|  |
| --- |
|  |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Media Raid:2016 Branding Elements:1 - Logo:AI versions:New_DE&S_logo_RGB:Colour_RGB:New_DE&S_logo_RGB.png | |  | | --- | | Commercial Officer: **REDACTED**  Title: **REDACTED** | | Contact Number **REDACTED** | | Email:**REDACTED** | |  |
| Defence Marine Services  Room 221, 24 Store,  Building1/117  HMNB Portsmouth  PO1 3LT | /Volumes/Media Raid/Jobs in Progress/Ed L/CURRENT JOBS/ABW-15-238-BRANDING-2015/2-BRAND ELEMENTS/4-CORPORATE STATIONARY/SOURCE/icons-for-form.jpg |
|  |  |
|  | Date 01 December 2022  Our Reference:703249457 |  |

Dear Sir/Madam

**Defence Marine Services Next Generation (****"DMS-NG") Invitation To Negotiate (ITN) Reference Contract 3 Supply and Maintenance of Moorings, Markers and Targets. Contract Number** **703249457**

1. Thank you for your response to the DPQQ, which as you are aware has been successful.
2. DMS-NG comprises the following four contracts:

Contract 1 – Support to In-Port Marine Services and Delivery of a Vessel Replacement Programme

Contract 2 – Inshore Support to Military Training, Testing and Evaluation

Contract 3 – Supply and Maintenance of Moorings, Markers and Targets

Contract 4 – Off-Shore support to Military Training and Exercises

1. You are invited to Tender for the DMS-NG Contract 3 Supply and Maintenance of Moorings, Markers and Targets competition in accordance with the attached documentation. Contract 3 is a competed contract which is part of the wider DMS-NG programme.
2. This is a unique opportunity for you to collaborate with the Authority and its other industrial partners to drive innovation, transformation, and best practice. The successful Tenderer for any of the Contracts will have a direct impact on improving DMS-NG capabilities and operational performance.
3. The Authority values the contribution that Incumbent Service Providers have made and are expected to continue to make to the Authority's capabilities. At the same time, the Authority recognises the significant innovation and other benefits that new suppliers can bring.
4. The anticipated date for the contract award decision is 23 August 2024. Contract award following this will be subject to a standstill period as detailed in Section B (Key Tendering Phases) below.
5. You must submit your Initial Tender and any ITN Documentation electronically via the Defence Sourcing Portal no later than the Tender Return Date set out in the table (Proposed Timetable) in paragraph 9.1.
6. Please confirm receipt of this ITN via the Defence Sourcing Portal within five (5) Business Days of the date of this letter.

Yours faithfully

**REDACTED**

**List of Tenderers Invited to Submit a Tender**

**Contract 3 Supply and Maintenance of Moorings, Markers and Targets. Contract Number 703249457.**

|  |  |
| --- | --- |
| **Tenderer Name** | **Tenderer Address** |
| **REDACTED** | **REDACTED** |
| **REDACTED** | **REDACTED** |

**DEFFORM 47 Invitation to Negotiate**

**Contract 3 Supply and Maintenance of Moorings, Markers and Targets.**

CONTENTS

SECTION A – INTRODUCTION 8

1 DEFINITIONS AND INTERPRETATION USED IN THIS ITN 8

2 INTRODUCTION TO THE DMS-NG PROGRAMME 16

3 PURPOSE 17

4 DESCRIPTION OF CONTRACT 18

5 OVERVIEW OF CONTRACT 18

6 DATA ROOM 19

7 OTHER INFORMATION 19

SECTION B – KEY TENDERING PHASES 21

8 INTRODUCTION 21

9 PROPOSED TIMETABLE 21

10 TENDERERS CONFERENCE 22

11 TENDERER CHECKPOINT MEETINGS 22

12 ATTENDANCE AT MEETINGS 22

13 INITIAL TENDER RETURN AND EVALUATION 23

14 NEGOTIATION PHASE 24

15 INVITATION TO SUBMIT FINAL TENDER (ISFT) 25

16 CONTRACT AWARD 25

17 STANDSTILL PERIOD 25

SECTION C - INSTRUCTIONS ON PREPARING TENDERS> 26

18 GUIDANCE INSTRUCTIONS 26

SECTION D – CONDITIONS OF TENDERING 27

19 NO COMMITMENT 27

20 TENDERER ACCEPTANCE OF TERMS OF THIS ITN 27

21 ELECTRONIC PURCHASING 27

22 ITN DOCUMENTATION AND ITN MATERIALS 28

23 INTELLECTUAL PROPERTY IN ITN DOCUMENTATION AND ITN MATERIALS 28

24 VARIANT TENDERS 29

25 INDEPENDENT ASSESSMENT REQUIRED 29

26 TENDER EXPENSES AND WORK UNDERTAKEN DURING THIS PROCUREMENT 29

27 GUARANTEES 29

28 SHARED DATA ENVIRONMENT 30

29 OTHER AGREEMENTS 30

30 CYBER RISK CONTRACTOR ASSURANCE QUESTIONNAIRE 30

31 GOVERNMENT FURNISHED EQUIPMENT AND REDUNDANT MATERIEL 30

32 CONFLICTS OF INTEREST AND ETHICAL WALLS 31

33 SENSITIVE INFORMATION 32

34 TRANSPARENCY, FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS 32

35 DATA PROTECTION 33

36 PUBLICITY ANNOUNCEMENT 33

37 MATERIAL CHANGE OF CONTROL 33

38 AUTHORITY'S ADVISERS 35

39 CONSULTATION WITH CREDIT REFERENCE AGENCIES 35

40 TRANSFERRING EMPLOYEES 35

41 LOTS 37

42 SAMPLES 37

43 APPLICABLE LAW 37

NAVIGATING THESE DOCUMENTS

This Invitation to Negotiate (ITN) sets out the requirements that Tenderers must meet to submit a valid Tender. It also contains the draft Contract, further related documents and forms, and sets out the Authority's position with respect to the competition.

This invitation consists of the following documentation:

Volume 1

* DEFFORM 47 – Invitation to Negotiate. This ITN sets out the key requirements that Tenderers must meet to submit a valid Tender. It also sets out the conditions relating to this competition. For ease it is divided into:
  + Section A – Introduction
  + Section B – Key Tendering Phases
  + Section C – Guidance to Tenderers
  + Section D – Conditions of Tendering
  + Annex A – Tender Submission Document (Offer)
    - Appendix 1 – Information on Mandatory Declarations
  + Annex B – Defence Sourcing Portal Guidance
  + Annex C – Guidance to Tenderers
    - Appendix 1 – Technical Requirements of Response Questions
    - Appendix 2 - Contract Provision Categories
  + Annex D – Evaluation of Tenders
    - Appendix 1 – Tender Deliverables' Weightings
  + Annex E – Security Aspects Letter
    - Appendix 1 – UK Official and UK Official-Sensitive Contractual Security Conditions
    - Appendix 2 – Contractor's Personnel at Government Establishments

Volume 2

* Contract 3 documents (as per the contents table in the Contract 3 Terms & Conditions)
  + Contract 3 Terms & Conditions which include the Schedule of Requirements and any additional Schedules, Annexes and/or Appendices

1. – INTRODUCTION
2. DEFINITIONS AND INTERPRETATION USED IN THIS ITN
   1. **Definitions**
      * + 1. In this ITN, unless the context otherwise requires, the following words and expressions shall have the following meanings; other capitalised terms shall have the meanings given to them in Schedule 1 (Definitions) or Schedule 4 (Payment Performance and Incentivisation Mechanism) of the Contract 3 Terms & Conditions.

|  |  |
| --- | --- |
| **"Acceptable Means of Compliance", "AMC"** | 1. has the meaning(s) ascribed in the applicable Defence Maritime Regulation; |
| **"Armed Forces Covenant"** | 1. means the covenant detailed in paragraph 7.1 (The Armed Forces Covenant); |
| **"****Authority"** | 1. means the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland, acting as part of the Crown; |
| **"Authority's Commercial Officer"** | 1. means Callum Johnstone, DES Ships Acq-Conrcl-20; |
| **"Commercial Envelope"** | 1. means the location in the DSP where Tender Deliverables must be submitted as set out in Table C.1 (Tender Deliverable Checklist) of Annex C (Guidance to Tenderers); |
| **"****Competition Markets Authority", "****CMA"** | 1. means the UK competition regulator responsible for strengthening business competition and reducing anti-competitive activities; |
| **"Compliance Regime"** | 1. means a legally enforceable set of rules, procedures, physical barriers and controls that, together, act to prevent the flow of sensitive or protected information to parties to whom it may give an unfair advantage; |
| **"****Conditions of Tendering"** | 1. means the conditions set out in this ITN that govern the competition; |
| **"****Consortium"** | 1. means an arrangement whereby two or more economic operators come together specifically for the purposes of Tendering for this Contract and **"Consortia"** will be construed accordingly; |
| **"Consortium Arrangement"** | 1. means two or more economic operators who have come together specifically for the purpose of Tendering for this Contract and who establish a consortium agreement or special purpose vehicle to contract with the Authority; |
| **"Contract"** | 1. means the Contract entered into between the successful Tenderer and the Authority, should the Authority award a Contract as a result of this competition; |
| **"Contract 3 Terms &** **Conditions"** | 1. means the Contract 3 terms and conditions including any schedules, annexes and appendices that will govern the Contract entered into between the successful Tenderer and the Authority, should the Authority award a Contract as a result of this competition; |
| **"Cyber Implementation Plan"** | 1. means the plan referred to in Clause 3 of DEFCON 658; |
| **"Cyber Risk Profile"** | 1. means the level at which the cyber risk is classified. The Cyber Risk Profile in relation to this Contract procurement is moderate; |
| **"Cyber Security Risk Assessment"** | 1. means a structured process that is designed to identify security vulnerabilities in an organisation and how to take proactive steps to improve vulnerable areas for this Contract; |
| **"Data Room"** | 1. means the data room containing information to support Tenderers in compiling their Tender responses which is hosted on AWARD and can be accessed via the Defence Sourcing Portal; |
| **"Defence Commercial Toolkit"** | 1. means useful information about defence procurement and links to related guidance and instructions from the Authority; |
| **"DEFCON"** | 1. means Defence Conditions which are available electronically via the Knowledge in Defence (KID) website; |
| **"Defence Cyber Protection Partnership", "****DCPP"** | 1. means the joint UK Ministry of Defence and industry initiative put in place to improve the protection of the defence supply chain against cyber threats; |
| **"Defence Cyber Security Partnership Rules"** | 1. has the meaning given to it in the guidance for Defence Cyber Protection Partnership; |
| **"DEFFORMS"** | 1. means Defence Forms which are available electronically via the Knowledge in Defence website; |
| **"Defence Maritime Regulations", "DMR"** | 1. means DSA02-DMR - Defence Maritime Regulations for Health Safety and Environmental Protection, issued by the Defence Maritime Regulator under the authority of the Charter for the Defence Safety Authority (DSA) (Secretary of State for Defence) as amended from time to time; |
| **"Derogation"** | 1. means, for a limited number of the Contract 3 Terms and Conditions, proposed alternative drafting; |
| **"DSP Supplier User Guidance"** | 1. means the technical guide to Tenderers on how to use the Defence Sourcing Portal accessible via the Defence Sourcing Portal; |
| **"****Evaluation Criteria"** | 1. means the Evaluation Criteria for the Contract set out in Annex D (Evaluation of Tenders) and "**Evaluation Criterion**" will be construed accordingly; |
| **"Exit Management Plan"** | 1. means the plan to be prepared in response to RoR ID C3\_EMP found in Appendix 1 (Technical Requirements of Response Questions) of Annex C (Guidance to Tenderers); |
| **"Final Contract"** | 1. means the final version of the Contract 3 Terms & Conditions issued to Tenderers following the Negotiation Phase; |
| **"Final Tender"** | 1. means any final Tender that is submitted in accordance with this ITN following the issue by the Authority to Tenderers of the Invitation to Submit Final Tenders; |
| **"Final Tender Phase"** | 1. means the Tender phase detailed in paragraph 15 (Invitation to Submit Final Tender) of this ITN and paragraphs 11.20 and 11.21 (Final Tender Phase) of Annex C (Guidance to Tenderers); |
| **"Financial Model"** | 1. means the Financial Model to be submitted by Tenderers as part of their Tenders in accordance with the Financial Requirements of Response; |
| **"Financial Requirement of Response" or "Financial RoRs"** | 1. means a financial requirement of response as set out in Table C.4 (RoR for the Financial Model), C.5 (RoR for the Record Of Assumptions & Data Book ('ROADB')) or C.6 (RoR for the Payment, Performance and Incentivisation Mechanism) of Annex C (Guidance to Tenderers); |
| **"Freedom of Information Request"** | 1. means any request for information made under the Freedom of Information Act 2000; |
| **"Governance Management Plan"** | 1. means the plan to be prepared in response to RoR ID C3\_GMP found in Appendix 1 (Technical Requirements of Response Questions) of Annex C (Guidance to Tenderers); |
| **"Government Transparency Agenda"** | 1. means the Government's commitment to greater transparency across its operations to enable the public to hold public bodies and politicians to account, and includes commitments to be as open, accountable, and honest when dealing with public procurement; |
| **"Human Resources Management Plan"** | 1. means the plan to be prepared in response to RoR ID C3\_HRMP found in Appendix 1 (Technical Requirements of Response Questions) of Annex C (Guidance to Tenderers); |
| **"Incumbent Service Provider"** | 1. means a service provider, including its affiliates and/or Sub-Contractors, who immediately prior to the relevant Service Commencement Date, supplied to the Authority services which are being replaced by any of the Services; |
| **"Initial Tender"** | 1. means any initial Tender submitted in response to this ITN; |
| **"Initial Tender Phase"** | 1. means the Tender phase detailed in paragraph 13 (Initial Tender Return and Evaluation) of this ITN and paragraphs 11.4 to 11.17 (Initial Tender Phase) of Annex C (Guidance to Tenderers); |
| **"Insurance Requirement(s)"** | 1. means the insurance requirements set out in Table C.3 (Insurance Requirements) of Annex C (Guidance to Tenderers) that Tenderers must complete and submit as a required Tender Deliverable; |
| **"International Transfer and Arms Regulations", "ITAR"** | 1. means the United States regulatory regime to restrict and control the export of defence and military related technologies to safeguard US national security and further US foreign policy objective; |
| **"Invitation to Submit Final Tenders", "ISFT"** | 1. means invitations sent to the Tenderers following the Negotiation Phase requesting the submission of Final Tenders; |
| **"ITN Documentation"** | 1. means this ITN and any information in any medium or form (for example drawings, handbooks, manuals, instructions, specifications and notes of pre-Tender meetings), issued to Tenderers, or to which they have been granted access by the Authority, for the purposes of responding to this ITN. **"ITN Documents"** will be construed accordingly; |
| **"ITN Materials"** | 1. means any materials (including patterns and samples), equipment or software, in any medium or form issued to Tenderers, or to which they have been granted access, by the Authority for the purposes of responding to this ITN, excluding the ITN Documentation; |
| **"Knowledge in Defence", "KID"** | 1. means the website where DEFCONs and DEFFORMS can be located, accessible via the Defence Gateway; |
| **"MAC"** | 1. means the Model Award Criteria relating to social value which are derived from the UK Government's Social Value Model (Procurement Policy Note 06/20); |
| **"Mandatory Declarations"** | 1. means a condition of tendering that the Tenderer must complete and return as requested in Appendix 1 (Information on Mandatory Declarations) of Annex A (Tender Submission Document (Offer)); |
| **"Mooring Replacement Programme"** | 1. means the programme to be prepared in response to RoR ID C3\_MRP found in Appendix 1 (Technical Requirements of Response Questions) of Annex C (Guidance to Tenderers); |
| **"Most Economically Advantageous Tender", "****MEAT"** | 1. has the meaning set out in Regulation 31 of the Defence and Security Public Contracts Regulations 2011; |
| **"Negotiation Phase"** | 1. means the period of negotiation between the Authority and Tenderers to be conducted in accordance with paragraph 14 (Negotiation Phase); |
| **"Net Present Value", "NPV"** | 1. means the amount calculated in accordance with paragraph 5.17 of Annex D (Evaluation of Tenders); |
| **"new Fair Deal for staff pensions", "NFD"** | 1. means the revised Fair Deal position set out in the HM Treasury guidance: "Fair Deal for staff pensions: staff transfer from central government" issued in October 2013 including any amendments to that document immediately prior to the Relevant Transfer Date; |
| **"****Non-Compliance"** | 1. has the meaning in paragraph 6 (Exclusion of Tenders for Non-Compliance) of Annex D (Evaluation of Tenders) and "**Non-Compliant**" will be construed accordingly; |
| **"Operational Delivery Plan"** | 1. means the plan to be prepared in response to RoR ID C3\_ODP found in Appendix 1 (Technical Requirements of Response Questions) of Annex C (Guidance to Tenderers); |
| **"Quality Management and Continuous Improvement Plan"** | Quality Management and Continuous Improvement Plan means the quality management and continuous improvement plan to be prepared in response to RoR ID C3\_QMCIP found in Appendix 1 (Technical Requirements of Response Questions) of Annex C (Guidance to Tenderers); |
| **"Reasonable Maximum Deductible Threshold"** | 1. means that amount which the Contractor is responsible for paying toward an insured loss before payment under the policy applies, as proposed by the Tenderer, and which in the reasonable opinion of the Authority reflects the prevailing market rates as at the point of the submission of the Tender; |
| **"Reputable Insurer"** | 1. means a provider of the required insurance cover which of sufficient standing for the relevant class of insurance and the location of the Services in question taking into consideration matters including, but not limited to, ownership, management, operating environment, reinsurance protection, lines of business, profitability and business philosophy; |
| **"Requirements of Response", "RoR"** | 1. means the Technical Requirements of Response and the Financial Requirements of Response; |
| **"ROADB"** | 1. means the Record of Assumptions and Data Book; |
| **"Security and Information Management Plan"** | 1. means the plan to be prepared in response to RoR ID C3\_SIMP found in Appendix 1 (Technical Requirements of Response Questions) of Annex C (Guidance to Tenderers); |
| **"Security Condition"** | 1. means the security conditions set out in Appendix 1 (UK Official and UK Official-Sensitive Contractual Security Conditions) of Annex E (Security Aspects Letter); |
| **"Social Value Plan"** | 1. means one of the plans related to the achievement of social value in the context of delivering the Services to be prepared in response to RoR IDs C3\_SVP\_2.2, C3\_SVP\_6.1 and C3\_SVP\_7.1 found in Appendix 1 (Technical Requirements of Response Questions) of Annex C (Guidance to Tenderers); |
| **"Compliance to Statement of Requirement Declaration Statement"** | 1. means the compliance to Statement of Requirement declaration statement as set out in paragraph 13.1 (Completing the Pass/Fail Compliance to Statement of Requirement Declaration Statement) of Annex C (Guidance to Tenderers) that Tenderers must complete and submit as a required Tender Deliverable; |
| **"System Administrator"** | 1. means, in relation to Annex E (Security Aspects Letter) a person or process responsible for carrying out functions which support the deployment or operation of a system; |
| **"Small and Medium-sized Enterprise", "SME"** | 1. means micro, small and medium-sized enterprises as defined in Article 2 of the Annex to Commission Recommendation 2003/361/EC; |
| **"****Sub-Contracting Arrangement"** | 1. means a group of economic operators who have come together specifically for the purpose of tendering for this Contract, where one of their number will be the party to the Contract with the Authority, the remaining members of that group being Sub-Contractors to the lead economic operator; |
| **"Table of Derogations"** | 1. means the table in the form of Table C.2 in Annex C (Guidance to Tenderers) which Tenderers complete to indicate which Derogations, if any, are proposed, their compliance with the Contract 3 Terms & Conditions, and to confirm their compliance with the requirement for Tenderer Inputs; |
| **"Technical Envelope"** | 1. means the location in the DSP where Tender Deliverables must be submitted as set out in Table C.1 (Tender Deliverable Checklist) of Annex C (Guidance to Tenderers); |
| **"Technical Requirement of Response" or "Technical RoR"** | 1. means a technical requirement as set out in Appendix 1 (Technical Requirements of Response Questions) of Annex C (Guidance to Tenderers) in relation to a specific aspect of delivery of the Statement of Requirement set out in Schedule 2 (Statement of Requirement) of the Contract 3 Terms & Conditions; |
| **"Technical Score"** | 1. has the meaning set out in paragraph 7.2 (Evaluation of Technical Requirements of Response) of Annex D (Evaluation of Tenders); |
| **"Tender"** | 1. means the overall offer in response to the Statement of Requirement that each Tenderer makes to the Authority in response to the ITN, and the word "Tender" shall include any Initial Tender and any Final Tender; |
| **"Tender Deliverable Checklist"** | 1. means the checklist at Table C.1 (Tender Deliverable Checklist) of Annex C (Guidance to Tenderers) which sets out each Tender Deliverable that must be provided as part of a Tender; |
| **"Tender Deliverable(s)"** | 1. means any element of the Tender that Tenderers are required to submit as part of their Tender response as set out at paragraph 10 (Tender Deliverable Checklist) of Annex C (Guidance to Tenderers); |
| **"Tender Return Date"** | 1. means the final date for submission of Tenders as set out in paragraph 9.1 (Proposed Timetable) of this ITN; |
| **"Tenderer"** | 1. means an economic operator submitting a Tender in response to this ITN; |
| **"Tenderer Inputs"** | 1. means those clauses and schedules of the Contract in Category 3 of Appendix 2 (Contract Provision Categories) of Annex C (Guidance to Tenderers) for which Tenderers must supply drafting as further set out in paragraph 11 (Acceptance of the Contract) of Annex C (Guidance to Tenderers); |
| **"Tenderer Representative"** | 1. means one of the two (2) nominated points of contact for all communications between a Tenderer and the Authority via the DSP; |
| **"Tenderers Conference"** | 1. means a presentation by the Authority to all Tenderers about the Contract requirements, at which Tenderers have an opportunity to ask questions about the requirements and the competition; |
| **"Test, Trials, Training and Evaluation", "T3E"** | 1. means the agreement between the Authority and QinetiQ to run the Authority's instrumented ranges; |
| **"Third Party"** | 1. means any person (including a natural person, corporate or unincorporated body (whether or not having separate legal personality)), other than the Authority, the Tenderer or their respective employees; |
| **"Total Value"** | 1. means the total value of the Tender as further set out in paragraph 8.1 (Evaluation of the Financial Model) of Annex D (Evaluation of Tenders); |
| **"TUPE Data"** | 1. means the TUPE-related data received from the Incumbent Service Provider stored in the Data Room; |
| **"Variant Tender"** | 1. has the meaning in Regulation 13 of the Defence and Security Public Contracts Regulations 2011; |
| **"Vessel and Asset Management Plan"** | 1. means the plan to be prepared in response to RoR ID C3\_VAMP found in Appendix 1 (Technical Requirements of Response Questions) of Annex C (Guidance to Tenderers); and |
| **"Weighted Value for Money Index"** | 1. means the method by used to calculate the MEAT per paragraph 10.1 (Determination of Successful Tenderer) in Annex D (Evaluation of Tenders). |

* 1. **Interpretation**
     + - 1. In this ITN the following rules of interpretation shall apply unless otherwise stated.
       1. **Accounting terms**: accounting terms shall be construed so as to be consistent with generally-accepted accounting principles.
       2. **Dates**: reference to a date is to the day commencing on such date.
       3. **DEFCONs**: any reference to a DEFCON, DEF STAN or DEFFORM, is a reference to the edition of the DEFCON, DEF STAN or DEFFORM referred to in this ITN.
       4. **Expressions not to limit construction**: the words "other" and "otherwise" shall not be construed as meaning "of the same type" as any foregoing words where a wider construction is possible. The words "include", "including" and "in particular" shall be construed as being by way of illustration or emphasis and shall not limit or prejudice the generality of any foregoing words.
       5. **Gender**: reference to any gender includes any other.
       6. **Inconsistencies**: if there is any ambiguity, inconsistency or conflict between the provisions of the following documents, the following order of precedence shall apply:

1. the Contract 3 Terms & Conditions (including its schedules);
2. this ITN.
   * + 1. **Living documents**: unless stated to the contrary, this ITN and any reference to any other document mentioned in this ITN (other than a DEFCON, DEF STAN or DEFFORM) are references to this ITN as varied, amended, novated, supplemented or replaced from time to time.
       2. **Living instruments**: any reference to any Law shall include a reference to the Law as:
3. amended, extended, consolidated or re-enacted;
4. supplemented or applied by, or pursuant to, any other Law before, on or after the Effective Date.
   * + 1. **Person**: any reference to a "person" includes any individual, partnership, firm, trust, body corporate, government, governmental body, authority, emanation, agency, instrumentality and unincorporated body of persons or association.
       2. **Public organisations**: any reference to a public organisation or representative shall be deemed to include a reference to any successor to such public organisation or representative or any organisation or entity or representative which has taken over the functions or responsibilities of such public organisation or representative in whole or in part.
       3. **Related words**: where this ITN defines a word or expression, related words and expressions have a consistent meaning.
       4. **Singular and plural**: any reference to the singular includes the plural and vice versa.
       5. **Successors in title and transferees**: reference to any person includes that person's lawful successors in title and transferees, whether pursuant to contract, statute or otherwise.
       6. **This Section or Annex**: a reference in this ITN to a Section or Annex is, except where it is expressly stated to the contrary, a reference to such Section or Annex of this ITN.
       7. **No order of precedence**: the Sections in this ITN and associated documents are structured in line with a generic tendering process and do not indicate importance/precedence.
5. INTRODUCTION TO THE DMS-NG PROGRAMME
   1. The DMS-NG programme will put in place contractual arrangements to deliver future Marine Services to Defence. It will replace the two current contracts with industrial partners (SERCO and BOSKALIS) for the Continued Procurement of Marine Services ("**CPMS**") (which continues on from the initial Procurement of Marine Services ("**PMS**")) and the marine support to range safety and aircrew training ("**RSACT**"). CPMS and RSACT are each due to expire on 31 March 2025. The DMS-NG programme comprises the following four (4) contracts, each of which is subject to either competed or single source procurement:

**Contract 1** – Support to in-Port Marine Services and Delivery of a Vessel Replacement Programme;

**Contract 2** – Inshore Support to Military Training, Testing, and Evaluation;

**Contract 3** – Supply and Maintenance of Authority Moorings, Markers and Target; and

**Contract 4** – Offshore Support to Military Training and Exercises.

* 1. **The DMS-NG mission is to achieve**

A pan-defence endorsed requirement for Marine Services delivered through commercial arrangements that provides Defence with the ability to manage demand and in doing so drive innovation.

* 1. **The DMS NG vision is to**

Deliver a safe, effective, and affordable Marine Services to Defence.

* 1. The programme is designed to deliver strategic benefits that will challenge both the Authority and suppliers to increase output and value for money against current arrangements. The successful Tenderer will be expected to improve performance and productivity, against which the Authority will accept the challenge to improve the clarity and stability of its demand. The strategic benefits are:
     + - 1. be able to scale appropriately, looking forward to how the demand in the DMS-NG programme may change significantly again;
         2. keep pace and move from analogue to digital capability as well as building in adaptability to support a changing force;
         3. inject some fresh thinking and increase the focus on remaining relevant and competitive;
         4. introduce new ships, with a cost and environmental consciousness the Authority has not had before;
         5. keep pace with technology and industrial partners' standards to avoid unnecessary customisation and associated cost growth; and
         6. look beyond the immediate contracting vehicle staying in control of the Authority's commercial situation and leverage future opportunities.
  2. This requirement was advertised by the Authority on the Find a Tender Service (national registration number 2022/703249450), and on the Defence Sourcing Portal, on 8 June 2022 under the following reference 2022/S 000-015758.
  3. This ITN is subject to the Defence and Security Public Contracts Regulations 2011.
  4. This ITN has been issued to all potential Tenderers chosen during the supplier selection stage under the negotiated procedure.

1. PURPOSE
   1. The purpose of this ITN is to invite Tenderers to submit a Tender, in accordance with the instructions set out in this ITN, to propose a solution and best price to meet the Authority's requirement. This documentation explains and sets out the:
      * + 1. Tender process and timetable for the next phases of the Contract procurement;
          2. instructions, conditions and processes that govern this Contract procurement;
          3. information Tenderers must include in their Tender and the required format;
          4. administrative arrangements for the receipt and evaluation of Tenders;
          5. process and criteria to be used for evaluation of Tenders; and
          6. the Contract 3 Terms & Conditions and other agreements that shall apply in the event that the Authority awards a contract following this Contract procurement.
2. DESCRIPTION OF CONTRACT
   1. This ITN seeks Tenders for Contract 3 Supply and Maintenance of Authority Moorings, Markers and Targets reference number 70324957.
   2. The Services to be provided in this Contract procurement are as detailed in the SoR, and include in broad summary:
      * + 1. **the Mooring Maintenance Programme;**
          2. **the Moorings Replacements Programme**; and
          3. **sourcing, storage and delivery of components to a nominated UK point of departure.**
   3. Tenderers must work closely with the Authority and other suppliers to the Authority and to DMS-NG to plan and execute the Services successfully.
   4. The Authority's Commercial Officer for this Contract procurement is Callum Johnstone (DES Ships Acq-Conrcl-20). Tenderers may only contact the Authority's Commercial Officer through the Defence Sourcing Portal.
3. OVERVIEW OF CONTRACT

**The Supply and Maintenance of Authority Moorings, Markers and Targets top level description**

* 1. The Tenderer shall provide the Services in Service Delivery Area 8:
     + - 1. **The Mooring Maintenance Programme (MMP)** is the authorised schedule of routine mooring and navigation mark maintenance which ensures that Authority moorings and navigation marks remain safe to operate. This results in an update to the MoD Mooring Inventory (MMI). Maintenance and inspection tasks are agreed annually to an agreed maintenance programme. Maintenance varies depending on the class, location and age of the mooring or navigation marks. This maintenance is a specialist, skilled and labour-intensive process which involves the utilisation of a specialist mooring vessel and anchor handlers as well as skilled personnel and diving teams.
         2. **The Moorings Replacement Programme (MRP)** to replace circa nineteen (19) moorings due to age and obsolescence and circa twelve (12) navigation marks with telemetry buoys which will automatically update on their maintenance and positional status. The MRP will take place during the life of the Contract and will involve the total removal of the legacy mooring, the design and assurance of the new moorings, the procurement of replacement components and the installation and assurance of the new moorings.
         3. The sourcing, storage and delivery of components to an Authority nominated UK point of departure, allowing the Authority to maintain moorings in Ascension Island and the Falkland Islands.

**Strategic Outcomes**

* 1. The Contract will deliver:
     + - 1. high improved operational performance through the introduction of replacement assets and enhanced contract management to provide better MI, enabling intelligent customer roles and governance arrangements;
         2. value for money through new, competed contracting arrangements, refreshed scope, manpower efficiencies and a robust and transparent cost structure; and
         3. the introduction of new vessels and hybrid technologies, use of alternative fuels, and revised working practices to drive down emissions and reduce fuel consumption. Methodologies & capture of CO2 and GHG emissions will also need to be factored.

1. DATA ROOM
   1. The Data Room will be made available to the Tenderers. Access to the Data Room is subject to the terms of this ITN and Annex B (Defence Sourcing Portal Guidance). Any documents and data made available to Tenderers via the Data Room shall be classed as Disclosed Data for the purposes of the Contract.
2. OTHER INFORMATION
   1. **The Armed Forces Covenant**
      * + 1. The Armed Forces Covenant is a promise from the nation to those who serve, or who have served, and their families, to ensure that they are treated fairly and are not disadvantaged in their day to day lives, as a result of their service.
          2. The Covenant is based on two principles:
        1. that the Armed Forces community would not face disadvantages when compared to other citizens in the provision of public and commercial services; and
        2. that 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 Armed Forces Covenant, declaring their support for the Armed Forces community by displaying the values and behaviours set out therein.

* + - * 1. The Armed Forces Covenant provides guidance on the various ways Tenderers can demonstrate their support through their covenant pledges and how by engaging with the covenant and Armed Forces, such as employing reservists, a company or organisation can also see real benefits in their business.
        2. If Tenderers wish to register their support they can provide a point of contact for their company on this issue to the Armed Forces Covenant team at the address below, so that the Authority can alert Tenderers to any events or initiatives in which Tenderers may wish to participate. The Covenant team can also provide any information Tenderers require in addition to that included on the website.

Email address: [employerrelations@rfca.mod.uk](mailto:employerrelations@rfca.mod.uk)

Address: Defence Relationship Management

Ministry of Defence

Holderness House

51-61 Clifton Street

London

EC2A 4EY

* + - * 1. Paragraph 7.1(a)-(d) 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, the Contract award procedure or any resulting contract. However, the Authority very much hopes Tenderers will want to provide their support.

1. – KEY TENDERING PHASES
2. INTRODUCTION
   1. The purpose of this Section B is to set out the chronology of the Tender process and detail what should be expected of Tenderers at each phase. This Section should be read in conjunction with Annex B (Defence Sourcing Portal Guidance), Annex C (Guidance to Tenderers) and Annex D (Evaluation of Tenders).
3. PROPOSED TIMETABLE
   1. The key dates for this Contract procurement are currently anticipated to be as follows:

| **Phase** | **Proposed Date and Time** | **Submit to** |
| --- | --- | --- |
| ITN issue | 01 December 2022 | Tenderer via the Defence Sourcing Portal |
| Tender period | 01 December 2022 until 24 April 2023 | N/A |
| Final date for clarification questions/requests for additional information | 10 March 2023 | Authority's Commercial Officer via the Defence Sourcing Portal |
| The Authority issues final clarification answers | TBC | All Tenderers via the Defence Sourcing Portal |
| Tender Return Date | 21 April 2023 | Authority's Commercial Officer via the Defence Sourcing Portal |
| Tender evaluation | TBC | Clarifications will be raised to relevant Tenderers via the Defence Sourcing Portal |
| Negotiation Phase | TBC | As required through the Defence Sourcing Portal |
| Issue of ISFT | TBC | Tenderer via the Defence Sourcing Portal |
| Final Tenders received and evaluation of Final Tenders | TBC | Authority's Commercial Officer via the Defence Sourcing Portal |
| Notice of intended contract award and standstill period | TBC | Notice will be issued to all Tenderers via the Defence Sourcing Portal |
| Anticipated Contract award date | 17 September 2024 | Confirmation through the Defence Sourcing Portal |
| Mobilisation | TBC | N/A |

* 1. Notwithstanding the above table, the Authority reserves the right at any time to:
     + - 1. vary any aspect of this procurement process including the timetable and/or introduce additional steps or phases into it. For example, the Authority reserves the right to issue updates to the ITN Documentation, ITN Materials, the draft Contract or revised instructions to Tenderers including amending the timetable set out above; and
         2. cancel this procurement.
  2. Should it be necessary to issue amendments to the ITN Documents during the process, these will be issued to all Tenderers prior to the applicable Tender Return Date. If there are a number of amendments issued, the Authority may issue a further set of ITN Documents.

1. TENDERERS CONFERENCE
   1. The Authority may hold a Tenderers Conference to enable the Authority to present the requirements for the Contract, the Tender process and the DMS-NG programme to all Tenderers at the same time. This would also be an opportunity for Tenderers to ask questions about the requirement.
2. TENDERER CHECKPOINT MEETINGS
   1. The Authority may request Tenderer checkpoint meetings to engage with Tenderers about the Authority's requirements, general approach and updates to the programme. These will be separate to the negotiations described in paragraph 14 (Negotiation Phase). At the Tenderer checkpoint meetings Tenderers may ask questions to clarify the Authority's requirements or discuss potential approaches to the Authority's requirements.
3. ATTENDANCE AT MEETINGS
   1. This paragraph applies to any Tenderer Conference or Tenderer checkpoint meeting.
   2. Instructions relating to any meeting invitations will be issued through the Defence Sourcing Portal to Tenderers.
   3. Where a meeting is to be held in person, Tenderers will be required to provide the following details for all attendees, at least five (5) Business Days before the date of any meeting, so that access to the site can be arranged:
      * + 1. Full name;
          2. Date of birth;
          3. Place of birth;
          4. Nationality now;
          5. Nationality previous;
          6. Company name;
          7. Email address;
          8. Contact number;
          9. Car make, model, colour, registration (if travelling to the Tenderers Conference by car); and
          10. Security clearance (a minimum of BPSS will be required for each individual – see Annex B (Defence Sourcing Portal Guidance))

All attendees will also be required to bring photo ID.

* 1. Tenderers will be advised by the Authority via the Defence Sourcing Portal about the maximum number of attendees permitted per Tenderer.
  2. Any questions that Tenderers may have should be submitted via the Defence Sourcing Portal at least three (3) Business Days before the date of the meeting. These questions will be treated in the same way as all clarification questions and, as detailed in paragraph 3 (Clarification Questions) in Annex C (Guidance to Tenderers), unless a Tenderer can justify why matters discussed are commercially sensitive and therefore confidential to it, a summary of questions and responses will be copied to all Tenderers after the meeting. The Authority reserves the right not to deal with questions raised at the meeting and instead answer them in writing at a later date.
  3. The Authority will aim to issue the agenda for the meeting four (4) Business Days before the date of the meeting. The agenda for the meetings will be set by the Authority. Tenderers will have the opportunity to highlight areas or issues that they would like to be included on the agenda. The Authority may adjust or include subjects for discussion in response to submission from Tenderers.
  4. A copy of any Authority presentation provided will be issued to all Tenderers regardless of attendance at any meeting.

1. INITIAL TENDER RETURN AND EVALUATION
   1. Please see Annex C (Guidance to Tenderers) of this ITN for the requirements for Initial Tender return. Initial Tenders will be subject to evaluation in accordance with the Evaluation Criteria at Annex D (Evaluation of Tenders).
   2. The Authority may, in its own absolute discretion extend the deadline for receipt of Initial Tenders and in such circumstances the Authority will notify all Tenderers of any such extension.
   3. Following the evaluation of the Initial Tenders, the Authority will provide feedback to the Tenderers.
2. NEGOTIATION PHASE
   1. All Tenderers will be taken forward to the Negotiation Phase, unless the Authority determines that their Initial Tender is Non-Compliant and that it should be rejected in accordance with paragraph 6 (Exclusion of Tenders for Non-Compliance) in Annex D (Evaluation of Tenders).
   2. Further details on the Negotiation Phase can be found below and in Annex C (Guidance to Tenderers).
   3. The overall objectives of the negotiations will be to:
      * + 1. discuss Tenders with the aim of addressing any areas of Non-Compliance and improving the quality and efficiency of the tendered solution for the purposes of any subsequent Tender evaluation;
          2. provide a means for the Authority to clarify the Authority's requirement to Tenderers;
          3. enable open and constructive discussions between Tenderers and the Authority with the aim of clarifying and understanding their Tender; and
          4. establish the basis on which Tenderers will be invited to submit a Final Tender.
   4. As part of the Negotiation Phase, the Authority may negotiate those clauses and schedules of the Contract from which Tenderers wish to derogate (Derogations - Category 2 elements) and those for which Tenderers must offer drafting (Tenderer Inputs - Category 3 elements), as further detailed and explained in Annex C (Guidance to Tenderers). The Category 2 and Category 3 Clauses and Schedules are identified in Appendix 2 (Contract Provision Categories) of Annex C.
   5. The Authority will draw up a list of relevant topics for negotiation prior to the commencement of the Negotiation Phase and will provide an outline agenda/issues list in advance of each meeting.
   6. It is intended that negotiations will take place between the dates detailed in the timetable shown at paragraph 9 (Proposed Timetable) which will be shared with all Tenderers via the Defence Sourcing Portal. The specific timetable and agendas for such discussions will be circulated to the Tenderers following evaluation of Initial Tenders.
   7. Negotiations may take the form of one or more of the following:
      * + 1. in writing;
          2. via Microsoft Teams; or
          3. formal face-to-face meetings at the Authority's premises, or at any other premises that the Authority shall nominate.
   8. The Authority shall treat Tenderers equally and without discrimination and shall act in a transparent and proportionate manner in conducting the negotiation process and at all times in accordance with the Regulations.
3. INVITATION TO SUBMIT FINAL TENDER (ISFT)
   1. The Authority will notify Tenderers once negotiations have concluded at the end of the Negotiation Phase and Tenderers will be invited to submit a Final Tender.
   2. The Authority will commence the Final Tender stage by issuing the ISFT to Tenderers via the Defence Sourcing Portal. The ISFT will provide instructions to Tenderers for the preparation of the Final Tender, including any instructions regarding outstanding issues from the Negotiation Phase and details of the agreed amendments to the draft Contract. It will also identify any updated versions of all ITN Documentation and ITN Materials and the current contents of the Data Room.
   3. Where the Tenderer has any clarification questions regarding the requirements or the procurement process during the Final Tender Phase, these must be made in accordance with paragraph 3 (Clarification Questions) in Annex C (Guidance to Tenderers).
   4. The Final Tender must be comprehensive and comprise the Tenderer's complete offer. The Authority will not negotiate any aspect of a Final Tender but the Final Tender may be clarified at the request of the Authority as detailed in paragraph 11.22 (Following Contract Award) of Annex C.
   5. The Authority will evaluate Final Tenders based on the published award criteria and select the MEAT.
   6. The Tenderer that submits the MEAT will be designated as the successful Tenderer. The Authority will perform due diligence on the successful Tenderer's DPQQ information.
   7. A failure to accept the terms of any revised Contract at Final Tender stage will make their Tender Non-Compliant and paragraph 6 (Exclusion of Tenders for Non-Compliance) in Annex D (Evaluation of Tenders) shall apply.
4. CONTRACT AWARD
   1. Contract award notices will be issued to Tenderers following completion of the Authority's Contract approval process.
5. STANDSTILL PERIOD
   1. The Authority will allow a period of at least ten (10) calendar days between the date of dispatch of the notice of its decision to award a Contract to the successful Tenderer before entering into a Contract, known as the standstill period. The standstill period ends at 23:59 on the tenth (10th) day after the date of such notification. If the tenth (10th) day is not a Business Day, the standstill period ends at 23:59 on the next Business Day.
6. – GUIDANCE TO TENDERERS
7. GUIDANCE INSTRUCTIONS
   1. Guidance to Tenderers on preparing and submitting Tenders are set out in Annex B (Defence Sourcing Portal Guidance) and Annex C (Guidance to Tenderers) and should be read in conjunction with Annex D (Evaluation of Tenders).
8. – Conditions of Tendering
9. NO COMMITMENT
   1. The issue of ITN Documentation or ITN Materials is not a commitment by the Authority to enter a contract as a result of this Contract procurement or at any time. Neither does the issue of this ITN or subsequent Tender submission create any implied contract between the Authority and any Tenderer and any such implied contract is expressly excluded. The Authority reserves the right, but is not obliged to:
      * + 1. withdraw this ITN at any time, or re-invite Tenders on the same or any alternative basis;
          2. discontinue the competed procedure and re-issue this ITN on a single source basis if this Contract procurement results in a situation:
        1. where only one Tender is received;
        2. where there is an absence of Tenders or suitable Tenders;
        3. where the Authority has only received irregular or unacceptable Tenders; or
        4. where adjustments are required by the application of the Defence Reform Act 2014 and / or the Single Source Contract Regulations 2014;
           1. choose not to award any contract as a result of the current Contract procurement process (the Authority will issue a notice of completion in such circumstances);
           2. change or waive (as appropriate) the basis, the requirements, the procedures and/or the timescale for this ITN and the Tender process; and/or
           3. terminate negotiations with any or all Tenderers.
   2. The Contract will be effective when both parties sign the Contract. The Contract will be issued by the Authority to the address the Tenderer provides, on or before the end of the validity period specified in paragraph 11 (Validity of Final Tenders) in Annex D (Evaluation of Tenders).
10. TENDERER ACCEPTANCE OF TERMS OF THIS ITN
    1. The submission of an application to participate in the Tender process will be deemed as the Tenderer's acceptance of the terms of participation set out in this ITN in relation to this Contract procurement without qualification.
11. ELECTRONIC PURCHASING
    1. Tenderers 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 mandatory for any resultant Contract awarded following this Tender. By submitting a Tender, each Tenderer agrees to electronic payment. Tenderers should consult the service provider in relation to connectivity options. Failure to accept electronic payment will result in a Tender being deemed Non-Compliant and disqualified from further participation in this Contract procurement.
12. ITN DOCUMENTATION AND ITN MATERIALS
    1. The information contained in the ITN Documentation and the ITN Materials has been prepared in good faith. The Authority does not give any warranty as to the accuracy or completeness of any information provided.
    2. It is the responsibility of each Tenderer to ensure that it has undertaken its own due diligence in formulating its responses and its Tender. The Authority will not warrant/certify any third party information required by Tenderers in formulating their responses and Tenders.
    3. In furnishing the ITN Documentation and/or the ITN Materials to Tenderers, the Authority and the Authority's advisers undertake no obligation to provide Tenderers with access to any additional information or to update the ITN Documentation or the ITN Materials or to correct any inaccuracies herein which may become apparent. The information contained in the ITN Documentation and/or the ITN Materials may be changed by the Authority from time to time without any prior (or any) notice being given. In the ITN Documentation and the ITN Materials words such as "anticipates", "expects", "projects", "intends", "plans", "believes", "will", and such words and terms of similar substance, indicate the present expectation of future events, which are subject to a number of factors and uncertainties that could cause actual requirements and circumstances to differ materially from those described.
13. INTELLECTUAL PROPERTY IN ITN DOCUMENTATION AND ITN MATERIALS
    1. The ITN Documentation, ITN Materials 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 Tenderers to submit a Tender. No Tenderer shall obtain any right, title or interest therein.
    2. Each Tenderer must:
       * + 1. take responsibility for the safe custody of the ITN Documentation and ITN Materials and for all loss and damage sustained to it while in the Tenderer's care;
           2. not copy or disclose the ITN Documentation or any part of it to anyone other than the team involved in preparing its Tender, and not use, reproduce or store it (in any medium, in whole or in part) except for the purpose of responding to this ITN;
           3. seek written approval from the Authority if the Tenderer needs to provide access to any ITN Documentation or ITN Materials to any Third Party;
           4. abide by any reasonable conditions imposed by the Authority in giving its approval under paragraph 23.2(c), which at a minimum will require the Tenderer to ensure any disclosure to a Third Party is made by the Tenderer 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 Materials (or use beyond the original purpose), or further use of ITN Documentation or ITN Materials, without the Authority's written approval may make the Tenderer liable for a claim for breach of confidence and/or infringement of IPR and thereby responsible for a remedy which may involve a claim for compensation;
           6. inform the Authority's Commercial Officer if the Tenderer decides not to submit a Tender;
           7. immediately return all ITN Documentation, ITN Materials and derived information of an unmarked nature, should the Tenderer decide not to respond to this ITN, or the Tenderer is notified by the Authority that its Tender has been unsuccessful; and
           8. consult the Authority's Commercial Officer to agree the appropriate destruction process if the Tenderer is in receipt of ITN Documentation and ITN Materials marked 'OFFICIAL-SENSITIVE' or 'SECRET'.
    3. Some or all of the ITN Documentation and ITN Materials may be subject to one or more confidentiality agreements made between the Tenderer 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 are in addition to, and do not derogate from, Tenderers' obligations under paragraph 23.2 above.
14. VARIANT TENDERS
    1. The Authority will not evaluate any Variant Tenders at the Initial Tender and Final Tender stages.
    2. Any Initial Tender made subject to additional or alternative contract conditions alone is not a Variant Tender. At Final Tender stage, the Authority may treat a Tender as Non-Compliant where it includes any such additional or alternative contract conditions and the Authority reserves the right to exclude such Tenders from the Contract procurement.
    3. Tenderers should note that the Authority will deem Non-Compliant and will not consider Final Tenders which:
       * + 1. seek to combine more than one Contract; and/or
           2. offer terms which vary if contracts or parts of contracts are combined with the Contract to which this ITN relates or if more than one Contract is awarded to the same Tenderer.
15. INDEPENDENT ASSESSMENT REQUIRED
    1. The ITN Documentation and/or the ITN Materials are not intended to form the basis of any investment decision or of any investment recommendation by the Authority or any of the Authority advisers and does not purport to be all-inclusive or to contain all the information that a Tenderer may require. Each person to whom the ITN Documentation and/or the ITN Materials is made available must make their own independent assessment of it after making such investigation and taking professional financial, legal or other advice, as they deem necessary.
16. TENDER EXPENSES AND WORK UNDERTAKEN DURING THIS PROCUREMENT
    1. Tenderers will bear all costs associated with preparing and submitting their Tender. The Authority will not be liable for the costs of any Tender, work or effort incurred by Tenderers participating in this Tender process, including where the Tender process is terminated or amended by the Authority, where the Authority decides not to award a contract.
    2. In addition, the Authority shall not be responsible in any way whatsoever for any work undertaken by Tenderers during this procurement.
17. GUARANTEES
    1. The Authority may require the provision of one or more guarantee(s) in the form set out in Schedule 26 (Guarantees) of the Contract 3 Terms & Conditions. The required guarantee will be a financial and performance guarantee, by the parent, of all of the Tenderer's obligations relating to the Contract (i.e. the Contract and any related contracts which the Authority and the Tenderer may enter into pursuant to the Contract ) or such other form of guarantee or security as may be acceptable to the Authority.
    2. Tenderers will be informed whether they are required to provide a guarantee in the event that they are selected as the successful Tenderer. No Contract will be awarded until a guarantee, where required, is in place. Failure to provide a required guarantee, may result in Tenderers being de-selected as the successful Tenderer.
    3. If Tenderers are Tendering for this Contract as a Consortium, parent company guarantees must be joint and several and be provided by the parent of each Consortium member.
18. SHARED DATA ENVIRONMENT
    1. There is a requirement for a Shared Data Environment. Tenderers should note that the Shared Data Environment will be hosted by the Authority. Tenderers shall be required to enter into an Electronic Information sharing agreement when so requested by the Authority.
19. OTHER AGREEMENTS
    1. Where required by the Authority, the Tenderer is expected to be required to enter into:
       * + 1. an Admission Agreement as described in Schedule 22 (Staff Transfer) of the Contract 3 Terms & Conditions; and
           2. a Direct Agreement (as set out in Schedule 24 (Form of Direct Agreement) of the Contract in respect of any identified Key Sub-Contractors).
    2. The Tenderer must satisfy itself about what licenses, permits and consents it will be required to hold before being able to carry out the Services.
20. CYBER RISK CONTRACTOR ASSURANCE QUESTIONNAIRE
    1. Cyber Risk has been considered and in accordance with the Cyber Security Model resulted in a Cyber Risk Profile of "moderate". Tenderers are required to complete the Contractor Assurance Questionnaire accessible using reference number RAR-202758782 via: https://www.gov.uk/guidance/defence-cyber-protection-partnership and submit this as part of their Tender response, together with a Cyber Security Implementation Planas appropriate.
21. GOVERNMENT FURNISHED EQUIPMENT AND REDUNDANT MATERIEL
    1. Where the Authority provides Government Furnished Equipment **("GFE")** in support of this Contract procurement, Tenderers must include details of the GFE in their Public Store Account and treat it in accordance with DEF STAN 05-099. Tenderers can access the DEF STAN by signing into the Defence Commercial Toolkit.
22. CONFLICTS OF INTEREST AND ETHICAL WALLS
    1. Any attempt by Tenderers or their advisors to influence the contract award process in any way may result in the Tenderer being disqualified. Specifically, Tenderers shall not directly or indirectly at any time:
       * + 1. devise or amend the content of their Tender in accordance with any agreement or arrangement with any other person, other than in good faith with a person who is a proposed partner, supplier, Consortium member or provider of finance;
           2. enter into any agreement or arrangement with any other person as to the form or content of any other Tender, or offer to pay any sum of money or valuable consideration to any person to effect changes to the form or content of any other Tender;
           3. enter into any agreement or arrangement with any other person that has the effect of prohibiting or excluding that person from submitting a Tender;
           4. canvass the Authority or any employees or agents of the Authority in relation to this Contract procurement; or
           5. attempt to obtain information from any of the employees or agents of the Authority or their advisers concerning another Tenderer or Tender.
    2. Tenderers must notify the Authority immediately where they have provided advice to the Authority in relation to this procurement or otherwise have been or are involved in any way in the preparation or conduct of this procurement, or where any other actual or potential conflict of interest exists, arises or may arise or any situation arises that might give the perception of a conflict of interest at any point before the Contract award decision.
    3. Where an actual or potential conflict of interest exists or arises, or any situation arises that might give the perception of a conflict of interest at any point before the Contract award decision, the Tenderer must notify the Authority immediately and provide a proposed Compliance Regime within seven (7) calendar days of notifying the Authority of the actual, potential or perceived conflict of interest. The proposal must be of a standard which, in the Authority's sole opinion, appropriately manages the conflict, provides sufficient separation to prevent distortion of competition, and fully meets the requirements listed at sub-paragraph 32.3(a) to 32.3(g) below. Where the Contract is awarded and the conflict of interest is still relevant post-Contract award decision, the Tenderer's proposed Compliance Regime will become part of the Contract 3 Terms & Conditions. As a minimum, the Compliance Regime must include:
       * + 1. the 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 and/or non-disclosure agreements (e.g. DEFFORM 702);
           6. the Authority's rights of audit; and
           7. physical and managerial separation.
    4. Each Tenderer is ultimately responsible for ensuring that no conflicts of interest exist between the Tenderer and its advisers, and the Authority and its advisers. Where any Tenderer fails to comply with the requirements described in this paragraph 32 (including where the Authority does not deem the Tenderer's proposed Compliance Regime to be of a standard which appropriately manages the conflict), that Tenderer's Tender may, at the discretion of the Authority, be deemed Non-Compliant and disqualified from the procurement.
23. 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 their documentation / information (including any that Tenderers consider to be confidential and/or commercially sensitive such as specific Tender information) submitted by the Tenderers to the Authority during this Contract procurement. Tenderers must identify any sensitive information in the DEFFORM 539A and consent to these terms as part of the Contract procurement process. This allows the Authority to share information with other government departments while complying with its obligations to maintain confidentiality.
    3. The Authority reserves the right to disclose on a confidential basis any information it receives from Tenderers during the Contract procurement process (including information identified by the Tenderer as commercially sensitive information in accordance with the provisions of this ITN) to any of the Authority's advisers or any Third Party engaged by the Authority for the specific purpose of evaluating or assisting the Authority in the evaluation of the Tenderer's Tender. In providing such information the Tenderer consents to such disclosure.
24. TRANSPARENCY, FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS
    1. The Authority shall publish notification of the Contract and publish Contract documents where required following a request under the Freedom of Information Act 2000 (the "FOIA") 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 Tenderers.
    2. The Authority may publish the contents of any resultant Contract in line with government policy set out in the government's [Transparency Principles](https://www.gov.uk/government/publications/procurement-policy-note-0117-update-to-transparency-principles) and in accordance with the provisions of Clause 42 (Transparency and Freedom of Information (DEFCON 539 (01/22))) of the Contract 3 Terms & Conditions.
    3. Before publishing the Contract, the Authority will redact any information which is exempt from disclosure under the FOIA or the Environmental Information Regulations 2004 (the "EIR"). Tenderers must complete the attached Tenderer's Sensitive Information form (DEFFORM 539A) explaining which parts of their Tender they consider to be Contractor's Commercially Sensitive Information (as defined in the Contract 3 Terms & Conditions). The successful Tenderer's completed DEFFORM 539A will form the basis of Schedule 14 (Commercially Sensitive Information) to the Contract.
    4. As part of completing DEFFORM 539A, Tenderers must provide details of a named individual who can be contacted with regard to FOIA and EIR. Tenderers should note that, while their views will be taken into consideration, the ultimate decision whether to publish or disclose information lies with the Authority. Tenderers 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 a Tenderer's wishes, the Tenderer will be given prior notification.
25. DATA PROTECTION
    1. The Authority will Process Personal Data provided in any Tender only for evaluation under this procurement for the stated requirement. The Authority will comply with its obligations as a Controller under the Data Protection Legislation.
26. PUBLICITY ANNOUNCEMENT
    1. The Authority will publish notification of the Contract award and Contract documents (with sensitive information redacted, as appropriate) under the Government's Transparency Agenda 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. Tenderers should complete and return Schedule 14 (Commercially Sensitive Information) as set out in paragraph 34.3 (Transparency, Freedom of Information and Environmental Information Regulations) above.
    2. If Tenderers wish to make a similar announcement, Tenderers **must** seek prior approval from the Authority's Commercial Officer and press office and such permission will only be given at the sole discretion of the Authority. Requests must be made in writing through the Defence Sourcing Portal and a copy of the draft announcement provided. This shall then be forwarded to the press office and their contact details will be provided for further follow up.
    3. Under no circumstances should Tenderers confirm to any Third Party (other than their professional advisers and insurers, provided they are subject to an appropriate duty of confidentiality) the Authority's acceptance of an offer of contract prior to the Authority's announcement of the award of the Contract.
27. MATERIAL CHANGE OF CONTROL
    1. Tenderers must inform the Authority in writing as soon as Tenderers become aware of:
       * + 1. any material changes to any of the information, representations or other matters of fact communicated to the Authority as part of their DPQQ response or in connection with the submission of their DPQQ response;
           2. any material adverse change in their circumstances which may affect the truth, completeness or accuracy of any information provided as part of their DPQQ response or in connection with the submission of their DPQQ response or in their financial health or that of any Consortium Arrangement member or Sub-Contracting Arrangement member;
           3. any material changes to their financial health or that of a party to the Consortium Arrangement or Sub-Contracting Arrangement; or
           4. any material changes to the makeup of the Consortium Arrangement or Sub-Contracting Arrangement, including:
         1. the form of legal arrangement by which the Consortium Arrangement or Sub-Contracting Arrangement will be structured;
         2. the identity of the Consortium Arrangement or Sub-Contracting Arrangement;
         3. the intended division or allocation of work or responsibilities within or between the Consortium Arrangement or Sub-Contracting Arrangement; and
         4. any change of control of any Consortium Arrangement or Sub-Contracting Arrangement.
    2. Material changes include:
       * + 1. any material Change of Control, composition, membership or responsibilities of the Tenderer and/or any Consortium or Consortium member(s);
           2. the establishment of any Consortium or a change in the role of Sub-Contractors to Consortium members, or the addition of any Key Sub-Contractors; and
           3. any material changes to the financial standing of the Tenderer and/or any Consortium member.
    3. If a change described in paragraph 37.1 occurs, the Authority may:
       * + 1. re-assess Tenderers against the DPQQ selection criteria. The Authority reserves the right to require Tenderers to submit an updated/amended DPQQ response (or parts thereof) to reflect the revised circumstances so that the Authority can make a further assessment by applying the published selection criteria to the new information provided. The outcome of this further assessment may affect their suitability to proceed with the procurement; and/or
           2. review and evaluate the change so notified and make decisions in relation to the procurement based on such evaluation, including:
         1. requiring further information to be provided by the Tenderer;
         2. excluding the Tenderer from the procurement, for example where the Tenderer no longer meets the requirements of the DPQQ; and/or
         3. requiring the Tenderer to meet conditions specified by the Authority to allow the Tenderer's continued participation in the procurement.
    4. In relation to a change described in paragraph 37.1, as far as is reasonably practicable, Tenderers must discuss any such proposed changes with the Authority before they occur and Tenderers must additionally highlight any changes from their DPQQ response relating to any change in the Consortium Arrangement or Sub-Contracting Arrangement or any change relating to conflicts of interest following a change, directly or indirectly in their ownership or control of any Consortium Arrangement or Sub-Contracting Arrangement.
    5. The Authority reserves the right, at its sole discretion, to disqualify any Tenderer who makes any material change to any aspects of their responses to the DPQQ if:
       * + 1. they fail to re-submit to the Authority the updated relevant section of their DPQQ response providing details of such change in accordance with paragraph 37.4 as soon as is reasonably practicable and in any event no later than five (5) Business Days following request from the Authority; or
           2. having notified the Authority of such change, the Authority considers that the effect of the change is such that, on the basis of the evaluation undertaken by the Authority for the purpose of selecting potential providers to participate in the procurement, the Tenderer would not have pre-qualified.
    6. Annex A (Tender Submission Document (Offer)) includes a requirement for self-certification of the Tenderer's good standing and ability to continue to meet the requirements set out in the DPQQ and that there have been no material changes of circumstances since the Tenderer's DPQQ response. The return of Annex A, signed by a main board director of the Tenderer and each Consortium member where applicable, is a pre-condition for a Tenderer continuing in this procurement.
28. AUTHORITY'S ADVISERS
    1. For the purposes of this ITN and the Tender process, the Authority's advisers are acting exclusively for the Authority and will not be responsible to anyone other than the Authority for work carried out by them in connection with this ITN. Neither the Authority, nor any of the Authority advisers, shall be liable for any costs or expenses incurred by any Tenderer or other recipient of this ITN in connection with the Tender process, discussions and negotiations including if the Tender process is terminated, suspended or amended by the Authority. All applications, responses, solutions and submissions relating to this ITN and/or the Tender process are made and subsequent discussions and negotiations are entered into at the risk of the Tenderers.
    2. Tenderers must ensure that they do not approach the Authority's advisers to ask them to undertake any work on their behalf which leads or may lead to a conflict of interest for such Authority adviser in connection with their role advising the Authority in connection with the DMS-NG procurement.
29. CONSULTATION WITH CREDIT REFERENCE AGENCIES
    1. The Authority may consult with credit reference agencies to assess Tenderers' credit worthiness. This information may be used to support and influence decisions to enter into a contract with Tenderers.
30. TRANSFERRING EMPLOYEES
    1. The Authority envisages that staff working on the current service may transfer to the successful Tenderer or its Sub-Contractors, under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) ("**TUPE**"). It is for Tenderers to make their own determination as to the application of TUPE and the Authority makes no warranty or representation as to its application.
    2. TUPE Data can be found in the Data Room. This information must be treated on a confidential basis and is released to Tenderers in accordance with the terms of the non-disclosure agreement that each Tenderer signed as a condition of participation in this the procurement. Tenderers must not copy or use the TUPE Data except for the purposes of preparing their Tenders and must return it, and any copies of it, if unsuccessful in the procurement.
    3. The Authority will continue to work with the Incumbent Service Provider throughout the procurement and will update the TUPE Data in the Data Room in a controlled manner at appropriate points during the process. As a minimum, the Authority will populate the Data Room with updated TUPE Data to support the Final Tender stage.
    4. The TUPE Data has been supplied by the Incumbent Service Provider and/or their Sub-Contractors. The Authority has no control over the content of the TUPE Data and has not verified or approved the TUPE Data. It is provided for Tenderers who may wish to take their own professional or specialist advice on the basis of the following terms of use:
       * + 1. the Authority does not make any representations, warranties or guarantees, whether express or implied, that the TUPE Data is accurate, complete or up to date;
           2. the Authority accepts no liability for any inaccuracies in the TUPE Data; and
           3. TUPE Data is provided for information only. It is not intended to amount to advice on which Tenderers should rely. Tenderers shall obtain professional or specialist advice before taking, or refraining from, any action on the basis of the TUPE Data.
    5. By accessing the TUPE Data the Tenderer hereby confirms and accepts the above terms of use. If the Tenderer does not agree to these terms, the TUPE Data must not be accessed by the Tenderer.
    6. The Authority does not anticipate that any existing Authority staff will be subject to transfer under TUPE as a result of this contract.
    7. If it transpires that former public sector employees are in scope of TUPE, the Tenderer will be expected to (i) comply in full with its obligations under new "Fair Deal for staff pensions" policy **("NFD")** whereby such employees TUPE transfer and remain eligible for NFD protection to participate in the relevant public sector pension scheme following the transfer date and (ii) facilitate giving such employees the option to bulk transfer past service. The new "Fair Deal" policy, can be found at <https://www.gov.uk/government/publications/fair-deal-guidance>.
    8. The Authority will procure that the Tenderer is indemnified in respect of any employee liabilities which relate to the period prior to the relevant transfer date and liabilities which rise from any former supplier's failure to inform and consult provided the Authority is able to recover any such liabilities under relevant indemnity protection from the relevant former supplier.
    9. The successful Tenderer will be required to indemnify the Authority and any former suppliers in respect of any employee liabilities which arise from its acts or omissions in respect of the relevant transfer, including any failure to inform and consult and from any proposals to make detrimental changes to working conditions or the terms and conditions of employment.
    10. In preparation for a service transfer to a replacement supplier, termination or partial termination of the current contracts detailed in paragraph 2.1 (Introduction to the DMS-NG Programme), the successful Tenderer will be required to:
        * + 1. provide staffing information as requested to assist with any onward transfer of staff;
            2. warrant the accuracy of all staffing information provided to the Authority for the benefit of the Authority and any replacement supplier; and
            3. retain any liabilities, including liabilities which relate to the period prior to the onward transfer date and liabilities which arise from its failure to inform and consult.
31. LOTS
    1. This requirement has not been split into lots.
32. SAMPLES
    1. Samples are not required.
33. APPLICABLE LAW
    1. Tenderers must comply with:
       * + 1. the Laws of England and Wales; and
       1. any equivalent legislation in a third state.
    2. Tenderers' attention is drawn to legislation relating to the canvassing of a public official, collusive behaviour and bribery. If Tenderers act in breach of this legislation they may be treated as Non-Compliant and disqualified from this Contract procurement for Non-Compliance. Disqualification will be without prejudice to any civil remedy available to the Authority or any criminal liability that their conduct may attract.
    3. Tenderers must report any Tender rigging, fraud, bribery, corruption, or any other dishonest irregularity in connection to this Tendering exercise to:

Defence Regulatory Reporting

Telephone Hotline 0800 161 3665

Overseas +44 1371 854 881

* 1. The courts of England and Wales will have exclusive jurisdiction in relation to any disputes arising from this ITN and/or the ITN Documentation and/or ITN Materials.