



## **DE&S**

**Tender Number :**  
OSP/0050

**Description:**  
The Demonstration, Manufacture and In-Service Support of the Combat Water Supply System (CWSS) Prime Contract for Provision and Support of Expeditionary Water Services

### **Terms and Conditions**

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## 1. SCHEDULE OF REQUIREMENTS

Name and Address of Tenderer	MINISTRY OF DEFENCE	Tender No  <b>OSP/0050</b>
	Schedule of Requirements for <b>Combat Water Supply System (CWSS) Prime contract for provision and support of expeditionary water services</b>	
Issued With <b>DEFFORM 47</b>	On	Previous Contract No: N/A

### Requirements

Item No.	Description	Delivery Date	Deliver To	Quantity	Price £ (ex-VAT) each
1	Validation activities of Capabilities in items 2a to 2i in accordance with the System Requirement Document (SRD) at Annex C and Contractor Participation Integrated Test Evaluation Acceptance and Activities (CPITEAA) at Annex C Appendix 2.	In accordance with Contract Milestone Payment Plan at Annex E	The Contractor is required to adhere to the completion dates detailed with the Milestone Payment Plan E.	1	<i>(Tenderer to provide a Firm Price and Lead Time.)</i>  For Firm Price refer to Annex E Milestone Payment Plan
2a	Water Purification Equipment to support <b>Sub Unit</b> in accordance with the SRD at Annex C and the Battle Field	In accordance with Contract Milestone Payment Plan	The Contractor is required to adhere to the completion dates detailed with	<i>(Tenderer to provide Qty in line with BFM.)</i>	<i>(Tenderer to provide a Firm Price and Lead Time.)</i>  For Firm Price refer to Annex

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	Mission (BFM) document at Annex C Appendix 1. Including Complete Equipment Schedule (CES) at Annex H	at Annex E	the Milestone Payment Plan E.		E Milestone Payment Plan
2b	Water Purification Equipment to support <b>Battlegroup</b> in accordance with the SRD at Annex C and the Battle Field Mission (BFM) document at Annex C Appendix 1. Including Complete Equipment Schedule (CES) at Annex H	In accordance with Contract Milestone Payment Plan at Annex E	The Contractor is required to adhere to the completion dates detailed with the Milestone Payment Plan E.	<i>(Tenderer to provide Qty in line with BFM.)</i>	<i>(Tenderer to provide a Firm Price and Lead Time.)</i>  For Firm Price refer to Annex E Milestone Payment Plan
2c	Water Purification Equipment to support a <b>Formation</b> in accordance with the SRD at Annex C and the Battle Field Mission (BFM) document at Annex C Appendix 1. Including Complete Equipment Schedule (CES) at Annex H	In accordance with Contract Milestone Payment Plan at Annex E	The Contractor is required to adhere to the completion dates detailed with the Milestone Payment Plan E.	<i>(Tenderer to provide Qty in line with BFM.)</i>	<i>(Tenderer to provide a Firm Price and Lead Time.)</i>  For Firm Price refer to Annex E Milestone Payment Plan
2d	Water Purification Equipment to support <b>Force level</b> in accordance with the SRD at Annex C and the BFM document at Annex C Appendix 1. Including Complete Equipment Schedule (CES) at Annex H	In accordance with Contract Milestone Payment Plan at Annex E	The Contractor is required to adhere to the completion dates detailed with the Milestone Payment Plan E.	<i>(Tenderer to provide Qty in line with BFM.)</i>	<i>(Tenderer to provide a Firm Price and Lead Time.)</i>  For Firm Price refer to Annex E Milestone Payment Plan
2e	Water Storage Equipment to support <b>Sub Unit</b> in accordance with the SRD at Annex C and the Battle Field	In accordance with Contract Milestone Payment Plan	The Contractor is required to adhere to the completion dates detailed with	<i>(Tenderer to provide Qty in line with BFM.)</i>	<i>(Tenderer to provide a Firm Price and Lead Time.)</i>  For Firm Price refer to Annex

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	Mission (BFM) document at Annex C Appendix 1. Including Complete Equipment Schedule (CES) at Annex H	at Annex E	the Milestone Payment Plan E.		E Milestone Payment Plan
2f	Water Storage Equipment to support <b>Battlegroup</b> in accordance with the SRD at Annex C and the Battle Field Mission (BFM) document at Annex C Appendix 1. Including Complete Equipment Schedule (CES) at Annex H	In accordance with Contract Milestone Payment Plan at Annex E	The Contractor is required to adhere to the completion dates detailed with the Milestone Payment Plan E.	<i>(Tenderer to provide Qty in line with BFM.)</i>	<i>(Tenderer to provide a Firm Price and Lead Time.)</i>  For Firm Price refer to Annex E Milestone Payment Plan
2g	Water Storage Equipment to support a <b>Formation</b> in accordance with the SRD at Annex C and the Battle Field Mission (BFM) document at Annex C Appendix 1. Including Complete Equipment Schedule (CES) at Annex H	In accordance with Contract Milestone Payment Plan at Annex E	The Contractor is required to adhere to the completion dates detailed with the Milestone Payment Plan E.	<i>(Tenderer to provide Qty in line with BFM.)</i>	<i>(Tenderer to provide a Firm Price and Lead Time.)</i>  For Firm Price refer to Annex E Milestone Payment Plan
2h	Water Storage Equipment to support <b>Force level</b> in accordance with the SRD at Annex C and the Battle Field Mission (BFM) document at Annex C Appendix 1. Including Complete Equipment Schedule (CES) at Annex H	In accordance with Contract Milestone Payment Plan at Annex E	The Contractor is required to adhere to the completion dates detailed with the Milestone Payment Plan E.	<i>(Tenderer to provide Qty in line with BFM.)</i>	<i>(Tenderer to provide a Firm Price and Lead Time.)</i>  For Firm Price refer to Annex E Milestone Payment Plan
2i	Water Packaging Equipment to support <b>Formation / Force level</b> in accordance with the SRD at Annex C and the Battle	In accordance with Contract Milestone Payment Plan	The Contractor is required to adhere to the completion dates detailed with	<i>(Tenderer to provide Qty in line with BFM.)</i>	<i>(Tenderer to provide a Firm Price and Lead Time.)</i>  For Firm Price refer to Annex

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	Field Mission (BFM) document at Annex C Appendix 1. Including Complete Equipment Schedule (CES) at Annex H	at Annex E	the Milestone Payment Plan E.		E Milestone Payment Plan
2j	The procurement of Jigs, Tools and Test Equipment at Annex J.	In accordance with Contract Milestone Payment Plan at Annex E	The Contractor is required to adhere to the completion dates detailed with the Milestone Payment Plan E.		<i>(Tenderer to provide a Firm Price and Lead Time.)</i>  For Firm Price refer to Annex E Milestone Payment Plan
2k	The procurement of Support and Test Equipment (S&TE) at Annex I.	In accordance with Contract Milestone Payment Plan at Annex E	The Contractor is required to adhere to the completion dates detailed with the Milestone Payment Plan E.		<i>(Tenderer to provide a Firm Price and Lead Time.)</i>  For Firm Price refer to Annex E Milestone Payment Plan
3a	Integrated Logistic Support activity in accordance with the ILS/CLS Statement of Requirement at Annex D, which has been identified with "ILS".	In accordance with Contract Milestone Payment Plan at Annex E	The Contractor is required to adhere to the completion dates detailed with the Milestone Payment Plan Annex E.	1	<i>(Tenderer to provide a Firm Price and Lead Time.)</i>  For Firm Price refer to Annex E Milestone Payment Plan
3b	Set up of Contractor Logistic Support in accordance with the provisions of the ILS/CLS Statement of Requirement at Annex D to the Contract, which has been identified with 'CLS'	In accordance with Contract Milestone Payment Plan at Annex E	The Contractor is required to adhere to the completion dates detailed with the Milestone Payment Plan Annex E.	1	<i>(Tenderer to provide a Firm Price and Lead Time.)</i>  For Firm Price refer to Annex E Milestone Payment Plan
3c	Contractor Logistic Support in accordance with the provisions	CLS Support shall	The Contractor is required to adhere	1	<i>(Tenderer to provide a Firm Price and Lead Time.)</i>

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	of the ILS/CLS Statement of Requirement at Annex D to the Contract, which has been identified with 'CLS' and the CWSS assumed usage levels at Annex U.	commence on delivery of Initial Operating Capability (IOC) and run for a period of 5 years.	to the completion dates detailed with the Milestone Payment Plan Annex E.		For Firm Price refer to Annex E Milestone Payment Plan
4	Post Design Service and Ad-hoc Tasking in accordance with condition 3.6, which is not covered by the scope of CLS activity at Annex D.	In accordance with each agreed task.	In accordance with each agreed task.	N/A	<i>(Tenderer to Firm Price labour rates in accordance with Appendix1 Annex Q)</i>
5	Options – In accordance with Annex P to the ITN and condition 4.3.	In accordance with Annex P.	In accordance with Annex P.	N/A	<i>(Tenderer to complete tables therein, providing a Firm or Fixed price as applicable.)</i>  <i>(Please Note: VOP will apply to Fixed pricing in accordance with condition 4.2 to the Contract.)</i>
6	Pre-Contract award Option - Contractor Traditional Support (CTS) in accordance with Annex D, which has been identified with 'CTS'.	CTS Support shall commence on delivery of Initial Operating Capability (IOC) and run for a period of 5 years.	To be agreed.	1	<i>(Tenderer to provide a Firm price at Annex H to the DEFFORM 47.)</i>
7	Limit of Liability for Accident,	To be agreed	To be paid on	N/A	<i>As arising from the ISC as</i>

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	Misuse, Negligence or Abuse	with the Authority on a case by case basis.	resolution of ISC		<i>detailed in Annex M to the ITN OSP/0050.</i>
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**Notes: (to be removed at contract award)**

**1. Please Note: Only support package (CLS or CTS) once evaluated via Section D to the DEFFORM 47 will be taken forward into Contract Award.**

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## 2. GENERAL CONDITIONS

DEFCON68 (Edn.02/16) - Supply of Data for Hazardous Articles, Materials and Substances

DEFCON501 (Edn.03/15) - Definitions and Interpretations

DEFCON503 (Edn.12/14) - Formal Amendments To Contract

DEFCON515 (Edn.10/04) - Bankruptcy and Insolvency

DEFCON516 (Edn.04/12) – Equality

DEFCON518 (Edn.11/12) – Transfer

DEFCON520 (Edn.08/15) - Corrupt Gifts and Payments of Commission

DEFCON521 (Edn.04/12) - Sub-Contracting to Supported Businesses

DEFCON526 (Edn.08/02) – Notices

DEFCON527 (Edn.09/97) – Waiver

DEFCON528 (Edn.05/12) - Overseas Expenditure, Import and Export Licences

The Contractor's attention is drawn to clause 1 of DEFCON 528 requiring notification of overseas expenditure. In this connection, the Contractor shall, within one month of acceptance of the Contract, notify the Contracts Branch of details of any overseas sub-contract or order he has placed, or intends to place, in aid of the contract. Details to be provided are: Contract No; Country in which sub-contract placed/to be placed; Name, Division and full postal address of sub-contractor; Value of sub-contract as applicable to main contract; Date placed/to be placed. If no overseas orders are to be placed, the Contractor shall advise the Contracts Branch to this effect in the same timescale

DEFCON528App (Edn 05/12.) - Appendix to DEFCON 528 – Overseas Expenditure, Import and Export Licences

DEFCON529 (Edn.09/97) - Law (English)

DEFCON530 (Edn.12/14) - Dispute Resolution (English Law)

DEFCON531 (Edn.11/14) - Disclosure of Information

DEFCON532A (Edn.06/10) - Protection Of Personal Data (Where Personal Data is not being processed on behalf of the Authority)

DEFCON537 (Edn.06/02) - Rights of Third Parties

DEFCON538 (Edn.06/02) – Severability

DEFCON539 (Edn.08/13) – Transparency

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DEFCON550 (Edn.02/14) - Child Labour and Employment Law

DEFCON566 (Edn.04/15) - Change of Control of Contractor

DEFCON620 (Edn.06/14) - Contract Change Control Procedure

DEFCON656 (Edn.03/06) – Break

DEFCON660 (Edn.11/14) - Reportable OFFICIAL and OFFICIAL-SENSITIVE Security Requirements

DEFCON670 (Edn.07/14) - Tax Compliance

## **2.1 Access to Authority Sites**

- a. The Authority will assist in arranging access to the relevant Authority site(s) and personnel required to undertake the work required under this Contract in accordance with DEFCON 76. Requests for access/visits shall be made in a timely manner to allow any necessary clearances to be approved/authorised. No access will be granted unless such approval has been given. This shall be co-ordinated through the Project Manager, at Box 2 in the Appendix to Contract (DEFFORM 111).
- b. The Authority shall have no liability to the Contractor if when the opportunities to visit the Authority's sites/personnel are made available, or are offered to be made available, on the agreed dates and the Contractor fails to make use of them. In such circumstances, the liability of the Authority shall cease with effect from the first time the opportunities are made available or offered on the agreed dates.
- c. The Contractor shall arrange access to other sources (i.e. Industry) himself.

## **2.2 Access to Contractor/Sub-Contractor Sites**

- a. The Contractor shall arrange for the representatives of the Authority to have access to the premises where the work under the Contract is being undertaken, and to technical information relevant to the Contract for the purposes of monitoring progress and compliance with the Contract requirements.
- b. Visits by the Authority's representatives to Sub-Contractors in accordance with Sub-Clause a. above shall normally only be made after consultation with the Contractor.

## **2.3 Amendments to Contract**

- a. Only the Commercial Officer, detailed at Box 1, in the Appendix to Contract (DEFFORM 111), or their authorised representative, is authorised to

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vary the terms and conditions of the Contract. Such variations shall only have effect if agreed in writing.

b. Any technical or other proposal from the Contractor requiring an amendment to the Contract is to be submitted in writing to the Authority for consideration, together with cost and time-scale implications. Any such changes accepted by the Authority shall be notified to the Contractor by written amendment to the Contract, and shall not be effective until accepted in writing by the Contractor.

c. Notwithstanding DEFCON 503, nothing said, done or written by any person, nor anything omitted to be said, done or written by any person, including but without limitation, any servant or agent of the Authority, shall in any way affect the rights of the Authority, modify, affect, reduce or extinguish the obligations and liabilities of the Contractor under the Contract, or be deemed to be a waiver of rights of the Authority, unless stated in writing and signed by the Commercial Branch named in the Appendix to this Contract.

## **2.4 Appointment of Prime Contractor and Placing of Sub-Contracts**

a. For the purposes of this Contract and the work to be performed there under, the Contractor shall be designated as the Prime Contractor, and shall accordingly be responsible to the Authority, subject to the provisions of the Contract, for the timely, economic and proper execution of the Contract as described in the Schedule of Requirements and the Statement of Requirements (Annexes A, C and D and associated Appendices).

b. The Contractor's responsibilities referred to shall apply equally to work carried out by Sub-Contractors in respect of the requirements of the Contract.

c. The Contractor shall ensure that the terms and conditions of this Contract are reflected in all Sub-Contracts, at whatever level, to the extent necessary to enable the Contractor to fully meet his obligations to the Authority under the Contract.

d. The Contractor shall furnish the Authority with a copy of any Sub-Contract on request.

## **2.5 Business Continuity**

The Contractor shall demonstrate an effective and project specific Business Continuity and Incident Management/Business Continuity and Disaster Recovery plan in accordance with BS EN ISO 22301:2014 Societal security — Business continuity management systems — Requirements (ISO 22301:2014). Upon request, the Authority shall be granted full access to this document.

## **2.6 Compliance with the Electronic Transactions Agreement**

a. The Authority and the Contractor shall comply with the Electronic Transactions Agreement by completion of the DEFFORM 30; The meaning of

Purchase Order and Order Acknowledgement messages shall be as defined in the Contract at Section 8, Payments & Receipts. The Contract shall take precedence in all circumstances.

## **2.7 Contract Duration**

a. The Contract will commence on date of unqualified acceptance (refer to DEFFORM 10) and expire on the *(date to be inserted at contract award)* where no further work shall be placed. The Contract shall be closed on completion and acceptance of all Contract deliverables. The Contract duration shall cover the demonstration, manufacture and In-Service phases of the CWSS project.

b. The Contract includes 2 x 1 year irrevocable options to extend the contract duration, refer to Annex P to the ITN OSP/0050.

## **2.8 Contractors Personnel**

a. The Contractor shall take all reasonable steps to avoid changes of personnel assigned, and accepted for, work under the Contract, at both Prime and Sub-Contractor level. The Contractor shall give at least four weeks' notice to the Authority of any changes to key personnel, except where those changes are unavoidable or of a temporary nature caused by sickness etc.

## **2.9 Contractors Responsibility**

a. The Contractor shall ensure that personnel employed under the Contract have the appropriate qualifications and competence to carry out the work to fully meet the requirements of the Contract.

b. The Contractor shall nominate an Project Manager who shall provide an initial contact as a focal point for all contact. The Contractor shall not replace his nominated Project Manager without approval of the Authority whose approval shall not be unreasonably withheld.

c. The Contractor shall fulfil and verify that the requirements of the Contract are met by demonstrating to the satisfaction of the Authority's Project Manager that the Items delivered meet the requirements for the entirety of the contract.

d. Where so required, details of key personnel to be employed on the Contract shall be made available to the Authority on request.

e. The Contractor shall take all reasonable steps to avoid changes of key personnel assigned to and accepted for work under this Contract. The Authority shall be notified in advance of any change of key personnel.

## **2.10 Definitions and Interpretations**

a. In the Contract, the following expressions shall each have the meanings respectively assigned to them, except where the context requires otherwise.

- b. The meaning of 'the Contract', 'the Contractor', the Authority', 'Contract price', 'Articles', 'Firm Price', Project Manager' and 'month' shall be set out in DEFCON 501.
- c. 'The Ministry' means the Secretary of State for Defence
- d. 'The Parties' means the Authority and the Contractor
- e. 'Sub-Contractor' means any person, firm or Company to whom the Contractor sub-lets any part of the work to be carried out by the Contractor.
- f. 'The Terms and Conditions' means the Clauses set out in the Contract.
- g. 'The Items' means the items detailed on the Schedule of Requirements which the Contractor is contracted to supply.
- h. Unless otherwise stated references to Clauses, sub-Clauses, paragraphs, sub-paragraphs, annexes and Appendices relate to the Contract.
- i. Unless otherwise stated references to DEFCONs, DEFFORMs and DEFSTANs made in the Contract shall be the latest edition thereof at the date of Contract, except as may be agreed subsequently.
- j. Any notice given by any Party to the Contract shall be in writing and shall be deemed duly served if delivered personally or sent by facsimile transmission or by prepaid first class post (airmail in the case of an address for service outside the United Kingdom) to the addressee at the address or (as the case may be) the facsimile number of that party to be served may have notified (in accordance with the provisions of this Clause) for the purposes of the Contract.

## **2.11 Disclosure of Information**

- a. In this Condition, the definition of Information shall be that set out in DEFCON 531 (Edn 11/14).
- b. The Authority shall not be in breach of the Contract where it can show that any disclosure of Information is made solely and to the extent necessary to comply with the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

## **2.12 Export Licences**

- a. If, in the execution of the Contract, the Contractor needs to import material for which a foreign export licence is required, it shall be his responsibility to apply for and obtain in a timely manner such a licence.



### 2.13 Further Work

- a. Nothing in this Contract shall be interpreted as an undertaking by the Authority to place any other contract with the Contractor or to authorise any further work in connection with the work carried out under the contract.

### 2.14 Place of Manufacture

- a. Any change in the Contractor's or major Sub-Contractor's place(s) of manufacture during the currency of the Contract shall be promptly notified to the Authority's Commercial Officer, with a copy to the Authority's Project Manager, detailed in Boxes 1 and 2 respectively of the Appendix to Contract (DEFFORM 111).

### 2.15 Precedence

- a. Should there be any discrepancy between the aspects of the documentation under the Contract then the order of precedence of the documentation shall be as follows:
  - (i) Terms and Conditions including DEFCONS and the Statement of Requirement (Annex A);
  - (ii) SRD (Annex C)
  - (iii) SRD Compliancy Matrix (Appendix 3 to Annex C)
  - (iv) Other Contract Annexes;
  - (v) Any other documents incorporated by reference.
- b. The Contractor shall immediately inform the Authority of any discrepancy, inconsistency or error in the documentation under this Contract which comes to his attention. The Authority shall notify to the Contractor the proper construction of the documentation or issue a correction to the documentation and such construction or correction (as the case may be) shall be binding on both the Contractor and the Authority.
- c. Any conflict or apparent conflict between any documents in the Contract shall be notified to the Authority's Commercial Manager at the earliest opportunity for determination of how such conflict or apparent conflict may be resolved. The Authority's Commercial Manager will consult with the Contractor to determine how such conflict or apparent conflict may be resolved. If after such consultation both parties fail to resolve the conflict or apparent conflict, then the conflict or apparent conflict shall be concluded in accordance with DEFCON 530 (Edn 12/14).
- d. The Clause headings are for convenience and shall not form part of this agreement or of any Contract(s) made hereunder nor govern their interpretation.

### 2.16 Publications Publicity and Status

- a. Unless expressly permitted in writing by the Authority, the Contractor shall not publish or permit to be published either alone or in conjunction with any other person, any information, articles, photographs or other illustrations relating to the business of the Authority, his servants, agents or employees.

b. For reasons of security the Contractor shall not release any information associated with the project without first obtaining the prior written consent of the Authority, except as may be required by law or other government requirements. Prior to release, copies of the information to be released shall be forwarded to the Contracts branch named in the Appendix 111 to the Contract together with an accurate and complete English translation thereof, if the publication is to be in another language. It is expressly understood and agreed that neither Party has the authority to communicate on behalf of the other.

## **2.17 Resolution of Disputes**

- a. A graduated approach to dispute resolution shall be adopted as follows:  
In the first instance, the parties shall attempt to resolve disputes in good faith through negotiations between their respective senior representatives.
- b. If negotiations between the senior representatives fail within one month or such other period as may be agreed on a case-by-case basis, disputes may be resolved by referral to an expert by agreement between the parties, whose decision shall be final and binding. Otherwise, either party may refer the dispute to an adjudicator.
- c. Disputes not settled following adjudication might be resolved by arbitration, except that any dispute relating to a security matter on which the Authority's decision is expressed to be final and conclusive shall not be referred to adjudication or arbitration. Disputes in relation to pricing issues shall be dealt with in accordance with the provisions of the Contract and not be referred to adjudication or arbitration. The provisions of this Clause shall be in addition to those of DEFCON 530 Dispute Resolution, which shall take precedence.
- d. The Contractor shall appoint an individual to deal with any high level disputes that cannot be dealt with at Project Manager Level.
- e. The Authority's nominated officer for dealing with disputes will be as defined in DEFFORM 1111.

## **2.18 Sustainable Procurement**

- a. The Contractor is to bring to the attention of the Authority any measures which might promote sustainable procurement from a social, economic and environmental point of view.

## **2.19 Sustainable Procurement - Legislative Requirements**

- a. The Contractor shall take all reasonable steps to procure the observance of the economic, social and environmental legislation related to the subject matter or the execution of the contract by any servants, employees or agents of the Contractor and any subcontractors engaged in the performance of the Contract.

- b. If the Contractor becomes aware of any prosecution or proceedings, for criminal breaches of the economic, social and environmental legislation related to the subject matter or the execution of the Contract, against the Contractor, any servants, employees or agents of the Contractor and any subcontractors engaged in performance of the Contract, the Contractor shall immediately notify the Authority at the address specified in the Contract.
- c. Any convictions during the period of the Contract for criminal breaches of [the economic, social and environmental legislation related to the subject matter or the execution of the Contract by the Contractor or any of the Contractor's directors/partners or senior management who have powers of representation, decision or control, shall be regarded as a material breach of this Contract.

## **2.20 Sales of CWSS Equipment to other MoD teams**

- a. In the interests of effective fleet management and control of spares, the Contractor shall obtain the written agreement of the Authority's Project Manager identified in Box 2 of the Appendix to Contract, DEFFORM 111, before entering into any future Commercial arrangement for the supply, either directly or via an agent, of any additional CWSS equipment's at Item 2 of the Schedule of Requirements to any MOD Team other than OIP. The Contractor shall ensure that his sub-contractors are subject to the same restriction.

## **3. Specification, Plans, Etc.**

DEFCON82 (Edn.10/04) - Special Procedure For Initial Spares

DEFCON117 (Edn.10/13) - Supply Of Information For NATO Codification And Defence Inventory Introduction

DEFCON129 (Edn.03/15) - Packaging (For Articles other than Munitions)

DEFCON129J (Edn.07/08) - The Use Of The Electronic Business Delivery Form

DEFCON502 (Edn.06/14) - Specifications Changes

DEFCON602A (Edn.12/06) - Deliverable Quality Plan

DEFCON606 (Edn. 06/14) – Change and Configuration Procedure

DEFCON608 (Edn.10/14) - Access and Facilities to be provided by the Contractor

DEFCON624 (Edn.11/13) - Use of Asbestos

DEFCON627 (Edn.12/10) - Quality Assurance - Requirement for a Certificate of Conformity

DEFCON637 (Edn.08/99) - Defect Investigation and Liability

DEFCON644 (Edn.05/15) - Marking of Articles

## DEFCON645 (Edn.07/99) - Export Potential

**3.1 Commercial Risk**

a. The Contractor acknowledges that any risk assessment that has been, or may be, undertaken in connection with this Contract has been, or will be, a project management function only. Such risk assessment does not affect the legal relationship between the parties. The issuing of any risk assessment questionnaire and the process of risk assessment generally, including without limitation, the identification of (or failure to identify):

- (i) Particular risks and their impact; or
- (ii) Risk reduction measures, contingency plans and remedial actions shall not in any way limit or exclude the Contractor's obligations under this Contract and shall be entirely without prejudice to the Authority's rights, privileges and powers under this Contract.

b. The risks identified as a result of any risk assessment questionnaire and risk assessment process generally remain the risks of the Contractor and are not assumed by the Authority except to the extent that the Authority expressly and unequivocally accepts those risks under the Contract. Any risk assessment questionnaire released was or will be issued by the Authority solely on this basis.

**3.2 Configuration Control**

a. For the purposes of the Contract, the current version of Defence Standard 05-57 entitled "Configuration Management of Defence Materiel" shall apply.

**3.3 Change And Configuration Control Procedure**

a. In addition to the requirements of DEFCON 606 (Edn.06/14), if there is any reason for a change to the contracted build standard of the equipment called for in the Schedule of Requirements, the Contractor shall complete a Change and Configuration Control Form (CCCF) as copied at Annex T to the Contract. Once completed, the CCCF shall be sent to the Authority's Project Manager for consideration.

b. If the change is accepted as being necessary, the Commercial Branch may, in accordance with the provisions of DEFCON 127 (Edn.12/14), seek a further breakdown of the costs involved if the information already provided with the CCCF is insufficient to establish the reasonableness of the price.

c. If, after a price investigation, it is agreed that the price is fair and reasonable and offers best value for money, an amendment to the Contract incorporating the change, in accordance with the provisions of DEFCON 503 (Edn.12/14) will be offered to the Contractor.

d. No work shall be carried out on any suggested change until the Contractor has accepted a formal amendment to the Contract.

### 3.4 Risk Management

- a. All Risk Management shall be conducted in accordance with Annex A Statement of Requirement. The Risk and Opportunities Register and Issues template is located at Appendix 3 at Annex B of the ITN OSP/0050 shall be maintained by the Contractor throughout the Contract.
- b. All queries relating to the Contractor's obligations relating to Risk Management shall be directed to the Project Manager at Box 2 of the Appendix to Contract (DEFFORM 111).
- c. The Contractor shall, in accordance with the ILS/CLS Statement of Requirement at Annex D to the ITN OSP/0050, the SRD at Annex C to the ITN OSP/0050 and CDRs at Annex B to the ITN OSP/0050, provide to the Authority, not later than 4 weeks following the award of Contract, a Risk and Opportunity Management Plan and a Risk Register which shall be maintained by the Contractor throughout the Contract.

### 3.5 Scope and Requirements of the Contract

- a. All work authorised against this Contract shall be undertaken to the satisfaction of the Authority's Project Manager, or his authorised representative, and shall be fully compliant with all contract deliverables.
- b. Notwithstanding any official approval by the Authority of, or expression of satisfaction with, any Drawings, Specifications, Schedules, Software, or any relevant Technical, Administrative or other Documents or Data produced by the Contractor in aid of the Contract, the Contractor shall produce designs (where necessary), which in all respects, are wholly complete, accurate and fully meet the requirements of the Contract.
- c. All Articles, Drawings, Specifications, Schedules and Technical Data produced under the Contract shall be in metric terms unless specifically requested by the Authority.
- d. Any technical or other changes, including Specifications etc. proposed by the Contractor and requiring an amendment to the Contract, must be submitted in writing to the Authority's Project Manager through the Authority's Commercial Officer for consideration together with full details of any cost, time and performance implications. Any proposed change agreed between the Authority and the Contractor shall only come into force by the Authority's Commercial Officer confirming in the form of a formal amendment to Contract.
- e. The Contractor shall be liable for the full management of the contracted programme.

### 3.6 Post Design Services (PDS) & Ad Hoc Tasking

- a. Authorisation and Performance of Work
  - i. All work required at Line Item 4 of the Schedule of Requirements, shall be notified to the Contractor, by the Authority, on a PDS Tasking Proforma 1 Request for a Time/Cost Quotation (attached at Annex Q). PDS Tasking Proforma's may be initiated by the Contractor or the Project Manager.

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- ii. The Contractor shall complete all sections and sign the PDS Tasking Proforma 2 Time/Cost Quotation. The information to be provided by the Contractor shall be as set out in PDS Proforma 2. The Contractor shall use the agreed Firm Rates at Appendix 1 to Annex Q when completing the quotation.
- iii. Additional work resulting out of the original task shall be against the same task number suffixed as /2, /3, etc. Each task will be subject to a separate definition of work, firm price and delivery arrangement.
- iv. All completed PDS Tasking Proforma 2 forms shall be submitted to the Authority's Project Manager. Tasks that are identified by the Authority's Project Manager as Priority shall be marked as such in the Proforma and these PDS Tasking Proforma 3 forms shall be processed as expeditiously as possible.
- v. The Contractor shall not undertake any work until the relevant PDS Tasking Proforma 3 Customer Authorisation/Cancellation has been signed by the Authority's Project and Commercial Managers (details as at Appendix to Contract, DEFFORM 111, box 1) and the Authority's Finance representative.
- vi. In the event that the Authority does not wish to proceed with the PDS Tasking, the Tasking Proforma 3 shall be labelled as 'Cancellation'. The Authority shall bear no cost to cancel a task.

### **3.7 Deliverable Quality Plan**

- a. The Quality Assurance Representative (QAR) shall be the Authority's Project Manager named in Box 2 of the Appendix to Contract (DEFFORM 111) or his nominated representative. Any reference to the QAR in any document forming part of the Contract shall be read as referring to the Authority's Project Manager named in Box 2 of the Appendix to Contract (DEFFORM 111). The Quality Assurance conditions applicable to the Contract are:

ISO 9001, 2008 or ISO 9001, 2015 within the scope of the contract requirements.

AQAP 2105, Edn 2 - NATO Requirements for Deliverable Quality Plans

AQAP 2110, Edn 3 – NATO Quality Assurance Requirements for Design, Development and Production. Certificate of Conformity shall be provided i.a.w. DEFCON 627.

DEFSTAN 05-57 Issue 6 – Configuration Management of Defence Materiel.

DEFSTAN 05-61 Part 1, Issue 5 – Quality Assurance Procedural Requirements – Concessions.

DEFSTAN 05-61 Part 4, Issue 3 – Quality Assurance Procedural Requirements – Contractor Working Parties.

DEFSTAN 05-035 Issue 1 – Avoidance of Counterfeit Materiel.

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## DEFCON 602A (Edn 12/06) -Deliverable Quality Plan

- b. The Contractor shall provide (i.a.w. CDR 27-01) and maintain a Deliverable Quality Plan i.a.w. DEFCON 602A and AQAP2105.
- c. All Contract Articles shall meet the quality requirements of the SRD at Annex C to the ITN OSP/0050.
- d. The Contractor shall maintain the required ISO 9001 scope certification throughout the duration of the Contract. In the event that his certification is reduced in any way, he shall immediately notify the Commercial Officer named in Box 1 of the Appendix to Contract (DEFFORM 111).

**4. Price**

DEFCON 127 (Edn 12/14) - Price Fixing Condition for Contracts of Lesser Value

DEFCON619A (Edn.09/97) - Customs Duty Drawback

**4.1 Contract Pricing**

- a. The Contract Prices within the Schedule of Requirements for Line Items 1 to 3 shall be Firm (not subject to variation), in pounds sterling, exclusive of VAT.
- b. Schedule of Requirements line item 4 - The Rates at Appendix 1 to Annex Q for years 1-5 at commencement of Initial Operating Capability (IOC) shall be Firm and not subject to variation. Rates at Appendix 1 to Annex Q for option years 6-7 shall be Fixed and subject to the provisions of Variation of Price condition 4.2.
- c. Schedule of Requirements line item 5 – Option prices shall be Firm (not subject to variation) or Fixed (subject to the provisions of Variation of Price condition 4.2).
- d. The price within Line item 3c to the Schedule of Requirements shall be based upon the CLS activities within Annex D and the CWSS usage assumptions at Annex U.

**4.2 Variation Of Price**

- a. The prices stated for years 6-7 of Appendix 1 to Annex Q and those identified as 'Fixed' within Annex P are FIXED at January 2016 price levels. The prices do not include provision beyond this date for increases or decreases in the market price of the Articles being purchased. Any such variation shall be calculated in accordance with the following formula:

$$V = P (a+b(O_i/O_0)) - P$$

Where:

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**V** represents the variation of price

**P** represents the FIXED price as stated in the Schedule of Requirements

**O** represents the index Products of Manufacturing Industry (K3BI)

**OO** represents the average OUTPUT Price Index figure for the base period 1 January 2016.

**O<sub>i</sub>** represents the average OUTPUT Price Index figure for the period October to December of the previous year

**a** represents the 10% Non-Variable Element

**b** represents the 90 % Variable Element

$a+b=1$

b. The Index referred to above shall be taken from the following Tables:

OUTPUT Price Index - ONS Publication MM22 Table 2 'Price Indices of UK OUTPUT: All Manufacturing and Selected Industries', or, Table 4 'Price Indices of Products Manufactured in the UK'.

c. Indices published with a 'B' or 'F' marker, or a suppressed value, in the last 3 years are not valid for Variation of Price clauses and shall not be used. Where the price index has an 'F' marker or suppression applied to it during the term of the Contract, the Authority and the Contractor shall agree an appropriate replacement index or indices. The replacement index or indices shall cover, to the maximum extent possible, the same economic activities as the original index or indices.

d. In the event that any material changes are made to the indices (e.g. a revised statistical base date) during the period of the contract and before final adjustment of the final contract price, then the re-basing methodology outlined by the Office for National Statistics (ONS, the series providers) to match the original index to the new series shall be applied.

e. In the event the agreed index or indices cease to be published (e.g. because of a change in the Standard Industrial Classification) the Authority and the Contractor shall agree an appropriate replacement index or indices, which shall cover to the maximum extent possible the same economic activities as the original index or indices. The methodology outlined by the Office for National Statistics used for rebasing indices shall then be applied.

f. Notwithstanding the above, any extant index / indices agreed in the Contract shall continue to be used as long as it is / they are available and subject to ONS revisions policy. Payments calculated using the extant index / indices during its / their currency shall not be amended retrospectively as a result of any change to the index or indices.

g. The Contractor shall notify the Authority of any significant changes in the purchasing / manufacturing plan on the basis of which these provisions were drawn up and agreed, or of any other factor having a material bearing on the operation of these provisions such as to cause a significant divergence from their intended purpose, in order that both parties may consider whether any change in this provision would be appropriate.

h. Prices shall be adjusted taking into account the effect of the above formula as soon as possible after publication of the relevant indices or at a later date if so agreed between the Authority and the Contractor. Where an index



value is subsequently amended, the Authority and the Contractor shall agree a fair and reasonable adjustment to the price, as necessary.

- i. Claims under this Condition shall be submitted to the Bill Paying Branch, certified to the effect that the requirements of this Condition 4.3 have been met.

### **4.3 Exercise of Options**

- a. The Contractor will grant to the Authority irrevocable options at Annex P, which the Authority has no obligation to exercise.

- b. In addition to the quantities of Articles detailed in the Schedule of Requirements, the Contractor hereby grants to the Authority in consideration of the award of the Contract to the Contractor, the irrevocable option to purchase:

- i. Additional CWSS Equipment.
- ii. Further Contractor Logistic Support.
- iii. Additional Legacy equipment.
- iv. Labour.
- v. Overhead and Profit mark up on materiel.

as set out in Annex P Tables in accordance with the Terms and Conditions of the Contract (the Authority has no obligation to exercise such options).

- c. The Authority shall have the right to exercise an option any number of times up to the expiry of the option periods shown in Annex P to the ITN OSP/0050. Option periods will commence at IOC and will expire 3 months prior to Contract Expiry.

- d. The foregoing option validity periods at Annex P shall be extended by such further period as corresponds to the aggregate of any periods:

- i. of delay in the delivery programme whether constituting any breach of the Contract or resulting from any Force Majeure event within Clause 7.3 of the Contract; or

- ii. when the Authority is prevented from exercising any such option by reason of any other breach of the Contract by the Contractor.

- iii. The Authority reserves the right to seek competitive tenders for the option requirement(s) detailed in Annex P of the ITN OSP/0050 within the period specified for the exercise of that option as detailed in Annex P of the ITN OSP/0050. In such event, the Contractor shall not relinquish any of his obligations to supply the option requirement(s) detailed in Annex P of the ITN OSP/0050 nor shall the Authority waive any of its rights under the said condition.

#### 4.4 Earned Value Management System Implementation and Review Item 1 & 2

- a. The Contractor shall define, implement and maintain an Earned Value Management System (EVMS) to be used in the management of the Contract. This shall comply with the guidance detailed in the Earned Value Management APM Guide, 2<sup>nd</sup> Edition or any equivalent document as agreed by the Authority. Compliance shall be maintained for the duration of the Contract.
- b. The Contractor shall provide the Authority with an EVMS implementation plan within 1 month following Contract Award. Updates to this plan shall be provided on a regular basis (maximum monthly) until the EVMS is implemented.
- c. The Contractor shall provide and update the Authority with an EVMS Implementation plan in accordance with CDR 25-03 in Annex B to the ITN OSP/0050.
- d. At the earliest opportunity, but not exceeding two months following Contract Award, the Contractor shall provide details of the EVMS operating process for the Contract (e.g. System Description or other agreed guide).
- e. No later than 20 working days prior to the date of the Integrated Baseline Review referred to at para 4.6, the Contractor must deliver the following detailed proposals to the Authority:
  - i) the Statement of Work (SOW);
  - ii) the Work Breakdown Structure (WBS);
  - iii) the Organisational Breakdown Structure (OBS);
  - iv) the Responsibility Assignment Matrix (RAM);
  - v) the WBS Dictionary which demonstrates full coverage of the contracted SOW;
  - vi) the Project Master Schedule (PMS) plan with full drill down to the lowest levels;
  - vii) the Control Account (CA) schedules, fully resourced with EV techniques allocated; and
  - viii) the Proposals for variance threshold reporting for the Performance
- f. Measurement Baseline (PMB).

- i) The Contractor shall allow the Authority to review the EVM techniques that are proposed to be applied in the detailed Master and Control Account schedules together with the variance thresholds for the Performance Measurement Baseline. The Authority may suggest alternative EVM techniques where it can be seen to be of benefit to the effectiveness of the reporting process. Where alternative EVM techniques are agreed between the Authority and the Contractor they must be formally incorporated into the Contract.
- g. At the conclusion of the EVMS implementation, the Contractor shall provide a copy of the Integrated Master Schedule (IMS) in an agreed format. This will be analysed by the Authority in conjunction with the Risk Register and a list of the known discrepancies and departures from the agreed implementation standard. The Contractor must also provide a copy of the Schedule Risk Analysis with 10%, 50%, and 90% confidence dates. This may result in the identification of corrective actions which will need to be addressed by the Contractor within agreed timescales in order to enable validation of the EVMS.
- h. The Contractor shall make available to the Authority the following Cost Performance Reports (CPR) for mats 1-5 in accordance with CDR 25-02. These reports shall be submitted in both hard copy and soft copy in a format compatible with the Authority's defence Information Infrastructure (DII(F)).

#### **4.5 The Integrated Baseline Review (IBR)**

- a. The Contractor shall provide resources and facilities to enable the Authority to conduct an Integrated Baseline Review (IBR) to enable an assessment of the acceptability of the Performance Measurement Baseline (PMB). This should happen within a period not to exceed six months of the date of contract award. Where requested by the Authority, the Contractor shall ensure that resources include appropriate contractor and sub-contractor representatives.
- b. The Authority may also, at its discretion, conduct an IBR at any reasonable time during the execution of the Contract, if any significant changes are made to the Contract, or if in the Authority's view, the Contractor may be unable to complete the contract within time and cost. These additional IBR's shall be at the Authority's cost unless related to poor Contractor performance. The Authority will formally provide the Contractor with notice of its intent to conduct such an IBR. The period of notice shall be 3 months.
- c. The Contractor shall demonstrate, to the satisfaction of the Authority, that the following IBR exit criteria are met (clarity of issue control and version numbers must be provided):
  - i) the right Contractor personnel and managers were interviewed;
  - ii) the complete Contract Statement of Work (SOW) is covered in the Contract Work Breakdown Structure and WBS Dictionary;
  - iii) the technical scope can be accomplished within cost and schedule baseline constraints and that the resources are available and have been appropriately distributed to the Contract tasks;

- iv) there is a logical sequence of events that support the Contract Schedule;
  - v) identified risk assessments are adequately represented in time, cost and resource allocations;
  - vi) the Contractors PMB is being utilised to generate a draft Cost Performance Report through examination of at least one Cost Performance Report; and
  - vii) the Contractor's cost schedule control system is compliant with the Earned Value Management APM Guidelines or other agreed guide/standard e.g. ANSI 748.VM Association
- d. The Authority shall provide the Contractor with an IBR Report which shall include a description of the scope of the review, an assessment of the PMB (including an assessment of relative risks) and proposed EVM system, together with any corrective actions required. The Contractor shall provide a corrective action plan within one month of receipt of the report with a firm commitment to address the corrective actions as agreed with the Authority. Should the Authority disagree on the level of corrective actions to be addressed, or the schedule for addressing them, see Contract Payment and Termination Conditions.
- e. Should the Contractor wish to make changes to the data within the EVM System or of the system itself, beyond an agreed threshold (re-plan, New Section on change management Over Target Schedule, Over Target Baseline) the Authority must be fully informed in writing with all relevant details prior to any implementation. The Authority shall investigate the impact of any changes which they deem significant and reserves the right to refuse approval. Where the Authority agrees with the proposed changes approval shall be provided to the Contractor in writing and the progress of the agreed change monitored at subsequent reviews. All such changes shall be subjected to the Contractor's Configuration Management system.
- f. The Contractor agrees to provide access to all pertinent EVMS records, personnel, managers and data associated with the contract requested by the Authority.
- g. The Contractor must deliver proposals for variance thresholds for the Performance Measurement Baseline (PMB) no less than 20 working days before the scheduled date for the IBR. The Contractor must allow the Authority to review and approve the variance thresholds prior to any implementation. Where the Authority disagrees with the proposed variance thresholds the Contractor shall work to achieve a satisfactory outcome that is acceptable to the Authority. Should the Contractor be unable to achieve a satisfactory outcome see Contract Payment and Termination Conditions.
- h. The Contractor must, where reasonably requested by the Authority, provide all EVM reporting data for review at the IBR.

- i. The Contractor must provide resources, including personnel and managers, and facilities to enable the Authority to conduct a Demonstration Review (DR) on a mutually agreed date. Where requested by the Authority, the Contractor must ensure that the resources include appropriate contractor and sub-contractor representatives.

#### **4.6 EVMS Reporting and Surveillance**

- a. EVM report data will be used by the Authority to monitor contract performance and significant variances, and to measure the impact of the variances on the Contract. The report data will also provide status information for senior management.
- b. Following the IBR (see clause 2) the Contractor shall make available to the Authority the following information:
  - i) A copy of the Schedule indicating the Critical Path and showing actual performance compared to the baseline; and
  - ii) The Cost Performance Reports (CPRs) as defined in the Contract. As a minimum CPR 1, 3 and 5 will be required but all CPRs shall if appropriate be made available.
- c. Cost Performance Reports shall be available in soft copy, in a format compatible with existing MOD software applications, and be easily imported to common format software applications e.g. XML compatible or alternatively via a Shared Data Environment (SDE) system.
  - i) Data reported in the CPR reports shall be limited to authorised Contract work, including both priced and un-priced effort.
- d. The Progressed Schedule and CPRs shall be made available to the Authority in the agreed form on a monthly basis (within one month of the data collection), and shall report current in-month and cumulative project status information to at least Level 3 of the Contract Work Breakdown Structure (CWBS), with drill down capability to a lower level at the request of the Authority.
- e. The Reported performance data details shall include as a minimum;
  - i) Planned Value (PV) or Budgeted Cost of Work Scheduled (BCWS)
  - ii) Earned Value (EV) or Budgeted Cost of Work Performed (BCWP)
  - iii) Actual Cost (AC) or Actual Cost of Work Performed (ACWP)
  - iv) Budget at Completion (BAC)
  - v) Estimates at Completion (EAC) Pessimistic and Optimistic (EAC 1, 2, and 3)

vi) To Complete Performance Index (Estimates at Completion) (TCPI (EAC))

vii) EVMS Variance analysis including:

- Cost Variance and Cost Performance Index (EV versus AC)
- Schedule Variance and Schedule Performance Index (EV versus PV)
- Two independent Estimates at Completion (IEAC):
  - a)  $AC\ cum + (BAC - EV\ cum)$   
CPI
  - b)  $AC\ cum + (BAC - EV\ cum)$   
CPI x SPI

Variance at Completion (BAC versus EAC)

- f. The Contractor shall report all variances that exceed the reporting thresholds agreed between the Contractor and Authority to the agreed level of granularity, typically at Level 3 of the CWBS. Reports on variances shall clearly state:
- a) The root cause and impact of a variance on the overall cost and schedule performance of the Contract.
  - b) all corrective action taken to mitigate the variance and identify any new risks associated with this course of action and how closure of these actions will affect the schedule;
  - c) the status of actions taken for previously reported variances; and
  - d) all proposed Performance Management Baseline (PMB) changes and/or variance threshold revisions if required.
- g. To confirm that standards are being maintained, the Contractor must conduct periodic surveillance of the EVMS throughout the remainder of the Contract. The minimum period between each surveillance activity will be 6 months. Copies of the surveillance reports must be made available to the Authority within 10 working days of the completion of the surveillance activity.
- h. To maintain and improve Evm maturity throughout the duration of the Contract, the Authority and the Contractor must, on a mutually agreed date, perform an EVMS maturity assessment using the Association of Project Management (APM) standard or agreed equivalent.

#### **4.7 EVM Flow Down Requirements for Sub Contractors**

- a. Where the Prime Contractor shall require significant sub-contracts the Prime Contractor shall, at Contract Award, detail the names of all potential sub-contractors. These sub-contractors will be required to comply with the requirements of EVM. Sub-contractors shall be agreed between the Contractor and the Authority

- b. All significant sub-contracts shall comply with the performance statements detailed in Condition 4.3. The Prime Contractor shall flow down as necessary to the sub-contractors and any necessary Integrated Baseline Review or surveillance activity with the sub-contractor. If flow down of EVM is not achievable the Prime Contractor and the Authority will agree on the substitution of a set of objective measures that can be agreed with and applied to the sub-contractor to give confidence in delivery of the project objectives. Where appropriate alternative arrangements be agree, these must be detailed.
- c. The Contractor and Authority shall be responsible for ensuring the sub-contractors EVMS is compliant with the contract requirements. The Contractor and Authority shall be responsible for reviewing and accepting the sub-contractor(s) PMB through an IBR, and ensuring that the Authority is able to participate fully in this IBR.
- d. The Contractor shall ensure that the sub-contractor(s) issues contract status reports to the Contractor in the same report cycle time that the Contractor reports to the Authority.

#### 4.8 Contractor Logistic Support (CLS) Assumed Usage and Variation

- a. The Contractor's price for Contractor Logistic Support (CLS) service at line item 3c to the Schedule of Requirements shall be based on the Assumed Usage document at Annex U to Contract. The table below summarises the usage in terms of hours and fleet size:

Usage Eqpt Type	Operations	Training	Exercise	Storage	Deployable Fleet Size	Total Hours usage per year.
Sub-Unit	10.5%	15%	10%	64.5%	63	9420
Battlegroup	10%	25%	26%	39%	20	6112
Force/Formation	10%	50%	-	40%	4	1976
Packaging	10%	25%	-	65%	4	1416
WDR	12%	3%	-	55%	64	3302
					<b>TOTAL Hours Per Year</b>	<b>22,226</b>

- b. The custodian of the equipment shall record on the Joint Asset Management and Engineering Solutions (JAMES) System the actual hours used for each system.
- c. Annex U provides a baseline of 22,226 hours equipment usage per year.
- d. At the end of each CLS Year, both parties shall review the actual consumption of equipment usage hours.
- e. Over Utilisation
- i. In the event that the actual hours consumed are over the baseline of 22,226, the following shall apply:

i.i. If CWSS utilisation increases up to and including 10% of the total hours per Annum, there shall be no additional cost to the Authority.

i.ii. If CWSS utilisation exceeds 10% of the total hours per Annum, then the Authority has the option to procure further CLS Support at a cost of:

Annual Usage (ex VAT)		
Year of CLS	Per Hour	Per 100 Hours
1		
2		
3		
4		
5		

f. Under Utilisation

i. In the event that the actual hours consumed are under the baseline of 22,226, the following shall apply:

ii. If CWSS utilisation falls below the baseline by up to 10% of the total hours per Annum, there shall be no obligation for the Contractor to reimburse the Authority.

iii. If CWSS utilisation falls below the baseline by more than 10% of the total hours per Annum, then the Contractor shall reimburse the Authority in line with the table below:

Annual Usage (ex VAT)		
Year of CLS	Per Hour	
1		
2		
3		
4		
5		

iv. For the avoidance of doubt reconciliation of over and underutilisation shall be made at the end of the CLS year. Should the Authority and Contractor agree, over and underutilised hours can be offset against future CLS years.

## 5. Intellectual Property Rights

DEFCON14 (Edn.11/05) - Inventions and Designs Crown Rights and Ownership of Patents and Registered Designs

DEFCON15 (Edn.02/98) - Design Rights and Rights to Use Design Information



For the purpose of this condition, the CDRs are located at Annex B.

DEFCON16 (Edn.10/04) - Repair and Maintenance Information

DEFCON21 (Edn.10/04) - Retention of Records

DEFCON90 (Edn.11/06) – Copyright

DEFCON126 (Edn.11/06) - International Collaboration Clause

DEFCON632 (Edn.08/12) - Third Party Intellectual Property - Rights and Restrictions

## **5.1 Procedure for Making Direct Agreements with Sub-Contractors**

- a. The Contractor shall not place any sub-contract or order involving the design or development of equipment required under this contract without the prior approval of the Authority.
- b. The Contractor shall not enter into any commitment in relation to the equipment specified at DEFFORM 177, as may be amended from time-to-time, until the sub-contractor has entered into an agreement with the Authority. Wherever possible the request for approval should be accompanied by two copies of the agreement signed by the sub-contractor. If, in any case the Contractor is unable to comply with this condition he shall report the matter to the commercial officer and await further instructions before placing the sub-contract or order.

## **5.2 Confidentiality**

- a. This Condition shall apply in addition to and notwithstanding DEFCON 531 or any other confidentiality condition of the Contract.
- b. For the purposes of this Condition "Controlled Information" shall mean any information in any written or tangible form which is disclosed to the Contractor by or on behalf of the Authority under or in connection with the Contract, and which is identified by the legend "Controlled Information" or other approved legend notified to the Contractor. Controlled Information shall exclude information provided by oral communication.
- c. The Contractor shall:
  - (1) Hold the Controlled Information and not to use it other than for the purpose of discharging its obligations under the Contract;
  - (2) Not to copy the Controlled Information except as strictly necessary for the purpose of discharging its obligations under the Contract;
  - (3) Not to disclose the Controlled Information to any third party unless so authorised in writing beforehand by the Authority;

- (4) Protect the Controlled Information diligently against unauthorised access and against loss; and,
  - (5) Act diligently to ensure that:
    - (a) Controlled Information is disclosed to its employees only to the extent necessary for the purpose of discharging its obligations under the Contract;
    - (b) Employees to whom Controlled Information is disclosed are made aware of and required to comply with the terms of this Condition.
- d. Where Controlled Information is provided to the Contractor, it shall:
- (1) Compile a register of that Controlled Information, which shall include explicit description of the Controlled Information, a record of the number of copies made and a record of all access to the Controlled Information including access to any copies of the Controlled Information.
  - (2) Maintain this register for the duration of the Contract and for two years following completion of the Contract.
  - (3) make the register of access available to the Authority upon reasonable notice for inspection and audit for so long as it is required to be maintained under this Condition; and,
  - (4) At the completion of the Contract, return to the Authority all original and duplicate copies of the Controlled Information, or else at the Authority's option destroy these copies and provide a certificate of destruction to the Authority.
- e. This Condition shall not diminish or extinguish any right of the Contractor to copy, use or disclose any other information to the extent that it can show:
- (1) That the information concerned was or has become published or publicly available for use without breach of any provision of the Contract or any other agreement between the parties;
  - (2) That the information was already known to it (without restrictions on disclosure or use) prior to receiving it under or in connection with the Contract;
  - (3) That the information concerned was lawfully provided by a third party without restriction on use or further disclosure; or
  - (4) From its records, that the information was derived independently of the Controlled Information;
  - (5) To the extent that copying, use or disclosure of this other information shall not disclose its relationship to any Controlled Information.

### **5.3 Employee's Acknowledgement to Employer of Obligations Relating to Confidentiality**

a. The Contractor shall ensure that any employee of the Contractor who is engaged in performance of the Contract/Task shall sign the confidentiality acknowledgement DEFFORM 702.

### **5.4 Copyright Marking**

a. In the case that the Contractor includes a Copyright legend on any documentation, including extracts there from, produced under the Contract such legend shall also refer to the rights of the Authority in accordance with DEFCON 90.

b. An IPR caveat shall only be applied to information that needs protection and must not be used purely for convenience. Information within reports that contain IPR shall be clearly marked. The Contractor shall justify the use of proprietary caveats on all documents produced under the Contract.

### **5.5 Intellectual Property**

a. Subject to the provisions of DEFCON 537, the Authority and any other United Kingdom Government Department shall have, during the period of the Contract and at all times thereafter, the right, anywhere in the world to copy, in whole or in part and use information to which this condition applies for the purposes as those defined in the Contract Data Requirements List (DEFFORM 315) at Annex B to the ITN OSP/0050.

b. All documentation (including hand-outs, training materials, user manuals etc.) generated under this contract must be in accordance with DEFCON 90.

c. The Contractor shall not use or disclose any material called for or generated under this Contract without explicit permission from the Authority.

d. Nothing in the condition shall transfer from the Contractor to the Authority ownership of rights in any IP not generated in the performance of work under the Contract.

### **5.6 Technical Publication Clause**

a. The Contractor shall ensure that the Authority has the right to copy, amend, extend or have copied, amended or extended any technical publication supplied under the Contract or any part thereof including any such part when incorporated in any amended or extended version of such technical publication, and to circulate, use or have used said technical publication including any amended or extended version and any copies thereof for any United Kingdom Government purpose but not for the purpose of manufacturing equipment to which the technical publication relates.

## 6. Loans

DEFCON23 (Edn. 08/09) – Special Jigs, Tooling and Test Equipment

DEFCON76 (Edn.12/06) - Contractor's Personnel at Government Establishments

DEFCON611 (Edn.07/10) - Issued Property

DEFCON694 (Edn.02/12) - Accounting For Property of the Authority

### 6.1 Government Furnished Assets issued to Contractors

a. The Government Furnished Equipment/Facilities/Information (GFE/F/I) listed at Annex O to the Contract shall be issued to the Contractor on the Loan Terms annotated against each item, for use in support of the Contract only.

b. For issues of further articles of GFE/F/I the Contractor shall make an application in writing to the Authority's Commercial Officer named in Box 1 of the Appendix to Contract (DEFFORM 111). Whilst every effort will be made to issue the GFE/F/I to the Contractor, no guarantee can be given by the Authority that any additional GFE/F/I shall be made available.

c. The Legacy equipment to be supported under this contract is listed at Annex N Appendix 2. IOC and FOC quantities below, and a snapshot in time of equipment condition is at Annex A para 4.6.

- i. Articles supplied to the Contractor by the Authority for refurbishment or modification shall be deemed to be issued on Contract Loan terms.
- ii. The Contractor shall ensure that all articles for repair/refurbishment are recorded for identification purposes, particularly the package number.
- iii. The Authority will be responsible for providing and/or making available, free of charge to the Contractor, those requirements in terms of GFA that are listed and specifically and clearly defined by description and quantity in Annex O to the ITN OSP/0050. All such loan issues shall be recorded in the Contract accordingly. No other GFA shall be issued as a Contract dependency.
- iv. The Authority will have no liability to the Contractor if, when the Government Furnished Equipment(s), Facilities or Information are made available or offered to be made available on the agreed dates, the Contractor fails to make use of them. In such circumstances, the liability of the Authority shall cease with effect from the first time the Equipment(s), Facilities and Information are made available or offered on the agreed dates.
- v. The Contractor shall observe any instructions regarding the use of any GFA issued for the purpose of this Contract.
- vi. The Authority will make every endeavour to ensure the Contractor has access to the relevant GFA. In the event GFA is unable to be issued to

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the Contractor, the Authority will endeavour to make other arrangements, such as access to GFA at an MOD establishment. If this is not possible, Contractors will be notified at the earliest opportunity.

- vii. The right of the Authority to reject Articles under the Contract shall in no way be prejudiced by or though the fact that the Articles in question may have been made for or include materials supplied by the Authority.
- viii. The Contractor shall return to the Authority any Item of GFA that has been utilised by the Contractor in the performance of this Contract at the date agreed by the Authority. The GFA shall be returned in the same state or better as it was issued to the Contractor. Should any GFA be required to undergo any repair or refurbishment activity to return it to the issued state then the Contractor shall be solely responsible for this activity, at no cost to the Authority
- ix. Should any GFA become consumed or damaged Beyond Economic Repair it will be charged at the Store Systems 3 price, available on request. The BER level will be determined during the quarterly reviews.
- x. GFA must not be removed from the Contractors premises to which the work has been allocated without the prior consent of the Authority's Project Manager.
- xi. A list of GFA is attached at Annex O; the Authority shall make these assets available to the Contractor free of charge as stated in paragraph iii above.
- xii. The provisions of DEFCON 611 shall apply to any Government Assets issued to the Contract on loan.
- xiii. The Contractor shall comply with the requirements of the Public Accounting Authority (see box 8 of the Appendix to Contract (DEFFORM 111)) concerning any item of GFA.
- xiv. Should the Contractor require additional GFA throughout the duration of this Contract a written request should be presented to the Authority at least 1 month prior to the Contractors requested date of delivery. The availability of any additional GFA shall be at the Authority's discretion.

## **7. Delivery**

DEFCON5J (Edn.03/15) - Unique Identifiers

Where used in conjunction with contracts for services, Clause 2 of the DEFCON shall not apply.

DEFCON113 (Edn.02/16) - Diversion Orders

DEFCON507 (Edn.10/98) – Delivery

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DEFCON514 (Edn.08/15) - Material Breach

DEFCON524 (Edn.10/98) – Rejection

DEFCON525 (Edn.10/98) – Acceptance

DEFCON612 (Edn.10/98) - Loss of or Damage to the Articles

DEFCON621A (Edn.06/97) - Transport (if Authority is responsible for transport).

a. The Contractor shall deliver all goods and services in accordance with the prescribed timescales in the Statement of Requirements (SOR) at Annex A and D and the Milestone Payment Plan at Annex E.

b. Any items requiring physical delivery shall be packaged and delivered by the Contractor in accordance with the instructions listed in the SOR at Annex A to the Contract.

## **7.1 Contractor's Responsibility**

a. The Contractor shall be wholly responsible for delivering the Articles and Services, which meet the Requirements of the System Requirement Document at Annex C, the Statement of Requirements (SoR) at Annex A, the ILS/CLS SoR at Annex D to the ITN OSP/0050 and for ensuring that any work is wholly complete, accurate, and meets the requirements of the Contract.

## **7.2 Liquidated Damages**

a. It is recognised by the parties that in the event that any of the Articles specified in the table of the Schedule of Requirements which the Contractor is required to supply to the Authority, being not delivered at the time required, the Authority will suffer loss and damage thereby.

b. Accordingly, if any of the Articles detailed to be delivered by Initial Operating Capability (IOC) as listed in Annex E, are not delivered by the date agreed with the Contractor for IOC; the Contractor shall be liable to pay to the Authority as liquidated damages for delay in delivery the sum of £67,118.00 for each month of delay up to a limit of 6 months (£402,708.00).

c. The Authority will normally invoice the Contractor as soon as the liquidated damages become payable. The Contractor shall pay the liquidated damages promptly not later than 30 calendar days after receipt of the invoice.

d. The provisions of the Clause are without prejudice to any other rights of the Authority under the Contract. Accordingly, damages shall be payable hereunder in respect of any material period during which the Contract subsists.

e. No Payment or concession to the Contractor by the Authority or other act or omission of the Authority shall in any way affect the rights of the Authority to recover the said liquidated damages or be deemed to be a waiver of the right

of the Authority to recover any such damages unless a waiver has been expressly stated in writing by the Authority.

f. Unless expressly stated by the Authority in writing, the provisions of DEFCON 524 (Waiver) shall apply to the Authority's right to recover Liquidated Damages under this clause.

### **7.3 Force Majeure**

a. The Contractor shall not be in breach of this Contract, nor liable for late or non-performance of any of its obligations under this Contract, if such delay or failure result from a "Force Majeure Event". For the purposes of this Contract, a Force Majeure Event is defined as one of the following:

- (1) acts of nature;
- (2) war;
- (3) hostilities;
- (4) fire at any of the Contractor's premises or those of its suppliers.

b. The Contractor shall immediately notify the Authority in writing on the occurrence of a Force Majeure Event, including details of the Force Majeure Event, its effect on the Contractor's obligations under this Contract, and the actions proposed to mitigate its effect.

c. Subject to Clause d below, the Contractor shall be entitled to an appropriate extension of time for performing such obligations provided always that the Contractor has used, to the satisfaction of the Authority, all reasonable endeavours, both to mitigate the effects of the Force Majeure Event, and to facilitate the continued performance of its obligations under this Contract.

d. The maximum extension of time granted under this clause shall be limited to 5 weeks after which time the Authority may, on giving written notice to the Contractor, terminate this Contract with immediate effect.

## **8. Payments/Receipts**

DEFCON509 (Edn.09/97) - Recovery of Sums Due

DEFCON513 (Edn.06/10) - Value Added Tax

DEFCON522J (Edn.05/03) - Payment under P2P

DEFCON523 (Edn.03/99) - Payment of Bills Using the Bankers Automated Clearing Service (BACS) System

DEFCON534 (Edn.06/97) - Prompt Payment (Sub-Contracts)

**8.1 Milestone Payments for Firm, Fixed or Provisional Priced contracts**

- a. The Contractor shall receive payment in accordance with the Milestone Payment Plan at Annex E. Before payment is made against a Milestone, all corresponding deliverables and acceptance criteria must be met to the Authority's satisfaction. Payment of the full amount shall be subject to the Contractor's performance in accordance with KPI Condition 8.3 and the provisions within Annex G.
- b. All Milestones must be claimed for sequentially.

**8.2 Payment Schedule**

- a. The Authority and its authorised agent will make payments to the Contractor via Purchase to Payment (P2P) in accordance with DEFCON 522J and any monies shall be claimed by the Contractor in accordance with DEFFORM 522J.

**8.3 Contractors Performance – Key Performance Indicators (KPIs)**

- a. The contractor will be subject to the KPIs and its provisions at Annex G.
- b. All work under the Contract shall be performed to the satisfaction of the Authority's Project Manager.

**9. Contract Administration**

DEFCON605 (Edn.09/14) - Financial Reports  
For the purposes of the Contract, the frequency of reports shall be provided quarterly

DEFCON609 (Edn.06/14) – Contractor's Records

DEFCON642 (Edn. 06/14) – Progress Meetings

DEFCON647 (Edn.09/13) - Financial Management Information

**9.1 Governance**

- a. The Authority and the Contractor shall both appoint a Project Manager who shall be responsible for the day-to-day management of the contract.
- b. Details of the Authorities appointed Project Manager can be found in Box 2 of Appendix to contract (DEFFORM 111)

**9.2 Gainshare****9.2.1 Reductions In Scope Of Work Proposed By The Contractor**



- a. During the term of this Contract the Contractor shall keep under review and report to the Authority any opportunities he has identified for reductions in the Contractor's scope of work, which could result in improvements to Contract delivery and/or reductions in cost.
- b. Should the Authority be satisfied in principle with the reduction in scope of work proposed by the Contractor, then the Authority and the Contractor shall negotiate in good faith an appropriate contract amendment to reflect the agreed reduction in scope of work proposed by the Contractor, and its effect on existing contract prices and delivery dates.
- c. For the avoidance of doubt, for the purposes of such negotiation it is agreed that:
  - i. The actual reduction in cost resulting from a reduction in scope may be difficult to accurately identify retrospectively; therefore in agreeing a contract amendment to reflect the reduction in scope proposed by the Contractor, the agreed price reduction shall be based on the principle that the Authority shall subject to sub-clause (2) be entitled to a [50%] share in the Contractor's estimated reduction in cost, with [50%] being retained by the Contractor.
  - ii. The Contractor shall be entitled to retain [50%] of any savings arising solely from efficiencies within the Contractor's organisation or those of his sub-contractors and suppliers, which the Contractor, or his sub-contractors and suppliers, has sponsored.

#### **9.2.2 Reductions In Scope Of Work Proposed By The Authority**

- a. During the term of this Contract the Authority shall keep under review and report to the Contractor any opportunities he has identified for reductions in the Contractor's scope of work which could result in improvements to Contract delivery and/or reductions in cost.
- b. Should the Authority identify any such opportunity he shall provide full details of the proposed change to the Contractor and the Contractor shall provide to the Authority a contract change proposal setting out the effects of the proposed change to the current Contract.
- c. Should the Authority be satisfied with the Contractor's proposed change then the Authority and the Contractor shall negotiate in good faith an appropriate contract amendment to reflect the agreed reduction in scope proposed by the Authority and its effect on the existing Contract prices and delivery dates.
- d. For the avoidance of doubt for the purposes of such negotiation it is agreed that:
  - (1) The actual reduction in cost resulting from a reduction in scope may be difficult to accurately identify retrospectively; therefore in agreeing a contract amendment to reflect the reduction in scope proposed by the Authority, the agreed resultant price reduction shall be based on the

principle that the Authority shall be entitled to [60%] of the Contractor's estimated cost saving.

(2) The Authority shall reimburse the Contractor all reasonable costs which may be incurred by the Contractor, plus Profit, in responding to any requests by the Authority to investigate reductions in scope which may be proposed by the Authority in pursuance of this sub-clause.

### **9.3 Gainshare Agreement**

- a. The Authority and the Contractor shall during the period of Contract identify all possible areas for Gainshare. Such Gainshare opportunities are to be listed within the Contractor's Quarterly Progress Report.
- b. Any Gainshare proposal shall be raised using the Change Proposal form at Annex K.
- c. Any Gainshare identified shall be considered in line with the Framework Agreement at 9.2 above.
- d. All savings achieved as a result of a Gainshare agreement shall be shared, in a ratio to be agreed between both parties, subject to the following:
  - i. any non-recurring costs incurred during investigation and subsequent implementation of any agreed Gainshare arrangement shall be offset against the agreed savings;
  - ii. any non-recurring costs incurred by the Contractor during investigation of a proposed Gainshare which has been approved by the Authority during a quarterly Progress Meeting, but where it is later decided by the Authority not to proceed with the Gainshare, shall be allowed as a genuine charge to the Contract;
- e. Any non-recurring costs incurred by the Contractor during investigation of a proposed Gainshare which has been approved by the Authority during a quarterly Progress Meeting, but where it is later decided by mutual agreement not to proceed with the Gainshare, shall be shared in a ratio to be agreed between both parties.
- f. The Authority may at his discretion, request the Contractor to provide a quotation for non-recurring costs incurred.
- g. The Contractor shall not claim any profit when recovering non-recurring costs under a Gainshare proposal.

### **9.4 Transfer Of Undertakings (Protection Of Employment)**

The Contractor shall comply with the provisions of Annex T and its Appendices to the Contract.

- a. **CONDITIONS PRECEDENT:**

"This Agreement shall not become effective until the following condition[s] ha[s/ve] been satisfied:

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(i) The Contractor and any Employing Sub-contractor enter into an Admission Agreement in the form set out in Annex A to Schedule as detailed in Annex T to the ITN; and

b. PENSIONS:

“The parties agree that the provisions of Schedule as detailed in Annex T to the ITN will apply to this Agreement.

c. SUB-CONTRACTING: PENSIONS

All Sub-contracts which may result in the employment of any Former Authority Employee being transferred to a Sub-contractor pursuant to the Transfer Regulations shall include those provisions required under clause 1.2 of Schedule as detailed in Annex T to the ITN (Pensions) of this Contract in respect of such Sub-contracts.

d. TERMINATION:

The Authority may terminate this Agreement at any time before the Expiry Date in the following circumstances:

(i) If the Contractor does not enter into the Admission Agreement by Contract Award;

(ii) If the Contractor breaches the provisions of the Admission Agreement provided that where the breach is remediable the right to terminate shall only arise where the Contractor fails to remedy the breach within 28 days of service of a notice from the Minister for the Cabinet Office setting out particulars of the breach and requiring the Contractor to remedy it;

(iii) If the Contractor breaches the provisions of as detailed in Annex T to the ITN provided that where the breach is remediable the right to terminate shall only arise where the Contractor fails to remedy the breach within 28 days of service of a notice from the Authority setting out particulars of the breach and requiring the Contractor to remedy it; or

(iv) Where notice to terminate the Admission Agreement has been served under clause 13.1 of the Admission Agreement

## 9.5 General Exit Strategy

a. The Authority and the Contractor recognise the importance of timely planning to ensure that, following expiry or termination of the Contract, there is a seamless and effective transition to alternative Support arrangements. Following expiry or termination of the requirements of the Contract, the Contractor shall assist the Authority if necessary in the implementation of such alternative Support arrangements; the extent of such assistance shall be mutually agreed between the Authority and the Contractor at the time. The Contractor shall complete the activities described in the Exit Management Plan at Annex R to the ITN OSP/0050, which shall be reviewed and updated if necessary by the Contractor at not less than quarterly intervals. The activities described in the Exit Management Plan will be overseen by the Authority's Project Manager or his authorised representative. The Contractor shall allow

the Authority's representatives reasonable access to Contract Data throughout the Contract term to ensure the Contract Data prepared in accordance with the provisions of this clause is adequate in terms of scope and stage of completion. The activities shall include, but not be limited to:

- i. Completion of all maintenance and inspections up to an agreed transition date for each part of CWSS.
- ii. Completion of incident sentencing obligations and rectification following on from the forum.
- iii. Provision of all CWSS engineering and asset management data complete up to the transition date for each piece of equipment (including historical data since contract start).
- iv. Provision of all inventory management data complete up to the transition date for CWSS (including historical data since contract start).
- v. Provision of a final report incorporating the latest updated quarterly reports and element plans extant for the CWSS in the current configuration.
- vi. The transfer to the Authority of any spares held solely in support of CWSS which the Authority wishes to acquire. The prices for the spares shall be agreed in accordance with the Government profit formula, shall take into account the standard cost at the time on the Contractor's Business System and any payments already made for those spares under Item 3c of the Schedule of Requirements at Table 1 to the ITN OSP/0050. Refer to GFA clause at paragraph 6.1 ix to the ITN OSP/0050.

**DEFFORM 111**  
(Edn 08/15)

### Appendix - Addresses and Other Information

<p><b>9. 1. Commercial Officer</b></p> <p><b>Miss C. Wilkins</b></p> <p>Operational Infrastructure Programmes   Commercial MOD Abbey Wood, #1309   Spruce 3A   Bristol   BS34 8JH</p> <p><b>Email: DESLEOSP-OIP-CWSS-Comrcl@mod.uk</b></p>	<p><b>9. 8. Public Accounting Authority</b></p> <p>1. Returns under DEFCON 694 (or SC equivalent) should be sent to DBS Finance ADMT – Assets In Industry 1, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD ☎ 44 (0) 161 233 5397</p> <p>2. For all other enquiries contact DES Fin FA-AMET Policy, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD ☎ 44 (0) 161 233 5394</p>
<p><b>2. Project Manager, Equipment Support Manager or PT Leader</b> (from whom technical information is available)</p> <p>Jonathan Clarke</p> <p>Email:</p>	<p><b>9. Consignment Instructions</b></p> <p>The items are to be consigned as follows:</p>
<p><b>3. Packaging Design Authority</b></p> <p>(where no address is shown please contact the Project Team in Box 2)</p>	<p><b>10. Transport.</b> The appropriate Ministry of Defence Transport Offices are:</p> <p><b>A. DSCOM.</b> DE&amp;S, DSCOM, MoD Abbey Wood, Cedar 3c, Mail Point 3351, BRISTOL BS34 8JH <u>Air Freight Centre</u> IMPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943 EXPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943 <u>Surface Freight Centre</u> IMPORTS ☎ 030 679 81129 / 81133 / 81138 Fax 0117 913 8946 EXPORTS ☎ 030 679 81129 / 81133 / 81138 Fax 0117 913 8946</p> <p><b>B. JSCS</b> JSCS Helpdesk Tel 01869 256052 (option 2, then option 3); JSCS Fax No 01869 256837 <a href="http://www.freightcollection.com">www.freightcollection.com</a></p>
<p><b>4. (a) Supply/Support Management Branch or Order Manager:</b></p> <p><b>Tel No:</b></p> <p><b>(b) U.I.N.</b></p>	<p><b>11The Invoice Paying Authority (see Note 1)</b></p> <p>Ministry of Defence ☎ 0151-242-2000 DBS Finance Walker House, Exchange Flags Fax: 0151-242-2809 Liverpool, L2 3YL <b>Website is:</b> <a href="https://www.gov.uk/government/organisations/ministry-of-defence/about/procurement#invoice-processing">https://www.gov.uk/government/organisations/ministry-of-defence/about/procurement#invoice-processing</a></p>
<p><b>5. Drawings/Specifications are available from</b></p>	<p><b>12. Forms and Documentation are available through *:</b></p> <p>Ministry of Defence, Forms and Pubs Commodity Management PO Box 2, Building C16, C Site Lower Arncott Bicester, OX25 1LP (Tel. 01869 256197 Fax: 01869 256824) <b>Applications via fax or email: DESLCSLS- OpsFormsandPubs@mod.uk.</b></p>
<p><b>6. For contracts containing DEFCON 5, mauve Copies of MOD Form 640 are to be sent to</b></p> <p>(where no address is shown the mauve copy should be destroyed)</p>	<p><b>NOTES</b></p> <p><b>1. Forms.</b> Hard copies, including MOD Form 640 are available from address in Box 12. , All other invoicing forms e.g. AG Forms 169 and 173, are available from the website address shown at Box 11.</p> <p><b>2.* Many DEFCONs and DEFFORMs</b> can also be obtained from the MOD Internet Website; <a href="https://www.aof.mod.uk/aofcontent/tactical/toolkit/index.htm">https://www.aof.mod.uk/aofcontent/tactical/toolkit/index.htm</a></p>
<p><b>7. Quality Assurance Representative:</b></p> <p>Commercial staff are reminded that all Quality Assurance requirements should be listed under the General Contract Conditions.</p> <p><b>AQAPS and DEF STANs</b> are available from UK Defence Standardization, for access to the documents and details of the helpdesk visit <a href="http://dstan.uwh.dif.r.mil.uk/">http://dstan.uwh.dif.r.mil.uk/</a> [intranet] or <a href="https://www.dstan.mod.uk/">https://www.dstan.mod.uk/</a> [extranet, registration needed]</p>	

## Design Rights and Patents (Sub-Contractor's Agreement)

THIS AGREEMENT is made the                      day of                      19

BETWEEN

whose registered office is at

(hereinafter called "the Sub-Contractor") of the one part and THE SECRETARY OF STATE FOR DEFENCE (hereinafter called "the Secretary of State") of the other part

WHEREAS:-

1. The Secretary of State has placed with (hereinafter called "the main contractor") a contract bearing the reference number (hereinafter called "the main contract") for the design and development of the effect of which is that the costs of such design and development (including the cost referable to any sub-contracts hereinafter referred to) will be substantially borne by the Secretary of State.
2. The main contractor contemplates that the design development and supply of certain components needed for performance of the main contract will be undertaken by various third parties in pursuance of sub-contracts made between them and the main contractor.
3. With a view to securing to the Secretary of State rights as regards inventions designs and other related matters in respect of any sub-contract the main contract provides that the main contractor shall not enter into any sub-contract for any component aforesaid without obtaining the prior approval of the Secretary of State.
4. The main contractor has now informed the Secretary of State that for the purpose of performing the main contract he wishes to place with the Sub-Contractor a sub-contract for the design and development of the items described in the First Schedule (hereinafter called "the sub-contracted items") and has requested the Secretary of State's approval of the sub-contract accordingly.
5. The Secretary of State has signified his willingness to approve the sub-contract on condition that in consideration of his giving approval the Sub-Contractor enters into a direct Agreement with the Secretary of State concerning the matters hereinafter appearing and the Sub-Contractor has signified his willingness to enter into such an agreement.

Subject to Contract

NOW THIS AGREEMENT made in consideration of the premises and of the rights and liabilities hereunder mutually granted and undertaken WITNESSETH AND IT IS HEREBY AGREED AND DECLARED as follows:-

1. The Sub-Contractor and the Secretary of State hereby agree to be bound to each other by the provisions of the Conditions as set out in the Second Schedule hereto.
2. No extension alteration or variation in the terms of the sub-contract between the main contractor and the sub-contractor and no other agreement between the main contractor and the sub-contractor relating to the work to be done under the sub-contract or any modification now or hereafter made thereto shall prejudice the operation of this Agreement which shall in all respects apply to the sub-contract as so extended altered varied supplemented or modified as if such extension alteration variation supplementation or modification had been originally provided for in the sub-contract and the expression "the sub-contract items" shall have effect accordingly.

**DEFFORM 177 (Edn 3/80)**

IN WITNESS whereof the parties hereto have set their hands the day and years first before written

Signed on behalf of  
the Sub-Contractor

(in capacity of )

Signed on behalf of  
The Secretary of  
State for Defence

Subject to Contract



**DEFFORM 177 (Edn 3/80)**

THE FIRST SCHEDULE

The Sub-Contract Items are:-

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-----  
THE SECOND SCHEDULE

The Clauses which apply to this Agreement are:-

To be  
inserted as  
appropriate

except that:

- (i) Where "the Contractor" is stated "the Sub-Contractor" shall be substituted.
- (ii) Where "the Authority" is stated "the Secretary of State" shall be substituted.
- (iii) Where "Contract" is stated "sub-contract" shall be substituted.
- (iv) Where "sub-contractor" is stated "further sub-contractor" shall be substituted.
- (v) Where "sub-contract" is stated "further sub-contract" shall be substituted.

Subject to Contract

