

4 May 2023

Dear Sir / Madam

**Invitation to Tender Reference 706826451**

1. You are invited to tender for the Purchase of Auditory Evoked Potential Equipment, including Set Up, Training and Maintenance for 5 years in competition in accordance with the attached documentation.
2. The requirement is set out in [Schedule 4 - Statement of Requirements](#). Tenders will be evaluated in accordance with the [Tender Evaluation Criteria](#) and the resulting contract will be based on the [Terms & Conditions](#).
3. The total budget is £36,000.00 (excluding VAT). This is broken down as:  
£33,000.00 for all equipment, set up and training  
£2,000.00 for 5 years annual maintenance and calibration  
£1,000.00 for consumables over 5 years
4. You may raise questions about the tender and the requirement via the Defence Sourcing Portal. The deadline for asking questions is 10:00 on 18 May 2023. Please note that any questions raised, and the answers provided, may be shared with other interested suppliers.
5. You must submit your Tender via the Defence Sourcing Portal by 10:00 on 6 June 2023. You should allow sufficient time for submission as late tenders will not be accepted. Tender responses should answer all evaluation questions, include all completed documents, and provide all requested prices.
6. The anticipated date for the contract award decision is 12 June 2023. Please note that this is an indicative date and may change.

Yours faithfully

**Lauren Terry**  
Senior Commercial Manager

**Ministry of Defence  
Invitation to Tender (ITT)  
Less Complex Requirements  
(Competitive)**

To:	ITT Reference No: 706826451  ITT Issue Date: 4 May 2023  Due for return by (Due Date): 6 June 2023
	From: Navy Commercial  Address: 4 Deck, NCHQ, Leach Building, Whale Island, Portsmouth, PO2 8BY  Commercial Officer: Lauren Terry  Telephone: 03001677915 Email: lauren.terry103@mod.gov.uk

**This ITT consists of:**

1. Invitation to Tender – Less Complex Requirements Competitive.
2. Annex A - Offer.
3. Annex B - Tender Evaluation Criteria.
4. Special Notices and Instructions to Tenderers.
5. Purchase Order, including the Schedule of Requirements.
6. Statement of Requirements.
7. MOD Terms and Conditions for Less Complex Requirements.
8. DEFFORM 68 (see Clause 9 of Terms and Conditions).
9. Statement Relating to Good Standing.
10. DEFFORM 711
11. Cyber Risk Assessment

**The Tenderer must return:**

1. Completed Annex A to this ITT.
2. Completed Purchase Order.
3. Any other documentation requested in the Tender

## Invitation to Tender – Competitive

### Notices To Tenderers

1. You are invited to tender, in accordance with the following Conditions, for the supply of Deliverables detailed in the accompanying ITT Material. **The issue of an ITT is not a commitment by the Secretary of State for Defence - ‘the Authority’ - to place an order as a result of the tendering exercise or at a later stage. Any expenditure, work or effort undertaken prior to an offer of contract and acceptance thereof, is a matter solely for the commercial judgement of your company. The Authority reserves the right to:**
  - a. undertake an iterative tendering process following receipt of the tender;
  - b. waive or change the requirements of this ITT from time to time without prior (or any) notice being given by the Authority;
  - c. seek clarification or documents in respect of a Tenderer's submission;
  - d. disqualify any Tenderer that does not submit a compliant tender in accordance with the instructions in this ITT;
  - e. disqualify any Tenderer that is guilty of serious misrepresentation in relation to its tender, expression of interest, the PQQ or the tender process;
  - f. withdraw this ITT at any time, or to re-invite tenders on the same or any alternative basis;
  - g. choose not to award any Contract as a result of the current procurement process; and / or
  - h. make whatever changes it sees fit to the timetable, structure or content of the procurement process, depending on approvals processes or for any other reason.

### Publicity Announcement

2. Tenderers are advised that the MOD may wish to publicise the award of the Contract for the requirement described in the Schedule of Requirements in the attached Purchase Order.
3. Any Tenderer who wishes to make a similar announcement, either coincident with or subsequent to the MOD's announcement, should contact the Authority's Representative (Commercial Officer) named in the Purchase Order. The content of any announcement a successful Tenderer may wish to make must be cleared in writing and in advance by the MOD Authority's Representative (Commercial Officer) named in the Purchase Order who shall liaise with the MOD Security branch responsible for clearance of publicity material for open publication.
4. If the notice inviting tenders was advertised in Contracts Finder, the MOD will publish the following information on the Contract awarded unless the MOD decides that there are specific and valid reasons for not doing so:
  - a. Contractor's Name;
  - b. Nature of the Deliverables to be supplied;
  - c. Award criteria;

- d. Rationale for Contract award; and
  - e. Total price of the Contract awarded.
5. Under no circumstances should a successful Tenderer(s) confirm to any third party the fact of their acceptance of an offer of Contract prior to informing the MOD of their acceptance, and / or ahead of the MOD's announcement of the award of Contract.

### **Codes of Practice**

6. The attention of Tenderers is drawn to the agreements that have been reached by the MOD / Industry Commercial Policy Group (CPG) on Codes of Practice. The Codes of Practice are intended to demonstrate a commitment by the MOD and its suppliers to the establishment of better working relationships in the supply chain, based upon openness and trust. The opportunity also exists for Tenderers to advertise any subcontracts valued at over £10,000 in the Defence Sourcing Portal and further details can be obtained directly from: <https://www.gov.uk/guidance/subcontract-advertising>. This process is managed by the Strategic Supplier Management team who can be contacted at: DefComrcISSM-Suppliers@mod.gov.uk.

### **Submission of Tender**

7. Tenderers must:
- a. Sign and date Part A (but not Part C) ("Effective date") of the Offer and Acceptance box on both copies of the Purchase Order, scan and return them both as PDFs, as part of their tender. The Terms and Conditions are to be kept by the Tenderer for their records.
  - b. Complete the Consignor Box with the name and address of the Consignor where the MOD stipulates that the Deliverables will be transported by the MOD (as defined in the Purchase Order under the Transport Instructions box);
  - c. Complete the Schedule to the Purchase Order by populating the Delivery Date column (if stated to do so), the Firm Price (£) Ex VAT sub columns (Per Item and Total including packing), finally completing the Total Firm Price at the bottom of the Schedule.
  - d. Sign, scan and return one copy of the tender form, at Annex A to this Invitation to Tender – Less Complex Requirements – Competitive Procurement, as a PDF, as part of their tender.
  - e. Provide any further information requested in this Invitation to Tender.
8. Your Tender must be submitted electronically via the Defence Sourcing Portal no later than the date and time stated above. The Authority reserve the right to reject any Tender received after the stated date and time. Hard copy, paper or delivered digital Tenders (e.g. DVD) are no longer required and will not be accepted by the Authority. You must provide one priced copy of your Tender and one unpriced copy. You should ensure that there are no prices present in your unpriced copy.
9. You must ensure that your completed SC1A ITT Comp Annex A is signed, scanned and uploaded to the Defence Sourcing Portal, with the SC1A Purchase Order and Schedule of Requirements as a PDF. Your Tender must be compatible with MSWord and other MSOffice applications.
10. Tenderers must ensure they are registered on the Defence Sourcing Portal in order to submit their Tender response. A supplier registration guide and a supplier user guide is

available on the Defence Sourcing Portal landing page.

11. The Defence Sourcing Portal is security accredited to OFFICIAL-SENSITIVE. Material that is protectively marked above this classification must not be uploaded. Please contact if you have a requirement to submit documents above OFFICIAL SENSITIVE.
12. You must not upload any ITAR or Export Controlled information as part of your Tender or ITT documentation into the Defence Sourcing Portal. You must contact to discuss any exchange of ITAR or Export Controlled information. You must ensure that you have the relevant permissions to transfer information to the Authority.
13. If you have any difficulty accessing the Defence Sourcing Portal or if you have any questions with regards to the tendering exercise itself, please contact the MOD Commercial Officer named above.
14. Any request for an extension of the period for tendering must be submitted on the DSP at least four (4) Business Days before the tender return date. Any extension will be at the sole discretion of the Authority and if granted will be granted to all Tenderers. All correspondence connected with your tender which requires attention before the tender return date, or communications stating that no tender will be submitted, must be submitted on the DSP.  
**This procedure is designed to preserve equity between Tenderers by ensuring that no premature disclosure of tender details can take place.**
15. **No useful purpose is served by enquiring about the result of this ITT.** Tenderers will be notified of the Authority's decision as early as possible.

#### **Formation of Contract**

16. Once the evaluation process has been completed, the Tenderers will be notified of the outcome of the competition and the name of the successful Tenderer. The Authority's Representative (Commercial) stipulated on the Purchase Order will accept the successful tender by signing and dating Part B of the Offer and Acceptance box of the Purchase Order and dating Part C to signify the Effective Date (i.e. the date of the Contract). The Effective Date shall be no earlier than the date of acceptance of the tender and shall allow a reasonable time for the acceptance to be communicated to the Contractor. One copy of the completed Purchase Order will then be returned to the Contractor to be attached to their copy of the Terms and Conditions.

#### **Instruction to Tenderers**

1. **Small and Medium-sized Enterprises** - The Authority is committed to supporting the Government's small and medium-sized enterprise (SME) policy, and we want to encourage wider SME participation throughout our supply chain. Our goal is that 25% of MOD spending should be spent with SMEs by 2020; this applies to the money which the MOD spends directly with SMEs and through the supply chain. The Authority uses the European Commission definition of an SME.

A key aspect of the Government's SME Policy is ensuring that its suppliers throughout the supply chain are paid promptly. All suppliers to the Authority and their sub-contractors are encouraged to make their own commitment and register with the [Prompt Payment Code](#). Suppliers are also encouraged to work with the Authority to support the Authority's SME initiative. Information on the Authority's purchasing arrangements, our commercial policies and our SME policy can be found at [Gov.UK](#) and the DSP.

2. **Price** - In order to facilitate the comparison of tenders, the prices quoted for the

Deliverables and Packaging must reflect the terms of the Purchase Order and be set out in strict accordance with the requirements of the Schedule to Purchase Order.

3. **Orders for Parts of the Tender** - The Authority reserves the right, **unless the Tenderer expressly states that parts of the tender may not be accepted separately in their tender**, to order some or all of the Deliverables stated in the Schedule to the Purchase Order.
4. **Alternative Conditions** - The Tenderer shall comply with the notices and instructions set out in this ITT and submit a tender compliant with the MOD Terms and Conditions for Less Complex Requirements. Any offer made subject to additional or alternative contractual conditions will not be considered and will be rejected on the grounds of those conditions alone.
5. **Tender Evaluation** - The tender evaluation shall be carried out in accordance with the Evaluation Criteria stated in the ITT tender documentation. **The Authority can only evaluate those things stated in your tender.**
6. **Alteration to Purchase Order** - Any alteration to the Purchase Order suggested by the Tenderer (e.g. an alternative Delivery offer), should be effected by striking through the original entry and inserting the alternative adjacent to it. The Tenderer's attention is, however, drawn to paragraphs 3 to 5 above.
7. **Completion of Tender**
  - a. In the event of a Deliverable appearing more than once in the attached Schedule of Requirements, whether separately or as part of an assembly, the Tenderer is requested to quote on the basis of the total quantity for that Deliverable.
  - b. The Tenderer should ensure that their tender is clear and in a form which will allow the Authority to take copies for evaluation purposes.
8. **Tenders for Selected Deliverables** - Tenders need not necessarily be for all the Deliverables listed in the Schedule to the Purchase Order. The words "No Tender" should be inserted in the price column against items for which no offer is made.
9. **Bid costs** - The Tenderer will bear all costs associated with preparing and submitting their Tender. If the Tender process is terminated or amended by the Authority, the Tenderer will not be reimbursed.
10. **ITT Material**
  - a. ITT Material means information (including for example, drawings, handbooks, manuals, instructions, specifications and notes of pre-tender clarification meetings, in whatever form or medium, patterns and samples) issued to you by the Authority or on its behalf, or to which you have been given access, for the purposes of responding to this ITT. ITT Material remains the property of the Authority or other owners and is released solely for the purpose of tendering. The Tenderer shall notify the Authority's Representative (Commercial Officer) without delay if any additional ITT Material is required for the purpose of tendering. The Tenderer shall be responsible for the safe custody and due return of ITT Material, and shall be responsible for all loss or damage sustained while in their care, and until re-delivered to the Authority.

- b. **Destruction of ITT Material** You must immediately confirm destruction of (or in the case of software, that it is beyond use) all ITT Documentation, ITT Material and derived information of an unmarked nature, should you decide not to respond to this ITT, or you are notified by the Authority that your Tender has been unsuccessful.
- c. **Intellectual Property Rights in ITT Material** The Intellectual Property Rights in ITT Material may belong to the Authority or a third party. The ITT Material may only be used for the purpose of responding to this ITT and shall not be copied, or disclosed to anyone other than employees of the Tenderer involved in the preparation of the tender, without the prior written approval of the Authority. If the Tenderer discloses the ITT Material other than to employees involved in the tender preparation, or uses the ITT Material other than for the purpose of tendering, the Authority, or the third party owner, may suffer damage for which compensation may be sought from the Tenderer.
- d. **Confidentiality Agreements** Some or all of the ITT Material issued in connection with this ITT may already be the subject of Confidentiality Agreements. The provisions of such agreements are in addition to, and not in substitution for, any obligations arising from receipt of or access to ITT Material under the terms of this ITT, and the provisions of sub-paragraphs 10.a - c above.

## 11. Samples

- a. Where it is indicated in Annex B that samples may be required for evaluation, the Tenderer must be prepared to submit them without charge. Samples should be clearly labelled with the following particulars:
  - i. The Tenderer's name and address.
  - ii. The ITT Reference Number and tender return date.
  - iii. Description and Item Number as shown in the Schedule to the Purchase Order.
- b. The Authority shall retain all samples for twelve (12) months. After this period the Authority shall destroy the samples unless you specifically state you require their return. The sample of any subsequent contracts shall be kept indefinitely.

## 12. Notification of Inventions etc.

- a. The Tenderer acknowledges that their prices shall include the use of any intellectual property rights which they own or control to the extent that their use is required for the performance of any resultant Contract. The Tenderer also acknowledges that their prices include subsequent use by the Authority of anything delivered under the Contract.
- b. In their tender the Tenderer shall notify the Authority of:
  - i. any invention or design the subject of patent or registered design rights (or application therefore) of which the Tenderer is aware , and;
  - ii. any other restriction (including any export requirement or restriction) as to disclosure or use or obligation to make payments in respect of intellectual property (including technical information) to which the Tenderer is subject, and;
  - iii. any allegation of infringement of intellectual property rights made against the Tenderer;

which pertains to or appears to be relevant to the performance of any resultant Contract or to subsequent use by the Authority of anything required to be done or

delivered under any resultant Contract.

- c. The Tenderer shall, at the request of the Authority, give the Authority particulars of every restriction and obligation referred to in sub-paragraph 12.b.(2). above.
- d. If the information required under this Paragraph 12 has been provided previously, the Tenderer may satisfy these requirements by giving details of the previous notification.

**13. Ozone Depleting Substances** - The Tenderer must state whether the Contractor Deliverables or any item provided in accordance with the Terms and Conditions of the Contract (including Packaging) use Substances that deplete the Ozone Layer, as defined in Regulation (EC) 1005/2009, as it applies in Great Britain as retained EU law, and as it applies in Northern Ireland directly.

**14. Hazardous Deliverables and Substances** - It is a condition of this ITT that where the ITT calls for, or the Tenderer proposes, the use of Hazardous Deliverables or substances, the Tenderer shall provide with their tender a completed Safety Data Sheet in accordance with Clause 9 of the Terms and Conditions. Failure to comply fully with this condition may result in the tender being deemed non-compliant thus rendering it ineligible for further consideration by the Authority.

**15. Elimination Of Asbestos** - It is a condition of this ITT that the Deliverables shall not incorporate asbestos of any kind. The Tenderer will confirm this by signing and returning the tender form at Annex A to this ITT as part of their tender.

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

- a. Tenderers should be aware that, if they are awarded the Contract, the content of the Contract may be published by the MOD to the general public in line with government policy set out in the Government's [Transparency Principles](#).
- b. Before publishing the Contract, the MOD will redact any information which would be exempt from disclosure if it was the subject of a request for information under the Freedom of Information Act 2000 ("the FOIA") or the Environmental Information Regulations 2002 ("the EIR").
- c. The FOIA and the EIR provide a more general statutory right of access to information held by or on behalf of public authorities, including information provided by third parties such as suppliers. This right of access is subject to a number of exemptions, including confidential information and commercially sensitive information. Further details of MOD policy on FOIA and EIR can be found on Knowledge in Defence (KiD) (<https://www.aof.mod.uk/aofcontent/tactical/toolkit/index.htm> click on "Commercial Toolkit" then "MOD Commercial Management" then "Freedom of Information").
- d. In order to assist the MOD in applying the exemptions in the FOIA and the EIR, Tenderers should complete the appropriate Tenderer's Sensitive Information box in the Purchase Order, explaining which parts of their Tender they consider to be sensitive or confidential. Tenderers are also requested to include in the box the details of a named individual who may be contacted with regard to this information.
- e. Tenderers should note that, while their views will be taken into consideration, the ultimate decision whether to publish or disclose information provided to the MOD lies with the MOD. Tenderers are advised to give as much detail as possible on the Form. It is highly unlikely that a contract will be exempt from disclosure in its entirety. Should the MOD decide to publish or disclose information against the



wishes of a Tenderer, the Tenderer will be given prior notification.

**17. Consultation with Credit Reference Agencies** - The Authority may consult credit reference agencies to assess the creditworthiness of a Tenderer. Information on creditworthiness may be used by the MOD to support and influence decisions to enter into business with a Tenderer.

**18. Conflicts of Interest**

- a. MOD policy states that it is sometimes in the MOD's wider business interests to allow suppliers to operate on both the client and supply side. Conflicts of Interest (Col) can occur outside of direct commercial relationships between the MOD and its suppliers and therefore all personnel involved in acquisition (both Authority and Tenderer) should be familiar with the Conflicts of Interest Commercial Policy Statement (CPS).
- b. Accordingly, Tenderers shall notify immediately the Authority of any current or potential or perceived Col relating to the requirement and shall give particulars of every instance. Tenderers should be aware that withholding knowledge of such interests may result in disqualification from a competition.
- c. Where an actual or potential COI exists or arises or any situation arises that might give the perception of a COI at any point before the Contract award decision, you must provide a proposed Compliance Regime to the Authority upon request. The proposed Compliance Regime must be of a standard which, in the Authority's sole opinion, appropriately manages the conflict, provides sufficient separation to prevent distortion of competition and provides full details that cover those areas listed at (1) to (7) below. Where the Contract is awarded and the COI is still relevant post-Contract award decision, your proposed Compliance Regime will become part of the Contract Terms and Conditions. As a minimum, the Compliance Regime must include:
  - i. the manner of operation and management;
  - ii. roles and responsibilities Manner of operation and management;
  - iii. standards for integrity and fair dealing; for integrity and fair dealing;
  - iv. levels of access to and protection of competitors sensitive information and Government Furnished Information;
  - v. confidentiality and/or Non-Disclosure Agreements (NDA's)(e.g. DEFFORM 702);
  - vi. the Authority rights of audit;
  - vii. physical and managerial separation.
- d. Tenderers are ultimately responsible for ensuring that no COI exists. Any Tenderer who fails to comply with the requirements in this paragraph 18 (including where the Authority does not deem the proposed Compliance Regime to be of a standard which appropriately manages the conflict) may be disqualified from the procurement at the discretion of the Authority

**19. Canvassing** - Any Tenderer who directly or indirectly seeks to persuade any officer, member, employee, or agent of the MOD concerning this procurement except by responding to this ITT or who directly or indirectly obtains or attempts to obtain information from any such officer, member, employee or agent of the MOD concerning any other Tenderer, tender or proposed tender concerning this procurement before the end of the selection process will be disqualified from consideration for this procurement.

**20. Collusive Behaviour** - The Tenderer's attention is drawn to the requirements of the

Competition Act 1998, Part 1. Any Tenderer found to have been part of a 'Concerted Practice' or 'Agreement', the purpose of which was to prevent, restrict or distort competition, shall be disqualified from consideration from this procurement. Disqualification will be without prejudice to any to any civil remedy available to the Authority or criminal liability which the conduct of the Tenderer may attract.

21. **Bribery** - Any Tenderer who offers to pay or give or does pay or give any sum or sums of money, inducement or valuable consideration directly or indirectly to any party for doing or having done or causing or having caused to be done, any act or omission concerning this tender shall be disqualified. Disqualification will be without prejudice to any to any civil remedy available to the Authority or criminal liability which the conduct of the Tenderer may attract.
22. **Authority Remedies for Breach of Contract** - Tenderers should be aware of the contractual remedies set out at Clause 17 of the Terms and Conditions of the Contract which may apply in the event of a breach of contract by the Contractor. Damages for breach of contract are not limited under the Contract. However, Tenderers should also note under Clause 17 that in exercising its rights and remedies under the Contract the Authority must act in a reasonable and proportionate manner having regard to the nature and consequences of the breach of contract. If Tenderers are unsure about the potential liability under the Contract, they should seek advice as appropriate.
23. **Confidential Information** - All Central Government Departments and their Executive Agencies and Non Departmental Public Bodies are subject to control and reporting within Government, in particular, they report to the Cabinet Office and HM Treasury for all expenditure. Further, the Cabinet Office has a cross-governmental role delivering overall Government policy on public procurement, including ensuring value for money and related aspects of good procurement practice.

For these purposes, the Authority may share within Government any of the Contractor's documentation / information (including any that the Contractor considers to be confidential and/or commercially sensitive such as specific bid information) submitted by the Contractor to the Authority during this Procurement. The information will not be disclosed outside Government. Contractors taking part in this competition must identify any sensitive material in the DEFFORM 539A and consent to these terms as part of the competition process.

24. **Cyber Essentials Accreditation** - For all new requirements advertised from 1st January 2016 which entail the transfer of MOD identifiable information from customer to supplier or the generation of information by a supplier specifically in support of the MOD contract, MOD will require suppliers to have a Cyber Essentials certificate by the contract start date at the latest, and for it to be renewed annually. This requirement must be flowed down the supply chain.

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

Please notify the Authority as soon as you become aware of any issues with Supply Chain ability to comply with Cyber Essentials.

**THE TENDERER MUST SIGN AND RETURN ONE COPY OF SC1A ITT Comp (Annex A) WITH THEIR TENDER**

**Ministry of Defence**  
**TENDER**

**To the Secretary of State for Defence (hereinafter called "the Authority")**

The undersigned Tenderer having read the Invitation to Tender – Less Complex Requirements – Competitive Procurement and accompanying Conditions of Contract, offers to supply the Deliverables (to the extent which the Authority may determine in ordering the Deliverables ) at the price or prices and at the time or times stated and in accordance with any drawings and / or specifications stated in the Purchase Order and subject the above mentioned MOD Terms and Conditions.

The following additional information is provided:

<b>Notification of Inventions</b>
Please state below details invention or design, other restriction and any allegation of infringement specified in Paragraph 12.b and 12.d (continue on a separate sheet if necessary).
<b>Ozone Depleting Substances</b>
Please state below details of the use of substances specified in Paragraph 13, or state "NIL RETURN" (continue on a separate sheet if necessary).
<b>Asbestos</b>
By signing this Offer, the Contractor confirms that the Deliverables do not incorporate asbestos as specified in Paragraph 15
<b>Premises where Contract will be performed (if applicable)</b>
The Deliverables, or any part of them supplied under this Contract resulting from this Tender will be manufactured and or bought in from premises detailed below:
<b>Value of Tender (excluding VAT)</b>
Total cost of Deliverables, including packaging, required computed at the Tenderer's quoted price   £  Total value of tender (to be repeated below in WORDS)   £  (WORDS:       )
<b>Value Added Tax</b>
If registered for Value Added Tax purposes, please insert  a.       Registration No  b.       Total amount of Value Added Tax payable on this tender (at current rate(s))   £
<b>Transparency</b>
Should the Tenderer be awarded a Contract resulting from this tender, it understands that the Authority may publish the content of the Contract to the general public. The Sensitive Information which forms part of the Purchase Order is completed to assist the Authority in applying the appropriate exemptions in the FOIA and the EIR.
1.       We certify that the offer made in connection with the above tender is intended to be genuinely competitive. No aspect of the price has been fixed or adjusted by any arrangement with any third party. Arrangement in this context includes any transaction or agreement, private or open, or collusion, formal or informal, and whether or not legally binding. In particular:  a.       the offered price has not been divulged to any third party person,  b.       no arrangement has been made with any third party that they should refrain from tendering,

- c. no arrangement with any third party has been made to the effect that we will refrain from bidding on a future occasion,
- d. no discussion with any third party has taken place concerning the details of either's proposed price, and
- e. no arrangement has been made with any third party otherwise to limit genuine competition.

2. We understand that any instances of illegal cartels, market sharing arrangements or other anti-competitive practices, suspected by the Ministry of Defence will be referred to the Competition and Markets Authority for investigation and may be subject to action under the Competition Act 1998 and the Enterprise Act 2002.

3. We understand that any misrepresentations may also be the subject of criminal investigation or used as the basis for civil action.

4. We agree that the Authority may share the Contractor's information / documentation (submitted to the Authority during this procurement) more widely within Government for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes. We certify that we have identified any Sensitive Information in DEFFORM 539A.

**Dated this                      day of                      Year**

**Signature:** **In the capacity of**  
(State official position e.g. Director, Manager, Secretary etc.)

**Name:** (in BLOCK CAPITALS)

**duly authorised to sign this tender for and on behalf of:**

(Tenderer's Name)

**Postal Address:**

**Telephone No:**

**Email:**

## **Annex B – Tender Evaluation Criteria**

- D1. This section details how your Tender will be evaluated.
- D2. The Tender evaluation will calculate the Most Economically Advantageous Tender (MEAT) to The Authority based on the following calculation:
- $$\text{Evaluation Score} = \frac{\text{Total Price}}{\text{Total Technical Score}}$$
- D3. Any Tender which is considered non-compliant for any Commercial, Financial or Technical element or criteria will be excluded from the competition and not receive an Evaluation Score. That tender may also be excluded from full Technical evaluations and not receive any Technical scores or feedback.
- D4. The Tenderer with the lowest Evaluation Score will be considered to be the Winning Tenderer and awarded any resulting contract.
- D5. In the event that multiple Tenderers achieve the exact same lowest Evaluation Score, then the Tenderer with the lowest Total Price will be considered to be the Winning Tenderer. In the event that multiple Tenderers achieve the exact same lowest Evaluation Score and have the exact same lowest Total Price, then The Authority reserves the right to request those, and only those, Tenderers to submit final and best Total Prices, with the lowest final and best Total Price considered to be the Winning Tenderer.
- D6. Tenderers must provide relevant answers and all requested documentation in response to all commercial qualification, financial and technical criteria/questions. Responses should remain as concise as possible and any supporting information should be relevant to the response.
- D7. Tenders will be evaluated based on the contents of their Tender response only.
- D8. Tenderers must submit only one priced proposal. Where more than one price or set of prices is submitted, only the first submitted priced proposal will be accepted.
- D9. Technical Evaluation will be undertaken independently from Commercial and Financial Evaluations. Technical evaluators will have no knowledge of associated prices. Tenderers must ensure that there are no prices shown within any technical criteria responses or supporting documents.
- D10. Should any exclusions, assumptions, dependencies or caveats apply to your Tender or any of the goods and/or services that you would provide when delivering the requirements, these should be clearly indicated in the relevant areas of the Tender.

### **Commercial Qualification Evaluation**

- D11. The Commercial Qualification Evaluation will assess if all tendering and contractual requirements have been provided.
- D12. A Tender will be considered non-compliant if:
- the Tender was not received by the due date and time.
  - the full set of requirements cannot be delivered.
  - any required delivery dates cannot be met.
  - all MOD Terms & Conditions have not been accepted.
  - any other required documentation was not submitted.

- any prices have been included in the technical responses and the Authority considers that this has affected the evaluation process.
- more than one priced proposal has been submitted and the Authority considers that this has affected the evaluation process.

D13. The Authority reserves the right to undertake due diligence checks and/or financial health checks of Tenderers as part of the Commercial Evaluation. If any of these checks raises concerns around the Tenderer or If a Parent Company or Bank guarantee is requested and is not provided, The Authority will consider the Tenderer non-compliant. If these checks are undertaken on the Winning Supplier during the standstill period prior to formal contract award, the Authority reserves the right to award the Contract to the next best placed Supplier or to cancel or re-run the procurement.

## **Financial Evaluation**

D14. The Financial Evaluation will assess the Total Price the Tenderer has offered to deliver all the requirements set out in the Statement of Requirements.

D15. As the maximum duration for this contract is longer than 3 years, Variation of Price (VOP) will apply to prices that for any goods and/or services delivered after 3 years. Any prices stated for the Contract Periods 4 and 5 must be the same as the prices for Contract Period 1. Any VOP calculation will be made as necessary during the contract term.

D16. Prices should be provided for each item listed in the Schedule of Requirements (prior to any VOP adjustment). The Total Price should be confirmed on Tender Annex A. This shall be the total maximum cost for the provision of all goods and/or services listed, as detailed in the Statement of Requirement, for the quantities quoted and for the full maximum duration of the requirement, including any optional goods/services and/or periods (prior to any VOP adjustment). All prices submitted must be excluding VAT.

D17. The Total Price figure that will be used in the evaluation of Tenders shall be the total figure that is calculated from the prices Tenderers have provided for each item listed in the Schedule of Requirements (prior to any VOP adjustment)., for the full maximum duration of the requirement, including any optional goods/services and periods.

D18. Tenderers are notified that when the contract is in place, payments for goods and/or services will be made after the goods and/or services have been fully delivered. For example, payment for purchase of an item will be made after it has been delivered and installed or payment for annual services will be made at the end of the contract period during which the services were undertaken.

D19. Where estimated Authority usage figures are shown on the Schedule of Requirements, the Total Price figure shall not be a guarantee of quantities required or payments to be made under any resulting Contract.

D20. A Tender will be considered non-compliant if:

- the Total Price is greater than the total available funding of £36,000.00 ex VAT; or
- Annex A shows an incorrect Total Price as the Total Price calculation is above the available funding; or
- the Tender does not indicate a Total Price; or
- the Tender has not provided prices for all items in the Schedule of Requirements.

## **Technical Evaluation**

D21. The Technical Evaluation will assess the Tender response to establish the level of confidence

The Authority has that the Tenderer will be able meet and deliver all the requirements detailed in the Statement of Requirements.

- D22. The Technical Evaluation will allocate points to a set of evaluation criteria. These criteria may also be weighted, with the points allocated to each individual criteria being multiplied by the associated weight to give a score for that individual criteria. The points, weightings and scores available for each criteria are indicated in the Technical Criteria Table. Guidance on how Tenders will be scored is in the Scoring Criteria Table.
- D23. The Technical Evaluation may also assess some criteria on a pass/fail basis. These criteria will not be included in the Total Technical Score calculation. Guidance on how Tenders will be scored is in the Scoring Criteria Table.
- D24. The scores awarded for each individual criteria, excluding any pass/fail criteria, will be added together to give the Total Technical Score.
- D25. Technical evaluators are considered to be Subject Matter Experts in the areas they are evaluating. If an individual criteria is evaluated by more than the one evaluator, then each evaluator will undertake their own assessment before attending a moderation meeting where those evaluators will agree an overall consensus points figure for that criteria. This moderated consensus points figure will be used for the purposes of the evaluation.
- D26. Evaluators will assess each question individually and will not be expected to search for answers. Where a Tenderers answer to any technical criteria question is covered within a separately attached document, the text answer to that criteria question must clearly indicate the relevant part of the supporting document in which the answer can be found. Any documents that have not been referenced will be discounted during evaluation.
- D27. A Tender will be considered non-compliant if:
- the Tender receives a fail on any pass/fail criteria; or
  - the Tender receives points which are below the threshold set for any individual criteria;

D28. Technical Criteria Table

Figure	Criteria	Points Available	Minimum Threshold	Weight	Score Available
A	Confirm the equipment meets the necessary UK/European standards as detailed in the SOR	Pass or Fail	Pass	N/A	Pass or Fail
B	Confirm equipment includes the modalities as requested in the SOR	Pass or Fail	Pass	N/A	Pass or Fail
1	Does the tender response provide for all requirements of the SOR such as, but not restricted to, equipment familiarisation, maintenance, calibration	0,30,70 or 100	30	60.00%	60.00
2	Does the equipment provide for the additional requirements as detailed in the SOR	0,30,70 or 100	30	40.00%	40.00
				100%	100

## D29. Scoring Criteria Table

Criteria A to B will be scored in accordance with the following:

Pass	Fail
<p>In The Authority's opinion the Tenderers response to the requirements or criteria being assessed: clearly details how the requirements or criteria will be met in full and sufficient evidence has been provided, where applicable.</p> <p>clearly shows that any required volumes, timescales, standards or support will be met, where applicable.</p>	<p>In The Authority's opinion the Tenderers response to the requirements or criteria being assessed: does not clearly detail how the requirement or criteria will be met in full and sufficient evidence has not been provided, where applicable.</p> <p>does not clearly show that any required volumes, timescales, standards or support will be met, where applicable.</p>

Criteria 1 and 2 will be scored in accordance with the following:

100 – High Confidence	70 – Good Confidence	30 – Moderate Confidence	0 – Low Confidence
<p>In The Authority's opinion the Tenderers response to the requirements or criteria being assessed: addresses and demonstrates a thorough understanding of all elements of the requirement or criteria, where applicable.</p> <p>provides a comprehensive, unambiguous and thorough explanation of how all of the requirement or criteria will be delivered, where applicable.</p> <p>details a thorough explanation of how the full volumes and timescales of the requirement or criteria will be met, where applicable.</p> <p>provides comprehensive details showing how all of the requirement or criteria will be managed with sufficient resource allocated and support provided for the full duration, where applicable.</p> <p>comprehensively details how the requirement or criteria will be assured and how all quality or standards</p>	<p>In The Authority's opinion the Tenderers response to the requirements or criteria being assessed: addresses and demonstrates a sufficient understanding of most of the requirement or criteria, where applicable.</p> <p>provides sufficient detail and explanation of how most of the requirement or criteria will be delivered, where applicable.</p> <p>shows sufficient ability to meet most of the volumes and timescales for the requirement or criteria, where applicable.</p> <p>provides sufficient information to show how most of the requirement or criteria will be managed with adequate resource allocated and support provided, where applicable.</p> <p>sufficiently details how most of the requirement or criteria will be assured and quality or standards expected will</p>	<p>In The Authority's opinion the Tenderers response to the requirements or criteria being assessed: addresses and demonstrates an understanding of some of the elements of the requirement or criteria, where applicable.</p> <p>is weak in some areas and does not fully detail or explain how some elements of the requirement or criteria will be delivered, where applicable.</p> <p>indicates that some of the volumes or timescales for the requirement or criteria will be met but may be lacking detail in some areas, where applicable.</p> <p>provides details of how some of the requirement or criteria will be managed but leaves concerns about the resource and support provided, where applicable.</p> <p>provides details of how some of the requirement or criteria will be assured but leaves doubt about quality</p>	<p>In The Authority's opinion the Tenderers response to the requirements or criteria being assessed: does not address or demonstrate an understanding of most or all of the requirement or criteria, where applicable.</p> <p>does not demonstrate the ability to deliver most or all of the requirement or criteria, where applicable.</p> <p>does not show that most or all of the volumes or timescales of the requirement or criteria will be met, where applicable.</p> <p>does not provide details of how most or all of the requirement or criteria will be managed or that the required resource and support will be provided, where applicable.</p> <p>does not demonstrate that most or all of the required standards or quality will be met, where applicable.</p>



expected will be met in full, where applicable. has comprehensively considered risks to delivery of the requirement or criteria and thoroughly explained how they will be eliminated or mitigated, where applicable.	be met, where applicable. has considered risks to delivery of the requirement or criteria and adequately indicated how most will be eliminated or mitigated, where applicable.	or standards, where applicable. has considered risks to some of the requirement or criteria but leaves concerns that there are risks that have not been considered or may not be mitigated, where applicable.	has identified and addressed few or no risks to delivery, where applicable.
---	---	--	---

### D30. Evaluation Example Table

The following table provides an example of how Tenders may be evaluated/scored and is for illustrative purposes only. The number of questions and potential points/scores do not necessarily reflect the exact Technical Scores and Scoring Criteria for this particular requirement or how Tenders for this requirement will be evaluated. This example is based on a procurement with 2 pass/fail criteria and 5 scored criteria, each with a minimum threshold of 30, and funding of £250,000.

Figure	Weight	Tender 1 Points	Tender 1 Score	Tender 2 Points	Tender 2 Score	Tender 3 Points	Tender 3 Score	Tender 4 Points	Tender 4 Score
A	N/A	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
B	N/A	Pass	Pass	Fail	Fail	Pass	Pass	Pass	Pass
1	30.00%	100	30.00	100	30.00	100	30.00	70	21.00
2	25.00%	70	17.50	100	25.00	30	7.50	100	25.00
3	18.00%	100	18.00	30	5.40	100	18.00	70	12.60
4	15.00%	100	15.00	0	0.00	100	15.00	100	15.00
5	12.00%	100	12.00	100	12.00	100	12.00	100	12.00
Technical Score			92.50		72.40		82.50		81.10
Technical Compliance			Compliant		Non-Compliant		Compliant		Compliant

Total Price			240,000		215,000		275,000		210,000
Financial Compliance			Compliant		Compliant		Non-Compliant		Compliant

Commercial Compliance			Compliant		Compliant		Compliant		Compliant
-----------------------	--	--	-----------	--	-----------	--	-----------	--	-----------

Evaluation Score			2594.59		0.00		0.00		2589.40
------------------	--	--	---------	--	------	--	------	--	---------

In this example, Tender 2 was non-compliant as it did not meet the minimum threshold for Technical Criteria B and 4. Tender 3 was as non-compliant as the Total Price exceeded the funding available. Tender 4 is the Winning Tenderer, as it had the lowest Evaluation Score (combining price and technical score) and was compliant for all Commercial, Financial and Technical criteria.

## Invitation to Tender

### Special Notices and Instructions to Tenderers - DEFFORM 47R (SC1A)

1. The contents of this Invitation to Tender must not be disclosed to un-authorised persons and must be used only for the purposes of tendering.
2. In addition to the Notices and Instructions specified elsewhere in the Invitation to Tender (ITT) the following shall also apply:

Save as set out in PPN 01/22, the Authority will not be accepting Tenders that:

- a. contain any Russian/Belarusian products and / or services; and/or
  - b. are linked to entities who are constituted or organised under the law of Russia or Belarus, or under the control (full or partial) of a Russian/Belarusian person or entity.
- Please note that this does not include companies:
- i. registered in the UK or in a country with which the UK has a relevant international agreement with reciprocal rights of access in the relevant field of public procurement; and / or
  - ii. which have significant business operations in the UK or in a country the UK has a relevant international agreement with reciprocal rights of access in the relevant field of public procurement.

Tenderers must confirm in writing that their Tender, including any element that may be provided by any part of the Contractor's supply chain, does not contain any Russian/Belarusian products and/or services.

Tenderers must include provisions equivalent to those set out in this clause in all relevant Sub-Contracting Arrangements.

### Contract Documents

Any contract resulting from this tender will be formed from the MOD Terms & Conditions and associated Schedules, including the Statement of Requirements and Schedule of Requirements, incorporating prices submitted by the Winning Tenderer.

If the Winning Tenderer does not enter into the Contract following contract award or enters the contract but is unable to deliver the requirements, the Authority reserves the right to terminate that Contract and award the Contract to the next best placed Tenderer or to cancel or re-run the procurement.

### IR35

IR35 off payroll working rules are not expected to apply to this requirement unless the Winning Tenderer indicates that the personnel who will be used to deliver Services will not be employed through their payroll. In those circumstances, a relevant assessment will be considered.

### Cyber Risk

A Cyber Risk Assessment has been raised and the profile is Very Low. The Risk Assessment Reference is RAR-698751559.

A Supplier Assurance Questionnaire does need to be completed.

Where a Supplier Assurance Questionnaire needs to be completed, Tenderers must complete this online at <https://production.prod.digitaldds.co.uk> and submit a copy of the completed questionnaire, confirming their score, as part of the tender submission.

If a Tenderers Supplier Assurance Questionnaire score does not meet the level set in the Cyber

Risk Assessment, this does not prevent submission of a Tender. In those circumstances, a Cyber Implementation Plan should be completed as part of the tender submission, to demonstrate what actions will be taken to meet the required Cyber Risk level. Provided the actions and timescales were considered acceptable to The Authority, the Cyber Implementation Plan would then be included as a requirement in any resulting Contract.

Guidance of Cyber Implementations Plans can be found online at

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1126692/20221219-CIP\\_Guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1126692/20221219-CIP_Guidance.pdf)

## Cyber Implementation Plan Template

MOD contract number:	
CSM Risk Acceptance Reference:	
CSM Cyber Risk Profile:	
Name of Supplier:	
Current level of Supplier compliance:	
Reasons unable to achieve full compliance:	
Measures planned to achieve compliance / mitigate the risk with dates:	
Anticipated date of compliance / mitigations in place:	



# Ministry of Defence

## PURCHASE ORDER

Supply the Deliverables described in the Schedule to this Purchase Order, subject to the attached MOD Terms and Conditions for Less Complex Requirements (up to the applicable procurement threshold).

Contractor	Quality Assurance Requirements (Clause 8)
<p>Name:</p> <p>Registered Address:</p>	<p>Is a Deliverable Quality Plan required for this Contract? (Delete as appropriate)</p> <p>Yes <input type="checkbox"/></p> <p>No <input checked="" type="checkbox"/></p> <p>Other Quality Requirements:</p> <p>AQAP 2120</p>
Consignor (if different from Contractor's registered address)	Transport Instructions (Clause 10)
<p>Name:</p> <p>Address:</p>	<p>Select method of transport of Deliverables</p> <p>To be Delivered by the Contractor <input checked="" type="checkbox"/></p> <p>To be Collected by the Authority <input type="checkbox"/></p> <p>Each consignment of the Deliverables shall be accompanied by a delivery note.</p>
Progress Meetings (Clause 14)	Progress Reports (Clause 14)
<p>The Contractor shall be required to attend the following meetings:</p> <p>To be arranged if and when required unless already detailed in Statement of Requirements.</p>	<p>The Contractor is required to submit the following Reports:</p> <p>To be arranged if and when required unless already detailed in Statement of Requirements.</p>
Payment (Clause 15)	

Payment is to be enabled by CP&F/Exostar.

Forms and Documentation	Supply of Hazardous Substances, Mixtures and Articles in Contractor Deliverables (Clause 9)
<p>Forms can be obtained from the following websites:</p> <p><a href="https://www.kid.mod.uk/maincontent/business/commercial/index.htm">https://www.kid.mod.uk/maincontent/business/commercial/index.htm</a> (Registration is required).</p> <p><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><a href="https://www.dstan.mod.uk/">https://www.dstan.mod.uk/</a> (Registration is required).</p> <p>The MOD Forms and Documentation referred to in the Conditions are available free of charge from:</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)</p> <p>Applications via email: <a href="mailto:Leidos-FormsPublications@teamleidos.mod.uk">Leidos-FormsPublications@teamleidos.mod.uk</a></p> <p>If you require this document in a different format (i.e. in a larger font) please contact the Authority's Representative (Commercial Officer), detailed below.</p>	<p>A completed DEFFORM 68 (Hazardous and Non-Hazardous Substances, Mixture or Articles Statement) and, if applicable, UK REACH Article 31 compliant Safety Data Sheet(s) (SDS) including any related information to be supplied in compliance with the Contractor's statutory duties under Clauses 9.b, and any information arising from the provisions of Clause 9 are to be provided by email with attachment(s) in Adobe PDF or MS WORD format to:</p> <p>The Commercial Officer detailed in the Purchase Order, and</p> <p>by the following date: with tender submission</p> <p>So that the safety information can reach users without delay, the Authority shall send a copy preferably as an email with attachment(s) in Adobe PDF or MS WORD format.</p> <p>(1) Hard copies to be sent to:</p> <p>Hazardous Stores Information System (HSIS) Spruce 2C, #1260 MOD Abbey Wood (South) Bristol, BS34 8JH</p> <p>(2) Emails to be sent to:</p> <p><a href="mailto:DESEngSfty-QSEPSEP-HSISMulti@mod.gov.uk">DESEngSfty-QSEPSEP-HSISMulti@mod.gov.uk</a></p> <p>SDS which are classified above OFFICIAL including Explosive Hazard Data Sheets (EHDS) for Ordnance, Munitions or Explosives (OME) are not to be sent to HSIS and must be held by the respective Authority Delivery Team.</p>

## Appendix - Addresses and Other Information

### 1. Commercial Officer:

Name: Lauren Terry

Address: NCHQ, Leach Building, Whale Island, Portsmouth, PO2 8BY

Email: lauren.terry103@mod.gov.uk

☎: 03001677915

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

Name: Lee Boswell

Address: Environmental Medicine and Science, Institute of Naval Medicine, Crescent Rd, Gosport, Hants, PO12 2DL

Email: TBC on Contract Award

☎: TBC on Contract Award

### 3. Packaging Design Authority:

Organisation and point of contact:

(where no address is shown please contact the Project Team in Box 2)

☎

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

As per box 2

☎

(b) U.I.N.

### 5. Drawings/Specifications are available from:

### 6. Intentionally Left Blank

### 7. Quality Assurance Representative:

Commercial staff are reminded that all Quality Assurance requirements should be listed under the General Contract Conditions.

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

### 8. Public Accounting Authority:

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

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

### 9. Consignment Instructions:

The items are to be consigned as follows:

As detailed in Schedule of Requirements

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

A. **DSCOM**, DE&S, DSCOM, MoD Abbey Wood, Cedar 3c, Mail Point 3351, BRISTOL BS34 8JH

Air Freight Centre

IMPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943  
EXPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943

Surface Freight Centre

IMPORTS ☎ 030 679 81129 / 81133 / 81138 Fax 0117 913 8946  
EXPORTS ☎ 030 679 81129 / 81133 / 81138 Fax 0117 913 8946

### B. JSCS

JSCS Helpdesk ☎ 01869 256052 (option 2, then option 3); JSCS Fax No 01869 256837

Users requiring an account to use the MOD Freight Collection Service should contact UKStratCom-DefSp-RAMP@mod.gov.uk in the first instance

### 11. The Invoice Paying Authority:

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

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

### 12. Forms and Documentation are available through \*:

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

Applications via fax or email: [DESLSCLS-OpsFormsandPubs@mod.uk](mailto:DESLSCLS-OpsFormsandPubs@mod.uk)

### \* NOTE

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

<https://www.kid.mod.uk/maincontent/business/commercial/index.htm>

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

Contractor's Sensitive Information (Clause 5). Not to be Published
Description of Contractor's Sensitive Information:
Cross reference to location of Sensitive Information:
Explanation of Sensitivity:
Details of potential harm resulting from disclosure:
Period of Confidence (if Applicable):
Contact Details for Transparency / Freedom of Information matters: Name: Position: Address: Telephone Number: E-Mail Address:

**DEFFORM 68 –  
Hazardous and Non Hazardous Substances, Mixtures or Articles Statement by the Contractor**

Contract Number: 706826451

Contract Title: Purchase of Auditory Evoked Potential Equipment, including Set Up, Training and Maintenance for 5 years

Contractor:

Date of Contract:

\* To the best of our knowledge there are no hazardous Substances, Mixtures or Articles to be supplied. ☐

\* To the best of our knowledge the hazards associated with Substances, Mixtures or Articles to be supplied under the Contract are identified in the Safety Data Sheets or UK REACH Communication attached in accordance with either:

DEFCON 68 ☐ ; or

Condition 9 of Standardised Contract 1A/B Conditions ☐;

Contractor's Signature:

Name:

Job Title:

Date:

\* check box (T) as appropriate

---

**To be completed by the Authority**

DMC:

NATO Stock Number:

Contact Name:

Contact Address:

Contact Phone Number:

Contact Email Address:

Copy to be forwarded to:

Hazardous Stores Information System (HSIS)

Department of Safety & Environment, Quality and Technology (D S & EQT)

Spruce 2C, #1260

MOD Abbey Wood (South)

Bristol, BS34 8JH

Email: [DESEngSfty-QSEPSEP-HSISMulti@mod.gov.uk](mailto:DESEngSfty-QSEPSEP-HSISMulti@mod.gov.uk)



Offer and Acceptance	
<p>A) The Purchase Order constitutes an offer by the Contractor to supply the Deliverables. This is open for acceptance by the Authority for 90 days from the date of signature. By signing the Purchase Order the Contractor agrees to be bound by the attached Terms and Conditions for Less Complex Requirements (up to the applicable procurement threshold).</p> <p>Name (Block Capitals):</p> <p>Position:</p> <p>For and on behalf of the Contractor:</p> <p>Authorised Signatory .....</p> <p>Date:</p>	<p>B) Acceptance</p> <p>Name (Block Capitals):</p> <p>Position:</p> <p>For and on behalf of the Authority:</p> <p>Authorised Signatory .....</p> <p>Date:</p>
<p>C) <b>Effective Date of Contract:</b></p>	

## **The Statement Relating To Good Standing**

**Contract Title:** Purchase of Auditory Evoked Potential Equipment, including Set Up, Training and Maintenance for 5 years

**Contract Number:** 706826451

1. We confirm, to the best of our knowledge and belief, that ***insert potential supplier*** including its directors or any other person who has powers of representation, decision or control or is a member of the administrative, management or supervisory body of ***insert potential supplier*** has not been convicted of any of the following offences within the past 5 years:

a. conspiracy within the meaning of section 1 or 1A of the Criminal Law Act 1977 or article 9 or 9A of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 where that conspiracy relates to participation in a criminal organisation as defined in Article 2 of Council Framework Decision 2008/841/JHA;

b. corruption within the meaning of section 1(2) of the Public Bodies Corrupt Practices Act 1889 or section 1 of the Prevention of Corruption Act 1906;

c. common law offence of bribery;

d. bribery within the meaning of section 1,2 or 6 of the Bribery Act 2010; or section 113 of the Representation of the People Act 1983;

e. any of the following offences, where the offence relates to fraud affecting the European Communities financial interests as defined by Article 1 of the Convention on the protection of the financial interests of the European Communities:

(1) the common law offence of cheating the Revenue;

(2) the common law offence of conspiracy to defraud;

(3) fraud or theft within the meaning of the Theft Act 1968, the Theft Act (Northern Ireland) 1969, the Theft Act 1978 or the Theft (Northern Ireland) Order 1978;

(4) fraudulent trading within the meaning of section 458 of the Companies Act 1985, Article 451 of the Companies (Northern Ireland) Order 1986 or section 933 of the Companies Act 2006;

(5) fraudulent evasion within the meaning of section 170 of the Customs and Excise Management Act 1979 or section 72 of the Value Added Tax Act 1994;

(6) an offence in connection with taxation in the European Union within the meaning of section 71 of the Criminal Justice Act 1993;

(7) destroying, defacing or concealing of documents or procuring the extension of a valuable security within the meaning of section 20 of the Theft Act 1968 or section 19 of the Theft Act (Northern Ireland) 1969;

(8) fraud within the meaning of section 2,3 or 4 of the Fraud Act 2006; or

(9) the possession of articles for use in frauds within the meaning of section 6 of the Fraud Act 2006, or making, adapting, supplying or offering to supply articles for use in frauds within the meaning of section 7 of that Act;

f. any offence listed:

(1) in section 41 of the Counter Terrorism Act 2008; or

(2) in Schedule 2 to that Act where the court has determined that there is a terrorist connection;

g. any offence under sections 44 to 46 of the Serious Crime Act 2007 which relates to an offence covered by (f) above;

h. money laundering within the meaning of section 340(11) and 415 of the Proceeds of Crime Act 2002;

- i. an offence in connection with the proceeds of criminal conduct within the meaning of section 93A, 93B, or 93C of the Criminal Justice Act 1988 or article 45, 46 or 47 of the Proceeds of Crime (Northern Ireland) Order 1996;
- j. an offence under section 4 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004;
- k. an offence under section 59A of the Sexual Offences Act 2003;
- l. an offence under section 71 of the Coroners and Justice Act 2009;
- m. an offence in connection with the proceeds of drug trafficking within the meaning of section 49, 50 or 51 of the Drug Trafficking Act 1994; or
- n. an offence under section 2 or 4 of the Modern Slavery Act 2015;
- o. any other offence within the meaning of Article 57(1) of Public Contracts Directive –  
(1) as defined by the law of any jurisdiction outside England and Wales and Northern Ireland: or  
(2) created in the law of England and Wales or Northern Ireland after the day on which these Regulations were made;
- p. any breach of its obligations relating to the payment of taxes or social security contributions where the breach has been established by a judicial or administrative decision having final and binding effect in accordance with the legal provisions of the country in which it is established or with those of any jurisdictions of the United Kingdom.

2. ***insert potential supplier*** further confirms to the best of our knowledge and belief that within the last 3 years it:

- a. has fulfilled its obligations relating to the payment of taxes and social security contributions of the country in which it is established or with those of any jurisdictions of the United Kingdom;
- b. is not bankrupt or is not the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court, where it is in an agreement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under the laws and regulations of any State;
- c. has not committed an act of grave professional misconduct, which renders its integrity questionable;
- d. has not entered into agreements with other suppliers aimed at distorting competition;
- e. Is not subject to a conflict of interest within the meaning of regulation 24;
- f. has not been involved in the preparation of this procurement procedure which would result in distortion of competition which could not be remedied by other, less intrusive, measures other than exclusion from this procedure;
- g. has not had a contract terminated, damages or other comparable sanctions taken as a result of significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract, or a prior concession contract as defined by the Concession Contracts Regulations 2016;
- h. is not guilty of serious misrepresentation in providing any information required by this statement.
- i. has not unduly influenced the decision-making process of the Authority or obtained confidential information that may confer upon it undue advantages in the procurement procedure;

j. in relation to procedures for the award of a public services contract, is licensed in the relevant State in which he is established or is a member of an organisation in that relevant State where the law of that relevant State prohibits the provision of the services to be provided under the contract by a person who is not so licensed or who is not such a member;

k. has fulfilled its obligations in the fields of environmental, social and labour law established by EU law, national law, collective agreements or by the international environmental, social and labour law provisions listed in the Public Contracts Directive as amended from time to time (as listed in PPN 8/16 Annex C).

I confirm that to the best of my knowledge my declaration is correct. I understand that the contracting authority will use the information in the selection process to assess my organisation's suitability to be invited to participate further in this procurement, and I am signing on behalf of my organisation. I understand that the Authority may reject my submission if there is a failure to provide a declaration or if I provide false or misleading information.

<b>Organisation's name</b>	
<b>Signed (By Director of the Organisation or equivalent)</b>	
<b>Name</b>	
<b>Position</b>	
<b>Date</b>	

## **Schedule 1 – Additional Definitions of Contract**

As detailed in Statement of Requirements.

## Schedule 2 – Notification of Intellectual Property Rights (IPR) Restrictions (i.a.w. Clause 7)

### Part A – Notification of IPR Restrictions

1. Contract Number <b>706826451</b>				
2. ID #	3. Unique Technical Data Reference Number / Label	4. Unique Article(s)* Identification Number / Label	5. Statement Describing IPR Restriction	6. Ownership of the Intellectual Property Rights
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				

\* Article(s), for the purpose of this form only, means part or the whole of any item, component or process which the Contractor is required under the Contract to supply or in connection with which it is required under the Contract to carry out any service and any other article or part thereof to the same design as that article.

**Part B – System / Product Breakdown Structure (PBS)**

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

## Completion Notes

### Part A

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

For example, any of the following must be disclosed:

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

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



## Part B

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

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

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

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

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

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

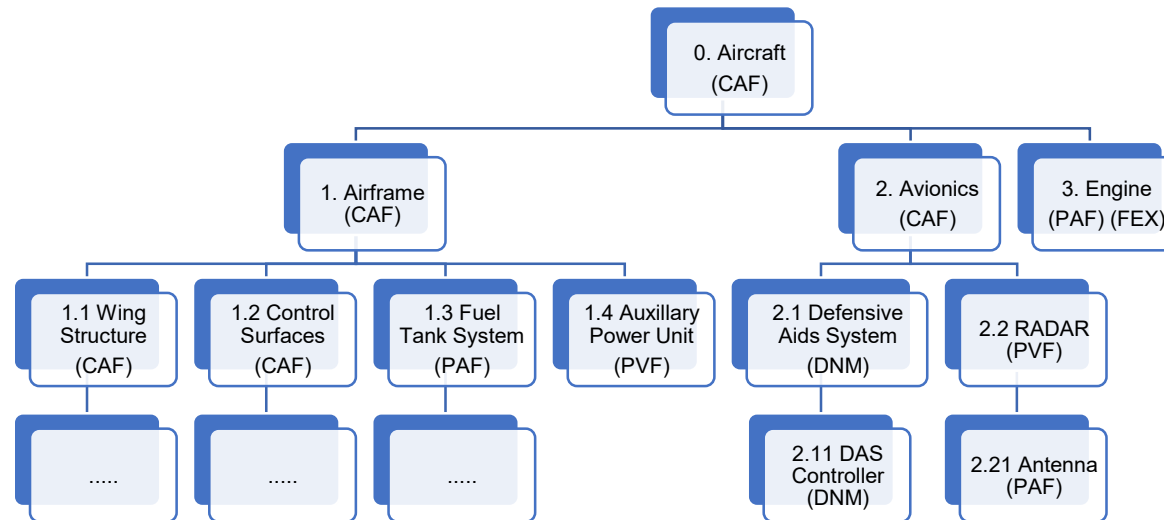
- e) (FEX) Foreign Export Controlled

### Notes:

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

## Example PBS

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



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

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

## Schedule 3 - Schedule of Requirements

Deliverables in accordance with Statement of Requirements								
Item Number	Description	Delivery Date	Unit of Measurement	Quantity	Individual Price (£) Ex VAT	Price Type	VOP Review Date	Total Price (£) Ex VAT
1	Purchase of Equipment as detailed in the Statement of Requirement (SOR) to include, set up and training.	Contract Period 1 June 2023 to June 2024	Per Item	1	£	Firm	Not Applicable	£
2	Maintenance and Support for Equipment	Contract Period 1 June 2023 to June 2024	Per Period	1	£	Firm	Not Applicable	£
3	Maintenance and Support for Equipment	Contract Period 2 June 2024 to June 2025	Per Period	1	£	Firm	Not Applicable	£
4	Maintenance and Support for Equipment	Contract Period 3 June 2025 to June 2026	Per Period	1	£	Firm	Not Applicable	£
5	Maintenance and Support for Equipment	Contract Period 3 June 2026 to June 2027	Per Period	1	£ + VOP adjustment	Fixed to VOP calculation	1 April 2026	£
6	Maintenance and Support for Equipment	Contract Period 4 June 2027 to June 2028	Per Period	1	£ + VOP adjustment	Fixed to VOP calculation	1 April 2027	£
						Total Contract Value		£

Item Number	Consignee Address (XY code only)
1 - 6	Institute of Naval Medicine, Crescent Road, Gosport, Hants, PO12 2DL
Item Number	Payment Schedule
1	Payment to be made following successful delivery, set up and training of equipment
2 - 6	Payments for annual support to be made at the end of each contract year in which services were delivered

Exact delivery dates will be dependent on date of signing contract and will be confirmed on contract award.

All prices stated are firm prices, to be paid in £ (GBP/Pounding Sterling), not subject to any increase or exchange rates.

The quantity of each item are expected numbers and not a guarantee of amounts required or due. Quantities ordered under the contract may be higher or lower based on Authority requirements during the contract period.

The Prices set for each item shall be the total maximum price the Contractor shall charge for the delivery of the goods and/or services covered within that item (prior to any VOP adjustment, where adjustment date has not yet passed). This shall include, but not be limited to:

- Any direct or indirect costs
- Any labour costs or personnel salaries, pensions or contributions
- Any costs for manufacture or provision of goods and/or services
- Any costs for delivery to the Authority
- Any fuel costs
- Any related travel and subsistence
- Any packaging
- Any import costs or charges
- Any implementation or exit costs
- Any sub-contractor costs
- Any IT or system related costs
- Any costs required to provide Authority access to systems or accounts

### **Variation of Price (VOP)**

All Prices for goods and/or services with delivery dates in Contract Periods 1, 2 and 3 are firm prices which are not subject to any adjustment.

All Prices for goods and/or services with delivery dates in Contract Periods 4 and 5 are firm prices which shall be the subject to a VOP adjustment in accordance with the following calculation:

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

where;

P is the firm price for services delivered in Contract Period 1 (line 2 in Schedule of Requirements above)

a is 0.1, which is the non-variable element of prices

b is 0.9, which is the variable element of prices

O<sub>i</sub> is the 12-month index average for the four quarters prior to the quarter in which the variation calculation is being made

O<sub>0</sub> is the 12-month index average for the four quarters prior to the quarter in which the contract commenced

Prior to any VOP adjustment, the prices for goods and/or services with delivery dates in Contract Periods 5 and 6 shall be the same as the prices stated for those goods and/or services in Contract Period 1.

VOP adjustments shall be made on the VOP Review Date and the new prices, calculated in accordance with above, shall be incorporated into the contract through a formal contract amendment. The new prices shall remain in place for 12 months until any subsequent adjustment is made at the next VOP Review Date.

When a VOP adjustment calculation is made, the Contractor shall be obliged to provide the goods and/or services at the prices calculated.

VOP will apply also apply to any optional requirements or periods, should those optional requirements or periods have delivery dates in in Contract Periods 4 and 5. Any optional requirements or periods with delivery dates in Contract Periods 1, 2 or 3 shall be at the firm prices.

The Index to be used for the VOP calculation shall be the Top Level SPPI, Sections H to U excl. Section K produced by the Office of National Statistics.

## Schedule 4 - Statement of Requirements

### AUDITORY EVOKED POTENTIALS

#### Background

There is a requirement to acquire/replace Auditory Evoked Potential equipment, including set up and training with maintenance support for 5 years.

#### Requirement

This requirement is for The Defence Audiology Services (DAS), Institute of Naval Medicine (INM), who's remit is to provide a fully comprehensive Clinical Audiology service this includes diagnostic/investigative neuro-otology, to replace obsolete essential equipment. New equipment is required to replace aging and obsolete equipment (GSI Audera 2007). This piece of specialised equipment is used to acquire accurate hearing threshold levels on non-organic (deceitful/imaginary/psychological/compensation seeking) personnel by objective testing in the form of threshold evoked potentials (testing the brain, not the person).

Any replacement equipment would have to have appropriate standards as recommended by British Society of Audiology et al. that would meet current NICE/NHS standards, including the appropriate calibration BS EN ISO 389 (CAEP) & BS EN ISO 389-6 (ABR), Stimulation type - linear ramped tone burst &/or CE Chirp (or equivalent)

The 'Gold' standard stimulus is a 'click'. IEC 60645-3 (IEC 2020) ([BS EN 60645-1:2017 Electroacoustics. - European Standards](#)) covers the specification of clicks, tone pips and chirps but there are several possible designs of chirps that conform to this standard. The CE-Chirp, a type of chirp stimulus as per IEC 60645-3 (2020) developed by Claus Elberling has been shown to improve test time and increase detectable wave amplitudes thus reducing test times.

If the products available are modular and have component pricing, then the following components would be required as a minimum:

1. Cortical Auditory Evoked Potential (CAEP)
2. Auditory Brainstem Response (ABR)
3. Auditory Steady-State Response (ASSR)
4. Otoacoustic Response, Transient (TOAE) and Distortion Product (DPOAE): Clinical and Screening.

Additional requirements:

1. Headphones/Inserts/Bone Conductor
2. Laptop (or if necessary, desktop)
3. Training and/or face to face familiarisation for 1 user
4. Annual calibration, if required, with a calibration certificate to be provided after each test.
5. Annual maintenance visits to include but not limited to:
  - BS EN 60645-1:2015
  - BS EN 60318-1:2009
  - BS EN 60318-4:2010
  - BS EN 60318-6:2008
  - BS EN 80318-3:2015

- BS EN ISO 389-1:2000
- BS EN ISO 389-2:1997
- BS EN ISO 389-3:2016
- BS EN ISO 389-6:2007

6. Printer to be compatible with the laptop or desktop provided in this requirement

SC1A  
(Edn 10/22)



## **MOD Terms and Conditions for Less Complex Requirements**



## 1 Definitions - In the Contract:

**Article** means, in relation to Clause 9 only, an object which during production is given a special shape, surface or design which determines its function to a greater degree than does its chemical composition;

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

**Business Day** means 09:00 to 17:00 Monday to Friday, excluding public and statutory holidays;

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

**Contractor** means the person, firm or company specified as such in the purchase order. Where the Contractor is an individual or a partnership, the expression shall include the personal representatives of the individual or of the partners, as the case may be;

**Contractor Deliverables** means the goods and / or services including packaging (and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract in accordance with the schedule to the purchase order;

**Effective Date of Contract** means the date stated on the purchase order or, if there is no such date stated, the date upon which both Parties have signed the purchase order;

**Firm Price** means a price excluding Value Added Tax (VAT) which is not subject to variation;

**Government Furnished Assets (GFA)** is a generic term for any MOD asset such as equipment, information or resources issued or made available to the Contractor in connection with the Contract by or on behalf of the Authority;

**Hazardous Contractor Deliverable** means a Contractor Deliverable or a component of a Contractor Deliverable that is itself a hazardous material or substance or that may in the course of its use, maintenance, disposal, or in the event of an accident, release one or more hazardous materials or substances and each material or substance that may be so released;

**Issued Property** means any item of Government Furnished Assets (GFA), including any materiel issued or otherwise furnished to the Contractor in connection with the Contract by or on behalf of the Authority;

**Legislation** means in relation to the United Kingdom any Act of Parliament, any subordinate legislation within the meaning of section 21 of the Interpretation Act 1978, any exercise of Royal Prerogative or any enforceable community right within the meaning of Section 2 of the European Communities Act 1972.

**Mixture** means a mixture or solution composed of two or more substances;

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

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

**PPT** means a tax called "plastic packaging tax" charged in accordance with Part 2 of the Finance Act 2021;

**PPT Legislation** means the legislative provisions set out in Part 2 and Schedule 9-15 of the Finance Act 2021 together with any secondary legislation made under powers contained in Part 2 of the Finance Act 2021. This includes, but not limited to, The Plastic Packaging Tax (Descriptions of Products) Regulations 2021 and The Plastic Packaging Tax (General) Regulations 2022;

**Plastic Packaging Component(s)** shall have the same meaning as set out in Part 2 of the Finance Act 2021 together with any associated secondary legislation;

**Sensitive Information** means the information listed as such in the purchase order, being information notified by the Contractor to the Authority, which is acknowledged by the Authority as being sensitive, at the point at which the Contract is entered into or amended (as relevant) and remains sensitive information at the time of publication;

**Substance** means a chemical element and its compounds in the natural state or obtained by any manufacturing process, including any additive necessary to preserve its stability and any impurity deriving from the process used, but excluding any solvent which may be separated without affecting the stability of the substance or changing its composition;

**Transparency Information** means the content of this Contract in its entirety, including from time to time agreed changes to the Contract, except for (i) any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations Act 2004 (EIR), which shall be determined by the Authority, and (ii) any Sensitive Information.

## 2 General

- a. The Contractor shall comply with all applicable Legislation, whether specifically referenced in this Contract or not.
- b. Any variation to the Contract shall have no effect unless expressly agreed in writing and signed by both Parties.
- c. If there is any inconsistency between these terms and conditions and the purchase order or the documents expressly referred to therein, the conflict shall be resolved according to the following descending order of priority:
  - (1) the terms and conditions;
  - (2) the purchase order; and
  - (3) the documents expressly referred to in the purchase order.
- d. Neither Party shall be entitled to assign the Contract (or any part thereof) without the prior written consent of the other Party.
- e. Failure or delay by either Party in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of its rights or remedies. No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy.
- f. The Parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a Party to it.
- g. The Contract and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English Law, and subject to Clause 16 and without prejudice to the dispute resolution procedure set out therein, the Parties submit to the exclusive jurisdiction of the English courts. Other jurisdictions may apply solely for the purpose of giving effect to this Clause 2.g and for enforcement of any judgement, order or award given under English jurisdiction.

## 3 Application of Conditions

- a. The purchase order, these terms and conditions and the specification govern the Contract to the entire exclusion of all other terms and conditions. No other terms or conditions are implied.
- b. The Contract constitutes the entire agreement and understanding and supersedes any previous agreement between the Parties relating to the subject matter of the Contract.

#### 4 Disclosure of Information

Disclosure of information under the Contract shall be managed in accordance with DEFCON 531 (SC1).

#### 5 Transparency

- a. Notwithstanding any other condition of this Contract, and in particular Clause 4, the Contractor understands that the Authority may publish the Transparency Information to the general public.
- b. Subject to Clause 5.c, the Authority shall publish and maintain an up-to-date version of the Transparency Information in a format readily accessible and reusable by the general public under an open licence where applicable.
- c. If, in the Authority's reasonable opinion, publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority acknowledges that it shall only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication on that basis, it will provide a clear statement to the general public explaining the categories of information that have been excluded from publication and reasons for withholding that information.
- d. The Contractor shall assist and co-operate with the Authority as reasonably required to enable the Authority to publish the Transparency Information, in accordance with the principles set out above. Where the Authority publishes Transparency Information, it shall:
  - (1) before publishing redact any information that would be exempt from disclosure if it was the subject of a request for information under the FOIA and/or the EIR, for the avoidance of doubt, including Sensitive Information;
  - (2) taking into account the Sensitive Information set out in the purchase order, consult with the Contractor where the Authority intends to publish information which has been identified as Sensitive Information. For the avoidance of doubt the Authority, acting reasonably, shall have absolute discretion to decide what information shall be published or be exempt from disclosure in accordance with the FOIA and/or EIR; and
  - (3) present information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how this Contract is being performed.

#### 6 Notices

- a. A Notice served under the Contract shall be:
  - (1) in writing in the English Language;
  - (2) authenticated by signature or such other method as may be agreed between the Parties;
  - (3) sent for the attention of the other Party's representative, and to the address set out in the purchase order;
  - (4) marked with the number of the Contract; and
  - (5) delivered by hand, prepaid post (or airmail), facsimile transmission or, if agreed in the purchase order, by electronic mail.
- b. Notices shall be deemed to have been received:
  - (1) if delivered by hand, on the day of delivery if it is the recipient's Business Day and otherwise on the first Business Day of the recipient immediately following the day of delivery;
  - (2) if sent by prepaid post, on the fourth Business Day (or the tenth Business Day in the case of airmail) after the day of posting;
  - (3) if sent by facsimile or electronic means:
    - (a) if transmitted between 09:00 and 17:00 hours on a Business Day (recipient's time) on completion of receipt by the sender of verification of the transmission from the receiving instrument; or
    - (b) if transmitted at any other time, at 09:00 on the first Business Day (recipient's time) following the completion of receipt by the sender of verification of transmission from the receiving instrument.

#### 7 Intellectual Property

- a. The Contractor shall as its sole liability keep the Authority fully indemnified against an infringement or alleged infringement of any intellectual property rights or a claim for Crown use of a UK patent or registered design caused by the use, manufacture or supply of the Contractor Deliverables.
- b. The Authority shall promptly notify the Contractor of any infringement claim made against it relating to any Contractor Deliverable and, subject to any statutory obligation requiring the Authority to respond, shall permit the Contractor to have the right, at its sole discretion to assume, defend, settle or otherwise dispose of such claim. The Authority shall give the Contractor such assistance as it may reasonably require to dispose of the claim and will not make any statement which might be prejudicial to the settlement or defence of the claim
- c. Notwithstanding any other provisions of the Contract and for the avoidance of doubt, award of the Contract by the Authority and placement of any contract task under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The Contractor acknowledges that any such authorisation by the Authority under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific intellectual property involved.

#### Notification of Intellectual Property Rights (IPR) Restrictions

- d. Where any of the Conditions listed below (1 to 3) have been added to these Conditions of the Contract as Project Specific DEFCONs at Clause 21, the Contractor warrants and confirms that all Intellectual Property Rights restrictions and associated export restrictions relating to the use or disclosure of the Contractor Deliverables that are notifiable under those Conditions, or of which the Contractor is or should reasonably be aware as at Effective Date of Contract, are disclosed in Schedule 5 (Notification of Intellectual Property Rights (IPR) Restrictions):
    - (1) DEFCON 15 - including notification of any self-standing background Intellectual Property;
    - (2) DEFCON 90 - including copyright material supplied under clause 5;
    - (3) DEFCON 91 - limitations of Deliverable Software under clause 3b;
  - e. The Contractor shall promptly notify the Authority in writing if they become aware during the performance of the Contract of any required additions, inaccuracies or omissions in Schedule 5.
- Any amendment to Schedule 5 shall be made in accordance with DEFCON 503 (SC1).

#### 8 Supply of Contractor Deliverables and Quality Assurance

- a. This Contract comes into effect on the Effective Date of Contract.
- b. The Contractor shall supply the Contractor Deliverables to the Authority at the Firm Price stated in the Schedule to the purchase order.
- c. The Contractor shall ensure that the Contractor Deliverables:
  - (1) correspond with the specification;
  - (2) are of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) except that fitness for purpose shall be limited to the goods being fit for the particular purpose held out expressly by or made known expressly to the Contractor and in this respect the Authority relies on the Contractor's skill and judgement; and
  - (3) comply with any applicable Quality Assurance Requirements specified in the purchase order.
- d. The Contractor shall apply for and obtain any licences required to import any material required for the performance of the Contract in the UK. The Authority shall provide to the Contractor reasonable assistance with regard to any relevant defence or security matter arising in the application for any such licence.

## **9 Supply of Data for Hazardous Substances, Mixtures and Articles in Contractor Deliverables**

- a. Nothing in this Clause 9 shall reduce or limit any statutory duty or legal obligation of the Authority or the Contractor.
- b. As soon as possible and in any event within the period specified in the purchase order (or if no such period is specified no later than one month prior to the delivery date), the Contractor shall provide to the Authority's representatives in the manner and format prescribed in the purchase order:
  - (1) confirmation as to whether or not to the best of its knowledge any of the Contractor Deliverables contain Hazardous Substances, Mixtures or Articles; and
  - (2) for each Substance, Mixture or Article supplied in meeting the criteria of classification as hazardous in accordance with the GB Classification, Labelling and Packaging (GB CLP) a UK REACH compliant Safety Data Sheet (SDS);
  - (3) where Mixtures supplied do not meet the criteria for classification as hazardous according to GB CLP but contain a hazardous Substance an SDS is to be made available on request; and
  - (4) for each Article whether supplied on its own or part of an assembly that contains a Substance on the UK REACH Authorisation List, Restriction List and / or the Candidate List of Substances of Very High Concern (SVHC) in a proportion greater than 0.1% w/w of the Article, sufficient information, available to the supplier, to allow safe use of the Article including, as a minimum, the name of that Substance.
- c. For substances, Mixtures or Articles that meet the criteria list in clause 9.b above:
  - (1) if the Contractor becomes aware of new information which may affect the risk management measures or new information on the hazard, the Contractor shall update the SDS/safety Information and forward it to the Authority and to the address listed in the purchase order; and
  - (2) if the Authority becomes aware of new information that might call into question the appropriateness of the risk management measures identified in the safety information supplied, shall report this information in writing to the Contractor.
- d. If the Substances, Mixtures or Articles in Contractor Deliverables are Ordnance, Munitions or Explosives (OME), in addition to the requirements of the GB CLP and UK REACH the Contractor shall comply with hazard reporting requirements of DEF STAN 07-085 Design Requirements for Weapons and Associated Systems.
- e. If the Substances, Mixtures or Articles in Contractor Deliverables, are or contain or embody a radioactive substance as defined in the Ionising Radiation Regulations SI 2017/1075, the Contractor shall additionally provide details on DEFFORM 68 of:
  - (1) activity; and
  - (2) the substance and form (including any isotope).
- f. If the Substances, Mixtures and Articles in Contractor Deliverables have magnetic properties which emit a magnetic field, the Contractor shall additionally provide details on DEFFORM 68 of the magnetic flux density at a defined distance, for the condition in which it is packed.
- g. Failure by the Contractor to comply with the requirements of this Condition shall be grounds for rejecting the affected Substances, Mixtures and Articles in Contractor Deliverables. Any withholding of information concerning hazardous Substance, Mixtures or Articles in Contractor Deliverables shall be regarded as a material breach of Contract under Condition 18 (Material Breach) for which the Authority reserves the right to require the Contractor to rectify the breach immediately at no additional cost to the Authority or to terminate the Contract in accordance with Condition 18.
- h. Where delivery is made to the Defence Fulfilment Centre (DFC) and / or other Team Leidos location / building, the Contractor must comply with the Logistic Commodities and Services Transformation (LCST) Supplier Manual.

## **10 Delivery / Collection**

- a. The purchase order shall specify whether the Contractor Deliverables are to be delivered to the consignee by the Contractor or collected from the consignor by the Authority.
- b. Title and risk in the Contractor Deliverables shall pass from the Contractor to the Authority on delivery or on collection in accordance with Clause 10.a.
- c. The Authority shall be deemed to have accepted the Contractor Deliverables within a reasonable time after title and risk has passed to the Authority unless it has rejected the Contractor Deliverables within the same period.

## **11 Marking of Contractor Deliverables**

- a. Each Contractor Deliverable shall be marked in accordance with the requirements specified in the purchase order. or if no such requirement is specified, the Contractor shall mark each Contractor Deliverable clearly and indelibly in accordance with the requirements of the relevant DEF-STAN 05-132 as specified in the contract or specification. In the absence of such requirements, the Contractor Deliverables shall be marked with the MOD stock reference, NATO Stock Number (NSN) or alternative reference number shown in the Contract.
- b. Any marking method used shall not have a detrimental effect on the strength, serviceability or corrosion resistance of the Contractor Deliverables.
- c. The marking shall include any serial numbers allocated to the Contractor Deliverable.
- d. Where because of its size or nature it is not possible to mark a Contractor Deliverable with the required particulars, the required information should be included on the package or carton in which the Contractor Deliverable is packed, in accordance with condition 12 (Packaging and Labelling (excluding Contractor Deliverables containing Ammunition or Explosives)).

## **12 Packaging and Labelling of Contractor Deliverables (Excluding Contractor Deliverables Containing Ammunition or Explosives)**

- a. The Contractor shall pack or have packed the Contractor Deliverables in accordance with any requirements specified in the purchase order and Def Stan 81-041 (Part 1 and Part 6).
- b. The Contractor shall establish if the Contractor Deliverables are, or contain, Dangerous Goods as defined in the Regulations set out in this Clause 12. Any that do shall be packaged for UK or worldwide shipment by all modes of transport in accordance with the following unless otherwise specified in the Schedule to the purchase order:
  - (1) the Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO), IATA Dangerous Goods Regulations;
  - (2) the International Maritime Dangerous Goods (IMDG) Code;
  - (3) the Regulations Concerning the International Carriage of Dangerous Goods by Rail (RID); and
  - (4) the European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR).
- c. Certification markings, incorporating the UN logo, the package code and other prescribed information indicating that the package corresponds to the successfully designed type shall be marked on the packaging in accordance with the relevant regulation.

## **13 Plastic Packaging Tax**

- a. The Contractor shall ensure that any PPT due in relation to this Contract is paid in accordance with the PPT Legislation.
- b. The Contract Price includes any PPT that may be payable by the Contractor in relation to the Contract.
- c. On reasonable notice being provided by the Authority, the Contractor shall provide and make available to the Authority details of any PPT they have paid that relates to the Contract.
- d. The Contractor shall notify the Authority, in writing, in the event that there is any adjustment required to the Contract Price in accordance with section 70 of the Finance Act 2021 and, on reasonable notice being provided by the Authority, the Contractor shall provide any such information that the Authority requires in relation to any such adjustment.
- e. In accordance with DEFCON 609 (SC1) the Contractor (and their sub-contractors) shall maintain all records relating to PPT and make them available to the Authority when requested on reasonable notice for reasons related to the Contract.
- f. Where the Contractor manufactures, purchases or imports into the UK any Plastic Packaging Component in relation to the Contract the Contractor shall, on reasonable notice being given, provide the Authority with such information and documentation that it requires to enable the Authority to carry out due diligence checks and satisfy itself that the Contractor has complied with the requirements of the PPT Legislation. This shall include, but is not limited to the Contractor providing:
  - (1) confirmation of the tax status of any Plastic Packaging Component;
  - (2) documents to confirm that PPT has been properly accounted for;
  - (3) product specifications for the packaging components, including, but not limited to, the weight and composition of the products and any other product specifications that may be required; and
  - (4) copies of any certifications or audits that have been obtained or conducted in relation to the provision of Plastic Packaging Components.
- g. The Authority shall have the right, on providing reasonable notice, to physically inspect or conduct an audit on the Contractor, to ensure any information that has been provided in accordance with clause 13.f above is accurate.
- h. In the event the Contractor is not required to register for PPT they (and to the extent applicable, their sub-contractors) shall provide the Authority with a statement to this effect and, to the extent reasonably required by the Authority on reasonable notice, supporting evidence for that statement.
- i. The Contractor shall provide, on the Authority providing reasonable notice, any information that the Authority may require from the Contractor for the Authority to comply with any obligations it may have under the PPT Legislation.

## **14 Progress Monitoring, Meetings and Reports**

The Contractor shall attend progress meetings and deliver reports at the frequency or times (if any) specified in the purchase order and shall ensure that its Contractor's representatives are suitably qualified to attend such meetings. Any additional meetings reasonably required shall be at no cost to the Authority.

## **15 Payment**

- a. Payment for Contractor Deliverables will be made by electronic transfer and prior to submitting any claims for payment under clause 15b the Contractor will be required to register their details (Supplier on-boarding) on the Contracting, Purchasing and Finance (CP&F) electronic procurement tool.
- b. Where the Contractor submits an invoice to the Authority in accordance with clause 15a, the Authority will consider and verify that invoice in a timely fashion.
- c. The Authority shall pay the Contractor any sums due under such an invoice no later than a period of 30 days from the date on which the Authority has determined that the invoice is valid and undisputed.
- d. Where the Authority fails to comply with clause 15b and there is undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purpose of clause 15c after a reasonable time has passed.
- e. The approval for payment of a valid and undisputed invoice by the Authority shall not be construed as acceptance by the Authority of the performance of the Contractor's obligations nor as a waiver of its rights and remedies under this Contract.
- f. Without prejudice to any other right or remedy, the Authority reserves the right to set off any amount owing at any time from the Contractor to the Authority against any amount payable by the Authority to the Contractor under the Contract or under any other contract with the Authority, or with any other Government Department.

## **16 Dispute Resolution**

- a. The Parties will attempt in good faith to resolve any dispute or claim arising out of or relating to the Contract through negotiations between the respective representatives of the Parties having authority to settle the matter, which attempts may include the use of any alternative dispute resolution procedure on which the Parties may agree.
- b. In the event that the dispute or claim is not resolved pursuant to Clause 16.a the dispute shall be referred to arbitration and shall be governed by the Arbitration Act 1996. For the purposes of the arbitration, the arbitrator shall have the power to make provisional awards pursuant to Section 39 of the Arbitration Act 1996.
- c. For the avoidance of doubt it is agreed between the Parties that the arbitration process and anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential as between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise. No report relating to anything said, done or produced in or in

relation to the arbitration process may be made beyond the tribunal, the Parties, their legal representatives and any person necessary to the conduct of the proceedings, without the concurrence of all the Parties to the arbitration.

## **17 Termination for Corrupt Gifts**

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

- a. where the Authority becomes aware that the Contractor, its employees, agents or any sub-contractor (or anyone acting on its behalf or any of its or their employees):
  - (1) has offered, promised or given to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward;
  - (2) commits or has committed any prohibited act or any offence under the Bribery Act 2010 with or without the knowledge or authority of the Contractor in relation to this Contract or any other contract with the Crown;
  - (3) has entered into this or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by it or on its behalf, or to its knowledge, unless before the contract is made particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority.
- b. In exercising its rights or remedies to terminate the Contract under Clause 17.a. the Authority shall:
  - (1) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person committing the prohibited act;
  - (2) give due consideration, where appropriate, to action other than termination of the Contract, including (without being limited to):
    - (a) requiring the Contractor to procure the termination of a subcontract where the prohibited act is that of a Subcontractor or anyone acting on its or their behalf;
    - (b) requiring the Contractor to procure the dismissal of an employee (whether its own or that of a Subcontractor or anyone acting on its behalf) where the prohibited act is that of such employee.
- c. Where the Contract has been terminated under Clause 17.a. the Authority shall be entitled to purchase substitute Contractor Deliverables from elsewhere and recover from the Contractor any costs and expenses incurred by the Authority in obtaining the Contractor Deliverables in substitution from another supplier.

## **18 Material Breach**

In addition to any other rights and remedies, the Authority shall have the right to terminate the Contract (in whole or in part) with immediate effect by giving written notice to the Contractor where the Contractor is in material breach of their obligations under the Contract. Where the Authority has terminated the Contract under Clause 18 the Authority shall have the right to claim such damages as may have been sustained as a result of the Contractor's material breach of the Contract.

## **19 Insolvency**

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

## **20 Limitation of Contractor's Liability**

- a. Subject to Clause 20.b the Contractor's liability to the Authority in connection with this Contract shall be limited to £5m (five million pounds).
- b. Nothing in this Contract shall operate to limit or exclude the Contractor's liability:
  - (1) for:
    - a. any liquidated damages (to the extent expressly provided for under this Contract);
    - b. any amount(s) which the Authority is entitled to claim, retain or withhold in relation to the Contractor's failure to perform or under-perform its obligations under this Contract, including service credits or other deductions (to the extent expressly provided for under this Contract);
    - c. any interest payable in relation to the late payment of any sum due and payable by the Contractor to the Authority under this Contract;
    - d. any amount payable by the Contractor to the Authority in relation to TUPE or pensions to the extent expressly provided for under this Contract;
  - (2) under Condition 7 of the Contract (Intellectual Property), and DEFCONs 91 or 638 (SC1) where specified in the contract;
  - (3) for death or personal injury caused by the Contractor's negligence or the negligence of any of its personnel, agents, consultants or sub-contractors;
  - (4) for fraud, fraudulent misrepresentation, wilful misconduct or negligence;
  - (5) in relation to the termination of this Contract on the basis of abandonment by the Contractor;
  - (6) for breach of the terms implied by Section 2 of the Supply of Goods and Services Act 1982; or
  - (7) for any other liability which cannot be limited or excluded under general (including statute and common) law.
- c. The rights of the Authority under this Contract are in addition to, and not exclusive of, any rights or remedies provided by general (including statute and common) law.

## **21 The Project Specific DEFCONs and SC Variants that apply to this Contract are:**

DEFCON 5J (Edn 11/16) - Unique Identifiers  
DEFCON 76 SC1 (Edn 11/22) - Contractor's Personnel at Government Establishments  
DEFCON 129J SC1 (Edn 06/17) – The Use of the Electronic Business Delivery Form  
DEFCON 503 SC1 (Edn 06/22) – Formal Amendments to Contract  
DEFCON 524A SC1 (Edn 12/22) – Counterfeit Materiel  
DEFCON 531 SC1 (Edn.09/21) - Disclosure of Information  
DEFCON 532A SC1 (Edn 05/22) - Protection of Personal Data  
(Where Personal Data is not being processed on behalf of the Authority)  
DEFCON 534 (Edn 06/21) – Subcontracting and Prompt Payment  
DEFCON 538 (Edn 06/02) - Severability

DEFCON 566 Edn 10/20) - Change of Control of Contractor  
DEFCON 609 SC1 (Edn 08/18) - Contractor's Records  
DEFCON 620 SC1 (Edn 06/22) – Contract Change Control Procedure  
DEFCON 624 SC1 (Edn 08/22) - Use Of Asbestos  
DEFCON 627 SC1 (Edn 11/21) - Requirement for a Certificate of Conformity  
DEFCON 656A (Edn 08/16) - Termination for Convenience Under £5m  
DEFCON 658 SC1 (Edn 10/22) - Cyber  
Further to DEFCON 658 the Cyber Risk Level of the Contract is  
Very Low, as defined in Def Stan 05-138  
DEFCON 659A (Edn 09/21) - Security Measures  
DEFCON 671 (Edn 10/22) – Plastic Packaging Tax

## **22 The special conditions that apply to this Contract are:**

22.1 The Contractor shall, and shall procure that their Sub-contractors shall, notify the Authority in writing as soon as they become aware that:

a. the Contract Deliverables and/or Services contain any Russian/Belarusian products and/or services; or  
b. that the Contractor or any part of the Contractor's supply chain is linked to entities who are constituted or organised under the law of Russia or Belarus, or under the control (full or partial) of a Russian/Belarusian person or entity. Please note that this does not include companies:

(1) registered in the UK or in a country with which the UK has a relevant international agreement providing reciprocal rights of access in the relevant field of public procurement; and/or

(2) which have significant business operations in the UK or in a country with which the UK has a relevant international agreement providing reciprocal rights of access in the relevant field of public procurement.

22.2 The Contractor shall, and shall procure that their Sub-contractors shall, include in such notification (or as soon as reasonably practicable following the notification) full details of the Russian products, services and/or entities and shall provide all reasonable assistance to the Authority to understand the nature, scope and impact of any such products, services and/or entities on the provision of the Contract Deliverables and/or Services.

22.3 The Authority shall consider the notification and information provided by the Contractor and advise the Contractor in writing of any concerns the Authority may have and/or any action which the Authority will require the Contractor to take. The Contractor shall be required to submit a response to the concerns raised by the Authority, including any plans to mitigate those concerns, within 14 business days of receipt of the Authority's written concerns, for the Authority's consideration.

22.4 The Contractor shall include provisions equivalent to those set out in this clause in all relevant Sub-contracts.

### **22.5 Security**

The Contractor shall ensure that they arrange for any relevant security clearances (including BPSS or SC) to be in place when their personnel are required deliver any goods or services on Authority sites.

If Contractor personnel are required to access any classified information at MOD sites or on a MOD provided laptop, they must ensure that this information remains at those sites or on that laptop, unless otherwise agreed and detailed on a Security Aspects Letter. If Contractor personnel are working with any sensitive information they may be required to sign a Non-Disclosure Agreement and/or a Conflicts of Interest statement.

### **22.6 Publicity and Communications with the Media**

The Contractor shall not and shall ensure that any employee or Subcontractor shall not communicate with representatives of the press, television, radio or other media on any matter concerning the Contract unless the Authority has given its prior written consent.

### **22.7 Options**

Not applicable

### **22.8 Variation of Price**

a. The prices stated in the Schedule of Requirements are FIXED at 1 April 2023 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:

V represents the variation of price

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

O represents the index Top Level SPPI, Sections H to U excl. Section K

O<sub>0</sub> represents the average OUTPUT Price Index figure for the base period

O<sub>i</sub> represents the average OUTPUT Price Index figure for the period in which variation is being made

a represents the Non- Variable Element (NVE)

b represents the Variable Element

$$a+b=1$$

b. The Index referred to in Clause 1 above shall be taken from the following Tables:

ONS - Top Level SPPI, Sections H to U excl. Section K

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 (as in Clause d above) 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 Clause [insert the VOP clause number]" have been met.

## **23 The processes that apply to this Contract are:**

### **Key Subcontractors**

The Contractor has advised that the following key sub-contractors will be used in delivery of this contract:

Name	Work Undertaken	Approximate Value
TBC		

The Contractor shall notify the Authority before engaging any further Key Subcontractors.

### **Impediments**

The Contractor shall notify the Authority as soon as they become aware of any circumstance which will impact on their ability to deliver any of the requirements or meet any of the stated timescales.

### **Tender Proposal**

Requirements to be delivered in accordance with this contract and, where it does not conflict with this contract, in line with proposal included in tender.

### **Performance Management**

A date for delivery of goods or completion of each service will be stated in the contract or agreed between the Authority and the Contractor. Where this is not met by the Contractor, goods are not delivered or services are not completed, until after any stated or agreed date (unless the Authority accepts that circumstances were outside of the control of the Contractor), the Authority reserves the right to deduct 10% of the payment due for those services for each week or portion of a week that passes before the services are completed.

If, at any time, any of the goods or services provided under the Contract do not meet the required standard or quality then the Authority will not be obligated to buy any more services unless it is satisfied that the required standard or quality will be met.

Where the Contractor is unable to provide the required goods/services within the timescales required, the Authority shall be entitled to procure those goods/services from other providers.

If the Authority is able to procure goods/services, which are similar to those listed in this contract, at significantly lower prices than those listed in this contract then the Authority shall be entitled to ask the Contractor to provide a reduced price and/or shall be entitled to procure those goods/services from other providers.

If, in order to deliver the goods/services, the Contractor sources anything through their supply chain subcontractors they shall not charge any additional mark up or profit, on those costs they have paid, when calculating prices to be charged to the Authority.