

# **SINGLE SOURCE INVITATION TO NEGOTIATE (ITN)**

**REDACTED FOR PUBLICATION**

## **MSS/102 MARINE ROTATING ELECTRICAL MACHINERY (MREM) ASSET AVAILABILITY SERVICE FOR SURFACE FLEET AND SUBMARINE FLEET**



In line with Transparency legislation and the Security Aspects Letter for this requirement, any information within this Invitation to Negotiate considered to fall under the following categories has been redacted.

1. Military sensitive technical information
2. Tenderer's commercially sensitive information
3. Personal data

In accordance with the above, all Annexes and Appendices have been redacted in FULL as they are either considered to contain military sensitive technical information and are classified as OFFICIAL-SENSITIVE within the Security Aspects Letter



Ministry  
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Defence Equipment & Support  
Birch 3c #3133  
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23/04/2020

Ref: 2020-003/MSS/102

Dear REDACTED TEXT

**SINGLE SOURCE INVITATION TO NEGOTIATE (ITN) MSS/102 – ASSET AVAILABILITY  
SERVICE FOR MARINE ROTATING ELECTRICAL MACHINERY (MREM)**

**REFERENCES:**

- A. Authority Letter Reference '20190905\_MREM\_ITN\_information\_notice-OSC' dated 05 Sept 2019
  - B. Authority ITN Reference '20200115-ITN\_MSS102\_MREM-OSC' dated 15 Jan 2020
  - C. Authority ITN Reference '20200130-ITN\_MSS102\_MREM\_Amdt\_1-OSC' dated 30 Jan 2020
  - D. Authority Letter Reference '20200402-Babcock MREM Notification of Single Source Procurement-OSC' dated 02 April 2020.
1. Further to our correspondence at Reference A, B and C and consistent with our letter at Reference D the Authority invites you to Tender on a Single Source basis for the Provision of an Asset Availability Service of Marine Rotating Electrical Machinery (MREM) fitted to HM Ships and Submarines in accordance with the attached documentation. In addition to this electronic soft copy the Authority shall employ the use of Commerce Decision's, web-based evaluation system, AWARD. Please continue to use any previous logins to access AWARD.
  2. The requirement is for a Legal Agreement (hereinafter referred to as 'Contract'), covering the period from 01 April 2021 to 31 March 2031 to provide a 10-year Asset Availability as a Service Support Solution for Marine Rotating Electrical Machinery HM Surface Fleet and Submarine Fleet in accordance with DSPCR 2011.
  3. The anticipated date for the Contract Award is January 2021; please note that this is an indicative date and is subject to change.
  4. You must submit your Tender through AWARD no later than 18:00hrs on 29 May 2020.
  5. Please confirm receipt of this document and submit all correspondence to MSS Commercial Officer REDACTED TEXT and clarification questions via AWARD.

Yours Sincerely,

REDACTED TEXT

**DES Ships MSS-COM-CS3a-FutProj**

## **1 Changes to Special Terms and Conditions:**

- 1.1 The only changes made to the Special Terms and Conditions are the addition of DEFCONs relating to Single Source Contracting Regulations.

## **1 Changes to DEFFORM 47**

- 1.1 The Authority has amended the DEFFORM 47 to reflect the DEFFORM 47 ST (Single Tender) template. This incorporates the necessary SSCR guidance and expectations from the Authority at Sections C, D and F.
- 1.2 Within the DF47 ST the Authority has also outlined its requirements in relation to price breakdown in Section D (Details of Price Breakdown and Mandatory Criteria).
- 1.3 The Authority has amended Section E (Tender Evaluation) to ensure this now reflects a Single Source Procurement. All references to MEAT and comparative scoring have been removed. The weighting has been retained (and has not been altered) to enable the Tenderer to ascertain which areas are deemed more important to the Authority. Please note the additional paragraphs (at E13-E15) summarises the revised Tender Evaluation process.
- 1.4 In line with current guidance relating to COVID-19, a request for a hard copy of your tender has been removed. All submissions will be electronic via the AWARD Tender Evaluation tool.
- 1.5 The only additional changes to the DEFFORM 47 are those that involve dates and/or compliance matrices to align with the changes above.

## **2 Changes to Other Annexes**

- 2.1 Annex B – Pricing Schedule: The Authority has added 'Price per Vessel' against the Provision of Spares as per the initial issue of the ITN dated 15 January 2020.
- 2.2 No other Annexes or Appendices have been amended for the purpose of this amendment.

## **ITN Contents**

This invitation consists of the following documentation:

DEFFORM 47 ST – Invitation to Negotiate. The DEFFORM 47 ST sets out the key requirements that Tenderers need to meet in submitting a valid Tender in advance of any negotiations. It also sets out the conditions relating to this procurement. For ease it is broken into:

### **Section A – Introduction**

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### **Section E – Tender Evaluation**

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- Tender Assessment Process
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- Commercial Evaluation Criteria
- Tender Evaluation Process

- Scoring Methodology
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- Tenderer Compliance Matrix
- Technical Evaluation Criteria
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- Conforming to the Law
- Fraud and Other Illegal Practices
- Conflicts of Interest
- Government Furnished Assets
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- Publicity Announcement
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- Remedies for Actionable Contraventions under the Defence Reform Act 2014
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## **DEFFORM 47 ST Annex A**

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- Tender Submission Document (Offer)
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## **CONTRACT TERMS AND CONDITIONS**

### **CONTRACT ANNEXES**

Annex A - Statement of Support Requirements (SoSR):

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- A01. Support Operation Matrix
- A02. Surface Ships Equipment
- A03. Submarine Equipment
- A04. KPI Summary
- A05. Weekly Report Template
- A06. Forward Fleet Plan
- A07. Cost and Schedule Status Report

Annex B – Pricing Schedule:

- B1. Activity 1 Service Management and Activity 2 Equipment Availability - Schedule of Firm and Fixed Prices;
- B2. Post Design and Technical Services: Schedule of Firm and Fixed (all-inclusive) Labour Prices;
- B3. Post Design and Technical Services: Schedule of Firm and Fixed (all-inclusive) Travel and Subsistence Prices, Mileage Prices.

Annex C - DEFFORM 110 – Schedule of Requirements

Annex D - DEFFORM 315 – Contract Data Requirements

Annex E - DEFFORM 68 – Hazardous Materials

Annex F - DEFFORM 316 - GFI

Annex G - Exit/Transition Plan (*once complete*)

Annex H - Security Aspects Letter (SAL)

Annex I - Contractor's Good Standing Letter (*once complete*)

Annex J - Transfer of Undertakings inc Appendix 1 (*Protection of Employment*)

Annex K - Performance Management Record (PMR)

Annex L - Sample Certificate of Conformity

Annex M - Obsolescence Management Plan (*once completed*)

Annex N – DEFFORM 647 - Financial Reporting Spreadsheet

Annex O - Electronic Information Sharing Agreement (EISA)

Annex P - DEFFORM 177 - Design Rights and Patents (Sub-Contractors) Agreement

Annex Q - Task Approval Form (TAF)



Annex R - Contract Change Control Procedure

Annex S - Project Management Plan (*once complete*)

Annex T - Risk Management Plan (*once complete*)

Annex U - Quality Management Plan (*once complete*)

Annex V - Stakeholder Management Plan (*once complete*)

Annex W - Packing, Handling, Storage & Transport Plan (*once complete*)

Annex X - Procurement Plan (*once complete*)

Annex Z – Safety & Environmental Plan (*once complete*)

Annex AA – Dependencies, Assumptions, Risks, Exclusions, Liabilities & Insurance (*once complete*)

**Appendix to Contract – DEFFORM 111 – Addresses and Other Information.**

## **Section A – Introduction**

### **Definitions**

- A1. “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.
- A2. “Tenderer” means the economic operator or group of operators in the form of a consortium, including sub-Contractors, who have been invited to submit a response to this Invitation to Tender. Where “you” is used this means an action on you the Tenderer.
- A3. “Invitation to Tender” (ITT) refers to the first document that the Authority sends out to potential Tenderers that initiates a Tender response, and within this document shall also mean “Invitation to Negotiate”.
- A4. “Single Source” means a situation where the Authority has invited a response from only one Tenderer.
- A5. A “Tender” is the offer that you are making to the Authority.
- A6. “Contractor Deliverables” means the works, goods and / or the services, including packaging (and Certificates(s) of Conformity supplied in accordance with any Quality Assurance (QA) requirements if specified) and any associated technical data which the Contractor is required to provide under the Contract in accordance with the Statement of Support Requirements, but excluding incidentals outside the Statement of Support Requirements such as progress reports.
- A7. “Schedule of Support Requirements” means that part of the Contract which identifies, either directly or by reference, the Contractor Deliverables to be supplied or carried out, the quantities involved and the price or pricing terms in relation to each Contractor Deliverable.
- A8. The “Statement of Support Requirements” details the technical and managerial requirements, either directly or by reference, the Contractor Deliverables or Services to be supplied or carried out. The Statement of Support Requirements is forwarded with this DEFFORM 47 ST.
- A9. “Conditions of Tendering” means the conditions set out in the DEFFORM 47 ST that govern the competition.
- A10. “Contract Conditions” means the attached conditions that will govern any resultant Contract.
- A11. A “Third Party” is any person who is not an employee of the Authority or Tenderer as defined at A2.

### **Purpose**

- A12. The purpose of this ITN is to invite you to propose a solution / best price to meet the Authority’s requirement. This documentation explains and sets out the:
  - a. Tender process and timetable for the next stages of the procurement;
  - b. instructions and conditions that govern this competition;
  - c. information you must include in your Tender and the required format;
  - d. administrative arrangements for the receipt and review of your Tender;; and
  - e. Contract Conditions that shall apply in the event that the Authority awards a Contract following this competition.

- A13. The sections in this ITN and associated documents are structured in line with a generic Tendering process and do not indicate importance / precedence.
- A14. The requirement was advertised by the Authority in the Official Journal of the European Union dated 17<sup>th</sup> December 2018 under Contract Notice 85/2018 - 229347 with reference to the requirement for “Asset Availability as a Service in support of Marine Rotating Electrical Equipment (MREM)” under the Negotiated procedure and in accordance with the Defence and Security Public Contracts Regulations 2011.

#### **ITN Documentation and ITN Material**

- A15. ITN Documentation means any information in any medium or form (for example drawings, handbooks, manuals, instructions, specifications and notes of pre-Tender clarification meetings), issued to you, or to which you have been granted access, by the Authority for the purposes of responding to this ITN. ITN Material means any other material (including patterns and samples), equipment or software issued to you, or to which you have been granted access, by the Authority for the purposes of responding to this ITN. ITN Documentation, ITN Material and any intellectual property rights (IPR) in them shall remain the property of the Authority or other Third-Party owners and is released solely for the purposes of enabling you to submit a Tender. You must:
- a. take responsibility for the safe custody of the ITN Documentation and ITN Material and for all loss and damage sustained to it while in your care;
  - b. not copy or disclose the ITN Documentation or any part of it to anyone other than the bid team involved in preparing your Tender, and not use it except for the purpose of responding to this ITN;
  - c. seek approval from the Authority if you need to provide access to any ITN Documentation or ITN Material to any Third Party;
  - d. abide by any reasonable conditions imposed by the Authority in giving its approval under sub-paragraph A15.c, which at a minimum will require you to ensure any disclosure to a Third Party is made by you in confidence. Alternatively, due to IPR issues for example, the disclosure may be made, in confidence, directly by the Authority;
  - e. accept that any further disclosure of ITN Documentation or ITN Material (or use beyond the original purpose), or further use of ITN Documentation or ITN Material, without the Authority’s written approval may make you liable for a claim for breach of confidence and / or infringement of IPR, a remedy which may involve a claim for compensation;
  - f. inform the named Commercial Officer if you decide not to submit a Tender;
  - g. immediately return all ITN Documentation, ITN Material and derived information of an unmarked nature, should you decide not to participate in responding to this ITN, or you are notified by the Authority that your Tender has been unsuccessful; and
  - h. consult the named Commercial Officer to agree the appropriate destruction process if you are in receipt of ITN Documentation and ITN Material marked ‘OFFICIAL-SENSITIVE’ or ‘SECRET’.
- A16. Some or all of the ITN Documentation and ITN Material may be subject to one or more confidentiality agreements made between you and either the Authority or a Third Party, for example a confidentiality agreement established in the form of DEFFORM 94. The obligations contained in any such agreement will be in addition to, and not derogate from, your obligations under paragraph A15 above.

**Tender Expenses**

A17. You will bear all costs associated with preparing and submitting your Tender. If the Tender process is terminated or amended by the Authority, the Authority will not reimburse you.

**Material Change of Control from Supplier Selection**

A18. You must inform the Authority in writing if there is any material change in control, composition or membership of your organisation and / or consortium members, including any Sub-Contractors at any time during the procurement process. This may affect our decision to award a contract to you.

**Contract Conditions**

A19. The Contract Conditions are enclosed. The full text of Defence Conditions (DEFCONs) and Defence Forms (DEFFORMS) are available electronically via the Acquisition System Guidance <https://www.gov.uk/acquisition-operating-framework>

**Consultation with Credit Reference Agencies**

A20. The Authority may consult with credit reference agencies to assess your creditworthiness. This information may be used to support and influence decisions to enter into a Contract with you.

## Section B – Key Activities

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

Stage	Date and Time	Initiated By	Submit to:
Final date for Clarification Questions/Requests for additional information	18:00 hrs on 15 May 2020	Tenderers	The Authority via AWARD System
The Authority Issues Final Clarification Answers	18:00 hrs on 22 May 2020	The Authority	Tenderer
Tender Return	18:00 hrs on 29 May 2020	Tenderers	Award System
The following are indicative timescales for planning purposes only			
Negotiations <sup>2</sup> (if required)	July 2020	The Authority	N/A
Contract Award Date	January 2021	The Authority	N/A
Contract Commencement Date	1 April 2021	The Authority	N/A

## Section C - Instructions on Preparing Tenders

### Tenders for Selected Contractor Deliverables

- C1. You must Tender for all the Contractor Deliverables listed in the Pricing Schedule (Annex B). The Authority reserves the right to reject your Tender where you have not Tendered for all of the Contractor Deliverables.

**The Tenderer must note that the spreadsheet containing relevant pricing information (i.e. Annex B1 to B3) forwarded with this Invitation to Negotiate is supplied as an ‘aid’ only to the calculation of your Tendered prices. The Authority can offer no guarantee as to the accuracy of the spreadsheet or the total Tendered price to be calculated from it. Therefore, it is the sole responsibility of the Tenderer to ensure the individual and overall Tendered prices offered are accurate and correct.**

### Construction of Tenders

- C2. Your Tender must be written in English, using Arial font size 11. All prices must be in £GBP and exclude VAT. Prices must be Firm and Fixed Price where it has been agreed. (i.e. not subject to any variation whatsoever once accepted by the Authority). Firm Prices must include all costs associated with packaging.
- C3. To enable the Authority to complete its Value For Money (VFM) assessment, your price must be broken down. If the resultant contract is a Qualifying Defence Contract (QDC) under the Defence Reform Act (DRA) and Single Source Contract Regulations (SSCR) you must price your bid accordingly.
- C4. To assist the Authority’s evaluation please set out your Tender response in accordance with Section D (Tender Evaluation).
- C5. This response shall include: Responses are to be submitted electronically via the AWARD system, as described below – one hard copy of the Commercial response is also required. This is to contain the prices and is to be clearly marked “Priced copy”. Please note that all electronic soft copy documentation must be submitted in Microsoft Excel and Word format. This response shall include:
- a. a statement both noting the Cyber Security Level of the proposed Contract and confirming that completion of the Supplier Assurance Questionnaire demonstrating your compliance with the cyber security controls in Def Stan 05-138 has been achieved (see paragraph F21 of this document and Condition 56 of the Terms and Conditions of Contract).
- C6. In addition to the AWARD submission, one hard copy of the Support/Technical response is required in accordance with DEFFORM 28. This is not to include any prices and is to be clearly marked “Un-Priced copy”. This response shall include a draft:
- a. Exit/Transition Plan
  - b. Project Management Plan (PMP);
  - c. Risk Management Plan (RMP);
  - d. Stakeholder Management Plan (SMP);
  - e. Quality Management Plan (QMP);
  - f. Obsolescence Management Plan (OMP);
  - g. Packaging, Handling, Storage & Transport Plan (PHS&T);
  - h. Configuration Management Plan (CMP);

i. Procurement Plan

C7. Your Tender Response shall also include, but not be limited to:

- b. A completed Compliance Matrix in accordance with E13 and in the format provided in Section E to this DEFFORM 47 ST;
- c. Cyber Security Statement;
- d. completed Statement of Good Standing;
- e. a fully compliant Schedule of Requirements at Annex C;
- f. prices in the format provided at Annex B1 to B3 (Pricing Schedules);
- g. responses to all Serial Questions provided at Section E to this DEFFORM 47 ST
- h. any other Tender deliverables prescribed within this DEFFORM 47 ST and its annexes.

C7. The Tender shall have pages and paragraphs individually numbered and clearly identified on the cover with the following:

- a. Contractor's Name;
- b. "Invitation to Negotiate MSS/102 – Marine Rotating Electrical Machinery;
- c. Contractor's reference, Issue No. and date of Tender; and either "Support/Technical Un-Priced Copy" or "Commercial Priced Copy".

C8 The tenderer is required to provide concise explanations, evidence and justifications of the different elements in their Tender. The Tender must not include promotional text, pictures and diagrams that do not add value to the Authority's understanding of the Tender.

**Use of AWARD for Electronic Submission**

C9. Your Tender must be submitted electronically via the AWARD® Virtual Tender Board by the date specified in Section B. Hard copy, paper or delivered digital tenders (e.g. DVD) are no longer required and will not be accepted by the Authority. You must ensure that your DEFFORM 47 ST Annex A is signed, scanned and uploaded to AWARD® with your Tender as a PDF. AWARD® is security accredited to OFFICIAL-SENSITIVE. Material that is protectively marked above this classification must not be uploaded. Data that is subject to the International Traffic in Arms Regulations (ITAR) or export controlled must not be uploaded.

C10. The Authority is using AWARD software for on-line electronic interaction for the project. AWARD will be used to:

- a. Publish Authority documents;
- b. Provide a portal for formal submission of your Tender.

C11. Allow the Tenderer to raise and respond to Requests and Clarifications.

C12. The Tenderer organisation will receive an individual login to the AWARD system. The login details will be forwarded from AWARD via e-mail.

C13. AWARD is an intuitive Internet based system and contains on-line guidance.

- C14. AWARD will be used to manage distribution of the ITN, supporting documents, and submission of the completed Bid.
- C15. In order to access the system, the user will need to state that they have read the Terms and Conditions, and that they accept them.
- C16. Clarification: If the Tenderer wishes to raise a clarification on supplied information then a Tenderer Clarification should be raised. The Authority point of contact will be notified of your request. The person who raised the request will be alerted by AWARD when a response is available. Each Request should consist of a single topic.
- C17. In accordance with E5 and E6 should the Authority wish the Tenderer to clarify information provided with their Bid, the Authority will raise a Clarification. The Tenderer will be alerted by AWARD and respond accordingly.
- C18. Not used
- C19. Alerts: AWARD alerts users via email that are they required to perform an action as a result of Tenderer Requests, Notification or Clarification. Once dealt with the alert may be safely deleted without affecting the originating item.
- C20. Criteria: The published evaluation criteria will be visible in AWARD and will state the evidence sought by the Authority in each case. Unless specific instructions to the contrary, a Tenderer may use as many files as necessary to substantiate their answer (Note: the Authority will seek conciseness over quantity in most cases). The Tenderer may use as many files as necessary, presented in the specified manner.
- C21. Files: The Tenderer should endeavor to ensure that individual files are no larger than the recommended size where possible. Larger files may take significant time to open over poorer connections and cause delays in evaluation. To facilitate the limit, images shall be compressed to a quality suitable for printing on A4 or A3 paper and viewing on a 1024 x 768-pixel screen. The Tenderer should not use images that add no value to the submission.
- C22. The AWARD system will be operating on an Internet hosted service supporting up to Official Sensitive information. Assessors will be able to access the model anywhere that they can access the Internet, but security of information and project guidelines should be followed.

### **ITN Clarification and Correspondence**

- C23. During the Tendering process, following the issue of the ITN, all contact with the Authority, including requests for information, ITN clarification, etc., must be submitted via AWARD. The Authority will have 5 working days to respond.
- C24. In the event that you are unsure of any element of the requirements described in the documentation, you may submit clarification questions to the Authority's Commercial Team.

### **Variant Bids**

- C25. Any Tender made subject to additional or alternative Contract Conditions alone is not a variant bid. A variant bid is a Tender that offers an alternative approach to, or method of, meeting the Authority's requirements as set out in the ITN Documentation. Where the Tender evaluation has a pass / fail for the Contract Conditions the Authority may reject the Tender on the grounds of such additional or alternative Contract Conditions.



- C26. The decision to invite a Single Source response is based on the scope of the requirement. Where you submit a variant bid that is outside the scope of the requirement the Authority may be obliged to compete the requirement.

### **Equipment Information to Support Tendering**

- C27. The Authority has provided supporting information to aid the Tenderer in pricing the required activities under any future contract and to support contract management decisions. The Tenderer should use the supporting information to develop their own equipment demand plans. The Authority makes no warranty as to the accuracy, reliability or completeness of the supporting information. The supporting information is listed as follows and can be found in the following locations:

- a. Appendix A01 to the Terms and Conditions of Contract – Support Operation Matrix;

For the purposes of this Contract **Asset Availability Service** (on balance sheet) applies.

- b. Appendix A02 to the Terms and Conditions of Contract– Surface Ships Equipment;

A list of NSNs is provided listing all Surface equipment that require support as part of the Asset Availability Service

- c. Appendix A03 to the Terms and Conditions of Contract – Submarine Equipment;

A list of NSN's is provided listing all Submarine equipment that require support as part of the Asset Availability Service.

- d. Appendix A04 to the Terms and Conditions of Contract – Key Performance Indicator (KPI) Summary;

A list of KPIs and Performance Indicators for the purposes of this Contract.

- e. Appendix A05 to the Terms and Conditions of Contract – Weekly Transfer File;

Contains a '.xlsx' spreadsheet template to allow the Contractor to furnish the Authority weekly with the latest stores position.

- f. Appendix A06 to the Terms and Conditions of Contract – Forward Fleet Plan;

The plan includes indicative high-level details of both Surface and Submarine future schedules.

- C28. The Tenderer must note that the above-mentioned Annexes are forwarded for information only and their accuracy should not be relied upon, unless stated to be actual figures.

Contains a list of all equipment that will be made available to the successful tenderer following contract award as Government Furnished Equipment subject to a tolerance of 10% on the stock levels provided.

### **Qualifying Defence Contracts**

#### **Defence Reform Act 2014 – Part 2, Single Source Contracts**

- C29. This ITT may result in a Qualifying Defence Contract (QDC) under the provisions of the Defence Reform Act 2014 (DRA). You should therefore understand the implications in the event that it does result in a QDC.
- C30. The DRA enables secondary legislation, called Single Source Contract Regulations 2014 (SSCR), which applies:
- a. to new contracts with a value of £5M (ex VAT) or above;
  - b. to amended contracts where the amended contract has a value of £5M (ex VAT) or above, and both parties agree that the amended contract should be a QDC.
- C31. The DRA and SSCR set out the criteria for determining when a single source contract is a Qualifying Defence Contract (QDC). Any new single source contract which meets the criteria will be a QDC, unless exempt by the Secretary of State for Defence. Exemptions will only be granted in exceptional circumstances.
- C32. The DRA and SSCR cover such matters as the pricing of QDCs, the information, openness and transparency that the parties must provide to each other, and the rights and obligations of both parties to a QDC once on contract.
- C33. The DRA requires a primary contractor to be satisfied that the costs proposed for inclusion in the price of a QDC are Allowable Costs, in that they are appropriate, attributable to the contract and reasonable in the circumstances. The MOD is obliged to ensure that you meet the criteria and at any time you may be required to show that this is the case in relation to any particular cost. The Single Source Regulations Office (SSRO) has issued Statutory Guidance on Allowable Costs (SGAC) which can be found on their website and which the parties to a QDC will be expected to adhere to, other than in exceptional circumstances. Either party to a QDC may subsequently make a referral to the SSRO for an adjustment of the contract price, if that party believes the price agreed was not in accordance with the requirements of the DRA / SSCR.
- C34. The DRA requires that the contract Profit Rate agreed between the parties for QDCs must be agreed in accordance with the provisions of the DRA and SSCR.
- C35. The DRA also sets out the criteria for determining when a contract is a Qualifying Sub Contract (QSC) to which the DRA and SSCR will apply. Any single source sub-contract in excess of £25M, placed in support of a QDC or another QSC and which meets the criteria in the DRA and SSCR, is potentially a QSC. Responsibility for assessing whether a sub-contract is a QSC lies with the party placing the sub-contract. The Tenderer therefore has an obligation to determine whether any planned sub-contract is a QSC. The Tenderer must keep a record of any determinations and notify both the Secretary of State for Defence and the sub-contractor in writing when a sub-contract is determined to be a QSC.

The MOD Commercial Toolkit provides further information about the new single source legal framework.

## **Section D – Details of Price Breakdown and Mandatory Criteria**

- D1. When placing any Contract the Authority is required to satisfy itself that the agreed price represents Value for Money (VFM). In single source Contracting you must provide to the Authority sufficient information in support of your price proposal and during subsequent price negotiation, to enable the Authority to fulfil its obligation to assure VFM. The Authority approaches all Contract pricing on the basis of the NAPNOC principle (No Acceptable Price, No Contract). We will not enter into any Contract that is unacceptably priced.
- D2. The contract is expected to be a QDC. It is your responsibility to decide the level of information you need to provide to the Authority in support of your price proposal and subsequent price negotiation, in order to satisfy the statutory obligations placed upon you by the DRA and the SSCR, and in compliance with the Statutory Guidance on Allowable Costs published by the Single Source Regulations Office (SSRO). Although you will need to understand all the requirements of the DRA/SSCR your particular attention is drawn to the DRA Section 20 (Allowable Costs).

### **Prices to be Tendered and Performance Mechanism for Activities 1 and 2**

- D3. The Authority acknowledges the challenges that the ever-changing priorities and demands of the Royal Navy present to our Supply Chain. As such, the Authority recognises the need to plan in advance. The current Forward Fleet Plan can be found at Appendix A06 of Annex A, Statement of Support Requirements.
- D4. The Authority proposes a mechanism under which:
- a. prices shall be submitted by the Tenderer for their proposal against this the ITN;
  - b. performance against KPIs shall be measured on a monthly basis against all KPIs. Should the Authority deem the level of performance has fallen below those specified in Condition 41 of the proposed Terms and Conditions to this Contract, a reconciliation will be undertaken by the Authority and any refund due from the Contractor will be advised.

### **Activity 1: Prices to be tendered for Service Management - Annex B1 to the Terms and Conditions of Contract.**

- D5. The Service Management activities for this Asset Availability Service are defined as follows:
- Project Management
  - Risk Management
  - Quality Management
  - Service Management
  - Safety & Environment Management
  - Obsolescence Management
  - Configuration Management
  - Technical Support/ 24hr Tech Help Line
- D6. This ITN invites you to Tender for the all-inclusive Firm and Fixed Prices, for discrete Surface and Submarine Fleet to undertake activities identified at D5. Payment shall be made monthly following receipt of a compliant Monthly Progress Report in accordance with Condition 27.

- D7. Your Firm and Fixed Prices should be submitted in accordance with Annex B1 and Annex C, Schedule of Requirement, reflecting the Financial year(s) within which it is intended the work will be undertaken. Prices for Years 4 to 10 shall be calculated in accordance with Condition 38 (Variation of Price) of the proposed Terms and Conditions of this Contract. Please ensure you provide as much granularity as you can to allow the Authority the ability to conduct a full price analysis.

**Activity 2: Prices to be tendered for Asset Availability Service – Equipment Availability – Annex B2 to the Terms and Conditions of Contract.**

- D8. The requirements of this Asset Availability Service for Equipment Availability are defined as follows:
- Provision of Spares (Price per Vessel)
  - Storage Facilities and PHS&T
  - Stock Level
- D9. This ITN invites you to Tender for the all-inclusive, Firm and Fixed Prices in the applicable columns to undertake activities identified within Activity 2. Payment shall be made monthly following receipt of a compliant Monthly Progress Report in accordance with Condition 27.
- D10. Your Firm and Fixed Prices should be submitted in accordance with Annex B1 and Annex C, Schedule of Requirement reflecting the Financial year(s) within which is intended the work to be undertaken. Years 4 to 10 shall be priced in accordance with Condition 38 (Variation of Price) of the proposed Terms and Conditions of this Contract. Please ensure you provide as much granularity as you can to allow the Authority the ability to conduct a full price analysis.
- D11. A variable service charge element example is specified at D12.

**Activity 2 Variable Service Charge**

- D12. The Contractor shall be paid a monthly (1 month in arrears) variable service charge. The variable element shall reflect the number of vessels in Fleet Time in accordance with Appendix A06. The Fleet Time numbers can change due to operational need therefore the Contractor would need to price the Asset availability by vessel accordingly.
- Example:
- If there are 10 vessels in Fleet time and the annual cost of keeping assets available for each vessel is £10000.
  - Activity 1 Annual Core Cost = £250000
  - Activity 1 + Activity 2
  - Activity 2= 10 x 10000=£100000
  - Therefore Activity 1+Activity 2=£350000
  - Monthly Charge would be 350000/12= £29167.
- Therefore, the Contractor shall receive £29,167 per calendar month**

**Fleet levels shall be reviewed during the Annual Strategic Review at Condition 29 and formalised via the Contract amendment process in accordance with Condition 12 and DEFCON 503.**

**Activity 3: Prices to be tendered for Out of Scope Tasks – Hourly Labour Rates and Travel and Subsistence Rates – Annex B3 to the Terms and Conditions of Contract.**

- D13. For the purposes of Activity 3, in relation to Task Approval Form (TAF) at Annex Q to the Contract, you are invited to offer:

- a. an all-inclusive hourly labour Firm and Fixed Prices that shall apply for all grades expected to be employed under a Post Design and Technical Service;
- b. an all-inclusive Mileage, Travel and Subsistence Firm and Fixed Prices that shall be employed under a Post Design and Technical Service;
- c. your Firm and Fixed Prices should be submitted in accordance with Annex B2 and B3, reflecting the Financial year (s) within which is intended the work to be undertaken. Years 4 to 10 shall be priced in accordance with Condition 38.

### **Questionnaire on Method of Allocation of Costs**

D14. The Questionnaire on Method of Allocation of Costs (QMAC) on which the Tender is based, together with its status (agreed or provisional) must be identified. If no QMAC has been produced or used, you must provide details of the method and rationale used for the allocation and apportionment of cost, and the means of determining overhead recovery rates.

### **Cost Breakdown**

D15. As part of the Tender, you must provide a cost breakdown that clearly indicates the way in which the proposed costs for the work described in the technical proposal have been derived.

D16. Where relevant, the cost breakdown must also be constructed to enable the relationships between the estimated cost and the Contract Terms and Conditions and associated assumptions and dependencies (as per Annex AA – Dependencies, Assumptions, Risks, Exclusions, Liabilities & Insurance) that have a bearing on the allocation of commercial risk (e.g. those relating to performance incentivisation) to be understood.

D17. The breakdown must provide sufficient detail to enable the Authority to assess whether the cost allocated to each of the work packages within the SoSR are Allowable.

D18. The cost breakdown must indicate the amounts quoted for each of the main cost types broken down by cost centre/department/division and by planned spend per Financial Year.

D19. For each Activity detailed in Annex A (Statement of Support Requirements) the following detail must be provided:

- a. The direct costs associated with the Activity. In this respect, a direct cost is one that can be completely attributed to the delivery of work package concerned, including materials costs, labour costs, sub-contract costs, other direct costs and any capital costs relating to expenditure on special to type equipment. Spend profiles for labour and materials broken down by financial year must be provided.
- b. The direct labour hours used to determine the work package estimate, broken down by band/grade and indicating the charging rates applied. Where applied, the annual utilisation rates used to derive the direct labour hour estimates. Any annual escalation applied to the rates must be detailed separately and the rationale provided.
- c. Any overhead and/or indirect costs relating to the conduct of your business in general which cannot be identified and measured as directly applicable to the performance of the contract (or sub-contract). The methodology used to determine such costs or cost recovery rates should be provided.
- d. Any risk contingencies associated with the work package must be quantified and substantiated. A detailed risk assessment covering: schedule, technical/performance, cost and commercial risks must be conducted. A Risk Register with Risk Analysis (RA), along with the RA rationale must be supplied. The methodology for managing and

eliminating/minimising risks off-set against the RA and its impact on cost growth and programme, must also be identified. The register must also include an assessment of costed opportunities relating to applying improved techniques/ practices, exploiting technology or pursuing other approaches that would yield VfM.

e. A statement detailing the rationale that underpins the price provided for the work package together with evidence that demonstrate the estimated costs are Allowable. The statement must include:

(1) details of any historic/recorded costs used to inform the development of the estimate supported by the rationale for any adjustments that may have been applied to that data to reflect different circumstances. Where no adjustments have been made, the rationale for applying historic/recorded costs must be provided.

(2) details of any scrap and rework costs included in the historical costs provided in response to para D19.e (1) above, specifically identifying the reasons why the scrap and rework occurred.

(3) any particular processes and/or techniques that are reflected within the estimate for the work package concerned.

f. Details of your estimating policy (e.g. estimating handbooks or guidance material) that has been applied to determine the tendered price(s), together with confirmation that the Authority will be afforded unfettered access to such documentation if requested.

D20. The relevant economic or other assumptions on which the costs in the cost breakdown are dependent, e.g. inflation, exchange rates, interest rates, limits of liabilities and taxation rates must be identified, and evidence provided.

D21. Quantified productivity improvements/efficiency gains (including any cost benefit from company re-organisation) expected to be realised over the life of the Contract, detailing the financial year they are expected to apply. Any costs included with the estimate that are expected to contribute to the realisation of those improvements shall be separately identified. Any proposed investments must be supported by a quantitative analysis demonstrating the benefits.

D22. The assumptions that underpin the estimated costs identified in the cost breakdown must be provided (in accordance with Annex AA – Dependencies, Assumptions, Risks, Exclusions, Liabilities & Insurance). The assumptions must identify any future work Authority or Tenderer programmes covering the duration of the prospective contract/contract amendment. The anticipated % of Authority/Tenderer workload split for the duration of the subject contract must be identified.

## **Profit**

D23. The profit rate(s) used to determine the tendered price(s) must be identified together with details of how each rate has been derived. It is the Authority's expectation that the extant Baseline Profit Rate (BPR) published by the SSRO must be used as the starting point when agreeing a profit rate for qualifying and non-qualify contracts with adjustments made in accordance with the six steps for calculating the profit rate laid out in Section 17 of the DRA.

## **Validity of Tender**

- D24. The Tenderer shall confirm that their Tender remains valid and open for acceptance by the Authority until 31 December 2021, if successful your Tender must remain open for acceptance for a further sixty (60) calendar days.

## **Section E – Tender Evaluation**

- E1. This section details how your Tender will be evaluated, the tools used to evaluate the Tender and the evaluation criteria.
- E2. The evaluation of Tenders will be conducted solely on the basis of the criteria set out in this Section D and in accordance with Regulations 18 and 31 of DSCPR 2011.

### **Confidentiality**

- E3. Evaluators will observe the confidentiality and commercial sensitivity of the Tender during the commercial and technical evaluation process.

### **Initial Clarification**

- E4. An initial clarification process will take place to ensure that the Tender is assessed fairly, with assessors all having a clear understanding of the Tender response.
- E5. The main purpose of clarification is to allow for a fair and accurate assessment of the Tender. Tender clarification questions will be generated when:
  - a. errors, such as typographical, are found in the Tender;
  - b. inaccuracies are found in the Tender;
  - c. assessors do not fully understand the Tender response.
- E6. Clarification questions are those asked by the Authority to clarify the content of the Tender. They are not used to lead or advise the Tenderer on better managerial/technical/commercial solutions, or to change the Tender in any form.

### **Assessment Overview**

- E7. The requirements of this Invitation to Negotiate invites the Tenderer to submit information, data, evidence, proposals and draft documentation to support their Tender and demonstrate managerial, technical and commercial compliance.
- E8. The Authority will conduct an assessment of the submitted information, data, evidence and draft documentation to assess whether it has been demonstrated that the Tenderer is compliant and capable to undertake the requirements of the proposed Contract.

### **Tender Assessment Process**

- E9. Not used
- E10. The Tendering and Contract award process is being undertaken in accordance with Regulation 18 (Negotiated Procedure) of the Defence and Security Public Contracts Regulations 2011.
- E11. The Tenderer shall provide data and evidence to demonstrate compliance and adherence to the full range of requirements stated within this ITN.

### **Tender Evaluation Criteria**



E12. The tender submission will be subject to an evaluation based on the technical and price criteria detailed at E13 – E20. The Tenderer should note that the Authority's primary objective is to obtain the best value for Defence.

E13. The Authority shall undertake a staged evaluation as outlined below. It will start with a Tender Completeness check required to ensure that all Tender deliverables are included in the Technical and Commercial Volumes and therefore ready for evaluation. Once completed the separate Technical and Commercial Evaluations will be undertaken and any clarifications issued in accordance with the clarifications process outlined in Section F). If either or both of these evaluations result in the Tender being deemed non-compliant the Authority will commence Stage 3 to negotiate changes with a joint aim of achieving a compliant Tender, which would culminate in Stage 4 – Revise and Confirm. At this point the Authority will undertake Stages 1 and 2 again and produce an Evaluation Report.

E14. Following the clarification phase if any areas, either in the Commercial or Technical evaluations at Stage 2 result in non-compliance, the Authority will commence a period of negotiation (Stage 3) with the Tenderer to attempt to resolve these areas. This may culminate in discussions with the Tenderer whereby the Authority describes the areas that are below the pass mark or are deemed non-compliant and request a Revise and/or Confirm offer from the Tenderer with the joint aim of achieving at least the pass mark or compliance. If the Tender is unaffordable the Authority will enter a dialogue with the Tenderer under the NAPNOC principle in order to reach an affordable and therefore compliant position through the issue of a Revise or Confirm (Stage 4).

E15. If the negotiation does not result in a Compliant Tender from a Technical or Commercial perspective following the receipt of the Revise and Confirm offer the Authority reserves the right to enter into further negotiations with the Tenderer.

### **Commercial Proposal Evaluation**

E16. The Tenderer's Commercial Proposal will be evaluated against the Commercial Compliancy Matrix at Table 4 to Section E of this DEFFORM 47 ST and the Commercial Evaluation Criteria Table 1 below. The Tenderer's Commercial Proposal submitted with its Tender should utilise the same Commercial Compliancy Matrix format. The Authority will evaluate the commercial impact on, and the risk to, the Authority of any proposed amendments made by the Tenderer to the Contract Terms and Conditions on the basis of the evaluation criteria set out below. The Tenderer is required to mark up the Commercial Compliancy Matrix with their proposed amendments where they are non-compliant with any Terms, Conditions and Annexes to give full effect to its Tender Response. The Tenderer should note that in completing their mark up, any comments, footnotes, square brackets or qualificatory language suggesting that the position is not final will be disregarded by the Authority. The Tenderer should provide its complete and final drafting only. The Tenderer's Commercial Proposal will be required to achieve a minimum consensus score of 2 in order for the Authority to consider it a viable and acceptable solution.

Commercial Evaluation Criteria	Score
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<p>The Authority considers, exercising its professional skill and judgment, that when assessed as a whole, the Tenderer's proposed amendments to the proposed Contract in their Contract mark-up are likely to have no adverse impact to the Authority on:</p> <ul style="list-style-type: none"> <li>a. commercial risk; and/or</li> <li>b. cost to the Authority; and/or</li> <li>c. Contractor's price; and/or</li> <li>d. Contractor performance; and/or</li> <li>e. Contractor's obligations; and/or</li> <li>f. service delivery; and/or</li> <li>g. the Authority's obligations or dependencies and/or</li> <li>h. Programme timescales.</li> </ul>	3
<p>The Authority considers, exercising its professional skill and judgment, that when assessed as a whole, the Tenderer's proposed amendments to the proposed Contract in their Contract mark-up are likely to have an acceptable adverse impact to the Authority on:</p> <ul style="list-style-type: none"> <li>a. commercial risk; and/or</li> <li>b. cost to the Authority; and/or</li> <li>c. Contractor's price; and/or</li> <li>d. Contractor performance; and/or</li> <li>e. Contractor's obligations; and/or</li> <li>f. service delivery; and/or</li> <li>g. the Authority's obligations or dependencies and/or</li> <li>h. Programme timescales.</li> </ul>	2
<p>The Authority considers, exercising its professional skill and judgment, that when assessed as a whole, the Tenderer's proposed amendments to the proposed Contract in their Contract mark-up are likely to have an unacceptable adverse impact to the Authority on:</p> <ul style="list-style-type: none"> <li>a. commercial risk; and/or</li> <li>b. cost to the Authority; and/or</li> <li>c. Contractor's price; and/or</li> <li>d. Contractor performance; and/or</li> <li>e. Contractor's obligations; and/or</li> <li>f. service delivery; and/or</li> <li>g. the Authority's obligations or dependencies and/or</li> <li>h. Programme timescales.</li> </ul> <p>Where the Tenderer achieves a score of 1 the Authority reserves the right to examine in greater detail during negotiation. .</p>	1
<p>The Authority considers, exercising its professional skill and judgment, that the Tenderer's proposed amendments to the proposed Contract shall have a serious adverse impact to the Authority.</p> <p>The Authority regards all 0 scores as unacceptable and therefore any Tenderer achieving a 0 score on one occasion shall be excluded from that point of the process without further technical or financial evaluation.</p>	0

**Section E - Table 1: Commercial Evaluation Criteria**  
**Tender Evaluation Process**

E17. The Authority will award marks against each Serial Question in accordance with the stated evaluation criteria for that Serial Question.

E18. The Authority will appoint technical assessors to independently evaluate the Tenderer's Technical Proposal against the Serial Questions. The Authority will appoint individual assessors to award marks in accordance with the applicable evaluation criteria detailed at E20 below.

E19. Individual assessors will subsequently convene to agree a consensus score for each Serial Question.

### Scoring Methodology

E20. Marks will be awarded against each Serial Number question in the Technical Evaluation Criteria at Table 5 to Section E of this DEFFORM 47 ST based upon compliance and confidence to indicate how credible the evaluation panel considers the data and evidence to be. A maximum score of 3 can be achieved for each Serial Number question.

### Technical Evaluation Scoring Guidance

<b>Criterion Scores*:</b>		
Each individual Serial Number Question will be evaluated against the following scoring mechanism.		
0	Unacceptable	<p>In the judgement of the Authority the Tenderer has <b><u>not</u></b> provided any of the elements required to form a complete answer to the question.</p> <p>The Tenderer HAS NOT provided any of the following:</p> <ul style="list-style-type: none"> <li>a. Details of the Contractor's processes (i.e. details of how the Contractor intends to deliver the tasks specific to this Contract);</li> <li>b. Evidence of the Contractor's processes (i.e. has supplied the Contractor's formal processes and procedures);</li> <li>c. Examples of where the process has been used to carry out the tasks previously (i.e. examples pertaining to the equipment within the scope of this Contract or similar rotating electrical machinery).</li> </ul> <p>The Tenderer HAS presented the following:</p> <ul style="list-style-type: none"> <li>a. Boilerplate copies of the Contractor's processes;</li> <li>b. Examples bearing no relevance to the deliverables of this Contract;</li> <li>c. Falsified evidence;</li> <li>d. Marketing propaganda.</li> </ul> <p><b>Outcome:</b> The Authority reserves the right to exclude the Tenderer if a 0 is achieved on one or more instances from that point in the process without further technical or financial evaluation.</p>
1	Partially Acceptable	<p>In the judgement of the Authority the Tenderer has only provided <b><u>one</u></b> of the elements required to form a complete answer to the question.</p> <p>The Tenderer has provided only one of the following:</p> <ul style="list-style-type: none"> <li>a. Details of the Contractor's processes (i.e. details of how the Contractor intends to deliver the tasks specific to this Contract);</li> </ul>

		<p>b. Evidence of the Contractor's processes (i.e. has supplied the Contractor's formal processes and procedures);</p> <p>c. Examples of where the process has been used to carry out the task previously (i.e. examples pertaining to the equipment within the scope of this Contract or similar rotating electrical machinery).</p> <p><b>Outcome:</b> Where the Tenderer achieves a score of 1 the Authority reserves the right to examine in greater detail during negotiation.</p>
2	Acceptable	<p>In the judgement of the Authority the Tenderer has provided <b><u>two</u></b> of the elements required to form a complete answer to the question.</p> <p>The Tenderer has provided two of the following:</p> <p>a. Details of the Contractor's processes (i.e. details of how the Contractor intends to deliver the tasks specific to this Contract);</p> <p>b. Evidence of the Contractor's processes (i.e. has supplied the Contractor's formal processes and procedures);</p> <p>c. Examples of where the process has been used to carry out the task previously (i.e. examples pertaining to the equipment within the scope of this Contract or similar rotating electrical machinery).</p> <p><b>Outcome:</b> The Tenderer achieving a score of 2 shall result in a pass and be deemed as meeting an acceptable level.</p>
3	Fully Acceptable	<p>In the judgement of the Authority the Tenderer has provided <b><u>all</u></b> the elements required to form a complete answer to the question.</p> <p>The Tenderer has provided the following:</p> <p>a. Details of the Contractor's processes (i.e. details how the Contractor intends to deliver the task specific to this Contract);</p> <p>b. Evidence of the Contractor's processes (i.e. has supplied the Contractor's formal processes and procedure);</p> <p>c. Examples of where the process has been used to carry out the task previously (i.e. examples pertaining to the equipment within the scope of this Contract or similar rotating electrical machinery).</p> <p><b>Outcome:</b> The Tenderer achieving a score of 3 shall result in a pass and be deemed as meeting the maximum acceptable level.</p>

## Section E - Table 2: Technical Evaluation Criteria

### Financial Proposal Evaluation

- E21. The Pricing Spreadsheets included at Annex B1 – B3 to Terms and Conditions of Contract require insertion of your Firm and Fixed prices/rates (as applicable) to complete your Financial Proposal. Financial evaluation will be undertaken in respect of all lines in Annexes B1, B2 and B3 (except travel and subsistence rates at B3 which are auto-populated by the Authority as the Authority's maximum limits) and shall include as a minimum:

- a. 100% of all line items in Annexes B1, B2 and B3. If any line item is received unpriced without acceptable justification, the Authority reserves the right to reject your entire Tender as non-compliant.
- E22. As the resulting contract is expected to be a QDC the Tenderer must complete a Contract Pricing Statement in accordance with the DRA / SSCR

## **TENDERER'S COMPLIANCE /COMPLETION CHECKLIST**

The Tenderer's return checklist at Table 3 below forms part of the Tender Evaluation Criteria and will be used by the Authority's Commercial Assessor to evaluate and cross check the completed Commercial documents forwarded with the Tenderer's Commercial Proposal.

<b>TENDER RESPONSE REQUIREMENTS</b>	<b>Compliance /Forms completed Yes/No</b>	<b>Proposal Reference</b>
Full completion of the table in DEFFORM 47 ST Annex A (Offer) (Section F, Paragraph 18)		
Appendix 1 (Information on Mandatory Declarations) to DEFFORM 47 ST Annex A (Offer)		
Tenderer's Commercially Sensitive Information Form (DEFFORM 539A)		
DEFFORM 111 – Appendix to Contract		
A completed Compliance Matrix in accordance with E13 and in the format provided in Section E to this DEFFORM 47 ST;		
Responses to all Serial Questions provided at Section E to this DEFFORM 47 ST		
DRAFT Contract Pricing Statement		
In accordance with Single Source Contract Regulations (SSCR) 2014 and the Cost Breakdown requirements defined within Section D of the DF 47 ST. This should also include the profit rate(s) used to determine the tendered price(s) must be identified together with details of how each rate has been derived.		
Annex A -Statement of Support Requirement inc Appendices A01 to A07		
Annex B – Pricing Schedule:		
Annex B1 – Activity 1 Service Management and Activity 2 Equipment Availability – Schedule of Firm and Fixed Prices		
Annex B2 – Post Design and Technical Services: Schedule of Firm (all inclusive) and Fixed Labour Prices		
Annex B3 – Post Design and Technical Services: Schedule of Firm (all inclusive) and Fixed Travel and Subsistence Prices, Mileage Prices		
Annex C – DEFFORM 110 Schedule of Requirements		
Annex D -DEFFORM 315 Contract Data Requirements		
Annex E – DEFFORM 68 Hazardous Materials		
Annex F – DEFFORM 316 GFI		
Annex G – Draft Exit/Transition Plan		
Annex H -Security Aspects Letter (SAL)		
Annex I – Statement Relating to Good Standing		
Annex J – Transfer of Undertakings (Protection of Employment)		
Appendix 1 to Annex J – Incumbent Contractor's TUPE declaration		
Annex K – Performance Management Record		
Annex L – Certificate of Conformity		

Annex M – Draft Obsolescence Management Plan		
Annex N – DEFFORM 647 Financial Reporting Spreadsheet		
Annex O – Electronic Information Sharing Agreement (EISA)		
Annex P – DEFFORM 177 Design Rights and Patents (Sub-Contractors) Agreement		
Annex Q – Task Approval Form (TAF)		
Annex R – Contract Change Register		
Annex S – Draft Project Management Plan		
Annex T- Draft Risk Management Plan		
Annex U – Draft Quality Management Plan		
Annex V – Draft Stakeholder Management Plan		
Annex W – Draft Packing, Handling, Storage and Transport Plan		
Annex X- Draft Procurement Management Plan		
Annex Y – Draft Configuration Management Plan		
Annex Z – Draft Safety and Environmental Plan		
Annex AA – Draft Dependencies, Assumptions, Risks, Exclusions, Liabilities & Insurance		
A statement confirming compliance with DEFCON 658 (Cyber), that the Supplier Assurance Questionnaire has been completed and appropriate Cyber Controls are in place. (see F21)		

### **Section E - Table 3: Tender Response Compliance Checklist**

## **TENDERERS COMPLIANCE MATRIX**

The Tenderer shall indicate his compliance or otherwise with the terms of the ITN and the Conditions of the proposed Contract by copying and completing the Commercial Compliance Matrix below and returning it as part of the TENDERER'S COMMERCIAL PROPOSAL.

The Commercial Compliance Matrix below forms part of the Tender Evaluation Criteria and will be used by the Authority's Commercial Assessor to evaluate and cross check the completed Commercial Compliance Matrix forwarded with the Tenderer's Commercial Proposal.

<b>GENERAL CONTRACT PROVISIONS</b>			<b>Fully Compliant Yes/No</b>	<b>Tenderer Mark Up Comments (and/or Proposal reference)</b>
<b>DEFCON</b>	<b>Edition</b>	<b>Description</b>		
5J	11/16	Unique Identifiers		
14	11/05	Inventions and Designs Crown Rights and Ownership of Patents and Registered Designs		
15	02/98	Design Rights and Rights to Use Design Information for use with DEFFORM 315		
16	10/04	Repair and Maintenance Information		
21	10/04	Retention of Records		
68	02/19	Supply of Data for Hazardous Articles, Materials and Substances		
76	12/06	Contractor's Personnel at Government Establishments		
90	11/06	Copyright		
113	02/17	Diversion Orders		
117	10/13	Supply of Documentation for NATO Codification Purposes		
127	12/14	Price Fixing Condition for Contracts of Lesser Value		
129	07/19	Packaging (for Articles other than Munitions)		
129J	11/16	The Use of the Electronic Business Delivery Form		
501	11/17	Definitions and Interpretations		
502	05/17	Specification Changes		
503	12/14	Formal Amendments to Contract <b>Note:</b> For the purposes of Clause 1 of DEFCON 503 the Authority's duly authorised representative shall be the Commercial Officer named at Box 1 of Appendix to Contract.		
507	10/18	Delivery		
513	11/16	Value Added Tax		
514	08/15	Material Breach		
515	02/17	Bankruptcy and Insolvency		
516	04/12	Equality		
518	02/17	Transfer		
520	05/18	Corrupt Gifts and Payment of Commission		
522	11/17	Payment and Recovery of Sums Due		



524	10/98	Rejection <b>Note:</b> For the purposes of Clause 4, the period specified shall be twelve months.		
524A	02/20	Counterfeit Materiel		
525	10/98	Acceptance <b>Note:</b> For the purposes of this DEFCON a period of twelve months shall apply.		
526	08/02	Notices		
527	09/97	Waiver		
528	07/17	Overseas Expenditure, Import and Export Licenses <b>Note:</b> For the purposes of Clause 16, the periods are 30 calendar days.		
529	09/97	Law (English)		
530	12/14	Dispute Resolution (English Law)		
531	11/14	Disclosure of Information		
532B	05/18	Protection of Personal Data		
534	06/17	Sub-Contracting and Prompt Payment		
537	06/02	Rights of Third Parties		
538	06/02	Severability		
539	08/13	Transparency		
550	02/14	Child Labour and Employment Law		
566	03/18	Change of Control of Contractor		
601	04/14	Redundant Material		
602A	12/17	Deliverable Quality Plan		
604	06/14	Progress Reports		
606	06/14	Change and Configuration Control Procedure		
608	10/14	Access and Facilities to be Provided by the Contractor		
609	08/18	Contractor's Records		
611	02/16	Issued Property		
612	10/98	Loss of or Damage to the Articles		
620	05/17	Contract Change Control Procedure		
621B	10/04	Transport (if the Contractor is responsible for Transport)		
624	11/13	Use of Asbestos in Arms, Munitions or War Materials		
625	10/98	Co-operation on Expiry of Contract		
627	12/10	Requirement for a Certificate of Conformity		
632	05/12	Third Party Intellectual Property – Rights and Restrictions		
637	05/17	Defect Investigation and Liability		
642	06/14	Progress Meetings		
643	12/14	Price Fixing (None-qualifying Contracts)		
644	07/18	Marking of Articles		
647	04/19	Financial Management Information (Annex N)		
649	12/16	Vesting		
656B	08/16	Termination for Convenience – over £5M		
658	10/17	Cyber		
659A	02/17	Security Measures		
660	12/15	Official-Sensitive Security Requirements		
670	02/17	Tax Compliance		
674	09/19	Advertising Subcontracts (DSPCR 2011)		
678	09/19	SME Spend Data Collection		
687A	07/19	Provision of A Shared Data Environment Service		
691	03/15	Timber and Wood – Derived Products		
694	03/16	Accounting for Property of the Authority		
800	12/14	Qualifying Defence Contract		

801	12/14	Amendments to Qualifying Defence Contracts – Consolidated versions		
802	12/14	QDC: Open Book on subcontracts that are not Qualifying Sub-contracts (QSC)		
804	03/15	QDC: Confidentiality of Single Source Contract Regulations Information		

CONTRACT SPECIAL CONDITIONS	Full Compliance Yes/No	Tenderer Mark Up Comments (and/or Proposal reference)
<b>CORE CONDITIONS</b>		
1. Definitions and Interpretations		
2. General		
3. Entire Agreement		
4. Contract Term and Option(s)		
5. Precedence of Documents		
6. Scope and Specification		
7. Cost of Contract		
8. No Partnership		
<b>PARTIES RIGHTS AND OBLIGATIONS</b>		
9. The Tasking Process		
10. Storage Transportation and Delivery		
11. Disposal of Assets (GFI)		
12. Formal Amendments to the Contract		
13. Obligations of the Authority		
14. Obligations of the Contractor		
15. Standards of Performance		
16. Contractor Related Parties		
17. Authority Related Parties		
18. Authority Disclosed Data		
19. Contractor's Due Diligence		
20. No Relief		
21. Fraudulent Statements		
22. Severability		
23. Waiver		
24. Assignment of Contract		
25. Third Party Rights		
26. Transparency		
27. Monthly Progress Report		
28. Project Review Meetings		
29. Annual Strategic Review		
30. Annual Strategic Review Report		
31. Mid-Term 5-Year Strategic Review Report and Meeting		
32. Supply of Contractor Deliverables and Quality Assurance		
33. Environmental Management		
34. CE Marking		
35. Continuous Improvement		
36. Self-to-Self Delivery		
<b>ACTIVITIES, PRICING AND PERFORMANCE</b>		
37. Pricing Contract Deliverables		
38. Variation of Price (VOP)		
39. Payment and Recovery of Sums		
40. Performance Measurement		
41. Key Performance Indicators (KPIs) and Performance Standards		
42. Mobilisation Period and Milestones		
43. Performance Improvement Plan		
44. Delivery / Collection		
45. Late Delivery		
46. Beyond Economic Repair		
47. Diversion Orders		

48. Service Warranty		
<b>FINANCIAL INSPECTION AND REVIEW</b>		
49. Rights of Audit		
50. Open Book Accounting		
51. Earned Value Management (EVM)		
<b>INTELLECTUAL PROPERTY, INFORMATION AND GOVERNANCE</b>		
52. Intellectual Property Rights (IPR)		
53. Sub Contracts		
54. Access to Material Information/Data/Software ('Information')		
55. Cyber Security		
56. Transfer of Undertakings (Protection of Employment) Information on Re-tender, Expiry or Termination		
57. Publicity		
58. Information Regarding Prosecution or Proceedings		
59. Security Aspects Letter		
60. Access to the Comprehensive Royal Naval Inventory Systems Project (CRISP)		
<b>OBLIGATIONS TO ASSIST POST TERMINATION OR EXPIRY</b>		
61. Exit/Transition Plan		
62. Transition to a New Contractor		
63. Exit Strategy		
<b>Quality Assurance Standards and Conditions</b>	<b>Compliance Yes/No</b>	<b>Tenderer Mark Up Comments (and/or Proposal reference)</b>
AQAP 2105		
DEFSTAN 00-45		
DEFSTAN 00-51		
DEFSTAN 00-56		
DEFSTAN 05-57		
DEFSTAN 05-135		
DEFSTAN 05-138		
DEFSTAN 02-617		
<b>DEFFORMS</b>	<b>Compliance Yes/No</b>	<b>Tenderer Mark Up Comments (and/or Proposal reference)</b>
47 ST – Invitation to Tender		
68 – Hazardous Equipment, Materials or Substances Statement by the Contractor		
110 – Schedule of Requirements		
111 – Appendix – Addresses and other Information		
129J – The Use of the Electronic Business Delivery Form		
177 – Design Rights and Patents (Sub-Contractors agreement)		
315 – Contract Data Requirements		
316 – Government Furnished Information		
647 – Financial Management Information		
687C - Electronic Information Sharing Agreement		
<b>Special Conditions and Processes</b>	<b>Compliance Yes/No</b>	<b>Tenderer Mark Up Comments (and/or Proposal reference)</b>

PDS Tasking Procedures, Repair and Technical Support		
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## **MREM MSS/102 –TECHNICAL EVALUATION CRITERIA**

### **Evidence Required:**

- a. The Tenderer shall provide details, supported by evidence **(NOT BOILERPLATE)**, of how they intend to deliver this Contract;
- b. How the Tenderer intends to deliver against each specific task under this Contract.
- c. The Tenderer is required to provide evidence that they have a robust Supply Chain process across stakeholders to deliver against each Activity specified in the SoSR at Annex A.
- d. The Tenderer is required to provide evidence that they and their Supply Chain hold the required standards and Suitably Qualified and Experienced Persons (SQEP) to meet the Contract deliverables.
- e. The Tenderer must reference the location(s) of evidence provided to respond to each Serial Question.

**The failure of the Tenderer to satisfy any Serial Question will result in a requirement for the Authority to negotiate changes with a joint aim of achieving a compliant Tender (as per Paras E13- E15)**

### **Characteristics Sought:**

Confidence that the Contractor has practices and processes in place for the Equipment Availability and Storage, to source OEM Spares and meet the Fleet Time schedule.

<b>Technical Criteria</b>				
<b>Serial No</b>	<b>Activity</b>	<b>SoSR Heading</b>	<b>Description of Tender Assessment Criteria/Requirement</b>	<b>Weighting (1-3) Score</b>
<b>1.</b>	1	Project Management	The Authority requires the Tenderer to provide details of its process for Project Management, including evidence of its process and examples of where the process has been used to carry out the tasks on Contracts for similar equipment. <b>Minimum Weighted Compliance Pass Score: 4</b>	2
<b>2.</b>	1	Risk Management	The Authority requires the Tenderer to provide details of its process for Risk Management, including evidence of its process and examples of where the process has been used to carry out the tasks on Contracts for similar equipment. <b>Minimum Weighted Compliance Pass Score: 6</b>	3
<b>3.</b>	1	Stakeholder Management	The Authority requires the Tenderer to provide details of its process for Stakeholder Management, including evidence of its process and examples of where the process	2

### Technical Criteria

Serial No	Activity	SoSR Heading	Description of Tender Assessment Criteria/Requirement	Weighting (1-3) Score
			has been used to carry out the tasks on Contracts for similar equipment.  <b>Minimum Weighted Compliance Pass Score: 4</b>	
4.	1	Quality Assurance	<p>The Authority requires the Tenderer to provide details of its process for Quality Management, including evidence of its process and examples of where the process has been used to carry out the tasks on Contracts for similar equipment. The QP shall address all areas of AQAP 2105 but shall describe in detail:</p> <ul style="list-style-type: none"> <li>a) Staff directly involved with QA (AQAP 2105 Sect. 4.7)</li> <li>b) Planning and control procedures for product realisation (AQAP 2105 Sect 4.10.1 and 4.10.8)</li> <li>c) Planning and control of design (AQAP 2105 Sect. 4.10.5)</li> <li>d) Configuration Management Control including application for Concessions (AQAP 2105 Sect 4.10.2)</li> <li>e) Purchasing including control of Sub-Contractor's and the 'flow down' of prime Contract conditions (AQAP 2105 Sect. 4.10.7)</li> <li>f) Records of Contract/Management Reviews carried out with both the Contractor and all Sub- Contractors (AQAP 2110 Edition D Sect. 5.5.3)</li> <li>g) Control of Non-Conformance (process and product) including corrective and preventative action (AQAP 2105 Sect. 4.4.1 and 4.11.1)</li> <li>h) Monitoring and measurement of Customer Satisfaction (AQAP 2105 Sect. 4.13.1)</li> </ul> <p><b>Minimum Weighted Compliance Pass Score: 6</b></p>	3
5.	1	Service Management	<p>The Authority requires the Tenderer to provide details of its process for Service Management, including evidence of its process and examples of where the process has been used to carry out the tasks on Contracts for similar equipment.</p> <p><b>Minimum Weighted Compliance Pass Score: 6</b></p>	3

Technical Criteria				
Serial No	Activity	SoSR Heading	Description of Tender Assessment Criteria/Requirement	Weighting (1-3) Score
6.	1	Safety & Environmental Management	<p>The Authority requires the Tenderer to provide details of its process for Safety &amp; Environmental Management, including evidence of its process and examples of where the process has been used to carry out the tasks on Contracts for similar equipment.</p> <p><b>Minimum Weighted Compliance Pass Score: 6</b></p>	3
7.	1	Obsolescence Management	<p>The Authority requires the Tenderer to provide details of its process for Obsolescence Management, including evidence of its process and examples of where the process has been used to carry out the tasks on Contracts for similar equipment.</p> <p><b>Minimum Weighted Compliance Pass Score: 4</b></p>	2
8.	1.	Configuration Management	<p>The Authority requires the Tenderer to provide details of its process for Configuration Management, including evidence of its process and examples of where the process has been used to carry out the tasks on Contracts for similar equipment.</p> <p><b>Minimum Weighted Compliance Pass Score: 4</b></p>	2
9.	1	Performance Management and Reporting	<p>The Authority requires the Tenderer to provide details of its process for Performance Management &amp; Reporting, including evidence of its process and examples of where the process has been used to carry out the tasks on Contracts for similar equipment.</p> <p><b>Minimum Weighted Compliance Pass Score: 6</b></p>	3



Technical Criteria				
Serial No	Activity	SoSR Heading	Description of Tender Assessment Criteria/Requirement	Weighting (1-3) Score
10.	2	Packing, Handling, Storage and Transport	<p>The Authority requires the Tenderer to provide details of its process for Packing, Handling, Storage &amp; Transport, including evidence of its process and examples of where the process has been used to carry out the tasks on Contracts for similar equipment.</p> <p><b>Minimum Weighted Compliance Pass Score: 6</b></p>	3
11.	2	Equipment Availability	<p>The Authority requires the Tenderer to demonstrate how it will meet the requirements within Activity 2 of the SoSR. The response shall include details of how it will manage and track the provision of spares and consumables, within its Supply Chain.</p> <p><b>Minimum Weighted Compliance Pass Score: 6</b></p>	3
12	2	Equipment Availability	<p>The Authority requires the Tenderer to demonstrate how it will ensure sufficient stock is available to achieve mandated availability targets and the demand delivery dates, specified in Condition 30 of the Terms &amp; Conditions.</p> <p><b>Minimum Weighted Compliance Pass Score: 6</b></p>	3
13	2	Provision of Equipment Repair	<p>The Authority requires the Tenderer to demonstrate how it will manage and track the refurbishment, overhaul and repair of equipment, including within its Supply Chain, in accordance with Activity 2 of the SoSR.</p> <p><b>Minimum Weighted Compliance Pass Score: 6</b></p>	3
14	1	Contract Transition	<p>The Authority requires the Tenderer to demonstrate how it shall include Contract commencement and Contract closure in accordance with Activity 1 Paragraph 13 of the SoSR.</p> <p><b>Minimum Weighted Compliance Pass Score: 4</b></p>	2

**Section E - Table 5: Technical Evaluation Criteria**

Commercial Criteria				
Serial No	Activity	SoSR Heading	Description of Tender Assessment Criteria/Requirement	Weighting (1-3) Score
1.	All	Procurement Plan	<p>The Tenderer shall demonstrate through, examples not boiler plate documentation, how it intends to manage the Contract Procurement and Supply Chain obligations. Your plan shall include details of how you will select, Contract and manage the provision of all Procurements within your Supply Chain, to include, but not limited to: Supplier selection;</p> <ul style="list-style-type: none"> <li>• Sub-Contracting including flow down pf Defence Terms &amp; Conditions and monitoring conformance;</li> <li>• Sub-Contracting management;</li> <li>• Sub-Contractor and Supplier performance metrics, monitoring and resolutions of any sub-standard performance;</li> <li>• Risk and opportunity management through your Supply Chain;</li> <li>• Details of all proposed key Sub-Contractors to include: proposed value, legal entity, country of performance, type of relationship, regularity of reports, meetings, key risks and identified mitigation specific to each Sub-Contractor.</li> </ul> <p><b>Minimum Pass Score: 4</b></p>	2

**Section E - Table 6: Commercial Evaluation Criteria**

## **Section F – Conditions of Tendering**

- F1. The issue of ITN Documentation or ITN Material is not a commitment by the Authority to place a Contract as a result of this competition or at a later stage. Any expenditure, work or effort undertaken prior to any offer and subsequent acceptance of Contract, is a matter solely for your commercial judgement. In addition to its legal rights in relation to qualifying contracts, under the Defence Reform Act 2014 the Authority reserves the right to:
- a. seek clarification or additional documents in respect of a Tenderer's submission;
  - b. visit your site;
  - c. disqualify any Tenderer that does not submit a compliant Tender in accordance with the instructions in this ITN;
  - d. not enter into a contract if you are found guilty of serious misrepresentation in relation to your Tender or the Tender process;
  - e. re-assess your suitability, for example where there is a material change of control from supplier selection;
  - f. withdraw this ITN at any time, or invite Tenders on the same or any alternative basis;
  - g. reject / negotiate your Tender or part of your Tender;
  - h. choose not to award any Contract as a result of the current procurement process;
  - i. award a Contract for some of the Contractor Deliverables, unless you specifically oppose this in your Tender or state any minimum order quantities; and / or
- F2. The Contract will be entered into when the Authority sends written notification of its entry into the Contract, either accepting your offer via DEFFORM 159 or by issuing an offer via DEFFORM 8 and you accept via a DEFFORM 10. Written notification will be issued, to the address you provide, on or before the end of the validity period specified in paragraph D24.
- F3. It is a Condition of Tendering that the Tenderer holds their Tender open for acceptance for the period stated in D24. In the event that legal proceedings are instigated, challenging the award of Contract, prior to entry into Contract, it is a condition of this ITN that you hold your Tender open for acceptance during this period, and up to fourteen (14) days after the result of the legal proceedings. In the event of such legal challenge, the Authority agrees to use all reasonable measures to accelerate proceedings.

### **Conforming to the Law**

- F4. You must comply with the UK Bribery Act 2010, applicable EU and UK legislation and any equivalent legislation in a third state.
- F5. Your attention is drawn to legislation relating to the canvassing of a public official, collusive behaviour and bribery. If you act in breach of this legislation your Tender may be disqualified from this procurement. Disqualification will be without prejudice to any civil remedy available to the Authority or any criminal liability that your conduct may attract.

### **Fraud and Other Illegal Practices**

- F6. You must report any bid rigging, fraud, bribery, corruption, or any other dishonest irregularity in connection to this Tendering exercise to:

Defence Regulatory Reporting Cell Hotline

0800 161 3665 (UK) or +44 1371 85 4881 (Overseas)

## **Conflicts of Interest**

- F7. You must notify the Authority immediately of any Conflicts of Interest (COI) that have arisen or that arise at any point prior to Contract award decision.
- F8. Where there is an existing or potential Conflict of Interest (COI) you must include a proposed Compliance Regime in your Tender. As a minimum, this must include:
- a. manner of operation and management;
  - b. roles and responsibilities;
  - c. standards for integrity and fair dealing;
  - d. levels of access to and protection of competitor's sensitive information and Government Furnished Information;
  - e. confidentiality / non-disclosure agreements (e.g. DEFFORM 702);
  - f. the Authority's rights of audit; and
  - g. physical and managerial separation.
- F9. Should your Tender be accepted your proposed compliance regime will become part of the Contract Conditions and shall be legally binding.

## **Government Furnished Assets**

- F10. Where the Authority provides, Government Furnished Assets (GFA) in support of this competition, you must include details of the GFA in your Public Store Account and treat it in accordance with Def Stan 05-099. If the Authority decides not to proceed with this procurement, you must seek disposal instructions for the GFA from the named Commercial Officer.

## **Publicity Announcement**

- F11. The Authority will publish notification of the Contract and may publish Contract documents under the FOI Act except where publishing such information would hinder law enforcement; would otherwise be contrary to the public interest; would prejudice the legitimate commercial interest of any person, or might prejudice fair competition between suppliers. You should complete and return DEFFORM 539A as explained in the DEFFORM 47 ST Annex A and associated Appendix 1.
- F13. If you wish to make a similar announcement, you must seek approval from the named Commercial Officer.
- F14. Under no circumstances should you confirm to any Third Party the Authority's acceptance of an offer of Contract prior to either informing the Authority of your acceptance or the Authority's announcement of the award of Contract, whichever occurs first.

## **Sensitive Information**

- F15. All Central Government Departments and their Executive Agencies and Non-Departmental Public Bodies are subject to control and reporting within Government. In particular, they report to the Cabinet Office and HM Treasury for all expenditure. Further, the Cabinet Office has a cross-governmental role delivering overall Government policy on public procurement, including ensuring value for money, related aspects of good procurement practice and answering Freedom of Information requests.
- F16. For these purposes, the Authority may share within Government any of the Contractor's documentation / information (including any that the Contractor considers to be confidential and / or commercially sensitive such as specific bid information) submitted

by the Contractor to the Authority during this procurement. Contractors taking part in this competition must identify any sensitive material in the DEFFORM 539A and consent to these terms as part of the competition process. This allows the Authority to share information with other Government Departments while complying with our obligations to maintain confidentiality.

- F17. The Authority reserves the right to disclose on a confidential basis any information it receives from the Tenderer during the procurement process (including information identified by the Tenderer as Commercially Sensitive Information in accordance with the provisions of this ITN) to any third party engaged by the Authority for the specific purpose of evaluating or assisting the Authority in the evaluation of the Tenderer's Tender. In providing such information the Tenderer consents to such disclosure.

### **Remedies for Actionable Contraventions under the Defence Reform Act 2014**

- F18. If you have a Qualifying Defence Contract under the DRA 2014 you should be aware that if you fail to comply with certain aspects of the legislation then the Authority may issue a Compliance Notice to you. If you continue to fail to comply, the Authority may serve you with a Civil Penalty, as DEFFORM 47ST (Edn 07/18) Page 14 of 17 provided in the Single Source Contract Regulations 2015. If you believe either a Compliance Notice or a Civil Penalty is unjustified, you may appeal the matter to the independent Single Source Regulations Office.

### **Reportable Requirements**

- F19. Listed in the DEFFORM 47 ST Annex A (Offer) are the Mandatory Declarations. It is a Condition of Tendering that you complete and attach the returns listed in the Annex and, where you select yes, you attach the relevant information.
- F20. Failure to complete this part of the Annex in full makes your Tender non-compliant. Additional information provided in response to Appendix 1 may be used to support the Authority's evaluation of your Tender, as detailed in Section D.
- F21. If you are an overseas Contractor and your Tender is successful, you will be required to provide the name and address of your bank and the relevant bank account number on Contract award.

### **Supplier Cyber Protection**

- F22. You should demonstrate your Cyber Capability for this Contract by completing the Supplier Assurance Questionnaire. The RAR code you require to complete this action is **RAR-4STB6EHA**. A link to the GOV.UK Supplier Cyber Protection Site is: <https://suppliercyberprotection.service.xgov.uk/>. In accordance with Def Stan 05-138 this requirement has been assessed as LOW.

DEFFORM 47 ST Annex A

(Edn 07/18)

## **Ministry of Defence**

**Tender Ref No. MSS/102**

## **Tender Submission Document (Offer)**

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

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

**Applicable Law**

I agree that any Contract resulting from this competition shall be subject to English Law *Where 'No' is selected, Scots Law will apply.				Yes / No*	
<b>Total Value of Tender (excluding VAT)</b>					
£ .....					
WORDS .....					
<b>UK 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>Location of work (town / city) where Contract will be performed by Prime:</b>					
Where items which are subject of your Tender are not supplied or provided by you, state location in town / city to be performed column (continue on another page if required)					
Tier 1 Sub-Contractor Company Name		Town / city to be Performed	Contractor Deliverables	Estimated Value	SME Yes /
<b>Mandatory Declarations</b> (further details are contained in Appendix 1 to DEFFORM 47 ST Annex A (Offer)):				<b>Tenderer's Declaration</b>	
Is the offer subject to the Authority Contracting for all the Contractor Deliverables?				Yes* / No	
Have you completed and attached a Contract Pricing Statement?				Yes* / No	
Is the offer made subject to a Minimum Order Quantity?				Yes* / No	
Are the Contractor Deliverables subject to IPR that has been exclusively or part funded by Private Venture, Foreign Investment or otherwise than by Authority funding?				Yes* / No	
Are the Contractor Deliverables subject to Foreign Export Control and Security Restrictions? If the answer is Yes, please complete and attach DEFFORM 528				Yes* / No	
Have you obtained foreign export approval necessary to secure IP user rights for the Authority in Contract Deliverables, including technical data, as determined in the Contract Conditions?				Yes* / No	
Have you provided details of how you will comply with all regulations relating to the operation of the collection of custom import duties, including the proposed Customs procedure to be used and an estimate of duties to be incurred or suspended?				Yes / No	
Have you completed Form 1686 for sub-Contracts?				Yes / No	
Have you completed the compliance matrix/ matrices?				Yes / No / Not Required	
Are you a Small Medium Sized Enterprise (SME)?				Yes / No	
Have you and your sub-Contractors registered with the Prompt Payment Code with regards to SMEs?				Yes / No	
Do you agree to report all SME information to the Authority?				Yes / No	
Have you completed and attached Tenderer's Commercially Sensitive Information Form (DEFFORM 539A)?				Yes / No	
If you have not already signed a corporate level DEFFORM 30 have you attached one?				Yes / No	
If you have not previously submitted a Statement Relating to Good Standing, or circumstances have changed, have you attached a revised version?				Yes* / No/ N/A	
Have you declared whether a conflict of interest exists within your Supply Chain?				Yes* / No/ N/A	
Do the Contractor Deliverables contain Asbestos, as defined by the control of Asbestos Regulations 2012?				Yes* / No	

Have you completed and attached a DEFFORM 68 - Hazardous Articles, Deliverables, Materials or Substances statement?	Yes* / No
Do the Contractor Deliverables (including Packaging) use Substances that deplete the Ozone Layer, as defined in Regulation (EC) 1005/2009 (as amended by EC 744/2010) of the European Parliament and of the Council? <a href="http://ozone.unep.org/en/treaties-and-decisions/montreal-protocol-substances-deplete-ozone-layer">http://ozone.unep.org/en/treaties-and-decisions/montreal-protocol-substances-deplete-ozone-layer</a>	Yes* / No
Are you able to support the objectives of Reservist and other supplier support to the Armed Forces?	Yes* / No
Have you attached The Bank / Parent Company Guarantee?	Yes* / No / Not Required
Have you completed, or are you working towards Cyber Essentials accreditation or equivalent and will have it in place by the Commencement Date of the Contract.	Yes*/No
If applicable are you working with your proposed supply chain to ensure where relevant they achieve Cyber Essentials accreditation or equivalent prior to the commencement date of each sub Contract.	Yes*/No/ N/A
Have you complied with the requirements of the Military Aviation Authority Regulatory Articles?	Yes / No / Not Required
Have you completed the additional Mandatory Requirements?	Yes / No / Not Required
*If selecting Yes to any of the above questions, please attach the information detailed in Appendix 1 to DEFFORM 47 ST Annex A (Offer).	
<b>Tenderer's Declaration</b>	
We understand that any misrepresentations may also be the subject of criminal investigation or used as the basis for civil action.	
Dated this..... day of ..... Year .....	
<b>Signature:</b>  (Must be original)	<b>In the capacity of</b> ..... (State official position e.g. Director, Manager, Secretary etc.)
<b>Name:</b> (in BLOCK CAPITALS)  <b>duly authorised to sign this Tender for and on behalf of:</b>  (Tenderer's Name)	<b>Postal Address:</b>  <b>Telephone No:</b> <b>Registered Company Number:</b> <b>Dunn and Bradstreet Number:</b>

## **Information on Mandatory Declarations Returns**

### **Part Tender**

1. Under Condition of Tendering F1, the Authority reserves the right to order some or part of your Tender. If your offer is subject to the Authority Contracting for all the Contractor Deliverables select 'Yes' and provide further details in your Tender.

### **Minimum Order Quantities**

2. Where your offer is subject to minimum order quantities select 'Yes' and provide further details in your Tender.

### **IPR – Restrictions**

3. Where the Contractor Deliverables are subject to IPR that has been exclusively or part funded by Private Venture, Foreign Investment or otherwise than by Authority funding you must select 'Yes' in Annex A (Are the Contractor Deliverables subject to IPR that has been exclusively or part funded by Private Venture, Foreign Investment or otherwise than by Authority funding).
4. If you have answered 'Yes' in Annex A (Offer) as directed by paragraph 3 above, you must provide details in your Tender of any Contractor Deliverable which will be, or is likely to be, subject to any IPR restrictions or any other restriction on the Authority's ability to use or disclose the Contractor Deliverable, including export restrictions. In particular, you must identify:
  - a. any restriction on the provision of information to the Authority; any restriction on disclosure or the use of information by the Authority; any obligations to make payments in respect of IPR, and any Patent or Registered design (or application for either) or other IPR (including unregistered Design Right) owned or controlled by you or a third party;
  - b. any allegation made against you, whether by claim or otherwise, of an infringement of Intellectual Property Rights (whether a Patent, Registered Design, unregistered Design Right, Copyright or otherwise) or of a breach of confidence, which relates to the performance of any resultant Contract or subsequent use by or for the Authority of any Contractor Deliverables;
  - c. the nature of any allegation referred to under sub-paragraph 4.b., including any obligation to make payments in respect of the Intellectual Property Right of any confidential information and / or;
  - d. any action you need to take or the Authority is required to take to deal with the consequences of any allegation referred to under sub-paragraph 4.b.
5. You must, when requested, give the Authority details of every restriction and obligation referred to in paragraph 4. The Authority will not acknowledge any such restriction unless so notified under paragraph 4 or as otherwise agreed under any resultant Contract. You must also provide, on request, any information required for authorisation to be given under Section 2 of the Defence Contracts Act 1958.



6. If you have previously provided information under paragraphs 4 and 5 you can provide details of the previous notification, updated as necessary to confirm their validity.

### **Notification of Foreign Export Control Restrictions**

7. If, in the performance of the Contract, you need to import into the UK or export out of the UK anything not supplied by or on behalf of the Authority and for which a UK import or export licence is required, you will be responsible for applying for the licence. The Authority will provide you with all reasonable assistance in obtaining any necessary UK import or export licence.
8. In respect of any Contractor Deliverables, likely to be required for the performance of any resultant Contract, you must provide the following information in your Tender:
  - a. Whether all or part of any Contractor Deliverables are or will be subject to:
    - (1) a non-UK export licence, authorisation or exemption; or
    - (2) any other related transfer control that restricts or will restrict end use, end user, re-transfer or disclosure.

You must complete DEFFORM 528 (or other mutually agreed alternative format) in respect of any Contractor Deliverables identified at paragraph 8 and return it as part of your Tender. If you have previously provided this information you can provide details of the previous notification and confirm the validity.

9. You must use reasonable endeavours to obtain sufficient information from your potential Supply Chain to enable a full response to paragraph 8. If you are unable to obtain adequate information, you must state this in your Tender. If you become aware at any time during the competition that all or part of any proposed Contractor Deliverable is likely to become subject to a non-UK Government Control through a Government-to-Government sale only, you must inform the Authority immediately by updating your previously submitted DEFFORM 528 or completing a new DEFFORM 528.
10. This does not include any Intellectual Property specific restrictions mentioned in paragraph 4.
11. You must notify the named Commercial Officer immediately if you are unable for whatever reason to abide by any restriction of the type referred to in paragraph 8.
12. Should you propose the supply of Contractor Deliverables of US origin the export of which from the USA is subject to control under the US International Traffic in Arms Regulations (ITAR), you must include details on the DEFFORM 528. This will allow the Authority to make a decision whether the export can or cannot be made under the US-UK Defense Trade Co-operation Treaty. The Authority shall then convey its decision to the Tenderer. If the Authority decides that use of the Treaty for the export is permissible, it is your responsibility to make a final decision whether you want to use that route for the export concerned if you are awarded the Contract.

### **Import Duty**

13. European Union (EU) legislation permits the use of various procedures to suspend customs duties.
14. For the purpose of this competition, for any deliverables not yet imported into the EU, you are required to provide details of your plans to address customs compliance, including the Customs procedures to be applied (together with the procedure code) and the estimated Import Duty to be incurred and / or suspended

15. You should note that it is your responsibility to ensure compliance with all regulations relating to the operation of the collection of import duties. This includes but is not limited to obtaining Her Majesty's Revenue and Customs (HMRC) authorisations.

### **Sub-Contracts Form 1686**

16. Form 1686 (also known as Appendix 5) is to be used in all circumstances where Contractors wish to place a sub-Contract with a Contractor where the release of OFFICIAL-SENSITIVE information is involved. The process will require submission of the single page document either directly to the MOD Project Team or, where specified, to the DE&S Security Advice Centre.

You can find further information in the Security Policy Framework – Contractual Process <https://www.gov.uk/government/publications/security-policy-framework>.

### **Small and Medium Enterprises**

17. The Authority is committed to supporting the Government's small and medium-sized enterprise (SME) initiative; its ambitious target is that every £1 in every £3 that the Government spends should be with small businesses by 2020. 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.
18. 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 at:  
<http://www.promptpaymentcode.org.uk>.
19. Suppliers are also encouraged to work with the Authority to support the Authority's SME initiative. The link below to Gov.uk website provides information on the Authority's purchasing arrangements, our commercial policies and our SME policy.  
<https://www.gov.uk/government/organisations/ministry-of-defence/about/procurement>.
20. The opportunity also exists for Tenderers to advertise any sub-Contract valued at over £10,000 in the MOD Contracts Bulletin and further details can be obtained directly from:

BiP Solutions Ltd

Web address: [www.Contracts.mod.uk](http://www.Contracts.mod.uk)

Tel No: 0845 270 7099

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

21. You should be aware that the contents of any resultant Contract may be published in line with government policy set out in the Prime Minister's letter of May 2010 (<https://www.gov.uk/government/policies/improving-the-transparency-and-accountability>) and the information contained within DEFCON 539.
22. Before publishing the Contract, the Authority will redact any information which is exempt from disclosure under the Freedom of Information Act 2000 ("the FOIA") or the Environmental Information Regulations 2002 ("the EIR").
23. You should complete the attached Tenderer's Commercially Sensitive Information Form (DEFFORM 539A) explaining which parts of your Tender you consider to be commercially sensitive. This includes providing a named individual who can be contacted with regard to FOIA and EIR.

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

### **Electronic Trading**

25. Tenderers must note that use of the Contracting, Purchasing and Finance (CP&F) electronic procurement tool – see <https://www.gov.uk/government/publications/mod-Contracting-purchasing-and-finance-e-procurement-system> - is a mandatory requirement for any resultant Contract awarded following this Tender. By submitting this Tender you agree to electronic payment. Please feel free to consult the service provider on connectivity options. Failure to accept electronic trading will result in your Tender being non-compliant.

### **Change of Circumstances**

26. If you have not previously submitted a Statement Relating to Good Standing or circumstances have changed, please select 'Yes' and submit a Statement Relating to Good Standing with your Tender.

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

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

### **Military Aviation Authority (MAA) Requirements**

28. There are no MAA Requirements.

### **Bank or Parent Company Guarantee**

29. A Parent Company or Bank Guarantee may be required. In the event that your Tender is identified as the most favourable / compliant Tender, but MOD assesses that a Parent Company or Bank Guarantee is required, then one will be requested (in the form of DEFFORM 24 / 24A as appropriate). No Contract will be awarded until a suitable Parent Company or Bank Guarantee, as appropriate, is in place.

### **The Armed Forces Covenant**

30. The Armed Forces Covenant is a public-sector pledge from Government, businesses, charities and organisations to demonstrate their support for the Armed Forces community. The Covenant was brought in under the Armed Forces Act 2011 to recognise that the whole nation has a moral obligation to redress the disadvantages the armed forces community face in comparison to other citizens, and recognise sacrifices made.
31. The Covenant's two principles are that:
- a. the Armed Forces community would not face disadvantages when compared to other citizens in the provision of public and commercial services; and
  - b. special consideration is appropriate in some cases, especially for those who have given most such as the injured and the bereaved.

The Authority encourages all Tenderers, and their suppliers, to sign the Corporate Covenant, declaring their support for the Armed Forces community by displaying the values and behaviours set out therein.

32. Guidance on the various ways you can demonstrate your support through the Corporate Covenant is at: <https://www.gov.uk/government/policies/armed-forces-covenant>.
33. If you wish to register your support you can provide a point of contact for your company on this issue to the Armed Forces Covenant Team at the address below, so that the MOD can alert you to any events or initiatives in which you may wish to participate. The Covenant Team can also provide any information you require in addition to that included on the website.

Email address: [covenant-mailbox@mod.uk](mailto:covenant-mailbox@mod.uk)  
Address: Armed Forces Covenant Team  
Zone D, 6<sup>th</sup> Floor, Ministry of Defence  
Main Building, Whitehall, London, SW1A 2HB

34. Paragraphs 30 – 33 above are not a condition of working with the Authority now or in the future, nor will this issue form any part of the Tender evaluation, Contract award procedure or any resulting Contract. However, the Authority very much hopes you will want to provide your support.



Ministry  
of Defence



**SUBJECT TO CONTRACT**

**TERMS AND CONDITIONS OF CONTRACT**

**For**

**MSS/102 MARINE ROTATING ELECTRICAL  
MACHINERY (MREM) ASSET AVAILABILITY  
SERVICE FOR SURFACE FLEET AND  
SUBMARINE FLEET**

By and Between:

DES Ships Commercial - Marine Systems Support  
Ministry of Defence, Birch 3a #3324,  
Abbey Wood, Bristol, BS35 8JH

and

**(to be completed at Contract Award)**  
**(together “the Parties”)**

**Revision History**

<b>Date</b>	<b>Amendment No.</b>	<b>Amendment Description</b>
26/04/19	1	Condition 28, Paragraph's 28.3 -28.4
14/01/20	2	ITN Re-issue
30/01/20	3	ITN Re-issue Amdt 1
16/04/20	4	Single Source ITN Re-issue Amdt 2

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## Part A. General Conditions

### Defence Conditions

The Parties agree that the following standard Conditions shall apply to this Contract in addition to any DEFCONs expressly incorporated in Part B (Special Conditions):

DEFCON	Edition	Description
5J	11/16	Unique Identifiers
68	02/19	Supply of Data for Hazardous Equipment, Materials and Substances
76	12/06	Contractor's Personnel at Government Establishments
113	02/17	Diversion Orders
117	10/13	Supply of Documentation for NATO Codification Purposes
127	12/14	Price Fixing Condition for Contracts of Lesser Value
129	07/19	Packaging (for Equipment s other than Munitions)
129J	11/16	The Use of the Electronic Business Delivery Form
501	11/17	Definitions and Interpretations
502	05/17	Specification Changes
503	12/14	Formal Amendments to Contract. <b>Note:</b> For the purposes of Condition Authority's duly authorised representative shall be named at Box 1 of Appendix to Contract
507	10/18	Delivery
513	11/16	Value Added Tax
514	08/15	Material Breach
515	02/17	Bankruptcy and Insolvency
516	04/12	Equality
518	02/17	Transfer (Assignment of Contract)
520	05/18	Corrupt Gifts and Payment of Commission
522	11/17	Payment and Recovery of Sums Due
524	10/98	Rejection. <b>Note:</b> For the purposes of this DEFCON a period of twelve months shall apply.
524A	02/20	Counterfeit Materiel
525	10/98	Acceptance. <b>Note:</b> For the purposes of this DEFCON a period of twelve months shall apply.
526	08/02	Notices
527	09/97	Waiver
528	07/17	Overseas Expenditure Import and Export Licences. <b>Note:</b> For the purposes of Condition 16, the periods are 30 calendar days.
529	09/97	Law (English)
530	12/14	Dispute Resolution (English Law)
531	11/14	Disclosure of Information
532B	05/18	Protection of Personal Data
534	06/17	Sub-Contracting and Prompt Payment
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538	06/02	Severability
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550	02/14	Child Labour and Employment Law
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601	04/14	Redundant Material
602A	12/17	Deliverable Quality Plan
604	06/14	Progress Reports
606	06/14	Change and Configuration Control Procedure
608	10/14	Access and Facilities to be Provided by the Contractor
609	08/18	Contractor's Records
611	02/16	Issued Property
612	10/98	Loss of or Damage to the Equipment
620	05/17	Contract Change Control Procedure
621B	10/04	Transport (if the Contractor is responsible for Transport)
624	11/13	Use of Asbestos in Arms, Munitions or War Materials
625	10/98	Co-operation on Expiry of Contract
627	12/10	Requirement for a Certificate of Conformity
637	05/17	Defect Investigation and Liability
642	06/14	Progress Meetings
643	12/14	Price Fixing (Non-qualifying Contracts)
644	07/18	Marking of Equipment
647	04/19	Financial Management Information
649	12/16	Vesting
656B	08/16	Termination for Convenience – over £5M. <b>Note:</b> the periods of notice referred to in Conditions 1 and 6(b) of this DEFCON shall be six months and every three months respectively.
658	10/17	Cyber
659A	02/17	Security Measures
660	12/15	Official-Sensitive Security Requirements
670	02/17	Tax Compliance
674	09/19	Advertising Subcontracts (DSPCR 2011)
678	09/19	SME Spend Data Collection
687A	07/19	Provision of A Shared Data Environment Service
691	03/15	Timber and Wood – Derived Products
694	07/18	Accounting for Property of the Authority

### Intellectual Property Rights

DEFCON	Edition	Description
14	11/05	Inventions and Designs Crown Rights and Ownership of Patents and Registered Designs
15	02/98	Design Rights and Rights to use Design Information
16	10/04	Repair and Maintenance Information
21	10/04	Retention of records
90	11/06	Copyright
632	08/12	Third Party Intellectual Property – Rights and Restrictions
800	12/14	Qualifying Defence Contract

801	12/14	Amendments to Qualifying Defence Contracts – Consolidated versions
802	12/14	QDC: Open Book on subcontracts that are not Qualifying Sub-contracts (QSC)
804	03/15	QDC: Confidentiality of Single Source Contract Regulations Information

### Quality Assurance Standards and Conditions

Standard	Description
AQAP 2105	NATO Requirements for Deliverable Quality Plans
DEFSTAN 00-45	Reliability Centered Maintenance
DEFSTAN 00-51	Environmental Management
DEFSTAN 00-56	Safety and Environmental Management
DEFSTAN 05-57	Configuration Management of Defence Material
DEFSTAN 05-135	Avoidance of Counterfeit Materiel
DEFSTAN 05-138	Cyber Security for Defence Suppliers
DEFSTAN 02-617	Magnetic Signature (applies to Submarine Fleet only)

### Defence Forms

DEFFORM	Edition	Description
47	11/17	Invitation to Tender/Negotiate
68	02/19	Hazardous Equipment, Materials or Substances Statement by the Contractor
110	10/04	Schedule of Requirements
111	12/17	Appendix – Addresses and other Information
129J	11/16	The Use of the Electronic Business Delivery Form
177	03/80	Design Rights and Patents (Sub-Contractors agreement)
315	02/98	Contract Data Requirements
316	05/98	Government Furnished Information
647	09/13	Financial Management Information
687C	06/01	Electronic Information Sharing Agreement

### Special Conditions and Processes

Description	Ref
PDS Tasking Procedures, Repair and Technical Support	Activity 3 to Annex A (SoSR)

## Part B. Special Conditions

### CORE CONDITIONS

#### 1. Definitions and Interpretations

- 1.1. In addition to the provisions of DEFCON 501 (Definitions and Interpretations), the following words and expressions shall apply to this Contract:

<b>Activity / Activities</b>	Task (s) pertinent to the delivery of this Contract.
<b>Applicable Law</b>	Any applicable law, common law, legislation, proclamation, by-law, directive, decision, regulation, rule, order, notice, rule of court or delegated or subordinate legislation, and any applicable official request or requirement with which the relevant Party is bound to or is accustomed to comply.
<b>Anticipated Contract Award Date (05 October 2020)</b>	The date by which the Contractor signs and returns the Authority's acceptance of offer.
<b>Authority</b>	The Government purchasing organisation.
<b>Authority Disclosed Data</b>	"Authority Disclosed Data" means information relating to the Authority, the Contractor or the Contractor Deliverables disclosed to the Contractor or a Contractor Related Party including: (a) the Contract Notice; (b) the Pre-Qualification Questionnaire; (c) information, data and documents disclosed during the tendering process; and (e) the Clarification Responses.
<b>Authority Related Party</b>	An officer, employee, Representative of the Authority, agent, adviser or Contractor of the Authority or member of the armed forces (in each case acting in such capacity), other than the Contractor and Contractor Related Parties.
<b>Business /Working Day</b>	Any day excluding Saturdays, Sundays and public and statutory holidays in England and Wales.
<b>Calendar Day</b>	Any day including Saturdays, Sundays and public and statutory holidays in England and Wales.
<b>Clarification Responses</b>	Answers, updates and other clarifications provided by the Authority to the Contractor during the tendering process.
<b>Commencement Date (01 Apr 2021)</b>	The date of inception of the Contract.

<b>Contractor's Representative(s)</b>	The Contractor's employees, agents and Sub-Contractors.
<b>Contractor Related Party</b>	means one or more of: (a) an officer, employee, representative, agent or adviser of the Contractor; (b) [a member of the Contractor Group]; (c) a Sub-Contractor and any further sub-Contractor of any tier; and (d) an officer, employee, representative, agent or adviser of a Sub-Contractor.
<b>Controlled Information</b>	Any information which is disclosed to the Contractor by or on behalf of the Authority under or in connection with the Contract, and which is stated to be 'Controlled Information'.
<b>CP&amp;F</b>	The Authority's Contracting, Purchasing and Finance e-procurement system.
<b>CRISP</b>	Comprehensive Royal Naval Inventory Systems Project.
<b>CSLI</b>	Critical Stock List Item
<b>Defence Conditions</b>	The Conditions listed in Part A.
<b>Delay</b>	Means maintenance activity will not delay the platform programme, particularly the Ready for Sea Date (RFSD).
<b>Delivery</b>	Means in respect of the Equipment as described within this Contract and delivery of these to the User (principally, but not exclusively Navy Command.), in accordance with Annex A, SoSR.
<b>EU Public Procurement Regime</b>	The Defence and Security Public Contracts Regulations 2011 or the Public Contracts Regulations 2015 as appropriate and as amended from time to time.
<b>EU Treaties</b>	The Treaty on the establishment of the European Union and the Treaty on the Functioning of the European Union as amended from time to time.
<b>Equipment</b>	Means new permanent capital, repaired and consumable spares or components as listed at Appendices A02-A03 to Annex A (SoSR).
<b>Equipment Availability</b>	The percentage of time during which the specified ME is available for operational use.
<b>Exit/Transition Plan</b>	A list of processes to manage the exit / transition of a Contractor from performing the services.
<b>Firm Price (s)</b>	A price agreed for the Goods and Services delivered under Activities 1 and 2 which is not subject to variation.
<b>Fixed Price (s)</b>	A price agreed for the Goods and Services delivered under Activities 1 and 2 which is subject to variation.

<b>Fleet-Time (FT)</b>	A period when a ship is available to Navy Command for tasking/patrol.
<b>Foreground Information</b>	Any Information which is generated in performance of this Contract.
<b>Good Industry Practice</b>	The exercise of such degree of skill, diligence, prudence and foresight as would reasonably and ordinarily be expected from a skilled and experienced person seeking to comply with his Contractual obligations and seeking to avoid liability arising under any duty of care that might reasonably apply to or to be expected from that person, complying with all applicable laws and engaged in the same type of undertaking and under the same or similar circumstances and Conditions as the Contractor or any sub-Contractor.
<b>Government Furnished Equipment</b>	Any Issued Property provided to the Contractor in accordance with DEFCON 611.
<b>Information</b>	Any information scientific, technical or otherwise irrespective of the manner in which it is presented including in the form of software and whether or not it is protected or capable of protection as Intellectual Property.
<b>Intellectual Property</b>	Patents, utility models, rights (registered and unregistered) in any designs; applications for any of the foregoing; copyright; database and topography rights; confidential information and trade secrets; and all rights and forms of protection of a similar nature to these or having equivalent effect anywhere in the world.
<b>Lead Time</b>	The period between placement of an order and delivery of Equipment.
<b>Master Equipment (ME)</b>	A group of components that when combined form an ME that delivers a capability.
<b>Monthly Progress Report</b>	Means the regular monthly reports delivered by the Contractor to the Authority in accordance with Condition 27 of this Contract.
<b>New Provider</b>	A third party or parties Contracted (or to be Contracted) by the Authority to carry out services and/or works similar to the Contractor Deliverables after Contract Expiry Date or termination.
<b>Performance Regime</b>	The KPI management regime set out in the Terms and Conditions of Contract (Performance Mechanism).
<b>PGMU</b>	Power Generation and MCAS (Machinery Control and Surveillance) Upgrade
<b>Quality Plan</b>	A plan which meets the requirements of AQAP 2105 and is in accordance with Paragraph 2.8 of Annex A, SoSR.



<b>Quality Management</b>	Activities and functions involved in determination of Quality policy and its implementation.
<b>SoSR</b>	Statement of Support Requirements as set out at Annex A.
<b>Standard Purchase Order</b>	An Authority generated demand for Contractor Deliverables raised through CP&F.
<b>Successor Contractor</b>	Means a Contractor awarded a Contract to provide substantially the same services previously provided to the awarding Authority as part of the same requirement.
<b>Supply Chain</b>	A network between the Contractor and its Supplier's to deliver this Contract.
<b>Task Approval Form (TAF)</b>	The form at Annex Q used by the Authority to request Contractor Deliverables under this Contract.
<b>TAF Approval</b>	The Authority's approval of a TAF Response by the completion of all sections of Part C of Annex Q (TAF).
<b>TAF Proposal</b>	The generation of a specific requirement by the Authority through the completion of Part A of Annex Q (TAF).
<b>TAF Response</b>	The Contractor's proposed solution, including price, for meeting a TAF Proposal by the completion of Part B of Annex Q (TAF).
<b>TAF Closure</b>	The Authority's acceptance of the supplied deliverables/services and closure of the Task by completion of Part D of Annex Q (TAF).
<b>Task</b>	A request from the Authority for Contractor Deliverables to be provided by the Contractor in relation to Activity 3 placed using a Task Authorisation Form.
<b>Term</b>	As set out in Condition 4 (Contract Term and Option(s)).
<b>TLS</b>	Trident Low Stock.

- 1.2 In this Contract, references to Defence Forms (DEFFORMs) shall mean the latest version of that document available.

## 2 General

- 2.1 The Contractor shall comply with all applicable Legislation, whether specifically referenced in this Contract or not.
- 2.2 The Contractor warrants and represents, that:
- 2.2.1 it has the full capacity and authority to enter into, and to exercise its rights and perform its obligations under, the Contract;
  - 2.2.2 from the Effective Date of Contract and for so long as the Contract remains in force it shall give the Authority Notice of any litigation, arbitration (unless expressly prohibited from doing so in accordance with the terms of the arbitration), administrative or adjudication or mediation proceedings before any court, tribunal, arbitrator, administrator or adjudicator or mediator or relevant authority against itself or a Subcontractor which would adversely affect the Contractor's ability to perform its obligations under the Contract;
  - 2.2.3 as at the Effective Date of Contract no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;
  - 2.2.4 for so long as the Contract remains in force it shall give the Authority Notice of any proceedings or other steps that have been taken but not discharged (nor to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues.
- 2.3 Unless the context otherwise requires:
- 2.3.1 The singular includes the plural and vice versa, and the masculine includes the feminine and vice versa.
  - 2.3.2 The words “include”, “includes”, “including” and “included” are to be construed as if they were immediately followed by the words “without limitation”, except where explicitly stated otherwise.
  - 2.3.3 The expression “person” means any individual, firm, body corporate, unincorporated association or partnership, government, state or agency of a state or joint venture.
  - 2.3.4 References to any statute, enactment, order, regulation, or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation, or instrument as amended, supplemented, replaced or consolidated by any subsequent statute, enactment, order, regulation, or instrument.
  - 2.3.5 The heading to any Contract provision shall not affect the interpretation of that provision.
  - 2.3.6 Any decision, act or thing which the Authority is required or authorised to take or do under the Contract may be taken or done only by the person (or their nominated deputy) authorised in Annex D (DEFFORM 315 - Contract Data Requirements) to take or do that decision, act, or thing on behalf of the Authority.
  - 2.3.7 Unless excluded within the Conditions of the Contract or required by law, references to submission of documents in writing shall include electronic submission.

### **3 Entire Agreement**

- 3.1 This Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes, and neither Party has relied upon, any prior negotiations, representations and undertakings, whether written or oral, except that this condition shall not exclude liability in respect of any fraudulent misrepresentation

### **4 Contract Term and Option(s)**

- 4.1 The Contract shall commence on 1<sup>st</sup> April 2021 and shall expire, subject to the provisions of any right of early termination, on the 31<sup>st</sup> March 2031 (Expiry Date) unless otherwise extended by the Authority.

#### **Option**

- 4.2 The Contractor hereby grants to the Authority the following irrevocable “Option” (“the “Option””) in accordance with the Terms and Conditions set out in this Contract, provided that the Authority exercises such “Option” by written notice as set out below and it being agreed that the Authority has no obligation to exercise the “Option”.

The Contractor grants the Authority the “Option”:

#### **4.2.1 Option 1**

To separate the services required under the Contract into two discrete requirements. To remove the entirety of the Submarine Fleet activities from the Contract and novate these to a new Contract (“the Submarine Contract”) between the Contractor the Authority’s Submarine Delivery Agency (SDA). After the exercise of the “Option” the Contract shall continue on the same Terms and Conditions save that the price will be reduced as per the Price Schedule to reflect the elements of the requirement which have been removed from its scope. The Submarine Contract shall be on the same Terms and Conditions as the Contract. In particular, the Contractor shall not propose or be entitled to any changes to the Contract Terms and Conditions in respect of its obligations or liabilities or to make changes to the way in which the price is calculated.

The Contractor notes and agrees that upon Contract Award they have unequivocally accepted and are bound by the terms of the “Option”.

If the Authority wishes to exercise this “Option”, it shall give the Contractor no less than 6 (six) months’ notice in writing. The “Option” shall take effect on the date falling 6 (six) months after such notice, or on such later date as specified in the notice.

### **5 Precedence of Documents**

- 5.1 If there is a conflict or inconsistency between any of the terms in the main body of this Contract and the Annexes, the following order of precedence shall apply to resolve that conflict:
- 5.1.1 Conditions 1 to 63 shall be given equal precedence with the General Defence Conditions;
  - 5.1.2 Annex A (Statement of Support Requirements);
  - 5.1.3 Appendix A04 (Key Performance Indicators) to Annex A;

- 5.1.4 the remaining Annexes; and
- 5.1.5 any other documents expressly referred to in the Contract.

5.2 If a Party becomes aware of any inconsistency within or between the documents referred to in Condition 5.1 above, such Party shall promptly notify the other and the Parties will seek to resolve such inconsistency, provided that either Party considers the inconsistency to be material then the matter shall be determined in accordance with DEFCON 530 (Dispute Resolution).

5.3 The Contractor shall not seek to limit its obligations or liability under this Contract by imposing, incorporating or relying on its (or its sub-tier suppliers) Conditions of sale whether or not such Conditions may be printed on or included in documentation (including order acknowledgements and in comments fields) provided to the Authority and shall indemnify the Authority for any and all costs, claims, liabilities, demands arising from such Conditions of sale.

## **6 Scope and Specification**

6.1 The Contractor shall undertake work as detailed in Annex A (Statement of Support Requirements) and in accordance with the specification set out therein. This includes the provision of an Asset Availability Service to support equipment listed in Appendices A02-A03. The Contract covers the provision of a management service to deliver availability of Marine Rotating Electrical Machinery (MREM) including manufacture, procurement, repair and technical support.

6.2 Any requirement for the authorisation of individual tasks by the Authority shall be specified elsewhere in the Contract. All work shall be carried out to the satisfaction of the Authority's Project Manager. No guarantee can be given as to the level of effort which will be required under this Contract, nor does the Authority bind itself to receive and pay for services other than those actually demanded.

6.3 For the avoidance of doubt, work undertaken by the Contractor for the period of the Contract shall be limited to the Contractor Deliverables specified within Annex A for equipment listed in Appendices A02-A03 and shall not be extended to services outside of such definition unless a formal Contract amendment is placed in accordance with Condition 12 (Formal Amendments to Contract).

## **7 Cost of Contract**

7.1 Costs which are incurred in developing and administering this Contract shall lie with the Party incurring such cost. For the avoidance of doubt, neither Party shall be responsible for any costs incurred by the other of whatsoever nature, save where these costs are properly incurred under the terms of the Contract.

## **8 No Partnership**

8.1 It is not the intention or the desire of the Parties to create, nor shall anything in this Contract, either expressly or by implication, give rise to the creation or constitution of a Partnership as envisaged in the Partnership Act 1890. The commitments contained in this Contract are not

intended to create a separate business from those operated either by the Authority or the Contractor. Neither Party to this Contract shall be entitled nor have the authority to bind the other in any contractual or legal obligation. Neither Party shall hold himself out to any third party as having the authority to so bind the other.

## **PARTIES RIGHTS AND OBLIGATIONS**

### **9 The Tasking Process**

- 9.1 Tasks will be initiated by means of a formal Task Approval Form (TAF) a copy of which is enclosed at Annex Q and consists of four parts:
- 9.1.1 Part A: Proposal – sets out the Authority's requirements and outputs of the task;
  - 9.1.2 Part B/B1: Response– sets out the Contractor's solution, associated costs and Firm price for the task;
  - 9.1.3 Part C: Internal Approvals – captures the internal approval of the task allowing formal authorisation to proceed.
  - 9.1.4 Part D: Task Closure– captures and records the Contractor's confirmation that all work and deliverables have been satisfied.
- 9.2 Each task will be allocated a unique and sequential reference number. Issue numbers will only vary where the TAF has been subjected to a duly approved amendment to the task.
- 9.3 On receipt of a TAF with completed Part A, the Contractor shall complete Parts B and B1 and return it to the Authority within the timescale stated in the TAF. The Contractor's Firm Price quotation shall be broken down under the headings specified in the TAF at Part B1 and shall utilise the labour and travel/subsistence prices agreed under the Contract at Annex B2 and B3.
- 9.4 Where the task, by exception, requires the Contractor to procure Assets or Spares, for example in support of a modification activity, the Contractor shall confirm that such costs have been secured competitively or where this has not been possible shall justify within their proposition as to the reasons why
- 9.5 Other than for those reasons set within this Contract, the Authority shall in no way be liable for any costs incurred by the Contractor until such time as formal approval of the task and the agreement of costs have been provided by the Authority's Commercial representative.
- 9.6 Upon approval by the Authority at Part C, the Authority shall raise a CP&F Standard Purchase Order (SPO) which will be sent to the Contractor as the approval to commence work and enable payment upon the satisfactory conclusion of the task.
- 9.9 Upon satisfactory completion of all activities authorised under the TAF, the Contractor shall complete Part D (Task Closure) and forward to the Authority for agreement. Following receipt by the Contractor of Part D signed by the Authority, the Contractor shall claim payment by raising an electronic invoice against the relevant CP&F SPO.

### **TAF Payment Authorisation**

- 9.8 Each TAF will be checked by the Authority's Project Manager for accuracy, and where accepted a CP&F SPO shall be raised by the Authority within 10 working days of receiving the completed TAFs. If there is a discrepancy over the accuracy of a TAF, and cannot be resolved within 2 working days, the Contractor will be requested to remove the associated Equipment from the TAF whilst negotiations commence. Following any agreement, the item will be added to the following months TAF to allow payment. The Authority reserves the right to interrogate and challenge all submissions.
- 9.9 The Authority will only pay for Equipment and/or services that have been delivered direct to a Platform (Ship / Submarine) or delivered to stores. The Authority's Project Manager shall receipt delivered items to allow payment of the TAF.
- 9.10 The Contractor shall ensure that a recorded list of all TAF's under this Contract shall be made available to the Authority or stored on a mutually agreed shared area.
- 9.11 This process will exist for the duration of the Contract, although the Authority reserves the right to cease the process if necessary.

## **10 Storage Transportation and Delivery**

- 10.1 All storage requirements for Equipment and Defined Services under the scope of this Contract will be the responsibility of the Contractor. A controlled environment must be provided in accordance with the Conditions specified within DEFCON 129, Packaging (For Equipment other than Munitions).

## **11 Disposal of Assets (GFI)**

- 11.1 All asset disposal requirements for Equipment under the scope of this Contract shall be the in accordance with the Conditions specified within the Management Disposal Plan in accordance with Defence Logistics Framework, Volume 7, Part 2: ILS Management.

## **12 Formal Amendments to the Contract**

- 12.1 In addition to the provisions of DEFCON 503 (Formal Amendments to Contract) and DEFCON 620 (Contract Change Control Procedure), nothing said, done or written by any person, nor anything omitted to be said, done or written by any person, (including any employee or servant of the Authority) shall in any way:
- 12.1.1 affect the rights of the Authority, or
  - 12.1.2 modify, affect, reduce or extinguish the obligations and liabilities of the Contractor under the Contract, or
  - 12.1.3 be deemed to be a waiver of rights of the Authority; unless made in writing and signed by the Authority's Commercial Officer (see Box 1 of DEFFORM 111 – Appendix to Contract) as the duly authorised representative of the Authority.
- 12.2 The Authority shall have no liability for any work undertaken by the Contractor which is the subject to an amendment, prior to the conclusion of any amendment in accordance with DEFCON 503 and DEFCON 620.

- 12.3 The Contractor shall maintain a register of all proposed and agreed amendments in the format prescribed at Appendix 1 to Annex R (Contract Change Register)

### **13 Obligations of the Authority**

- 13.1 The Authority shall comply with all Applicable Laws in the performance of its obligations under this Contract.

### **14 Obligations of the Contractor**

- 14.1 The Contractor shall provide the Contractor Deliverables to the Authority in accordance with:
- 14.1.1 the Statement of Support Requirements (SoSR) at Annex A; and
  - 14.1.2 all Appendices;
  - 14.1.3 Annex B (Pricing Schedule); and
  - 14.1.4 all applicable Defence Conditions (DEFCONS) and Defence Standards (Def Stans), legislation and regulations applicable; and
  - 14.1.5 all applicable Contract Plans; and
  - 14.1.6 all associated Out of Scope Task which shall be in the format contained at Annex Q (Task Approval Form).

### **15 Standards of Performance**

- 15.1 The Contractor shall (and the Contractor Related Parties shall) provide the Contractor Deliverables in compliance with:
- 15.1.1 all applicable Laws; and
  - 15.1.2 Good Industry Practice; and
  - 15.1.3 all applicable standards.

### **16 Contractor Related Parties**

- 16.1 The Contractor shall at all times remain directly liable to the Authority for the due and proper performance of its obligations under this Contract and shall be responsible and liable for the acts and omissions of the Contractor Related Parties in relation to this Contract and the Services as if they were the acts and omissions of the Contractor.
- 16.2 Without limitation in respect of its actual knowledge, the Contractor shall for all purposes of this Contract be deemed to have such knowledge in respect of the Contractor Deliverables and other obligations under this Contract as is held (or ought reasonably to be held) by any Contractor Related Party.

### **17 Authority Related Parties**

- 17.1 Subject to the provisions of this Contract, the Authority shall be responsible and liable for the acts and omissions of the Authority Related Parties as if they were the acts and omissions of the Authority.

**18 Authority Disclosed Data****18.1 Subject to Condition 21 (Fraudulent Statements):**

- 18.1.1 the Authority does not make any representation or give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any of the Authority Disclosed Data; and
- 18.1.2 neither the Authority nor any Authority Related Party shall be liable to the Contractor in Contract, tort (including the tort of negligence) or for breach of any statutory duty or otherwise as a result of:
  - a. any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the Authority Disclosed Data; and or
  - b. any failure to make available to the Contractor any materials, documents, drawings, plans or other information relating to the Contract or the competition.

**19 Contractor's Due Diligence**

- 19.1 On entering into this Contract, the Contractor agrees it has been given an opportunity to carry out a review and investigation of the documents provided during the tendering process and the Clarification Responses, and shall not in any way be relieved from any obligation under this Contract nor shall it be entitled to make any claim against the Authority (or an Authority Related Party) as a consequence of:
  - 19.1.1 any information not being provided in the tendering process or the Clarification Responses where such information is not material;
  - 19.1.2 any fact or circumstance that has been fairly disclosed during the tendering process or the Clarification Responses;
  - 19.1.3 any fact or circumstance which the Contractor, or its agents or advisers were, or ought reasonably to have been, aware of as a result of the tendering process or the Clarification Responses; or
  - 19.1.4 any fact or circumstance which a Tenderer, acting in accordance with Good Industry Practice, would have been aware of having made reasonable due diligence enquiries.

**20 No Relief**

- 20.1 Subject to Condition 21 (Fraudulent Statements), the Contractor shall not in any way be relieved from any obligation under this Contract nor shall it be entitled to make any claim against the Authority (or an Authority Related Party) on the basis that it has relied upon any information, whether obtained from the Authority, Authority Related Party or other third party.

**21 Fraudulent Statements**

- 21.1 Nothing in this Contract shall exclude any liability which the Authority would otherwise have to the Contractor for statements made fraudulently or fraudulent omissions to make statements prior to the date of this Contract.



**22 Severability**

22.1 If any provision of the Contract is held to be invalid, illegal or unenforceable to any extent then:

22.1.1 such provision shall (to the extent that it is invalid, illegal or unenforceable) be given no effect and shall be deemed not to include in the Contract but without invalidating any of the remaining provisions of the Contract; and

22.1.2 the Parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid, illegal or unenforceable provision.

**23 Waiver**

23.1 No act or omission of either Party shall by itself amount to a waiver of any right or remedy unless expressly stated by that Party in writing. In particular, no reasonable delay in exercising any right or remedy shall by itself constitute a waiver of that right or remedy.

23.2 No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy.

**24 Assignment of Contract**

24.1 Subject to DEFCON 518 (Transfer (Assignment of Contract)) Neither Party shall be entitled to assign the Contract (or any part thereof) without the prior written consent of the other Party.

**25 Third Party Rights**

25.1 Notwithstanding anything to the contrary elsewhere in the Contract, no right is granted to any person who is not a Party to the Contract to enforce any term of the Contract in its own right and the Parties to the Contract declare that they have no intention to grant any such right.

**26 Transparency**

26.1 Subject to Condition 26.2 but notwithstanding DEFCON 531 (Disclosure of Information), the Contractor understands that the Authority may publish the Transparency Information to the general public. The Contractor shall assist and cooperate with the Authority to enable the Authority to publish the Transparency Information.

26.2 Before publishing the Transparency Information to the general public in accordance with Condition 26.1, the Authority shall redact any Information that would be exempt from disclosure if it was the subject of a request for Information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, and any Information which has been acknowledged by the Authority at Appendix B – Contractor's Commercially Sensitive Information.

26.3 The Authority may consult with the Contractor before redacting any Information from the Transparency Information in accordance with Condition 26.2. The Contractor acknowledges and accepts that its representations on redactions during consultation may not be determinative and that the decision whether to redact Information is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

26.4 For the avoidance of doubt, nothing in this Condition 26 shall affect the Contractor's rights at law.

## **27 Monthly Progress Report**

27.1 The Contractor shall provide Monthly Progress Reports, in accordance with DEFCON 604 and Paragraph 2.3.2.d of Activity 1 of Annex A (SoSR), monthly throughout the Contract, or as reasonably required by the Authority, to establish the Equipment Availability performance levels being provided under the Contract and any order(s).

## **28 Project Review Meetings**

28.1 A Project Review meeting covering performance and financial matters shall be held between the Contractor and the Authority at monthly intervals for the first 12 months. Following satisfactory performance, the Authority shall review the requirement for monthly meetings and the periodicity of future meetings. The Authority reserves the right to recommence monthly meetings at any time during the contract.

28.2 The Project Review meeting shall be chaired by the Authority with secretarial services provided by the Contractor.

28.3 After the Project Review is complete there shall be a technical review of any in-service support provided and a review of Equipment Availability.

28.4 The Contractor shall be responsible for drafting the agenda for all Project Review meetings and submitting it for agreement to the Authority 5 working days prior to all meetings.

28.5 Draft Minutes of each Project Review meeting shall be submitted to the Authority by the Contractor for approval within 5 working days following the meeting being held.

28.6 The Project Review meeting shall be held at the Contractor's premises and at the Authority's facilities at Abbey Wood on an alternate basis, unless mutually agreed otherwise.

28.7 The Project Review Meeting shall address, but not be limited to, the issues captured within the Monthly Progress Report.

28.8 Within 4 weeks of Contract Commencement Date the Contractor shall initiate and hold a Contract Initiation Meeting in accordance with Condition 28.

## **29 Annual Strategic Review**

- 29.1 An Annual Strategic Review shall be held at the Authority's premises to review progress through the year and agree priorities and objectives for the following contractual year. The Contractor's overall performance against each Activity shall be reviewed and anticipated future requirements under each Activity shall be discussed. The Authority shall chair the meeting and the Contractor shall provide Secretariat services. Draft minutes shall be supplied by the Contractor to the Authority for approval within the two weeks following the Annual Strategic Review meeting.

### **30 Annual Strategic Review Report**

- 30.1 The Contractor shall submit an Annual Strategic Review Report to the Authority two weeks prior to the Annual Strategic Review. The report shall include but not be limited to:

30.1.1 a statement on the status of each Activity under the contract, identifying outstanding problems or delays and proposed resolutions;

30.1.2 a summary of the future committed programme indicating milestones to be achieved;

30.1.3 a summary of all identified residual risks and opportunities, risks resolved, solutions proposed and adopted;

30.1.4 a listing of all major problems outstanding and proposals for their resolution. Where trade-offs are proposed the effect on the overall programme against service requirements shall be presented;

30.1.5 the Contractor shall in relation to contracted activity provide a summary of the quality issues identified and resolved in year including opportunities for improvement identified and implemented;

30.1.6 a spend profile against each Task and the total Contract spend overall (all figures to be ex. VAT);

30.1.7 a summary of annual KPI performance metrics;

30.1.8 Weighted Average Costing (WAC) of all new Equipment purchased within the applicable year;

30.1.9 completed Financial Reporting Spreadsheet in accordance with Annex N to the Terms and Conditions of Contract.

### **31 Mid -Term 5-year Strategic Review Report and Meeting**

- 31.1 The Contractor shall submit a Mid-Term 5-year Strategic Review Report to the Authority no later than the 1<sup>st</sup> February 2026. Within one month of issuing the report, a Strategic Review meeting shall be held at the Authority's premises to review and authorise the contents of the Report.

The Mid-Term Strategic Review Report shall include but not be limited to:

- 31.1.1 a statement on the status of the Contract for the previous five years, identifying outstanding problems or delays and proposed resolutions;
  - 31.1.2 evidence of Continuous Improvement (CI) activities and a summary of the future CI plans and/or opportunities incorporating any milestones to be achieved;
  - 31.1.2 a comprehensive summary of all previously resolved risks including solutions adopted and impact to service, including mitigations processes to eliminate recurrences;
  - 31.1.3 a detailed report of all legacy major problems and resolutions, to include any adverse effect on the overall programme against service requirements.
- 31.2 Evidence compliance against all Contractual obligations to include, but not limited to:
- 31.2.1 assurance standards and Conditions;
  - 31.2.2 Defence Standards and Conditions;
  - 31.2.3 UK Government Policies and Law's;
  - 31.2.4 company legal entity changes;
  - 31.2.5 supply chain;
  - 31.2.6 protecting the Authority's IPR.
- 31.3 an all-inclusive total spend and EVM report to cover the previous five years and;
- 31.4 a comprehensive five-year Key Performance report, highlighting trends and resolution measures;
- 31.5 summary of how any Contract amendments/changes have been reported and regulated.

**32 Supply of Contractor Deliverables and Quality Assurance**

- 32.1 The Contractor shall provide the Contractor Deliverables to the Authority, in accordance with the terms of the Contract and as specified in Annex A (Statement of Support Requirement) and shall allocate sufficient resource to the provision of the Contractor Deliverables to enable it to comply with this obligation.
- 32.2 The Contractor shall:
- 32.2.1 comply with the Quality Assurance requirements specified in Annex A in providing the Contractors Deliverables; and
  - 32.2.2 discharge its obligations under Contract with all due skill, care, diligence and operating practice by appropriately experienced, qualified and trained personnel; and the
  - 32.2.3 Standards and Conditions and the Quality Management requirements detailed in Paragraph 2.8 to Activity 1 of Annex A (SoSR).
- 32.3 The provisions of Condition 32 shall survive any performance, acceptance or payment pursuant to the Contract and shall extend to any remedial services provided by the Contractor.

**33 Environmental Management**

- 33.1 The Contractor shall ensure that all activities performed under the Contract shall comply with certified environmental management standards based on ISO 14001 or equivalent.

**34 CE Marking**

- 34.1 The Contractor shall comply with the CE Marking European Union (EU) Directives and where Equipment comply with the CE Marking EU Directives the Supplier shall either mark the Equipment with the appropriate CE marking or identify on appropriate delivery paperwork. Where the Equipment is exempt from the CE Marking EU Directives the Contractor shall notify the Authority in writing prior to delivery.

**35 Continuous Improvement**

- 35.1 During the period of the Contract, the Parties shall endeavour to identify and notify the other Party of any areas of improvement which could be of significant mutual benefit to both Parties, including through collaborative processes. Such opportunities shall be listed within the Contractor's Monthly Progress Reports. Nothing within this Contract shall affect either the Contractor's freedom to manage as set out in the Terms and Conditions of the Contract or to rely on the Authority's reasonable approvals as required under the Contract to ensure the smooth and efficient operation of the Contract.
- 35.2 Nothing in Condition 35 shall obligate either Party to agree to any proposal raised by the other Party under this Condition.
- 35.3 If the Authority and/or the Contractor identify a significant process change that could potentially lead to an improvement, then a Cost Benefit Analysis (CBA) shall be undertaken by the Party generating that improvement for agreement by the other Party.

- 35.4 The CBA shall identify the benefits to be gained from such a change both in terms of cost, technical and process improvement. In the event both Parties agree the CBA then the proposed improvement shall be implemented through formal Contract amendment in accordance with Condition 12 (Formal Amendments to Contract).

### **36 Self-to-Self Delivery**

- 36.1 Where it is stated in Annex A (Statement of Support Requirement ) or elsewhere in this Contract that any Contractor Deliverable is to be Delivered by the Contractor to its own premises, or to those of a Subcontractor ('self-to-self delivery') the risk in such a Contractor Deliverable shall remain vested in the Contractor until such time as it is handed over to the Authority

## **ACTIVITIES, PRICING AND PERFORMANCE**

### **37 Pricing Contract Deliverables**

- 37.1 Firm and Fixed Prices for Activities 1 and 2 are set out at Annex B1 to the Terms and Conditions. Such prices are Firm for the first three (3) years and Fixed subject to Variation of Price (VOP) using Top Level Service Producer Price Index (SPPI) Index K8ZU, for the remaining seven (7) years.

#### **37.2 Activity 1 – Service Management for the duration of the Contract**

The Firm and Fixed Prices agreed for Activity 1 is set out at Annex B1 of these Terms and Conditions and shall be paid by the Authority in accordance with Condition 39. Such prices are Firm Prices for the period 1 April 2021 – 31 March 2024 and are not subject to any variation in any respect whatsoever. The Firm Prices shall include all costs such as material, labour, indirect overheads and any contingency provision. Fixed Prices for 1 April 2024 to 31 March 2031 shall be calculated in accordance with Condition 38, Variation of Price.

- 37.3 Firm and Fixed Prices for Activity 1 shall be paid by the Authority in accordance with Condition 39.

#### **37.4 Activity 2 – Equipment Availability**

The Firm and Fixed Prices agreed for Activity 2 are set out at Annex B1 of these Terms and Conditions and shall be paid by the Authority in accordance with Condition 39. Such prices are Firm Prices for the period 1 April 2021 – 31 March 2024 and are not subject to any variation in any respect whatsoever. The Firm Prices shall include all costs such as material, labour, indirect overheads and any contingency provision. Fixed Prices for 1 April 2024 to 31 March 2031 shall be calculated in accordance with Condition 38, Variation of Price.

- 37.5 Firm and Fixed Prices for Activity 2 shall be paid by the Authority in accordance with Condition 39 and remain subject to Performance KPIs

#### **37.6 Activity 3 – Post Design and Technical Services**

The Contractor should note that no prices are required for Activity 3 as these will be controlled through the PDS TAF process in accordance with Annex A, Annex B2 hourly labour Firm and Fixed Prices and Annex B3 Travel and Subsistence Firm and Fixed Prices. In accordance with Annex B3 the Tenderer must provide full transparency of any miscellaneous costs you consider applicable to support this requirement e.g. Service Management costs. Any TAF costs not consistent with this pricing schedule shall be rejected by the Authority.

### 37.7 **Unpriced First Time Demands (FTD)**

37.7.1 Where pricing has been requested against an unpriced First Time Demand the following shall apply:

Year 1-3 FTD: Initial Firm Prices shall carry over into consecutive year/s and remain in line with the Contractor's firm priced escalation rate; and

Years 4-10: Pricing in accordance with Condition 38 (Variation of Price).

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

### **Activities 1 and 2**

38.1 The prices stated in the Schedule of Requirements and Annex B are Firm prices for Years 1-3 of the Contract. The prices do not include provision beyond this date for increases or decreases in the market price of the Equipment being purchased or repaired. Any such variation shall be calculated in accordance with the following formula:

$$V = P (O_i/O_0) - P$$

Where:

V represents the variation of price

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

O represents the index 'Top - Level SPPI - All Services GSO (SIC 2007)' K8ZU

O<sub>0</sub> represents the average of Index K8ZU All Services GSO (SIC 2007) Output for the base period 1<sup>st</sup> April 2020 to 31<sup>st</sup> March 2021.

O<sub>i</sub> represents the quarterly average of Index K8ZU All Services GSO (SIC 2007) Output across the financial year (1<sup>st</sup> April – 31<sup>st</sup> March) prior to the period for which variation is being added.

O<sub>0</sub> represents the quarterly average of index K8ZU All services GSO (SIC 2007) Output for a represents the Non-Variable Element (NVE) which shall be 10%.

b represents the Variable Element which shall be 90%.

$$a+b=1$$

38.2 The Index referred to in 38.1 above shall be taken from the following Tables:

OUTPUT Price Index ONS Publication K8ZU 'Top - Level SPPI - All Services for Activities 1 and 2.

- 38.3 For the purposes of this Contract a variation modifier can be derived by completing the operation  $(a+b(O_i/o_0))$ . This variation modifier shall then be applied to each Firm Price in Annex B hereto to calculate prices for years 4 – 10 of the Contract.
- 38.4 For the avoidance of doubt, any new and unpriced items added to the Contract, the base period for calculating Variation of Price will be the year in which the items were added to the Contract and O0 shall be the prior financial year.
- 38.5 Indices published with a 'B' or 'F' marker, or a suppressed value, in the last 3 years are not valid for Variation of Price conditions 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.
- 38.6 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.
- 38.7 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 Condition 38.4 above) shall then be applied.
- 38.8 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.
- 38.9 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.
- 38.10 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.
- 38.11 Claims under this Condition shall be submitted to the Bill Paying Branch, certified to the effect that the requirements of this condition have been met.



- 38.12 For the purposes of this Contract a variation modifier can be derived by completing the following operation  $(a+b(Oi/OO))$ . This variation modifier shall then be applied to each Firm Price in Annexes B hereto to calculate Article and Repair prices for years 4 to 10 of the Contract.

### **39. Payment and Recovery of Sums**

- 39.1 Payment shall be made in accordance with DEFCON 522 (Payment and Recovery of Sums Due).
- 39.2 Payment for Contractor Deliverables under Activities 1 and 2 shall be made by electronic transfer and prior to submitting any claims for payment under Condition 39 the Contractor will be required to register their details (Supplier on-boarding) on the CP&F e-procurement tool.
- 39.3 Where the Contractor submits an invoice to the Authority in accordance with Condition 39.1, the Authority will consider and verify that invoice in a timely fashion.
- 39.4 The Authority shall pay the Contractor any sums due under such an invoice no later than a period of 39 days from the date on which the Authority has determined that the invoice is valid and undisputed.
- 39.5 Where the Authority fails to comply with Condition 39.3 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of Condition 39.4 after an addition 20 working days has elapsed.
- 39.6 The approval for payment of a valid and undisputed claim for payment 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.
- 39.7 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.

### **40 Performance Measurement**

- 40.1 The Contractor shall claim the agreed Firm price quoted against all line items priced. In accordance with the level of performance achieved against the contractually agreed Key Performance Indicators (KPIs) detailed at Annex K (Performance Management Record (PMR)) this may be adjusted following monthly and annual reviews.
- 40.2 Under this mechanism the following process shall be used:
- 40.2.1 the Contractor shall record, using the Performance Management Record (PMR) at Annex K, all Equipment Availability levels under Activity 2 of the SoSR for each calendar month throughout the life of the Contract. These records shall be monitored by the Contractor and submitted as part of the Monthly Progress Report for review and agreement by the Authority no later than 5 Business/Working Days after the end of each month;

40.2.2 on the first Business Day of each calendar month the Contractor shall identify all Surface Fleet Master Equipment Availability levels as a percentage, up to 2 decimal points e.g. X.XX% and present the evidence in Annex K in full for the previous calendar month and provide the Authority with the report within 5 Business / Working Days for review and agreement by the Authority;

40.2.3 on the first Business Day of each calendar month the Contractor shall identify all of the Submarine Fleet Master Equipment Availability levels as a percentage, up to 2 decimal points e.g. X.XX% and present the evidence in Annex K in full for the previous calendar month and provide the Authority with the report within 5 Business / Working Days for review and agreement by the Authority;

40.2.4 appertaining to the five discrete Surface Fleet Master Equipment Performance Indicators, should the Equipment Availability levels fall below 95% on any Master Equipment within one performance period (one calendar month) the Authority shall recover the appropriate price refund for each calendar month;

40.2.5 appertaining to the five discrete Submarine Fleet Master Equipment Performance Indicators, should the Equipment Availability levels fall below 95% on any Master Equipment within one performance period (one calendar month) the Authority shall recover the appropriate price refund for each calendar month;

40.2.6 notwithstanding Conditions 40.2.4 and 40.2.5 above, in the event that the Contractor consistently/repeatedly fails to meet the requirements of the Contract then the Authority shall, without limiting any of its other rights and remedies, be entitled to exercise (at its sole discretion) its right to terminate, in whole or in part, in accordance with DEFCON 514 (Material Breach).

#### 41 Key Performance Indicators and Performance Standards

41.1 Performance under Activity 2 to Annex A (SoSR) shall be measured in accordance with the following KPIs.

<b>KPI Number</b>	<b>1</b>
<b>KPI Description</b>	Retention of Surface Fleet Master Equipment Availability Levels
<b>Contract Ref from SoSR</b>	Activity 2
<b>To Whom?</b>	DE&S Ships MSS-ME-EPD-GL or as directed
<b>By Whom?</b>	The Contractor
<b>Reporting Frequency</b>	Monthly
<b>Performance Bands</b>	
<b>Minimum Equipment Availability Level</b>	<b>95%</b>
<b>Average Performance (example)</b>	Measures performance against the target of 95% e.g.: Monthly Fee £50,000.00 Availability ME Surface Fleet <sup>1</sup> 99.00% Performance ME Surface Fleet <sup>1</sup> 100.00% Availability ME Surface Fleet <sup>2</sup> 99.00% Performance ME Surface Fleet <sup>2</sup> 100.00% Availability ME Surface Fleet <sup>3</sup> 94.00% Performance ME Surface Fleet <sup>3</sup> 98.95% Availability ME Surface Fleet <sup>4</sup> 94.00% Performance ME Surface Fleet <sup>4</sup> 98.95% Availability ME Surface Fleet <sup>5</sup> 94.00% Performance ME Surface Fleet <sup>5</sup> 98.95% Recalculated Fee £49,824.56 Reconciliation £175.44

<sup>1</sup> MREM Surface Control Equipment

<sup>2</sup> MREM Surface Generators

<sup>3</sup> MREM Surface Motors

<sup>4</sup> MREM PGMU Hitzinger

<sup>5</sup> MREM PGMU MTU

<b>KPI Number</b>	<b>2</b>
<b>KPI Description</b>	Retention of Submarine Fleet Master Equipment Availability Levels
<b>Contract Ref from SoSR</b>	Activity 2
<b>To Whom?</b>	DE&S Ships MSS-ME-EPD-GL or as directed
<b>By Whom?</b>	The Contractor
<b>Reporting Frequency</b>	Monthly
<b>Performance Bands</b>	
<b>Minimum Equipment Availability Level</b>	<b>95%</b>
<b>Average Performance (example)</b>	Measures performance against the target of 95% e.g.: Monthly Fee £50,000.00

Availability ME Submarine <sup>1</sup>	99.00%
Performance ME Submarine <sup>1</sup>	100.00%
Availability ME Submarine <sup>2</sup>	99.00%
Performance ME Submarine <sup>2</sup>	100.00%
Availability ME Submarine <sup>3</sup>	94.00%
Performance ME Submarine <sup>3</sup>	98.95%
Availability ME Submarine <sup>4</sup>	94.00%
Performance ME Submarine <sup>4</sup>	98.95%
Availability ME Submarine <sup>5</sup>	94.00%
Performance ME Submarine <sup>5</sup>	98.95%
Recalculated Fee	£49,824.56
Reconciliation	£175.44

<sup>1</sup> MREM Submarine Control Equipment

<sup>2</sup> MREM Submarine Generators

<sup>3</sup> MREM Submarine Motors

<sup>4</sup> MREM Prop Rotors

<sup>5</sup> MREM MG Rotors

- 41.2 To meet the needs of the end user the Authority, throughout the life of the Contract, reserves the right to remove or amend KPIs 1 and 2 or any individual PI at no extra cost to the Authority in accordance with Condition 12 (Formal Amendments to Contract).

## 42 Mobilisation Period & Milestones

- 42.1 The Authority shall grant a Mobilisation period of three-calendar months where by the Contractor shall be obligated to provide weekly Availability Levels to the Authority's representative at Box 2 to DEFFORM 111 based on the baseline of 0% Availability to the Target Availability level represented as 100% in accordance with the following milestones:

Contract Start Date: 1 April 2021

Week 8: Target ≥ 81%.

Resolution: ≤80% requires a supporting Recovery Plan within 5 working days.

Week 16: Target ≥ 86%.

Resolution: ≤85% requires a supporting Recovery Plan within 2 working days.

Six Month Point: 31 October 2021 - Target ≥100%.

- 42.2 Such recovery plan as detailed in 42.1 above shall include as a minimum:

- 42.2.1 full description of delay and reasons;
- 42.2.2 any resultant impacts on future deliveries;
- 42.2.3 actions to be taken – including owner;
- 42.2.4 recovery schedule (burn down plan), and

the Contractor shall identify a recovery team which may include, at the Authority's direction, additional resource (internal or external) who shall be a dedicated resource to be used solely in support of Contract recovery and funded by the Contractor at no further cost to the Authority.

- 42.4 A failure by the Contractor to meet the Availability Levels and deliver Performance Improvement measures in accordance with the timescales at Condition 42.1 shall constitute as a material breach and the Authority reserves the right to terminate this Contract in accordance with DEFCON 514 (Material Breach) in such an event.

#### **43. Performance Improvement Plan**

- 43.1 If the Contractor fails to attain a 95% Availability Level in accordance with Condition 41, against either:
- the same single PI; or  
against any two (2) or more PIs for three (3) consecutive PI Reporting Periods;
- 43.2 then the Contractor shall provide to the Authority within twenty (20) Business Days a draft Performance Improvement Plan.
- 43.3 The Authority shall (acting reasonably) either approve the draft Performance Improvement Plan within twenty (20) Business Days of receipt or it shall inform the Contractor why it cannot accept the draft Performance Improvement Plan. In such, circumstances, the Authority and the Contractor shall meet to discuss the Authority's concerns. The Contractor shall submit a revised Performance Improvement Plan to the Authority for approval within ten (10) Business Days of the meeting, which the Authority shall (acting reasonably) either approve or reject within ten (10) Business Days of receipt. If the Contractor does not receive notice from the Authority that it does not accept the draft Performance Improvement Plan within the twenty (20) Business Day period or, if applicable, the further ten (10) Business Day period, the Contractor's draft Performance Management Plan shall be deemed to have been agreed.
- 43.4 Once agreed, the Contractor shall promptly start work on and comply fully with the terms of the Performance Improvement Plan.
- 43.5 If a Performance Management Plan cannot be agreed, then either Party may escalate the matter for resolution in accordance with DEFCON 530 (Dispute Resolution).
- 43.6 A failure by the Contractor to provide a draft Performance Improvement Plan within the required timescales at Condition 43.2 a Performance Improvement Plan shall constitute a material breach and the Authority reserves the right to terminate this Contract in accordance with DEFCON 514 (Material Breach) in such an event.

#### **44 Delivery / Collection**

- 44.1 Where any Equipment to be supplied under the Contract is to be delivered other than being handed over by the Contractor to the Authority, where any Equipment is to be delivered by the Contractor to his own premises or to those of a Sub-Contractor ('self-to-self delivery'), the risk shall (notwithstanding the provisions of DEFCON 612 (Loss of or Damage to the Equipment)) remain vested in the Contractor until such time as the Equipment is handed over to the Authority.

- 44.2 Where the Contractor Deliverables are to be Delivered by the Contractor (or a third party acting on behalf of the Contractor), the Contractor shall, unless otherwise stated in writing:
- 44.2.1 contact the Authority's Representative (Transport) as detailed in box 10 Appendix A (Addresses and Other Information) in advance of the Delivery Date in order to agree administrative arrangements for Delivery and provide any Information pertinent to Delivery requested;
  - 44.2.2 comply with any special instructions for arranging Delivery in Annex A (Statement of Support Requirements);
  - 44.2.3 ensure that each consignment of the Contractor Deliverables is accompanied by, (as specified in Annex A (Statement of Support Requirements)), a DEFFORM 129J (The Use of the Electronic Business Delivery Form) in accordance with the instructions; and
  - 44.2.4 be responsible for all costs of Delivery.
- 44.3 Where the Contractor Deliverables are to be Collected by the Authority (or a third party acting on behalf of the Authority), the Contractor shall, unless otherwise stated in writing:
- 44.3.1 contact the Authority's Representative (Transport) as detailed in box 10 of Appendix A (Addresses and Other Information) in advance of the Delivery Date in order to agree specific arrangements for Collection and provide any Information pertinent to the Collection requested;
  - 44.3.2 comply with any special instructions for arranging Collection in Annex A (Statement of Support Requirements);
  - 44.3.3 ensure that each consignment of the Contractor Deliverables is accompanied by, (as specified in Annex B (System Requirements Document)), a DEFFORM 129J in accordance with the instructions;
  - 44.3.4 ensure that the Contractor Deliverables are available for Collection by the Authority from the Consignor (as specified in Annex A (Statement of Support Requirements)) by the Delivery Date between the hours agreed by the Parties; and
  - 44.3.5 in the case of Overseas consignments, ensure that the Contractor Deliverables are accompanied by the necessary transit documentation. All Customs clearance shall be the responsibility of the Authority's Representative (Transport).
- 44.4 Title and risk in the Contractor Deliverables shall only pass from the Contractor to the Authority:
- 44.4.1 on the Delivery of the Contractor Deliverables by the Contractor to the Consignee in accordance with Condition 44.2; or
  - 44.4.2 on the Collection of the Contractor Deliverables from the Consignor by the Authority once they have been made available for Collection by the Contractor in accordance with Condition 44.3.
- 44.5 The Authority may from time to time issue instructions that vary the transport or consignment arrangements in the Contract. These instructions will be the subject of an amendment in accordance with Condition 12 (Formal Amendments to Contract) which shall provide for any resulting change in the contract price or delivery timescales or both.

**45 Late Delivery**

- 45.1 If a delay occurs in respect of the Contractor delivering Equipment on or before the Delivery date but they do not comply with the requirements of the Contract then, without limiting any of its other rights or remedies, and whether or not it has accepted the Equipment, the Authority may exercise the remedies set out in DEFCON 524 Rejection.
- 45.2 The Authority's rights and remedies under this Condition is in addition to its rights and remedies implied by statute and common law.

**46 Beyond Economic Repair (BER)**

- 46.1 For the purposes of this Contract, an item shall be considered BER if the required repair shall cost greater than 75% of the replacement Equipment bought new. The Contractor shall submit to the Project Manager full details of any Equipment considered BER. The Contractor shall then await further instructions from the Authority's Project Manager and, if it is decided to proceed with the repair, formal instruction to proceed shall be raised by the Authority's Project Manager.
- 46.2 If any Equipment is found to be BER. The Commercial Branch shall authorise, either:
- 46.2.1 complete disposal of the Equipment as scrap or otherwise to the best advantage of the Authority; or
  - 46.2.2 further work to enable serviceable components/assemblies to be identified, segregated and stored against future use. Remaining unserviceable Equipment are to be disposed of.

**47 Diversion Orders**

- 47.1 The Authority shall notify the Contractor at the earliest practicable opportunity if it becomes aware that a Contractor Deliverable is likely to be subject to a Diversion Order.
- 47.2 The Authority may issue a Diversion Order for the urgent delivery of the Contractor Deliverables identified in it. These Contractor Deliverables are to be delivered by the Contractor using the quickest means available as agreed by the Authority.
- 47.3 The Authority reserves the right to cancel the Diversion Order.
- 47.4 If the terms of the Diversion Order are unclear, the Contractor shall immediately contact the Representative of the Authority who issued it for clarification and/or further instruction.
- 47.5 If the Diversion Order increases the quantity of Contractor Deliverables beyond the scope of the Contract, it is to be returned immediately to the Authority's Commercial Representative with an appropriate explanation.
- 47.6 The Contractor shall be entitled to reasonable additional delivery and packaging costs incurred in complying with the Diversion Order or cancellation. Claims are to be submitted by the Contractor to the Authority's Commercial Representative together with applicable receipts and agreed as an amendment to the Contract in accordance with Condition 12

(Amendments to Contract). The Contractor shall comply with the requirements of the Diversion Order upon receipt of the Diversion Order.

#### **48 Service Warranty**

48.1 The Contractor warrants that in the performance of the Services it shall:

- 48.1.1 assign to the Contract those of its employees, subcontractor or agency members of staff who are suitably qualified and experienced to perform the Services; and
- 48.1.2 use reasonable skill and care in its workmanship; and
- 48.1.3 adhere to all applicable Laws and good industry practice.

48.2 The Contractor shall not be obliged to make any particular individual available for the purposes of Condition 48.1 above and the Contractor shall at any time or times be entitled to replace any individual with another provided that if, in the reasonable opinion of the Authority, any Contractor's employee, subcontractor or agency member of staff is unsatisfactory for the particular Services on which they are engaged, or in proven cases of gross misconduct or dishonesty, the Contractor shall replace the member of staff concerned within a reasonable period of time.

#### **FINANCIAL INSPECTION AND REVIEW**

##### **49 Rights of Audit**

49.1 The Contractor shall grant the Authority's nominated representative(s) or agent(s) reasonable access to the Contractor's systems and records relating to the Contract from the Contract Commencement Date. Contract Records shall be kept for a period of six years after completion of the Contract.

49.2 The Contractor shall keep full and accurate records (including, without limitation, foreground information, financial documents including Supplier quotations/tenders evidencing expenditure and income) with respect to the Contract. The Authority reserves the right to use this information for re-tendering purposes.

49.3 The Contractor shall grant the Authority and its authorised representative(s) or agent(s) the right of access at all reasonable times to visit the Contractor's premises and to inspect and/or take copies from the records, relating to the Contract, and the Contractor shall provide all reasonable assistance at all times during the currency of the Contract, and for six years after completion of all work there under, for the purposes of allowing the Authority and/or its authorised representative(s) or agent(s) to obtain such information as is necessary to:

- 49.3.1 fulfil the Authority's obligations to supply information in relation to Parliamentary, Governmental, judicial or other administrative purposes; or
- 49.3.2 carry out an audit of the Contractor's compliance with the obligations set out in the Contract including, without limitation, the Contractor's obligations with respect to the meeting of performance and quality standards, the security and confidentiality of data, computer integrity and other security requirements; or
- 49.3.3 investigate suspected fraud or other impropriety by the Contractor, the Ministry of Defence and/or any third party in relation to the Contract, in which case the



- provisions of this Condition shall be to the powers of the law enforcement authorities granted by law; or
- 49.3.4 verify the accuracy of and appropriate application of charges and prices and any proposed or actual variations to the charges and prices in accordance with the Contract.
- 49.4 Subject to DEFCON 531 (Disclosure of Information) the Authority and its authorised representatives and/or agents shall treat as confidential all data and records accessed during any audit carried out pursuant to this Condition.
- 49.5 The Authority shall give a minimum of five (5) Business / Working Days' notice of the exercise of its audit rights under this Condition, except:
- 49.5.1 where overriding Government circumstances dictate (e.g. Ministerial /Parliamentary requirements); or
- 49.5.2 in the circumstances set out in Condition 49.5.3, in which case the Authority shall be entitled to conduct an audit without notice; and
- 49.5.3 that there shall be a standing right for the Authority or its agent (s) to carry out a spot check audit in conjunction with progress meetings held at the Contractor's premises.

## **50 Open Book Accounting**

- 50.1 The Contractor agrees to open book accounting whereby the Authority shall be provided with any information or documentation used by the Contractor that the Authority requires to evaluate the Contractor's pricing activities under the Contract.
- 50.2 These rights extend to Sub-Contractor level under the Contract and on the receipt of such a request the Contractor will provide the Authority with a full suite of information on their Supplier's and Original Equipment Manufacturer's quotations including a breakdown of mark ups within five (5) Business/ Working Days or a mutually agreed timescale.

## **51 Earned Value Management (EVM)**

- 51.1 The Contractor shall develop, deliver and update monthly over the term of the Contract, an Earned Value report in accordance with the requirements stated in Paragraph 2.12 (EVM Requirements) to Activity 1 of Annex A (SoSR).

## **INTELLECTUAL PROPERTY, INFORMATION AND GOVERNANCE**

### **52 Intellectual Property Rights (IPR)**

#### **Security of Supply**

- 52.1 In addition to the Intellectual Property Rights Conditions included within the General Conditions of Contract, the following shall also apply:

- 52.1.1 in the event that the Authority decides to place a follow-on Contract with the Contractor for the continuing provision of the Contractor Deliverables which are the same as or similar to those provided under this Contract and the Contractor is unwilling or unable to accept, on fair and reasonable terms a follow-on Contract from the Authority; and/or
- 52.1.2 the Contractor permanently discontinues its business for whatever reason and such business is not continued by a successor in interest to the Contractor to whom the relevant Intellectual Property Rights have been transferred, then the Authority shall have the right to obtain from the Contractor, or from the authorised trustees or receivers acting on behalf of the Contractor, sufficient data, code, information and licence(s) required for the provision of the Contractor Deliverables as those provided under this Contract or such similar deliverables, Equipment or services. Such data, code, information and licence(s) may be used royalty-free by the Authority or new provider to provide deliverables, Equipment or services similar to those provided under the Contract.

#### **Business disruption and Termination for Default**

- 52.3 Without prejudice to any other remedies available to the Authority under the Contract in the event that the Contractor ceases business or is otherwise unable to fulfil his obligations under the Contract (including in the event of termination for default under DEFCON 514 - Material Breach) then where applicable the Contractor hereby agrees that thereafter the constraints imposed on modification under DEFCON 15 - Design Rights and Rights to use Design Information shall cease to apply.

#### **Private Venture Funding**

- 52.4 The Contractor shall not introduce any private venture funding under this Contract without the prior written agreement of the same by the Authority's Commercial Officer. Unless the Contractor obtains such prior written approval from the Authority's Commercial Officer then it shall be assumed that no private venture funding was introduced.

### **53 Sub-Contracts**

- 53.1 The Contractor shall not place any Sub-Contract or order involving design or development of the Equipment required under this Contract without the prior approval of the Authority's Commercial Officer (see Box 1 of DEFFORM 111 – Appendix to Contract).
- 53.2 The Contractor shall not enter into any commitment in relation to such work until the Sub-Contractor has entered into an agreement with the Authority in the form set out in DEFFORM 177 Design Rights and Patents (Sub-Contractor's Agreement). Wherever possible, the request for approval should be accompanied by two copies of the agreement signed by the Sub-Contractor. If in any case the Contractor is unable to comply with this Condition, he shall report the matter to the Authority's Commercial Officer (see Box 1 of DEFFORM 111 – Appendix to Contract) and await further instructions before placing the Sub-Contract.

**54 Access to Material and Foreground Information/Data/Software ('Information')**

- 54.1 In the event of termination in accordance with DEFCON 514 (Material Breach) or retendering purposes, the Authority shall have a royalty free right to use all Information in whatever format generated or used by the Contractor specifically for the purposes of managing and administering the Contract and necessary for the Authority and/or a third party or Successor Contractor to manage and complete the Contract.
- 54.2 Within thirty Business / Working Days of receiving formal notice of termination under DEFCON 514 (Material Breach), the Contractor shall provide a list of all Information to the Authority's Commercial Officer identified in DEFFORM 111 to this Contract and agree the nature and timescale for the transfer of such information.
- 54.3 Where the Contract is terminated in accordance with DEFCON 656B (Termination for Convenience), or upon expiry of this Contract, then such rights to Information shall be limited to Information deliverables under the Contract and excludes rights to the Contractor's proprietary information.
- 54.4 Where the Contract is to be terminated in accordance with DEFCON 514 (Material Breach) or DEFCON 656B (Termination for Convenience) or the Authority seeks to place a Contract with a third party on expiry of this Contract to provide support under the scope of this Contract, then the Authority and such third party shall provide the Contractor with a written undertaking that the Contractor's Information provided under this Condition shall be protected and not used by such third party other than for the purposes of managing and administering the Contract or for the purposes of a similar Contract between the Authority and such third party.
- 54.5 Where the Contract is to be competitively retendered in accordance with the TFEU Principles, or similar, the Authority shall provide the Contractor with a written undertaking, within a reasonable timescale, requesting access to all data generated for the purposes of managing and delivering the Contract.
- 54.6 Upon the Contractor's receipt of the Authority's formal written notice of termination, the Authority will be deemed to have overall responsibility for managing the Exit/Transition Plan as detailed in Condition 63. The Contractor shall remain responsible for all aspects of the Contractor's performance of the Contract for the period of notice to the date of Contract termination
- 54.7 The Authority shall confirm its receipt of any assets returned or transferred by the Contractor to the Authority in writing.

**55 Cyber Security**

- 55.1 The Cyber Risk Level assigned to this Contract is **LOW** as defined in DEFSTAN 05-138 (Cyber Security for Defence Suppliers).

**56 Transfer of Undertakings (Protection of Employment) Information on Re-tender, Expiry or Termination**

- 56.1 The Contractor shall comply with the Terms and Conditions of Annex J – Transfer of Undertakings (Protection of Employment).

## **57 Publicity**

- 57.1 Save as required by Law, the Contractor shall not publicise, either directly or indirectly in any media release, public announcement, or public disclosure relating to this Contract or its subject matter, in any promotional or marketing materials, lists, or business presentations, without the written consent of the Authority for each such use or release in accordance with this Condition save as required through statutory regulations.

## **58 Information Regarding Prosecution or Proceedings**

- 58.1 If the Contractor becomes aware of any prosecution or proceedings, for criminal breaches of the Law related to the subject matter or the execution of the Contract, against the Contractor, any Crown Servants, employee's or agents of the Contractor and any Sub-Contractors engaged in performance of the Contract, the Contractor shall immediately notify the Authority.
- 58.2 Any convictions during the term of the Contract for criminal breaches of the Law related to the subject matter or the execution of the Contract by the Contractor or any of the Contractor's directors/partners or senior management who have powers of representation, decision or control, shall be regarded as a Material Breach of the Contract.

## **59 Security Aspects Letter**

- 59.1 The Classified matter of the Contract is defined in the following Security Aspects Letter (SAL) which can be found at Annex H to the Contract:
- 59.2 The SAL may be updated during the Contract term to reflect any changes to the security classification of the Equipment or the nature of its use.
- 59.3 The Contractor shall confirm in writing to the Authority's Project Manager (PM), see Box 2 of DEFFORM 111 – Contract Appendix, that the definition of the classified matter has been brought to the attention of the person directly responsible for the security of the Contract, that the definition is understood and that measures shall be taken to safeguard the classified matter. He shall immediately refer any difficulties in these respects to the Authority's Project Manager.

## **60. Access to the Comprehensive Royal Naval Inventory Systems Project (CRISP)**

- 60.1 The Contractor shall be given access to MOD Inventory System, Comprehensive Royal Naval Inventory Systems Project (CRISP), solely for the purpose of managing the GFI on this Contract MSS/102.
- 60.2 At the Authority's discretion the Contractor may be provided with up to a maximum of six (6) licences. Each licence shall provide READ ONLY access to a nominated individual. The Contractor shall arrange for each nominated individual to sign the Authority's SyOps and MOD Form 134 (Declaration of Official Secrets Act) prior to commencement of the Contract. Access shall be limited to the following data:

- 60.2.1 MREM - NATO Stock Number (NSN)
  - 60.2.2 MREM - Unique Identification Number (UIN)
  - 60.2.3. MREM - Date Demanded
  - 60.2.4 MREM - Demand Serial Number
  - 60.2.5 MREM - Standard Priority Code (SPC)
  - 60.2.6 MREM - Quantity
  - 60.2.7 MREM - Terms of Issue (TOI)
  - 60.2.8 MREM - Reason for Demand (RFD)
  - 60.2.9 MREM - Required Delivery Date (RDD)
- 60.3 Failure by the Contractor to meet the terms set out in Condition 60 and DEFCON 531 (Disclosure of Information) shall constitute as a material breach and the Authority reserves the right to terminate this Contract in accordance with DEFCON 514 (Material Breach) in such an event.
- 60.4 The Contractor shall ensure that any Information accessed from CRISP (by any nominated individual under clause 60.2) is not disclosed except to Authority personnel or as provided in this clause 60.4. Disclosure to any other person or party including sub-contractors and other employees of the Contractor (save for an employee of the Contractor who is at the time of disclosure also currently a nominated individual having access to CRISP) is prohibited. The information on CRISP is commercially sensitive and any disclosure in breach of this clause 60.4 could result in significant commercial damage to the Information owner and a claim for damages and costs against the Authority as well as a negative impact to the continuing business and reputation of the Authority. The Authority and/or an owner shall be entitled to compensation from the Contractor for any damages or costs arising as a result of any breach by the Contractor employees of the obligations of confidence under this Clause 60.4. If the Contractor becomes aware of any breach of this clause 60.4 then they shall report it immediately to the Authority. To the extent there is any conflict between this clause 60.4 and DEFCON 531 then this Clause 60.4 shall take precedence.

## **OBLIGATIONS TO ASSIST POST TERMINATION OR EXPIRY**

### **61 Exit/Transition Plan**

- 61.1 The Contractor shall comply with the Exit/Transition Plan.
- 61.2 The Contractor shall update the Exit/Transition Plan on the earlier of:
- 61.2.1. twelve (12) Months prior to the end of the Term; or
  - 61.2.2. upon receipt of a notice of termination.
- 61.3 All such updates must be approved by the Authority and shall include any changes which the Authority requires in order to achieve a controlled Contract exit and transition to the successor Contractor or, if there is no Successor Contractor, to the Authority.
- 61.4 The Contractor shall ensure that it is able to implement the Exit/Transition Plan throughout the full term of the Contract.

- 61.5 All costs incurred in developing, updating and implementing the Exit/Transition Plan shall be borne by the Contractor.
- 61.6 In the event of termination for default under DEFCON 514 - Material Breach then the Contractor shall bear all costs incurred in implementing the Exit/Transition Plan.

## **62 Transition to a New Contractor**

- 62.1 Prior to the expiry of this Contract the Contractor shall be responsible for the transfer of all GFI/GFX from their own storage facilities stock to either the Successor Contractor or the Authority's storage facilities. This stock shall be managed and accounted for in accordance with DEFCON 694. Ownership of the GFI/GFX stock shall remain the property of the Authority.
- 62.2 The quantity of transferred stock shall be agreed within 6 months from Contract Commencement.
- 62.3 Twelve months prior to the Contract expiry date, or Contract termination, the Contractor shall ensure in accordance with DEFCON 609 that copies of all items including, but not limited to, source data, software files and data which contain information generated and used in support of the Contract, are available for delivery to a successor Contractor. If a successor Contractor is nominated, there will be a six-month hand-over period during which the Contractor shall complete all current work and conclude GFI/GFX transfer arrangements to the Successor Contractor in accordance with the Exit/Transition Plan at Annex G to this Contract.
- 62.4 The Contractor shall be required to liaise with the Successor Contractor during this period, the duration of which will depend on the amount of current work but shall not exceed the period stated in the Contract Conditions.

## **63 Exit Strategy**

### **Circumstances**

- 63.1 Circumstances may arise whereby the Authority's requirement is no longer served by the scope or level of support provided by the Contract. In this situation the Authority may give notice of its intention to determine the Contract.
- 63.2 The terms of this Contract allow for termination of the Contract in accordance with DEFCON 655B (Termination for Convenience) or DEFCON 514 (Material Breach).

### **Notice**

- 63.3 The Authority's notice shall be in writing to the Contractor's Commercial Representative.

### **Exit Strategy and Process**

- 63.4 The Parties recognise the importance of timely planning to ensure that, following termination of the Contract, there is a seamless and effective transition to alternative support arrangements. The Authority may require the Contractor to assist in the implementation of such alternative support arrangements following termination of the Contract; the extent of such

assistance shall be directed by the Authority. The Authority shall pay to the Contractor a fair and reasonable price for such assistance.

- 63.5 The Authority shall appoint a Project Manager to oversee the Exit Strategy. The Authority's Project Manager will liaise with the Contractor to agree a timetable of actions necessary to either transfer the Project back to the Authority's control or to a Third-Party Contractor nominated by the Authority.
- 63.6 The Contractor shall not do anything to prevent or hinder the Authority or another Third-Party from entering into a contract with the Contractor's Sub-contractors on fair and reasonable terms.
- 63.7 During the period of notice up to termination of the Contract, the Contractor shall continue to undertake the work in accordance with the Contract terms and conditions subject to the direction of the Authority's Project Manager and any agreed changes to the

**Access to Material Information/Data/Software ("Information")**

- 63.8 In the event of termination in accordance with DEFCON 514 (Material Breach) or retendering purposes, the Authority shall have a royalty free right to use all Information in accordance with Condition 54.

**Authority**

- 63.9. Upon the Contractor's receipt of the Authority's formal written notice of termination the Authority will be deemed to have overall responsibility for managing the Project Exit Strategy. The Contractor shall remain responsible for all aspects of the Contractor's performance of the contract for the period of notice to the date of Contract termination.

**Payment**

- 63.10. The Contractor shall be paid in accordance with the Contract for all work satisfactorily completed under the Contract to the date of contract termination.
- 63.11 Where work is required to be undertaken in support of the exit strategy which is in addition to the scope of the Contract then the scope and price for the additional work will be agreed with the Authority prior to commencement of the work. The additional work may be either covered within the existing Contract or a separate order.
- 63.12 Reasonable costs incurred by the Contractor for the purpose of advance provisioning of assets, including ordering of parts and repairing/reconditioning assets, as well as performing other work, in anticipation of, or to migrate potential future Contract requirements shall be deemed to be commitments/expenditure properly chargeable by the Contractor. The Authority shall be entitled to purchase any unused spares or equipment.

**DEFFORM 111**  
**(Edn 05/19)**

**Appendix - Addresses and Other Information**

**1. Commercial Officer**

Name: REDACTED TEXT

Address: Birch 3a, MoD Abbey Wood, Bristol,  
 BS34 8JH

Email: REDACTED TEXT



**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

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

Name: REDACTED TEXT

Address: Birch 3a, MoD Abbey Wood, Bristol,  
 BS34 8JH

Email: REDACTED TEXT



**9. Consignment Instructions**

The items are to be consigned as follows:

**3. Packaging Design Authority**

Organisation & point of contact:

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



**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 No. 01869 256052 (select option 2, then option 3)

JSCS Fax No. 01869 256837

[www.freightcollection.com](http://www.freightcollection.com)

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

Branch/Name:



**(b) U.I.N.**

**5. Drawings/Specifications are available from**

**11. The Invoice Paying Authority**

Ministry of Defence

DBS Finance

Walker House, Exchange Flags

☎ 0151-242-2000

Fax: 0151-242-2809



	Liverpool, L2 3YL <b>Website is:</b> <a href="https://www.gov.uk/government/organisations/ministry-of-defence/about/procurement#invoice-processing">https://www.gov.uk/government/organisations/ministry-of-defence/about/procurement#invoice-processing</a>
<b>6. Intentionally Blank</b>	<b>12. Forms and Documentation are available through *:</b> Ministry of Defence, Forms and Pubs Commodity Management PO Box 2, Building C16, C Site Lower Arncott Bicester, OX25 1LP (Tel. 01869 256197 Fax: 01869 256824) <b>Applications via fax or email:</b> <a href="mailto:Leidos-FormsPublications@teamleidos.mod.uk">Leidos-FormsPublications@teamleidos.mod.uk</a>
<b>7. Quality Assurance Representative:</b> Alan Edwards Commercial staff are reminded that all Quality Assurance requirements should be listed under the General Contract Conditions.  <b>AQAPS and DEF STANs</b> are available from UK Defence Standardization, for access to the documents and details of the helpdesk visit <a href="http://dstan.uwh.diif.r.mil.uk/">http://dstan.uwh.diif.r.mil.uk/</a> [intranet] or <a href="https://www.dstan.mod.uk/">https://www.dstan.mod.uk/</a> [extranet, registration needed].	<b>* NOTE</b> <b>1.</b> Many <b>DEFCONs</b> and <b>DEFFORMs</b> can be obtained from the MOD Internet Site: <a href="https://www.aof.mod.uk/aofcontent/tactical/toolkit/index.htm">https://www.aof.mod.uk/aofcontent/tactical/toolkit/index.htm</a>  <b>2.</b> If the required forms or documentation are not available on the MOD Internet site requests should be submitted through the Commercial Officer named in Section 1.

