a material Default):

- (a) instruct the Supplier to comply with the Rectification Plan Process;
- (b) suspend this Contract (whereupon the relevant provisions of Clause 10.8 Core Terms (Partially ending and suspending the contract) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) the Deliverables;
- (c) without terminating or suspending the whole of this Call-Off Contract, terminate or suspend this Call-Off Contract in respect of part of the provision of the Deliverables only (whereupon the relevant provisions of Clauses 10.8 Core Terms (Partially ending and suspending the contract) and step-in to itself supply or procure a third party to supply (in whole or in part) such part of the Deliverables;

7.1.4 Where the Buyer exercises any of its step-in rights under this Paragraph 7.1.3, the Buyer shall have the right to charge the Supplier

for and the Supplier shall on demand pay any Costs reasonably incurred by the Buyer (including any reasonable administration costs) in respect of the supply of any part of the Deliverables by the Buyer or a third party and if the Buyer uses its reasonable endeavours to mitigate any additional expenditure in obtaining Replacement Deliverables.

8. BALANCED SCORE CARD

- 8.1 Overall supplier performance will be assessed overall per a Balanced Score Card and considered annually within the governance processes as set out in Call-Off Schedule 15 (Contract Management).
- 8.2 Satisfactory performance as assessed using the Balanced Score Card will inform sourcing decisions for Billable Works and changes to the Contract Term.
- 8.3 The Balanced Score Card shall have key themes against which critical success factors are measured on an annual basis. These are as follows:

[Balanced Score Card to be agreed with Supplier during mobilisation and inserted below]

PART A: PERFORMANCE CREDIT MODEL

The Performance Credit Model at Annex A to this Call-Off Schedule 14 sets out the Categories, Performance Measures, ALPs, Targets and the Weighting.

[Redacted – Commercially Sensitive]

PART B: PERFORMANCE MONITORING

1. PERFORMANCE MONITORING AND PERFORMANCE REVIEW

- 1.0 The Supplier shall provide the Buyer with accurate and complete performance monitoring reports in the same format as that in the Performance Credit Model (Performance Monitoring Reports) which shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:
 - 1.0.1 for each Performance Measure, the actual performance achieved in respect of that Performance Measure over the relevant Service Period;
 - 1.0.2 for each Performance Measure, the actual performance achieved in respect of that Performance Measure over a rolling year;
 - 1.0.3 a summary of all performance above the ALP, including performance by Establishment;
 - 1.0.4 a summary of any Performance Failures that occurred during that Service Period;
 - 1.0.5 details of any Persistent Performance Failures;
 - 1.0.6 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
 - 1.0.7 the Credits to be applied in respect of the relevant Service Period, indicating the Performance Measures to which the Credits relate;
 - 1.0.8 details of performance against any Rectification Plans; and
 - 1.0.9 such other details as the Buyer may reasonably require from time to time.
- 1.1 The Parties shall attend meetings to discuss Performance Monitoring Reports (Performance Review Meetings) on a Service Period basis. The Performance Review Meetings will be the forum for the review by the Supplier and the Buyer of the Performance Monitoring Reports. The Performance Review Meetings shall:
 - 1.1.1 take place at the frequency agreed by the parties at such location and time (within normal business hours) as the Buyer shall reasonably require;
 - 1.1.2 be attended by the Supplier's Representative and the Buyer's Representative; and
 - 1.1.3 be fully minuted by the Supplier and the minutes shall be circulated by the Supplier to all attendees and also to the Buyer's Representative and any other recipients agreed at the relevant meeting.
- 1.2 The minutes of the preceding Performance Review Meeting will be agreed and signed by both the Supplier's Representative and the Buyer's Representative at each meeting.
- 1.3 The Supplier shall provide to the Buyer such documentation and information as the Buyer may reasonably require in order to verify the level of the performance by the Supplier and to calculate the amount of Credits for any specified Service Period.

2. SATISFACTION SURVEYS

- 2.1 The Buyer may undertake satisfaction surveys in respect of the Supplier's provision of the Deliverables. The Buyer shall be entitled to notify the Supplier of any aspects of their performance of the provision of the Deliverables which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with this Contract.