

DATED: 2nd December 2020

MINISTRY OF DEFENCE

MULTI-MODE RADIO (MMR)

**(RE: DEFENCE CONTRACT NOTICE
-701101382 - GB-BATCM/0322)**

INVITATION TO NEGOTIATE

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1 **Definitions**

Defined terms used in this ITN shall have the same meaning as set out in the Contract, unless stated otherwise.

References to a 'Schedule', 'Section' or 'paragraph', shall be to a Schedule, Section or paragraph of this ITN, unless stated otherwise.

"Authority" means the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland, acting as part of the Crown;

"AWARD portal" means the e-procurement portal referred to in Section 2.2 of this ITN;

"BATCIS Delivery Team" means the Authority's 'Battlefield Tactical Communications and Information Systems' delivery team;

"Bidder" means any organisation (including, where applicable, any Member) selected by the Authority (following the DPQQ selection process) to participate in negotiations in relation to the procurement of the Project, subject to any down-selection in accordance with section 4.3 of this ITN or the withdrawal of any Bidder;

"Bidder Checklist" means the Bidder checklist at Annex A of **Schedule 6** of this ITN;

"Change of Ownership" means:

- (a) any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in the Bidder or any Member (as the case may be) (including the control over exercise of voting rights conferred on those shares, control over the right to appoint or remove directors or the rights to dividends);
- (b) any other arrangements that have or may have or which result in the same effect as limb (a) above; and/or
- (c) any disposal or acquisition by the Bidder or Member of a material asset (including shares held by the Bidder or Member or any of their Subsidiaries in any company), business or undertaking;

"Clarification Question" means a clarification question submitted by a Bidder to the Authority in accordance with the instructions set out in Section 2.4 of this ITN;

“Connected Person” means any officers, employees, agents, consultants or advisers of the Authority;

“Contract” means the contract for the Contractor Deliverables, a copy of which is available on the AWARD portal (comprising the Main Body Contract and the Contract Schedules);

“Contract Documents” means the contract documents (including the Contract) to be entered into between the Authority and the Preferred Bidder for the provision of the Contractor Deliverables. Such documents shall include the Contract and any other agreements required to be entered into. **“Draft Contract Documents”** means any draft Contract Documents issued to Bidders;

“Contract Notice” means the defence contract notice relating to this Project dated 8th May 2020

“Contract Schedules” means the schedules to the Contract;

“Contractor” means the successful Bidder, to whom this Contract is awarded and who enters into the Contract with the Authority;

“Contractor Deliverables” has the meaning set out in the Contract;

“DPQQ” means the pre-qualification questionnaire issued by the Authority in relation to this Project;

“Evaluation Criteria” means the Tender evaluation criteria set out in **Schedule 6** of this ITN;

“Evaluation Methodology” means the methodology to be applied to the evaluation of Tenders, as set out in **Schedule 6** of this ITN;

“Evaluators” means the persons responsible for evaluating Initial Tenders and Final Tenders, as described in **Schedule 6** to this ITN;

“Final Tender” means the final tenders prepared and submitted by each Bidder in response to the ISFT;

“Final Tender Deadline” means the deadline for the receipt of Final Tenders, to be set out in the ISFT;

“Final Tender Deliverables” means the Authority’s requirements for Bidders’ Final Tenders, as set out in the Bidder Checklist at Annex A to **Schedule 6** of this ITN;

“Financial Pillar” has the meaning set out in Section 1.3 of **Schedule 6** of this ITN;

“Government Furnished Information” means the obligations of the Authority set out in Schedule 7 of the Contract;

“Important Information” has the meaning set out in paragraph 2 of **Schedule 1** of this ITN;

“Information Provided” has the meaning given in paragraph 1 of **Schedule 1** of this ITN;

“Initial Tenders” means the bids prepared and submitted by each Bidder in response to this ITN and any subsequent instructions issued by the Authority;

“Initial Tender Deadline” has the meaning set out in section 5.3 of this ITN, with the deadline date being [REDACTED];

“Initial Tender Deliverables” means the Authority’s requirements for Bidders’ Initial Tenders, as set out in Annex A to **Schedule 6** of this ITN;

“ITN” means this document and schedules and appendices to it, issued to Bidders at the commencement of the Negotiation Stage, including any supplements or subsequent issues of documentation used to outline and specify the Authority’s evolving needs and requirements in the negotiation process;

“ISFT” means the Invitation to Submit Final Tenders document, to be issued to Bidders following completion of the Negotiation Stage of this procurement process;

“Key Personnel” means those persons whom the Bidder has identified in its Tender as the key personnel to perform the Contractor Deliverables;

“Legal Bid Requirements” means the table of legal bid requirements (available on the AWARD portal) to be completed and submitted by Bidders with their Initial Tender and Final Tender submissions. (The Authority may issue different Legal Bid Requirements documents for each of those submissions);

“Main Body Contract” means the Contract, excluding the Contract Schedules;

“Member” means any party forming part of the Bidder if the Bidder is a consortium or joint venture, whether through a special purpose vehicle or otherwise, including any major service providers;

“Minimum Technical Threshold” has the meaning set out in **Schedule 6** of this ITN;

“Minimum Commercial Threshold” has the meaning set out in **Schedule 6** of this ITN.

“Month” means a calendar month;

“Negotiation Stage” means the period commencing from the issue of this ITN and ending on the issue of the ISFT;

“Person” means any individual, firm, company or other body corporate (whether sole or aggregate) and any association (whether or not it has separate legal personality);

“Preferred Bidder” means the Bidder selected in accordance with Section 5.4 of this ITN;

“Project” means the provision of the MORPHEUS Multi-Mode Radio (MMR) Project, as described in more detail in the Contract Notice and this ITN;

“Qualitative Pillar” has the meaning set out in Section 1.3 of **Schedule 6** of this ITN;

“Security Aspects Letter” means the Authority’s security aspects letter (to be made available on the AWARD portal);

“Statement of Requirements” or **“SOR”** means the Authority’s statement of requirements for the Contractor Deliverables, as set out in Schedule 2 of the Contract;

“Subsidiary” has the meaning set out in, and shall be construed in accordance with, sections 1159 and 1162 of the Companies Act 2006 (and “Subsidiaries” shall be construed accordingly);

“Technical Response” has the meaning set out in Section 1.3 of **Schedule 6** of this ITN;

“Tender Demonstration” means as described in Annex G of Schedule 6 of this ITN. The aim of this demonstration is to supplement the technical written response supplied

in the tender with further supporting evidence as to the level of compliance of the proposed solution against the Bidder's SRD Compliancy Matrix

"Tender Presentation" means as described in Annex G of Schedule 6 of this ITN. The Bidders shall present their proposed solution and describe how their tender response meets the requirements set out in the Statement of Requirement.

"Tender Pack" means the tender information made available by the Authority on the AWARD portal;

"Tender Submission Document" means DEFFORM 47 Annex A (Offer) as set out at **Schedule 10** to this ITN;

"Tenders" means Initial Tenders and Final Tenders;

"Tenderer" means a "Bidder";

"Tenderer's Commercially Sensitive Information Form" means DEFFORM 539A as attached at **Schedule 2** to this ITN;

"TUPE" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 or any subsequent amendment or re-enactment of them;

"Working Day" means any day (except Saturday, Sunday or bank holiday) on which clearing banks in the City of London are open for business; and

"you" means a Bidder, and **"your"** shall be construed accordingly.

2 Introduction

2.1 Invitation to Negotiate

This ITN is being issued in relation to the Contract Notice for the Project, advertised on Defence Contracts Online with reference GB-BATCM/0322.

This ITN is being made available to the three (3) short-listed Bidders who were selected by the Authority to be invited to negotiate following its evaluation of DPQQ submissions. The shortlisted bidders are:

- Harris Global Communications Inc
- Ultra Electronics Ltd
- Rockwell Collins UK

This ITN:

- sets out the framework for and details of the Negotiation Stage;
- updates and expands upon the information contained in the Contract Notice, and the DPQQ;
- provides instructions to Bidders on the requirements for Initial Tenders and Final Tenders;
- sets out the timetable for the procurement process;
- sets out the evaluation criteria for the evaluation of Tenders (these evaluation criteria will be applied to both Initial Tenders and Final Tenders); and
- explains the administrative arrangements for the receipt of Initial Tenders and Final Tenders.

Please note that information contained in the DPQQ and the Contract Notice should be considered as current and applicable unless updated in this ITN. Accordingly, Bidders should continue to also refer to the DPQQ and the Contract Notice for further information such as information on the Authority and its requirements and objectives.

Bidders should also note that the Authority reserves the right to vary the requirements set out in this ITN, where it considers it appropriate to do so.

2.2 Communications with the Authority and the AWARD portal

Bidders will receive a link to and log-in details for the AWARD portal within 24 hours of the issue of this ITN. In the event that you do not receive such information within that timescale, please contact the Authority by email (marked for the attention of [REDACTED] at:

ISSComrcI-BATCIS-Morpheus-Grp@mod.gov.uk

All communications with the Authority, including all Clarification Queries and Tender submissions **must** be via the AWARD portal. Bidders are required to use the AWARD portal in accordance with the document headed “AWARD 6 – Quick Start Guide for Suppliers”, which is available on the AWARD portal.

The Authority will not accept any communications made other than through the AWARD portal, unless either expressly set out in this ITN or agreed in writing by the Authority in advance.

2.3 Important Information and Form of Acknowledgement

Bidders should read and accept the Important Information set out in **Schedule 1** of this ITN. Bidders' attention is drawn, in particular, to the statements regarding Official and Official-Sensitive Information, non-collusion and regarding costs and expenses incurred by Bidders in the procurement process for the Project.

Bidders are required to confirm their acceptance of this ITN and the terms set out in it by signing and returning to the Authority the Form of Acknowledgement at Schedule 4 to this ITN within 5 (five) Working Days of the date of issue of this ITN on the AWARD® Portal . Failure to submit the Form of Acknowledgement within the above time period (or within any longer period as the Authority may, in its discretion, agree) will result in the Bidder being disqualified from taking any further part in this procurement.

2.4 Clarification Queries

Bidders may submit Clarification Questions to the Authority (by uploading them onto the AWARD portal), in the form of questions or clarifications concerning this

procurement. Clarification Questions may be submitted to the Authority at any time during the Negotiation Stage, provided that they are submitted within sufficient time to enable the Authority to respond. The Authority recommends, therefore, that **any Clarification Questions prior to the Initial Tender Deadline are submitted by [REDACTED]** and that any Clarifications thereafter are submitted no later than 10 (ten) Working Days before the deadline for submission of Final Tenders.

Clarification Questions submitted after [REDACTED] will not be answered until [REDACTED]

All Clarification Questions should be uploaded onto the AWARD portal using the pro-forma provided thereon. Responses to Clarification Questions (and the Clarification Questions themselves) will be circulated to all Bidders, except in the circumstances set out in section 2.5 below.

Bidders should not contact the Authority or any of its employees, agents or advisers in relation to this procurement, outside the process outlined within this ITN, without prior written permission from the Authority.

The Authority will endeavour to deal in good faith with each Bidder. Comments received previously on particular aspects of a proposal/solution will not in any way bind the Authority to prefer a proposal/solution which adopts the Authority's comments, during the formal evaluation of any Tenders.

2.5 **Commercially Sensitive Information**

If a Bidder considers that any information shared or requested or contained in or related to a Clarification Question should not be disclosed to other Bidders because of its commercial sensitivity, then the Bidder should highlight the information that it considers should not be disclosed, together with the reasons why it considers such information to be commercially sensitive. Bidders are required to do so by completing the Tenderer's Commercially Sensitive Information Form (DEFFORM 539A) (in the form attached at **Schedule 2** to this ITN) and uploading it onto the AWARD portal.

Information highlighted in this way should be limited to information which is genuinely confidential and which may be exempted from disclosure under the Freedom of Information Act 2000, and/or the Environmental Information Regulations 2004 (together '**FOI Law**').

In circumstances where the Authority considers that a response to a Clarification Question containing commercially sensitive information should be disclosed to all Bidders, the Authority will exercise its discretion as to whether, in its view, the highlighted information should be treated as commercially sensitive.

If the Authority agrees with the Bidder's position, then the Authority will treat the information as being commercially sensitive. If the Authority disagrees with the Bidder's position, such that it considers any response to the information request should be shared with other Bidders, the Bidder will be permitted to first withdraw the Clarification Question and, in the event that it chooses to do so, no further action will be taken by the Authority.

This process shall in no way prejudice the Authority's obligation to consider and potentially disclose all information which it holds in respect of information requests made under FOI Law, and it reserves the right to do so. Bidders' attention is drawn to paragraphs 15 (Freedom of Information) and 31(21) – (24) (inclusive) of **Schedule 1** of this ITN.

3 Project Overview and Contract Structure

3.1 Background and objectives for the Project

The aim of the Multi-Mode Radio (MMR) project is to maintain Tactical Satellite (TacSAT) and Ground-to-Air (G2A) capabilities post-2023 and set the conditions for a transition to and integration with the future MORPHEUS radio capabilities. Further information regarding the background of this Project is set out in the Contract Notice and the Morpheus Defence Share Portal.

3.2 Contract Overview

The Contract is based on MOD DEFCONS in narrative form together with contract specific amendments relevant to the MMR procurement. The Contract is one of a suite of contracts which are relevant to the MORPHEUS Programme and wider BATCIS activities. Accordingly, the form of Contract is structured to permit ease of monitoring and consistency of approach for the Authority with all relevant MORPHEUS/BATCIS contractors. (Accordingly, references to "not used" clauses etc. enables the Authority to retain common numbering across those contracts which are and which will form part of the MORPHEUS Programme).

The Authority will issue a revised Contract with the Invitation to Submit Final Tenders and may issue additional iterations during the Negotiation Stage.

With their Initial Tender and Final Tender submissions, Bidders are required to either confirm acceptance of the draft form of Contract issued at those stages, or to set out any amendments to the Contract that they wish to make, by completing the relevant Legal Bid Requirements document for the Initial Tender and Final Tender stages. The Legal Bid Requirements documents will be made available to Bidders on the AWARD portal. Bidders' attention is drawn to the Commercial Evaluation Methodology contained in Annex D of **Schedule 6**.

3.3 Statement of Requirements

The Authority's Statement of Requirements is set out in Appendix A - Schedule 2 of the Contract.

3.4 TUPE

The Authority has formed the view that TUPE does not apply to this Contract. However, Bidders are recommended to obtain their own advice as to whether TUPE is likely to apply.

3.5 Contract Value

The total estimated value of the contract, excluding VAT, is between GBP £70,000,000 and £90,000,000 (excluding Options)

4 COVID-19 and Ways of Working

- 4.1 The Authority is aware that the Government guidelines regarding social distancing in the workplace and working from home where possible may affect some of the activities listed within this ITN. The Authority will provide further instructions regarding some of the activities listed in the Stage 1-4 and arrange alternative arrangements for the face to face activity to be carried out virtually via tools available to the Authority and Industry. This includes the Bidder's Conference, Bidder's Presentation and any Negotiations. It is likely that any face to face activity will be at OFFICIAL-SENSITIVE, then the Authority will be limited to conducting audio only meetings via Skype. The Authority will provide further details and instructions regarding such activity in advance of any planned activity. The Authority believes

that the Tender Presentation and Demonstrations can be conducted in a COVID-19 secure manner and will provide further details as part of the instructions issued in line with the Bidder's Presentation and Demonstration Plan at Annex G to Schedule 6. The Authority reserves the right to cancel or amend any of the planned activities in light of Government COVID-19 restrictions.

5 Tender Timetable and Process

5.1 Timetable

The dates detailed below are intended as a guide. Whilst the Authority does not plan to deviate from these dates, it reserves the right to do so at any time. Any changes will be notified to Bidders via the AWARD portal.

TABLE REMOVED

5.2 Stage 1 – Issue Contract Notice, Completion of Supplier Down-selection and Release of Invitation to Negotiate (ITN).

The Contract Notice for this procurement was published in DCO on 4th May 2020

Following the receipt and evaluation of DPQQ responses, the Authority short-listed three (3) Bidders to take part in the Negotiation Stage of the procurement on July 7th 2020. This ITN is being issued to those shortlisted Bidders.

5.3 Stage 2 - Initial Tender Stage – Bidders conference and Initial Tenders

Stage 2 will commence with a Bidders Conference, at which the Authority will present its objectives for the Contract and invite Bidders to ask questions. Bidders are required to submit to the Authority (via the AWARD portal) any queries or issues they may wish to discuss at such meetings by 16 December 2020. The Bidders Conference will be held in [REDACTED] at a venue to be confirmed or held remotely as outline in Paragraph 4.

Bidders are welcome to submit Clarification Questions to the Authority during the Initial Tender Stage (subject to the requirements of section 2.4 above).

At the Bidders Conference, Bidders will be issued with Government Furnished Equipment that will assist the Bidders to design their radio solution around the body worn elements of the dismounted soldier.

All Bidders are required to submit a fully compliant Initial Tender to the Authority by uploading their Initial Tender onto the AWARD portal no later than the “Initial Tender Deadline” in accordance with the instructions at Paragraph 18 Schedule 1 of this ITN

Stage 2a - Tender Presentation

Stage 2a will commence approximately 1 week after Initial Tender Deadline with the Bidders providing a presentation. The presentation will provide the opportunity for Bidders to further explain and confirm the scope of the Bidder's ITN return. The presentation shall be delivered in accordance with the Tender Presentation and Demonstration Outline Plan included within Annex G to Schedule 6. The Authority will provide further details (and reserves the right to change any details within the Presentation and Demonstration Outline Plan) no later than 10 (ten) working days prior to the scheduled date of the Tender Presentation (this includes cancelling requirement for the Tender Presentation for any reason (including those described in paragraph 4 of this ITN)). The Tender Presentation itself will not be evaluated unless the Tender Presentation slide pack submitted by the Bidder as part of the ITN return has been used as supporting evidence within the SRD Compliancy Matrix return, in which case the Tender Presentation slide pack will be evaluated in accordance with the Technical Evaluation Criteria at Annex C.

Stage 2b – Tender Demonstration

Stage 2b will commence approximately 2 (two) weeks after ITN Initial Deadline with the Bidders in accordance with the Demonstration Outline Plan at Annex G to Schedule 6. The detailed demonstration requirements (including location and dates) will be issued no later than 4 (four) weeks before the demonstrations that are due to take place. After the demonstrations, a formal report will be released by the Authority and provided to the Evaluators as supporting evidence for the Technical Evaluation of the SRD Compliancy Matrix to be assessed in accordance with the Technical Evaluation Criteria at Annex C. The Authority will put in place appropriate measures to ensure the Bidders Demonstration is undertaken in a COVID-19 secure manner as further detailed in paragraph 4.

Initial Tenders will be evaluated by the Authority in accordance with the Tender Evaluation Process as detailed in Schedule 6 to this ITN.

Following the evaluation of Initial Tenders, the Authority will notify Bidders of the outcome of its evaluation. The Authority may choose not to **enter negotiations at this point** (Stage 3) and to enter a contract with the first placed Bidder at this stage. Bidders will be notified of the outcome of the Initial Tender Evaluation and any unsuccessful Bidders will be notified at this stage.

Stage 3 - Negotiation Stage

If the Authority decides to proceed to Stage 3, it will enter into detailed negotiations with the remaining Bidders. Dates of meetings and the agenda will be confirmed by the Authority in due course through the AWARD portal. If negotiations cannot be conducted face to face, they will be carried out in accordance with paragraph 4.

Bidders are welcome to send any Clarification Questions at any time during the Negotiation Stage (subject to the provisions in section 2.4 above).

Detailed negotiations will continue until the Authority is satisfied that all material aspects of the Contract have been settled and decides to invite Final Tenders. At that stage, the Authority will issue an Invitation to Submit Final Tenders ("**ISFT**") to the Bidders. The Final Tender Deliverables are set out in the Bidder Checklist at Annex A of **Schedule 6** of this ITN. These will be updated in the ISFT.

Bidders must prepare and submit a Final Tender to the Authority by uploading their Final Tender onto the AWARD portal no later than the Final Tender Deadline (to be set out in the ISFT).

All Bidders are required to submit a Final Tender to the Authority by uploading their Final Tender onto the AWARD portal no later than the "Final Tender Deadline" (to be set out in the IFST) in accordance with the instructions at Paragraph 18 Schedule 1 of this ITN. Bidders will be required to submit, with their Final Tenders, a completed and signed **Form of Tender** (in the form attached at **Schedule 9** to this ITN), **Tender Submission Document** (in the form attached at **Schedule 10** to this ITN), and **Certificate of Bona Fide Offer** (in the form attached at **Schedule 11** to this ITN), each to be uploaded onto the AWARD portal. Bidders' attention is drawn to the requirements for the construction of tenders set out in paragraph 17 of **Schedule 1** of this ITN. Final Tenders will be evaluated by the Authority in accordance with the Evaluation Process and Methodology set out in **Schedule 6** of this ITN.

5.4 **Stage 4 – Final Tender Evaluation, Preferred Bidder, Standstill Period and Contract Award**

The Authority will evaluate Final Tenders, in accordance with the Evaluation Criteria and methodology set out in **Schedule 6** of this ITN. Bidders may be required to clarify any aspects of their Final Tenders.

Following the above evaluation process, the Authority will make its award decision and notify the successful and unsuccessful Bidders accordingly, confirming the commencement of a standstill period together with such other information as the Authority is required to provide to explain its decision.

Following the award decision, the Authority shall finalise the Contract with the Preferred Bidder. In the event that the Authority is unable to finalise the Contract with the Preferred Bidder within a reasonable time period, it reserves the right to cease discussions with that Preferred Bidder and to remove their status as Preferred Bidder. In such circumstances, the Authority also reserves the right to appoint the Bidder who achieved the second highest Value for Money Index score as the Preferred Bidder and to seek to finalise the Contract with that new Preferred Bidder.

Following the satisfactory conclusion of the standstill period, the Authority intends to enter into the Contract with the Preferred Bidder. This is subject to all necessary approvals being obtained by the Authority and, until such time as all outstanding issues or approvals have been addressed, no Contract will be entered into.

Schedule 1

Important information

1 Applicable law and jurisdiction

The laws of England and Wales are applicable to this ITN. The Courts of England and Wales will have exclusive jurisdiction in relation to any disputes arising out of this ITN.

2 Confidentiality

The information contained in and enclosed with the ITN and all other information, whether written or oral, made available at any time to Bidders by or on behalf of the Authority (the “**Information Provided**”) is provided on the basis that Bidders and their advisers will keep such information confidential at all times and that such information will be used only for the purpose of participating in the negotiation process for the Project. For the avoidance of doubt, nothing in this section shall prevent the Bidder from passing the Information Provided to its employees, potential sub-contractors and professional advisers solely for the purpose of assisting the Bidder in the negotiation process for the Project, provided such persons agree to treat such information as confidential in accordance with the duty described in this section.

The duty of confidentiality described in the section above does not apply in relation to information which:

- 2.1 is in or enters the public domain otherwise than by a breach of an obligation of confidentiality;
- 2.2 is or becomes known from other sources without breach of any restriction on disclosure or obligation of confidentiality; or
- 2.3 is required to be disclosed by law or any professional or regulatory obligation.

Any information provided by or on behalf of the Authority to Bidders (in any format) which is marked as, or which the Authority notifies Bidders as being, “OFFICIAL” or “OFFICIAL - SENSITIVE” during this procurement process must be treated in accordance with the provisions set out in Schedule 25 (Security Conditions) of the Contract.

Bidders are required to confirm their acceptance of the Security Aspects Letter (available on the AWARD portal) by completing and signing the Form of Acknowledgement (at Schedule 4 to this ITN) within 5 (five) Working Days of the date of issue of this ITN. Failure to submit the Form of Acknowledgement within the above time period (or within any longer period as the Authority may, in its discretion, agree) will result in the Bidder being disqualified from taking any further part in this procurement.

3 Return of documents

All Information Provided, including any software or electronic media or data relating to the Project, are the Authority's property and must be returned on request.

Should the Bidder decide not to participate in the Negotiation Stage for the Project at any stage, then all documents and other material supplied by or on behalf of the Authority, together with all such copies thereof as may have been taken, shall be returned to the Authority forthwith and all electronic data supplied by or on behalf of the Authority shall forthwith be permanently deleted from the Bidder's storage devices and from the storage devices of any other Persons to whom the Bidder may have passed the same (whether or not permitted by the Authority). Nothing in this section shall require the return or destruction of such electronic or other records as are required to be retained to fulfil a legal, regulatory or professional obligation.

4 Copyright

The copyright in the Information Provided is vested in the Authority and its advisers. The Information Provided may not be copied or stored in any electronic medium without the Authority's prior written consent, except where necessary for the purpose of preparing responses to the Authority's Negotiation Stage deliverables or where otherwise expressly permitted by the Authority.

5 Accuracy of Information Provided

Although every care has been taken in preparing this document with information obtained from sources considered to be reliable, it has not been independently verified by the Authority, or any Connected Person. No representation, warranty or undertaking, express or implied is made, and no responsibility or liability (including for negligence) will be accepted by the Authority or any Connected Person as to the accuracy or completeness of the Information Provided. It should not be assumed that

the information contained in the ITN will remain unchanged after the date hereof. Neither the Authority nor any Connected Person shall be liable for any costs, expenses, loss, costs, expenses, or damage arising as a result of reliance on the Information Provided.

The Information Provided is given in good faith, but Bidders will have to make their own investigations and interpretations as to its veracity, and no liability will be accepted by the Authority or any Connected Persons for the accuracy or completeness of the Information Provided.

Without limiting the generality of the foregoing, descriptions, dimensions, references to condition, necessary permissions for use and occupation and other details in the Information Provided are for general guidance only. Their accuracy is not guaranteed. Bidders must not rely on them as statements of fact or representations and must satisfy themselves as to their accuracy.

In the event of inconsistency between the ITN and any other Information Provided by the Authority or its advisers in respect of the Project, the information contained in the ITN shall prevail, unless otherwise expressly stated by the Authority.

6 Conflicts of interest

You must notify the Authority immediately of any conflicts of interest that have arisen or that arise at any point prior to the Authority's Contract award decision.

Where there is an existing or potential conflict of interest, you must include a proposed compliance regime in your Tender. As a minimum, this must include:

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

- physical and managerial separation.

The Authority reserves the right to disqualify Bidders and/or Members where there is a conflict of interest which, in the Authority's opinion, cannot be effectively remedied by other measures. Bidders are therefore advised to review carefully their prior or current involvement with the Authority and to contact the Authority before engaging with the Authority in the procurement process to discuss actual or potential conflicts that have been identified.

Bidders will be required to comply with any further instructions regarding conflicts of interest that may be issued by the Authority from time to time during this procurement process.

7 Changes to consortium membership and Change of Ownership

Bidders have been evaluated and selected in accordance with the selection criteria set out in the DPQQ. If a Bidder proposes to introduce a new consortium Member(s) or key sub-contractor(s), the Authority reserves the right to ask for qualification information which will be evaluated in accordance with the DPQQ selection criteria. Where the Authority finds the proposed new Member or key sub-contractor unacceptable, it reserves the right to request that the Bidder finds an alternative Member or key sub-contractor, or to exclude that Bidder from further participation in the procurement process. Any such proposal for changes to consortium membership or key sub-contractors must be notified in writing to the Authority immediately.

You must inform the Authority in writing if there is any Change of Ownership, or change in the composition or membership of the Bidder or of any Member at any time during this procurement process.

The Authority reserves the right to take any action it deems appropriate in the event of a Change of Ownership, change in the composition or membership of the Bidder or of any Member . This may include (but is not limited to):

- Re-assessing the Bidder against the DPQQ criteria; and
- Excluding the Bidder from this procurement process.

8 Contracting with the Authority

The Information Provided shall not form the basis for any warranty, representation (express or implied) or term of any contract by the Authority with any third party. Only the express terms of any written contract relating to the subject matter of the Information Provided as and when it is executed shall have any contractual effect in connection with the matters to which it relates.

No advisers of the Authority nor any of their employees or representatives has any authority to make or give any representation or warranty or enter into any contract whatever in relation to any property mentioned in the ITN.

9 Right to withdraw

Nothing in the Information Provided is, or should be relied on as, a promise or representation as to the future intentions of the Authority. The Authority reserves the right to withdraw from the procurement process at any stage and no costs, expenses, losses or damage incurred by any Bidder or its advisers in connection with participation in the procurement process for the Project will be reimbursed. The Authority reserves the right not to award a contract for the whole or any part of the Contractor Deliverables for any reason. The Authority is not bound to accept the most economically advantageous, or any, Tender.

10 Canvassing and Collusion

Any Bidder who directly or indirectly canvasses any member, officer or employee of the Authority or any Connected Person concerning the Project or the award of the Contract, or who directly or indirectly obtains or attempts to obtain information from any such person, save in accordance with the Information Provided, will be disqualified.

Any Bidder who:

- 10.1 fixes or adjusts its bids by arrangement with any other Person (save for legitimate agreements and/or arrangements with professional advisers and/or proposed sub-contractors and/or proposed consultants necessary for the purposes of preparing the bid or submission); or

- 10.2 communicates to any Person other than the Authority (other than in confidence to the Bidder's employees, potential sub-contractors and professional advisers directly and legitimately involved in the bidding process for the Project and in order to obtain insurance quotations necessary for its preparation) the details of its proposal; or
- 10.3 enters into any arrangement with any other Person that it will cease negotiating or to tender for the Project; or
- 10.4 offers or agrees to pay or give or does pay or give any sum of money, other inducement or consideration, directly or indirectly, to any Person in respect of its proposal or the Project, receives or agrees to receive from any Person, or offers or agrees to give to any Person, or procure for any Person any gift or consideration of any kind as an inducement or reward for doing or not doing anything, or for showing favour or disfavour to any Person in relation to a bid or submission or any other contract or the proposed contract with the Authority; or
- 10.5 conspires with any Person or incites any Person or counsels or procures any Person to do any of the acts mentioned above;

will be disqualified, without prejudice to any other civil remedy which may be available to the Authority and any criminal liability which may be incurred. As part of the Final Tender submission, Bidders are required to submit a Certificate of Bona Fide Offer in the form set out in **Schedule 11** of this ITN.

11 Failure to comply

Failure to comply with any of the instructions set out in the Information Provided may result in a bid or submission not being considered by the Authority. The Authority also reserves the right to reject any Bidder who is guilty of serious misrepresentation in supplying any of the information requested by the Authority as part of the procurement process.

12 Costs and expenses

Bidders must bear all of their own costs and expenses in connection with this procurement. Under no circumstances shall the Authority or any Connected Person incur any liability for any costs, expenses, losses or damage incurred by Bidders or their advisers in connection with the procurement process, whether or not the procurement proceeds.

13 Consents

Unless otherwise stated, the Bidder will be responsible for obtaining all permissions, consents, approvals, certificates, permits, licences and authorisations required by law in relation to this Project.

14 Jurisdictional restrictions

Taking the Information Provided into, or possessing or distributing it in, certain jurisdictions may be restricted by law and therefore Persons in possession of the Information Provided should inform themselves about and observe such restrictions.

15 Freedom of Information

The Authority is subject to the Freedom of Information Act 2000, subordinate legislation under that Act and the Environmental Information Regulations 2004 (together “**FOI Law**”).

As part of its duties under FOI Law, the Authority may be required to disclose information provided by Bidders to anyone who makes a request. The Authority may also be required to publish some of the information given in tender submissions in its Publication Scheme under FOI Law.

If a Bidder considers that any of the information it provides to the Authority or its agents or advisers should not be disclosed because of its commercial sensitivity then it should highlight the information that it considers should not be disclosed together with its reasons for considering it to be commercially sensitive. Information thus highlighted should be limited to that information which is genuinely confidential and which may be exempted from disclosure under FOI Law. The Authority shall consider the applicability of the exemption on a case by case basis and the Authority reserves the right to disclose information thus highlighted in order to comply with its obligations under FOI Law.

16 Amendments to the ITN

The Authority may amend the ITN at any time. Any such amendment shall be issued to all Bidders and, if appropriate to ensure Bidders have reasonable time in which to take such amendment into account, any applicable deadline shall, at the discretion of the Authority, be extended.

17 **Construction of Tenders**

Your Tender must be written in English, using **Arial font size 10**. Prices must be in £GBP exclusive of VAT. Bidders Tender responses must comply with any applicable word counts referred to in Annex B of **Schedule 6** to this ITN. If a Bidder's response is in excess of any applicable word count, the Authority shall only evaluate that response up to the relevant word count and shall ignore any text in excess of such word count for the purposes of the evaluation of that Tender.

All Final Tenders must be valid/open for acceptance for a period of 6 Months from the deadline for submission of Final Tenders.

All Bidder submissions must comprise the relevant documents specified by the Authority and in the format as detailed by the Authority. Any documents requested by the Authority must be completed in full.

Bidders' attention is drawn to the Bidder Checklist attached at Annex A of **Schedule 6** to this ITN, which identify the mandatory requirements for Initial Tenders and Final Tenders, together with other responses required from Bidders (where relevant), as mentioned in this ITN.

Bidders are required to submit, with their Final Tenders, a completed and signed **Form of Tender** (in the form attached at **Schedule 9** to this ITN), **Tender Submission Document** (in the form attached at **Schedule 10** to this ITN) and a completed **Certificate of Bona Fide Tender** (in the form attached at **Schedule 11** to this ITN), uploaded to AWARD® with your Tender as a PDF

18 **Electronic Tender Submission**

Your Tender must be submitted electronically via the AWARD® Virtual Tender Board by **4 March 2021, 17:00** Greenwich Mean Time. Hard copy, paper or delivered digital tenders (e.g. DVD) are no longer required and will not be accepted by the Authority. Tenderers are required to submit an electronic online tender response to ITN 'reference number'. You must provide one priced copy of your tender and one unpriced copy. You should ensure that there are no prices present in your unpriced copy.

You must ensure that your Form of Tender (in the form attached at Schedule 9 to this ITN), is signed, scanned and uploaded to AWARD® with your Tender as a PDF.

Bidders will receive AWARD® login details no later than 5 (five) working days before the tender submission date. Once logged into the AWARD® service, uploading and submission instructions will be readily available. Login details will be sent via two separate automatically generated emails. Bidders should ensure their local mail application settings allow receipt of computer-generated emails.

AWARD® is security accredited to OFFICIAL-SENSITIVE. Material that is protectively marked above this classification must not be uploaded.

If you intend to upload any ITAR or Export Controlled information as part of your tender, you must notify the Commercial Officer at least 10 (ten) working days before you upload your tender to AWARD.

If you have any difficulty accessing the AWARD® service or if you have any questions with regards to the tendering exercise itself, please contact the Authority by email (marked for the attention of Daniel Brockley) at: ISSComrcl-BATCIS-Morpheus-Grp@mod.gov.uk

19 Variant Tenders

As stated in the Contract Notice, variant Tenders will not be accepted.

20 Duplication

Where a section of a Tender response is duplicated between different sections of that response, the Bidder must repeat the relevant information for each section as the Authority will only refer to the particular response to a question when evaluating that question.

21 Changes to information submitted in a DPQQ response, Tender response or other response made following a request by the Authority

The Authority shall have the right to disqualify you from the procurement process at any stage if it becomes aware of any omission or misrepresentation in your response to any question or in the event that there are material changes to a position/information set out in any aspect of your DPQQ response, Final Tender response or other response made following a request by the Authority. For the avoidance of doubt, the Authority may check that there has not been any material changes to the information provided or the positions outlined in your response at any stage and, in the event of any changes, the Authority reserves the right to disqualify you based on an

assessment of the updated information.

22 Verification

The Authority may, at any stage in the process, require you to provide evidence to verify earlier statements made by you in any submission, Tender response or other response made following a request by the Authority and reserves the right to disqualify you where such evidence and verification cannot be provided or is not provided within the timescale specified by the Authority.

23 Publicity

No publicity regarding the award of any contract will be permitted unless and until the Authority has given express written consent to the relevant communication. For example, no statements may be made to the media regarding the nature of any Tender, its contents or any proposals relating to it, or the Contract without the prior written consent of the Authority.

24 Liability

Nothing in this **Schedule 1** or any other part of this ITN is intended to exclude or limit the liability of the Authority in relation to fraud or in other circumstances where the Authority's liability may not be excluded or limited under any applicable law.

25 Modifications to Tender documents once submitted

You may modify your Tender response prior to the relevant deadline by giving written notice to the Authority. Any modification should be clear and submitted as a complete new Tender, in accordance with the rules in this ITN. The Authority will only consider the latest Tender submitted by a Bidder within the relevant deadline.

26 Rejection of Tender responses or other documents

A Tender response or any other document requested by the Authority may be rejected which:

- contains gaps, omissions, misrepresentations, errors, uncompleted sections, or changes to the format of the Tender documentation provided;
- contains hand written amendments which have not been initialled by the authorised signatory;

- does not reflect and confirm full and unconditional compliance with all of the documents issued by the Authority forming part of the ITN (except as expressly permitted by the Authority);
- other than expressly permitted in this ITN, contains any caveats or any other statements or assumptions qualifying the Tender response that are not capable of evaluation in accordance with the Evaluation Criteria and Evaluation Methodology or requiring changes to any documents issued by the Authority in any way;
- is not submitted in a manner consistent with the requirements set out in this ITN; and/or
- is received after the applicable deadline.

27 Government Furnished Assets (“GFA”)

Where the Authority provides GFA in support of this competition, all Issued Property shall remain the property of the Authority. It shall be used in execution of supporting this competition only and for no other purpose, without the prior approval in writing of the Authority.

Neither the Contractor, nor any subcontractor, nor any other person, shall have a lien on Issued Property, for any sum due to the Bidder, other Bidders or other person, and the Contractor shall take all such steps as may be necessary to ensure that the title of the Authority, and the exclusion of any such lien, are brought to the notice of all subcontractors and other persons dealing with any Issued Property.

Within 5 (Five) Working Days of receipt of Issued Property, the Bidder shall:

- (1) check the Issued Property to verify that it corresponds with the Issued Property specified in as part of ITN Data Pack.
- (2) conduct a reasonable visual inspection; and
- (3) conduct any additional inspection and testing as may be necessary and practicable to check that the Issued Property is not defective or deficient for the purpose for which it has been provided; and notify the Authority of any defects, deficiencies or discrepancies discovered.

The Authority shall within a reasonable time after receipt of any notice under this Condition replace, re-issue or authorise repair of Issued Property agreed to be

defective or deficient and, If appropriate, it shall also issue written instructions for the return or disposal of the defective or deficient Issued Property.

In the event that the Authority fails to provide, replace, or authorise repair of defective or deficient Issued Property within a reasonable time of receipt of a notice, fair and reasonable revisions to return of the ITN shall be made as may be appropriate provided that the Bidder has taken all reasonable measures to mitigate the consequences of any such delay.

The Bidder shall be responsible for the safe custody and due return of Issued Property, and shall be responsible for all loss or damage thereto, until re-delivered in accordance with the Authority's instructions or until the expiry of the period specified in ITN Data Pack.

The Bidder shall not be liable in respect of:

(1) defects or deficiencies notified to the Authority which the Bidder can show could not reasonably have been discovered by means of the activities used.

(2) fair wear and tear in Issued Property resulting from its normal and proper use in supporting response to this competition (except insofar as the deterioration is contributed to by any misuse or lack of care by the Bidder);

The Bidder shall include details of the GFA in your Public Store Account and treat it in accordance with DEFSTAN 05-099. If unsuccessful in this competition, the Bidder shall forward a list of Issued Property marked for the attention of Daniel Brockley, Commercial Manager, Information Systems and Services, BATCIS) (via the AWARD portal). The Authority will then provide details of how the Issued Property shall be returned.

28 [NOT USED]

29 Conforming to the Law

You must comply with the UK Competition Act 1998, the UK Bribery Act 2010, any applicable EU and UK legislation and any equivalent legislation in a third state.

Your attention is drawn in particular to legislation relating to the canvassing of a public official, collusive behaviour and bribery. If you act in breach of this legislation then 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.

30 Sensitive Information

All Central Government Departments and their Executive Agencies and Non-Departmental Public Bodies are subject to control and reporting within Government. In particular, they report to the Cabinet Office and HM Treasury for all expenditure. Further, the Cabinet Office has a cross-governmental role delivering overall Government policy on public procurement, including ensuring value for money, related aspects of good procurement practice and answering Freedom Of Information requests.

For these purposes, the Authority may share within Government any of the Bidders' documentation/information (including any that the Bidders consider to be confidential and/or commercially sensitive such as specific bid information) submitted by Bidders to the Authority during this procurement. Bidders 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.

The Authority reserves the right to disclose on a confidential basis any information it receives from Bidders during the procurement process (including information identified by Bidders 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 Bidders' Tenders. In providing such information Bidders consent to such disclosure.

31 Reportable Requirements

Listed in the DEFFORM 47 Annex A (Offer) (the **Tender Submission Document** attached at **Schedule 10** to this ITN) are the Mandatory Declarations. As mentioned in sections 4.3 and paragraph 17 of this **Schedule 1**, you are required to complete and submit the Tender Submission Document and, where you select 'yes', to attach the relevant information.

Failure to complete and submit the Tender Submission Document in full will result in your Tender being non-compliant.

32 **Information on Mandatory Declarations**

Part Tender

1. The Authority reserves the right to order some or part of your Tender.

2. **[NOT USED]**

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 the relevant section of the Tender Submission Document (*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?*) .

If you have answered 'Yes' in the Tender Submission Document 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.

7. Where any of the conditions listed below (7a-c) form part of the contract terms and conditions of the Contract or where other similar narrative based obligations exist, the Contractor warrants and confirms that all Intellectual Property Rights restrictions and associated export restrictions relating to the use or disclosure of the Contractor Deliverables of which the Contractor is or should be reasonably be aware as at the date of the Contract are disclosed in the return of the IPR Restrictions Notification Form at Schedule 5 to this ITN that will subsequently form Annex D to Schedule 14 of the Contract.

a. Limitations of Deliverable Software under Clause 3b of Part 2 of Schedule 14 of the Contract,

b. Notifications under Clause 1 of Part 4 of Schedule 14 of the Contract.

c. Notifications under Clause 4a of Part 3 to Schedule 14 (the Technical Data Paragraph)

The Contractor shall promptly notify the Authority in writing if it becomes aware during the performance of the Contract of any required additions, inaccuracies or omissions in Annex D to Schedule 14.

8. Any amendment to Annex D to Schedule 14 shall be made in accordance with Clause 76 (Amendments to Contracts) of the Terms and Conditions.

9. Guidance on completing Schedule 5 of the ITN is available in the ITN Data Pack.

Notification of Foreign Export Control Restrictions

7. If, in the performance of the Contract or respond to the Competition, 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 (Schedule 3 of this DEFFORM48) (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 (Schedule 3 of this ITN) or completing a new DEFFORM 528 (Schedule 3 of this ITN).

10. This does not include any Intellectual Property specific restrictions mentioned in paragraph 4.

11. You must notify the Authority (marked for the attention of **Daniel Brockley, Commercial Manager, Information Systems and Services, BATCIS**) via the AWARD portal 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 (Schedule 3 of this ITN) 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 Bidder. 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.

13. The Authority requests that if any bidders are in the process of applying for, or already have a US Export Authorisation (eg Export Licence or Technical Assistance Authorisation) to support the MMR ITN response, that the companies included within the MMR Community List - Export Controls within the Data Pack are added as sub-licensees to such an authorisation to support access to any controlled information or equipment as part of the MMR ITN Evaluation or that is required upon award of any resulting Contract. Full company details are included within the MMR Community List.

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 accounting for import duties. This includes but is not limited to obtaining the appropriate Her Majesty's Revenue & Customs (HMRC) authorisations.

16. **[NOT USED]**

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 £1 in every £3 that the Government spends should be with small businesses by 2020. Our goal is that 25% of Authority spending should be spent with SMEs by 2020; this applies to the money

which the Authority spends directly with SMEs and through the supply chain. The Authority uses the European Commission definition of an SME. Bidders' attention is drawn to clause 16 of the Contract.

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.

19. Suppliers are also encouraged to work with the Authority to support the Authority's SME initiative. Information on the Authority's purchasing arrangements, our commercial policies and our SME policy can be found at Gov.UK. (Bidders' attention is drawn to clause 16 of the Contract, highlighting that the Authority welcomes proposals on SME participation as part of Initial Tenders).

20. The opportunity also exists for Tenderers to advertise any sub-contract valued at over £10,000 in the Authority Contracts Bulletin and further details can be obtained directly from:

BiP Solutions Ltd

Web address: 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 (Government Transparency and Accountability) and the information contained within Clause 42 of the Terms and Conditions.

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 Purchasing

25. Tenderers must note that use of the Contracting, Purchasing and Finance (CP&F) electronic procurement tool 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 payment 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' in the relevant section of the Tender Submission Document (attached at **Schedule 10** to this ITN) and submit a Statement Relating to Good Standing with your Tender.

27. **[NOT USED]**

28. **[NOT USED]**

Bank or Parent Company Guarantee

29. A Parent Company or Bank Guarantee is likely to be required. In the event that your Final Tender is identified as the most favourable/compliant Final Tender, and the Authority assesses that a Parent Company or Bank Guarantee is required, then one will be requested (in the form of Schedule 17 to the Contract 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. The Armed Forces Covenant provides guidance on the various ways you can demonstrate your support through the Corporate 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 Authority can alert you to any events or initiatives in which you may wish to participate. The Covenant Team can also provide any information you require in addition to that included on the website.

Email address: covenant-mailbox@mod.uk

Address: Armed Forces Covenant Team

Zone D, 6th 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.

Disqualification

If you fail to comply with this **Schedule 1**, or if there are any errors, omissions or material adverse changes relating to any information supplied by you at any stage in this procurement process, or if any other circumstances arise entitling the Authority to reject a Tender response, or if you or your appointed advisers attempt to:

- inappropriately influence this procurement process;
- fix or set the price for supplies or services;
- enter into an arrangement with any other party that such party shall refrain from submitting a Tender response;
- except as otherwise agreed by the Authority, enter into any arrangement with any other party (other than another party that forms part of your consortium bid or is your proposed sub-contractor) as to the prices submitted;
- collude in any other way;
- engage in direct or indirect bribery or canvassing by you or your appointed advisers in relation to this procurement process; or
- obtain information from any of the employees, agents or advisors of the Authority concerning this procurement process (other than as permitted by these rules) or from another Bidder or another Tender response,

the Authority shall be entitled to reject your Tender response in full and to disqualify you from this procurement process. Subject to paragraph 23 (Liability) above, by participating in this procurement process you accept that the Authority shall have no liability to a disqualified Bidder in these circumstances.

Schedule 2

Tenderer's Commercially Sensitive Information Form (DEFFORM 539A)

[See following page]

Tenderer's Commercially Sensitive Information Form

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

Schedule 3

Schedule 4

Form of Acknowledgement

TO: Ministry of Defence, Information Systems and Services, BATCIS Delivery Team (the “**Authority**”) (For the attention of Daniel Brockley)

DATE:

PROVISION OF: Multi-Mode Radio (MMR) 701101382 (**BATCM/0322**) (the “**Services**”)

Multi-Mode Radio (MMR) 701101382 (BATCM/0322) (the “Services”)

The terms defined in the Invitation to Negotiate dated 25 November 2020 (“**ITN**”) for the Services shall bear the same meaning in this letter of acknowledgement.

On behalf of [*insert lead Bidder's name*] and the following Members [*insert the name of each Member indicated in your DPQQ response*], I acknowledge receipt of the ITN and I confirm that we have read and understood the terms of participation in the procurement process described in the ITN, including (without limitation) the Important Information contained in **Schedule 1** of the ITN and the Security Aspects Letter.

I am duly authorised by [*insert names of lead Bidder and each Member*] to inform you that we accept the ITN, the Security Aspects Letter and the terms of participation in the procurement and look forward to engaging with you in the Negotiation Stage. I confirm that we have complied with, and will continue to comply with, the Bidder obligations set out in **Schedule 1** of the ITN. By signing this Form of Acknowledgement (**Schedule 4** to the ITN), we confirm that we have read and accept the Security Aspects Letter.

Yours sincerely

[*signature*]

[*signatory's name and position*]

(Authorised representative)

Schedule 5

[NOTIFICATIONS OF INTELLECTUAL PROPERTY RIGHTS (IPR) RESTRICTIONS]

Schedule 6

Evaluation Organisation, Process and Methodology

[See separate document entitled “Schedule 6 Evaluation Organisation, Process and Methodology”.]

Schedule 7

[Contract Technical Data Requirements Form¹]

¹ Details the Technical Data Requirements for the MMR Contract.

Schedule 8

[NOT USED]

Schedule 9

Form of Tender

TO: Ministry of Defence, Information Systems and Services, BATCIS Delivery Team, (the “Authority”) (For the attention of David Fox)

DATE: [DATE]

PROVISION OF: BATCM/0322 - Multi-Mode Radio (MMR)

We [INSERT NAME[S]] the undersigned, having examined the ITN and associated documents, do hereby offer to provide the Services as specified in those documents to the Authority for the period specified in the Contract and/or ITN. We agree:

(1) that the information contained in our DPQQ response remains correct and accurate and that we will inform the Authority forthwith if this position changes prior to an award of contract being made;

(2) by submitting a tender response, to be bound by the terms of the Contract without further negotiation or amendment save as provided in this ITN and our Final Tender;

(3) that this Final Tender response and any contract arising from it shall be subject to the provisions of the ITN;

(4) that the prices and charges offered are firm for the period of the Contract (subject only to any indexation mechanism agreed);

(5) to comply with the provisions of confidentiality set out in the ITN; and

(6) that this offer remains open for acceptance by the Authority until 180 days from the deadline for the receipt of tenders responses.

I warrant that I have all requisite authority to sign this tender and confirm that I have complied with all the requirements of the ITN.

I attach a completed **Tender Submission Document** (in the form attached at **Schedule 10** of the ITN).

Signature _____

Name and status _____

For and on behalf of [NAME OF COMPANY, PARTNERSHIP OR CONSORTIUM]

Date _____

The Form of Tender and Tender Submission Document must be signed by an authorised signatory: in the case of a partnership, by a partner for and on behalf of the firm; in the case of a limited company, by an officer duly authorised, the designation of the officer being stated.

Schedule 10

Tender Submission Document (Offer)

Ministry of Defence

Tender Ref No. **BATCM/0322**

Tender Submission Document (Offer)

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

The undersigned Tenderer, having read the ITT Documentation, offers to supply the Contractor Deliverables 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*	
Total Value of Tender (excluding VAT)				
£				
WORDS				
UK Value Added Tax				
If registered for Value Added Tax purposes, please insert:				
a. Registration No				
b. Total amount of Value Added Tax payable on this Tender (at current rate(s)) £.....				
Location of work (town / city) where contract will be performed by Prime:				
Where items which are subject of your Tender are not supplied or provided by you, state location in town / city to be performed column (continue on another page if required)				
Tier 1 Sub-contractor Company Name	Town / city to be Performed	Contractor Deliverables	Estimated Value	SME Yes / No
Mandatory Declarations (further details are contained in Appendix 1 to DEFFORM 47 Annex A (Offer)):			Tenderer's Declaration	
Is the offer subject to the Authority contracting for all the Contractor Deliverables?			Yes* / No	
Is the offer made subject to a Minimum Order Quantity?			Not applicable	
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?			Not required	
Have you completed the compliance matrix/ matrices?			Not required	
Are you a Small Medium Sized Enterprise (SME)?			Yes/No	
Have you and your sub-contractors registered with the Prompt Payment Code with regards to SMEs?			Yes/No	
Have you completed and attached Tenderer's Commercially Sensitive Information Form (DEFFORM 539A)?			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	

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.	Yes/No
Have you attached The Bank / Parent Company Guarantee?	
Have you complied with the requirements of the Military Aviation Authority Regulatory Articles?	
Have you completed the additional Mandatory Requirements?	
*If selecting Yes to any of the above questions, please attach the information detailed in Appendix 1 to DEFFORM 47 Annex A (Offer).	
Tenderer's Declaration of Compliance with Competition Law	
<p>We certify that the offer made is intended to be genuinely competitive. No aspect of the price has been fixed or adjusted by any arrangement with any Third Party. Arrangement in this context includes any transaction, or agreement, private or open, or collusion, formal or informal, and whether or not legally binding. In particular:</p> <p>a. the offered price has not been divulged to any Third Party,</p> <p>b. no arrangement has been made with any Third Party that they should refrain from tendering,</p> <p>c. no arrangement with any Third Party has been made to the effect that we will refrain from bidding on a future occasion,</p> <p>d. no discussion with any Third Party has taken place concerning the details of either's proposed price, and</p> <p>e. no arrangement has been made with any Third Party otherwise to limit genuine competition.</p> <p>We understand that any instances of illegal cartels or market sharing arrangements, or other anti-competitive practices, suspected by the Authority will be referred to the Competition and Markets Authority for investigation and may be subject to action under the Competition Act 1998 and the Enterprise Act 2002.</p> <p>We understand that any misrepresentations may also be the subject of criminal investigation or used as the basis for civil action.</p> <p>We agree that the Authority may share the Contractor's information / documentation (submitted to the Authority during this Procurement) more widely within Government for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes. We certify that we have identified any sensitive material in DEFFORM 539A.</p>	
Dated this..... day of Year	
Signature: In the capacity of	
(Must be original) (State official position e.g. Director, Manager, Secretary etc.)	
Name: (in BLOCK CAPITALS) duly authorised to sign this Tender for and on behalf of: (Tenderer's Name)	Postal Address: Telephone No: Registered Company Number: Dunn And Bradstreet number:

Schedule 11

Certificate of Bona Fide Offer

I/We certify that this offer is made in good faith and that we have not fixed or adjusted the amount of the offer in accordance with any agreement or arrangement with any other person. We also certify that we have not, and we undertake that we will not:

- (i) communicate to any person other than the person inviting these offers the amount or the approximate amount of the offer except where the disclosure, in confidence, of the amount or approximate amount of the offer was necessary to obtain professional advice and/or quotations required for the preparation of the offer, for insurance purposes or for a contract guarantee bond;
- (ii) enter into any arrangement or agreement with any other person that he or any other person shall refrain from making an offer or as to the amount of any offer to be submitted;
- (iii) pay give or offer or agree to pay or give any sum of money or other valuable directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any offer or proposed offer for the goods/services any act or thing of the sort described in (i) or (ii) above.

(Note: The provisions of (i) (ii) and (iii) above shall not prevent the entering into of arrangements or discussing the offer, to the extent necessary, with another party that forms part of a consortium bid or is a proposed sub-contractor to you.)

We certify that the principles described in paragraphs (i), (ii) and (iii) above have been and will be brought to the attention of all sub-contractors, suppliers and associated companies providing services or materials connected with this tender and any contract entered into with such sub-contractors, suppliers or associated companies will be made on the basis of compliance with the above principles by all parties.

We acknowledge that if we have acted or shall act in contravention of this certificate, the Authority will be entitled to cancel any contract between us and to recover from ourselves the amount of any loss and expense resulting from such a cancellation.

In this certificate, the word 'person' includes any person and any body or association, corporate or unincorporated; 'any agreement or arrangement' includes any transaction, formal or informal and whether legally binding or not.

Signature _____

Name and status _____

For and on behalf of *[NAME OF COMPANY, PARTNERS OR CONSORTIUM]*

Date _____

The Certificate of Bona Fide Offer must be signed by an authorised signatory: in the case of a partnership, by a partner for and on behalf of the firm; in the case of a limited company, by an officer duly authorised, the designation of the officer being stated.