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**MOD**

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| **Draft Contract Number** :  BFCCB/1354 |
| **Description**:  Provision of Logistic Movement Support (LMS) to British Forces Cyprus (BFC) |

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ANNEX A – STATEMENT OF REQUIREMENT

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ANNEX E – TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) – TRANSFER REGULATIONS

# SCHEDULE OF REQUIREMENTS

|  |  |  |
| --- | --- | --- |
|  | **MINISTRY OF DEFENCE** |  |
| **Name and Address of Tenderer**  [To be inserted at Contract Award] | **Schedule of Requirements for**  **Provision of Logistics Movement Support (LMS) to British Forces Cyprus (BFC)** | **Tender No**  **BFCCB/1354** |
| **Issued With**  **DEFFORM 47** | **On**  **17 December 2015** | **Previous Contract No**  **BFC/CB/1236** |

**Requirements**

|  |  |  |
| --- | --- | --- |
| **Item Number** | **Description** | **Price All £ (ex-VAT)** |
| 1 | Provision of Logistics Movement Support in accordance with the Statement of Requirements at Annex A of the Contract. | As per Annex B |

2 GENERAL CONDITIONS

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

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

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

DEFCON516 (Edn.04/12) - Equality

DEFCON518 (Edn.11/12) - Transfer

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

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

DEFCON526 (Edn.08/02) - Notices

DEFCON527 (Edn.09/97) - Waiver

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

Note: This DEFCON may be removed upon Contract award subject to the location of the winning Tenderer]

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

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

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

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

DEFCON538 (Edn.06/02) - Severability

DEFCON539 (Edn.08/13) - Transparency

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

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

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

DEFCON630 (Edn.03/15) - Framework Agreements

DEFCON646 (Edn.10/98) - Law and Jurisdiction (Foreign Suppliers)

[Note: This DEFCON may be removed upon Contract award subject to the location of the winning Tenderer]

DEFCON656 (Edn.03/06) - Break

2.1. PRECEDENCE

2.1.1 The conditions contained within this Contract will take precedence over any terms and conditions that may be quoted by the Contractor either verbally or in writing.

2.1.2 Except where expressly stated to the contrary by the Authority, the following shall constitute the order of precedence governing this Contract:

2.1.2.1 General Conditions of this Contract and any documents expressly called up in these;

2.1.2.2 Statement of Requirements;

2.1.2.3 All other Annexes;

2.1.2.4 All other specifications and/or documents incorporated into this agreement by reference;

2.1.2.5 Contractors Tender documentation.

2.1.3 In the event of any conflict in any document, or any conflict between documents with the same order of precedence, the parties shall agree the proper construction of the documentation. Should the Parties be unable to agree a resolution to the conflict, the Authority shall be entitled to give directions as to which part of the relevant document or which document (as the case may be) shall take precedence over which other part or which other document (as the case may be). The Authority shall issue a correction to the documentation and such construction or correction (as the case may be) shall be binding on the Contractor and the Authority with no adjustment to the Contract Price.

2.1.4 The Authority’s decisions in the matter shall be final and conclusive and the Contractor agrees that the Contract shall be construed accordingly.

2.1.5 Headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of this Contract.

2.1.6 Nothing in the Contract shall be construed as creating a partnership, a contract of employment or a relationship of principle and agent between the Authority and the Contractor.

2.2. INTERPRETATIONS

2.2.1 In Conditions of Contract and in any other Conditions, Schedules, Annexes or correspondence relating to the Contract the “Authority” shall be the Secretary of State for Defence whose Designated Officer (DO) in respect of the Contract shall be **SO3 (Movements), J4, HQ BFC, Anglikos Stratos, 3370 Episkopi, Limassol, Cyprus.**

2.2.2 The DO shall appoint Authorised Representatives who shall be responsible for the day-to-day liaison with the Contractor and the approval of Demands.

2.2.3 In addition to DEFCON 501 (Edn 03/15) – Definitions and Interpretations, a list of definitions specific to this Contract can be found at Appendix 1 to Annex A .

2.3. LANGUAGE OF THE CONTRACT

2.3.1 English shall be the language of the Contract and for all documentation or information required or produced in the course of or in connection with the Contractor's performance of its obligations under the Contract, and all other correspondence. For the avoidance of doubt the Contractor shall be responsible for any translation/interpretation costs.

2.4. PURPOSE OF THE CONTRACT

2.4.1 The purpose of the Contract is for the Provision of Logistic Movement Support to British Forces Cyprus (BFC) as per the Statement of Requirement at Annex A to the Contract and in accordance with the Contractors Tender reference [To Be Inserted Upon Contract Award].

2.5. CONTRACT DURATION

2.5.1 The Contract duration shall be five (5) years and shall commence on the [To be inserted at Contract Award], notwithstanding the Authority’s right of early termination under the conditions of the Contract.

2.6. APPLICABILITY OF UK LEGISLATION

2.6.1 Where this document makes reference to UK legislation and the legislation does not apply in the Sovereign Base Areas, the Contractor shall take it as meaning that he is contracted to operate as if the standards quoted do apply. This is subject to Contractor’s personnel complying with local laws.

2.6.2 It is the responsibility of the Contractor to ensure that the activities under the Contract do not breach any local laws.

2.6.3 The Contractor is to indemnify the Authority against any liability caused by the activities of the Contractors personnel breaching local laws.

2.7. INDUSTRIAL DISPUTES

2.7.1 The Contractor shall immediately notify the Authority of any industrial dispute or any other inconvenience, which may affect the level of Service provided under the Contract.

2.7.2 The Contractor shall keep the DO informed of any industrial relations problems likely to affect the performance of the Contract, and must take all reasonable steps, and demonstrate that he has done so, to avoid industrial disputes or stoppages involving staff employed on the Contract. Notification under this condition shall not release the Contractor from any of his obligations under the Contract.

2.8 INSURANCE

2.8.1 The Contractor shall effect and maintain (or procure the maintenance of) with a reputable insurer of good financial standing for the duration of the Contract and any period beyond the expiry of the Contract during which an order placed under this Contract takes effect, the insurances specified in Condition 2.8 (the Required Insurances). These insurances must be effective in each case not later than the date on which the relevant risk commences.

2.8.2 The Required Insurances shall:

2.8.2.1 be for such amounts and cover such risks as a prudent person performing the same obligations as those of the Contractor under the Contract would insure (or such amount as the Authority may from time to time reasonably require), and shall include, but shall not be limited to:

1. employers’ liability insurance, subject to a limit of indemnity of not less than the statutory minimum amount;
2. third party public and products liability insurance, subject to a limit of indemnity of not less than £10,000,000 (or Euro equivalent) for any one occurrence (and in the annual aggregate for products liability and sudden and accidental pollution);
3. airside liability insurance, subject to a limit of indemnity of not less than £50,000,000 (or Euro equivalent) for any one occurrence;
4. motor third party liability insurance, subject to a limit of indemnity of not less than the statutory minimum amount;
5. errors and omissions insurance (professional indemnity insurance), subject to a limit of indemnity of not less than £5,000,000 (or Euro equivalent) for any one occurrence and in the annual aggregate (and taken out annually for a period of 6 years after the expiry or termination of the Contract);
6. freight liability insurance, subject to limits of indemnity of not less than:

(i) £10,000,000 (or Euro equivalent) for any one location; and

(ii) £10,000,000 (or Euro equivalent) for any one land, water or air conveyance;

to cover the Contractors liability arising in connection with the Contract; and

2.8.2.2 be against such other or further risks of whatever nature and howsoever arising in connection with the Contract as are required by all applicable laws.

For the purpose of Condition 2.8.2.2 above (but without prejudice to the remainder of the Contract) “laws” shall mean all local, national and directly applicable supra-national laws in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate laws for the time being in force made under them and all orders and notices made under them.

2.8.3 The Contractor shall provide to the Authority prior to the commencement of the Contract and thereafter at each insurance renewal date (and at any other times when reasonably requested by the Authority) evidence (in a form satisfactory to the Authority, acting reasonably) of the Required Insurances together with confirmation from his insurers or insurance broker that the relevant premiums have been paid in full.

2.8.4 The Contractor shall comply with the terms of any insurances to which this Condition 2.8 (Insurance) refers and shall do nothing which could invalidate any such insurance.

2.8.5 Other than in Condition 2.8.2.1 (e), the Contractor shall procure that each insurance policy effected in accordance with Condition 2.8.2.1 contains an indemnity to principals clause indemnifying the Authority in respect of claims made against the Authority arising from death or bodily injury or third party property damage and for which the Contractor is legally liable under this Contract.

2.8.6 The Contractor shall procure that each insurance policy effected in accordance with Condition 2.8.2.1 (b) and (c) contains a clause waiving the insurer's subrogation rights against the Authority, its employees, servants and agents.

2.8.7 If the Contractor is in breach of Condition 2.8.1 above, the Authority may elect to pay any premiums, fees, broker's costs or other expenses required to keep such insurance in force or itself procure such insurance and may in either case recover such amounts from the Contractor on written demand.

2.8.8 Neither failure to comply nor full compliance with the insurance provisions of this Contract shall limit or relieve the Contractor of its liabilities and obligations under this Contract.

2.8.9 The insurance premiums in respect of the Required Insurances and any insurance policy excesses or deductibles related thereto shall at all times be the responsibility of the Contractor. The Contractor shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.

2.8.10 Except where the Authority is the claimant party, the Contractor shall give the Authority notification within twenty (20) Business Days after any claim in respect of the Contract in excess of £50,000 on any of the insurance policies referred to in this Condition 2.8 accompanied by full details of the incident giving rise to the claim.

2.8.11 Nothing in this Condition 2.8 (Insurance) shall oblige the Contractor to take out insurance in respect of a risk which has been demonstrated by the Contractor (to the satisfaction of the Authority, acting reasonably) to be unavailable to the Contractor in the worldwide insurance market save where the predominant cause of the risk being unavailable is any act(s) or omission(s) of the Contractor or a party for whom the Contractor is responsible.

2.9. UNLAWFUL ACTS

2.9.1 The Contractor shall perform its obligations under the Contract in accordance with all applicable laws. For the purpose of this Condition 2.9.1 (but without prejudice to the remainder of this Contract) “laws” shall mean all local, national and directly applicable supra-national laws in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate laws for the time being in force made under them and all orders and notices made under them. Notwithstanding [DEFCON 529 (Edn 09/97)/DEFCON 646 (Edn 10/98)] such laws may be laws other than English law.

2.9.2 If the Contractor, which for the purpose of this Condition 2.9.2 (but without prejudice to the remainder of this Contract) shall include any of its employees, contractors, subcontractors, agents, or persons under its control or acting on its behalf:

2.9.2.1 breaches Condition 2.9.1;

2.9.2.2 is convicted of a criminal offence in any jurisdiction; or

2.9.2.3 (in the Authority’s proper opinion) commits an act of grave misconduct

(Individually or collectively an “Unlawful Act”) the Authority shall have the rights set out in Condition 2.9.3 without prejudice to any other right or remedy.

2.9.3 If an Unlawful Act occurs, the Authority shall be entitled to:

2.9.3.1 Terminate the Contract and recover from the Contractor any loss resulting from the termination; or

2.9.3.2 Recover from the Contractor any loss resulting from the occurrence of an Unlawful Act where the Contract has not been terminated.

2.9.4 In exercising its rights and remedies under Condition [1.3] the Authority shall:

2.9.4.1 act in a reasonable and proportionate manner having regard to such matters as the gravity of the Unlawful Act, and the identity of the person committing the Unlawful Act;

2.9.4.2 give all due consideration, where appropriate, to action other than termination of the Contact, including (without being limited to):

2.9.4.2.1 Requiring the Contractor to procure the termination of a contract where the Unlawful Act is that of a contractor or anyone acting on behalf of the contractor;

2.9.4.2.2 Requiring the Contractor to procure the dismissal of an employee (whether its own or that of a contractor or anyone acting on behalf of the contractor) where the Unlawful Act is that of such employee and for the avoidance of doubt it is acknowledged by the parties that the Authority could satisfy its obligations in this Condition 2.9.4 and still be entitled to exercise its rights under Condition 2.9.3 in relation to any Unlawful Act.

2.9.5 Where the Contract has been terminated under Condition 2.9.3 the powers given by DEFCON 514 (Edn 08/15) – Material Breach shall apply as if there had been a failure in delivery.

2.10. PUBLIC RELATIONS AND PUBLICITY

2.10.1 The Authority reserves the right to publish information about the performance of the Contractor and/or any other information as it may deem appropriate (acting reasonably) in order to comply with its statutory duties provided that before publishing any Information it shall consult with the Contractor.

2.10.2 The Contractor shall not, and shall ensure that its employees; agents or sub-contractors shall not communicate with representatives of the press, television radio or other media on any matter concerning the Contract without the prior approval of the Authority.

2.10.3 No facilities to photograph or film in or upon any property used in relation to the Contract shall be given or permitted by the Contractor unless the Authority has given its prior written consent.

2.11. STEP IN RIGHTS

2.11.1 If in the opinion of the Authority it needs to take action in connection with the provision of the Services:

2.11.1.1 because a serious risk exists to the health or safety of persons or property or to the environment;

2.11.1.2 to discharge a statutory duty;

2.11.1.3 because, without prejudice to the provisions of DEFCON 514 (Edn 08/15) – Material Breach there is a Persistent Breach in the provision of the Services;

2.11.1.4 because a fundamental breach of the Contract occurs;

then the Authority shall be entitled to take action in accordance with conditions 2.11.2

to 2.11.5 below.

2.11.2 If condition 2.11.1 applies and the Authority wishes to take action, the Authority shall serve a notice on the Contractor stating the following:

2.11.2.1 The action it wishes to take;

2.11.2.2 The reason for such action;

2.11.2.3 The date it wishes to commence such action;

2.11.2.4 The time period which it believes will be necessary for such action; and

2.11.2.5 To the extent practicable, the effect on the Contractor and his obligation to provide the Services during the period such action is being taken.

2.11.3 Following service of such a notice, the Authority shall take such action as notified under condition 2.11.2 above and any consequential additional action as it reasonably believes is necessary (together, the "Required Action") and the Contractor shall give all reasonable assistance to the Authority while it is taking such Required Action.

STEP IN WITHOUT CONTRACTOR BREACH

2.11.4 If the Contractor is not in breach of his obligations under this Contract, then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing any part of the Services:

2.11.4.1 The Contractor shall be relieved from his obligations to provide such part of the Services; and

2.11.4.2 In respect of the period in which the Authority is taking Required Action, and provided the Contractor provides the Authority with reasonable assistance (such assistance to be at the expense of the Authority to the extent incremental costs are incurred) the Monthly Charge due from the Authority to the Contractor shall equal the amount the Contractor would receive if he were satisfying all his obligations and providing the Services affected by the Required Action in full over that period.

STEP IN ON CONTRACTOR BREACH

2.11.5 If the Required Action is taken as a result of a breach of the obligations of the Contractor under this Contract, then for so long as and to the extent that the Required Action is taken:

2.11.5.1 The Contractor shall be relieved of his obligations to provide such part of the Services; and

2.11.5.2 In respect of the period in which the Authority is taking the Required Action the Contract Price due from the Authority to the Contractor shall be adjusted accordingly and the Contractor shall pay to the Authority any costs incurred by it in taking the Required Action to the extent such costs are in excess of the contract price which would have been due to the Contractor if the Contractor had been providing the Services affected by the Required Action.

2.11.6 Where the Authority has completed the Required Action, the Authority shall as soon as reasonably practicable notify the Contractor that:

2.11.6.1 The Required Action has ceased; and

2.11.6.2 The Authority intends to step out of the provision of the Services and that the Contractor is required to commence delivery of the Services affected by the Required Action on the expiry of a notice period of not less than forty eight (48) hours.

2.12. SUSTAINABLE PROCUREMENT – BEST PRACTICE

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

2.13. PERFORMANCE

2.13.1. The Contractors performance shall be measured against the Target for each Key Performance Indicator (KPI) listed at Annex C to the Contract.

2.13.2 The KPIs shall come into effect at Service Commencement and shall be measured on a quarterly basis for the duration of the Contract.

2.13.3. The Authority reserves the right to perform an audit of the Quarterly Report and the methodology used to compile it at any time.

REPORTING PROCESS

2.13.4. The Contractor shall assess their performance for each quarterly period against each PI in accordance with the Key Performance Indicator Assessment Table within Annex C and record the results for each KPI within the template.

2.13.5. The Contractor shall submit the Performance Report for the preceding quarter for review at the Quarterly Contract Review Meetings at Condition 9.1 in the format at Annex C to the Contract. The Performance Report shall be submitted to the DO and Commercial Manager at least two (2) weeks prior to the Quarterly Contract Review Meeting.

2.13.6. The Authority shall review the Performance Report prior to the Quarterly Contract Review Meeting and confirm its acceptance or rejection of the Report at the meeting. In the event that the Authority rejects the report, reasons for rejection shall be provided to the Contractor at the meeting and rectification actions agreed.

NON-ACHIEVEMENT OF KPIs

2.13.7. The Contractors performance in any quarterly period shall be considered unacceptable if 25% or more of the PIs achieve a Critical Weakness score (Red) or 50% or more of the PIs achieve a Minor Weakness score (Amber). For scoring purposes, where there is a combination of Red and Amber performance scores, an Amber shall be worth half the value of a Red and the Amber and Red percentage scores shall be combined to calculate the total percentage value of non-achievement of the PIs.

2.13.8 Should the Contractor fail to meet the acceptable performance levels against the PIs as detailed at Condition 2.13.7 an abatement shall be applied to the monthly payment following the 3 month period in which the failure occurred. The abatement shall be equivalent to 5% of the total value of the preceding 3 months payments. An abatement shall not apply to the first quarter of the Contract duration.

2.13.9. Should the level of performance continue to fall below the acceptable performance levels for two consecutive reporting periods, a further 5% abatement shall be applied and the Authority shall require the Contractor to submit a report detailing the reasons for continued failure and the measures to be put in place to increase performance to meet the acceptable performance levels.

2.13.10 Should performance levels fail to improve following the implementation of performance rectification actions, the Authority reserves the right to provide notice to the Contractor of its intention to determine the Contract. This is without prejudice to the provisions of DEFCON 514 (Edn 08/15) – Material Breach.

2.14. SECURITY VETTING OF CONTRACTOR EMPLOYEES

2.14.1. The Authority will issue all necessary forms, advice and guidance for completion to the Contractor upon contract award.

2.14.2. The Contractor shall complete all relevant and current security and pass forms as required and return them to the Authority for approval for all employees, servants, agents or Sub-Contractors (together called his representatives) who may need to enter an Authority Controlled Establishment for the purpose of, or in connection with, work under the Contract upon Contract award.

2.15. SECURITY OF AUTHORITY PROPERTY

2.15.1. In situations where the assessed threat levels to BFC are increased then the Contractor shall assist BFC with the inplementation of suitable measures to increase the security of BFC property in transit whilst in the Contractors control.

2.15.2. Threat levels can change at short notice and the Contractor shall respond to the Authority’s instructions accordingly.

2.16. VEHICLE/PERSONNEL LICENCES

2.16.1. The Contractor shall be solely responsible for ensuring that licences are held in respect of the vehicles and personnel under the Contractor's control as required by the relevant legislation. Failure to secure any such licences shall not excuse the Contractor from any failure to fulfil his obligations under the Contract.

2.16.2. The Contractor shall, upon request, produce or furnish details of such licences for inspection by the Authority.

3 SPECIFICATIONS, PLANS, ETC

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

DEFCON502 (Edn.06/14) - Specifications Changes

DEFCON602B (Edn.12/06) - Quality Assurance (Without Deliverable Quality Plan)

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

3.1. QUALITY ASSURANCE

3.1.1 All work under the Contract shall be carried out in accordance with the provisions below.

3.1.2 The Contractor is responsible for ensuring:

3.1.2.1 The quality of the Service supplied conforms to the Contract requirements;

3.1.2.2 The quality planning and management activities conform to the Contract requirements; and

3.1.2.3 Sub-contractor controls conform to the Contract requirements.

3.1.3 The Contractor shall maintain ISO 14001:2004 – Environmental Management Systems; and OHSAS 18001 – Occupational Health and Safety Management Systems certification with appropriate scope for the duration of the Contract.

3.1.4 The Contractor shall provide to the Authority prior to the commencement of the Contract and thereafter at each certification renewal date (and at any other times when reasonably requested by the Authority) evidence (in a form satisfactory to the Authority, acting reasonably) of the certifications.

3.1.5 In accordance with DEFCON 608 (Edn.10/14) - Access and Facilities to be Provided by the Contractor, the Authority reserves the right, subject to reasonable notice, to inspect and audit the Contractor’s activities in relation to this Contract, including the ability to review the Contractor’s premises and licences.

3.1.6 For the purpose of this Contract the Authority’s QA Representative shall be the DO, detailed at box 2 of the Appendix to Contract, or his authorised representative, as may from time to time be notified by the Authority.

4 PRICE

4.1.1. Prices shall be FIRM (i.e. not subject to variation and exempt from all taxes and custom charges) as detailed in Annex B – Pricing Schedule, for the duration of the Contract and shall be in accordance with Annex A – The Statement of Requirements.

4.1.2 Prices shall be inclusive of all costs incurred by the Contractor to carry out the Authority's requirement, with the exception of disbursements, which shall be paid directly by the Contractor and invoiced to the Authority MONTHLY in arrears.

4.1.3 Disbursement shall be reimbursed at cost, plus a Disbursement Handling Fee of [##% To be inserted upon Contract Award].

4.1.4 The total amount to be paid by the Authority to the contractor under the Contract shall not exceed [€/£ - To Be Inserted Upon Contract Award] for the period from [to be inserted upon contract award] to [to be inserted upon contract award].

4.1.5. If at any time the contractor considers that the contract cannot be completed for the sum mentioned above, he shall immediately inform the Authority and at the same time provide an explanation of the circumstances.

5 INTELLECTUAL PROPERTY RIGHTS

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

6 LOANS

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

6.1. GOVERNMENT FURNISHED ASSETS

6.1.1. The Authority shall provide the Government Furnished Assets (GFA) listed at Annex D to enable the Contractor to carry out its contracted obligations.

EMBEDDED PERSONNEL

6.1.2 In order for the Contractor to perform its obligations in accordance with the Contract, Contractor employees may be embedded within an MoD establishment to work collaboratively with Authority personnel.

6.1.3. The Contractor has sole responsibility to ensure that its employees are conversant and comply fully with all rules and regulations applicable to working form the Authority’s premises.

PROVISION OF VEHICLE PARKING

6.1.4. The Authority may permit the Contractor to park authorised vehicles on its premises. Permission shall only be granted to park vehicles that appear on the Authorised Vehicle List (AVL). The Contractor shall comply fully with all local regulations and Standing Orders for the operation of vehicles on the Authority's Premises.

6.1.5. Requests for parking facilities shall be submitted to each individual BFC Station through the Designated Officer.

6.1.6. Authority to park vehicles shall only be granted following the relevant Station Commander’s approval and Defence Infrastructure Organisation (DIO) consultation.

7 DELIVERY

DEFCON5J (Edn.03/15) - Unique Identifiers

Note: Clause 4 of the DEFCON shall not apply.

DEFCON507 (Edn.10/98) – Delivery

DEFCON514 (Edn.08/15) – Material Breach

8 PAYMENTS/RECEIPTS

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

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

DEFCON522 (Edn.07/99) - Payment

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

DEFCON523 (Edn.05/12) – Payment of Bills Using the Bankers Automated Clearing system (BACS) System

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

8.1. PAYMENT

8.1.1 Payment of bills shall be in accordance with DEFCON 522J (Edn 05/03) and shall be made to the Contractor MONTHLY in arrears at the prices shown in the Pricing Schedule at Annex B.

8.1.2 The use of the Purchase to Payment (P2P) system shall be in accordance with the Contractors DEFFORM 30 reference [to be inserted upon contract award] dated [to be inserted upon contract award].

8.2. VAT

8.2.1 **[For BFC Contracts With Cypriot Contractors**: British Forces Cyprus is exempt from payment of VAT on goods or services received in Cyprus for their official use. Therefore, all prices quoted in The Schedule of Requirements shall be Zero rated. A SBAA Fiscal Office VAT Form V6A shall be issued to the Contractor upon acceptance of the Contract.

or

**For BFC Contracts With Non-Cypriot EU (including UK) Contractors**: British Forces Cyprus is exempt from payment of VAT on goods or services received in Cyprus for their official use. Therefore, all prices quoted in The Schedule of Requirements shall be Zero rated. A European Union “VAT and/or Excise Customs Duty Exemption Certificate” shall be issued to the Contractor upon acceptance of the Contract.]

[Note: One of the above conditions will be removed upon Contract award subject to the location of the winning Tenderer]

8.2.2 The Contractor shall also refer to DEFCON 513 (Edn 06/10) for further guidance.

9 CONTRACT ADMINISTRATION

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

DEFCON604 (Edn.06/14) - Progress Reports

For the purposes of the Contract, the frequency of reports shall be every three (3) months.

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

DEFCON625 (Edn.10/98) - Co-operation on Expiry of Contract

DEFCON642 (Edn.06/14) - Progress Meetings

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

9.1. COMPLAINTS PROCEDURES

9.1.1. The Contractor shall acknowledge all complaints made by the Demanding Officer (DO) or his Authorised Representatives within 24 hours of receipt and shall provide a full written explanation to the AO within three (3) working days from the time of complaint receipt.

9.1.2. Complaints shall be acknowledged by the Contractor within 24 hours and full written explanations shall be provided within (3) working days.

9.2. MEETINGS

9.2.1. A Contract Start Up meeting will be held two (2) weeks prior to Contract commencement.

9.2.1.1. The Contractor shall provide an update on the preparations made to allow smooth Contract commencement at least one (1) week prior to the Contract Start Up meeting.

9.2.1.2. The Contractor shall provide details of the currently held fleet of vehicles and employees at least one (1) week prior to the Contract Start Up meeting.

9.2.1.3. The Contractor shall provide information on any anticipated additional vehicles or employee resources required at least two (2) weeks prior to the Contract Start Up meeting.

9.2.2. Contract Review meetings shall be held monthly for the first three (3) months of the Contract and thereafter quarterly. The Authority reserves the right to amend these depending on the outcome of the Contractor’s performance.

9.2.3. The Contractor shall provide to the Designated Officer or his Authorised Representative a summary of all Demands during the preceding three months (one month for the first 3 months) in an electronic format (Microsoft Excel Spreadsheet) at least two (2) weeks prior to the Contract Review meeting. The following data shall be included in the Report:

9.2.3.1. Demand Order Number;

9.2.3.2. Service supplied (Haulage / Vessel Support / Cargo Clearance / MHE / Recovery / Ad-Hoc);

9.2.3.3. Dates And Times;

9.2.3.4. Price quoted/Price charged.

9.2.4. The Contractor shall provide information on any proposed/approved amendments to the AVL and Authorised Driver List (ADL) at least two (2) weeks prior to the Contract Review meeting.

9.2.5. The Designated Officer or his Authorised Representative shall be responsible for the issuing of the agreed meeting agenda one (1) week prior to each meeting, liaising with the Contractor for agenda items to be included.

9.2.6. The Designated Officer or his Authorised Representative shall be responsible for ensuring maximum attendance for each meeting. As a minimum, attendance/representation is required from the following: The Contractor, BFC Commercial Branch, the Designated Officer and the Authorised Officer.

9.2.7. The Designated Officer or his Authorised Representative shall be responsible for producing the records of meetings for distribution no later than one (1) week after the date of the meeting.

9.2.8. The Contract Review Meeting agenda shall include the following items, as a minimum:

9.2.8.1 Review of Previous Meeting Minutes;

9.2.8.2 Review of Performance Report;

9.2.8.3 Review of Demands Report;

9.2.8.4 Review of AVL and ADL changes;

9.2.8.5 Review of contract savings made.

9.3. AMENDMENTS TO CONTRACT

9.3.1 In addition to the terms of DEFCON 503 (Edn 12/14) only the Commercial Manager (or, to the extent expressly authorised, such representative as is authorised in writing by the Commercial Manager to act on their behalf) detailed at Box 1 of DEFFORM 111 shall be authorised by the Authority to vary the terms and conditions of the Contract, including specifications which form part of the Contract. The Authority will not be liable for any additional costs incurred otherwise.

9.3.2 Nothing said, done or written by any person, nor anything omitted to be done, said or written by any person, including, but without limitation, any servant or agent of the Authority, shall in any way affect the rights of the Authority, modify, affect, reduce or extinguish the obligations and liabilities of the Contractor under the Contract, or be deemed to be a waiver of rights of the Authority, unless as may be expressly stated in writing and signed by the Commercial Manager or his authorised representatives as detailed at Box 1 of DEFFORM 111.

9.4. CONTRACTORS PERSONNEL

9.4.1 All employees of the Contractor and/or any sub-contractor engaged in connection with the Contractor’s performance of its obligation under the Contract shall be appropriately qualified and competent to perform the activities in which they are engaged and shall be in all respects acceptable to the Authority.

9.4.2 If the Authority shall consider any employee to be unacceptable then the Authority will call a meeting within three (3) days of any notification relating to the Contractors employees, to be held at the Authority’s premises with senior representation from the Contractor. Following this meeting the Contractor shall immediately take such action as agreed to resolve the issues and notify the Authority of the outcome as necessary.

9.4.3 The Contractor shall ensure that there shall be no conflict for the employees between the demands of this Contract and the demands of any other Contract in which these employees may be engaged on from time to time.

9.4.4 The Contractor shall be responsible for the observance by himself, his employees and sub-contractors, of all safety precautions necessary for the protection of himself, his employees, sub-contractors and any other persons including all precautions required to be taken by or under any Act of Parliament including any regulations or bye-law of any local or other authority. He shall co-operate fully with the Authority to ensure the proper discharge of these duties.

9.5. CONTRACTORS RECORDS

9.5.1 In accordance with DEFCON 609 (Edn 06/14) – Contractors Records. The Authority reserves the right to inspect the Contractors or his employee’s records for information that relates to the delivery of the contract and performance of the Schedule of Requirements.

9.5.2 The Contractor shall maintain such records as detailed in Condition 9.5.1 above in respect of the Contract as the Authority may reasonably require and shall within 10 days of request produce them for inspection by the Authority. The Contractor shall also make such periodical, statistical and accounting returns as the Authority may reasonably demand; these records and returns shall remain the property of the Authority and shall not be released, published or disposed of without the prior written approval of Authority.

9.5.3 All documentation requested shall be provided to the Authority within three (3) months of completion of the contract unless the Contractor is instructed to do otherwise.

9.6. SUB-CONTRACTING

9.6.1 The Contractor shall submit to the Authority any proposed plans for work to be performed by sub-contractors or agents.

9.6.2 The Contractor shall be responsible for the management of sub-contractors or agents and accept responsibility for the delivery of their required outputs.

9.6.3 The Contractor shall ensure that all sub-contractors will be subject to the Contract terms and conditions contained herein.

9.6.4 Where the Contractor enters a sub-contract with a supplier or contractor for the purposes of performing the Contract, he shall cause a term to be included in such sub-contract which requires payment to be made to the supplier or contractor within a specified period not exceeding 30 days from receipt of the valid invoice as defined by the sub-contract requirements.

9.7. TRANSFER AND SUBCONTRACTING

9.7.1 This Contract is personal to the Contractor. The Contractor shall not assign, novate or otherwise dispose of this Contract or any part thereof without the previous consent in writing of the Authority.

9.7.2 The Authority hereby consents to the Contractor’s subcontracting of its obligations specified in The Schedule of Requirements, to the respective subcontractors specified therein. Notwithstanding any subcontracting permitted hereunder, the Contractor shall remain primarily responsible for the acts and omissions of its subcontractors as though they were its own.

9.7.3 Subject to Clause 9.7.5 the Authority shall be entitled to:

9.7.3.1 assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof to any Contracting Authority, provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations pursuant to this Agreement; or

9.7.3.2 novate this Agreement to any other body (including but not limited to any private sector body approved by the Contractor, such approval shall not be unreasonably withheld, and where there is any dispute between the parties the provisions of Condition DEFCON 530 (Edn 12/14) – Dispute Resolution shall apply, which substantially performs any of the functions that previously had been performed by the Authority.

9.7.4 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to Clause 9.7.5 affect the validity of this Contract. In such circumstances this Contract shall bind and inure to the benefit of any successor body to the Authority.

9.7.5 If this Agreement is novated to a body which is not a Contracting Authority pursuant to Clause 9.7.3 or if a successor body which is not a Contracting Authority becomes the AUTHORITY pursuant to Clause 9.6.4 (in the remainder of this Clause both such bodies are referred to as "the transferee"):

9.7.5.1 the rights of termination of the Authority in DEFCON 515 (Edn 10/04) – Bankruptcy and Insolvency and DEFCON 514 (Edn.08/15) – Material Breach, shall be available, mutatis mutandis, to the Contractor in the event of the bankruptcy, insolvency or Default of the transferee;

9.7.5.2 the transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof with the previous consent in writing of the Contractor;

9.7.5.3 the rights of the Authority under DEFCON 509 (Edn 09/97) – Recovery Of Sums Due shall cease and the rights under DEFCON 515 (Edn 10/04) – Bankruptcy and Insolvency, DEFCON 520 (Edn 08/15) – Corrupt Gifts And Payment of Commission, shall be exercised by the Authority not by the transferee; and

9.7.5.4 the transferee shall not have the benefit of DEFCON 509 (Edn 09/97) – Recovery of Sums Due.

9.7.6 The Contractor shall be under an obligation to disclose to any transferee such Confidential Information (which may include commercially sensitive information) as will be required for the operation of the Contract. In such cases where third-party approval is necessary before such information can be released, the Contractor shall use his best endeavours to obtain such consent. Where commercially sensitive information is released, the Authority shall have the right to authorise the transferee to only use such Confidential Information only for purposes relating to the performance of the Contract and for no other purposes. For the avoidance of doubt, the Contractor shall be under an obligation to enter into a confidentiality agreement with the transferee.

9.8. TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT)

9.8.1. The Contractor shall comply with the Transfer of Undertakings (Protection of Employment) (TUPE) Conditions detailed at Annex E to the Contract.

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| **DEFFORM 111**  **(Edn 08/15)**  **Appendix - Addresses and Other Information** | | | | | |
|  | **1. Commercial Officer**  Def Comrcl CC-JFC 2a1  Commercial Branch, C Block, HQ BFC, 3370 Anglikos Stratos, Episkopi, Cyprus  00 357 2596 3490  Email: DefComrclCC-JFC2a1@mod.uk |  | **8. Public Accounting Authority**  1. Returns under DEFCON 694 (or SC equivalent) should be sent to DBS Finance ADMT – Assets In Industry 1, Level 4 Piccadilly Gate, Store Street,  Manchester, M1 2WD  🕿 44 (0) 161 233 5397  2. For all other enquiries contact DES Fin FA-AMET Policy, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD  🕿 44 (0) 161 233 5394 |  | |
|  | | | | | |
|  | **2. Project Manager, Equipment Support Manager or PT Leader**  (from whom technical information is available)  BFC-HQ-J4-MovSO3  J4, HQBFC, 3370 Anglikos Stratos, Episkopi, Cyprus  Email: BFC-HQ-J4-MovSO3@mod.uk |  | **9. Consignment Instructions**  The items are to be consigned as follows: | |  |
|  | | | | | |
|  | **3. Packaging Design Authority**  N/A  (where no address is shown please contact the Project Team in Box 2) |  | **10. Transport.** The appropriate Ministry of Defence Transport Offices are:  **A. DSCOM**, DE&S, DSCOM, MoD Abbey Wood, Cedar 3c, Mail Point 3351, BRISTOL BS34 8JH  Air Freight Centre  IMPORTS 🕿 030 679 81113 / 81114 Fax 0117 913 8943  EXPORTS 🕿 030 679 81113 / 81114 Fax 0117 913 8943  Surface Freight Centre  IMPORTS 🕿 030 679 81129 / 81133 / 81138 Fax 0117 913 8946  EXPORTS 🕿 030 679 81129 / 81133 / 81138 Fax 0117 913 8946  **B. JSCS** JSCS Helpdesk Tel 01869 256052 (option 2, then option 3); JSCS Fax No 01869 256837 www.freightcollection.com | |  |
|  | | |
|  | **4. (a) Supply/Support Management Branch or Order Manager:**  **Tel No:00357 2596 2570**  **(b) U.I.N. Multiple** |  |
|  | | | | | |
|  | **5. Drawings/Specifications are available from**  N/A |  | **11The Invoice Paying Authority (see Note 1)**  Ministry of Defence 🕿 0151-242-2000  DBS Finance  Walker House, Exchange Flags Fax: 0151-242-2809  Liverpool, L2 3YL **Website is:** <https://www.gov.uk/government/organisations/ministry-of-defence/about/procurement#invoice-processing> | |  |
|  | | | | | |
|  | **6. For contracts containing DEFCON 5, mauve Copies of MOD Form 640 are to be sent to**  (where no address is shown the mauve copy should be destroyed) |  | **12. Forms and Documentation are available through \*:**  Ministry of Defence, Forms and Pubs Commodity Management  PO Box 2, Building C16, C Site  Lower Arncott  Bicester, OX25 1LP (Tel. 01869 256197 Fax: 01869 256824)  **Applications via fax or email:** [DESLCSLS-OpsFormsandPubs@mod.uk](mailto:DESLCSLS-OpsFormsandPubs@mod.uk). | |  |
|  | | | | | |
|  | 1. **Quality Assurance Representative:**   Commercial staff are reminded that all Quality Assurance requirements should be listed under the General Contract Conditions.  **AQAPS** and **DEF STANs** are available from UK Defence Standardization, for access to the documents and details of the helpdesk visit <http://dstan.uwh.diif.r.mil.uk/> [intranet] or <https://www.dstan.mod.uk/> [extranet, registration needed] |  | **NOTES**  **1. Forms.** Hard copies, including MOD Form 640 are available from address in Box 12. , All other invoicing forms e.g. AG Forms 169 and 173, are available from the website address shown at Box 11.  **2.\*** Many **DEFCONs and DEFFORMs** can also be obtained from the MOD Internet Website;  [**https://www.aof.mod.uk/aofcontent/tactical/toolkit/index.htm**](https://www.aof.mod.uk/aofcontent/tactical/toolkit/index.htm) | |  |
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| AllJ4, HQ BFC105202BFC-CMDSEC FINP&B COS ACOS OFFRXX | | | | | |

**Ministry of Defence**

**RELEVANT FORM DETAILS FOR DEFCON 522 PAYMENT CONDITION**

**This form must be completed and attached to each contract containing DEFCON 522.**

|  |  |
| --- | --- |
| Contract Number: | BFCCB/1354 |

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| --- | --- | --- |
| **Line Item plus further description if necessary** | **Relevant Form** | **Representative of the Authority[[1]](#footnote-1)** |
| All | P2P | SO3 (Movements), J4, HQBFC |
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With regard to paragraph 3 of DEFCON 522, the Contractor shall submit all claims for payment to the Bill Paying Branch using a properly completed DAB Form 10.**[[2]](#footnote-2)**

1. When completing Column 3, “Representative of the Authority”, please ensure, wherever practicable, this is not one person and that there are arrangements for payment approval forms to be signed when the usual “Representative” is absent. [↑](#footnote-ref-1)
2. The sentence is to be used when appropriate, e.g. when DBA is the Bill Paying Branch, otherwise the sentence should be deleted. In particular, the sentence is not appropriate when the Contract contains DEFCON 5J, even when DBA is the Bill Paying Branch, and should be deleted in that case. [↑](#footnote-ref-2)