

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

<p>To:</p> <p>Cross Match Technology GmbH</p> <p><i>[Redacted]</i></p>	<p>ITT Reference No: SPSCM/01079</p> <p>ITT Issue Date: 31/03/2017</p> <p>Due for return by (Due Date): 10/04/2017</p>
	<p>From: <i>[Redacted]</i></p> <p>(MOD Commercial Branch) Address: <i>[Redacted]</i></p> <p>MOD Commercial Officer: <i>[Redacted]</i></p> <p>Tel No.: <i>[Redacted]</i></p> <p>Email: <i>[Redacted]</i></p>

This ITT consists of:

1. Invitation to Tender – Less Complex Requirements – Non Competitive Procurement (this document).
2. Annex A - Offer.
3. Annex B - Tender Evaluation Criteria.
4. Annex C - Compliance Matrix
5. Special Notices and Instructions to Tenderers (DEFFORM 47R (SC1)) (one copy).
6. Purchase Order, including the Schedule of Requirements (two copies).
7. MOD Terms and Conditions for Less Complex Requirements.
8. DEFFORM 28 ST - Tender return address label.
9. DEFFORM 68 (see Clause 9 of Terms and Conditions)

The Tenderer should return:

1. Completed Annex A to this ITT (one hard copy and one soft copy).
2. Completed Purchase Order, including the Schedule of Requirement (one hard copy and one soft copy).
3. Completed Annex C to this ITT (one hard copy and one soft copy)
4. Completed DEFFORM 68 (one hard copy and one soft copy)

Notices To Tenderers

1. You are invited to tender, in accordance with the following Conditions, for the supply of Deliverables detailed in the accompanying ITT Material. This ITT has been issued only to the addressee; it is not an invitation to participate in competitive tendering. Any inferred reference to competitive tendering in this document is to be construed as a reference to a single tender. **The issue of an ITT is not a commitment by the Secretary of State for Defence - 'the Authority' - to place an order as a result of the tendering exercise or at a later stage. Any expenditure, work or effort undertaken prior to an offer of Contract and acceptance thereof, is a matter solely for the commercial judgement of your company. The Authority reserves the right to:**

- a. undertake an iterative tendering process following receipt of the tender;
- b. waive or change the requirements of this ITT from time to time without prior (or any) notice being given by the Authority;
- c. seek clarification or documents in respect of a Tenderer's submission;
- d. disqualify any Tenderer that does not submit a compliant tender in accordance with the instructions in this ITT;
- e. disqualify any Tenderer that is guilty of serious misrepresentation in relation to its tender, expression of interest, the PQQ or the tender process;
- f. withdraw this ITT at any time, or to re-invite tenders on the same or any alternative basis;
- g. choose not to award any Contract as a result of the current procurement process; and / or
- h. make whatever changes it sees fit to the timetable, structure or content of the procurement process, depending on approvals processes or for any other reason.

Publicity Announcement

2. The Tenderer is advised that the MOD may wish to publicise the award of the Contract for the requirement described in the Schedule of Requirements in the attached Purchase Order.

3. Any Tenderer who wishes to make a similar announcement, either coincident with or subsequent to the MOD's announcement, should contact the Authority's Representative (Commercial Officer) named in the Purchase Order. The content of any announcement a successful Tenderer may wish to make must be cleared in writing and in advance by the MOD Authority's Representative (Commercial Officer) named in the Purchase Order who shall liaise with the MOD Security branch responsible for clearance of publicity material for open publication.

4. If the notice inviting tenders was advertised in Contracts Finder, the MOD will publish the following information on the Contract awarded unless the MOD decides that there are specific and valid reasons for not doing so:

- a. Contractor's Name;
- b. Nature of the Deliverables to be supplied;
- c. Award criteria;
- d. Rationale for Contract award;
- e. Total price of the Contract awarded.

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

Codes of Practice

6. The attention of Tenderers is drawn to the agreements that have been reached by the MOD / Industry Commercial Policy Group (CPG) on Codes of Practice. The Codes of Practice are intended to demonstrate a commitment by the MOD and its suppliers to the establishment of better working relationships in the supply chain, based on openness and trust. The opportunity also exists for Tenderers to advertise any subcontract valued at over £10,000 in the Defence Contracts Online and further details can be obtained directly from:

BiP Solutions Ltd

Web address: 'www.contracts.mod.uk'

Tel No: 0141 270 7329

Submission of Tender

7. Tenderers must:

- a. Sign and date Part A (but not Part C) ("Effective date") of the Offer and Acceptance box on both copies of the Purchase Order and return them both as part of their tender. The Terms and Conditions are to be kept by the Tenderer for their records.
- b. Complete the Consignor Box with the name and address of the Consignor where the MOD stipulates that the Deliverables will be transported by the MOD (as defined in the Purchase Order under the Transport Instructions box);
- c. Complete the Schedule to the Purchase Order by populating the Delivery Date column (if stated to do so), the Firm Price (£) Ex VAT sub columns (Per Item and Total inc. packing), finally completing the Total Firm Price at the bottom of the Schedule.
- d. Sign and return one copy of the tender form at Annex A to this Invitation to Tender – Less Complex Requirements – Non Competitive Procurement, as part of their tender.
- e. Provide any other information requested in this Invitation to Tender.

8. Your tender is to be submitted in the English language, in a sealed package (e.g. envelope / box), bearing the enclosed label (DEFFORM 28 ST), to the address shown thereon, for receipt no later than the date and time stated above. The outer packaging must clearly distinguish between commercial and technical tenders. For health and safety reasons no individual package should weigh more than 11 kilos.

9. **The envelope bearing the DEFFORM 28 ST label will not be opened until the date and time shown (the tender return date).** The Authority cannot undertake to give consideration to any tender submitted in a different manner (for example, by telephone, facsimile or email) or any tender not received on time. Where the Tenderer is required to provide electronic copies of tenders, these must be provided with the tender(s) to the Tender Board.

10. Any request for an extension of the period for tendering must be received at least four (4) Business Days before the tender return date. Any extension will be at the sole discretion of the Authority. Correspondence connected with your tender which requires attention before the tender return date, or communications stating that no tender will be submitted, should be sent in a separate envelope bearing no external reference to the ITT Reference No or return date, addressed to the Authority's Representative (Commercial) as stated above.

11. **No useful purpose is served by enquiring about the result of this ITT.** You will be notified of the Authority's decision as early as possible.

Formation of Contract

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

Contractor. One copy of the completed Purchase Order will then be returned to the Contractor to be attached to their copy of the Terms and Conditions.

Instruction to Tenderers

1. **Small and Medium-sized Enterprises** The MOD is committed to supporting the Government's small and medium-sized enterprise (SME) initiative; its aspiration that 25% of spend, direct and through the supply chain, goes to SMEs by 2015. A key aspect of this is ensuring that its suppliers and any suppliers within the supply chain are paid promptly. All suppliers to the Department are encouraged to make their own commitment and register with the Prompt Payment Code at: <http://www.promptpaymentcode.org.uk>. Suppliers are also encouraged to work with the Department to support the wider SME initiative. The link below to the Cabinet Office website provides information on the Government's Crown Representative for SMEs, a link to the definition of an SME and details on the SME initiative. <http://www.cabinetoffice.gov.uk/content/crown-representative-smes-stephen-allott>
2. **Price** The prices quoted for the Deliverables and Packaging must be set out in strict accordance with the requirements of the Schedule to the Purchase Order. The Tenderer shall include in their tender any additional information regarding their quotation price breakdown, equality of information etc. as requested elsewhere in this ITT Material
3. **Orders for Parts of the Tender** The Authority reserves the right, **unless the Tenderer expressly states that parts of the tender may not be accepted separately in their tender**, to order some or all of the Deliverables stated in the Schedule to the Purchase Order.
4. **Alternative Conditions** The Tenderer shall comply with the notices and instructions set out in this ITT and submit a tender compliant with the MOD Terms and Conditions for Less Complex Requirements. Any offer made subject to additional or alternative contractual conditions will not be considered and will be rejected on the grounds of those conditions alone.
5. **Tender Evaluation** The tender evaluation shall be carried out in accordance with the Evaluation Criteria stated in the ITT tender documentation. **The Authority can only evaluate those things stated in your tender.**
6. **Alterations to Purchase Order** Any alteration to the Purchase Order suggested by the Tenderer e.g. an alternative Delivery offer, should be effected by striking through the original entry and inserting the alternative adjacent to it. The Tenderer's attention is, however, drawn to paragraphs 3 to 5 above.
7. **Completion of Tender**
 - a. In the event of a Deliverable appearing more than once in the attached Schedule of Requirements, whether separately or as part of an assembly, the Tenderer is requested to quote on the basis of the total quantity for that Deliverable.
 - b. The Tenderer should ensure that their tender is clear and in a form which will allow the Authority to take copies for evaluation purposes.
8. **Tenders for Selected Deliverables** Tenders need not necessarily be for all the Deliverables listed in the Schedule to the Purchase Order. The words "No Tender" should be inserted in the price column against items for which no offer is made.
9. **Bid costs** The Authority will not be liable for any bid costs, expenditure, work or effort incurred by a Tenderer in proceeding with or participating in this tender, including if the tender process is terminated or amended by the Authority.

10. **ITT Material**

- a. ITT Material means information (including for example, drawings, handbooks, manuals, instructions, specifications and notes of pre-tender clarification meetings, in whatever form or medium, patterns and samples) issued to you by the Authority or on its behalf, or to which you have been given access, for the purposes of responding to this ITT. ITT Material remains the property of the Authority or other owners and is released solely for the purpose of tendering. The Tenderer shall notify the Authority's Representative (Commercial Officer) without delay if any additional ITT Material is required for the purpose of tendering. The Tenderer shall be responsible for the safe custody and due return of ITT Material, and shall be responsible for all loss or damage sustained while in their care, and until re-delivered to the Authority.
- b. **Return of ITT Material** In the event that a recipient of ITT Material decides not to participate in the submission of a tender, the ITT Material shall be returned to its place of issue without delay. If a tender is submitted to the Authority, the ITT Material may be retained by the Tenderer until the result of the competition is known. In the event that the Tenderer's bid is unsuccessful the ITT Material shall be returned to its place of issue without delay at the prospective Tenderers cost.
- c. **Intellectual Property Rights in ITT Material** The Intellectual Property Rights in ITT Material may belong to the Authority or a third party. The ITT Material may only be used for the purpose of responding to this ITT and shall not be copied, or disclosed to anyone other than employees of the Tenderer involved in the preparation of the tender, without the prior written approval of the Authority. If the Tenderer discloses the ITT Material other than to employees involved in the tender preparation, or uses the ITT Material other than for the purpose of tendering, the Authority, or the third party owner, may suffer damage for which compensation may be sought from the Tenderer.
- d. **Confidentiality Agreements** Some or all of the ITT Material issued in connection with this ITT may already be the subject of Confidentiality Agreements. The provisions of such agreements are in addition to, and not in substitution for, any obligations arising from receipt of or access to ITT Material under the terms of this ITT, and the provisions of sub-paragraphs 10.a - c above.

11. **Samples – Not Required.**

12. **Notification of Inventions etc.**

- a. The Tenderer acknowledges that their prices shall include the use of any intellectual property rights which they own or control to the extent that their use is required for the performance of any resultant Contract. The Tenderer also acknowledges that their prices include subsequent use by the Authority of anything delivered under the Contract.
- b. In their tender the Tenderer shall notify the Authority of:
- (1) any invention or design the subject of patent or registered design rights (or application therefore) of which the Tenderer is aware , and;
 - (2) any other restriction (including any export requirement or restriction) as to disclosure or use or obligation to make payments in respect of intellectual property (including technical information) to which the Tenderer is subject, and;
 - (3) any allegation of infringement of intellectual property rights made against the Tenderer;
- which pertains to or appears to be relevant to the performance of any resultant Contract or to subsequent use by the Authority of anything required to be done or delivered under any resultant Contract.
- c. The Tenderer shall, at the request of the Authority, give the Authority particulars of every restriction and obligation referred to in sub-paragraph 12.b.any other restriction (including any export requirement or restriction) as to disclosure or use or

obligation to make payments in respect of intellectual property (including technical information) to which the Tenderer is subject, and; above.

d. If the information required under this paragraph 12 has been provided previously, the Tenderer may satisfy these requirements by giving details of the previous notification.

13. **The Montreal Protocol** As a signatory to the Montreal Protocol on Substances that deplete the Ozone Layer, Her Majesty's Government is committed to the reduction of the production and consumption of those substances controlled under the Protocol. The Tenderer must therefore state whether their response will involve the use of any or all of the substances outlined in Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer. A full version of the regulations including the comprehensive list of controlled substances can be found at:

http://ozone.unep.org/new_site/en/montreal_protocol.php

The Tenderer must also provide full details of that use, including where this relates to packaging) or submit a "NIL RETURN".

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

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

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

a. Tenderers should be aware that, if they are awarded the Contract, the content of the Contract may be published by the MOD to the general public in line with government policy set out in the Prime Minister's letter of May 2010 (<https://www.gov.uk/government/policies/improving-the-transparency-and-accountability-of-government-and-its-services>).

b. Before publishing the Contract, the MOD will redact any information which would be exempt from disclosure if it was the subject of a request for information under the Freedom of Information Act 2000 ("the FOIA") or the Environmental Information Regulations 2002 ("the EIR").

c. The FOIA and the EIR provide a more general statutory right of access to information held by or on behalf of public authorities, including information provided by third parties such as suppliers. This right of access is subject to a number of exemptions, including confidential information and commercially sensitive information. Further details of MOD policy on FOIA and EIR can be found on the Acquisition Operating Framework (<https://www.aof.mod.uk/aofcontent/tactical/toolkit/index.htm> click on "Commercial Toolkit" then "MOD Commercial Management" then "Freedom of Information").

d. In order to assist the MOD in applying the exemptions in the FOIA and the EIR, Tenderers should complete the appropriate Tenderer's Commercially Sensitive Information box in the Purchase Order, explaining which parts of their tender they consider to be sensitive or confidential. Tenderers are also requested to include in the box the details of a named individual who may be contacted with regard to this information.

e. Tenderers should note that, while their views will be taken into consideration, the ultimate decision whether to publish or disclose information provided to the MOD lies

with the MOD. Tenderers are advised to give as much detail as possible on the Purchase Order. It is highly unlikely that a contract will be exempt from disclosure in its entirety. Should the MOD decide to publish or disclose information against the wishes of a Tenderer, the Tenderer will be given prior notification.

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

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

19. **Conflicts of Interest**

a. MOD policy states that it is sometimes in the MOD's wider business interests to allow suppliers to operate on both the client and supply side. Conflicts of Interest (Col) can occur outside of direct commercial relationships between the MOD and its suppliers and therefore all personnel involved in acquisition (both Authority and Tenderer) should be familiar with the Conflicts of Interest Commercial Policy Statement (CPS).

b. Accordingly, Tenderers shall notify immediately the Authority of any current or potential Col relating to the requirement and shall give particulars of every instance.

c. Where the Authority permits the Tenderer or any entity within the Tenderer's potential supply chain or any entity providing advisory services to the Tenderer or its potential supply chain to work on both the client and supply side, the Contractor shall, as a legally binding agreement or Condition of Contract, be required to:

(1) Adopt a formally agreed, legally binding, Compliance Regime (CR) between the Authority and the Contractor. This shall include but not be limited to:

- (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 competitors sensitive information and Government Furnished Information;
- (e) Confidentiality / Non-Disclosure Agreements (NDA's)(e.g. DEFFORM 702);
- (f) The Authority rights of audit;
- (g) Physical and Managerial separation.

(2) Identify potential or actual Conflicts of Interest;

(3) Investigate breaches.

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

21. **Bribery** Any Tenderer who offers to pay or give or does pay or give any sum or sums of money, inducement or valuable consideration directly or indirectly to any party for doing or having done or causing or having caused to be done, any act or omission concerning this

tender shall be disqualified. Disqualification will be without prejudice to any to any civil remedy available to the Authority or criminal liability which the conduct of the Tenderer may attract.

22. Authority Remedies for Breach of Contract Tenderers should be aware of the contractual remedies set out at Clause 17 of the Terms and Conditions of the Contract which may apply in the event of a breach of Contract by the Contractor. Damages for breach of contract are not limited under the contract. However Tenderers should also note under Clause 17 that in exercising its rights and remedies under the contract the Authority must act in a reasonable and proportionate manner having regard to the nature and consequences of the breach of contract. If Tenderers are unsure about the potential liability under the contract, they should seek advice as appropriate.

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

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

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

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

Ministry of Defence

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

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

The following additional information is provided:

Notification of Inventions	
Please state below details invention or design, other restriction and any allegation of infringement specified in Paragraph 12.b and 12.d (continue of a separate sheet if necessary).	
The Montreal Protocol	
Please state below details of the use of substances specified in Paragraph 13, or state "NIL RETURN" (continue on a separate sheet if necessary).	
Asbestos	
By signing this Offer, the Contractor confirms that the Deliverables do not incorporate asbestos as specified in Paragraph 15	
Premises where Contract will be performed (if applicable)	
The Deliverables, or any part of them supplied under this Contract resulting from this tender will be manufactured and or bought in from premises detailed below:	
Value of Tender (excluding VAT)	
Total cost of Deliverables, including packaging, required computed at the Tenderer's quoted price	£
Total value of tender (to be repeated below in WORDS)	£
(WORDS:)	
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))	£
Transparency	
Should the Tenderer be awarded a Contract resulting from this tender, it understands that the Authority may publish the content of the Contract to the general public. The Commercially Sensitive Information which forms part of the Purchase Order is completed to assist the Authority in applying the appropriate exemptions in the FOIA and the EIR.	
Dated this	day of Year
Signature:	In the capacity of (State official position e.g. Director, Manager, Secretary etc.)
Name: (in BLOCK CAPITALS)	
duly authorised to sign this tender for and on behalf of:	
(Tenderer's Name)	

Ministry of Defence

Tender Evaluation Criteria

The Authority intends to award the Contract for the Provision of SEEKII Repair Services on the basis of a Tender that: is evaluated as being Commercially Compliant, through unconditional Acceptance by the Tenderer of the Authority's Terms and Conditions as indicated by your completed Annex C to ITT - Compliance Matrix.

Ministry of Defence

Compliance Matrix

CONDITIONS OF CONTRACT SPSCM/01079				
Section	Conditions	Compliant	Non-compliant	Comment against non-compliance
2	General Conditions			
3	Application of Conditions			
4	Disclosure of Information			
5	Transparency			
6	Notices			
7	Intellectual Property			
8	Supply of Contractor Deliverables and Quality Assurance			
9	Supply of Hazardous Contractor Deliverables			
10	Delivery/Collection			
11	Marking of Contractor Deliverables			
12	Packaging and Labelling of Contractor Deliverables (Excluding Contractor Deliverables Containing Ammunition or Explosives)			
13	Progress Monitoring, Meetings and Reports			
14	Payment			
15	Dispute Resolution			
16	Termination for Corrupt Gifts			
17	Material Breach			
18	Insolvency			

OFFICIAL

19	Project Specific DEFCONS			
	DEFCON 503 (Edn. 12/16) - Formal Amendments to Contract			
	DEFCON 538 (Edn. 06/02) - Severability			
	DEFCON 566 (Edn. 09/16) - Change of Control of Contractor			
	DEFCON 609 (Edn. 12/16) - Contractor's Records			
	DEFCON 619A (Edn. 09/97) - Customs Duty Drawback			
	DEFCON 656A (Edn. 08/16) - Termination for convenience - Under £5M			
	DEFCON 611 (Edn. 02/16) - Issued Property			
	DEFCON 694 (Edn. 03/16) - Accounting for the Property of the Authority.			
20	Special Conditions			
21	Repair Services Process			