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| MOD_CMYK_AW | |  | | |  |
| Francesca Insley | |  |
| Commercial Lead | |  |
| Maple 2b, #2237 | |  |
| MOD Abbey Wood  Bristol BS34 8JH | |  |
| Email: [Francesca.Insley576@mod.gov.uk](mailto:Francesca.Insley576@mod.gov.uk) | |
|  | |  | |  |  |
|  | |  | |  |  |
| Aurora Engineering Partnership  QinetiQ Bristol  Building 240, Bristol Business Park  Coldharbour Lane  Bristol  BS16 1FJ  FAO: Mr Gordon Barr | | |  |  | Your Reference: |
|  |
|  | Our Reference: EDP/001 |
|  |
|  | Date: 22 Mar 18 |
|  |  |
|  |  | |  |  |  |

Dear Mr Barr,

**Single Source Invitation To Negotiate (ITN) Reference No. EDP/001**

1. You are invited to tender for the Engineering Delivery Partner in accordance with the attached documentation.
2. The requirements for the Engineering Delivery Partner comprises 3 parts:

2.1 **Part A - Engineering Services**. Comprising:

* 1. Resource (team or individual) for a specific assignment; and
  2. Specific Task - activity leading to a defined product(s).

2.2 **Part B - Innovation**. Provision of innovative approaches to enhance the services associated with the Engineering Function.

2.3 **Part C – EDP Contractor Delivery Team**. Provision of continuous key personnel to ensure EDP operates and is manged effectively; and forms part of the Joint Programme Management Office (JPMO).

1. This tender will result in a Qualifying Defence Contract subject to the provisions of the Defence Reform Act 2014 and the Single Source Contract Regulations 2014.
2. The anticipated date for the contract award decision is September 2018,please note this date is indicative and may change.
3. You must submit your Tender to arrive no later than 12.00 Noon on 4th May 2018.You must return your Tender to the Commercial Officer at the above address.

Yours sincerely

Francesca Insley

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**Invitation to Negotiate for the**

**Engineering Delivery Partner**

**(EDP/001)**

## Contents

This invitation consists of the following documentation:

* DEFFORM 47ST – Invitation ToNegotiate.The DEFFORM 47ST is the document that sets out the key requirements that you need to meet in submitting a valid Tender in advance of any negotiations. It also sets out the conditions relating to this procurement. For ease it is broken into:

* + **Section A – Introduction**
    - DEFFORM 47 Definitions
    - Purpose
    - ITN Documentation and ITN Material
    - Material Change of Control
    - Contract Conditions
    - General Data Protection Regulation 2018
    - Authority Delivery Partners
    - Correspondence
  + **Section B – Key Tendering Activities**
    - Key Dates
    - Document Up issue and Clarification
    - Tendering
    - Authority clarification questions
    - Tender Submission
    - Evaluation
    - Negiotation
    - Best and Final Offers
  + **Section C – Instructions on Preparing Tenders**
    - Construction of Tenders
    - Validity
    - Variant Bids
    - Qualifying Defence Contracts (Defence Reform Act 2014)
  + **Section D – Details of Price Breakdown and Mandatory Criteria**
    - Evaluation Criteria
    - I Commercial Evaluation
    - Contract Condition Categorisation
    - II Project Evaluation
    - Presentation and Q&A Evaluation
    - III Technical Evaluation
    - IV Financial Evaluation
    - Cost Breakdown Requirements
    - Make or Buy Plan
    - Questionnaire on Method of Allocation of Costs
    - Profit Brakedown Requirements for a QDC
  + **Section E – Instructions on Submitting Your Tender**
    - Submission of your Tender
    - Samples
  + **Section F – Conditions of Tendering**
    - General
    - Conforming to the Law
    - Fraud and Other Illegal Practices
    - Conflicts of Interest
    - Government Furnished Assets
    - Publicity Announcement
    - Sensitive Information
    - Remedies for Actionable Contraventions under the Defence Reform Act 2014
    - Reportable Requirements
    - Specific Conditions of Tendering
  + **DEFFORM 47ST Annex A – Tender Submission Document (Offer)**
    - Appendix 1 to DEFFORM 47ST Annex A (Offer) – Information on Mandatory Declaration Returns
    - Appendix 2 Commercial Compliance Matrix
    - Appendix 3 Commercial Evaluation Matrix
    - Appendix 4 Insurance Response Matrix
    - Appendix 5 Project Evaluation Criteria
    - Appendix 6 Technical Evaluation Criteria
    - Appendix 7 Financial Evaluation Template
  + **Contract Conditions**
    - **Schedule A – Schedule of Requirements**
      * Appendix 1 – Part A Engineering Services (Resources)
      * Appendix 2 – Part A – Engineering Services (Specific Tasks)
      * Appendix 3 – EDP Self-Support Sytstem
      * Appendix 4 – Engineering Function Role Profiles
    - **Schedule B - Contractor Group Governance**
      * Appendix 1 Contractor Group
    - **Schedule C - Contract Management**
      * Appendix 1 Financial Management Reporting Requirements
      * Appendix 2 Continuous Improvement Plan
      * Appendix 3 DE&S Engineering Delivery Partner – Pre-Mobilisation Checklist
      * Appendix 4 Contract Management Plan
    - **Schedule D – Tasking Process**
      * Appendix 1 EDP PART A Task Order Form
      * Appendix 2 EDP PART B Task Order Form
      * Appendix 3 Initial Approved Tasking Order
    - **Schedule E Dispute Resolution Procedure**
    - **Schedule F Payment And Performance Management**
      * Part I - Appendix 1 Part A & Part B Man Day Rate
      * Part I - Appendix 2 Indexation
      * Part II - Appendix 1 Key Performance Indicators
      * Part II - Appendix 2 Performance Reports (Example)
    - **Schedule G COI Compliance Regime**
      * Appendix 1 Disclosed Projects
      * Appendix 2 Business Appointments
    - **Schedule H Contractors’ Commercially Sensitive Information**
    - **Schedule I Management And Liability For Engaged Personnel**
      * Appendix 1 Letter of Placement
      * Appendix 2 Privilege and Confidentiality Agreement
    - **Schedule J Termination Payments**
    - **Schedule K Not Used**
    - **Schedule L Insurances**
    - **Schedule M Business Continuity Plan**
    - **Schedule N Transfer Regulations**
      * Appendix 1 Contractor Personnel-Related Information to be Released Upon Re-tendering where the Transfer Regulations Applies
      * Appendix 2 Personnel Information to be Released Pursuant to this Agreement
    - **Schedule O Accommodation And IT**
      * Appendix 1 Government Furnished Assets
    - **Schedule P Exit Strategy And Plan**
    - **Schedule Q Parent Company Guarantee**
    - **Schedule R Processing, Personal Data And Data Subjects**
* DEFFORM 111 – Appendix to Contract - Addresses and Other Information
* DEFFORM 28ST – Tender Return Label

## Section A – Introduction

**DEFFORM 47 Definitions**

1. "The Authority" means the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland (hereafter referred to as "the Authority"), acting as part of the Crown.
2. "Commercial Officer" means the Authority’s representative who is responsible for the administration of this tender process. Contact details can be found at Paragraph A38;
3. "Commercial Compliance Matrix" means the document attached at Appendix 2 (Commercial Compliance Matrix);
4. "Commercial Evaluation Matrix" means the document attached at Appendix 3 (Commercial Evaluation Matrix);
5. "Conditions of Tendering" means the conditions set out in the DEFFORM 47ST that govern the procurement process;
6. "Contractor Deliverables" means the services which the Contractor is required to provide under the contract in accordance with the Statement of Requirement, but excluding incidentals outside the Statement of Requirement such as progress reports;
7. "Contractor Group" means a consortium of more than one economic operator which acts as a single entity for the purpose of tendering for and delivering the Contractor Deliverables;
8. "Contract Conditions" means the attached conditions that will govern any resultant contract;
9. "EIR" means the Environmental Information Regulations 2002;
10. "Financial Evaluation Criteria" means the document attached at Appendix 7 (Financial Evaluation Criteria);
11. "Firm Price" means a price, agreed for the Articles or Services, or both, which is not subject to variation
12. "FOI Act" or "FOIA" means the Freedom of Information Act 2000;
13. "Insurance Response Matrix" means the document attached as Appendix 4 (Insurance Response Matrix);
14. "Invitation to Negotiate" or "ITN" refers to the first document that the Authority sends out to potential Tenderers that initiates a tender response or negotiation;
15. "ITN Documentation" has the meaning given in Paragraph A28;
16. "ITN Material" has the meaning given in Paragraph A28;
17. "NAPNOC" is an Authority pricing policy meaning "No Acceptable Price, No Contract";
18. "Project Evaluation Criteria" means the document attached at Appendix 5 (Project Evaluation Criteria);
19. A "Qualifying Defence Contract" (QDC) is a contract subject to the provisions of the Defence Reform Act 2014 (DRA) and associated regulations and statutory guidance. A single source contract of £5m is likely to be a QDC, subject to fulfilling the other criteria set out in the DRA;
20. "Schedule of Requirements" Schedule A 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;
21. "Single Source" means a situation where the Authority has invited a response from only one Tenderer;
22. "Technical Evaluation Criteria" means the document attached at Appendix 6 (Technical Evaluation Criteria);
23. A "Tender" is the offer that you are making to the Authority;
24. "Tenderer" means the economic operator or group of operators in the form of a consortium, including sub-contractors, who have been invited to submit a response to this Invitation to Tender. Where "you" is used, this means an action on you the Tenderer;
25. A "Third Party" is anyone who is not an employee of the Authority or Tenderer;
26. "Voluntary Ex Ante Transparency Notice" means amandatory notice used to announce a procurement decision that the Authority intends to place a non-competitive contract under OJEU procedures. This also appears in the DCO as a "Voluntary Transparency Notice". This allows industry to challenge the decision not to compete.

**Purpose**

1. The purpose of this ITN is to invite you to propose a solution / best price to meet the Authority’s requirement. This documentation explains and sets out the:
   1. Tender process and timetable for the next stages of the procurement;
   2. instructions and conditions that govern this invitation;
   3. information you must include in your Tender and the required format;
   4. administrative arrangements for the receipt and review of your Tender; and
   5. Contract Conditions that shall apply in the event that the Authority awards a contract following this invitation.
2. The sections in this ITN and associated documents are structured in line with a generic tendering process and do not indicate importance / precedence.

A27. The decision to conduct single source procurement for this requirement was determined following the release of the Contract Notice and the assessment of the Pre-Qualification Questionnaire (PQQ) when it was determined that only one Tenderer had passed the PQQ and would move to the ITN stage of the process.

### ITN Documentation and ITN Material

A28. ITN 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 ITN. ITN Material means any other material (including patterns and 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 ITN. ITN Documentation, ITN 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:

* 1. take responsibility for the safe custody of the ITN Documentation and ITN Material and for all loss and damage sustained to it whilst in your care;
  2. not copy or disclose the ITN 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 ITN;
  3. seek written approval from the Authority if you need to provide access to any ITN Documentation or ITN Material to any Third Party;
  4. abide by any reasonable conditions imposed by the Authority in giving its approval under sub-paragraph A16.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;
  5. accept that any further disclosure of ITN Documentation or ITN Material (or use beyond the original purpose), or further use of ITN Documentation or ITN 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;
  6. inform the named Commercial Officer immediately if you decide not to submit a Tender;
  7. immediately destroy all ITN Documentation, ITN Material and derived information of an unmarked nature, should you decide not to participate in responding to this ITN, or you are notified by the Authority that your Tender has been unsuccessful; and
  8. consult thenamed Commercial Officerto agree the appropriate destruction process if you are in receipt of ITN Documentation and ITN Material marked ‘OFFICAL SENSITIVE’ or ‘SECRET’.

A29. Some or all of the ITN Documentation and ITN 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 A16 above.

**Expenses**

A30. You will bear all costs associated with preparing, submitting and negotiating your Tender. If the Tender process is terminated or amended by the Authority, the Authority will not reimburse you.

### Material Change of Control

A31. You must inform the Authority in writing if there is any material change in control, composition or membership of your organisation and / or consortium members, including any sub-contractors at any time during the procurement process. This may affect our decision to award a contract to you.

### Contract Conditions

A32. The full text of the Contract Conditions are attached.

### Consultation with Credit Reference Agencies

A33. 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.

**General Data Protection Regulation 2018**

A34. The bidder’s attention is drawn to New Data Protection Legislation which they should familiarize themselves with. Guidance can be obtained from the Commissioner’s office (ICO). The General Data Protection Regulation 2018 will apply to all contracts that are extant on or after 25 May 2018.

A35. In certain circumstances, the Controller (“the Authority”) is required to conduct a Data Protection Impact Assessment (“DPIA”). This may occur before the contract is entered into. Information on consent and privacy notices, and data subject’s rights under GDPR is available on the ICO website.

A36. The bidder is required to confirm that they can implement the appropriate technical and organisational measures to comply with GDPR and provide guarantees of their ability to comply with the regulations.

A37. The Authority believes that both the Authority and the Contractor will be Joint Controllers and Joint Processors within the meaning of the GDPR. A new draft clause will be provided relating to the a GDPR Indemnity which will be provided once available.

**Authority Delivery Partners**

A38. The Authority has a Commercial Delivery Partner and is putting in place an Programme Delivery Partner. It is expected that the Engineering Delivery Partner will work alongside these other Delivery Partners.

# Correspondence

A39. Please direct all correspondence to the Commercial Officer who is the point of contact for this tendering activity:

Francesca Insley

DE&S Corporate Commercial

MOD Abbey Wood,

Maple 2B, Mailpoint #2237

Bristol

BS34 8JH

Email: [DESComrcl-CM-PSS@mod.gov.uk](mailto:DESComrcl-CM-PSS@mod.gov.uk)

## Section B – Key Tendering Activities

**Key Dates**

B1. The key dates for this procurement are currently anticipated to be as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| **Stage** | **Date and Time** | **Initiated By** | **Submit to:** |
| Bidders Clarification Workshop | w/c 16th April | Authority | N/A |
| Final date for Clarification Questions / Requests for additional information | 20th April 2018 at Noon | Tenderer | [DESComrcl-CM-PSS@mod.gov.uk](mailto:DESComrcl-CM-PSS@mod.gov.uk) |
| Final Date for Requests for Extension to return date | 27th April 2018 at Noon | Tenderer | [DESComrcl-CM-PSS@mod.gov.uk](mailto:DESComrcl-CM-PSS@mod.gov.uk) |
| The Authority issues Final Answers and Clarifications | 27th April 2018 at Noon | The Authority | Tenderer |
| Tender Return | 4th May 12 Noon | Tenderer | Francesca Insley [DESComrcl-CM-PSS@mod.gov.uk](mailto:DESComrcl-CM-PSS@mod.gov.uk) |
| Value For Money (VFM) Assessment in accordance with NAPNOC – see Section D of this DEFFORM 47ST.  A QDC will be assessed to ensure compliance with the Defence Reform Act 2014, and associated Single Source Contract Regulations and statutory guidance. | 7th May 2018 | The Authority | N/A |
| The following are indicative timescales for planning purposes only | | | |
| Start of Negotiation | 4th June 2018 | The Authority | N/A |
| Best And Final Offer | 13th July 2018 | The Authority | N/A |

## B2. All dates in the above timetable are provisional only and the Authority may vary the outline timetable or terminate or alter the negotiation process in any way at its sole discretion, including the addition or removal of stages.

# Document Up-Issue and Clarification

1. During the period from the issue of Contract Notice until you have submitted your Tender, you may ask clarification questions of the Authority and the Authority may ask clarification questions of you.

**Tenderer clarification questions**

1. Your clarification questions must be submitted to the Commercial Officer via the email address at Paragraph A38. The Authority aims to reply to clarification questions within 5 Business Days of receipt, however this time period may be extended by notification of the Commercial Officer if the clarification is complex or a response is not possible within that timeframe.

**Authority clarification questions**

1. The Authority will issue clarification questions to Tenderers via the email address provided by the Tenderer. The Tenderer should promptly acknowledge receipt of the clarification question and shall respond to the clarification question within 5 Business Days. Clarification questions issued by the Authority and responses received thereto will be presumed to be commercially sensitive.
2. At any time prior to Contract Award, the Authority may add, delete or amend any document relating to this procurement. Where it does so, the Authority will issue such changes to the Tenderer as soon as possible and the Tenderer shall be entitled to request additional time where such changes impact on the Tenderer’s ability to submit a Tender within the existing timescales.

**Tender Submission**

1. The Tenderer must issue their tenders to the Authority by the date identified in the Invitation to Negotiate.
2. Tender prices must take the form of the Man Day Rates or prices required for the Financial Evaluation in accordance with Paragraphs D31 to D47. If the Authority is not satisfied that the Tender is capable of meeting its requirement, it may decide to re-compete the requirement.
3. The Tenderer is required to ensure that their Tender complies with the relevant sections of Paragraphs C1 to C14 (inclusive) and Section D.

# Evaluation

1. The Tender will be evaluated in accordance with Section D.

# Negotiation

1. Negotiations shall take place at the Tenderers’ Offices in the Bristol area. The location of the negotiations must be communicated to the Commercial Officer five working days in advance of the negotiations.
2. The Authority’s negotiation team shall consist of up to six personnel so we will require a negotiation room to accommodate this size of group in addition to the Contractor’s grouping negotiation team. The Authority will also require a suitably sized and quiet room for intermittent breakouts.
3. The first round of negotiations will be held over a four-week period. Subsequent negotiation periods will be arranged if required.
4. An agenda shall be issued within 3 business days prior to the negotiations via email; an example of what it may look like can be viewed below:

|  |  |
| --- | --- |
| **Time** | **Agenda Item** |
| 09:00 – 09:15hrs | Arrivals |
| 09:15 – 11:00hrs | Negotiation |
| 11:00 – 11:30hrs | Break |
| 11:30 – 13:00hrs | Negotiation |
| 13:00 – 13:45 | Lunch |
| 13:45 – 17:00hrs | Negotiation |

1. All negotiations with the Authority will be undertaken in accordance with the provisions of the Defence Reform Act 2014 and the Single Source Contracts Regulations 2014.
2. The Key Personnel Senior Responsible Owner (SRO) and Contract Lead who will be responsible for managing the Contract must take a key part in the negotiations and the presentation throughout the tender process.

# Best and Final Offers

1. At the end of the rounds of negotiation the Tenderer may be invited to submit Best and Final Offers to the Authority.

## Section C - Instructions on Preparing Tenders

### Construction of Tenders

1. Your Tender must be written in English, using Arial font size 11. Prices must be in £GBP ex VAT. Prices must be Firm Price for Years 1 (one) to 4 (four) of the Contract. A maximum price must be provided for option period 1 (Years five (5) to seven (7)) and option period 2 (Years eight (8) to ten (10)).
2. To enable the Authority to complete its Value For Money (VFM) assessment, your price must be broken down. If the resultant contract is a Qualifying Defence Contract (QDC) under the Defence Reform Act (DRA) and Single Source Contract Regulations (SSCR) you must price your bid accordingly. Please set out your Tender response in accordance with Section D.

C3. The Tenderer will need to supply the Authority in response to Section D (Tender Evaluation) the following documentation:

|  |  |  |
| --- | --- | --- |
| **No.** | **Documentation to be provided by the Tenderer** | **Tick Box** |
|  | **Commercial Evaluation** |  |
| 1 | Completed and Signed Annex A Tender Submission Document (Offer) |  |
| 2 | Completed Commercial Compliance Matrix (Appendix 2) |  |
| 3 | Completed Commercial Evaluation Matrix (Appendix 3) |  |
| 4 | Annotated version of the Contract Conditions in Category 2 of Appendix 2 |  |
| 5 | Annotated version of each of the Schedules in Category 2 of Appendix 2 |  |
| 5 | Completed insurance response matrix (Appendix 4) |  |
|  | **Project Evaluation** |  |
| 6 | A completed response to the Project Evaluation Criteria in Appendix 5 including all plans, processes and strategies requested or appropriate to demonstrate compliance with the “Minimum Criteria/Characteristics Sought” |  |
|  | **Technical Evaluation** |  |
| 7 | A completed response to the Technical Evaluation Criteria in Appendix 6 including all plans, processes, strategies and case studies requested or appropriate to demonstrate compliance with the technical criteria stated. |  |
|  | **Financial Evaluation** |  |
| 8 | Completed the financial evaluation template at Appendix 7 in accordance with the Financial Evaluation requirements (Tenderers should note that this should NOT be included in the return of an unpriced Tender). |  |

C4. To assist the Authority’s evaluation please set out your Tender response in accordance with Section D (Tender Evaluation).

**Validity**

1. Your Tender must be valid / open for acceptance for six (6) months or 180 calendar days from the Tender return date.

### Variant Bids

1. The decision to invite a Single Source response is based on the scope of the requirement. Where you submit a variant bid that is outside the scope of the requirement the Authority may be obliged to compete the requirement.

### Qualifying Defence Contracts

### Defence Reform Act 2014 – Part 2, Single Source Contracts

1. This ITN may result in a Qualifying Defence Contract (QDC) under the provisions of the [Defence Reform Act 2014 (DRA)](http://services.parliament.uk/bills/2013-14/defencereform.html). You should therefore understand the implications in the event that it does result in a QDC.
2. The DRA enables secondary legislation, called Single Source Contract Regulations 2014 (SSCR), which applies:
   1. to new contracts with a value of £5M (ex VAT) or above;
   2. to amended contracts where the amended contract has a value of £5M (ex VAT) or above, and both parties agree that the amended contract should be a QDC.
3. The DRA and SSCR set out the criteria for determining when a single source contract is a Qualifying Defence Contract (QDC). Any new single source contract which meets the criteria will be a QDC, unless exempt by the Secretary of State for Defence. Exemptions will only be granted in exceptional circumstances.
4. The DRA and SSCR cover such matters as the pricing of QDCs, the information, openness and transparency that the parties must provide to each other, and the rights and obligations of both parties to a QDC once on contract.
5. The DRA requires a primary contractor to be satisfied that the costs proposed for inclusion in the price of a QDC are Allowable Costs, in that they are appropriate, attributable to the contract and reasonable in the circumstances. The MOD is obliged to ensure that you meet the criteria and at any time you may be required to show that this is the case in relation to any particular cost. The Single Source Regulations Office (SSRO) has issued Statutory Guidance on Allowable Costs (SGAC) which can be found on their website and which the parties to a QDC will be expected to adhere to, other than in exceptional circumstances. Either party to a QDC may subsequently make a referral to the SSRO for an adjustment of the contract price, if that party believes the price agreed was not in accordance with the requirements of the DRA / SSCR.
6. The DRA requires that the contract Profit Rate agreed between the parties for QDCs must be agreed in accordance with the provisions of the DRA and SSCR.
7. The DRA also sets out the criteria for determining when a contract is a Qualifying Sub-Contract (QSC) to which the DRA and SSCR will apply. Any single source sub-contract in excess of £25M, placed in support of a QDC or another QSC and which meets the criteria in the DRA and SSCR, is potentially a QSC. Responsibility for assessing whether a sub-contract is a QSC lies with the party placing the sub-contract. The Tenderer therefore has an obligation to determine whether any planned sub-contract is a QSC. The Tenderer must keep a record of any determinations and notify both the Secretary of State for Defence and the sub-contractor in writing when a sub-contract is determined to be a QSC.
8. The [MOD Commercial Toolkit](https://www.aof.mod.uk/aofcontent/tactical/toolkit/index.htm) provides further information about the new single source legal framework.

**Section D – Details of Price Breakdown and Mandatory Criteria**

This section details how the Authority will evaluate the Single Source Tender.

**Evaluation Criteria**

D1. The Authority will evaluate the Tender in accordance with this Section D and Regulation 18 of the Defence and Security Public Contracts Regulations 2011 using the Negotiated Procedure.

D2. There are four overarching areas for evaluation:

I. "Commercial Evaluation" (Paragraphs D4 to D9 (inclusive));

II. "Project Evaluation" (Paragraphs D10 to D18 (inclusive));

III. "Technical Evaluation" (Paragraphs D19 to D23 (inclusive)); and

IV. "Financial Evaluation" (Paragraphs D24 to D40 (inclusive)).

D3. Evaluation of Tenders will be solely on the basis of the criteria set out in this Section D. Any matter addressed through the negotiation process, but omitted from your Tender submission (which shall include your Presentation and Q&A session and any response given to Authority clarification questions raised following receipt of Tenders) shall not be considered or taken into account during Tender Evaluation.

**I. Commercial Evaluation**

D4. Evaluation of the commercial element of the Tender will be undertaken by the Authority’s commercial staff and/or legal representatives.

D5 The commercial evaluation section of this document shall be evaluated as a pass/fail, the Tenderer must fill in the Commercial Compliance Matrix at Appendix 2. In the event of a fail the Authority may decide to re-compete the requirement or may negotiate this point during the negotiation phase.

D6. For the avoidance of doubt, where permitted by the Defence Security Public Contracts Regulations 2011, to the extent that any amendment proposed during the Tender Evaluation is not ultimately agreed by the Authority, the Authority will not be obliged to include such amendment in the version of the Contract Conditions which it ultimately enters in to.

D7. The Tenderer shall complete Appendix 2 (Commercial Compliance Matrix) and Appendix 3 (Commercial Evaluation Matrix). For each Clause and Paragraph you shall record whether it is:

a. Accepted (A); or

b. Not Accepted (NA).

D8. You must record in the comments column of Appendix 3 (Commercial Evaluation Matrix), against any Not Accepted item, detailing the justification for non-acceptance, along with any recommendations and/or steps to mitigate the non-acceptance.

D9. In relation to insurance, you are also required to fill out the Insurance Response Matrix in Appendix 4 (Insurance Response Matrix). The identity of the insurer will be taken into account in the evaluation as set out in Appendix 4 (Insurance Response Matrix).

**II. Project Evalation**

D10. The project evaluation will be undertaken by the Authority, including additional subject matter experts.

D11. The written project evaluation will assess three (3) main categories:

a. engineering services;

b. innovation; and

c. combined delivery.

These are articulated in Schedule A (Requirements) to the Contract Conditions). The criteria for these three categories and their relative sub-category criterion are provided in Appendix 5 (Project Evaluation Criteria).

D12. Each sub-category criterion has a corresponding table in Appendix 5 (Project Evaluation Criteria) that identifies the Aim, Evidence Required and the Minimum Criteria/Characteristics Sought.

D13. The Tenderer must respond to each of the sub-category criterion in Appendix 5 (Project Evaluation Criteria). In certain sub-category criterion, the Authority has identified its preferred location in the Contract Conditions for the Tenderer to provide a response. The Tenderer should respond in accordance with these directions, however, the Authority reserves the right (but shall not be obliged) to look at the Tenderer's responses as a whole when evaluating a sub-category criterion

D14. The Tenderer must ensure that their responses against each of the sub-category criterion are clearly attributable including, as a minimum, appropriate headings and page numbers. Each sub-category criterion should be responded to separately.

D15. The project evaluation evaluators will assess the Tenderer’s response to each sub-category criterion to determine whether or not the response meets the Minimum Criteria/ Characteristics Sought that is required for that sub-category criterion.

D16. If the Tenderer receives an evaluation of unacceptable in relation to any of the sub-category criterion the Authority may deem that the Tenderer's response is non-compliant and this will be included as a point for negotiation.

# Presentation and Q&A Evaluation

D17. The Tenderer shall present to a senior panel of Authority representatives. The evaluation criteria are as set out at Appendix 5 (Project Evaluation Criteria).

D18. Each member of the senior panel will evaluate the Presentation and Q&A in accordance with the Minimum Criteria / Characteristics Sought as set out at Appendix 5 (Project Evaluation Criteria).

**III. Technical Evaluation**

D19. The written technical evaluation will assess the engineering services requirement as set out in Schedule A (Requirements) element of the Tender. The Technical Evaluation will be undertaken by the Authority, including additional subject matter experts.

D20. The written technical evaluation will assess the following five (5) main categories:

1. Part A Engineering Services - Resource;

2. Part A Engineering Services – Specific Task;

3. Quality;

4. Data and Information; and

5. Migration.

These are articulated in Schedule A (Requirements) to the Contract Conditions. The criteria for each of these five categories and any sub-category criterion are provided in Appendix 6 (Technical Evaluation Criteria).

D21. The Tenderer must ensure that their responses against each of the category criterion (and any related sub-category criterion) are clearly attributable including, as a minimum, appropriate headings and page numbers. Each criterion should be responded to separately although the Authority reserves the right (but shall not be obliged) to look at the Tenderer's responses as a whole when evaluating a sub-category criterion.

D22. The technical evaluation evaluators will assess the Tenderer’s response to each of the category and any related sub-category criterion to determine whether or not the response meets the minimum technical criteria that is required for that category or sub-category criterion.

D23. The Tenderer must ensure that they comply with the minimum technical criteria detailed for each category. If the Tenderer is evaluated as unacceptable in relation to any of the criterion the Authority may deem that the Tenderer's response is non-compliant and this may be included as a point for negotiation.

# IV. Financial Evaluation

D24. The Authority requires:

* 1. a FIRM price for the first four (4) years of the Term (**"Base Term"**); and
  2. the **Redacted** options for 2 periods of extension (**"Option Terms"**). **Redacted**

D25. The potential contract period is 10 years on **Redacted** basis.

D26. You must provide prices against the Base Term and each Option Term.

D27. If the Authority elects to extend the Base Term, the maximum price for the relevant Option Term will be converted to a FIRM price in accordance with Clause 5.2 (Options) of the Contract Conditions.

D28. If your Tender is successful, the Man Day Rate Cards for the Base Term and Option Terms will be included as Appendix 1 and Appendix 2 to Part I of Schedule F (Payment and Performance Management Regime) to the Contract Conditions.

D29. When placing any contract the Authority is required to satisfy itself that the agreed price represents Value for Money (VFM) and the Tenderer must ensure that all costs are Appropriate, Attributable and Reasonable. In single source contracting you must provide to the Authority sufficient information in support of your price proposal and during any subsequent price negotiation, to enable the Authority to fulfil its obligation to assure VFM. The Authority approaches all contract pricing on the basis of the NAPNOC principle (No Acceptable Price, No Contract).

**Cost Brakedown Requirements**

D30. Detailed below is the information and evidence that the Authority will require to enable the assessment of the Prime Contract and Sub-contract proposals submitted in response to the Authority’s ITN dated 21 Mar 18. Subject to paras D38-D42, the information detailed must be submitted as part of your response to the ITN.

D31. You may have already provided some of the information detailed below as part of a separate investigation and agreement with the Authority (e.g. the methodology used to determine overhead cost recovery rates). If so, you should provide details and dates of any such agreements.

D32. Notwithstanding the details specified below, if the tender is expected to lead to a Qualifying Defence Contract (QDC), it is your responsibility to provide sufficiently detailed information to the Authority in support of your price proposal, in order to satisfy the statutory obligations placed upon you by the [Defence Reform A](http://www.legislation.gov.uk/ukpga/2014/20/contents/enacted)ct 2014 (DRA) and the [Single Source Contract Regulations 2014 (SSCR](http://www.legislation.gov.uk/uksi/2014/3337/contents/made)). The costs you propose within your price should be compliant with the ‘Single Source Cost Standards – [Statutory Guidance on Allowable Costs](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/678280/Allowable_Costs_guidance_April_2018.pdf)’ (SGAC) published by the Single Source Regulations Office (SSRO). Further information about the DRA and SSCR provisions can be found on the MOD Commercial Toolkit and on the [SSRO website](https://www.gov.uk/government/organisations/single-source-regulations-office).

D33. The aim of the Authority’s assessment will be to determine whether your proposed costs are Allowable Costs (see DRA Section 20). In the event that the information supplied with your tender is insufficient to enable an Allowable Cost assessment to be completed, the Authority reserves the right to request further supporting information.

D34. You should provide a cost breakdown that clearly indicates the way in which the proposed costs for the work described in the technical proposal have been derived.

D35. The relevant economic or other assumptions on which the costs in the cost breakdown are dependent, e.g. inflation, interest rates, and taxation rates should be identified.

**Make or Buy Plan**

D36. A Make or Buy Plan defining the criteria and rationale used for the apportionment of work within the proposed supply network should be provided. The plan should identify each package of work or service etc. for which the Tenderer intends to seek competitive tenders expected to lead to an order, or orders. The approximate value of each tender requirement, together with the proposed list of tenderers involved in each case, should be provided.

D37. The plan should also identify each package of work or service the Contractor does not intend to seek competitive tenders (including work and supplies etc. that the Contractor and /or associated group companies or business units intends to undertake or provide). In each of these cases the Contractor should indicate his reasons for not seeking competition (i.e. competition not practicable or not reasonable for other reasons which must be stated) and should provide the following information:

a) the name and address of the proposed subcontractor or own facility concerned;

b) the approximate value of the subcontract or order;

c) the means by which prices are to be determined as fair and reasonable e.g. by incorporation into the subcontract or order the text of the relevant Appendix of, as applicable, Clauses 38, 39, 40, 44 and 51 of the Contract Conditions;

d) the delivery programme; and

e) other relevant factors.

**Questionnaire on Method of Allocation of Costs**

D38. The Questionnaire on Method of Allocation of Costs (QMAC) on which the estimate was based, together with its status should be identified. If no QMAC has been produced or used, you should provide details of the method and rationale used for the allocation and apportionment of cost, and the means of determining overhead recovery rates.

**Profit Breakdown Requirements for a QDC**

D39. The profit rate(s) used to determine the tendered price(s) should be identified together with details of how each rate has been derived. For a QDC the agreement of the Contract Profit Rate is a six-step process, described in SSRO guidance. Step 1, the Baseline Profit Rate (BPR), must be the BPR in force at 1 April in the period 1 Apr – 31 Mar in which the contract is signed. The same applies to step 4 (SSRO funding adjustment) and step 6 (Capital Servicing Allowance – CSA). You may if you wish tender proposed adjustments for step 2 (risk), step 3 (POCO) and step 6 (CSA), provided that you show they are in accordance with SSRO Statutory Guidance on the profit rate adjustments. Step 5 is an incentive adjustment which, if the Authority decides it wishes to include, may be added in negotiation with the Authority.

D40. Information regarding the Contract Profit Rate can be found on the[SSRO website](https://www.gov.uk/government/publications/2018-contract-profit-rate)**.**

## Section E – Instructions on Submitting your Tender

### Submission of your Tender

1. You must send your Tender to the Commercial Officer stated in the covering letter to this DEFFORM 47ST.
2. You must provide three(3) paper copies and two (2) electronic copies on CDs of your Tender. The electronic copies of the Tenders must be compatible with Microsoft Office Word 2010 and other MS Office 2010 applications. If you, password protect or encrypt any information on CDs containing prices you must supply the password / use compatible encryption methods so that the Authority can undertake a pricing evaluation.
3. You must complete and include DEFFORM 47ST Annex A (Offer) with your Tender. Where you select ‘Yes’ to any questions you must attach the relevant information.
4. You must include the original signed DEFFORM 47ST Annex A (Offer) with one paper copy of your Tender.
5. 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.
6. 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.

### Samples

1. No samples are required for this procurement.

## Section F – Conditions of Tendering

**General**

* 1. The issue of ITN Documentation or ITN Material is not a commitment by the Authority to place a contract as a result of this ITN or at a later stage. Any expenditure, work or effort undertaken by you prior to an offer and subsequent acceptance of contract, is a matter solely for your commercial judgement. In addition to its legal rights in relation to qualifying contracts, under the Defence Reform Act 2014 the Authority reserves the right to:
     1. seek clarification or additional documents in respect of your submission;
     2. visit your site;
     3. not enter into a contract if you are found guilty of serious misrepresentation in relation to your Tender or the Tender process;
     4. re-assess your suitability. For example, where there is a material change of control from supplier selection;
     5. reject / negotiate your Tender or part of your Tender;
     6. withdraw this ITN at any time, or invite other Tenders on the same or any alternative basis;
     7. choose not to award any contract as a result of the current procurement process;
     8. award a contract for some of the Contractor Deliverables, unless you specifically oppose this in your Tender or state any minimum order quantities.
  2. The contract will be entered into when the Authority sends written notification of its entry into the contract, either accepting your offer via DEFFORM 159 or by issuing an offer via DEFFORM 8 and you accept via a DEFFORM 10. Written notification will be issued, to the address you provide, on or before the end of the validity period specified in paragraph C5.

### Conforming to the Law

* 1. You must comply with the UK Bribery Act 2010, applicable EU and UK legislation and any equivalent legislation in a third state.
  2. Your attention is drawn to legislation relating to canvassing of a public official, collusive behaviour and bribery. If you act in breach of this legislation your Tender may be disqualified from this procurement. Disqualification will be without prejudice to any civil remedy available to the Authority or any criminal liability that your conduct may attract.

**Fraud and Other Illegal Practices**

* 1. You must report any, 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

* 1. You must notify the Authority immediately of any new Conflicts of Interest (COI) that have arisen or that arise at any point prior to the contract award decision.
  2. 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:
     1. manner of operation and management;
     2. roles and responsibilities;
     3. standards for integrity and fair dealing;
     4. levels of access to and protection of competitors sensitive information and Government Furnished Information;
     5. confidentiality / non-disclosure agreements (e.g. DEFFORM 702);
     6. the Authority’s rights of audit; and
     7. 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

1. Where the Authority provides Government Furnished Assets (GFA) in support of this procurement, you must include details of the GFA in your Public Store Account and treat it in accordance with Def Stan 05-099. If the Authority decides not to proceed with this procurement, you must seek instructions for the GFA from the named Commercial Officer.

### Publicity Announcement

1. The Authority will publish notification of the contract and shall publish contract documents under the FOI Act except where publishing such information would hinder law enforcement; would otherwise be contrary to the public interest; would prejudice the legitimate commercial interest of any person, or might prejudice fair competition in the supply chain. You should complete and return Schedule H as explained in the DEFFORM 47ST Annex A and associated Appendix 1.
2. If you wish to make a similar announcement you must seek approval from the named Commercial Officer.
3. 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

1. All Central Government Departments and their Executive Agencies and Non-Departmental Public Bodies are subject to control and reporting within Government. In particular, they report to the Cabinet Office and HM Treasury for all expenditure. Further, the Cabinet Office has a cross-governmental role delivering overall Government policy on public procurement, including ensuring value for money and related aspects of good procurement practice and answering Freedom of Information requests.
2. For these purposes, the Authority may share within Government any of your documentation / information (including any that you consider to be confidential and / or commercially sensitive such as specific bid information) submitted by you to the Authority during this procurement. The information will not be disclosed outside Government. You must identify any sensitive material in Schedule H and consent to these terms as part of the tendering process. This allows the MOD to share information with other Government Departments while complying with our obligations to maintain confidentiality.
3. The Authority reserves the right to disclose on a confidential basis any information it receives from you during the procurement process (including information identified by you as Commercially Sensitive Information in accordance with the provisions of this ITN to any third party engaged by the Authority for the specific purpose of evaluating or assisting the Authority in the evaluation of your Tender. In providing such information you consent to such disclosure.

**Remedies for Actionable Contraventions under the Defence Reform Act 2014**

1. If you have a Qualifying Defence Contract under the DRA 2014 you should be aware that if you fail to comply with certain aspects of the legislation, then the Authority may issue a Compliance Notice to you. If you continue to fail to comply, the Authority may serve you with a Civil Penalty, as provided in the Single Source Contract Regulations 2015. If you believe either a Compliance Notice or a Civil Penalty is unjustified, you may appeal the matter to the independent Single Source Regulations Office.

### Reportable Requirements

1. Listed in the DEFFORM 47ST Annex A (Offer) are the Mandatory Declarations. It is a Condition of Tendering that you complete and attach the returns listed in the Annex and, where you select “Yes”, you attach the relevant information.
2. Failure to complete this part of the Annex in full makes your Tender non-compliant. Additional information provided in response to Appendix 1 may be used to support the Authority’s evaluation of your tender, as detailed in Section D.
3. If you are an overseas Contractor and your Tender is successful, you will be required to provide the name and address of your bank and the relevant bank account number on contract award.

### Specific Conditions of Tendering

**Demand**

F19. The Authority is unable to confirm a minimum or maximum demand level (other than to the extent agreed in the signed Contract for the Initial Approved Tasking Order). The Tenderer, by tendering, acknowledges that there is no guarantee of continual and consistent utilisation.

F20. Demand will be generated in different parts of the organisation, who will have to seek funding from their budget.

F21. The Authority cannot guarantee the demand for Resource for specific Assignments or Specific Tasks under the Agreement. However, the Tenderer is encouraged to consider that repeat utilisation of the Services, by Authority Demanders, could be achieved through a consistent provision of quality Personnel and a quality Service whilst maintaining affordability.

F22. The Tenderer, by tendering, acknowledges that any part of the Service can be prematurely terminated, in full or in part, through application of and subject to the termination provisions set out in the Contract Conditions.

**Ministry of Defence**

**Tender Ref No. EDP/001**

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

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Applicable Law** | | | | | | |
| I agree that any contract resulting from this procurement shall be subject to English Law  \*Where ‘no’ is selected, Scots Law will apply. | | | | | Yes / No\* | |
| **Value of Tender (excluding VAT)** | | | | | | |
| £...............................................................................................................................................................................................  WORDS………………………………………………………………………………………………………………….. | | | | | | |
| **UK Value Added Tax** | | | | | | |
| If registered for Value Added Tax purposes, please insert:  a. Registration No ..........................................  b. Total amount of Value Added Tax payable on this Tender (at current rate(s)) £........................... | | | | | | |
| **Location of work (town / city) where the contract will be performed by Prime:** | | | | | | |
| Where items which are subject of your Tender are not supplied or provided by you, state location in town / city to be performed column (continue on another page if required) | | | | | | |
| Tier 1 Sub-contractor Company Name | Town / city to be  Performed | Contractor Deliverables | | Estimated Value | | SME  Yes / No |
|  |  |  | |  | |  |
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|  |  |  | |  | |  |
| **Mandatory Declarations (further details are contained in Appendix 1 to DEFFORM 47ST ST Annex A (Offer)):** | | | | **Tenderer’s Declaration** | | |
| Is the offer subject to the Authority contracting for all the Contractor Deliverables? | | | | Yes\* / No | | |
| Have you completed and attached a Contract Pricing Statement? | | | | Yes / No | | |
| Is the offer made subject to a Minimum Order Quantity? | | | | Yes\* / No | | |
| Are the Contractor Deliverables subject to IPR that has been exclusively or part funded by Private Venture, Foreign Investment or otherwise than by Authority funding? | | | | Yes\* / No | | |
| Are the Contractor Deliverables subject to Foreign Export Control and Security Restrictions? If the answer is yes, please complete and attach DEFFORM 528. | | | | Yes\* / No | | |
| Have you obtained prior foreign export approval necessary to secure IP user rights for the Authority in Contract Deliverables, including technical data, as determined in the Contract Conditions? | | | | Yes\* / No | | |
| Have you provided details of how you will comply with all regulations relating to the operation of the collection of custom import duties, including the proposed Customs procedures to be used and estimates of duties to be incurred or suspended? | | | | Yes / No | | |
| Have you completed Form 1686 for sub-contracts? | | | | Yes / No | | |
| Are you a Small Medium Sized Enterprise (SME)? | | | | Yes / No | | |
| Have you and your sub-contractors registered with the Prompt Payment Code with regards to SMEs? | | | | Yes / No | | |
| Have you completed and attached Schedule H (Tenderer’s Commercially Sensitive Information Form)? | | | | Yes / No | | |
| If you have not previously submitted a Statement Relating to Good Standing, or circumstances have changed, have you attached a revised version? | | | | Yes / No / N/A | | |
| Do the Contractor Deliverables contain Asbestos, as defined by the control of Asbestos Regulations 2012? | | | | Yes\* / No | | |
| Have you completed and attached a DEFFORM 68 - Hazardous Articles, Deliverables materials or substances statement? | | | | Yes\* / No | | |
| Do the Contractor Deliverables (including Packaging) use Substances that deplete the Ozone Layer, as defined in Regulation (EC) 1005/2009 (as amended by [EC 744/2010](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010R0744)) of the European Parliament and of the Council. | | | | 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 | | |
| Have you completed the Project Specific Declarations? | | | | Yes / No / Not Required | | |
| \*If selecting Yes to any of the above questions, please attach the information detailed in Appendix 1. | | | | | | |
| **Tenderer’s Declaration** | | | | | | |
| We understand that any misrepresentations may also be the subject of criminal investigation or used as the basis for civil action. | | | | | | |
| **Dated this ................................. day of ...................................................... Year ........................** | | | | | | |
| **Signature: In the capacity of**  **.......................................................................................................**  (Must be original) (State official position e.g. Director, Manager, Secretary etc.) | | | | | | |
| **Name:** (in BLOCK CAPITALS)  **duly authorised to sign this Tender for and on behalf of:**  (Tenderer's Name) | | | **Postal Address:**  **Telephone No:**  **Registered Company Number:**  **Dunn and Bradstreet Number:** | | | |

## Information on Mandatory Declaration Returns

### Part Tender

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

### Minimum Order Quantities

1. Where your offer is subject to minimum order quantities, select ‘Yes’ and provide further details in your Tender.

### IPR Restrictions

1. Where the Contractor Deliverables are subject to IPR that has been exclusively or part funded by private venture, foreign investment or otherwise than by Authority funding you must select ‘Yes’ in Annex A (Are the Contractor Deliverables subject to IPR that has been exclusively or part funded by Private Venture, Foreign Investment or otherwise than by Authority funding).
2. If you have answered ‘Yes’ in Annex A (Offer) as directed by paragraph 3 above, you must provide details in your Tender of any Contractor Deliverable which will be, or is likely to be, subject to any IPR restrictions or any other restriction on the Authority’s ability to use or disclose the Contractor Deliverable, including export restrictions. In particular you must identify:
3. any restriction on the provision of information to the Authority; any restriction on disclosure or the use of information by the Authority; any obligations to make payments in respect of IPR, and any Patent or Registered Design (or application for either) or other IPR (including unregistered Design Right) owned or controlled by you or a Third Party;
4. 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;
5. the nature of any allegation referred to under sub-paragraph 4.b., including any obligation to make payments in respect of the intellectual property right any confidential information and / or;
6. 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.
7. You must, when requested, give the Authority details of every restriction and obligation referred to in paragraph 4. The Authority will not acknowledge any such restriction unless so notified under paragraph 4 or as otherwise agreed under any resultant Contract. You must also provide, on request, any information required for authorisation to be given under Section 2 of the Defence Contracts Act 1958.
8. 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

1. If, in the performance of the Contract, you need to import into the UK or export out of the UK anything not supplied by or on behalf of the Authority and for which a UK import or export licence is required, you will be responsible for applying for the licence. The Authority will provide you with all reasonable assistance in obtaining any necessary UK import or export licence.
2. 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:
   1. Whether all or part of any Contractor Deliverables are or will be subject to:
3. a non-UK export licence, authorisation or exemption; or
4. any other related transfer control that restricts or will restrict end use, end user, re-transfer or disclosure.

You must complete DEFFORM 528 (or other mutually agreed alternative format) in respect of any Contractor Deliverables identified at paragraph 8 and return it as part of your Tender. If you have previously provided this information you can provide details of the previous notification and confirm the validity.

1. You must use reasonable endeavours to obtain sufficient information from your potential supply chain to enable a full response to paragraph 8. If you are unable to obtain adequate information, you must state this in your Tender. If you become aware at any time during the procurement that all or part of any proposed Contractor Deliverable is likely to become subject to a non-UK Government Control through a Government-to-Government sale only, you must inform the Authority immediately by updating your previously submitted DEFFORM 528 or completing a new DEFFORM 528.
2. This does not include any Intellectual Property specific restrictions mentioned in paragraph 4.
3. You must notify the named Commercial Officer immediately if you are unable for whatever reason to abide by any restriction of the type referred to in paragraph 8.
4. Should you propose the supply of Contractor Deliverables of US origin the export of which from the USA is subject to control under the US International Traffic in Arms Regulations (ITAR), you must include details on the DEFFORM 528. This will allow the Authority to make a decision whether the export can or cannot be made under the US-UK Defense Trade Co-operation Treaty. The Authority shall then convey its decision to you. If the Authority decides that use of the Treaty for the export is permissible, it is your responsibility to make a final decision whether you want to use that route for the export concerned if you are awarded the contract.

### Import Duty

1. European Union (EU) legislation permits the use of various procedures to suspend customs duties.
2. For the purpose of this procurement, for any deliverables not yet imported into the EU, you are required to provide details of your plans to address customs compliance, including the Customs procedures to be applied (together with the procedure code) and the estimated Import Duty to be incurred and / or suspended.
3. You should note that it is your responsibility to ensure compliance with all regulations relating to the operation of the accounting for import duties. This includes but is not limited to obtaining the appropriate Her Majesty’s Revenue & Customs (HMRC) authorisations.

### Sub-contracts Form 1686

1. [Form 1686](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/367494/Contractual_Process_-_Appendix_5_form.doc) (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 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](https://www.gov.uk/government/publications/security-policy-framework).

### Small and Medium Enterprises

1. The Authority is committed to supporting the Government’s small and medium-sized enterprise (SME) initiative; its ambitious target is that £1 in every £3 that the Government spends should be with small businesses by 2020. Our goal is that 25% of Authority spending should be spent with SMEs by 2020; this applies to the money which the Authority spends directly with SMEs, and through the supply chain. The Authority uses the European Commission definition of SME.
2. A key aspect of the Government’s SME Policy is ensuring that its suppliers throughout the supply chain are paid promptly.  All suppliers to the Authority and their sub-contractors are encouraged to make their own commitment and register with the [Prompt Payment Code](http://www.promptpaymentcode.org.uk/).
3. Suppliers are also encouraged to work with the Authority to support the Authority’s SME initiative. Information on the Authority’s purchasing arrangements, our commercial policy priorities and our SME policy can be found at [Gov.UK](https://www.gov.uk/government/organisations/ministry-of-defence/about/procurement).
4. 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](http://www.contracts.mod.uk/feed)

Tel No: 0845 270 7099

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

1. 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 ([Government Transparency and Accountability](https://www.gov.uk/government/policies/government-transparency-and-accountability)) and the information contained within Conditions of Contract Clause 8.
2. 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”).
3. You should complete the attached Tenderer’s Commercially Sensitive Information Form (Schedule H of the Conditions of Contract) explaining which parts of your Tender you consider to be commercially sensitive. This includes providing a named individual who can be contacted with regard to FOIA and EIR.
4. 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

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

### Change of Circumstances

1. If you have not previously submitted a Statement Relating to Good Standing or circumstances have changed please, select ‘Yes’ and submit a Statement Relating to Good Standing with your Tender.

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

1. 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.

### Military Aviation Authority (MAA)

28. In July 2011 the Military Aviation Authority (MAA) launched a new set of Regulatory Publications. Key to these is the Regulatory Articles (RA), which prescribe Acceptable Means of Compliance (AMC) for each separate Regulation. If you wish to propose an alternative means of compliance you must obtain agreement in principle from the MAA (through the Project team) in advance of submitting your Tender. AMC are strongly recommended practices and a justification will be required if they are not followed. You must consult the MAA where there is more than one AMC. You must confirm how you intend to comply with the RA, and the date you consulted with the MAA.

### Bank or Parent Company Guarantee

29. A parent Company or bank Guarantee is required in the form of Schedule Q as appropriate and attached. No contract will be awarded until a suitable Parent Company or Bank Guarantee, is in place.

### Cyber Essentials Accreditation

30. For all new requirements advertised from 1st January 2016 which entail the transfer of Authority identifiable information[[1]](#footnote-2) from customer to supplier or the generation of information by a supplier specifically in support of the Authority contract, the Authority will require suppliers to have a Cyber Essentials certificate by the contract start date at the latest, and for it to be renewed annually. This requirement must be flowed down the supply chain.

31. Please notify the Authority as soon as you become aware of any issues with Supply Chain ability to comply with Cyber Essentials.

### The Armed Forces Covenant

1. The Armed Forces Covenant is a public-sector pledge from Government, businesses, charities and organisations to demonstrate their support for the Armed Forces community. The Covenant was brought in under the Armed Forces Act 2011 to recognise that the whole nation has a moral obligation to redress the disadvantages the armed forces community face in comparison to other citizens, and recognise sacrifices made.
2. The Covenant’s two principles are that:
3. the Armed Forces community would not face disadvantages when compared to other citizens in the provision of public and commercial services; and
4. special consideration is appropriate in some cases, especially for those who have given most such as the injured and the bereaved.

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

1. [The Armed Forces Covenant](https://www.gov.uk/government/policies/armed-forces-covenant) provides guidance on the various ways you can demonstrate your support through the Corporate Covenant.
2. If you wish to register your support you can provide a point of contact for your company on this issue to the Armed Forces Covenant Team at the address below, so that the 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 on the website.

Email address: [covenant-mailbox@mod.uk](mailto:covenant-mailbox@mod.uk)

Address: Armed Forces Covenant Team

Zone D, 6th Floor, Ministry Of Defence

Main Building, Whitehall, London, SW1A 2HB

1. Paragraphs 30 – 33 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 review, contract award procedure or any resulting contract. However, the Authority very much hopes you will want to provide your support.

**COMMERCIAL COMPLIANCE MATRIX**

**AGREEMENT CONDITIONS**

| **Agreement Reference No.** | **Description of Clause** | **Pass/ Fail** |
| --- | --- | --- |
|  |
| **Part I - Core Clauses** | |  |
| Clause 1 | Definitions and Interpretation |  |
| Clause 2 | Qualifying Defence Contract |  |
| Clause 3 | Governing Law |  |
| Clause 4 | Commencement |  |
| Clause 5 | Duration of the Agreement |  |
| Clause 6 | Appointment and Liability |  |
| Clause 7 | Non-Exclusive Agreement |  |
| Clause 8 | Standing Offer |  |
| Clause 9 | Transparency |  |
| Clause 10 | Change of Control of the Contractor and Change in COI Associates |  |
| Clause 11 | Contractor’s Warranties and Representations |  |
| Clause 12 | Contractor's Related Parties |  |
| Clause 13 | Authority Related Parties |  |
| Clause 14 | Notices |  |
| Clause 15 | Representatives |  |
| Clause 16 | Authority's Disclosed Data |  |
| Clause 17 | Assignment and Novation |  |
| Clause 18 | Severability |  |
| Clause 19 | Variation |  |
| Clause 20 | Formal Amendments to the Agreement |  |
| Clause 21 | Amendments to the Agreement - Consolidated Versions |  |
| Clause 22 | Waiver |  |
| Clause 23 | No Partnership, Agency or Employment Relationship |  |
| Clause 24 | Counterparts |  |
| Clause 25 | Contracts (Rights of Third Parties) Act 1999 |  |
| Clause 26 | Entire Agreement |  |
| Clause 27 | Conflicts of Interest |  |
| Clause 28 | Prohibited Acts |  |
| **Part II - Parties’ Rights and Obligations** | |  |
| Clause 29 | Obligations of the Authority |  |
| Clause 30 | Obligations of the Contractor |  |
| Clause 31 | Acceptance of Contractor Deliverables |  |
| Clause 32 | Rejection of Contractor Deliverables |  |
| Clause 33 | Delivery of Contractor Deliverables |  |
| Clause 34 | Quality Assurance (with Deliverable Quality Plan) |  |
| Clause 35 | UK Import and Export Licences |  |
| Clause 36 | Sub-Contracts |  |
| **Part III – Financial Inspection and Review** | |  |
| Clause 37 | Financial Management Information |  |
| Clause 38 | Single Source Open Book |  |
| Clause 39 | Open Book Accounting on Sub-Contracts which are not Qualifying Sub-Contracts |  |
| Clause 40 | Single Source Confidentiality of Open Book and Reporting Information |  |
| **Part IV – Contract Management** | |  |
| Clause 41 | Contractor Related Party Governance |  |
| Clause 42 | Contract Management and Tasking |  |
| Clause 43 | Monthly Contract Reviews |  |
| Clause 44 | Single Source Contract Reports and Notifications |  |
| Clause 45 | QDC: Confidentiality of Single Source Contract Regulations Information |  |
| **Part V – Asset Management** | |  |
| Clause 46 | Government Furnished Assets and Contractor Assets |  |
| **Part VI – Engaged Personnel Matters** | |  |
| Clause 47 | Non-discrimination and Equality |  |
| Clause 48 | Engaged Personnel |  |
| Clause 49 | Transfer Regulations |  |
| Clause 50 | Non-Solicitation |  |
| Clause 51 | Transfer Regulations |  |
| **Part VII – Pricing, Payment, Performance and Incentivisation Mechanism** | |  |
| Clause 52 | Single Source: Profit and Loss Sharing on Firm/Fixed Price Contracts |  |
| Clause 53 | Invoicing and Payment |  |
| Clause 54 | Disputed Amounts |  |
| Clause 55 | Interest on Late Payments |  |
| Clause 56 | Recovery of Sums Due |  |
| Clause 57 | Exclusions of Contractor Set off |  |
| Clause 58 | VAT on Payments |  |
| Clause 59 | Tax Non-Compliance |  |
| **Part VIII – Supervening Events** | |  |
| Clause 60 | Business Continuity |  |
| **Part IX – Termination** | |  |
| Clause 61 | Early Termination |  |
| Clause 62 | Consequences of Termination or Expiry |  |
| Clause 63 | Post Termination or Expiry Obligations to Assist |  |
| **Part X – Dispute Resolution** | |  |
| Clause 64 | Dispute Resolution Procedure |  |
| **Part XI – Security Measures** | |  |
| Clause 65 | Security Measures |  |
| Clause 66 | Official-Sensitive Security Requirements |  |
| Clause 67 | Security Aspects Letter |  |
| Clause 68 | Cyber |  |
| **Part XII – Intellectual Property, Information and Disclosure** | |  |
| Clause 69 | Ownership of Intellectual Property |  |
| Clause 70 | Licence of Authority IPR |  |
| Clause 71 | Licence of Contractor IPR |  |
| Clause 72 | Licence ad Sub-licence of Third Party IPR Provided by the Contractor |  |
| Clause 73 | Protection of Information |  |
| Clause 74 | Contractor’s IPR Indemnity |  |
| Clause 75 | Further Assurances |  |
| Clause 76 | Use and Sharing of Know How |  |
| Clause 77 | Data Protection |  |
| Clause 78 | Confidentiality |  |
| Clause 79 | Controlled Information |  |
| Clause 80 | Legal Advice |  |
| Clause 81 | Disclosure |  |
| Clause 82 | Contractor Right to Request Confidentiality |  |
| Clause 83 | Publication |  |
| Clause 84 | Freedom of Insurance |  |
| **Part XIII – Insurance and Liabilities** | |  |
| Clause 85 | Insurance |  |
| Clause 86 | Liability |  |

**SCHEDULES**

| **Schedule No.** | **Category 1 – Mandatory** | **Pass/Fail** |
| --- | --- | --- |
| **Authority Drafting as standard** |  |
| Schedule A | Requirements |  |
| Schedule C | Contract Management |  |
| Schedule D | Tasking Process |  |
| Schedule E | Dispute Resolution Procedure |  |
| Schedule F | Payment Mechanism |  |
| Schedule G | COI Compliance |  |
| Schedule I | Management and Liability for Engaged Personnel |  |
| Schedule J | Termination Payments |  |
| Schedule L | Insurances |  |
| Schedule N | Transfer Regulations |  |
| Schedule O | Accommodation and IT |  |
| Schedule P | Exit Strategy and Plan |  |
| Schedule Q | Parent Company Guarantee |  |
| Schedule R | Processing, Personal Data and Data Subjects |  |

|  |  |  |  |
| --- | --- | --- | --- |
| **Category of Compliance**  **(1 or 2)** | **Condition** | **Accepted  (A / NA)** | **Comment** |
| Example clause: |  |  |  |
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**COMMERCIAL EVALUATION MATRIX**

**EVERTHING BELOW REDACTED**

1. 'Information' means any information in any written or other tangible form disclosed to one party by or on behalf of the other party under or in connection with the Contract, including information provided in the tender or negotiations which preceded the award of the Contract. [↑](#footnote-ref-2)