

Invitation To Tender
For
LSBU15/0051 Supply of Multifunction
Installation Tester 1653B

Contents

This invitation consists of the following documentation:

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Section A – Introduction

Definitions

- A1. This requirement is issued on behalf of the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland, (referred to in this document as "the Authority"). In this Agreement, the Authority is acting as part of the Crown.
- A2. "You / Tenderer" means the economic operator or group of operators in the form of a consortium, including sub-contractors, which has been invited to submit a response to this Invitation to Tender.
- A3. "Invitation to Tender" (ITT) refers to the first document that the Authority sends out to potential Tenderers that initiates a tender response, competitive dialogue or negotiation.
- A4. A "Tender" is the offer that you are making to the Authority.
- A5. "Contractor Deliverables" means the works, goods and / or the services, including packaging (and Certificates(s) of Conformity supplied in accordance with any Quality Assurance (QA) requirements if specified) which the contractor is required to provide under the contract in accordance with the Schedule of Requirements, but excluding incidentals outside the Schedule of Requirements such as progress reports.
- A6. "Schedule of Requirements" means that part of the contract which identifies, either directly or by reference, the Contractor Deliverables to be supplied or carried out, the quantities involved and the price or pricing terms in relation to each Contractor Deliverable.
- A7. "Conditions of Tendering" means the conditions set out in the DEFFORM 47 that govern the competition.
- A8. "Contract Conditions" means the attached conditions that will govern any resultant contract.
- A9. A "Third Party" is any person who is not an employee of the Tenderer as defined at A2.

Purpose

- A10. The purpose of this ITT is to invite you to propose a solution / best price to our requirement. This documentation explains and sets out the:
- a. tender process and timetable for the next stages of the procurement;
 - b. instructions and conditions that govern this competition;
 - c. information you must include in your Tender and the required format;
 - d. administrative arrangements for the receipt and evaluation of Tenders; and
 - e. Contract Conditions that shall apply in the event that the Authority awards a contract following this competition.
- A11. The sections in this ITT and associated documents are structured in line with a generic tendering process and do not indicate importance / precedence.
- A12. This ITT has been issued to all potential Tenderers chosen during the supplier selection stage, listed on page 2 of this DEFFORM 47.
- A13. The requirement was advertised by the Authority in Defence Contract Online dated 02 December 2014 with reference to the requirement for GB-Telford LSBU7/0190 following the Restricted procedure under the Public Contracts Regulations 2006.

ITT Documentation and ITT Material

- A14. ITT Documentation means any information in any medium or form (for example drawings, handbooks, manuals, instructions, specifications and notes of pre-tender clarification meetings), issued to you, or to which you have been granted access, by the Authority for the purposes of responding to this ITT. ITT Material means any other material (including patterns 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 ITT. ITT Documentation, ITT Material and any intellectual

property rights (IPR) in them shall remain the property of the Authority or other Third Party owners and is released solely for the purposes of enabling you to submit a Tender. You must:

- a. take responsibility for the safe custody of the ITT Documentation and ITT Material and for all loss and damage sustained to it while in your care;
- b. not copy or disclose the ITT Documentation or any part of it to anyone other than the bid team involved in preparing your Tender, and not use it except for the purpose of responding to this ITT;
- c. seek approval from the Authority if you need to provide access to any ITT Documentation or ITT Material to any Third Party;
- d. abide by any reasonable conditions imposed by the Authority in giving its approval under sub-paragraph A14.c, which at a minimum will require you to ensure any disclosure to a Third Party is made by you in confidence. Alternatively, due to IPR issues for example, the disclosure may be made, in confidence, directly by the Authority;
- e. accept that any further disclosure of ITT Documentation, or further use of ITT Documentation or ITT Material, without the Authority's written approval may make you liable for a claim for breach of confidence and / or infringement of IPR, a remedy which may involve a claim for compensation;
- f. immediately destroy all ITT documentation, ITT Material and derived information of an unmarked nature, should you decide not to participate in responding to this ITT, or you are notified by the Authority that your Tender has been unsuccessful; and
- g. consult the named Commercial Officer to agree the appropriate destruction process if you are in receipt of ITT Documentation and ITT Material marked 'OFFICIAL-SENSITIVE' or 'SECRET'.

A15. Some or all of the ITT Documentation and ITT Material may be subject to one or more confidentiality agreements made between you and either the Authority or a Third Party, for example a confidentiality agreement established in the form of DEFFORM 94. The obligations contained in any such agreement will be in addition to, and not derogate from, your obligations under paragraph A14 above.

Tender Expenses

A16. You will bear all costs associated with preparing and submitting your Tender. If the Tender process is terminated or amended by the Authority, the Authority will not reimburse you.

Material Change of Control from Supplier Selection

A17. You must inform the Authority in writing if there is any material change in control, composition or membership of your organisation and / or consortium members, including any sub-contractors at any time during the procurement process. This may affect your right to stay in the competition.

Contract Conditions

A18. The full text of Defence Conditions (DEFCONs) and Defence Forms (DEFFORMS) are available electronically via <https://www.gov.uk/acquisition-operating-framework>.

Section B – Key Activities

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

Stage	Date and Time	Initiated By	Submit to:
Invitation to Bidders Conference ¹	Not used	The Authority	All Tenderers
Date for Confirmation of attendance at Bidders Conference ¹	Not used	Tenderers	N/A
Final date for Clarification Questions / Requests for additional information	21 Apr 2015	Tenderers	Procurement Officer E Ops 1
Final Date for Requests for Extension ²	17 Apr 2015	Tenderers	Procurement Officer E Ops 1
The Authority issues Answers and Clarifications	23 Apr 2015	The Authority	All Tenderers ³
Tender Return	29 Apr 2015	Tenderers	The Tender Board, using DEFFORM 28
Tender Evaluation	26 May 2015	The Authority	N/A
Negotiations ⁴	N/A	The Authority	N/A
Reverse Auction	N/A	The Authority	N/A
Trials / Testing	N/A	The Authority	N/A

Notes

1. A Bidders Conference is where the Authority presents the requirement to all Tenderers at the same time. A copy of the presentation will be issued to all Tenderers regardless of attendance. It gives you an opportunity to ask questions about the requirement. The Tenderer must provide the name(s) of those attending the Bidders Conference to the above named contact, by the date shown, so that access to the site can be arranged.
2. The Tenderer must make requests for an extension in writing (email is sufficient) to the above named contact, by the date and time shown. Any extension is at the sole discretion of the Authority and if granted will be granted to all Tenderers.
3. The Authority will automatically copy questions and answers to all Tenderers, removing the names of those who have raised the questions. If you do not want your question disclosed you must inform the Authority of this and the reason why when submitting the question. The Authority may choose to discuss with you whether it is appropriate to disclose the question or response, or both, to other bidders. If the Authority decides to disclose, you will be given the opportunity to withdraw your question. Where a question reveals a piece of information that could significantly impact the Tenderers responses this may result in an extension of the Tender return date.
4. Negotiations are only permitted under the Negotiated procedures, unless the procurement is exempt from advertising under the Public Contracts Regulations 2006 or Defence and Security Public Contracts Regulations 2011.

Section C - Instructions on Preparing Tenders

Tenders for Selected Contractor Deliverables

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

Construction of Tenders

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

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

Validity

C4. In accordance with F3 your Tender must be valid / open for acceptance for 90 calendar days from the Tender return date. If successful, your Tender must be open for acceptance for a further thirty (30) calendar days.

Variant Bids

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

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

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

Section D – Tender Evaluation

This section details how your Tender will be evaluated

The Tender Evaluation will be on the basis
of:

Lowest Price

Section E – Instructions on Submitting Tenders

Submission of your Tender

- E1. Tenders must be sent to the Tender Board by the date and time stated in the covering letter to this DEFFORM 47.
- E2. You must complete and include DEFFORM 47 Annex A (Offer) (excluding Appendix 1) with your Tender. Where you select 'Yes' to any questions you must attach the relevant information.
- E3. You must include the original signed DEFFORM 47 Annex A (Offer) with one paper copy of your priced Tender.
- E4. You must submit your Tender in a sealed envelope.
- E5. You must attach the enclosed Tender Return Label (DEFFORM 28) to the outer packaging of each envelope that contains your Tender.
- E6. You must ensure you include all relevant information in your Tender. The Authority can only evaluate information that you include in your Tender.

Samples

- E7. Where samples are required for evaluation purposes you must be prepared to submit them without charge. You should clearly label samples with the following particulars:
- a. your name and address;
 - b. the Tender Reference Number and due date for return of the Tender; and
 - c. the Description and Item Number as shown in the Schedule of Requirements.
- E8. You should send any samples to the named Commercial Officer (or Technical Officer as detailed in the Tender) after the Tender return date.
- E9. The Authority may retain all samples for twelve (12) months from the Tender return date. After this period, the Authority will destroy the samples unless you specifically state you require their return. The Authority may keep samples associated with a successful Tender indefinitely.
- E10. Samples that are consumed will not be returned.

Section F – Conditions of Tendering

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

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

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

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

Conforming to the Law

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

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

Bid Rigging and Other Illegal Practices

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

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

Conflicts of Interest

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

F8. It is essential that you do not have a Conflict of Interest (COI).

Government Furnished Assets

F9. Where the Authority provides Government Furnished Assets (GFA) in support of this competition, you must include details of the GFA in your Public Store Account and treat it in accordance with Def Stan 05-99. If unsuccessful in this competition, you must seek disposal instructions for that GFA from the named Commercial Officer.

Standstill Period

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

Publicity Announcement

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

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

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

Sensitive Information

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

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

Remedies for Breach of Contract

F16. Damages for breach of contract are not limited under the contract. However, you should also note that in exercising its rights and remedies under the contract, the Authority must act in a reasonable and proportionate manner having regard to the nature and consequences of the breach of contract. If you are unsure about the potential liability under the contract, you should seek advice from the named Commercial Officer.

Reportable Requirements

F17. Listed in the DEFFORM 47 Annex A (Offer) are the Mandatory Declarations. It is a Condition of Tendering that you complete and attach the returns listed in the Annex and, where you select yes, you attach the relevant information.

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

Ministry of Defence

Tender Ref No: LSBU15/0051

Tender Submission Document (Offer)

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

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

Applicable Law				
I agree that any contract resulting from this competition shall be subject to English Law *Where 'No' is selected, Scots Law will apply.				Yes / No*
Total Value of Tender (excluding VAT)				
£				
WORDS				
UK Value Added Tax				
If registered for Value Added Tax purposes, please insert:				
a. Registration No				
b. Total amount of Value Added Tax payable on this Tender (at current rate(s)) £.....				
Location of work (town / city) where contract will be performed by Prime:				
Where items which are subject of your Tender are not supplied or provided by you, state location in town / city to be performed column (continue on another page if required)				
Tier 1 Sub-contractor Company Name	Town / city to be Performed	Contractor Deliverables	Estimated Value	SME Yes / No
Mandatory Declarations (further details are contained in Appendix 1 to DEFFORM 47 Annex A (Offer)):			Tenderer's Declaration	
Are the Contractor Deliverables subject to Registered Designs or Patents?			Yes* / No	
Are the Contractor Deliverables subject to Foreign Export Control and Security Restrictions?			Yes* / No	
Are the Contractor Deliverables subject to Overseas Expenditure?			Yes* / No	
Have you complied with all regulations relating to the operation of the collection of custom import duties?			Yes / No	
Have you completed Form 1686 for sub-contracts?			Yes / No	
Have you and your sub-contractors registered with the Prompt Payment Code with regards to SMEs?			Yes / No	
Have you completed and attached Tenderer's Commercially Sensitive Information Form (DEFFORM 539A)?			Yes / No	
If you have not already signed a corporate level DEFFORM 30 have you attached one?			Yes / No	
Have circumstances changed since Supplier Selection Stage? If so have you attached a revised Statement Relating to Good Standing?			Yes* / No	

Do the Contractor Deliverables contain Asbestos, as defined by the control of Asbestos Regulations 2012?	Yes* / No
Do the Contractor Deliverables contain hazardous items, materials or substances?	Yes* / No
Do the Contractor Deliverables (including Packaging) use Substances that deplete the Ozone Layer, as defined in Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000? http://ozone.unep.org/new_site/en/montreal_protocol.php	Yes* / No
Are you able to support the objectives of Reservist and other supplier support to the Armed Forces?	Yes* / No
Have you attached The Bank / Parent Company Guarantee?	Yes* / No / Not Required
Have you complied with the requirements of the Military Aviation Authority Regulatory Articles?	Yes / No / Not Required
*If selecting Yes to any of the above questions, please attach the information detailed in Appendix 1 to DEFFORM 47 Annex A (Offer).	
Tenderer's Declaration of Compliance with Competition Law	
We certify that the offer made is intended to be genuinely competitive. No aspect of the price has been fixed or adjusted by any arrangement with any Third Party. Arrangement in this context includes any transaction, or agreement, private or open, or collusion, formal or informal, and whether or not legally binding. In particular: a. the offered price has not been divulged to any Third Party, b. no arrangement has been made with any Third Party that they should refrain from tendering, c. no arrangement with any Third Party has been made to the effect that we will refrain from bidding on a future occasion, d. no discussion with any Third Party has taken place concerning the details of either's proposed price, and e. no arrangement has been made with any Third Party otherwise to limit genuine competition. We understand that any instances of illegal cartels or market sharing arrangements, or other anti-competitive practices, suspected by the Authority will be referred to the Competition and Markets Authority for investigation and may be subject to action under the Competition Act 1998 and the Enterprise Act 2002. We understand that any misrepresentations may also be the subject of criminal investigation or used as the basis for civil action. We agree that the Authority may share the Contractor's information / documentation (submitted to the Authority during this Procurement) more widely within Government for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes. We certify that we have identified any sensitive material in DEFFORM 539A.	
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:

Information on Mandatory Declarations

Notification of Inventions etc.

1. Where the Contractor Deliverables are subject to any Registered Intellectual Property Rights select 'Yes'.
2. You must clearly state in your Tender any Contractor Deliverable to be produced under any resultant contract that is, or is likely to be, the subject of a Patent, a Registered Design right or an application for either, or an unregistered design right, owned by either yourself or a Third Party. This includes anything of this nature affecting the performance of any resultant contract or subsequent use of any Contractor Deliverable by the Authority. You must specifically draw attention to:
 - a. any Patent or Registered Design (or application for either) or unregistered design right you own or control which is or appears to be relevant to the Contractor Deliverables, the use of which by or on behalf of the Authority may give rise to a claim under Sections 55 or 56 of the Patents Act 1977, or Section 12 of the Registered Designs Act 1949, or Section 240 of the Copyright, Designs and Patents Act 1988;
 - b. any allegation made against you, whether by claim or otherwise, of an infringement of an intellectual property right (whether a Patent, Registered Design, unregistered design right, copyright or otherwise) or of a breach of confidence, which relates to the performance of any resultant contract or subsequent use by or for the Authority of any Contractor Deliverables;
 - c. the nature of any allegation referred to under sub-paragraph 2.b., including any obligation to make payments in respect of the Intellectual Property Right of any confidential information and / or;
 - d. any action you need to take or the Authority is required to take to deal with the consequences of any allegation referred to under sub-paragraph 2.b.
3. You must, when requested, give the Authority details of every restriction and obligation referred to in paragraph 2. You must also provide, on request, any information required for authorisation to be given under Section 2 of the Defence Contracts Act 1958.
4. If you have previously provided information under paragraphs 2 and 3 you can provide details of the previous notification, updated as necessary to confirm their validity.

Notification of Foreign Export Control Restrictions

5. In respect of any Contractor Deliverables, likely to be required for the performance of any resultant contract, you must provide the following information in your Tender:
 - a. Whether all or part of any Contractor Deliverables are or will be subject to:
 - (1) a non-UK export licence, authorisation or exemption; or
 - (2) any other related transfer control that restricts or will restrict end use, end user, re-transfer or disclosure.
 - b. If requested, a summary of every existing, expected or known licence and restriction referred to in paragraph 5.a. This includes any related obligation or restriction and the extent they place an obligation or restriction on the Authority, including:
 - (1) the exporting nation and the export licence number, where known;
 - (2) the Contractor Deliverables affected;
 - (3) the nature of the restriction and obligation;
 - (4) the authorised end use and end users;

(5) any specific restrictions on access by Third Parties, or by individuals based on their nationality, to the Contractor Deliverables; and

(6) any specific restrictions on re-transfer or re-export to Third Parties of the Contractor Deliverables or anything delivered or used in the performance or fulfilment of them.

c. If requested, you must provide an outline of your mitigation plan to manage performance risks on any resultant contract based on paragraph 5.a.

6. You must use reasonable endeavours to obtain sufficient information from your potential supply chain to enable a full response to paragraphs 5.a and 5.b. If you are unable to obtain adequate information, you must state this in your Tender when responding to paragraph 5.a and 5.b.

7. If you become aware at any time during the competition that all or part of any proposed Contractor Deliverable is likely to become subject to a non-UK Government Control through a Government-to-Government sale only, you must inform the Authority immediately.

8. If you have previously provided information under paragraph 5 you can provide details of the previous notification and confirm the validity.

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

10. It is the Winning Tenderer(s) responsibility to ensure they comply with any restrictions stated in paragraph 5 during the life of the contract. This includes any restrictions the Authority has explicitly stated / clarified in any ITT documentation.

11. 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 5.

Overseas Expenditure

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

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

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

Import Duty

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

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

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

Sub-contracts Form 1686

17. Form 1686 (also known as Appendix 5) is to be used in all circumstances where contractors wish to place a sub-contract with a contractor where the release of either Reportable OFFICIAL or OFFICIAL-SENSITIVE information is involved. The process will require submission of the single page document either directly to the MOD Project Team or, where specified, to the DE&S Security Advice Centre. You can find further information in the Security Policy Framework – Contractual Process chapter. You can access a word version of Form 1686 on GOV.UK at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/322603/Contractual_Process_-_Appendix_5_form.doc.

Small and Medium Enterprises

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

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

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

21. 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
Tel No: 0845 270 7099

Transparency, Freedom of Information and Environmental Information Regulations

22. You should be aware that the contents of any resultant contract may be published in line with government policy set out in the Prime Minister's letter of May 2010 (<https://www.gov.uk/government/policies/improving-the-transparency-and-accountability-of-government-and-its-services>) and the information contained within DEFCON 539.

23. 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").

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

25. 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

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

Change of Circumstances

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

Asbestos, Hazardous Items and Depletion of the Ozone Layer

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

Reservist and other Supplier Support to the Armed Forces

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

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

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

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

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

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

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

33. Guidance on the various ways you can demonstrate your support through the Corporate Covenant is at The corporate covenant - Detailed guidance - GOV.UK.

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

35. Please provide a point of contact for your company on this issue to the Armed Forces Covenant Team at the address below, so that the MOD can alert you to any events or initiatives in which you may wish to participate. The Covenant Team can also provide any information you require in addition to that included in the websites.

Email address: covenant-mailbox@mod.uk

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

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

37. Paragraphs 29 – 36 above are not a condition of working with the Authority now or in the future, nor will this issue form any part of the tender evaluation, contract award procedure or any resulting contract. However, the Authority very much hopes you will want to provide your support and we are committed to working with you to this end.

Military Aviation Authority (MAA) Requirements

38. There are no MAA Requirements.

Bank or Parent Company Guarantee

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

Name and Address of Tenderer:

1. CMCA (UK) Ltd
2. Electroservices (Midlands) Ltd
3. Fluke (UK) Ltd
4. Instrotech Ltd
5. Alpha Electronics (Southern) Ltd

MINISTRY OF DEFENCE
Schedule of Requirements For
 The Supply of Multifunction
 Installation Tester 1653B

Tender No:
LSBU15/0051

Issued On:
30 Mar 2015

Table 1 – Articles Required

Item No.	Description	Quantity	Firm Price (£) EX VAT
1	W115 6625-99-4843565 Multifunction Installation Tester 1653B	62 PPQ 1	Per EA

Packaging Requirements:
 COMMERCIAL PACKAGING

Table 2 – Delivery of Articles

PLEASE QUOTE YOUR EARLIEST FIRM DELIVERY OFFER	<u>CONDITIONS OF CONTRACT</u> This Contract is subject to the Terms and Conditions of Contract
--	--

CONDITIONS OF CONTRACT

GENERAL CONDITIONS OF CONTRACT

DEFCON 5 (Edn 07/99) - MOD Form 640 - Advice and Inspection Note
Note: A commercial invoice will not be acceptable for payment against the contract.

DEFCON 68 (Edn 11/14) - Supply of Data For Hazardous Articles, Materials And Substances

DEFCON 113 (Edn 10/04) - Diversion Orders

DEFCON 129 (Edn 03/15) - Packaging for Articles other than Munitions

DEFCON 501 (Edn 03/15) - Definitions and Interpretations

DEFCON 502 (Edn 06/14) – Specifications changes

DEFCON 503 (Edn 12/14) - Formal Amendments to Contract

DEFCON 507 (Edn 10/98) - Delivery

DEFCON 509 (Edn 09/97) - Recovery of Sums Due

DEFCON 513 (Edn 06/10) - Value Added Tax

DEFCON 515 (Edn 10/04) - Bankruptcy and Insolvency

DEFCON 516 (Edn 04/12) - Equality

DEFCON 518 (Edn 11/12) - Transfer

DEFCON 520 (Edn 07/11) - Corrupt Gifts and Payments of Commission

DEFCON 521 (Edn 04/12) - Subcontracting To Supported Businesses

DEFCON 522 (Edn 07/99) - Payment

Note: DEFFORM 522A is not attached. For the purposes of this Contract and DEFCON 522 the "Relevant Form" shall be the Brown copy of MOD Form 640 and the "Representative of the Authority" shall be Head of E Ops Resources, DSG Land Supply Telford, Building B15, MOD Donnington, Telford TF2 8JT unless otherwise specified elsewhere in the Contract. With regard to paragraph 3 of DEFCON 522, the Contractor shall submit all claims for payment to the Bill Paying Branch using a properly completed DAB Form 10.

DEFCON 523 (Edn 03/99) - Payment of Bills Using the Bankers Automated Clearing Service (BACS) System

DEFCON 524 (Edn 10/98) - Rejection

DEFCON 525 (Edn 10/98) - Acceptance

DEFCON 526 (Edn 08/02) - Notices

DEFCON 527 (Edn 09/97) - Waiver

DEFCON 528 (Edn 05/12) - Overseas Expenditure and Import and Export Licences
Note: The Contractor's attention is drawn to Clause 1 of DEFCON 528 requiring notification of overseas expenditure.

DEFCON 529 (Edn 09/97) - Law (English)

DEFCON 530 (Edn 12/14) - Dispute Resolution (English Law)

DEFCON 531 (Edn 11/14) - Disclosure of Information

DEFCON 532A (Edn 06/10) - Protection of Personal Data (Where Personal Data is not being processed on behalf of the Authority)

DEFCON 534 (Edn 06/97) - Prompt Payment (Sub-Contracts)

DEFCON 537 (Edn 06/02) - Rights of Third Parties

DEFCON 538 (Edn 06/02) - Severability

DEFCON 539 (Edn 08/13) - Transparency

DEFCON 550 (Edn 02/14) - Child Labour and Employment Law

DEFCON 566 (Edn 07/14) - Change of Control of Contractor

DEFCON 602B (Edn 12/06) - Quality Assurance (Without Deliverable Quality Plan)

DEFCON 609 (Edn 06/14) - Contractor's Records

DEFCON 612 (Edn 10/98) - Loss of or Damage to the Articles

DEFCON 614 (Edn 09/03) - Default

DEFCON 619A (Edn 09/97) - Customs Duty Drawback

DEFCON 620 (Edn 06/14) - Contract Change Control Procedure

DEFCON 621B (Edn 10/04) - Transport (if the Contractor is responsible for Transport)

DEFCON 624 (Edn 11/13) - Use of Asbestos

DEFCON 632 (Edn 08/12) - Third Party Intellectual Property - Rights and Restrictions

DEFCON 644 (Edn 06/13) - Marking of Articles

DEFENCE ELECTRONIC COMMERCE SERVICE (DECS)

During the period of the Contract, the Authority may wish to switch from a manual system of tasking/receipt/payment to an electronic system. Further details will be provided when available, at which point the Authority will seek the Contractor's agreements that:

- i. DEFCON 5J (Edn 03/15) will supersede DEFCON 5 and any other conditions which are linked to DEFCON 5 shall operate under DEFCON 5J.
- ii. DEFCON 129J (Edn 07/08) - The Use of Electronic Business Delivery Form shall apply.
- iii. DEFCON 522J (Edn 05/03) - Payment under P2P shall apply.
- iv. DEFCON 522JA (Edn 04/09) – Payment under P2P (Matching the Invoice and Order (Two-way Match))

COMPLIANCE WITH ELECTRONIC TRANSACTIONS AGREEMENT (Shall only apply to orders delivered via DECS)

The Authority and the Contractor shall comply with the Electronic Transactions Agreement comprised in the completed DEFFORM 30 (Edn 02/14). The sending by the Contractor of an "Acknowledgement of Receipt" Message is to be regarded as acceptance of the Purchase Order Message to which it refers, unless the Purchase Order Message itself constitutes acceptance in accordance with the terms and conditions of the Contract. Messages under DEFFORM 30 (Edn 02/14) received by the Contractor shall be regarded as having been authorised by the Authority.

EXISTING CONTRACTS CREATED OFF-LINE (Shall only apply to orders delivered via DECS)

Where an offer and acceptance has already taken place off-line to establish the Contract, the Authority shall issue a Purchase Order Message in order to establish Unique Order Identifiers for the Items on the Schedule of Requirements for the purpose of subsequent P2P transactions. The Contractor shall respond with an Acknowledgement Message. In these circumstances, Purchase Order Message serve only to convey to the Contractor the information necessary against which to supply an item, prepare a delivery label and to submit an Invoice Message; the Purchase Order Acknowledgement Message serves only to confirm receipt of a Purchase Order Message. No new contract is understood to be formed by this Purchase Order transaction. The Authority shall hold the Contractor harmless for any delay or failure by the Authority to issue a Purchase Order. However, any delay or failure to issue a Purchase Order shall not relieve the Contractor of his obligations under the Contract.

SPECIAL CONDITIONS OF CONTRACT

1. CONTRACT NOVATION

1.1 The Authority may notify the Contractor that agreement has been reached to transfer the business and assets, or substantially all of the business and assets, of the Authority to DSG Newco. The Contractor agrees that, if it is so notified by the Authority, then with effect from the Completion Date or other date as stipulated by the Authority at its sole discretion:

1.1.1 The Authority's rights, obligations and liabilities under this Contract will be automatically transferred to DSG Newco in place of the Authority without the need for any consent or action by the Contractor or the Authority;

1.1.2 DSG Newco will automatically become responsible for all future obligations (the "Assumed Obligations") owed by the Authority to the Contractor in respect of this Contract;

1.1.3 The Authority will be released automatically from the Assumed Obligations.

1.2 The Contractor further agrees at the request of the Authority to enter into any further agreement or document and take any formal steps which are necessary or desirable at the time to give effect to these provisions.

1.3 If this Contract is novated pursuant to Clause 1.1 above then DSG Newco shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof with the prior written consent of the Contractor.

1.4 The Contractor shall disclose to DSG Newco such Confidential Information (which may include commercially sensitive information) as may be requested for the operation of the Contract. Where third-party consent is required before such Confidential Information can be disclosed, the Contractor shall use its best endeavours to obtain such consent. DSG Newco shall only use such Confidential Information for purposes relating to the performance of the Contract and for no other purposes.

1.5 The Authority reserves to itself the right at its sole discretion to appoint an agent to manage this Contract, and to give directions to the Contractor, on its behalf. In the event of such appointment, the Authority will notify the Contractor of the identity of the agent and of the scope of the agent's authority to so act.

"Completion Date" means the day when Completion takes place.

"Completion" means completion of the transfer and acquisition of the business of the DSG Trading Fund.

"DSG Newco" means DSG Land Equipment Support Limited (Company Number: 9329025) (or any successor)

2. PRICE

2.1 Unless otherwise stated in the schedule the price shall be the price of the Articles packaged in accordance with the terms of the Contract and delivered to the consignee.

2.2 Price shall allow for all discounts.

3. OPTIONS

Publication for expressions of interest advised that the Authority reserves the right to purchase additional quantities of these items from the winning tenderer within a 24 month period.

Tenderers shall therefore submit, as part of their Tender response, firm pricing and leads time as per below:

<u>Year 1 - Firm Price (£) Ex Vat (Inclusive of Packaging and Delivery) for Multifunction Installation Tester 1653B, NSN 6625-99-4843565</u>

Price:

Lead time:

<u>Year 2 - Firm Price (£) Ex Vat (Inclusive of Packaging and Delivery) for Multifunction Installation Tester 1653B, NSN 6625-99-4843565</u>

Price:

Lead time:

4. DESCRIPTION OF DEF STAN

DEFSTAN 00-56 Part 1 - Safety Management Requirements For Defence System

DEFSTAN 05-61 Part 1, Issue 5 - Concessions

DEFSTAN 05-135 Issue 1 - Avoidance of Counterfeit Materiel

DEFSTAN 81-41 Pts 1-6 - Packing of Defence Material (in accordance with DEFCON 129)

5. DESCRIPTION OF AQAPS

AQAP 2130 Edn 3 - NATO Quality Assurance Requirements for Inspection And Test.
Certificate of Conformance shall be provided in accordance with DEFCON 627

6. INFORMATIVE QA STANDARDS

AQAP 2009 Edn 3 - For guidance on application and interpretation of AQAPs

7. ADDITIONAL REQUIREMENTS

The following is a strict requirement for the items:

- 7.1 ISO Calibration Certificates
- 7.2 Operating Instructions

8. DELIVERY TERMS

Contract is carriage paid, not ex-works.

9. PACKING REQUIREMENTS

Items require Commercial Packing A

As specified in DEFCON 129 (Edn 03/15) Para 6 – Commercial Packaging

10. BAR CODE LABELS

Bar Coding as specified in DEFCON 129 (Edn 03/15) Para 14, will be a strict requirement of any subsequent Contract. Any items not Bar Coded will be rejected unless expressly agreed with the Authority.

11. CONSIGNEE

Trade Receipts, LCS Donnington, Telford TF2 8JT

12. DELIVERY INSTRUCTIONS

For Parcel deliveries to LCS Donnington, the following criteria will apply

- A. Maximum weight per item 25 KG
- B. Maximum length per item 80 CM
- C. Maximum width per item 80 CM
- D. Maximum height per item 40 CM

At the point of Parcel delivery, B5 LS Donnington reserves the right to:

- Not accept a delivery/collection outside of the hours 8.00 to 16:00 (15:30 Friday only)
- Allow up to 5 parcels per supplier per day.
- Defer a delivery to our Docks area if there is a Health and Safety concern.
- Redirect the driver to an approved area/an alternative building for offloading.
- Offer the next available space within the Vehicle Delivery Service if the delivery does not meet the criteria of that above.

LS will not take responsibility for undelivered goods should the company choose not to be re-directed.

PALLET DELIVERIES - LS DONNINGTON

Items requiring delivery to LS that fall outside of the above criteria, should be declared through our Logistics Commodities and Services Vehicle Booking Service (Booking Slots) situated in Trade Receipts, B5 FMW Donnington, using the Email address DESDDA-FMWSLOTS@mod.uk and quoting the following:

1. The 13 digit NATO Stock Number (NSN) for deliveries of 10 NSNs or under (multiple pallet deliveries of a single NSN will not be accepted without it).
2. Type of Item (Description).
3. Requirement Change Form (RCF) Number as advised by Project Team.
4. Number of packages / pallets.
5. Any special type of Mechanical Handling aids required.
6. Any specialist information e.g. Urgent Operational Requirement / Valuable & Attractive.
7. Supplier / Carrier Details.
8. Contact Number in case of communication failure.
9. Preferable date and time for delivery.
10. A safety data sheet is needed for hazardous items.

NCR Collection

If the booking request is for a Non-Compliant Trade Receipt requiring collection from the Donnington site, the NCR number (NCR 0*****), NSN and any covering Documentation is required at the email stage.

DESDSDA-FMWSLOTS@mod.uk

Should the email communication links be unavailable please contact:

Booking Slots Mobile - 07500 123710, Landline - 01952 673322

Receipts Manager - 01952 673305

Receipts Supervisor - 01952 673389

13. NON CONFORMING DELIVERIES

13.1 Please note that following a recent amendment to Joint Service Publication (JSP) 886 Vol 2 Part 1, it is now JSCS policy to quarantine and reject any consignments that do not conform to the requirements of the contract.

13.2 Should any consignments be deemed as non-conforming by JSCS the Authority will notify the contractor as to the reason(s) for non-conformance. In accordance with DEFCON 524 (Edn 10/98) - Rejection, it will be the responsibility of the contractor to rectify the problem on site at JSCS or arrange for the items to be collected and rectified at the contractor's premises at no cost to the crown. The list at 13.4 details the reasons upon which a consignment may be rejected.

13.3 It is advised however that in certain circumstances the Authority may consider it impractical for the Contractor to undertake any rectification due to geographical location, nature of the non-conformance and/or urgency of need, in these situations the Authority may request JSCS to undertake the rectification action but will pass on any associated costs to the Contractor as necessary.

13.4 Reasons for Non Conformance:

Incorrect DMC/NSN
Incorrect Description
Part/Batch Numbers Incorrect
Incorrect PPQ
Incorrect D of Q
Packaging Level incorrect
No Bar Code Labelling
Insufficient/No Test Certificates
Damaged in Transit
Incorrectly Labelled
Incorrect Matcon
No Logo (ISPM 15) Fail
Mixed NSN
Non Codified Item

No Engineering Record Card
No Labelling
No Paperwork
No weight label
In adequate Shelf Life
No hazard Data Sheet
Incorrect Quantity - Surplus

14. NEW STORES REJECT (NSR)

14.1 If the Authority reasonably considers that any Contractor Deliverable fails to comply in all material respects to the specification, a New Stores Reject (NSR) shall be raised by the Authority. Such rejection shall be reported to the Contractor in writing, who will manage it in accordance with paragraphs below.

14.2 Once notified in accordance with paragraph 14.1 the Contractor shall respond to the Authority's Representative (Procurement Branch) within 5 Business Days of receipt detailing its offer of repair and/or replacement at no cost to the Authority. The Authority's Representative (Procurement Branch) shall respond to the Contractors proposed remedy within 5 Business Days.

14.3 Once the remedy is agreed between the Authority and the Contractor, the Parties shall agree a reasonable time period within which the NSR shall be fully resolved and the corrected Contractor Deliverables delivered, at the Contractor's cost, to the Authority's stated consignee.

Appendix - Addresses and Other Information

1. Commercial Officer

LSBU7 Procurement, DSG Land Supply Business Systems,
Building B15, MOD Donnington, Telford, Shropshire, TF2
8JT

Email: farida.mansurali@dsg.mod.uk

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

TLS Technical, DSG Land Supply Business Systems, Building B15,
MOD Donnington, Telford, Shropshire TF2 8JT

Email: ben.sullivan@dsg.mod.uk

3. Packaging Approving Authority

AS BOX 2

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

Tel No: 01952 673815

(b) U.I.N. D5475C

5. Drawings/Specifications are available from

Not applicable

6. For contracts containing DEFCON 5, mauve Copies of MOD Form 640 are to be sent to

(where no address is shown the mauve copy should be destroyed)

7. Quality Assurance Representative:

As per Conditions of the Contract – Condition 4, 5 and 6

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

8. Public Accounting Authority

1. Returns under DEFCON 694 (or SC equivalent) should be
sent to DBS Finance ADMT – Assets In Industry 1, Level 4
Piccadilly Gate, Store Street, Manchester, M1 2WD ☎
44 (0) 161 233 5397

2. For all other enquiries contact DES Fin FA-AMET Policy,
Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD
☎ 44 (0) 161 233 5394

9. Consignment Instructions

The items are to be consigned as follows:

As per Contract Condition 11 - Consignee

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

N/A – Carriage paid Contract

11. The Invoice Paying Authority (see Note 1)

Ministry of Defence ☎ 0151-242-2000
DBS Finance
Walker House, Exchange Flags Fax: 0151-242-2809
Liverpool, L2 3YL

Website is:

<https://www.gov.uk/government/organisations/ministry-of-defence/about/procurement#invoice-processing>

12. Forms and Documentation are available through *:

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

Applications via fax or email:

DESLCSLS-OpsFormsandPubs@mod.uk

NOTES

1. Forms. Hard copies, including MOD Form 640 are available
from address in Box 12., All other invoicing forms e.g. AG
Forms 169 and 173, are available from the website address
shown at Box 11.

2.* Many DEFCONs and DEFFORMs can be obtained from
the MOD Internet Site:

<https://www.aof.mod.uk/aofcontent/tactical/toolkit/index.htm>

For Official Use Only Recoverable YES ☐ NO ☒

Issue of Government Property YES ☐ NO ☒

VAT Contractor - Country of Origin (delete those not applicable)

UK

Overseas (non-EC Country)

Overseas (EC Country)

If EC specify country:

Outside the scope

Exempt

Taxable Zero Rate

Taxable - Standard Rate

☐

☐

☐

☒

Item Nos

Item Nos

Item Nos

Item Nos

ALL ITEMS

Finance Branch

E OPS RESOURCES

LH No/Project No

Requisition No

Project Management/
Production branch
reference

LSBU15/0051

Place of manufacture

Place of packaging

Contractor's Tel No

(where contract is with an overseas contractor RP (FIN) VAT Guidance Note No 3 should be consulted)

Tenderer's Commercially Sensitive Information Form

ITT Ref No:LSBU15/0051
Description of Tenderer's Commercially Sensitive Information:
Cross Reference(s) to location of sensitive information in Tender:
Explanation of Sensitivity:
Details of potential harm resulting from disclosure:
Period of Confidence (if applicable):
Contact Details for Transparency / Freedom of Information matters: Name: Position: Address: Telephone Number: Email Address:

Not to be used for General
Correspondence with the
Ministry

Affix
Stamp
Here

THE TENDER BOARD
Ministry of Defence (ARMY)
Defence Support Group
Building B15
Donnington
Telford
TF2 8JT

Tender No: **LSBU15/0051**

Due 1400 hours: **29 April 2015**

THE ELECTRONIC TRANSACTIONS AGREEMENT

Between

And

SECRETARY OF STATE FOR DEFENCE

MINISTRY OF DEFENCE
Electronic Transactions Agreement

THIS AGREEMENT comprises the General Clauses for electronic transactions.

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

AGREED

For and on behalf of:

For and on behalf of:

Secretary of State for Defence

Signature: _____

Signature: _____

Name: _____

Name: _____

Position: _____

Position: _____

Date: _____

Date: _____

Whose Registered Office is at:

Whose Address is:

Agreement reference number:

Contents

Electronic Transactions

General Clauses

CLAUSE 1	Definitions
CLAUSE 2	Scope
CLAUSE 3	Security of Data
CLAUSE 4	Authenticity of Messages
CLAUSE 5	Integrity of Messages
CLAUSE 6	Acknowledgement of Receipt of Messages
CLAUSE 7	Storage of Data
CLAUSE 8	Intermediaries
CLAUSE 9	Term and Termination
CLAUSE 10	Interruption of Service
CLAUSE 11	Invalidity and Severability
CLAUSE 12	Notices
CLAUSE 13	Precedence
CLAUSE 14	Virus Control
CLAUSE 15	Limit of Liability
CLAUSE 16	Entire Agreement
 Annex A	 Message Implementation Guidelines (MIGs) and additional requirements and information applicable to this Agreement

1. Definitions

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

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

2. Scope

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

3. Security of Data

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

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

4. Authenticity of Messages

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

5. Integrity of Messages

- a. The sending party shall ensure as far as is reasonably practicable that all Messages are complete, accurate and secure against being altered in the course of transmission and, subject to Sub-Clauses 5.b. 5.d. and 15, shall be liable for the direct consequences of any failure to perform its obligations under this Sub-Clause 5.a.
- b. Each party will accord all Messages the same status as would be applicable to a document or to information sent other than by electronic means, unless a Message can be shown to have been corrupted as a result of technical failure on the part of a machine, system or transmission line involved in the process of Interchange.
- c. Upon either party becoming aware that a Message has been corrupted or if any Message is identified as incorrect then that party shall inform the other and the sending party shall re-transmit the Message as soon as practicable with a clear indication that it is a corrected Message. Any liability of the sending party which would otherwise accrue

from its failure to comply with the provisions of this Sub-Clause 5.c. shall not accrue if Sub-Clause 5.d. applies.

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

6. Acknowledgement of Receipt of Messages

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

and 17.00 hours on a business day (recipient's time) or if transmitted at any other time, at 09.00 on the first business day (recipient's time).

7. Storage of Data

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

8. Intermediaries

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

9. Term and Termination

- a. This Agreement shall take effect as of the date of last signature and shall remain in full force and effect until terminated by either party upon giving one month's notice to the other. Any termination of this Agreement shall not affect contracts that call it up by reference prior to that termination.
- b. Notwithstanding termination for any reason, Clauses 3, 7 and 8 shall survive termination of this Agreement.
- c. Termination of this Agreement shall not affect any action required to complete or implement Messages which are sent prior to such termination.

10. Interruption of Service

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

11. Invalidity and Severability

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

12. Notices

The provisions of DEFCON 526 shall apply.

13. Precedence

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

14. Virus Control

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

15. Limit of Liability

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

16. Entire Agreement

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

Message Implementation Guidelines (MIGs)

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