



Ministry
of Defence

Army Commercial BFG Proc Team
Block 5, Catterick Barracks
Bielefeld, BFPO 39
BF1 0AP
Email: ArmyComrcl-BFG-Mailbox@mod.uk
Tel: [REDACTED]

Potential Tenderer

Our Reference: CB/BFG/0167

Date: 29 March 2019

Dear Sir/Madam,

Invitation To Tender Reference Number: CB/BFG/0167 - Provision of a Fuel Card for the Purchase of Tax and Duty-Free Fuel by Entitled Private Motorists of the British Forces Community in Germany

1. You are invited to tender for the above requirement in competition in accordance with the attached documentation.
2. The anticipated date for the contract award decision is 31 May 2019, please note that this is an indicative date and may change.
3. You must submit your Tender no later than 08 May 2019 11:00 Central European Time (CET). You must attach the enclosed Tender Return Label (DEFFORM 28) to the outer packaging of your Tender when you submit it to the Authority.

Yours faithfully

[REDACTED]

Invitation to Tender (ITT)

Contents

This invitation consists of the following documentation:

- Invitation to Tender document. This sets out the key requirements that Tenderers need to meet in submitting a valid Tender. It also sets out the conditions relating to this competition. For ease it is broken into:
 - o Section A - Introduction
 - Tender Definitions
 - Purpose
 - Tender Expenses
 - Contract Conditions
 - Consultation with Credit Reference Agencies
 - Other Information
 - o Section B - Key Tendering Activities
 - o Section C - Instructions on Preparing Tenders
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 - Conforming to the Law
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 - Conflicts of Interest
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 - o Annex A – Tender Submission Document (Offer)
- DEFFORM 28 - Tender Return Label
- Schedule 1 – Contract Conditions
- Schedule 2 –Tenderer's/Contractor's Commercially Sensitive Information Form
- Schedule 3 - Statement of Requirements
- Schedule 4 – Personal Data Particulars
- DEFFORM 111 - Appendix to Contract - Addresses and Other Information

Section A - Introduction

A1. Not used.

Tender Definitions

A2. "The Authority" means the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland, (referred to in this document as "the Authority"), acting as part of the Crown.

A3. "Tenderer" means the economic operator or group of operators in the form of a consortium, including sub-contractors, who have been invited to submit a response to this Invitation to Tender. Where "you" is used this means an action on you the Tenderer.

A4. "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.

A5. A "Tender" is the offer that you are making to the Authority.

A6. "Contractor Deliverables" means the services as specified in Schedule 3 which the Contractor is required to provide under the Contract;

A7. Not used.

A8. The "Statement of Requirement" details the technical requirements and acceptance criteria of the Contractor Deliverables. The Statement of Requirement is attached at Schedule 3 to this ITT.

A9. "Conditions of Tendering" means the conditions set out in the ITT that govern the competition.

A10. "Contract Conditions" means the conditions at Schedule 1 that will govern any resultant contract.

A11. A "Third Party" is any person who is not an employee of the Authority or Tenderer, as defined at A3.

Purpose

A12. The purpose of this ITT is to invite you to propose a solution / best price to meet the Authority's 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.

A13. The sections in this ITT and associated documents are structured in line with a generic tendering process and do not indicate importance / precedence.

A14. This ITT has either been issued to all potential Tenderers.

A15. This Requirement is advertised in the Official Journal of the European Union.

A16. Not used.

A17. Not used.

Tender Expenses

A18. 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.

A19. Not used.

Contract Conditions

A20. The Contract conditions are at Schedule 1.

Consultation with Credit Reference Agencies

A21. The Authority may consult with credit reference agencies to assess your creditworthiness. This information may be used to support and influence decisions to enter into a contract with you.

Other Information

A22. Cyber Risk. The cyber risk level for this requirement has been assessed as 'Low'. The cyber risk reference is: **RAR-WG7M76N5**. You must complete the Supplier Assurance Questionnaire via the Supplier Cyber Protection Service (Octavian) to demonstrate your compliance with the required cyber risk level. You can find further information on this by searching for DCPD on the GOV.UK website. The cyber risk response must be completed before the tender return date.

Section B – Key Tendering Activities

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

Stage	Date and Time	Initiated By	Submit to:
Final date for Clarification Questions / Requests for additional information	22 April 2019	Tenderers	Army Commercial BFG Proc TL
Final Date for Requests for Extension to return date (1)	22 April 2019	Tenderers	Army Commercial BFG Proc TL
The Authority issues Final Clarification Answers	24 April 2019	The Authority	All Tenderers (2)
Tender Return	08 May 2019	Tenderers	The Tender Board, using DEFFORM 28
Tender Evaluation	09-17 May 2019	The Authority	N/A

Notes

1. The Tenderer must make requests for an extension in writing (email is sufficient) to the above named contact, by the date and time shown. Any extension is at the sole discretion of the Authority and if granted will be granted to all Tenderers.
2. The Authority will automatically copy questions and answers to all Tenderers, removing the names of those who have raised the questions. If you do not want your question disclosed you must inform the Authority of this and the reason why when submitting the question. The Authority may choose to discuss with you whether it is appropriate to disclose the question or response, or both, to other Tenderers. 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. The Authority will endeavour to ensure that you have at least 10 working days to submit your Tender.

Section C – Instructions on Preparing Tenders

Tenders for Selected Contractor Deliverables

C1. The Authority reserves the right to reject all or part of your Tender where you have not tendered for all of the Contractor Deliverables.

Construction of Tenders

C2. Your Tender must be written in English.

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.

Section D – Tender Evaluation

D1. This section details how your Tender will be evaluated, including the evaluation criteria to be used.

The Tender Evaluation will be on the basis of: Most Economically Advantageous Tender (MEAT)

MEAT ratio: 70% Technical, 30% Price

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

This Tender will be evaluated using the MEAT method. This is a comparative score and the scoring method is worked out using the ratio above. The optimum is the highest technical score and lowest price, this together would get the highest total score. If you had the highest technical score but your price was double that of the lowest compliant Tender, this would receive a lower total score. The score will be calculated to two decimal places. In the event of two or more Tenders being awarded the same total, the Tender with the lowest price will be selected.

Evaluation Process

D2. The Tender evaluation process is split into a number of phases and shall be conducted separately for Commercial, Technical and Price aspects.

Evaluation Overview

D3. An overview of the evaluation phases for this requirement is as follows:

Phase	Name	Evaluation	Evaluation Criteria
1	SAQ Evaluation	Evaluation of the Suitability Assessment Questionnaire (SAQ) responses. Should the tenderer fail to pass the SAQ evaluation then the tenderer's tender will not be considered further. You must register your company to complete the SAQ online at https://www.contracts.mod.uk	Pass/Fail
2	Commercial Evaluation	<p>The Commercial evaluation will check whether the tenderer has submitted all of the required information as described at paragraph D4.</p> <p>These will be judged as a 'tender compliance' issue (i.e. Pass/Fail). Any suggested adjustments to the MOD Terms and Conditions by the tenderer will be subject to a 'risk assessment', to assess their acceptability, and may therefore be rejected if the associated risk is evaluated as being too high for the Authority to accept.</p> <p>A bidder's tender will be deemed 'non-compliant' and therefore excluded from the remainder of the evaluation process if marked as a 'Fail' on the Commercial Evaluation.</p>	Pass/Fail

3	Technical Evaluation	The qualitative evaluation by the Authority's Subject Matter Experts, which will be undertaken independently without sight of pricing information. It will be conducted by scoring the tenderer's responses to the Technical RORs at paragraph D11.	A mark that comprises 70% of overall score
4	Price Evaluation	Assessment conducted by the Authority to ensure a fair and reasonable overall price has been submitted by the Tenderer.	A mark that comprises 30% of overall score

Commercial Evaluation Responses Required

D4. Tenderers should submit the following in order to comply with the Commercial requirements of this tender:

ROR No	Subject - Commercial	Evaluation Criteria
1	A signed completed Tender Submission Document (Offer)	Pass or Fail
2	A statement within the ITT submission that the Terms and Conditions of Contract are accepted by the Tenderer	Pass or Fail
3	Confirmation that the Tender is open for at least 90 calendar days.	Pass or Fail
4	A completed Tenderer's Commercially Sensitive Information Form (Schedule 2 of the draft contract).	Pass or Fail
5	Details of the administration charge that will apply on a per litre basis.	Pass or Fail
6	Confirmation that the Suitability Assessment Questionnaire has been completed online at https://www.contracts.mod.uk	Pass or Fail
7	A statement confirming that the Tender is based on the latest published version of the ITT, and that any additional information published by the Authority has been taken into account in your Tender.	Pass or Fail
8	Confirmation that the Cyber Risk Supplier Assurance Questionnaire has been completed (see paragraph A22 of the ITT).	Pass or Fail

D5. The Commercial evaluation will be carried out in accordance with the Evaluation Criteria specified in the table above. Failure to meet the Commercial Evaluation Criteria could result in your tender being declared non-compliant.

Technical Evaluation

D6. The Technical Evaluation will assess the technical effectiveness of each bid. A score will be allocated against each of the Requirements of Response (ROR) specified at paragraph D11 below. Following the individual assessments, the Technical Evaluation Team will be convened for a single set of overall consensus scores to be agreed and allocated to each ROR response. Only those tenders evaluated as being Commercially compliant in accordance with paragraphs D4 and D5 above will be allocated a score.

D7. In accordance with the MEAT ratio provided above, the maximum number of points allocated to the Technical Evaluation is 70. The Technical Evaluation score shall be calculated as a proportion of the total marks achieved by the tenderer against the maximum number of marks available. For example, if a tenderer is awarded a total of 800 marks out of the maximum of 1,000 achievable, then they will be allocated a Technical Evaluation score of 56 points $((800/1000) \times 70)$.

D8. Tenderers should note that a failure to achieve a minimum score of '6' (Satisfactory and

acceptable response) against any of the Technical RORs will automatically render a tender non-compliant, to be excluded from the remainder of the evaluation process regardless of the total score attained.

D9. The scoring guide characteristics applicable to all RORs are as follows:

Classification	Score	Details
Outstanding response (fully compliant, with some areas exceeding requirements)	10	Submission sets out a robust solution (as for an 8 score) and, in addition, provides or proposes additional value and/or elements of the solution which exceed the requirements in substance and outcomes in a manner acceptable to the contracting authority; provides full confidence as to the relevant ability, understanding, expertise, skills and/or resources not only to deliver the requirements, but also exceed it as described. Low/no risk solution for the contracting authority.
Fully satisfactory /very good response (fully compliant with requirements).	8	Submission sets out a robust solution that fully addresses and meets the requirements, with full details (and, where evidence is required or necessary, full and relevant evidence) provided to support the solution; provides full confidence as to the relevant ability, understanding, expertise, skills and/or resources to deliver the requirements. Low/no risk solution for the contracting authority.
Satisfactory and acceptable response (compliant with no major concerns)	6	Submission sets out a solution that largely addresses and meets the requirements, with some detail (or, where evidence is required or necessary, some relevant evidence) provided to support the solution; minor reservations or weakness in a few areas of the solution in respect of relevant ability, understanding, expertise, skills and/or resources to deliver the requirements. Medium, acceptable risk solution to the contracting authority.
Partially acceptable response (one or more areas of major weakness)	4	Weak submission which does not set out a solution that fully addresses and meets the requirements: response may be basic/minimal with little or no detail (and, where evidence is required or necessary, with insufficient evidence) provided to support the solution and demonstrate that the tenderer will be able to provide the services and/or some reservations as to the tenderer's solution in respect of relevant ability, understanding, expertise, skills and/or resources to deliver the requirements. May represent a high risk solution for the contracting authority.
Unsatisfactory response (potential for some compliance but very major areas of weakness)	2	Substantially unacceptable submission which fails in several significant areas to set out a solution that addresses and meets the requirements: little or no detail may (and, where evidence is required or necessary, no evidence) have been provided to support and demonstrate that the tenderer will be able to provide the services and/or considerable reservations as to the tenderer's proposals in respect of relevant ability, understanding, expertise, skills and/or resources to deliver the requirements. Would represent a very high risk solution for the contracting authority.
No response (complete non-compliance)	0	No response at all or insufficient information provided in the response such that the solution is totally un-assessable and/or incomprehensible.

D10. Scoring against each of the RORs shall be carried out in accordance with the following:

ROR No.	Subject	Weighting	Score	Maximum Marks achievable
ROR 1	Supply of tax and duty-free fuel from a roadside service station network	30	10/8/6/4/2/0	300
ROR 2	Simplicity of application, use and payment	30	10/8/6/4/2/0	300
ROR 3	Usage control measures	20	10/8/6/4/2/0	200
ROR 4	Customer on-line accounts	10	10/8/6/4/2/0	100
ROR 5	Implementation timetable	10	10/8/6/4/2/0	100
MAXIMUM MARKS AVAILABLE				1000

D.11 Details of the Technical RORs are as follows, tenderers must complete a full response against each of the requirements:

ROR No.	Subject	SOR References	Weighting
ROR 01	Supply of tax and duty-free fuel from a roadside service station network	Paragraphs 3, 4, 5 and 14	30
<p>1. Aim: The Authority is seeking a Supplier who will provide a fuel card system to enable entitled personnel to purchase petrol and diesel from road side service stations throughout Germany. This must be at the correct grade, free of German VAT ("Umsatzsteuer") and fuel energy tax ("Energiesteuer") at the point of sale, and available from a network of its, and any affiliated partners' stations.</p> <p>2. Background: Fuel will be required nationally in Germany and in particular in areas where the British Forces live and work, predominantly in North Rhine Westphalia (NRW), Lower Saxony, Bavaria and Ramstein (Rhineland-Palatinate). Once the vehicle is refuelled the fuel card system must be able to deduct all taxes and duty at the point of sale. This arrangement must comply with all tax conditions imposed by the relevant German authorities.</p> <p>3. Evidence Required:</p> <p>a. Describe your solution for providing fuel from nationwide roadside locations throughout Germany and along all categories of roads; in particular in the areas of North Rhine Westphalia (NRW), Lower Saxony, Bavaria and Ramstein (Rhineland-Palatinate).</p> <p>b. Describe your ability to supply the grades of petrol and diesel in accordance with the SOR.</p> <p>c. Describe the process you will employ to subtract all taxes and duty from the pump price at the point of sale.</p> <p>d. Describe how the tax and excise duty exemption will meet the requirements of the German tax authorities.</p>			

ROR No.	Subject	SOR References	Weighting
ROR 02	Simplicity of application, use and payment	Paragraphs 7, 8, 10 and 11	30
<p>1. Aim. To select a Supplier who will be able to provide an individual fuel card to an entitled person through a simple application process, and a system that a card holder will find simple to use at the point of sale. Any charges for the use of the card are to be paid by the entitled person.</p> <p>2. Background. The Authority requires individual fuel cards which are easy to apply for and simple to use. The preference is for the Authority to spend minimum time processing applications between the entitled person and the Supplier. Once provided, the entitled person must find the card straightforward to use at the point of sale. The Authority intends to make no payment for this service. If the Contractor chooses, payment for the service can be through a fee, or administration charge, added at the point of sale.</p> <p>3. Evidence Required.</p> <p>a. Describe your proposal of how entitled personnel will apply for the card.</p> <p>b. An explanation of the complete transactional process from when an entitled person arrives at a filling station to departing.</p> <p>c. Explain if you would add any fee or administration charge to the use of the card by the entitled person, and if so how this will be achieved.</p> <p>d. Describe a replacement process should the card be lost or damaged.</p>			

ROR No.	Subject	SOR References	Weighting
ROR 03	Usage control measures	Paragraphs 3, 6, 13 and Appendix 1 to the SOR.	20
<p>1. Aim. To select a Supplier who will be able to control the tax and duty-free fuel purchases to an entitled person, filling their authorised vehicle, within the "monthly ration".</p> <p>2. Background. The Authority is seeking a compliant bid that will demonstrate an understanding and adherence to the need to only supply fuel to entitled personnel when fuelling their authorised vehicles, up to a monthly allowance, known as the "monthly ration" (as specified in the SOR).</p> <p>3. Evidence Required.</p> <p>a. Demonstrate your understanding of this part of the requirement.</p> <p>b. Describe how you would check on the correct usage of the card at the service station by the entitled person fuelling their authorised vehicle.</p> <p>c. Describe how you would be able to limit the supply of fuel to the maximum allowable in the "monthly ration".</p> <p>d. Outline how your proposal will be capable of blocking an individual account or reducing an individual fuel ration.</p> <p>e. Describe how you would share purchasing information with the Authority and relevant German Government authorities (primarily Hauptzollamt Hamburg-Stadt) for audit purposes.</p>			

ROR No.	Subject	SOR References	Weighting
ROR 04	Customer on-line accounts	Paragraph 12.	10
<p>1. Aim. To select a Supplier who will provide a personal on-line account for the Main Card Holder.</p> <p>2. Background. The Authority requires that each entitled person should be able to have the ability to have an overview of their fuel purchases shown against their monthly ration allowance.</p> <p>3. Evidence Required.</p> <p>a. Describe your proposal for an on-line customer account.</p> <p>b. Describe any additional on-line facilities that you feel the Authority and its entitled personnel would benefit from.</p>			

ROR No.	Subject	SOR References	Weighting
ROR 05	Implementation timetable	NA	10
<p>1. Aim. To select a Supplier who will provide a realistic implementation timetable, taking into account any necessary legislation requirements, by the due service start date.</p> <p>2. Background. The Authority requires that a new contract is in place by the due service start date and there is no gap in service when migrating from the current to the future Supplier.</p> <p>3. Evidence Required:</p> <p>a. Provide a clear transition plan that shows key points in the migration to your proposed service by the start date. This must indicate that there would be no gap in capability by ensuring the entitled personnel are in possession of working cards at the start of the service.</p> <p>b. Identification of any risks to meeting the start date, and the mitigation actions to overcome them.</p>			

Evaluation of Price

D12. Following the Commercial and Technical Evaluations, those tenders considered compliant in accordance with the guidance provided in this section D will be scored in terms of their Price proposal. Maximum 'points' will be allocated to the commercially and technically compliant bidder who submits the lowest tender price. Subsequent points will then be awarded to the remaining compliant bidders based on their total price as a percentage of the lowest tender price. This calculation is subsequently converted to a price score to reflect that this carries 30% of the total score.

D13. The price for evaluation purposes shall be calculated as follows: the administration fee per litre as specified by the Tenderer, multiplied by 5,000,000 litres (1,000,000 litres per year for 5 years).

D14. Please note that the use of the numbers in paragraph D13 above is for comparative tender evaluation purposes only, and does not mean that this amount of fuel will necessarily be consumed.

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 ITT. The Authority reserve the right to reject any Tender received after the stated date and time. You must provide 3 unpriced and 1 priced copies of your Tender. You must not email electronic copies until after the Tender Board has taken place. If you email your Tender before the Tender Board date, your Tender may be excluded from the competition.
- E2. You must include the electronic copy/ies of the priced and unpriced Tender with the associated paper copy/ies only. You must label CDs containing electronic copies of the Tender with "Includes Prices" or "Unpriced". The electronic copies of the Tenders must be compatible with Microsoft Office Word 2010 and other MS Office 2010 applications. If you, password protect or encrypt any information on CDs containing prices you must supply the password / use compatible encryption methods so that the Authority can undertake a pricing evaluation.
- E3. You must complete and include the ITT Annex A (Offer) with your Tender. Where you select 'Yes' to any questions you must attach the relevant information.
- E4. You must include the original signed ITT Annex A (Offer) with one paper copy of your priced Tender.
- E5. You must submit your paper and CD copies in a sealed envelope or box. For health and safety reasons, no individual envelope or box should weigh more than 11 kilos.
- E6. You must attach the enclosed Tender Return Label (DEFFORM 28) to the outer packaging of each envelope or box that contains your Tender.
- E7. If you intend to hand deliver your Tender you must inform the named Commercial Officer of your intention and seek further delivery instructions. Failure to do so may result in your Tender being refused and / or returned.
- E8. You must ensure you include all relevant information in your Tender. The Authority can only evaluate information that you include in your Tender.

Section F – Conditions of Tendering

F1. The issue of ITT Documentation or ITT Material 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 any offer and subsequent acceptance of contract, 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 or the tender process;
- d. withdraw this ITT at any time, or re-invite Tenders on the same or any alternative basis;
- e. re-issue this ITT on a single source basis, in the event that this procurement does not result in a 'competitive process' as defined in the Single Source Contract Regulations 2014, making such adjustments as would be required by the application of the Defence Reform Act 2014 and / or the Single Source Contract Regulations 2014;
- f. choose not to award any contract as a result of the current procurement process;
- g. ask for an explanation of the costs or price proposed in the tender where the tender appears to be abnormally low.

F2. The contract will be entered into when the Authority sends written notification of its entry into the contract, via a DEFFORM 159. Written notification will be issued, to the address you provide, on or before the end of the validity 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 are instigated, challenging the award of the contract, 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 to legislation relating to the canvassing of a public official, collusive behaviour and bribery. If you act in breach of this legislation your Tender may be disqualified from this procurement. Disqualification will be without prejudice to any civil remedy available to the Authority or any criminal liability that your conduct may attract.

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. There may be instances where it is essential that you do not have a Conflict of Interest (COI).

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

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

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

Standstill Period

F9. 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 at the end of the next working day.

Publicity Announcements

F10. The Authority will publish notification of the contract and shall publish contract documents under the UK 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 Schedule 2.

F11. If you wish to make a similar announcement, you must seek approval from the named Commercial Officer.

F12. 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

F13. 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, related aspects of good procurement practice and answering Freedom Of Information requests.

F14. For these purposes, the Authority may share within the UK 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 Contractor's Commercially Sensitive Information Form (Schedule 2) 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.

F15. The Authority reserves the right to disclose on a confidential basis any information it receives from Tenderers during the procurement process (including information identified by

the Tenderer as Commercially Sensitive Information in accordance with the provisions of this ITT) to 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.

Ministry of Defence

Tender Ref No. CB/BFG/0167

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, 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 German Law				Yes / No*
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
Tenderer's Declaration of Compliance with Competition Law				
<p>We certify that the offer made is intended to be genuinely competitive. No aspect of the price has been fixed or adjusted by any arrangement with any Third Party. Arrangement in this context includes any transaction, or agreement, private or open, or collusion, formal or informal, and whether or not legally binding. In particular:</p> <ol style="list-style-type: none"> the offered price has not been divulged to any Third Party, no arrangement has been made with any Third Party that they should refrain from tendering, no arrangement with any Third Party has been made to the effect that we will refrain from bidding on a future occasion, no discussion with any Third Party has taken place concerning the details of either's proposed price, and no arrangement has been made with any Third Party otherwise to limit genuine competition. <p>We understand that any instances of illegal cartels or market sharing arrangements, or other anti-competitive practices, suspected by the Authority will be referred to the UK Competition and Markets Authority for investigation and may be subject to action under the UK Competition Act 1998 and the UK Enterprise Act 2002.</p> <p>We understand that any misrepresentations may also be the subject of criminal investigation or used as the basis for civil action.</p> <p>We agree that the Authority may share the Contractor's information / documentation (submitted to the Authority during this Procurement) more widely within UK 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 the Contractor's Commercially Sensitive Information Form (Schedule 2).</p>				

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)

Postal Address:

duly authorised to sign this Tender for and on behalf of:

Telephone No:

(Tenderer's Name)

Registered Company Number:

DEFFORM 28 Tender Return Label

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Ministry

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THE TENDER BOARD
Army Commercial
Block 5
Catterick Kaserne
Detmolder Strasse 440
33605 Bielefeld

Tender No: CB/BFG/0167

Due 11 am CET: 08 May 2019

DEFFORM 28

Edn 6/09

Schedule 1 – Contract Conditions

1 Definitions

The Authority means the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland (referred to in this document as "the Authority"), acting as part of the Crown;

Business Day means 09:00 to 17:00 Monday to Friday Central European Time, excluding public and statutory holidays in the Federal Republic of Germany (DE) and UK;

Commercial Officer means the Authority's officer monitoring the Contract as assigned by the Authority to this Contract and as notified to the Contractor from time to time in the format at DEFFORM 111; **(only the Commercial Officer shall be empowered to negotiate and issue amendments to the terms and conditions on behalf of the Authority unless specific written authority has been issued to another Officer);**

Contract means the agreement concluded between the Authority and the Contractor, including all terms and conditions, specifications, plans, drawings, schedules and other documentation, expressly made part of the agreement in accordance with Clause 2c;

Contractor means the person, firm or company specified as such in this Contract;

Contractor's Commercially Sensitive Information means the information listed as such in the Contract, which is information notified by the Contractor to the Authority, which is acknowledged by the Authority as being commercially sensitive;

Contractor Deliverables means the services as specified in Schedule 3 which the Contractor is required to provide under the Contract;

Crown Servant means a person as defined within Section 12 of the UK Official Secrets Act 1989 as amended from time to time¹.

Effective Date of Contract means the date of the Authority's acceptance of the winning tender for the supply of the Contractor Deliverables.

Expiry Date means the date as stipulated in Clause 9 below.

Firm Price means a price, which is not subject to variation, excluding tax and/or duty;

Force means the personnel belonging to the land, sea or air armed services of the Authority within Federal Republic of Germany with their official duties;

Information means any information in any written or other tangible form disclosed to one Party by or on behalf of the other Party under or in connection with the Contract, including information provided in the tender or negotiations which preceded the award of the Contract.

Legislation means in relation to the Federal Republic of Germany any relevant laws as laid down by the European Union, the relevant German legislative and executive bodies or authorities, and the relevant codes of practices; and means in relation to the United Kingdom any Act of Parliament, any subordinate legislation within the meaning of section 21 of the Interpretation Act 1978, any exercise of Royal Prerogative or any enforceable community right within the meaning of Section 2 of the European Communities Act 1972.

Notices means all notices, orders, or other forms of communication required to be given in writing under or in connection with the Contract;

Parties means the Contractor and the Authority, and Party shall be construed accordingly;

Personal Data Particulars means the details required from the Contractor under Clause 7 (Data Protection) in the format at Schedule 4;

SOFA means the NATO Status of Forces Agreement of 19 June 1951;

SOFA SA means the Supplementary Agreement to SOFA dated 3 August 1959;

Transparency Information means the content of this Contract in its entirety, including from time to time agreed changes to the Contract, and details of any payments made by the Authority to the Contractor under the Contract.

2 General

a. The Contractor shall comply with all applicable Legislation and any other applicable law, whether specifically referenced in this Contract or not.

b. Any variation to the Contract shall have no effect unless expressly agreed in writing and signed by both Parties.

c. If there is any inconsistency between these terms and conditions and the documents expressly referred to therein, the conflict shall be resolved according to the following descending order of priority:

- (1) the terms and conditions; and
- (2) the schedules; and

- (3) the documents expressly referred to in the agreement.

d. Neither Party shall be entitled to assign the Contract (or any part thereof) without the prior written consent of the other Party.

e. Failure or delay by either Party in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of its rights under the Contract.

f. The Parties to the Contract do not intend that any term of the Contract shall be enforceable by any person that is not a Party to it.

g. The Contract and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with German Law, and subject to Clause 17 (Dispute Resolution) and without prejudice to the dispute resolution procedure set out therein, the Parties submit to the exclusive jurisdiction of the German courts. Other jurisdictions may apply solely for the purpose of giving effect to this Clause 2g. and for enforcement of any judgement, order or award given under German jurisdiction.

3 Application of Conditions

a. These terms and conditions and the Annexes thereto govern the Contract to the entire exclusion of all other terms and conditions. No other terms or conditions are implied.

¹
https://www.legislation.gov.uk/ukpga/1989/6/pdfs/ukpga_19890006_en.pdf

b. The Contract constitutes the entire agreement and understanding and supersedes any previous agreement between the Parties relating to the subject matter of the Contract.

4 Confidentiality

a. Subject to Clauses 5 to 7 each Party:

- (1) shall treat in confidence all Information it receives from the other;
- (2) shall not disclose any of that Information to any third party without the prior written consent of the other Party, which consent shall not unreasonably be withheld, except that the Contractor may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of the Contract;
- (3) shall not use any of that Information otherwise than for the purpose of the Contract; and
- (4) shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under the Contract.

b. The Contractor shall take all reasonable precautions necessary to ensure that all Information disclosed to the Contractor by or on behalf of the Authority under or in connection with the Contract:

- (1) is disclosed to its employees and sub-contractors, only to the extent necessary for the performance of the Contract; and
- (2) is treated in confidence by them and not disclosed except with prior written consent or used otherwise than for the purpose of performing work or having work performed for the Authority under the Contract or any sub-contract under it.

c. The Contractor shall ensure that his employees are aware of his arrangements for discharging the obligations at Clauses 4a. and 4b. before they receive Information and take such steps as may be reasonably practical to enforce such arrangements.

d. Clauses 4a. and 4b. shall not apply to any Information to the extent that either Party:

- (1) exercises rights of use or disclosure granted otherwise than in consequence of, or under, the Contract;
- (2) has the right to use or disclose the Information in accordance with other conditions of the Contract; or
- (3) can show:
 - i. that the Information was or has become published or publicly available for use otherwise than in breach of any provision of the Contract or any other agreement between the Parties;
 - ii. that the Information was already known to it (without restrictions or disclosure or use) prior to it receiving it under or in connection with the Contract;
 - iii. that the Information was received without restriction on further disclosure from a third party who lawfully acquired it and

- iv. who is himself under no obligation restricting its disclosure; or from its records that the same information was derived independently of that received under or in connection with the Contract; provided the relationship to any other Information is not revealed.

e. Neither Party shall be in breach of this Clause where it can show that any disclosure of Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the Party making the disclosure shall ensure that the recipient of the Information is made aware of and asked to respect its confidentiality. Such disclosure shall in no way diminish the obligations of the Parties under this Clause.

5 Limited Disclosure of Information

a. The Authority may disclose the Information:

- (1) on a confidential basis to any central government body for any proper purpose of the Authority or of the relevant central government body, which shall include: disclosure to the United Kingdom Cabinet Office and/or HM Treasury for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes;
- (2) to the United Kingdom Parliament and Parliamentary Committees or if required, by any Parliamentary reporting requirement;
- (3) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (4) on a confidential basis to a professional adviser, consultant or other person, for any purpose relating to or connected with this Contract;
- (5) on a confidential basis for the purpose of the exercise of its rights under the Contract; or
- (6) on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under the Contract;

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality arrangement containing terms no less stringent than those placed on the Authority under this Clause.

b. Before sharing any information in accordance with Clause 5a. above, the Authority may redact the Information. Any decision to redact Information made by the Authority shall be final.

c. The Authority shall not be in breach of the Contract where it can show that any disclosure of Information is made solely and to the extent necessary to comply with the United Kingdom Freedom of Information Act 2000² ("the Act") or the United Kingdom Environmental Information Regulations 2004³ ("the Regulations") or the General Data Protection Regulation⁴ (the "GDPR"). To the extent permitted by

² https://www.legislation.gov.uk/ukpga/2000/36/pdfs/ukpga_20000036_en.pdf.

³ https://www.legislation.gov.uk/uksi/2004/3391/pdfs/uksi_20043391_en.pdf.

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&from=EN>; Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data

the time for compliance under the Act or the Regulations or the GDPR, the Authority shall consult the Contractor where the Authority is considering the disclosure of Information under the Act or the Regulations or the GDPR and, in any event, shall provide prior notification to the Contractor of any decision to disclose the Information. The Contractor acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose Information in order to comply with the Act or the Regulations or the GDPR is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Act, the Regulations or the GDPR. For the avoidance of doubt, nothing in this Clause shall affect the Contractor's rights at law.

d. Nothing in this Clause shall affect the parties' obligations of confidentiality where Information is disclosed orally in confidence.

6 Transparency

a. Subject to Clause 6b., but notwithstanding Clauses 4 and 5 above, the Contractor understands that the Authority may publish the Transparency Information to the general public. The Contractor shall assist and cooperate with the Authority to enable the Authority to publish the Transparency Information.

b. Before publishing the Transparency Information to the general public in accordance with Clause 6a., the Authority shall redact any information that would be exempt from disclosure if it was the subject of a request for information under the Act or the Regulations or the GDPR, including the Contractor Commercially Sensitive Information.

c. The Authority may consult with the Contractor before redacting any information from the Transparency Information in accordance with Clause 6b. The Contractor acknowledges and accepts that its representations on redactions during consultation may not be determinative and that the decision whether to redact information is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Act or the Regulations or the GDPR.

d. For the avoidance of doubt, nothing in this Clause 6 shall affect the Contractor's rights at law.

7 Data Protection

a. The Authority agrees with the computer-technical recording of the performance and examination data by the Contractor.

b. The Contractor shall comply with the regulations and provisions within the GDPR, the *Bundesdatenschutzgesetz* (BDSG)⁵ and the *Strafgesetzbuch* (StGB)⁶. The Contractor shall obligate his employees and sub-contractors according to Section 53 *BDSG* (Confidentiality) separately referring therein to Sections 42, 43 *BDSG* (Penal provisions and provisions on administrative fines) as well as to Section 203 *StGB* (Violation of private secrets).

c. The Contractor notifies the Authority that the data is (also) processed and recorded digitally with the Contractor. The Contractor shall ensure that data is processed and recorded in compliance with the provisions of the GDPR and the *BDSG*, as stipulated, e.g., in Section 64 *BDSG* and the Contractor shall take all necessary and required steps thereby to ensure that

all employees and sub-contractors whom they may engage are equally obligated.

d. Should the Contractor be obliged in accordance with GDPR and/or the *BDSG* to appoint a data protection officer, the Contractor will inform the Authority of the details of such Data Protection Officer.

e. Should the Contract be terminated or expire, the Contractor shall provide the Data required for the incoming contractor to perform his tasks under the Contract whilst observing the GDPR and *BDSG* provisions.

f. The Personal Data Particulars are specified at Schedule 4.

8 Notices

a. A Notice served under the Contract shall be:

- (1) in writing in the English Language;
- (2) authenticated by signature or such other method as may be agreed between the Parties;
- (3) sent for the attention of the other Party's representative, and to the address set out in this Contract or as designated by the Parties from time to time;
- (4) marked with the number of the Contract; and
- (5) delivered by hand, prepaid post (or airmail), facsimile transmission or by electronic mail.

b. Notices shall be deemed to have been received:

- (1) if delivered by hand, on the day of delivery if it is a Business Day in the place of receipt, and otherwise on the first Business Day in the place of receipt following the day of delivery;
- (2) if sent by prepaid post, on the fourth Business Day (or the tenth Business Day in the case of airmail) after the day of posting;
- (3) if sent by facsimile or electronic means:
 - i. if transmitted between 09:00 and 17:00 hours on a Business Day (recipient's time) on completion of receipt by the sender of verification of the transmission from the receiving instrument; or
 - ii. if transmitted at any other time, at 09:00 on the first Business Day (recipient's time) following the completion of receipt by the sender of verification of transmission from the receiving instrument.

c. Notices served under the Contract shall be sent to the following address:

Authority: Army Commercial, Army HQ, Ramillies Building, Marlborough Lines, Monxton Road, Andover SP11 8HT

Contractor: TBC

9 Contract Period

The Contract shall come into effect on the Effective Date. Supply of the Contractor Deliverables shall commence with effect from **01 April 2020**. The Contract Expiry Date shall be **31 March 2025** unless it has been terminated prior to such Expiry Date in accordance with Clauses 12 up to and including 15.

10 Supply of Contractor Deliverables

and repealing Directive 95/46/EC (General Data Protection Regulation).

⁵ Federal Data Protection Act of 30 June 2017 (Federal Law Gazette I p. 2097) as amended from time to time.

⁶ German Criminal Code as published on 13 November 1998 (Federal Law Gazette I p. 3322) as last amended by Article 14 of the Law dated 18 December 2018 (Federal Law Gazette I p. 2639) and as amended from time to time.

The Contractor shall ensure that the Contractor Deliverables correspond with the specifications in the Statement of Requirements (SOR) at Schedule 3.

11 Payment

No payment shall be due to the Contractor from the Authority for the Contractor Deliverables. Payment for fuel purchased using the fuel card is to be made directly by entitled personnel.

12 Termination/Break

The Authority shall have the right to terminate the Contract at any time prior to the Expiry Date by giving the Contractor one month's notice in writing. Such termination shall be without prejudice to the rights of the parties accrued to the date of termination but shall be without further liability to either party.

13 Termination for Corrupt Gifts

The Authority may terminate the Contract with immediate effect, without compensation, by giving written notice to the Contractor at any time after any of the following events:

- a. where the Authority becomes aware that the Contractor, its employees, agents or any sub-contractor (or anyone acting on its behalf or any of its or their employees):
 - (1) has offered, promised or given to any Crown Servant, to a member of the Force or the Civilian Component, to any Dependent, to any Authority employee or any Directly Employed Labour any gift or financial or other advantage of any kind as an inducement or reward; or
 - (2) commits or has committed any prohibited act or any offence under the United Kingdom Bribery Act 2010 with or without the knowledge or authority of the Contractor in relation to this Contract or any other contract with the Crown; or
 - (3) has entered into this or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by it or on its behalf, or to its knowledge, unless before the contract is made particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority; or
 - (4) has committed an offence in accordance with Section 299 *StGB* (Taking and giving bribes in commercial practice); or
 - (5) has committed an offence in accordance with Section 300 *StGB* (Aggravated cases of taking and giving bribes in commercial practice); or
 - (6) has committed an offence in accordance with Section 333 *StGB* (Giving bribes); or
 - (7) has committed an offence in accordance with Section 334 *StGB* (Giving bribes as an incentive to the recipient's violating his official duties); or
 - (8) has committed an offence in accordance with Section 335 *StGB* (Aggravated cases).
- b. In exercising its rights or remedies to terminate the Contract under Clause 13a. the Authority shall:
 - (1) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person committing the prohibited act;

(2) give due consideration, where appropriate, to action other than termination of the Contract, including (without being limited to):

- i. requiring the Contractor to procure the termination of a subcontract where the prohibited act is that of a Subcontractor or anyone acting on its or their behalf;
 - ii. requiring the Contractor to procure the dismissal of an employee (whether its own or that of a Subcontractor or anyone acting on its behalf) where the prohibited act is that of such employee.
- c. Where the Contract has been terminated under Clause 13a. the Authority shall be entitled to purchase substitute Contractor Deliverables from elsewhere and recover from the Contractor any costs and expenses incurred by the Authority in obtaining the Contractor Deliverables in substitution from another supplier.

14 Termination for Material Breach

In addition to any other rights and remedies, the Authority shall have the right to terminate the Contract (in whole or in part) with immediate effect by giving written notice to the Contractor where the Contractor is in material breach of its obligations under the Contract. A breach is deemed to be material if the performance of the obligation, on which the Authority relies, is essential for the Authority's business operation. A breach is further to be deemed material, if the Contractor breaches his obligations under Clauses 4 (Confidentiality) and 7 (Data Protection). Where the Authority has terminated the Contract under this Clause 14 the Authority shall have the right to claim such damages as may have been sustained as a result of the Contractor's material breach of the Contract.

15 Termination for Insolvency

The Authority shall have the right to terminate the contract with immediate effect if the Contractor is declared bankrupt or goes into liquidation or administration. This is without prejudice to any other rights or remedies under this Contract.

16 Contractor's Liability and Indemnity

- a. Subject to Clause 16b. the Contractor's liability to the Authority in connection with this Contract shall be limited to £5m (five million pounds).
- b. Nothing in this Contract shall operate to limit or exclude the Contractor's liability:
 - (1) for:
 - i. any liquidated damages (to the extent expressly provided for under this Contract);
 - ii. any amount(s) which the Authority is entitled to claim, retain or withhold in relation to the Contractor's failure to perform or under-perform its obligations under this Contract, including service credits or other deductions (to the extent expressly provided for under this Contract);
 - iii. any interest payable in relation to the late payment of any sum due and payable by the Contractor to the Authority under this Contract;
 - (2) for death or personal injury caused by the Contractor's negligence or the negligence of any of its personnel, agents, consultants or sub-contractors;

- (3) for fraud, fraudulent misrepresentation, wilful misconduct or negligence;
- (4) in relation to the termination of this Contract on the basis of abandonment by the Contractor; or
- (5) for any other liability which cannot be limited or excluded under the German statutory law.

c. The rights of the Authority under this Contract are in addition to, and not exclusive of, any rights or remedies provided by German statutory law.

17 Dispute Resolution

a. The Parties will attempt in good faith to resolve any dispute or claim arising out of or relating to the Contract through negotiations between the respective representatives of the Parties having authority to settle the matter, which attempts may include the use of any alternative dispute resolution procedure on which the Parties may agree.

b. In the event that the dispute or claim is not resolved pursuant to Clause 17a. the dispute shall be referred for decision by a Court of Arbitration to be established in accordance with the Agreement between the United Kingdom and the Federal Republic of Germany in the Settlement of disputes arising out of the Direct Procurement Agreement (DPA) dated 3 August 1959, following the procedure laid down therein. Unless the dispute is over the immediate determination of the Contract, reference to arbitration may also take place during the life of a contract, provided that work is thereby in no way delayed.

18 Cyber Risk

a. The Cyber Risk Assessment reference is RAR-WG7M76N5. DEFCON 658 10/17 applies.

b. Further to DEFCON 658 the Cyber Risk Level of the Contract is Low Risk, as defined in Def Stan 05-138.

Schedule 2 - Contractor's Commercially Sensitive Information Form

Contract No: CB/BFG/0167
Description of Contractor's Commercially Sensitive Information:
Cross Reference(s) to location of sensitive information:
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:

Schedule 3 - Statement of Requirements

STATEMENT OF REQUIREMENT FOR THE PROVISION OF A FUEL CARD FOR THE PURCHASE OF TAX AND DUTY-FREE FUEL BY ENTITLED PRIVATE MOTORISTS OF THE BRITISH FORCES COMMUNITY IN GERMANY

1. **Background.** Entitled personnel¹ of the British Armed Forces in Germany are eligible to purchase fuel in Germany free of tax and duty under the conditions set out in the Supplementary Agreement to the NATO Status of Forces Agreement of 1951, and associated administrative agreements between the UK and Germany.
2. Tax-free purchases are normally made through an Official Procurement Agency (OPA) of the Authority. An Administrative Agreement with the German Federal Ministry of Finance of 6 Mar 14 (Annex A to Schedule 3), permits entitled personnel to act as the authorised agents of the OPA and pay for fuel themselves at the point of delivery, tax and duty free.
3. **Requirement.** The Contractor shall provide a fuel card system under which entitled personnel are able to purchase fuel free of all German tax and duty at all of a provider's service stations within its network and any affiliated partners' networks. The fuel card system shall comply with all conditions imposed by the relevant German authorities and in particular shall contain sufficient safeguards to ensure that:
 - a. Fuel (either petrol or diesel) is purchased only by entitled personnel by ensuring that the entitled person produces a British Forces identity card and that the name on that card corresponds to the relevant name on the fuel card.
 - b. The vehicle registration number annotated on the fuel card matches the number on the vehicle that has been refuelled.
 - c. Fuel is only purchased in quantities consistent with the monthly ration (see Paragraph 6 below) for each vehicle. The system shall prevent any entitled person from drawing more than the permitted ration in any one month for any one vehicle.
 - d. The German authorities can establish through audit the quantity of duty free fuel supplied to any entitled person in any one month period.
 - e. Fuel cards can only be used to purchase petrol or diesel.
4. **Types of Fuel.** The fuel card system shall enable entitled personnel to obtain the grades of petrol or diesel available on the German retail market. At present, these grades are as follows:
 - a. Super Gasoline E5 (95 Octane) in accordance with EN 228.
 - b. Super Gasoline E10 (95 Octane) in accordance with EN 228
 - c. Super Premium Gasoline (98 Octane or higher) in accordance with EN228
 - d. Automotive Diesel (minimum cetane rating of 51) in accordance with EN 590.
 - e. Automotive Premium Diesel (minimum cetane rating of 56) in accordance with EN 590.
5. **Service Station Network.** The Contractor shall ensure that petrol or diesel can be purchased using a fuel card in a network of service stations that provides national coverage

throughout Germany, and in particular provides good coverage in the areas where the British Forces live and work; predominantly concentrated in North Rhine Westphalia, Bavaria and Ramstein (Rhineland-Palatinate), as well as major road routes throughout Germany.

6. **Fuel Ration.** Entitled personnel are only to be supplied with tax and duty-free fuel under the fuel card system up to a monthly limit, this is termed the "monthly ration". The amount of the monthly ration is set out below and the Contractor's system shall ensure that tax and duty-free fuel may only be purchased up to the monthly limit. It shall not be possible to accumulate any part of an unused ration for a particular month. Any unused part of a ration shall become lost at 23.59 hrs of the last day of the month concerned. The new monthly ration shall become available from 00:01 hrs on the first day of a month.

	Motor Cars		Motor Cycles		
	Up to 1300 cc	From 1301 cc	Up to 449 cc	From 450 to 850 cc	From 851 cc
Monthly Ration	200 litres	400 litres	80 litres	90 litres	110 litres

7. **Pricing of the Contract.** The pricing scheme for the Contract will be such that the Authority makes no payment to the Contractor. If the Contractor chooses, payment to the Contractor for operating the fuel card system may be by way of a fee or administration charge which shall be added onto the cost of fuel purchased, payable directly by the card holder at the point of sale.

8. **Payment for Fuel.** Payment for fuel purchased using the fuel card is to be made directly by entitled personnel. This is to occur immediately after refuelling at the service station and at the pump price displayed at the time of refuelling, subject to the following adjustments:

- a. Umsatzsteuer (VAT) shall be deducted.
- b. Energiesteuer (fuel excise duty) shall be deducted.
- c. Any Contractor's administration fee shall be added.

9. A single receipt shall be produced at the point of sale. This shall show at the least the total amount for the fuel purchased and the amount paid by the entitled person after tax and duty have been deducted. The receipt shall also include the remaining balance of the monthly fuel entitlement in litres.

10. **Provision of the fuel cards.** Entitled personnel will apply to the Authority for a card. The Authority will process the card application and ensure that it is in relation to a vehicle that is registered, or in the process of being registered to them, with the British Forces vehicle licensing authority in Germany. The Authority will then request the Contractor to produce and issue a card, which the Contractor shall send to the Authority within 5 working days for collection by the entitled person. All fuel cards shall be provided to the Authority at the Contractor's expense. A PIN is not required.

11. **Fuel Card Detail.** Fuel cards shall have the following information on the text area of the card:

- a. Full name of the entitled person(s). Up to six names may be required.
- b. Vehicle registration number of the vehicle to which the fuel card relates.
- c. Type of fuel (petrol or diesel) which can be purchased.
- d. The expiry date of the card, which will be no more than 3 years from date of issue.

12. **Online Account.** On receipt of the application, the Contractor shall establish a personal online account for the Main Card Holder. Only one card per vehicle, bearing the Main Card Holder's name plus 5 further entitled persons' names, will be required. The accounts shall show:

- a. The vehicle's registration number.
- b. The current month's purchases in litres and value after deduction of taxes.
- c. The current month's balance on a reducing scale commensurate with purchases.
- d. A total history of purchase in litres.
- e. Expiry date of the card.

13. **Blocking of Accounts.** The fuel card system shall be capable of allowing the Authority to block an individual account or adjust an individual fuel ration. Circumstances where this might occur include enforcement of a penalty imposed on an individual for infringement of the regulations relating to the vehicle licensing or fuel card systems.

14. **Fuel Card Audit Requirements.** Individual card accounts shall be made accessible online by the Contractor to the relevant German Government authorities (primarily Hauptzollamt Hamburg-Stadt) and to the Authority (the most frequent elements of the Authority needing access will be the principle Headquarters and Customs and Immigration of the British Forces in Germany). Access is required, among other things for audit purposes. Audits will be notified by the Authority from time to time in consultation with the relevant German authorities. The Contractor shall ensure all personal data is fully protected and is compliant with the General Data Protection Regulation (GDPR).

15. **Fuel Card Quantities Required.** There will be an initial requirement of approximately 1,000 fuel cards. The cards will be required to be issued to entitled personnel and able to be used from 00:01 on 1 Apr 20. This will require a transition period to allow time for applications to be processed and cards to be made and provided to entitled personnel. Thereafter the requirement during the contracted period will be to respond to card requests to take account of new vehicle registrations, loss of cards, and replacement of cards as a result of wear and tear.

16. **Service Station Network.** The Contractor shall provide information on its, and any affiliated partners', service stations participating in the fuel card system. This will be used by the Authority to inform entitled personnel. The Authority would also seek to obtain on-line service station locations from the Contractor.

ADMINISTRATIVE ARRANGEMENT
ON
THE TRANSITION FROM THE FUEL COUPON SYSTEM TO A
FUEL CARD SYSTEM
BETWEEN
THE FEDERAL MINISTRY OF FINANCE, REPRESENTED BY THE
DIRECTORATE-GENERAL FOR CUSTOMS AND EXCISE DUTIES
AND
THE BRITISH FORCES IN GERMANY, REPRESENTED BY
THE GENERAL OFFICER COMMANDING
BRITISH FORCES GERMANY
("the Participants")

The Participants agree to the introduction of a fuel card system for private vehicles of members of the British Forces. The fuel card system will replace the existing fuel coupon system. Duty vehicles may be integrated into this fuel card system at a later date. The duties of the fuel supplier also form part of this Arrangement. The British Forces will ensure that these duties are subject to a separate agreement between the British Forces and the fuel supplier.

The transition from fuel coupons to the fuel card system will start from 1st April 2014 at the earliest. The transition process will be carried out by the British Forces after the introduction of the fuel card system as soon as possible, and will be completed by no later than 31st December 2015. The British Forces will notify the Federal Ministry of Finance of the beginning of the transition period and of the completion date for the transition simply by letter. If the final transition by the stated date is not possible, this date can be altered with the consent of both Participants without amending this Arrangement. During the transition period, the British Forces will ensure that the concurrent use of the fuel card and the fuel coupons for a vehicle is not possible. With effect from the date on which the fuel card system is fully introduced, the use of fuel coupons for the vehicles of members of the British Forces will no longer be possible.

For the time being, fuel coupons issued by the British Forces to forces of other NATO members or NATO Headquarters will not be affected by this Arrangement. At a later date, duty vehicles of other forces or NATO Headquarters as well as private vehicles of

members of other forces or the NATO Headquarters may be integrated without amending this Arrangement, provided the conditions listed are complied with. Permission must be obtained from the Federal Ministry of Finance prior to the integration of other forces. The date from which the fuel card system will be used by other forces or NATO Headquarters as well as a commitment to adhere to this Arrangement by the additional user must be confirmed in writing to the Federal Ministry of Finance.

If the Participants agree, this Arrangement can be amended or rescinded in writing. It can also be terminated by either Participant by giving notice in writing to the other Participant. The termination will take effect at the end of the year following the year when notice was received.

I. Description of system

1. This description comprises all important aspects of the electronically readable fuel card system for private vehicles of entitled persons.
2. a) "Entitled persons" means members of the British Forces, civilian component or their dependents within the meaning of Article I.1 of the NATO Status of Forces Agreement of 1951 (NATO SOFA), and any persons entitled to be treated as members of the civilian component or their dependents by virtue of Articles 71, 72 or 73 of the Supplementary Agreement (SA) to the NATO SOFA (see also section 1 number 13 of the Truppenzollgesetz (Foreign Forces Customs Act)) as well as members of the forces, civilian component or their dependents of an allied Headquarters in Germany for the purposes of Article III of the Paris Protocol to the NATO SOFA (see also section 1 number 14 of the Truppenzollgesetz).

b) With effect from the date on which the fuel card system is fully introduced, the use of fuel coupons for vehicles of entitled persons will no longer be possible.
3. The fuel rations are set out in section 18 of the Truppenzollgesetz and section 8 subsection (1) number 5 of the Truppenzollverordnung (Foreign Forces Customs Ordinance).
4. Since the ration limit is linked to a specific vehicle, the fuel card system links the ration limit to a specific vehicle as well. The ration limit generally applies to the respective calendar month. Fuel cards may only be used for the purchase of fuel (diesel or petrol) specific to the vehicle concerned.
5. Fuel cards are only to be issued for vehicles registered with the vehicle licensing authority of the British Forces. The fuel cards will be issued to entitled persons by the registration authorities of the British Forces. The registration number of the vehicle registered in this system must be marked indelibly on the card.
6. Only one card will be issued per vehicle.
7. Fuel cards must show all entitled persons who are authorised to purchase fuel free of tax and duty for the vehicle in question. Only these persons will be permitted to use the fuel card.

8. The validity of the fuel card will be the same as the period for which the vehicle concerned is registered with the British Forces (usually not more than one year).
9. If a fuel card holder loses his status as an entitled person, the fuel card will be blocked within 24 hours. Loss of a fuel card is to be reported immediately by the fuel card holder, and the card must be blocked within 24 hours. The same applies when a vehicle is sold.
10. If a vehicle is sold, or if a fuel card is damaged or lost or has expired, a new card can only be issued if the previous fuel card has been invalidated.
11. The system must ensure that tax- and duty-free fuel may only be purchased until the point that the ration is exhausted. The accumulation of unused rations is not possible. Any unused part of a ration will expire at 23.59 hrs of the last day of the month concerned. The new monthly ration will become available from 00:00 hrs on the first day of the month.

II. The fuel supplier's duties for the supply of fuel to foreign forces

12. The fuel supplier must ensure that fuel within this fuel card system is only supplied when a valid card is produced.
13. The fuel supplier must ensure that the fuel within this fuel card system is only supplied up to the ration limit. If the amount supplied exceeds the ration remaining, an application under paragraph 18 can only be made for the amount within the ration.
14. The fuel supplier must ensure that, for every supply of fuel, the registration number on the card is checked against the registration number of the vehicle for which fuel has been drawn.
15. The fuel supplier must ensure that the entitled person produces a British Forces identity card, and that the name on that card corresponds to the relevant name on the fuel card.
16. If an entitled person cannot produce his fuel card or if the supply takes place at a time in which the system is not working or not working correctly, the fuel supplier is not entitled to a reimbursement/refund for the amount supplied.

III. The fuel supplier's entitlement to reimbursement/refund

17. The fuel supplier must apply for the reimbursement/refund of energy duty under section 105a of the Energy Duty Implementing Ordinance (Energiesteuer-Durchführungsverordnung) at the relevant Main Customs Office (Hauptzollamt).
18. Provided that the fuel card system is working correctly and that the fuel supplier has fulfilled the above-mentioned duties by carrying out the necessary checks,

the data provided by the system, which will contain the information set out in paragraph 17 in connection with paragraph 19, will form the basis for checking that fuel was supplied to foreign forces correctly in accordance with the NATO SOFA, the SA and the Truppenzollgesetz.

19. The application for reimbursement/refund must be supported by documents that clearly show the following:
- the amount and the type (petrol/diesel) of fuel supplied
 - the date of the supply
 - the registration number of the vehicle
 - the location of the petrol station
 - the card number and
 - the names of the persons who are entitled to purchase the fuel.

This documentation can also be provided electronically.

20. The following are examples of cases where no entitlement to reimbursement exists:
- A fuel card is issued to a non-entitled person.
 - A fuel card held by a formerly entitled person was not blocked within the period stipulated in paragraph 9 after the person lost his status.
 - A malfunction of the system results in the ration being exceeded.
 - A vehicle for which no fuel card has been issued is supplied with fuel.

This list is not exhaustive.

21. For auditing purposes, the relevant customs office will have online reading access to the fuel card system.

IV. The fuel supplier's use of the value added tax exemption in accordance with Article 67 paragraph 3 of the SA to NATO SOFA

22. The fuel supplier must prove that he meets the conditions of the value added tax exemption in accordance with Article 67 paragraph 3 of the SA to NATO SOFA by producing correctly completed Abwicklungsscheine (tax relief documents) (section 73 subsection (1) number 1 of the Value Added Tax Implementing Ordinance - UStDV). The tax office may dispense with the Abwicklungsschein if the stipulated information can be obtained from other receipts and from the records of the fuel supplier in a clear and easily verifiable manner (section 73 subsection (3) of the UStDV).

V. Additional provisions for duty vehicles from the date when they are integrated into this fuel card system

23. Fuel cards for duty vehicles must be markedly different from fuel cards for private vehicles in a way that is recognisable at a glance.

24. Fuel cards for duty vehicles must show the unit name as well as the registration number.
25. With effect from the date of transition to the fuel card system, the use of the former system will no longer be possible.
26. Duty vehicles will not be subject to rationing.
27. The validity of the fuel cards will be limited to 3 years.
28. The unit name is to be given, in addition to the other details, as part of the reimbursement/refund procedure.

Signed at Bielefeld on 6th March 2014 in two originals, each in the German and English language, both texts having equal validity.

Klaus Winterschladen
Leiter Referat III B 2
Bundesministerium der Finanzen

Major General John Henderson CB
General Officer Commanding
British Forces Germany

Schedule 4 - Personal Data Particulars

Data Controller	<p>The Data Controller is the Contractor. The Personal Data will be provided by:</p> <p>The British Forces' Future Defence Presence headquarters in Germany.</p>
Data Processor	<p>The Data Processor is the Contractor. The Personal Data will be processed at:</p> <p>When contract awarded, the future provider's location.</p>
Data Subjects	<p>The Personal Data to be processed under the Contract concern the following Data Subjects or categories of Data Subjects:</p> <p>Members of the Force who are entitled to apply for a fuel card.</p>
Categories of Data	<p>The Personal Data to be processed under the Contract concern the following categories of data:</p> <p>Names, email address and vehicle registration number.</p>
Special Categories of data (if appropriate)	<p>The Personal Data to be processed under the Contract concern the following Special Categories of data:</p> <p>None.</p>
Subject matter of the processing	<p>The processing activities to be performed under the contract are as follows:</p> <p>The recording and storage of personal data in connection with the issue and holding of a fuel card.</p>
Nature and the purposes of the Processing	<p>The Personal Data to be processed under the Contract will be processed as follows:</p> <p>To process requests from entitled members of the Force to provide fuel cards. Once a fuel card has been issued, to record and store the data relating to the usage of the card and to make this data available to the card holder.</p>
Technical and organisational measures	<p>The following technical and organisational measures to safeguard the Personal Data are required for the performance of this Contract:</p> <p>General Data Protection Regulation EU 2016/679 to be adhered to.</p>
Instructions for disposal of Personal Data	<p>The disposal instructions for the Personal Data to be processed under the Contract are as follows (where Disposal Instructions are available at the commencement of Contract):</p> <p>Data is to be retained for the period of the contract.</p>
Date from which Personal Data is to be processed	<p>Where the date from which the Personal Data will be processed is different from the Contract commencement date this should be specified here:</p> <p>Card applications shall commence from 1 Mar 20.</p>

DEFFORM 111

Appendix to Contract - Addresses and Other Information

1. Commercial Officer

Name: [REDACTED]

Address: Army Commercial, Army HQ, Ramillies Building, Marlborough Lines, Monxton Road, Andover SP11 8HT

Email: [REDACTED]

Tel: [REDACTED]

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

Name: TBC

Address:

Email:

Tel:

3. 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

* NOTE

1. Many **DEFCONS** and **DEFFORMs** can be obtained from the MOD Internet Site:

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

DEFCONS: <https://www.aof.mod.uk/aofcontent/tactical/toolkit/content/defcons/defcon.htm>

Archived DEFCONS: <https://www.aof.mod.uk/aofcontent/tactical/toolkit/content/defcons/archive.htm>

DEFFORMS: <https://www.aof.mod.uk/aofcontent/tactical/toolkit/content/defforms/defelec.htm>

Archived DEFFORMS:

https://www.aof.mod.uk/aofcontent/tactical/toolkit/content/defforms/defelec_archive.htm

SC1A <http://aof.uwh.diif.r.mil.uk/aofcontent/tactical/toolkit/content/stancon/template1a.htm>

SC1B <http://aof.uwh.diif.r.mil.uk/aofcontent/tactical/toolkit/content/stancon/template1b.htm>

SC2 <http://aof.uwh.diif.r.mil.uk/aofcontent/tactical/toolkit/content/stancon/template2.htm>

2. If the required forms or documentation are not available on the MOD Internet site requests should be submitted through the Commercial Officer named in Section 1.