*DF47 Edn 09/21*

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|  | James Smith Senior Commercial Officer Kentigern House, 65 Brown Street, Glasgow G2 8EXEmail: James.smith868@mod.gov.uk Mob: 07979650874 |

|  |  |
| --- | --- |
|  | Your Reference: |
|  |
|  | Our Reference: 707555450 |
|  |
|  | Date: 19.05.2023 |
|  |

Dear Sir/Madam,

# Invitation To: Tender Reference Number: 707555450- Tri-Service Merchandising

1. You are invited to tender for Tri-Service Merchandising in competition in accordance with the attached documentation.
2. The requirement is for an agent to act on the Ministry of Defence’s behalf to find commercial opportunities for its trademarks and brands. This programme is a key tool to raise brand awareness in respect of the UK Armed Forces.
3. The anticipated date for the contract award decision is 1st August 2023, please note that this is an indicative date and may change.
4. You must submit your Tender to the Defence Sourcing Portal by 19.05.2023 16:00.00 (GMT).

Yours faithfully,

James Smith

***James Smith (Signed electronically)***

Senior Commercial Officer

Head Office Commercial

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# Terms and Conditions

# DEFFORM 47

**Contents**

DEFFORM 47

(EDN 11/22)

This Invitation to Tender 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: see explanatory note 2

· DEFFORM 47 – Invitation To . The DEFFORM 47 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 broken into:

o Section A – Introduction Page 4

o Section B – Key Tendering Activities Page 9

o Section C – Instructions on Preparing Tenders Page 10

o Section D – Tender Evaluation Page 11

o Section E – Instructions on Submitting Tenders Page 18

o Section F – Conditions of Tendering Page 19

o DEFFORM 47 Annex A – Tender Submission Document (Offer)

· Appendix 1 to DEFFORM 47 Annex A (Offer) – Information on Mandatory Declarations

· Contract Documents (As per the contents table in the Terms and Conditions)

o Terms & Conditions which includes the Schedule of Requirements and any additional Schedules, Annexes and/or Appendices

· DEFFORM 111 – Appendix to Contract - Addresses and Other Information

· DEFFORM 539A – Tenderer’s Sensitive Information (or SC1B Schedule 4 or SC2 Schedule 5)

· Any other relevant documentation:

* Schedule 1 – Pricing Schedule
* Schedule 2 – Statement of Requirements
* Schedule 3 – Licencing

## Section A - Introduction

DEFFORM 47

(Edn 11/22)

**DEFFORM 47 Definitions**

In this ITT the following words and expressions shall have the meanings given to them below:

A1. “**The Authority**” means the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland, acting as part of the Crown.

A2. “**Compliance Regime**” is 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.

A3. “**Conditions of Tendering**” means the conditions set out in this DEFFORM 47 that govern the competition.

A4. A “**Consortium Arrangement**” means two or more economic operators who have come together specifically for the purpose of bidding for this Contract and who establish a consortium agreement or special purpose vehicle to contract with the Authority.

A5. “**Contract**” means a Contract entered into between the successful Tenderer or consortium members and the Authority, should the Authority award a Contract as a result of this competition.

A6. “**Contract Terms & Conditions**” means the attached 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.

A7. “**Contractor;ll.**” means the works, goods and/or the services, including packaging (and Certificate(s) of Conformity and supplied in accordance with any Quality Assurance (QA) requirements if specified) which the Contractor is required to provide under the Contract.

A8. “**Cyber Security Model**” means the model defined in DEFCON 658.

A9. “**Defence Sourcing Portal**” means the electronic platform in which Tenders are submitted to the Authority.

A10. “**Government Furnished Information**” means information or data issued or made available to the Tenderer in connection with the Contract by or on behalf of the Authority..

A11. “**ITT Documentation**” means this ITT and any information in any medium or form (for example drawings, handbooks, manuals, instructions, specifications and notes of pre-tender clarification meetings), issued to you, or to which you have been granted access by the Authority, for the purposes of responding to this ITT

A12. “**ITT Material**” means any other material (including patterns and samples), equipment or software, in any medium or form issued to you, or to which you have been granted access, by the Authority for the purposes of responding to this ITT.

A13. “**Schedule of Requirements**” (Section 1 in Terms and Conditions, Schedule 2 in Standardised Contracting Template 1B (SC1B) or Schedule 2 in Standardised Contracting Template 2 (SC2)) means that part of the Contract which identifies, either directly or by reference, the Contractor Deliverables to be supplied or carried out, the quantities involved and the price or pricing terms in relation to each Contractor Deliverable.

A14. The “**Statement of Requirement**” means that part of the Contract which details the technical requirements and acceptance criteria of the Contractor Deliverables.

A15. A ‘**Sub-Contractor’** means any party engaged or intended to be engaged by the Contractor at any level of sub-contracting to provide Contractor Deliverables for the purpose of performing this Contract.

A16. A “**Sub-Contracting Arrangement**” means a group of economic operators who have come together specifically for the purpose of bidding 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.

A17. A “**Tender”** is the offer that you are making to the Authority.

A18. “**Tenderer**” means the economic operator submitting a response to this Invitation to Tender. Where “you” is used this means an action on you the Tenderer.

A19. A “**Third Party**” is 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.

**Purpose**

A20. The purpose of this ITT is to invite you to submit a Tender, in accordance with the instructions set out in this ITT, to propose a solution and best price to meet the Authority’s requirement. This documentation explains and sets out the:

a. timetable for the next stages of the procurement;

b.     instructions, conditions and processes that governs this competition;

c.     information you must include in your Tender and the required format;

d.     administrative arrangements for the receipt and evaluation of Tenders;

e.     criteria and methodology for the evaluation of Tenders; and

f. Contract Terms & Conditions

A21.   The sections in this ITT and associated documents are structured in line with a generic tendering process and do not indicate importance / precedence.

A22. This Requirement was advertised on Contract finder as a Prior Information Notice (Publication Date: 30 June 2022) under the following reference: 2022/S 000-017939.

A23.   This procurement is in accordance with Public Contracts Regulations 2015.

A24.   This ITT has either been issued to all potential Tenderers that expressed an interest,or has been issued to all potential Tenders chosen during the Tender selection stage.

**ITT Documentation and ITT Material**

A27. ITT Documentation, ITT Material and any Intellectual Property Rights (IPR) in them shall remain the property of the Authority or other Third-Party owners and is released solely for the purposes of enabling you to submit a Tender. You must:

a.     take responsibility for the safe custody of the ITT Documentation and ITT Material and for all loss and damage sustained to it while in your care;

b.    not copy or disclose the ITT Documentation or any part of it to anyone other than the bid team

involved in preparing your Tender, and not use it except for the purpose of responding to this ITT;

c.     seek written approval from the Authority if you need to provide access to any ITT Documentation or ITT Material to any Third Party;

d.     abide by any reasonable conditions imposed by the Authority in giving its approval under sub-paragraph A27.c, which at a minimum will require you to ensure any disclosure to a Third Party is made by you in confidence.  Alternatively, due to IPR issues for example, the disclosure may be made, in confidence, directly by the Authority;

e.     accept that any further disclosure of ITT Documentation or ITT Material (or use beyond the original purpose), or further use of ITT Documentation or ITT Material, without the Authority’s written approval may make you liable for a claim for breach of confidence and / or infringement of IPR, a remedy which may involve a claim for compensation;

f.      inform the named Commercial Officer if you decide not to submit a Tender;

g.     immediately confirm destruction of (or in the case of software, that it is beyond use) all ITT Documentation, ITT Material and derived information of an unmarked nature, should you decide not to respond to this ITT, or you are notified by the Authority that your Tender has been unsuccessful; and

h.     consult the named Commercial Officer to agree the appropriate destruction process if you are in receipt of ITT Documentation and ITT Material marked ‘OFFICIAL-SENSITIVE’ or ‘SECRET’.

A28.  Some or all of the ITT Documentation and ITT Material may be subject to one or more confidentiality agreements made between you and either the Authority or a Third Party, for example a confidentiality agreement established in the form of DEFFORM 94.  The obligations contained in any such agreement will be in addition to, and not derogate from, your obligations under paragraph A27 above.

**Tender Expenses**

A29. You will bear all costs associated with preparing and submitting your Tender. The Authority will not be liable for the costs of any Tender, work or effort incurred by you 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 or where you withdraw from the tender process either directly or indirectly as costs under any other Contract with the Authority.

**Consortia and Sub-Contracting Arrangements**

A30. The Authority requires all Tenderers to identify whether any and/or which Consortium Arrangements or Sub-Contracting Arrangements will apply in the case of their Tender, and in particular specify the Consortium Arrangement or Sub-Contracting Arrangement entity or both and their workshare. In the case of a Sub-Contracting Arrangement, the Authority requires all Tenderers to identify the entity that will be the party to the Contract with the Authority.

**Material Change of Control**

A31. You must inform the Authority in writing as soon as you become aware of:

a. any material changes to any of the information, representations or other matters of fact communicated to the Authority as part of your PQQ response or in connection with the submission of your PQQ response;

b. any material adverse change in your circumstances which may affect the truth, completeness or accuracy of any information provided as part of your PQQ response or in connection with the submission of your PQQ response or in your financial health or that of any Consortium Arrangement member or Sub-Contracting Arrangement member; or

c. any material changes to your financial health or that of a party to the Consortium Arrangement or Sub-Contracting Arrangement; and

d. any material changes to the makeup of the Consortium Arrangement or Sub-Contracting Arrangement, including:

i. the form of legal arrangement by which the Consortium Arrangement or Sub-Contracting Arrangement will be structured;

ii. the identity of Consortium Arrangement or Sub-Contracting Arrangement;

iii. the intended division or allocation of work or responsibilities within or between the Consortium Arrangement or Sub-Contracting Arrangement; and

iv. any change of control of any Consortium Arrangement or Sub-Contracting Arrangement.

A32. If a change described in paragraph A31 occurs, the Authority may reassess you against the PQQ selection criteria. The Authority reserves the right to require you to submit an updated/amended PQQ 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 your suitability to proceed with the procurement.

A33. In relation to a change described in paragraph A31, as far as is reasonably practicable, you must discuss any such proposed changes with the Authority before they occur and you must additionally highlight any changes from your PQQ 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 your ownership or control or of any Consortium Arrangement or Sub-Contracting Arrangement

A34. The Authority reserves the right, at its sole discretion to disqualify any Tenderer who makes any material change to any aspects of its responses to the PQQ if:

a. it fails to re-submit to the Authority the updated relevant section of its PQQ response providing details of such change in accordance with paragraph A33 as soon as is reasonably practicable and in any event no later than 6 business days following request from the Authority; or

b. 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.

**Contract Terms &Conditions**

A35. The Contract Terms & Conditions include all attachments listed in the contents of the Terms & Conditions, such as the Schedule of Requirements, any additional Schedules, Annexes and/or Appendices. The full text of Defence Conditions (DEFCONs) and Defence Forms (DEFFORMS) are available electronically via the [Knowledge in Defence (KiD) website.](https://www.gov.uk/guidance/knowledge-in-defence-kid)

A36. The Contract Terms & Conditions are attached.

**Other Information**

A37. **The Armed Forces Covenant**

a. 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.

b. The Covenant is based on two principles:

i. That the Armed Forces community would not face disadvantages when compared to other citizens in the provision of public and commercial services; and

ii. 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.

c. The Armed Forces Covenant provides guidance on the various ways you can demonstrate your support through your 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.

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

Email address: employerrelations@rfca.mod.uk

Address: Defence Relationship Management

 Ministry of Defence

 Holderness House

 51-61 Clifton Street

 London

 EC2A 4EY

e. Paragraph A37 a to 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, Contract award procedure or any resulting Contract. However, the Authority very much hopes you will want to provide your support.

## Section B - Key Tendering Activities

DEFFORM 47

(Edn 11/22)

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

| **Stage** | **Date and Time**  | **Initiated By** | **Submit to:** |
| --- | --- | --- | --- |
| Tender Open on DSP | 19.05.2023 | The Authority | All Tenderers |
| Final date for Clarification Questions / Requests for additional information | 26.05.2023 | Tenderers | Defence Sourcing Portal |
| The Authority issues Final Clarification Answers  | 02.06.2023 | The Authority | All Tenderers |
| Tender Return | 19.06.2023 | Tenderers | Defence Sourcing Portal |
| Tender Evaluation | 14.07.2023 | The Authority | N/A |
| Anticipated contract award date | 19.07.2023 | The Authority | Defence Sourcing Portal |

**Notes**

**Tenderers Conference**

B1.        A Tenderers Conference is not being held.

**Clarification Questions**

B2. The Authority will automatically copy clarification questions and answers to all Tenderers, removing the names of those who have raised the clarification questions. If you wish the Authority to treat the clarification as confidential and not issue the response to all Tenderers, you must state this when submitting the clarification question and provide justification. If in the opinion of the Authority, the clarification is not confidential, the Authority will inform the Tenderer, who will have an opportunity to withdraw the question. If the clarification question is not withdrawn, the response will be issued to all Tenderers.

**Tender Return**

B3. The Authority may, in its own absolute discretion extend the deadline for receipt of tenders and in such circumstances the Authority will notify all Tenderers of any change.

## Section C - Instructions on Preparing Tenders

DEFFORM 47

(Edn 11/22)

**Construction of Tenders**

C1. Your Tender must be written in English, using Arial font size 11. Prices must be in GBP ex VAT. Prices must be Firm Price for each Deliverable detailed in the Pricing Schedule, along with a full price breakdown.

C2. To assist the Authority’s evaluation, you must set out your Tender response in accordance with Section D (Tender Evaluation).

**Validity**

C3. Your Tender must be valid and open for acceptance for 60 days from the Tender return date. In addition, the winning Tender must be open for acceptance for a further thirty (30) calendar days once the Authority announces its decision to award the Contract. In the event that legal proceedings challenging the award of the Contract are instituted, before entry into Contract, you must hold your Tender open for acceptance during this period, and for up to fourteen (14) calendar days after any legal proceedings have concluded.

## Section D - Tender Evaluation

DEFFORM 47

(Edn 11/22)

D.1 Details of how your Tender will be evaluated, the tools used to evaluate the Tender and the evaluation criteria are detailed below.

D.2 Negotiations do not apply to this tender process.

D.3 All questions in regard to the tender must be asked through the Defence Sourcing Portal by 26th May at 17:00:00 and will be answered by the authority by the 2nd June at 17:00:00.

###  D.4 TENDER TECHNICAL EVALUATION MATRIX (TTEM)

Table 1 – Quality/ Service delivery marking criteria

Technical questions will be scored using the following marking scheme;

|  |  |
| --- | --- |
| **Mark** | **Characteristic** |
| **10 - Excellent** | **Score 10: Excellent:** The response fully meets all requirements with detail provided minimising risks to delivery and that there are no implementation plans required to meet the requirements. The response is comprehensive and unambiguous, demonstrating a thorough understanding of the requirements and provides details of how the requirement will be met in full without additional support from the Contracting Authority, other than that outlined within the Statement of Requirements.  |
| **7 - Good** | **Score 7: Good:** The response is acceptable and meets all the basic requirements.  However, the response, is not sufficiently detailed to minimise risk and/or the proposed approach may require additional support (in addition to that outlined in the Statement of Requirements) from the Contracting Authority to meet its deliverables. Any implementation plans to meet a requirement demonstrates a thorough understanding of the relevant issues, provides well defined plan to achieve full compliance in an acceptable timescale with no assistance from the contracting authority. |
| **3 - Adequate** | **Score 30: Adequate:** The response has met some, but not all elements of the requirement, which poses risk that the proposal will not meet the deliverables required. The response does not demonstrate a full understanding of the requirement. Any implementation plans to meet a requirement demonstrate some understanding of the relevant issues. Plans provided may lack sufficient detail to ensure full compliance in an acceptable timescale or may require significant assistance from the contracting authority. |
| **0 - Inadequate** | **Score 0: Inadequate:** The response does not address or explain how the requirement will be fulfilled and fails to demonstrate the ability to meet the requirement. Any implementation plans to meet a requirement do not demonstrate an understanding of the relevant issues. Plans do not provide sufficient detail to indicate that full compliance will be achieved in an acceptable timescale, and/or they require significant levels of assistance from the contracting authority. |

**Table 2 – Social Value marking criteria**

Social Value questions will be scored using the following marking scheme;

|  |  |
| --- | --- |
| **Mark** | **Characteristic** |
| **10 - Excellent** | **Score 10: Excellent:** (exceeds all of the Model Award Criteria). The response exceeds what is expected for the criteria. Leaves no doubt as to the capability and commitment to deliver what is required. The response therefore shows: - Very good understanding of the requirements. - Excellent proposals demonstrated through relevant evidence. - Considerable insight into the relevant issues. - The response is also likely to propose additional value in several respects above that expected. - The response addresses the social value policy outcome and also shows in-depth market experience. |
| **7 – Very Good** | **Score 7: Very good:** (exceeds some of the Award Criteria) The response meets the required standard in all material respects. There are no significant areas of concern, although there may be limited minor issues that need further exploration or attention later in the procurement process. The response therefore shows: - Good understanding of the requirements. - Sufficient competence demonstrated through relevant evidence. - Some insight demonstrated into the relevant issues. - The response addresses the social value policy outcome and also shows good market experience. |
| **3 - Good** | **Score 3: Good:** (meets all of the Award Criteria) The response broadly meets what is expected for the criteria. There are no significant areas of concern, although there may be limited minor issues that need further exploration or attention later in the procurement process. The response therefore shows: - Good understanding of the requirements. - Sufficient competence demonstrated through relevant evidence. - Some insight demonstrated into the relevant issues. - The response addresses most of the social value policy outcome and also shows general market experience |
| **1 - Poor** | **Score 1: Poor:** (meets some of the Award Criteria) The response meets elements of the requirement but gives concern in a number of significant areas. There are reservations because of one or all of the following: - There is at least one significant issue needing considerable attention. - Proposals do not demonstrate competence or understanding. - The response is light on detail and unconvincing. - The response makes no reference to the applicable sector but shows some general market experience. - The response makes limited reference (naming only) to the social value policy outcome set out within the invitation. |
| **0 - Fail** | **Score 0: Fail:** the response completely fails to meet the required standard or does not provide a proposal |

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| **QUESTIONNAIRE 1.1**  | **Weighting – 40 %**  |
| **All Potential Providers MUST answer ALL the following questions** **Page Limit for the single attachment containing your responses to Questionnaires is** **20 pages.  This is to include all annexes, certificates, and screenshots - failure to constrain responses to this limit may result in a tender being deemed non-compliant.**   |
| Question Number  | Question -  **Protect, promote and enhance brand** | Minimum Acceptable Score  | Maximum Available Score  | Weighting %  |
| 2.1.1(SOR 1 – 1.4)  | The Tenderer is to provide a statement demonstrating their understanding of the requirement, taking into account the following: * how you will source marketing opportunities for the Single Services brands
* explain the agreed process for the source of opportunities, developing proposal, detailing product specification through to licence and finalisation of merchandise
* how you plan to develop bespoke proposals to launch, promote and market merchandise/product ranges
 | 3 | 10  | 100% |

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| --- | --- |
| **QUESTIONNAIRE 1.2**  | **Weighting – 5%** |
| **All Potential Providers MUST answer ALL the following questions**  |
| Question Number  | Question - **style guidelines for use by prospective licensees** | Minimum Acceptable Score  | Maximum Available Score  | Weighting %  |
| 2.2.1 (SOR 2) | Please provide detailed examples of brand guidelines you have provided to licensees | 3  | 10 | 100% |

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|  | **QUESTIONNAIRE 1.3** | **Weighting: 30%**   |
|  | **All Potential Providers MUST answer ALL the following questions**  |
| Question Number  | Question - **Negotiation of Licence Terms and management of licence agreements** | Minimum Acceptable Score  | Maximum Available Score  | Weighting %  |
| (SOR 3) | Please provide a method statement of how you manage the negotiation of Licence Terms and management of licence agreements. | 3 | 10 | 65% |
| 2.3.2(SOR 3.2) | Provide evidence to showcase how you support software-based approvals process (i.e workflows) | 3 | 10 | 30% |
| 2.3.3(SOR 3.3) | Process amendments to licences. | 3 | 10 | 5% |

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|  | **QUESTIONNAIRE 1.4** | **Weighting: 15%**   |
|  | **All Potential Providers MUST answer ALL the following questions**  |
| Question Number  | Question – KPI Reporting Metrics | Minimum Acceptable Score  | Maximum Available Score  | Weighting %  |
| 2.4.1 (SOR 4) | Please demonstrate how you will Supply Financial Returns to the MOD that will be required on a quarterly basis | 3 | 10 | 55% |
| 2.4.2(SOR 5) | Please demonstrate how you plan to provide reporting metrics, to ensure the good running and performance of the contract – expected every six months.  | 3 | 10 | 45% |

|  |  |  |
| --- | --- | --- |
|  | **QUESTIONNAIRE 1.5** |   |
|  | **All Potential Providers MUST answer ALL the following questions**  |
| Question Number  | Question – KPI Compliance | Minimum Acceptable Score  | Maximum Available Score  | Weighting %  |
| 2.5.1 (SOR 4.1) | It is a requirement that you will Conduct spot check and/or audits of the (if necessary) of all MOD licensees. | Pass | Fail | N/A |
| 2.5.2(SOR 6) | It will be required that you ensure that products deemed to have failed (faulty of damaged goods) are withdrawn from market.  | Pass | Fail | N/A |
| 2.5.3 | Agent is required to disclose the annual gross contract income in the invoice documentation to demonstrate the percentage royalty shared with the authority.  | Pass  | Fail | N/A |

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| **QUESTIONNAIRE 1.6 – SOCIAL VALUE**  | **Weighting – 10%**  |
| **All Potential Providers MUST answer ALL the following questions** **Page Limit for the response to Questionnaire 2.6 is 2000.  Any supporting certificates are not included within this word limit.**  |
| Question Number  | Question  | Minimum Acceptable Score  | Maximum Available Score  | Weighting %  |
| 2.6.1 | Fighting Climate Change – Effective stewardship of the environmentUsing a maximum of 1000 words describe the commitment your organisation will make to ensure that opportunities under the contract deliver the Policy Outcome and Model Award Criteria. Please include: * your ‘Method Statement’, stating how you will achieve this and how your commitment meets the Award Criteria, and
* a timed project plan and process, including how you will implement your commitment and by when. Also, how you will monitor, measure and report on your commitments/the impact of your proposals. You should include but not be limited to:
	+ timed action plan
	+ use of metrics
	+ tools/processes used to gather data
	+ reporting
	+ feedback and improvement
	+ transparency

Effective measures to deliver any/all of the following benefits through the contract: MAC 4.1 Deliver additional environmental benefits in the performance of the contract including working towards net zero greenhouse gas emissions. MAC 4.2 Influence staff, suppliers, customers and communities through the delivery of the contract to support environmental protection and improvement. | 1 | 10 | 50% |
| 2.6.2 | Equal Opportunity – Tackling workforce InequalityUsing a maximum of 1000 words describe the commitment your organisation will make to ensure that opportunities under the contract deliver the Policy Outcome and Award Criteria. Please include: * your ‘Method Statement’, stating how you will achieve this and how your commitment meets the Award Criteria, and
* a timed project plan and process, including how you will implement your commitment and by when. Also, how you will monitor, measure and report on your commitments/the impact of your proposals. You should include but not be limited to:
	+ timed action plan
	+ use of metrics
	+ tools/processes used to gather data
	+ reporting
	+ feedback and improvement
	+ transparency
* how you will influence staff, suppliers, customers and communities through the delivery of the contract to support the Policy Outcome, e.g. engagement, co-design/creation, training and education, partnering/collaborating, volunteering.

Effective measures to deliver any/all of the following benefits through the contract: * MAC 6.1: Demonstrate action to identify and tackle inequality in employment, skills and pay in the contract workforce.
* MAC 6.2: Support in-work progression to help people, including those from disadvantaged or minority groups, to move into higher paid work by developing new skills relevant to the contract.
* MAC 6.3 Demonstrate action to identify and manage the risks of modern slavery in the delivery of the contract, including in the supply chain.
 | 1 | 10 | 50% |

D.5 Formula: Technical Score (as a % of 90 (the highest technical score)) \*0.7 + Royalty returned % \* 0.30 = Overall Score

For Example:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Tenderer | Technical Score % | Technical weighting | Royalty  | Royalty Weighting | Overall Score(Technical weighting + Royalty weighting)  |
| A | 100 | 70 | 60% | 18 | 88 |
| B | 91.11 | 63.78 | 70% | 21 | 84.78 |
| C | 83.33 | 58.33 | 80% | 24 | 82.33 |

D.6 The agent must return a minimum of 60% of the gross income generated by the contract on an annual basis. Anything below 60% would lead to exclusion from the tender as detailed in Schedule 1 (Pricing Schedule).

D.7 A score of ‘Inadequate’ or ‘Fail’ in any of the question sections will result in the tenderer being excluded from the tender for not reaching the correct standard.

## Section E - Instructions on Submitting Tenders

**DEFFORM 47**

**(Edn11/22)**

**Submission of your Tender**

E1. Your Tender and any ITT Documentation must be submitted electronically via the Defence Sourcing Portal (DSP) by 19th June 2023, 17:00:00. The Authority reserves the right to reject any Tender received after the stated date and time.  Hard copy, paper or delivered digital Tenders (e.g. email, DVD) at OFFICIAL SENSITIVE classification are no longer required and will not be accepted by the Authority. Tenderers are required to submit an electronic online Tender response to reference: 707555450.

E2. Your priced Tender and priced ITT Documentation must only be submitted to the commercial envelope of the DSP ITT. You must ensure that there are no prices present in the technical or qualification (if applicable) envelopes of the DSP ITT. The Authority has the right to request, at its discretion, that any pricing information found in the technical or qualification (if applicable) envelopes is redacted in accordance with paragraph E3.

E3. The Authority may, in its own absolute discretion allow the Tenderer to rectify any irregularities identified in the Tender by the Authority or provide clarification after the Tender return date. For example, this may include, but is not limited to, redacting pricing information in the unpriced copy of the tender, rectifying, or providing clarification in relation to a corrupt or blank document. Tenderers will be provided with instructions via the DSP on how they can correct such irregularities which must be completed by the deadline set. The Authority will cross reference the amended Tender with the original Tender submitted to the DSP before the Tender return date to ensure that no other amendments, other than in relation to the specific irregularity/clarification communicated by the Authority, have been made. Should Tenderers make additional amendments to the Tender other than those relating to the specific irregularity/clarification communicated to the Tenderer by the Authority, this will result in a non-compliant bid.

E4. The DSP is accredited to OFFICIAL SENSITIVE. Material that is protectively marked above this classification must not be uploaded to the DSP. Please contact helen.murray-webster100@mod.gov.uk if you have a requirement to submit documents above OFFICIAL SENSITIVE

E5. You must not upload any ITAR or Export Controlled information as part of your Tender or ITT documentation into the DSP. You must contact helen.murray-webster100@mod.gov.uk to discuss any exchange of ITAR or Export Controlled information. You must ensure that you have the relevant permissions to transfer information to the Authority.

E6. You must ensure that your DEFFORM 47 Annex A is signed, scanned and uploaded to DSP with your Tender as a PDF (it must be a scanned original). The remainder of your Tender must be compatible with MS Word and other MS Office applications.

## Section F - Conditions of Tendering

DEFFORM 47

(Edn 11/22)

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. Neither does the issue of this ITT or subsequent Tender submission create any implied Contract between the Authority and any Tenderer and any such implied Contract is expressly excluded.

F2. The Authority reserves the right, but is not obliged to:

a. vary the terms of this ITT in accordance with applicable law;

b. seek clarification or additional documents in respect of a Tenderer’s submission during the Tender evaluation where necessary for the purpose of carrying out a fair evaluation. Tenderers are asked to respond to such requests promptly;

c. visit your site;

d. disqualify any Tenderer that submits a non-compliant Tender in accordance with the instructions or conditions of this ITT;

e. disqualify any Tenderer that is guilty of misrepresentation in relation to its Tender, expression of interest, the dynamic PQQ or the tender process;

f. re-assess your suitability to remain in the competition, for example where there is a material change in the information submitted in and relating to the PQQ response, see paragraphs A31 to A34;

g. withdraw this ITT at any time, or choose not to award any Contract as a result of this tender process, or re-invite Tenders on the same or any alternative basis;

h. 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;

i. choose not to award any Contract as a result of the current tender process;

j. where it is considered appropriate, ask for an explanation of the costs or price proposed in the Tender where the Tender appears to be abnormally low;

F3. The Contract will be effective when both parties sign the Contract. The Contract will be issued by the Authority via a DEFFORM 8, to the address you provide, on or before the end of the validity period specified in paragraph C3.

**Conforming to the Law**

F4. You must comply with all applicable 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. 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:

· 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;

· 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;

· enter into any agreement or arrangement with any other person that has the effect of prohibiting or excluding that person from submitting a Tender;

· canvass the Authority or any employees or agents of the Authority in relation to this procurement; or

· attempt to obtain information from any of the employees or agents of the Authority or their advisors concerning another Tenderer or Tender.

F8. Where you have provided advice to the Authority in relation to this procurement procedure or otherwise have been or are involved in any way in the preparation or conduct of this procurement procedure or where any other actual or potential Conflict of Interest (COI) exists, arises or may arise or any situation arises that might give the perception of a COI at any point before the Contract award decision, you must notify the Authority immediately.

F9. Where an actual or potential COI exists or arises or any situation arises that might give the perception of a COI at any point before the Contract award decision, you must provide a proposed Compliance Regime within seven (7) calendar days of notifying the Authority of the actual, potential or perceived COI. 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 provides full details listed at F9 a to g below. Where the Contract is awarded and the COI is still relevant post-Contract award decision, your proposed Compliance Regime will become part of the Contract Terms and Conditions. As a minimum, the Compliance Regime must include:

a. the 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 and/or non-disclosure agreements (e.g. DEFFORM 702);

f. the Authority’s rights of audit; and

g. physical and managerial separation.

F10. Tenderers are ultimately responsible for ensuring that no Conflicts of Interest exist between the Tenderer and their advisers, and the Authority and its advisers. Any Tenderer who fails to comply with the requirements described at paragraphs F7 to F10 (including where the Authority does not deem the proposed Compliance Regime to be of a standard which appropriately manages the conflict) may be disqualified from the procurement at the discretion of the Authority.

**Government Furnished Assets**

F11. Where the Authority provides Government Furnished Assets (GFA) in support of this competition, you must include details of the GFA in your Public Store Account and treat it in accordance with Def Stan 05-099. If unsuccessful in this competition, you must seek instructions for the GFA from the named Commercial Officer.

**Standstill Period**

F12. The Authority is allowing a space of ten (10) calendar days between the date of dispatch of the electronic 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 10th day after the date the DEFFORM 158s are sent. If the 10th day is not a business day, the standstill period ends at 23:59 of the next business day.

**Publicity Announcements**

F13. If you wish to make an announcement regarding this procurement, you must seek approval from the named 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 to the named Commercial Officer 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.

F14. Under no circumstances should you confirm to any Third Party the Authority’s Contract award decision before the Authority’s announcement of the award of Contract.

**Sensitive Information**

F15. 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.

F16. For these purposes, the Authority may share within Government any of the Tenderer’s documentation/information (including any that the Tenderer considers to be confidential and/or commercially sensitive such as specific bid information) submitted by the Tenderer to the Authority during this procurement. Tenderers taking part in this competition must identify any Sensitive Information (as defined in DEFCON 539) in the DEFFORM 539A (or SC1B Schedule 4 or SC2 Schedule 5) and consent to these terms as part of the competition process. This allows the Authority to share information with other Government Departments while complying with our obligations to maintain confidentiality.

F17. Where required, the Authority will disclose on a confidential basis any information it receives from Tenderers during the tender process (including information identified by the Tenderer as 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.

**Reportable Requirements**

F18. Listed in the DEFFORM 47 Annex A (Offer) are the Mandatory Declarations. It is a Condition of Tendering that you complete and attach the returns listed in the Annex and, where you select yes, you attach the relevant information.

F19. Your Tender will be deemed non-compliant and excluded from the tender process if you fail to complete the Annex in full and attach relevant information where required.

**Specific Conditions of Tendering**

F20. Section F

# General Conditions

**Third Party IPR Authorisation**

AUTHORISATIONBY THE CROWN FOR USE OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS

Notwithstanding any other provisions of the Contract and for the avoidance of doubt, award of the Contract by the Authority and placement of any contract task under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The Contractor acknowledges that any such authorisation by the Authority under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific intellectual property involved.

# Annex A

DEFFORM 47 Annex A

(Edn 11/22)

**Ministry of Defence**

**Tender Submission Document (Offer) – Ref Number**

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

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

|  |
| --- |
| **Applicable Law**  |
| I agree that any contract resulting from this competition shall be subject to English Law | Yes / No |
| **Total Value of Tender (excluding VAT)** |
| £ ……………………………………………………………………………………………………………………… WORDS ................................................................................................................................................................................ |
| **UK Value Added Tax** |
| If registered for Value Added Tax purposes, please insert:a. Registration No ..........................................b. Total amount of Value Added Tax payable on this Tender (at current rate(s)) £........................... |
| **Location of work (town / city) where contract will be performed by Prime:**  |
| Where items which are subject of your Tender are not supplied or provided by you, state location in town / city to be performed column (continue on another page if required) |
| Tier 1 Sub-contractor Company Name | Town / city to bePerformed | Contractor Deliverables | Estimated Value | SMEYes / No |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
| **Mandatory Declarations** (further details are contained in Appendix 1 to DEFFORM 47 Annex A (Offer)):  | **Tenderer’s Declaration** |
| Are the Contractor Deliverables subject to Foreign Export Control and Security Restrictions? If the answer is Yes, please complete and attach DEFFORM 528. | Yes\* / No  |
| Have you completed and attached a DEFFORM 711 – Notification of Intellectual Property Rights (IPR) Restrictions? | Yes\* / No  |
| Have you obtained the foreign export approval necessary to secure IP user rights in the Contractor Deliverables for the Authority, including technical data, as determined in the Contract Terms & Conditions? | Yes\* / No  |
| Have you provided details of how you willcomply with all regulations relating to the operation of the collection of custom import duties, including the proposed Customs procedure to be used and an estimate of duties to be incurred or suspended? | Yes / No |
|  | Yes\* / No / N/A |
| Have you completed Form 1686 for sub-contracts? | Yes / No |
| Have you completed the compliance matrix/ matrices? | Yes / No / Not Required |
| Are you a Small Medium Sized Enterprise (SME)? | Yes / No |
| Have you and your sub-contractors registered with the Prompt Payment Code with regards to SMEs?  | Yes / No |
| Have you completed and attached Tenderer’s Sensitive Information Form?  | Yes / No |
| If you have not previously submitted a Statement Relating to Good Standing, within the last 12 months, or circumstances have changed have you attached a revised version? | Yes\* / No / N/A  |
| Do the Contractor Deliverables or any item provided in accordance with the Terms and Conditions of the Contract contain Asbestos, as defined by the control of Asbestos Regulations 2012? | Yes\* / No  |
| Have you completed and attached a DEFFORM 68 - Hazardous Articles, Deliverables materials or substances statement?  | Yes\* / No  |
| Do the Contractor Deliverables or any item provided in accordance with the Terms and Conditions of the Contract (including Packaging) use Substances that deplete the Ozone Layer,  as defined in Regulation (EC) 1005/2009, as it applies in Great Britain as retained EU law, and as it applies in Northern Ireland directly |  |
| Do the Contractor or any item provided in accordance with the Terms and Conditions of the Contract contain Asbestos, as defined by the control of Asbestos Regulations 2012? | Yes\* / No  |
| Where you have been informed that a Bank or Parent Company Guarantee is required, will you provide one during the standstill period, before Contract award, if you are identified as the winning Tenderer? | Yes / No / Not Required |
| Have you complied with the requirements of the Defence Safety Authority Regulatory Articles?  | Yes / No / Not Required |
| Have you completed the additional Mandatory Requirements (as per paragraph F18) stated in this ITT? | Yes / No / Not Required |
| \*If selecting Yes to any of the above questions, attach the information detailed in Appendix 1 to DEFFORM 47 Annex A (Offer). |
| **Tenderer’s Declaration of Compliance with Competition Law** |
| We certify that the offer made is intended to be genuinely competitive. No aspect of the price has been fixed or adjusted by any arrangement with any Third Party. Arrangement in this context includes any transaction, or agreement, private or open, or collusion, formal or informal, and whether or not legally binding. In particular:a. the offered price has not been divulged to any Third Party,b. no arrangement has been made with any Third Party that they should refrain from tendering,c. no arrangement with any Third Party has been made to the effect that we will refrain from bidding on a future occasion,d. no discussion with any Third Party has taken place concerning the details of either’s proposed price, ande. no arrangement has been made with any Third Party otherwise to limit genuine competition.We understand that any instances of illegal cartels or market sharing arrangements, or other anti-competitive practices, suspected by the Authority will be referred to the Competition and Markets Authority for investigation and may be subject to action under the Competition Act 1998 and the Enterprise Act 2002.We understand that any misrepresentations may also be the subject of criminal investigation or used as the basis for civil action.We agree that the Authority may share the Contractor’s information / documentation (submitted to the Authority during this Procurement) more widely within Government for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes. We certify that we have identified any sensitive material in the Tenderer’s Sensitive Information Form (DEFFORM 539A). |
| **Dated this.................. day of ................................................................... Year ........................** |
| **Signature:In the capacity of** (Must be scanned original) (State official position e.g. Director, Manager, Secretary etc.) |
| **Name:** (in BLOCK CAPITALS)**duly authorised to sign this Tender for and on behalf of:**(Tenderer's Name) | **Postal Address:****Telephone No:****Registered Company Number:****Dun And Bradstreet number:** |

## Appendix 1 to Annex A (Offer)

Edn 11/22

**Information on Mandatory Declarations**

**IPR Restrictions**

1. You must complete and attach DEFFORM 711 (Notification of Intellectual Property Rights (IPR) Restrictions) as part of your Tender. You must provide details of any information / technical data that is deliverable or delivered under the Contract where it is, or may be, subject to any IPR restrictions (or any other type of restriction which may include export restrictions) affecting the Authority’s ability to use or disclose the Information / technical data in accordance with the conditions of any resulting Contract. You must also identify any Contractor Deliverables subject to IPR which have been funded exclusively or in part by private venture, foreign investment or otherwise than by the Authority.

2. In particular, you must identify:

a.        any restriction on the provision of information to the Authority; any restriction on disclosure or the use of information by, or on behalf of, the Authority; any obligations to make payments in respect of IPR, and any Patent or Registered Design (or application for either) or other IPR (including unregistered Design Right) owned or controlled by you or a Third Party;

b.        any allegation made against you, whether by claim or otherwise, of an infringement of Intellectual Property Rights (whether a Patent, Registered Design, unregistered Design Right, Copyright or otherwise) or of a breach of confidence, which relates to the performance of any resultant Contract or subsequent use by or for the Authority of any Contractor Deliverables;

c.        the nature of any allegation referred to under sub-paragraph 2.b., including any obligation to make payments in respect of the Intellectual Property Right of any confidential information; and / or

d.        any action you need to take, or the Authority is required to take to deal with the consequences of any allegation referred to under sub-paragraph 2.b.

3. You must provide the Authority with details of every restriction and obligation referred to in paragraphs 1 and 2. The Authority will not acknowledge any such restriction unless so notified using DEFFORM 711 or as otherwise agreed under any resultant Contract. You must also provide, on request, any information required for authorisation to be given under Section 2 of the Defence Contracts Act 1958.

4. You should refer to the DEFFORM 711 Explanatory Notes for further information on how to complete the form.

**Notification of Foreign Export Control Restrictions**

5. If, in the performance of the Contract, you need to import into the UK or export out of the UK anything not supplied by or on behalf of the Authority and for which a UK import or export licence is required, you will be responsible for applying for the licence. The Authority willprovide you with all reasonable assistance in obtaining any necessary UK import or export licence.

6. In respect of any Contractor Deliverables, likely to be required for the performance of any resultant contract, you must provide the following information in your Tender:

Whether all or part of any Contractor Deliverables are or will be subject to:

a. a non-UK export licence, authorisation or exemption; or

b. any other related transfer control that restricts or will restrict end use, end user, re-transfer or disclosure.

You must complete DEFFORM 528 (or other mutually agreed alternative format) in respect of any Contractor Deliverables identified at paragraph 6 and return it as part of your Tender. If you have previously provided this information you can provide details of the previous notification and confirm the validity.

7. You must use reasonable endeavours to obtain sufficient information from your potential supply chain to enable a full response to paragraph 6. If you are unable to obtain adequate information, you must state this in your Tender. If you become aware at any time during the competition that all or part of any proposed Contractor Deliverable is likely to become subject to a non-UK Government Control through a Government-to-Government sale only, you must inform the Authority immediately by updating your previously submitted DEFFORM 528 or completing a new DEFFORM 528.

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

9. You must notify the named Commercial Officer immediately if you are unable for whatever reason to abide by any restriction of the type referred to in paragraph 6.

10. Should you propose the supply of Contractor Deliverables of US origin the export of which from the USA is subject to control under the US International Traffic in Arms Regulations (ITAR), you must include details on the DEFFORM 528. This will allow the Authority to make a decision whether the export can or cannot be made under the US-UK Defense Trade Co-operation Treaty. The Authority shall then convey its decision to the Tenderer. If the Authority decides that use of the Treaty for the export is permissible, it is your responsibility to make a final decision whether you want to use that route for the export concerned if you are awarded the contract.

**Import Duty**

11. United Kingdom (UK) legislation permits the use of various procedures to suspend customs duties.

12. For the purpose of this competition, for any deliverables not yet imported into the UK, you are required to provide details of your plans to address customs compliance, including the Customs procedures to be applied (together with the procedure code) and the estimated Import Duty to be incurred and / or suspended [see explanatory note 41].

13. You should note that it is your responsibility to ensure compliance with all regulations relating to the operation of the accounting for import duties. This includes but is not limited to obtaining the appropriate His Majesty’s Revenue & Customs (HMRC) authorisations.

**Cyber Risk**

14. Cyber risk has been considered and a Cyber Security Model resulted in a ‘Not Applicable’ outcome.

**Sub-contracts Form 1686**

15. [Form 1686](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/710891/2018_May_Contractual_process.pdf) (also known as Appendix 5) is to be used in all circumstances where contractors wish to place a Sub-Contract at OFFICIAL-SENSITIVE with a contractor outside of the UK, or where the release of SECRET or above information is involved within the UK or overseas. The process will require submission of the single page document either directly to the MOD Project Team or, where specified, to the DE&S Security Advice Centre. Form 1686 and further guidance can be found in the Cabinet Office’s [Contractual Process](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/710891/2018_May_Contractual_process.pdf).

**Small and Medium Enterprises**

16. The Authority is committed to supporting the Government’s Small and Medium-sized Enterprise (SME)policy, and we want to encourage wider SME participation throughout our supply chain. Our goal is that 25% of the Authority’s spending should be spent with SMEs by 2022; this applies to the money which the Authority spends directly with SMEs and through the supply chain. The Authority uses the European Commission definition of SME.

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

18. Suppliers are also encouraged to work with the Authority to support the Authority’s SME initiative, however this is not a condition of working with the Authority now or in the future, nor will this issue form any part of the Tender evaluation. Information on the Authority’s purchasing arrangements, our commercial policies and our SME policy can be found at [Gov.UK](https://www.gov.uk/government/organisations/ministry-of-defence/about/procurement). and the DSP.

19. The opportunity also exists for Tenderers to advertise any sub-contract valued at over £10,000 on the Defence Sourcing Portal and further details can be obtained directly from: https://www.gov.uk/guidance/subcontract-advertising. This process is managed by the Strategic Supplier Management team who can be contacted at: DefComrclSSM-Suppliers@mod.gov.uk.

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

20. The Authority shall publish notification of the Contract and publish Contract documents where required following a request under the FOI Act except where publishing such information would hinder law enforcement; would otherwise be contrary to the public interest; would prejudice the legitimate commercial interest of any person or might prejudice fair competition between suppliers.

21. The Authority may publish the contents of any resultant Contract in line with government policy set out in the Government’s Transparency Principles and in accordance with the provisions of either DEFCON 539, SC1B Conditions of Contract Clause 5 or SC2 Conditions of Contract Clause 12.

22. Before publishing the Contract, the Authority will redact any information which is exempt from disclosure under the Freedom of Information Act 2000 (“the FOIA”) or the Environmental Information Regulations 2004 (“the EIR”).

23. You must complete the attached Tenderer’s Sensitive Information Form (DEFFORM 539A, SC1B Schedule 4 or SC2 Schedule 5) explaining which parts of your Tender you consider to be Sensitive Information. This includes providing a named individual who can be contacted with regard to FOIA and EIR.

24. You should note that while your views will be taken into consideration, the ultimate decision whether to publish or disclose information lies with the Authority. You are advised to provide as much detail as possible on the form. It is highly unlikely that a Tender will be exempt from disclosure in its entirety. Should the Authority decide to publish or disclose information against your wishes, you will be given prior notification.

**Electronic Purchasing**

25. 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 a mandatory requirement for any resultant contract awarded following this Tender. By submitting this Tender, you agree to electronic payment. You may consult the service provider on connectivity options. Failure to accept electronic payment will result in your Tender being non-compliant and excluded from the tender process.

**Change of Circumstances**

26. In accordance with paragraph A31, if your circumstances have changed, please select ‘Yes’ to the appropriate question on DEFFORM 47 Annex A and submit a Statement Relating to Good Standing with your Tender.

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

27. The Authority is required to report any items that use asbestos, that are hazardous or where there is an impact on the Ozone. Where any Contractor Deliverables fall into one of these categories select ‘Yes’ to the appropriate question on DEFFORM 47 Annex A and provide further details in your Tender.

**Defence Safety Authority (DSA) Requirements**[see explanatory note 42]

28. There are no DSA Requirements.

#

# DEFFORM 539A

***Edn 01/22***

**Tenderer’s Sensitive Information**

This list shall be agreed in consultation with the Authority and the Contractor and may be reviewed and amended by agreement. The Authority shall review the list before the publication of any information.

|  |
| --- |
| ITT Ref No: 707555450  |
| Description of Tenderer’s Sensitive Information:      |
| Cross Reference(s) to location of Sensitive Information in Tender:      |
| Explanation of Sensitivity:       |
| Details of potential harm resulting from disclosure:      |
| Period of Confidence (if applicable):       |
| Contact Details for Transparency / Freedom of Information matters:Name:      Position:      Address:      Telephone Number:      Email Address:       |

# DEFFORM 711 – NOTIFICATION OF INTELLECTUAL PROPERTY RIGHTS (IPR) RESTRICTIONS

**DEFFORM 711 - PART A – Notification of IPR Restrictions**

|  |  |
| --- | --- |
| 1. ITT / Contract Number
 |  |
| ID #  | Unique Technical Data Reference Number / Label | Unique Article(s) Identification Number / Label | Statement Describing IPR Restriction | Ownership of the Intellectual Property Rights |
| 1 |  |  |  |  |
| 2 |  |  |  |  |
| 3 |  |  |  |  |
| 4 |  |  |  |  |
| 5 |  |  |  |  |
| 6 |  |  |  |  |
| 7 |  |  |  |  |
| 8 |  |  |  |  |
| 9 |  |  |  |  |
| 10 |  |  |  |  |

Please continue on additional sheets where necessary

**DEFFORM 711 - PART B – System / Product Breakdown Structure (PBS)**

The Contractor should insert their PBS here. For Software, please provide a Modular Breakdown Structure.

**Completion Notes**

**Part A**

If any information / technical data that is deliverable or delivered under the relevant Contract conditions is, or may be, subject to any IPR restrictions (or any other type of restriction which may include export restrictions) affecting the Authority’s ability to use or disclose the information / technical data in accordance with the conditions of any resulting Contract, then the Contractor must identify this restricted information / technical data in this Part A. Otherwise, the Authority shall treat such information in accordance with the same rights under the Contract it would enjoy should no restrictions exist.

For example, any of the following must be disclosed:

1. any restriction on the provision of information / technical data to the Authority; any restriction on disclosure or the use of information by, or on behalf of, the Authority; any obligations to make payments in respect of IPR, and any patent or registered design (or application for either) or other IPR (including unregistered design right) owned or controlled by you or a third party;
2. any allegation made against the Contractor, whether by claim or otherwise, of an infringement of IPR (whether a patent, registered design, unregistered design right, copyright or otherwise) or of a breach of confidence, which relates to the performance of the Contract or subsequent use by or for the Authority of any Contract deliverables;
3. the nature of any allegation referred to under sub-paragraph (b) above, including any request or obligation to make payments in respect of the IPR of any confidential information and / or;
4. any action the Contractor needs to take, or the Authority is requested to take, to deal with the consequences of any allegation referred to under sub-paragraph (b) above.

|  |  |
| --- | --- |
| Block 1 | Enter the associated Invitation to Tender (ITT) or Contract number as appropriate.  |
| Block 2 | No action – This sequential numbering is to assist isolation and discussion of any line item |
| Block 3 | Identify a unique reference number for the information / technical data (i.e. a Contractor’s document or file reference number) including any dates and version numbers. Documents may only be grouped and listed as a single entry where they relate to the same Article and where the restrictions and IPR owner are the same.  |
| Block 4 | Identify the Article(s) associated with the information / technical data by entering a unique identification number / label for the Article(s). This may range from platform level down to sub-system level. This is to enable the Authority to quickly identify the approximate technical boundary to any user rights limitation (e.g. The RADAR or Defensive Aid Sub-System etc). This identification shall be at the lowest level of replaceability of the Article(s) or part of it to which the restrictions apply (i.e. if the restrictions apply to a sub-system the parent system should not be used to identify the restriction boundary). Any entry without a unique identifier shall be treated as a nil entry.NOTE: The Authority does not accept any IPR restrictions in respect of the physical Articles themselves. Block 4 is solely to provide an applied picture to any technical data stated under Block 3 as having IPR restrictions. |
| Block 5 | This is a freeform narrative field to allow a short explanation justifying why this information / technical data has limited rights applying to it. |
| Block 6 | Identify who is the owner of the IPR in the information / technical data (i.e. copyright, design right etc).  If it is a sub-contractor or supplier, please identify this also.  |

**Part B**

If neither hardware nor software is proposed to be designed, developed or delivered as part of the Contract, Part B should be marked “NIL RETURN”.

Otherwise, the Contractor must include a System / Product Breakdown Structure (PBS) in a format which is consistent with ISO 21511 and / or the configuration requirements of DEFSTAN 05-057, unless an alternative format better represents your design configuration. For software, a modular breakdown structure must be provided. For reasons of clarity, it is acceptable to provide several levels of breakdown if this assists in organising the configuration of the Articles.

Details provided under Part B shall not imply any restriction of use over the Contract Articles, nor any restriction on associated technical data to be delivered under the Contract. Any restrictions of such technical data must be identified within Part A.

Against each unique item within the PBS / module breakdown, one of the following categories shall be recorded:

1. (PVF) - Private Venture Funded - where the article existed prior to the proposed Contract and its design was created through funding otherwise than from His Majesty’s Government (HMG).
2. (PAF) - Previous Authority Funded (inc. HMG Funded) - where the article existed prior to the proposed Contract and its design was created through Previous Authority Funding.
3. (CAF) - Contract Authority Funded (inc. HMG Funded) - where the article did not exist prior to the Contract and its design will be created through Contract Authority Funding under this Contract.
4. (DNM) Design Not Mature - where the article / design configuration is not yet fixed.

In combination with one of categories (a) to (d) above, the Contractor shall further identify where an item has, or will have, foreign export control applying to it, through use of the further following category:

1. (FEX) Foreign Export Controlled

Notes:

1. During the term of the Contract the Contractor may transition any items identified as category (d) above into category (b) or (c). Transitions from category (d) into category (a) may only be made with the express written agreement of the Authority’s Senior Commercial Officer, and by following the amendment process set out in the Contract.
2. It is acceptable to specify the highest level of structure to which the category (a), (b) or (c) applies (i.e. there is no need to specify each sub-system / componentry if the entirety of the parent system was for example, Private Venture Funded). See guidance examples overleaf.
3. For the avoidance of doubt, where a parent system did not exist prior to the Contract yet makes use of Private Venture Funded Articles, it must be identified as (CAF). The Private Venture Funded sub-components / sub-systems can be identified as PVF.
4. Where items are identified as category (b), the Contractor should provide the number(s) of the previous Contract(s) under which the design was created and the Previous Authority Funding was applied.

**Example PBS**

A theoretical pictorial example is given below but it is to be noted that the configuration may equally be dealt with in a hierarchal tabularised format.

The diagram above indicates a highly simplified and hypothetical Contract scenario dealing with the procurement of a new air asset.

1. The proposed new aircraft would be considered Contract Authority Funded (CAF) at its top level.
2. Items denoted as Private Venture Funded (PVF) would generally indicate that it and all of its sub-components have been funded by sources other than HMG. In this instance there is no need to proceed down the product breakdown structure any further (see 1.4), except unusually where a generally PVF regarded item has incorporated a Previous Authority Funded (PAF) item (see 2.21).
3. The proposed design is making use of a PAF engine.
4. This engine has Foreign Export Control (FEX) applying to items within it.
5. The Defensive Aids System at 2.1 is covered as part of the Contract but the exact configuration and design has not yet been fixed “Design Not Mature” (DNM).
6. It is not feasible for a parent PVF system to make use of a CAF item; the parent system configuration would not have existed prior to the Contract.

# DEFFORM 532

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| Personal Data Particulars | **DEFFORM 532**Edn 10/19 |

This Form forms part of the Contract and must be completed and attached to each Contract containing DEFCON 532B.

|  |  |
| --- | --- |
| **Data Controller** | The Data Controller is the Secretary of State for Defence (the Authority).The Personal Data will be provided by:**Defence Intellectual Property Rights** |
| **Data Processor** | The Data Processor is the Contractor.The Personal Data will be processed at: **Merchandise Agent and DIPR** |
| **Data Subjects** | The Personal Data to be processed under the Contract concern the following Data Subjects or categories of Data Subjects: **Licensees of the merchandise licensing programme via the merchandise agent***[Examples include staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]* |
| **Categories of Data**  | The Personal Data to be processed under the Contract concern the following categories of data: **name, address, telephone numbers of licensees** *[Examples include name, address, telephone number, medical records etc]* |
| **Special Categories of data (if appropriate)** | The Personal Data to be processed under the Contract concern the following Special Categories of data: **not applicable***[A Special Category of Personal Data is anything that reveals racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, sex life or sexual orientation or genetic or biometric data]* |
| **Subject matter of the processing** | The processing activities to be performed under the contract are as follows: **details of licenses will be collected and stored to enable accurate records of licensees, mainly so they can be contacted; basic details such as company name and website may be advertised to make the public aware they are official licensees of the MOD merchandise programme** *[This should be a high-level, short description of what processing will be taking place and its overall outcome i.e. its subject matter]* |
| **Nature and the purposes of the Processing**  | The Personal Data to be processed under the Contract will be processed as follows: **The personal data shall be collected, recorded, organised, stored digitally, disclosed by making available via a website***[The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether by automated means or not) etc. The purpose might include: employment processing, statutory obligation, recruitment assessment etc]* |
| **Technical and organisational measures** | The following technical and organisational measures to safeguard the Personal Data are required for the performance of this Contract: **NOT APPLICABLE***[Provide an overview of the measures described in the System Requirements, Statement of Work and/or the controls required in accordance with the Cyber Risk Profile relevant to the Contract, as detailed in Annex A to [Def Stan 05-138](http://dstan.gateway.isg-r.r.mil.uk/standards/defstans/05/138/000002000.pdf). Examples include anonymisation, authorised access, data processed on closed/restricted systems]* |
| **Instructions for disposal of Personal Data**  | 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): **NOT APPLICABLE***[Describe how long the data will be retained and how it will be returned or destroyed]* |
| **Date from which Personal Data is to be processed** | Where the date from which the Personal Data will be processed is different from the Contract commencement date this should be specified here: **1st August 2023** |

The capitalised terms used in this form shall have the same meanings as in the General Data Protection Regulations.

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# Schedule 1

## Pricing Schedule

1. Please fill out the below table with the percentage of the gross estimated turnover you will be returning to the Authority as royalties. Please carefully consider the figure you provide as once contracted the percentage royalty return will be fixed for 3 years.
2. Any percentage returned to the authority below 60% will be non-compliant.
3. Please see Section D for further clarification.

|  |  |  |  |
| --- | --- | --- | --- |
| **Description**  | **Firm Price (£)** | **Firm Price (£)** | **Firm Price (£)** |
|  | **Year 1** | **Year 2** | **Year 3** |
| Provision of Tri-Service Merchandising Services in accordance with the requirements of Schedules 2 and 3 of the contract.  | X% of Gross Income to be paid to MoD | X% of Gross Income to be paid to MoD | X% of Gross Income to be paid to MoD |

1. Please fill out the following table with the percentage you will offer for the optional years. The authority reserves the right to review these prices at the end of the contract year 3:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Description**  | **Firm Price (£)** | **Firm Price (£)** | **Firm Price (£)** | **Firm Price (£)** |
|  | **Year 4** | **Year 5** | **Year 6** | **Year 7** |
| Provision of Tri-Service Merchandising Services in accordance with the requirements of Schedules 2 and 3 of the contract for the extension years.  | X% of Gross Income to be paid to MoD | X% of Gross Income to be paid to MoD | X% of Gross Income to be paid to MoD | X% of Gross Income to be paid to MoD |

# Schedule 2

## Statement of Requirements

* + - 1. Each of these requirements is cross-referenced to a question within the Tender Evaluation Matric (Section D)
			2. Tenderers will be requested to sign a Non-Disclosure Agreement as part of the tender. Once all tenderers have signed the NDA, more information regarding the merchandising strategy and current licencing will be supplier to all tenderers.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Serial | Requirement | Measure of Performance | Justification | Priority[[1]](#footnote-1) |
| 1 | To protect, promote and enhance the reputation of Ministry of Defence’s (MOD) highly valuable brands, notably the Royal Navy, Army and RAF, in the UK and globally.  | The Licensing Agent works in close partnership with several specialist teams within MOD to identify, negotiate and deliver our high-end brand licensing projects. These teams are managers and/or stakeholders of the Brand Licensing Programme i.e.: Brand Strategy, Defence Intellectual Property Rights (DIPR) and the communications and engagement teams within the Royal Navy, Army and RAF.There are robust governance and formalised approval protocols in place at key stages of the brand licensing process to ensure that each high-end licensing project, and the merchandise that emanates from it, achieve the necessary objectives i.e., to protect, promote and enhance the reputation of the Service brands and ensure alignment to each Service’s brand strategy. More detail of this process is covered in Serial 1.2. On request of the Licensor, the Licensing Agent should provide the Licensees with officially licensed product stickers (holographic stickers) and should make these readily available. The Licensing Agent should use the same supplier as the MOD to ensure consistency and to be in line with the same serialised number register. | Protecting the reputation of the MOD. Comply with Trademark and Design law. | KEY |
| 1.1 | Source marketing opportunities for the Single Services brands | Agent must have a degree of understanding of the Single Services and Large Organisations.The Licensing Agent is responsible for using in-depth market research and analysis to proactively identify, source and approach potential licensees in the UK and globally that operate in those product categories as defined by MOD where there is a need to protect the Service brands and ensure trademark use. Therefore, the agent should have experienced marketing staff.In addition, the Licensing Agent will need to ensure that potential licensees will act to enhance the reputation of each brand and are strategically aligned with its values and standards. It is essential that each Service brand is commercially harnessed to appropriate companies to the benefit of each Service, both as an institution and a brand, and the Licensing Agent will review company credentials and meet with prospective licensees to ensure they meet the requirements.It is incumbent upon the Licensing Agent to make sure that they are fully immersed in and cognisant of the underpinning strategy, values and standards of each Service brand as this will help to inform and focus their exploration of licensing opportunities. The Licensing Agent is required to provide 6 month updates on their progress in sourcing potential licensees with an accompanying rationale on how each licensee will act to protect, promote and enhance the reputation of the Single Service brands. The Licensing Agent should have an good understanding and realization that there is MOD Risk in relation to licensing products and that occasionally having spent some time developing a product proposal, this may not always be fulfilled, and therefore the agent should have flexible ways of working.The Licensing Agent should have the capability and experience to search out and onboard a broad range of new clients with interesting Product ideas and variety. That meet the ethos and standards of the single services. The Licensing Agency required to have a global footprint to benefit international trademark protection and other potential licensing opportunities for example North America and the Far East. | Merchandising activities support key requirement. Single Services are working across the world and specifically the Red Arrows who are touring regularly | KEY |
| 1.2 | Follow the agreed process for the source of opportunities, developing proposal, detailing product specification through to licence and finalisation of merchandise | The Licensing Agent is required to follow a formal and well-established process for progressing brand licensing opportunities from initial concept through to the launch of final merchandise. The basic steps of this process are outlined below:a) Discuss initial ideas/concepts with MOD Director Defence Communications (DDC) Brand managers/stakeholders across departments (Including medical consultation e.g. for supplements) and have a flexible approach to timings and approvals.b) Develop a more detailed product specification for further discussionc) On agreement of a binding licensing agreement between MOD (DIPR) and the licensee, develop merchandise/product designs and pre-production artwork and, where necessary, provide merchandise/product samples for quality check and approvalsd) Production of merchandise/product/s can start and development of supporting marketing/PR plan and materials involving DDC and Single Services. e) Launch of merchandise/products with marketing/PR supportThe Licensing Agent is also required to adhere to the governance enshrined in the Brand Licensing Approval Process to support the necessary sign off by all relevant MOD managers/stakeholders at key stages/milestones during the development, planning and implementation of each Brand licensing project. These stakeholders will include the Brand Strategy Team, DIPR, the appropriate Services and MOD Ministers.A summary of these stages is as follows:1. **Early inception**: Formal approval of a potential licensee and associated merchandise in terms of its ability to protect, promote and enhance the brand and align with its standards and values
2. **Concept development**: Formal approval of a more developed concept to ensure it meets all strategic requirements and carries no potential reputational issues/risks. This is before there is any binding commitment with the licensee to proceed.
3. **Contractual agreement**: Once a detailed product specification has been agreed, DIPR in consultation with the licensing agent will draw up an MOD licensing agreement between MOD and the licensee. This contract constitutes a formal and binding commitment on both sides and enables the licensee to develop products/designs to a more advanced stage.
4. **Interim products/designs**: Formal approval to products/designs, together with any further project details, prior to finalisation.
5. **Final product/design**: Approval of the finished design/branding and final artwork for the merchandise before the licensee proceeds to manufacture.
 | Ensuring merchandise meet product quality, brand reputations approvals and single service requirements | 1 |
| 1.3 | Development of bespoke proposals to launch, promote and market merchandise/product ranges | The Licensing Agent will be responsible for developing bespoke proposals and organising activity to support the launch, promotion and marketing of merchandise/product ranges. This may include but not be restricted to the creation of brand sales materials to support licensee outreach; representation at trade shows, stand design and build (as required); online creative solutions and supporting materials; and industry-led solutions**.**The Licensing Agent will also seek innovative ways to market the MOD Brand Licensing Programme instore, online and through social media. |  | KEY |
| 1.4 | Agent share of royalties on successful outcome of licensing opportunities. | MOD to receive at least 60% of licensing income from any fully executed licence agreement. Agent will therefore receive no more than 40% on licensing income.  |  | KEY |
| 2  | Provide style guidelines for use by prospective licensees | The Licensing Agent will be responsible for developing style guidelines for the use of licensees which are aligned with individual Service brand guidelines and which will include trend boards, brand assets, executional guidelines etc. These style guidelines will be reviewed, amended and updated as necessary |  | 2 |
| 3 | Negotiation of Licence Terms and management of licence agreements | The Licensing Agent to provide a high level of negotiation skill to add value to the licence agreements and make proposals to DIPR regarding the terms. Also, to manage the licenses and ensure licensees have appropriate product liability insurance The current contract terminates on 31st July 2023. Any potential agent should be aware that some licence agreements already in place will run for up to 3+ years after current contract terminates. | This is to ease burden of DIPR staffnegotiation andadd value to thelicence | KEY |
| 3.1 | Assessment of licensing opportunities against ethical and environmental standards | The Licensing Agent is responsible for ensuring that all merchandise/product ranges adhere to and are compliant with relevant and up-to-date ethical and environmental standards and legal requirements, including renewability, sustainability and recyclability. | Risk Management activities to ensure the protection of the MOD brands | 1 |
| 3.2 | Provision of software-based approvals process | The Licensing Agent is required to provide and manage a software-based approvals portal via which all artwork, promotional material and final product samples etc. can be submitted to MOD stakeholders/managers, thereby facilitating and streamlining the approvals process. | Ensures that anapprovals processis followed andcontrolled fromdesign concept,through sample toproduction.Access to beprovided to thefacility after theclose of contract | 1 |
| 3.3 | Process amendments to licences. | The Licensing Agent to be proactive in processing licence amendments when required. Amendments to include addition intellectual property or products, extension of Licence terms. |  | 1 |
| 4 | Supply Financial Returns to the MOD | Supply financial returns to the DIPR finance team in a timely fashion on a quarterly basis in a format as advised by DIPR | To manage the service contract, relationship and performance | 1 |
| 4.1 | Conduct spot check and/or audits of the (if necessary) of all MOD licensees. | Conduct spot check and/or audits of (if necessary) MOD licensees. Spot checks may require premises visits and of the financial records to ensure the correct financial returns are provided to the MOD. Ensure compliance against licence terms and conditions.Details of spot check and or audit to be reported to DIPR | Ensure compliance against the licence terms and conditions and value for money | 2 |
| 5 | Provide written reports to outline progress against the contract | Conducts progress meeting with DDC and DIPR on a 6monthly basis, so that there is regular communication between agent and MoD; and progress of performance against terms and conditions of the contract can be monitored. | To manage the service contract, relationship and performance | 1 |
| 6 | Act to ensure that products deemed to have failed (faulty of damaged goods) are withdrawn from market.  | The Licensing Agent to ensure that products that are faulty to be removed from the marketplace in an expedient manner and to notify DIPR and DDC of this immediately.  | Risk Management DIPR against faulty products and damage to our reputation as a result  | 1 |

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# Schedule 3

## Licencing

* + - 1. The current agent will be able to continue their licences past the end of the contract provided that the subcontracts are signed before 31st of July 2023. This will be the same terms that is continued into the contract of the winning vendor.
			2. Once the tenderer has signed an NDA there will be further information about the merchandising strategy and current licence agreements.
1. Key Requirements will be indicated with a “Key”, others will be indicated with a number 1 to 3 with 1 being High Priority, 2 being Medium Priority and 3 being Low Priority [↑](#footnote-ref-1)