

Defence and Security Public Contracts Regulations 2011

Chapter 7 – Technical Specifications

Purpose

1. This guidance explains the rules that you must follow when preparing specifications under the Defence and Security Public Contracts Regulations (DSPCR) 2011.
2. In particular, it explains what we mean by the term “technical specifications”, identifies the applicable legal framework and sets out how to refer to technical specifications in the contract notice and contract documents.

What are technical specifications?

3. The definition of “technical specifications” is set out at Regulation 12(1) of the DSPCR. In brief, they are specifications in a document setting out the required characteristics of the goods, services or works that a supplier has to provide.
4. You may also know technical specifications as an operational requirement, statement of requirement, statement of service requirement or an output-based specification. Its purpose is to present suppliers with a clear, accurate and full description of the procurer’s needs and so enable them to propose a solution to meet those needs.

What is the legal framework?

5. Regulation 12 (Technical specifications in the contract documents) of the DSPCR sets out the use of technical specifications in contract documents and some aspects applying to evaluation and award in relation to technical specifications.

What are the detailed rules?

6. When preparing technical specifications you must follow certain rules within the DSPCR and these are set out below. However, in all cases it is advisable to start the preparation of the technical specification as early as possible and develop it as fully as possible before placing an Official Journal of the European Union (OJEU) contract notice.
7. The DSPCR sets out detailed rules on technical specifications for how you can describe the goods, services or works in the requirement. The objective of these rules is to give equal access to all suppliers within the European Union (EU) by not favouring particular suppliers or their products or processes and to avoid the effect of creating unjustified obstacles to competition.
8. If you wish to lay down technical specifications for the services, works or goods you are procuring under the contract, you are obliged, under Regulation

12(2), to include the technical specifications in the invitation to tender and the contract documents; you may include them in the contract notice as well. This can be by a reference or hyperlink in the technical specification document.

9. Technical specifications must be sufficiently precise to allow the supplier to determine the subject matter of the contract and for you to award the contract. This is particularly important in framework agreements where the tasks must align with the technical specification in the agreement – so framework agreements to provide labour that leave the technical specification to individual task orders will not be compliant.

10. In certain circumstances under competitive dialogue, there is a potential tension between the specification provided in the contract notice or descriptive document, and the precise specification for the requirement. You can resolve this by drawing up the specification in the descriptive document in broad output terms where possible, whilst recognising for complex products or system of systems this may not be possible. Interface specifications by their very nature are defined in narrow terms to ensure that the systems or components on either side of the interface function together as envisaged in the design intent.

11. At this stage of the procurement, you have an opportunity to take into account social and environmental considerations in the requirement that are relevant and proportionate to the contract. If the specification does not include social and environmental considerations, you cannot take account of these considerations at a later stage in the contract award procedure.

Mandatory technical requirements

12. There are two mandatory technical requirements that you must include in your specifications if they are relevant to your procurement.

13. First, national law may impose certain technical requirements, for example, those that relate to product safety, such as airworthiness of military aircraft, or prohibit the use of specific practices or substances that are harmful for the environment or public safety. You are bound to observe national law (on the condition that the national law is compatible with EU law) unless there is an appropriate exemption built into the law.

14. Second, the United Kingdom (UK) may be obliged to impose certain technical requirements as signatories to international standardisation agreements in order to guarantee the “interoperability” required by those standardisation agreements. The North Atlantic Treaty Organisation (NATO) Standardisation Agreements (known as STANAGS) are the most common standardisation agreements entered into by the UK.

15. STANAGS impose requirements for technical interoperability of equipment or common operational, logistical and administrative procedures that the UK must follow. These guarantee the ability of different UK military organisations (including any part of the UK tri-services) to conduct joint operations and training with its NATO allies.

16. You must observe the terms of these international standardisation agreements where they are compatible with EU law.

17. Subject to these two conditions, you may define the technical requirements by reference to:

- a. technical specifications;
- b. performance or functional requirements;
- c. performance or functional requirements, with reference to technical standards; or
- d. technical standards and performance or functional requirements for different characteristics.

Defining technical specifications

18. Where you define the technical specifications in terms of technical standards, the Regulations set out an order of preference. In other words, you may use any of the stated technical standards where relevant but where two or more are relevant, then the order sets out which one you should refer to. Where reference to a technical standard is made you must also include the words 'or equivalent'.

19. The order of preference is as follows:

- a. British Standards transposing European standards. These standards are usually referred to as BS EN <number>.
- b. European technical approvals which refer to the fitness for use of a product for building works.
- c. Common technical specifications. This means a technical specification drawn up in accordance with a procedure recognised by the Member States with a view to uniform application in all Member States and which has been published in the Official Journal.
- d. British Standards transposing international standards. These standards are usually referred to as BS ISO <number>.
- e. International standards. This means a civil standard adopted by an international standards organisation and made available to the public, and includes ISO (International Organization for Standardization) or IEC (International Electrotechnical Commission) standards.
- f. Other technical reference systems established by the European standardisation bodies if applicable or, in the absence of such systems, by reference to:
 - (1) other British Standards (BS <number>);
 - (2) British technical approvals;
 - (3) British technical specifications relating to the design, calculation and execution of the works and use of the product.
- g. Civil technical specifications originated and recognised by Industry (e.g. Lloyd's Register shipping rules and regulations, ASD-Stan (Aerospace Defence Standards), Institution of Engineering Technology (IET) standards, Institute of Electrical and Electronics Engineers (IEEE) standards).

h. British defence standards and defence materiel specifications similar to those standards (as defined in Regulation 12(1)).

20. If you define the technical specifications in terms of technical standards, you cannot reject an offer solely on the basis that the tenderer's solution does not comply with those standards if the tenderer can prove by 'appropriate means' to your satisfaction that the solution satisfies the requirements of the standard in an equivalent manner.

21. You can assess this equivalence with particular regard to interoperability and operational efficiency requirements. To demonstrate equivalence, you should permit tenderers to use any form of evidence. You must be able to provide a reason for any decision that equivalence does not exist in any given case.

22. 'Appropriate means' may be a technical dossier of the manufacturer or a test report from a recognised body. 'Recognised body' means a test and calibration laboratory or a certification and inspection body which complies with applicable European standards established in a Member State. You must accept a certificate from a recognised body.

Performance or functional requirements

23. You may define the technical specifications in terms of performance or functional requirements as long as it is sufficiently precise to allow a potential supplier to determine the subject matter of the contract and for you to award the contract.

24. Where you have defined a technical specification in terms of performance or functional requirements (this may include environmental characteristics) you cannot reject an offer from a tenderer that complies with:

- a. a British standard transposing a European standard;
- b. a European technical approval;
- c. a common technical specification;
- d. an international standard or a technical reference system established by a European standardisation body;

if these standards meet your performance or functional requirements, as stated in the contract documents.

25. In the situation described at paragraph 24 the tenderer must prove in the tender, to your satisfaction by 'appropriate means', that the 'equivalent' solution (see paragraph 20 above) satisfies your requirement as defined by the technical specifications.

Environmental characteristics

26. Where you specify environmental characteristics in terms of performance or functional requirements, you may use detailed specifications, or parts of specifications, as defined in European, national or multinational eco-labels, or by any other eco-label, provided that:

- a. the technical specifications are appropriate to define the characteristics of the requirement stated in the contract document;
- b. the requirements for the eco-label are drawn up on the basis of scientific information;
- c. the eco-labels are adopted using a procedure in which all stakeholders (e.g. government bodies, consumers, suppliers, environmental organisations) can participate; and
- d. they are accessible to all potential tenderers to ensure transparency and equal treatment.

27. You may indicate within the contract documents that you will accept goods and services bearing the eco-label as compliant with the technical specifications. You should also indicate that you will accept other appropriate means of compliance with the technical specifications such as a technical dossier of a manufacturer or test report from a recognised body (for definition of recognised body see paragraph 22 above).

Non Discrimination

28. You must specify requirements in generic or performance terms.

29. You must not set out technical specifications which refer to specific makes, i.e. brands, or sources or terms which refer to material or goods of specific origin or to a particular process or means of production, trademarks, patents or types that have the effect of favouring or discriminating against a potential supplier. This type of discrimination is illegal under EU law.

30. The only exception to this rule is because it is essential to do so because you can justify because of the subject matter of the contract or you cannot otherwise describe the requirement by reference to technical specifications that are sufficiently precise and intelligible to all tenderers. Where you cannot avoid referring to a particular make or trademark, patent, origin or process you must always qualify it by adding the words 'or equivalent'.

Further information

31. You can find further information in the following places:

- a. Efficiency Reform Group (ERG) / Cabinet Office Guidance on [Specification Writing](#).
- b. ERG / Cabinet Office Guidance on [Non-Discrimination in Technical Specifications](#).
- c. [The DEFRA website](#) for additional information on eco-labels

- d. The Defence Standardization (DStan) website www.dstan.dii.r.mil.uk/ (via the Defence Intranet) or [UK Defence Standardization](http://www.dstan.dii.r.mil.uk/) (via the Defence Internet)) carries information on standards, standardization and standardization management, and contact details of the DStan helpdesk.
- e. Additional information relating to international standardization documents such as STANAGS and their associated Allied Publications (APs) can be found on www.dstan.dii.r.mil.uk/intdocs.html (the more comprehensive site) or www.dstan.mod.uk/intdocs.html via the Internet.

What are the key points to remember?

1. You must include the technical specifications in the contract documentation (i.e. contract notice or contract documents, or both). This can be by means of a reference or hyperlink in the technical specification document.
2. You must ensure that technical specifications allow tenderers equal access and do not create unjustified obstacles to open competition.
3. You must ensure that technical specifications do not favour particular suppliers, their products or processes.
4. You must ensure technical specifications do not prejudice any technical requirements for the UK owed under any relevant international standardisation agreements in order to guarantee interoperability required by the signatories to those agreements.
5. You should be aware that under DSPCR technical specifications can now include reference to defence standards.