

# Tender – Preparation and Process Management

## Our Policy

- You must write tender documentation clearly and include properly defined mature technical documentation and / or specification.
- The tender documentation must comply with Ministry of Defence (MOD) policy.
- Tender documentation must state the planned activities at each stage of the tender process.

## Purpose and Scope

1. The purpose of this Commercial Policy Statement (CPS) is to set MOD policy for tender preparation and management of the tender process. This CPS is created primarily for commercial officers, so “you” indicates an action on the commercial officer.
2. Tender documentation is the document set issued for Invitations to Tender (ITTs), Invitations to Participate in Dialogue (ITPDs) and Invitations to Negotiate (ITNs), these and other terms are detailed in [Annex A of the Tender Process CPS](#).
3. The policy is applicable to all procurements, including competitions exempt from following the European Union (EU) Regulations, mini competitions under Framework Arrangements and single source procurements. The [Defence and Security Public Contracts Regulations](#) (DSPCR) 2011 and the [Public Contracts Regulations](#) (PCR) 2006 and the Public Contracts Regulations 2015 (the EU Regulations) set the legal framework under which you procure. Where the EU Regulations apply, you should first read the relevant EU guidance. The specific chapter for tendering within the DSPCR is chapter 15, [Conducting the Tendering Exercise](#) which you can also use this guidance when procuring under PCR 2006. For procurements under PCR 2015 you must also refer to the [PCR 2015 guidance](#). PCR 2015 guidance only applies to any Requirement where the Contract Notice has been placed after the PCR 2015 go-live date.
4. For procurement specifically from the USA, you should refer to the specific tendering and award procedures within the [Procurement from the USA topic](#). Where you are running a standard competition and you receive a bid from a US company you must follow the guidance stated in this CPS.

## Introduction

5. You must conduct all procurements in accordance with the principles of the Treaty for the Functioning of the European Union (TFEU), as stated in the [Tender Process CPS](#).
6. The tender documentation sets out the conditions of the competition / single source procurement and terms and conditions by which the MOD and the Contractor will be bound after Contract Award. You must consider the procurement risks in your [Commercial Strategy](#) and you must clearly define the Supplier's and MOD's obligations in managing those identified risks. You issue the tender documentation to invite offers from potential suppliers. This will allow potential tenderers to provide an offer that demonstrates appropriate management of the MODs requirements. The process for preparing tender documentation is detailed in Annex A.
7. The project manager is responsible for producing the specification(s) but you must ensure the specification is clear and sufficiently developed. You must also ensure the specification does not reference branded products or mandate the use of specific software. The specification forms part of the tender documentation.
8. You should explain to the acquisition team how the process works and how the process is defined by the Contract Notice. It is best practice to discuss any constraints with the acquisition team before you publish the Contract Notice, so you can publish a Contract Notice that is appropriate to their needs.
9. In sole source procurements, you should still issue tender documentation.

## Tender Document Preparation

### Preparing to Draft the Tender Documentation

10. When preparing the tender documentation you must check your [Commercial Strategy](#) to ensure you cover issues such as Small and Medium Sized Enterprises, Government Furnished Assets and evaluation strategy.
11. You should also have a [Commercial Risk Allocation Matrix](#) (CRAM). The CRAM will decide your position on key conditions. To identify risks you can use the [Commercial Risk Identification Prompt Tool](#). For low value, low complexity contracts the CRAM should be simple and look at high level risks. For higher value, complex procurements the CRAM will need to be more detailed.
12. Before drafting your terms and conditions, (ideally using ASPECT Rules Based Drafting), you should check the [Request for Contract Action \(RCA\)](#) details.

## Drafting the Tender Documentation

13. Where ASPECT has been rolled out, you must draft tender documentation using Rules Based Drafting in ASPECT, in accordance with the ASPECT Ways of Working. This pulls through the information from the ASPECT RCA.

14. If you do not have access to ASPECT, you must draft tender documentation using your Commercial Strategy and CRAM. Do not copy a previous contract as this is unlikely to be appropriate. You must contact Central Legal Service - Commercial Law ([CLS-CL](#)) when you are drafting new narrative conditions. Some questions to consider when drafting the tender documentation are:

- a. what am I trying to achieve?
  - b. what can go wrong (the risks)?
  - c. how can I contain the risk or reduce the impact of the risks?
  - d. what opportunities are there for income generation, innovation etc?
  - e. how can I encourage the supplier to take up these opportunities?
- and
- f. do I need to include any Option provisions?

(1) for an option to be enforceable under English law, consideration must pass from the buyer to the seller and there must be a clear definition of what is to be supplied under the option and the contractual conditions that are to apply. When you have included an option in a contract, consideration will be present from the mutual promises in the contract.

(2) you must state the mechanism for calling up options in the ITT.

(3) a specific narrative clause can be found at Annex B.

15. It is essential to get the tender documentation right first time, therefore consult CLS-CL if you are in any doubt. You must make sure the tender documentation:

- a. is clear - it should be written clearly, who will do what, when actions will be completed and who will take ownership of risks;
- b. is certain - if there is any ambiguity, the resultant contract may be unenforceable; you must state dates and acceptance periods and you must ensure there is no conflict between any of the tender documents;
- c. is complete - stating something will be agreed in the future is unenforceable. Also, if draft conditions are undefined it is difficult for tenderers to provide a realistic fully costed proposal;

- d. includes a clearly defined specification with adequate technical documentation defining the requirement. Under the Sale of Goods Act 1979, and where there is a contract for sale of goods by description, there is an implied term that the goods will correspond with the description. Therefore we can expect to get what we ask for in our specification and no more. You must make this clear to the acquisition team when drafting the specification. The Supply of Goods and Services Act of 1984, has a similar requirement, and this is also a principle of contract law;
- e. is identical - any information that you provide to one tenderer you **must** give to all tenderers. This also applies to [clarification questions](#) raised by tenderers;
- f. contains a blank copy of the evaluation criteria that you will use to evaluate the tenders; and
- g. requires a Statement of Good Standing.

16. Annex C has a list of the documents that you should include in most tender documentation. As a minimum you must include:

- a. the relevant DEFFORM 47. You must state the tender return date. When deciding on the date the acquisition team should consider:
  - (1) the minimum timescales stated under the [PCR 2006](#), PCR 2015 and [DSPCR 2011](#);
  - (2) the complexity of the requirement, including unusual technical features;
  - (3) the amount of preparatory subcontracting activity involved;
  - (4) the volume of the specifications and drawings to be examined;
  - (5) how familiar all of the potential tenderers are with the requirement. If you carried out [supplier selection](#) tenderers will have a better understanding of the requirement and so you can allow less time for tender returns;
  - (6) the involvement of overseas companies (e.g. translation and transit delay); and
  - (7) the possible need for a bidders conference.
- b. a defined specification (e.g. the specification is the final version), as confirmed by the Project Manager;
- c. dates, in DEFFORM 47 section B for the:
  - (1) bidders' conference;

- (2) closing date for clarification questions;
- (3) closing date for requests for extensions; and
- (4) use of iterative tendering techniques, such as:
  - (a) Reverse Auctions (RA). The RA team tailor the RA to your evaluation strategy and they will provide you with a statement for your DEFFORM 47. The [Tender Evaluation](#) CPS details how RAs work.
  - (b) Iterative tender submissions. This is where tenders are given an initial evaluation to pass round 2 of the evaluation process. You can only use this under the Negotiated Procedure, or where your procurement is exempt from the EU Regulations. How you should conduct this is covered in detail in the Tender Evaluation CPS; and
  - (c) Best and Final Offers (BAFO) – these involve another round of tendering where the evaluation cannot clearly identify the tenderer to award the contract. It is policy to avoid the use of BAFOs as they are costly, introduce delays and are more open to a legal challenge. There is a form of words in Section D of DEFFORM 47.
- d. details of the evaluation (at DEFFORM 47 section D):
  - (1) strategy. Choose Lowest Price or MEAT (Most Economically Advantageous Tender). You must be transparent about how you intend to evaluate tenders. See paras 17- 22, for evaluation issues to consider during the preparation stage;
  - (2) tools; and
  - (3) criteria including weightings.
- e. DEFFORM 28, the tender address label;
- f. confirmation of the use of contract management tools such as Purchase to Payment (P2P) and Key Performance Indicators. Anything that increases or reduces the time spent managing a contract will affect the price. N.B. The use of P2P improves efficiency and can provide income generation for early payment under P2P. You can find details of P2P in Annex D; and
- g. anything relevant to your project, such as Transfer of Undertakings Protection of Employment (TUPE) implications.

## The Evaluation Strategy

17. The evaluation strategy must identify the best Value For Money (VFM) option / solution for the requirement (see [Joint Service Publication \(JSP\) 507](#), Chapter 2.1). If using [Standardised Contracting](#) you must use Standard Contract

Annex B to record the evaluation strategy and criteria. You should consider how you will manage the resultant contract as this may affect the evaluation strategy.

18. For Category A, B and centrally funded Category C projects you must discuss the evaluation strategy with, and get endorsement from, Defence Economics and D Scrutiny staff in addition to CLS to ensure consistency with the requirement to demonstrate value for money.

19. You can base the evaluation strategy on either:

a. Lowest Price. This is where the contract is awarded to the lowest priced tender that is technically and commercially compliant. To use this strategy you must have chosen the lowest price criteria in the Contract Notice (if applicable);

or

b. Most Economically Advantageous Tender (MEAT). To use this method you must have chosen the MEAT option in the Contract Notice. This is the standard award criteria used in the MOD and central government. There are several MEAT evaluation strategies. The strategies are:

(1) Highest combined technically and financially scored tender. This is where you will score the technical elements and the price to give a combined score. The commercial element is a compliant / non-compliant statement. You award the contract to the tender with the highest score;

(2) Highest combined technically, financially and commercially scored bid. This is where you will score the technical, commercial and price elements to give a combined score. You will award the contract to the tender with the highest score;

(3) Lowest total value tender. This is where every element that the MOD will have to provide for the procurement is costed and added to the total cost of the procurement. You will award the contract to the tender with the lowest overall total cost. This is used for [Innovative Procurements](#), as it is difficult to compare the various solutions. This evaluation strategy enables you to measure overall VFM for a variety of solutions and is compatible with the use of a Combined Operational Effectiveness Investment Appraisal (COEIA); or

(4) Best technically affordable tender. This is where you will take the best possible option (i.e. highest technically scoring tender) for the available budget. It is compatible with the use of a COEIA and can be used for procuring innovation. You must provide the budget when using this type of evaluation. This type of evaluation strategy is unusual. Therefore, it is good practice to remind potential tenderers, either at a bidder's conference or when issuing clarification questions, that only the technical proposal will be scored.

20. The Tender Evaluation Strategies are different under PCR 2015. MEAT is more closely linked to Value For Money. The Lowest Price option is available under MEAT - best priced- quality. For any procurement advertised after PCR 2015 goes live you must refer to [PCR 2015 guidance Chapter 9 - Tendering and Contract Award](#).

21. There are many ways you can evaluate tenders, if you want to use a strategy other than those stated in paragraph 19 you must consult [CLS-CL](#).

22. You must also apply your chosen evaluation strategy to any variant bids. A variant bid is where the tenderer provides a tender that is outside the scope of the specification. The tenderer must also supply a standard tender response.

23. How you will carry out each tender evaluation strategy is covered in the [Tender Evaluation CPS](#).

### **Tender Evaluation Tools and Techniques**

24. You must state the tender evaluation tools in section D of the DEFFORM 47.

25. Details about the available tender evaluation tools and how they work are in Annex E.

### **Deciding the split between Financial, Technical, and other Criteria**

26. You must decide the split between financial, technical and other criteria. The weight that you give one factor will influence the other factors.

27. You should base the split between the different elements on the Performance, Time and Cost (PTC) envelope. Where technical performance is a key issue then you should heavily weight the split towards the technical element (i.e. between 80 and 100%). The technical factors include quality, safety, management, soft issues, delivery times and standards etc. Where the tenders are likely to be technically similar and the requirements are clearly defined, you may score these as minimum requirements and choose a heavier weight in price. A flow chart to decide the split is at Annex F.

28. In section E of DEFFORM 47 you can ask the tenderers to separate their tenders into key areas. Separate tenders that are commonly requested are in relation to technical, commercial, price, management and relationship management / soft issues.

29. Under the principle of proportionality, the MOD attempts to keep bid costs to a reasonable level. Therefore, for competitions of non-complex procurements under £1M you can ask for combined technical and commercial proposals.

30. The overall weighting between technical, commercial and financial criteria requires careful consideration. [JSP 507: MOD Guide to Investment Appraisal and Evaluation](#), Part 1 and Part 2, Chapter 8 provides some additional guidance points and you should always consult Defence Economics (DE) when deciding on

the appropriate weightings. General Enquiries should be sent to DASA-Enquiries-Mailbox (MULTIUSER).

31. Where the COEIA forms part of the evaluation (for Cat A and B projects) you must include the details of the COEIA in the award criteria within the tender documentation. Early engagement with DE ([DASA-DESA-AppEev-Hd](#)), and the selection of tender evaluation strategies that utilise the COEIA, is essential.

### **Deciding Evaluation Criteria**

32. The acquisition team, including technical, quality assurance and commercial staff choose the evaluation criteria. You will measure the tenders against these criteria you state in Section D of the DEFFORM 47. Any factors that will influence the evaluation decision must be quantifiable. The evaluation criteria must be relevant to the project. Initially criteria may seem similar to [Supplier Selection criteria](#), however you must take care to only evaluate the tender and not the tenderer's ability.

33. Evaluation criteria are usually a series of questions. The tenderers answer these, substantiating responses with evidence. The Tender Evaluation Panel (TEP) will mark these responses against the criteria. Questions can be set out as follows:

- a. mandatory. These can be:
  - (1) closed questions with a pass or fail score; and
  - (2) open questions with a minimum stated requirement;
- b. non-mandatory. These tend to be open questions designed to obtain details on how the supplier will carry out an activity, or the specific attributes of a technical solution.

34. The evaluation criteria must be in line with the scope of the contract (i.e. you must not ask for experts in nuclear power if your requirement is for cleaners). You can find a small sample list of evaluation criteria at Annex G. The skill is being able to clearly articulate what you are looking for. For example if you were evaluating communication, you would need to ask for examples of communication plans, response times, etc.

35. The Tender Evaluation Panel (TEP) are responsible for deciding evaluation criteria. The project manager is responsible for identifying the Tender Evaluation Panel (TEP) and ensuring those members have the relevant technical expertise to evaluate the tenders. The TEP should meet before you issue the tender documentation to ensure that all TEP members and sub-panels:

- a. are aware of their collective and individual responsibilities and the commercial sensitivities of the tender evaluation. It is best practice to issue each member with Terms of Reference (TORs), and you can find a sample set of TORs at Annex H;



- b. use the evaluation matrix (and criteria) from the tender documentation. It is important that TEP members are familiar with the evaluation matrix;
- c. are given an opportunity to run through a mock evaluation. This is referred to as sensitivity analysis, to ensure a consistent understanding and approach to the criteria. If the chosen ratio results in lowest price you must change the ratio, otherwise a successful challenge could be brought against the MOD for not using lowest price as the evaluation strategy. A mock evaluation will also highlight any areas that are unclear, giving you the opportunity to update the DEFFORM 47 evaluation matrix before you issue the tender documentation; and
- d. understand that any notes made during, before and after the evaluation may be called in evidence should there be a legal challenge.

36. Once you have issued tender documentation you must not introduce any new evaluation criteria. The introduction of new criteria can change the scope of the requirement, resulting in the re-starting the competition from Contract Notice.

37. You must ensure facilities, people and time slots are available when conducting trials and / or testing samples. You must state details in section B of the DEFFORM 47. Any trials must take place at least 40 calendar days after you issue the tender documentation, depending on the procurement procedure used.

### **Weighting Evaluation Criteria**

38. As a minimum, the acquisition team should apply weightings to key performance requirements. This ensures that tenders deliver the key requirements. Weightings tend to be applied to technical criteria. It is unlikely that you will weight the commercial requirements as these are usually:

- a. compliant. The tenderer has accepted the condition and / or commercial requirements;
- b. partially compliant. The tenderer has offered an acceptable alternative to the condition and / or commercial requirements; or
- c. non-compliant. The tenderer has proposed something that is unacceptable and would pass unacceptable risk to the MOD,

however you should check the technical weightings to ensure they are in line with the project Performance Time and Cost parameters.

39. The weightings flow from the VFM analysis carried out as part of the Investment Appraisal or COEIA. Weightings are usually multiplied by the mark e.g. where one element is marked 4 and weighted by 10 the element receives a total mark of 40.

## Evaluation Matrices

40. Typically, you will issue a blank matrix for each area to tenderers, such as Technical and Commercial. DEFFORM 47, Section D, states the minimum requirement, you must tailor this to your tender evaluations.

41. Each matrix will detail how the TEP will allocate scores, as per the evaluation tool in Annex E. Each matrix defines the mandatory and non-mandatory criteria.

## Iterative Tender Submissions

42. This is where you eliminate some tenders during the evaluation process, rather than only at the end of it. You will have set out the criteria for eliminating some tenderers in your tender documentation.

43. You must check the [Defence and Security Public Contracts Regulations \(DSPCR\) 2011](#) and the [Public Contracts Regulations \(PCR\) 2006](#) and PCR 2015 guidance as different levels of iterative tenders are allowed for each procedure.

44. Factors that inform this decision to use iterative tendering are:

- a. the procedure you advertised under. This is only applicable to Competitive Dialogue, Negotiated Procedure and tenders where the EU Regulations do not apply;
- b. the relative complexity of the requirement and the complexity of the required response; and
- c. the number of tenderers. You may eliminate the weakest tenderers from the competition as soon as possible to reduce the number of tenderers participating in subsequent rounds of negotiation.

45. You must treat iterative tender submissions in accordance with the [Tender Evaluation CPS](#).

## Issuing the Tender Documentation

46. It is a fundamental principle of the tendering process that the MOD has a serious intent to place a contract as a result of the tender exercise. This not a commitment to place a contract.

47. Before issuing the tender documentation you should have an approved business case, a completed and approved [Request for Contract Action](#), an accurate, clear, complete and defined specification, and the Statement Relating to Good Standing and you will have checked the Tenderer's certificate of performance (if necessary). If using the Open procedure you would ask Tenderer(s) to self-certify their past performance when they submit their tenders.

48. In some circumstances, such as Category A, B and Urgent Operational Requirements (UORs), approval will come just before contract award. In these circumstances you must ensure the finance officer with the appropriate delegated authority has confirmed in writing that funds are available for the requirement.
49. You must inform the Cabinet Office of where you intend to invite any Cross Government Strategic Suppliers, in accordance with [Commercial Cascade 19/2012](#).
50. You must issue competitive tender documentation to all the potential tenderers who met any pre-qualification requirements, at the same time.
51. It is good practice to send an electronic copy of the tender to tenderers, which you can send via e-mail (taking into account any restrictions relating to the sensitivity of the information) or include on a disc with the tender documentation. You must remove any hidden information as stated in the Defence Intranet [other Freedom of Information \(FOI\) Considerations](#).
52. The Invitation to Tender will stay open until the tender return date, unless it is withdrawn by the Authority.
53. Within 24 hours of issue you must publish the tender documentation for any requirement over £10k via Contracts Finder, in accordance with the [Transparency guidance](#), and publish the contract bidders notice.
54. When using the Open procedure you must issue the tender documentation to all prospective tenders on request. You can issue a tender up to 6 days before the tender return date.
55. You must not issue a Request For Quote (RFQ) as an alternative to issuing Tender Documentation as this results in a lengthy and complicated process.

### **Bidders Conference**

56. You must confirm the time, date and location of any bidders conference in Section B of the DEFFORM 47. A bidders conference gives tenderers an opportunity to ask questions about the requirement. It is usually run for complex and / or novel procurements. You must include any information from any industry day(s) in the bidders conference pack.
57. A bidders conference is a good tool to level the playing field between potential tenderers and any incumbent (the current provider) tenderer. They are costly to both the MOD and tenderers and you must only use them where there is a genuine need. The project manager must obtain the relevant approvals to run the bidders conference.
58. A bidders conference normally takes place three or four weeks after issue of the tender documentation (depending on its complexity). This gives potential tenderers time to analyse the requirement and identify any questions. You should allow a further three to four weeks after the bidders conference for return of tenders.

59. The acquisition team will speak to all the tenderers at the same time. You must issue a copy of the presentation to all potential tenderers, regardless of attendance.

60. The acquisition team leader or project manager should normally chair the conference supported by commercial officers and other team members as appropriate.

61. The format of the bidders conference will depend on what you are procuring. Typically, the first part is a presentation of the requirement, it may include a demonstration of equipment or even showing the tenderers around MOD's facilities. Then time is allowed for the questions.

62. It is good practice for you to ask for questions before the bidders conference. This means the project manager can identify the appropriate acquisition team members to attend.

63. For transparency reasons, it is essential to make sure that a member of the acquisition team records the questions and answers given. You must distribute the written questions and answers to all potential tenderers following the conference (including any potential tenderers who were unable to attend).

64. You must ensure the appropriate security requirements are in place if the conference involves classified information. Where the requirement has a high classification, you should limit the briefing to those companies who are appropriately cleared.

65. If a tenderer requests a one on one session you must refuse, unless you are using the Innovative Partnership (under PCR 2015) or Negotiated procedure. One to one sessions leave the MOD open to accusations of not following the process and are difficult to defend.

### **Tenderers Clarification Questions**

66. You must manage tenderers questions as stated in Section B of the DEFFORM 47. You should allocate serial numbers to help you to keep track of questions and avoid duplication.

67. You must send all questions and answers to all tenderers at the same time.

68. Where a question reveals a piece of information that could significantly impact the tenderers responses you should ensure they have at least 10 working days to submit a tender. This may mean extending the tender return date for all tenderers.

### **Amendments to the Tender Documentation**

69. Sometimes the bidders conference and / or tenderers clarification questions may lead to minor changes in the specification or draft conditions. If so, you can issue a corrigendum to the tender documentation. If there are number of

clarifications, you can re-issue an updated version of the tender documentation. Where requirements are classified OFFICIAL and below you can do this electronically.

70. If the change significantly alters the scope of the requirement, you must restart the competition from Contract Notice. If you are unsure whether a change is significant you should consult [CLS-CL](#).

## **Tender Submissions (Receiving Tenders)**

### **Tender Return Date**

71. You will have stated the tender return date in the DEFFORM 47.

### **Requests for Extensions of Time**

72. Tenderers may ask for additional time to return the tender. Only commercial officers holding the delegation to sign any resultant contract can deal with requests to extend the tender return date.

73. Before agreeing to an extension, you must consult the acquisition team and make sure the Tender Board can receive the tenders on the revised date.

74. If you agree to an extension, you must give all tenderers the same extension and notify all tenderers at the same time. You can issue revised DEFFORM 28 labels electronically.

### **The Tender Board**

75. The purpose of the [Tender Board](#) is to provide impartiality in competitive procurement. They receive signed paper copies of the commercial and technical tenders. These paper copies will take precedence and you must use them to settle any disputes that may arise concerning the content of any copies delivered directly to the acquisition team. You must make sure that you inform the tenderer of this.

76. These tenders remain sealed until the time stated on the DEFFORM 28, when opened the Tender Board check for obvious signs of [collusion](#), checking for last minute alterations to the tender etc.

77. Make sure that you book the time required with the tender board before issuing the Tender Documentation and remember to inform the Tender Board of any changes to the return date.

78. Tenders less than £5k in value and of a non-complex nature can be returned directly to you.

79. You must send a completed DEFFORM 297 to the Tender Board. This lists the expected tenders. You can ask the tenderer to submit multiple copies of the

tender. The minimum number of copies that can go to the Tender Board is one. Tenderers can send all other copies direct to you, it is worth reminding tenderers not to send these before the Tender Board return date.

## **Tender Submission**

80. The DEFFORM 47 warns that the MOD can only consider tenders submitted in accordance with its instructions.

81. You need to preserve confidence in the integrity of MOD procedures and to preserve impartiality of the award decision. It is very important to prevent disclosure of tendered prices and to ensure that no other irregularities can occur.

82. The tender should comprise of a signed DEFFORM 47 Annex A (Offer), the technical and commercial tenders, a completed compliance matrix and any other requested information.

83. On receipt of the master copy tenders from the Tender Board, you and the project manager must visually check respective electronic copies to ensure the responses are identical to the master. You should also ensure that there are no prices in the electronic copy before passing it to the TEP.

## **Unsolicited Tenders**

84. An unsolicited tender is when you have received a tender from a supplier to whom you did not send the tender documentation. You must reject this tender immediately. You must not consider any unsolicited tenders as you have not assessed those suppliers as capable of delivering the requirement.

## **Electronic Tendering**

85. The MOD does not yet have a full capability covering the e-tendering process 'end-to-end'. Where possible you should use electronic communication for OFFICIAL SENSITIVE, (or below), security classifications. Currently the MOD cannot receive any documents that require a legal signature electronically, therefore only the following can be e-mailed:

- a. copies of tender documentation;
- b. updates to the tender documentation;
- c. clarification questions and answers; and
- d. material from the bidders conference.

## **Reimbursement of Tender Costs**

86. There will be rare occasions where the tender process cannot proceed to contract due to changes in operational requirements. The DEFFORM 47 and 47ST address such eventualities.

87. You must not offer to reimburse tender costs. The MOD's working assumption is that the majority of contractors will recover their tender costs in part or in full through the prices they charge in those contracts that they win. It is for companies to decide whether to tender for MOD work and the level of resources to commit. It is not the MOD's responsibility to cushion tenderers from the results of their commercial decisions.

88. However, it is in the MOD's interests, as well as its tenderers' interests, to keep tender costs to reasonable levels. For this reason the MOD:

- a. only normally invites tenders when a technically endorsed and financially approved [Request for Contract Action \(RCA\)](#) exists;
- b. seeks to keep the number of potential tenderers down to manageable numbers by deploying, where appropriate, supplier selection exercises;
- c. operates tender evaluation processes designed to assist early decision making such as the early elimination of the weakest tenders and contract award;
- d. seeks to keep the process to a minimum; and
- e. works to achieve a 120 working day turnaround for non-complex requirements, as stated in the [Tender Process CPS](#).

89. Any request for the reimbursement of tender costs must be treated as a [claim](#) and referred to a commercial officer with the delegations to agree claims (normally B2 and above).

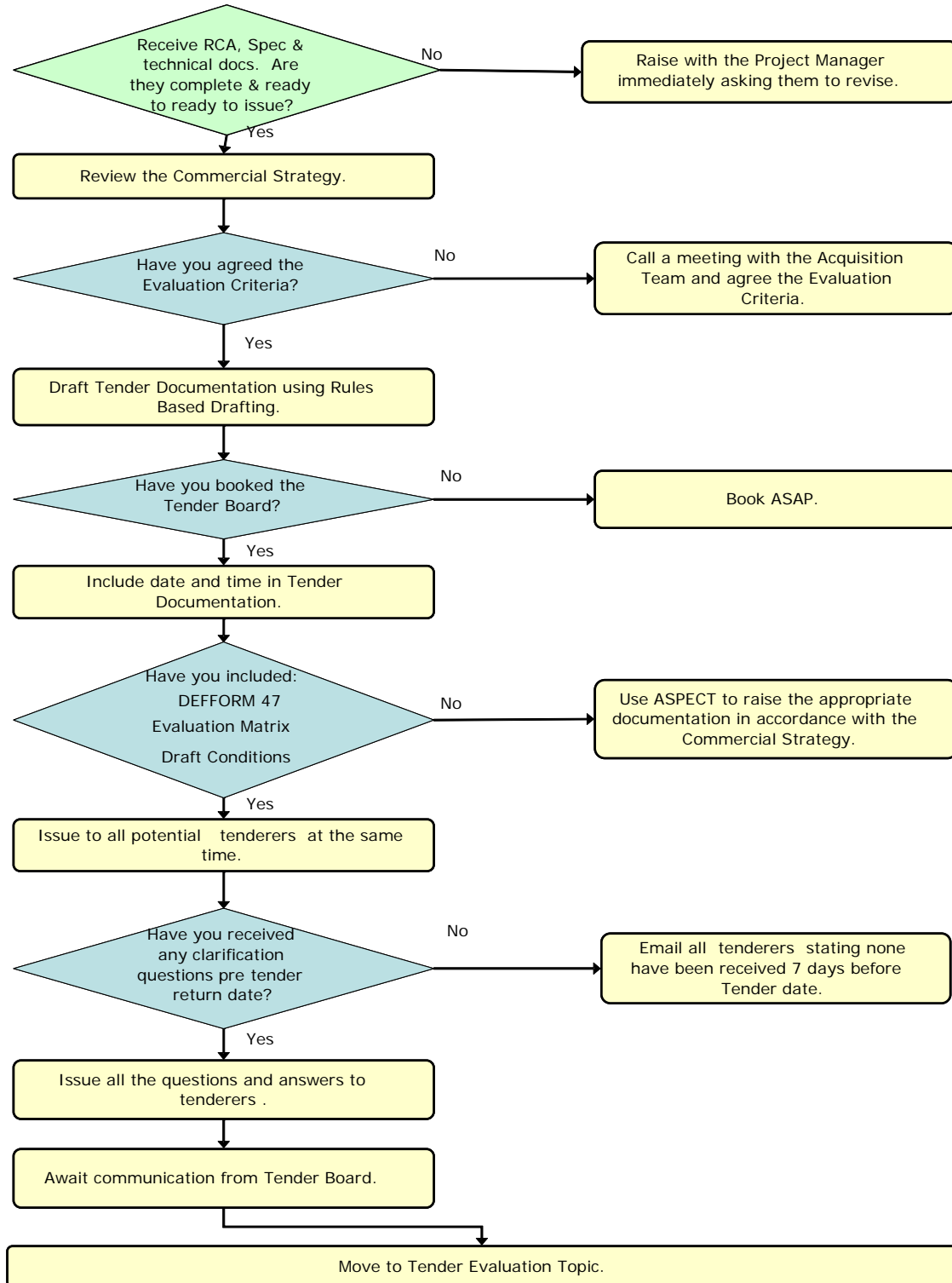
90. The next stage in the tender process covering actions to take after you have received the tenders is covered in the [Tender Evaluation CPS](#).

## **Contacts, Training and Further Information**

91. The [Web Access Page](#) for this topic contains a summary of the topic, details of who you can speak to for advice, and what training is available. It also contains links to other relevant topics and information.

## Annex A

# The Tender Preparation and Management Process





## Annex B – Specimen Options Narrative Condition

1. The option prices detailed below are [firm prices not subject to variation] [fixed prices relative to economic conditions at [ ] and are subject to variation as provided for in Condition [ ] [maximum price to be converted to firm or fixed prices].
2. In addition to the quantity detailed at Item [ ] of the Schedule of Requirements, the Contractor hereby grants to the Authority the following irrevocable options to purchase quantities of [equipment / items / stores] in accordance with the terms and conditions set out in this contract or any such subsequent contract or contracts where such options are taken up, it being agreed that the Authority has no obligation to exercise such options.
  - a. Option 1: A Qty [ ], in addition to [ ] already ordered under Item [ ], at a [firm] [fixed] price of £[ ] per [ ] in accordance with the delivery schedule at [ ] provided that the Authority exercises such an option by no later than [ ].
  - b. Option 2: A further Qty [ ], in addition to the quantities already ordered under Item [ ] and Condition 2.a. above, may be ordered at a [firm] [fixed] price of £[ ] per [ ] in accordance with the delivery schedule at [ ] provided that the Authority exercises such an option by no later than [ ].
3. The Authority may exercise any of the options in Conditions 2.a. and 2.b. above in the stated quantities varied within a range of + / - [ ]% ([ ] per cent), as well as in the stated quantities and the option prices shall apply equally to the quantities so varied.
4. The Authority shall have the right to exercise the options by the specified dates or within such further period as corresponds to the aggregate of any period(s):
  - a. of delay in the delivery programme whether constituting any breach of the Contract or resulting from any force majeure event within Condition [ ], or
  - b. for the duration of which the Authority is prevented from exercising any such option by reason of any other breach of the Contract by the Contractor.
5. The Authority shall not be obliged to exercise the options.

## Annex C

### Tender Documentation

Document	Remarks
<a href="#">DEFFORM 47</a>	A standard front sheet to be used for all formal Invitations To Tender (ITTs). It addresses the key requirements for tender submission and sets out the MOD's position with respect to award of contract, ordering of goods or services, iterative tendering, innovative tendering, notification of inventions, safety and environmental issues and import duty.
DEFFORM 28	A gummed label for return of competitive tenders to the Tender Board. It is not required for single tenders that are returned direct to the issuing commercial officer. You must include the Tender Documentation Reference Number and the tender due date on the label.
<a href="#">DEFFORM 30</a>	If the resultant contract is to be managed through P2P you must include a DEFFORM 30 Electronic Transactions Agreement in the Tender Documentation to be signed at company or Group level. See DEFFORM 30 <a href="#">Explanatory Notes</a> .
<a href="#">DEFFORM 111</a>	Appendix to contract, giving addresses and other information that will be required by the contractor. It must be completed for all contracts at the Tender Documentation stage.
<a href="#">DEFFORM 143</a>	Software Development Questionnaire. To be included in Tender Documentation involving software development. To avoid unnecessary duplication of similar information, Tender Documentation should invite potential tenderers to say whether they have recently provided such information and, if so, to whom. If the information is available and the acquisition team is satisfied it will meet their requirements, commercial officers should inform the potential tenderer(s) accordingly.
Schedule of Requirements	It should specify the Contractor Deliverables to be provided with space for the tenderer to insert price quotations.
Draft Contract	Terms and conditions of contract that are to apply. Refer to the <a href="#">Conditions Guide</a> for advice on mandatory DEFCONS.
Specification	It should form part of the formal Tender Documentation. It must be clear, accurate and complete, particularly in respect of descriptions and quantity of the Contractor Deliverables required, catalogue and reference numbers, dates, specification and drawing numbers (issue numbers and dates), delivery requirements, embodiment loan, packaging references, marking requirements and any other technical stipulations must be stated. If drawings, specifications and / or manufacturing documents are to be supplied to potential tenderers, the Tender Documentation must state how they will be supplied and by whom. In exceptional circumstance the specification may be issued to tenderers prior to issuing the complete set of Tender Documentation documents

<b>Document</b>	<b>Remarks</b>
Standardised Contracting Template	<a href="#">Standardised Contracting Templates</a>
Statement of Requirement	It should specify the goods and services to be provided with space for the tenderer to insert price quotations.

## Annex D

### Purchase to Payment

1. P2P is the MOD's strategic e-Purchasing tool which enables electronic purchasing, receipting and payment to take place. Establishing the electronic interchange of data for purchasing transactions relating to paper based contracts through P2P is a key aspect of MOD commercial policy.

2. On November 2011 2nd Permanent Undersecretary for State (PUS) mandated the use of P2P across all MOD contracts. As part of "normal business", you must operate the contract on P2P at the earliest opportunity of the procurement cycle. When advertising the requirement you must state that it is MOD policy to make payment via Purchase to Payment. You can request an early payment discount from tenderers for prompt payment. An example of the discounts available are:

Service [if divisible]	Payment* Terms	Discount applicable to tendered prices	Impact if one day later	Comment
A	3 days	A %	0%	<ul style="list-style-type: none"> <li>• Need to consider the impact of a longer delay, within the statutory 30 days. Option is that discount is not applied.</li> <li>• Suggest that P2P "discount holiday" agreed for the first three months to allow for fine tuning and to avoid unnecessary repayment.</li> </ul>
B	7 days	B %	0%	
C	10 days	C %	0%	
D	14 days	D %	0%	

\* Defined as the inclusive complete working days between the submission of an electronic invoice to P2P and payment being received in the Suppliers nominated Bank Account.

3. You must use P2P unless you consider that a contract will be unable to operate on P2P, in which case you must go through the [Exemption process](#).

4. You must include a DEFFORM 30 Electronic Transactions Agreement within the Tender Documentation. You should check the DEFFORM 30 first to see if the tenderer has already signed a DEFFORM 30 at company or group level. If there is no DEFFORM 30 for the tenderer then one will need to be signed. The agreement is usually negotiated by the designated Commercial Officer. You can find further guidance on the [DEFFORM 30 intranet page](#).

5. You should note that the terms and conditions included in the Tender Documentation must:

- a. be structured to reflect the individual elements necessary to create the electronic data required to establish a 'three way match' between the

Purchase Order Message, Receipt Message and Invoice Message to authorise payment, or "two way match" for low risk, low cost items; and

- b. include conditions covering:
  - (1) Unique Identifiers (DEFCON 5J);
  - (2) The Use of Electronic Business Delivery Form (DEFCON 129J);  
and
  - (3) Payment under P2P (DEFCON 522J).
6. You should include compliance with the P2P requirements as acceptance criteria when evaluating tender responses.
7. You must give notice to tenderers in the tender documents where:
  - a. the use of P2P is a mandatory requirement; and
  - b. the Contractor must sign DEFFORM 30 (Electronic Transaction Agreements) and unconditionally accept DEFCON 5J (Unique Identifiers), DEFCON 129J (The Use of Electronic Business Delivery Form) and DEFCON 522J (Payment under P2P).

However, there is no need to ask a specific question in the tender documents on using P2P as it is mandatory requirement. A tenderer must accept all mandatory requirements if their tender is to be deemed compliant. This is a pass or fail test. You must include the following wording in the DEFFORM 47 for any contract using P2P:

### **Electronic Trading**

Tenderers must note that use of the Authority's Purchase to Payment (P2P) system operating under the Defence Electronic Commerce Service is a mandatory requirement for this Contract. You can view information on the P2P system and the methods to connect at [www.d2btrade.com](http://www.d2btrade.com). Please feel free to consult the service provider on connectivity options. The Contractor shall be required to sign DEFFORM 30 (Electronic Transaction Agreements) at corporate level - if you have not done so before - and unconditionally accept DEFCON 5J (Unique Identifiers), DEFCON 129J (The Use of Electronic Business Delivery Form) and DEFCON 522J (Payment under P2P). A failure to do so will result in your tender being deemed non-compliant.

8. You can find guidance on P2P on the [P2P website](#).

## Annex E

### Tender Evaluation Tools

1. You must state the tool you will be using in section D of the DEFFORM 47.

#### Multiple Attribute Choice Elucidation (MACE)

2. MACE is not strictly a tool. It is a method for applying objective measurement to the relative merits of mutually exclusive acquisition options. Its principal application is in the Evaluation of responses to tenders. Its use is discretionary, though it is a 'default' option. You should focus the application of MACE on the offer being made by a tenderer. There are other techniques which evaluate the tenderer's professionalism, capability and their capacity to accommodate the task they are tendering for. In certain circumstances, Operational Analysis and Investment Appraisal may also play a part in Tender Evaluation. You should refer to Defence Economics (DE) ([DASA-DESA-AppEv-Hd](#)) and D Scrutiny for further information.

3. MACE translates key issues from the requirements into logical criteria, and derives a numerical worth. The intermediate result is an evaluation hierarchy of clearly defined and measurable criteria, which is included in the Tender Documentation. Typically, each System Requirement in a System Requirements Document (SRD) is a candidate criterion. All of the following tools incorporate MACE.

#### Traditional / Simple Evaluation

4. The 'traditional' way of evaluating tenders is the use of spreadsheet. This draws on MACE and each Tender Evaluation Panel (TEP) member allocates a score to each criterion. This is totalled to give a total score.

5. The TEP must score each criterion against a benchmark. Sample scores are included in Section D of the DEFFORM 47.

6. Each panel member will total their scores, at a meeting those scores are agreed to give an average score. The TEP can weight each criterion to ensure that top priority elements receive a higher score.

#### Emptoris

7. Emptoris® is a web-based solution, which is available through the Crown Commercial Service (CCS) Framework Agreement for CITHS. This is accessed

through the [i-Procurement e-Catalogue service](#), and click on see Related Documents.

8. It uses the MACE methodology and is suitable for use with the lowest price and standard MEAT evaluation strategies.
9. Before choosing this as your tool, you will need to seek financial approval, check to see if your Operating Centre (OC) has a corporate licence or procure the licences via the GPS framework.
10. You must ensure that there are no Conflicts Of Interest (COI) when choosing this tool, such as the provider of the tool also being a tenderer. If they are, how will they manage any COI through the use of a compliance regime.

## **Award**

11. Award is a web-based solution for supporting tender evaluation in procurement. It supports the MACE methodology, but can be configured to support any procurement approach. QinetiQ Commerce Decisions provide it and you can find more information on the [Award Webpage](#).
12. This is the preferred tool for some MOD OCs. Before deciding to use Award, you must get financial approval and assess your requirements for suitability. You should also check whether your OC has a corporate licence.
13. You must procure licences via the GPS Framework Agreement for CITHS Lot 3. This is accessed through the [i-Procurement e-Catalogue service](#), and click on see Related Documents.
14. There are different levels of service available from provision of the tool only to the provision of a technical expert who will assist the acquisition team to write the evaluation questions, help with weighting workshops and perform peer reviews. You must be clear about the level of support required and use experts where possible.
15. In the DEFFORM 47 you can request that the tenderers input the information onto Award themselves, rather than you loading all the information onto the tool. Alternatively, tenderers can complete 'off-line answer sheets' that they can then load onto Award. QinetiQ Commerce Decisions offer packages to support tenderers as well.
16. Where you are using Award as your evaluation tool and QinetiQ are a potential tenderer this constitutes a [Conflict of Interest](#). You can manage this using a compliance regime.

## **VERDICT™**

17. VERDICT™ is a solution available via the DECS Catalogue. It is delivered both to DII users and over the Internet via the SecureIA MyPhase gateway with a security accreditation for projects up to OFFICIAL SENSITIVE. It is able to

implement both the MACE and SIBET methodologies (although it can be configured to support any procurement approach). It is also able to administer all aspects of the Requirements Engineering discipline, integrating this with the MACE process (delivering automated inter-document linking and URD, SRD and MACE outputs to MS Word). VERDICT™ is the preferred tool for some MoD OCs. More information is available on the [Vantage Applications website](#). Before choosing this as your tool, you will need to seek financial approval, check to see if your OC has a corporate licence or procure the licences via the DECS Catalogue.

18. There are different levels of service available, from provision of a VERDICT™ license (such that the project operates on a self-help basis from the extensive inbuilt VERDICT™ Help system and documentation), through to provision of expert on-site assistance with all aspects of the competitive acquisition process (from Requirement inception to acceptance).

19. VERDICT™ supports not only generation of the ITT documentation, but can also be used by Bidders to input tender responses, with a significant raft of tools available to assist them with the crafting of value-for-money responses (many such tools subject to project-initiated permissions). VERDICT™ can produce presentation materials for the Tender Assessment Panel and, after selection of the Preferred Bid, it can both output tailored tender debrief packages and craft the draft Contract SRD from the winning bid. There are no potential conflicts of interest as Vantage operations are entirely independent of the MOD equipment and services supplier chains.

## **Pre-Contract Award Evaluation (PCAE)**

20. On major requirements, it may be appropriate to carry out a Pre-Contract Award Evaluation ([PCAE](#)) following receipt of tenders and prior to contract award. This is a project management tool used in the risk reduction process and / or tender clarification. It is aimed at providing the acquisition team with either:

- a. a comparative measure in preferred order of the capability and capacity of short-listed companies tendering for particular work; or
- b. in the case of single-source procurement, a measure of confidence that a company has the necessary capacity and is capable of undertaking the work, and an assessment of the risks (technical and commercial) involved.

21. As a PCAE will form part of the overall tender assessment criteria it is important to indicate this fact in the tender documentation.

22. PCAE is no substitute for a comprehensive pre-qualification exercise and in most cases such an exercise would be all that is necessary, having already covered much of the ground required to be covered in a PCAE exercise. By inviting a company to tender the MOD should be prepared to contract with that company, should it be judged to have submitted a compliant tender which offers best value for money.



23. Circumstances in which you might use PCAE are:

- a. when special requirements are identified within the specification (e.g. new technology, heavy dependence upon critical software, or special environmental or safety aspects);
- b. where there is a significant difference in the tendered price between compliant tenders that may suggest a failure to understand the Specification; and
- c. where the tenderer is new or unknown to the MOD and there is a need to confirm written claims.

24. It may be unnecessary to carry out a PCAE on each short-listed tenderer but you may need to defend such decisions, particularly to unsuccessful tenderers whose tenders are not subject to a PCAE. You may need a different PCAE plan for each tenderer.

25. A PCAE team (normally headed by the acquisition team leader) should visit the premises where the work is to be carried out and investigate matters such as:

- a. capacity, capabilities, experience and training of staff in relation to the proposed contract;
- b. the quality control system and Quality Assurance (QA) documentation;
- c. the proposed organisation and operating methods; what work may be dealt with in-house and what may be subcontracted; and how (in relation to subcontract work in particular) this will be managed, controlled and validated;
- d. the risks that have been identified by the tenderers and the actions proposed to minimise them; and
- e. the risks to other MOD work being undertaken by the tenderer if his tender is accepted.

26. If you intend to compare or combine PCAE findings with the results of other elements of tender evaluation, then the evaluation methods must be compatible. Each panel member should submit their PCAE findings to the TEP indicating the preferred option, giving reasons, advantages and risks, or recommending action (e.g. that Post Tender Negotiations be carried out to address any areas of weakness). They should also outline the alternative options, stating what advantages the MOD may obtain and what extra risks the MOD will incur.

27. You must maintain full records of the PCAE activity in order to assist the debriefing of unsuccessful tenderers, maintain a proper audit trail and plan risk management activities.

28. You should consult [PCAEE procurement development specialists](#) of the intention to undertake a PCAEE to establish whether any of the tenderers have recently been the subject of PCAEE on another requirement. Acquisition team leaders are encouraged to submit observations on the 'lessons learned' from PCAEEs to the procurement development specialists, together with a brief report on contract completion indicating whether the contractor's performance bore out the PCAEE findings.

29. Where concerns exist regarding the tenderer's past performance or the proposed controls detailed in their tender, you can use PCAEE to substantiate these concerns. It will identify the level of risk associated with their tender and enable the development of effective risk mitigation activities.

## Soft Issues

30. Soft issues are those things that affect the long-term relationship such as, culture, strategy and change management.

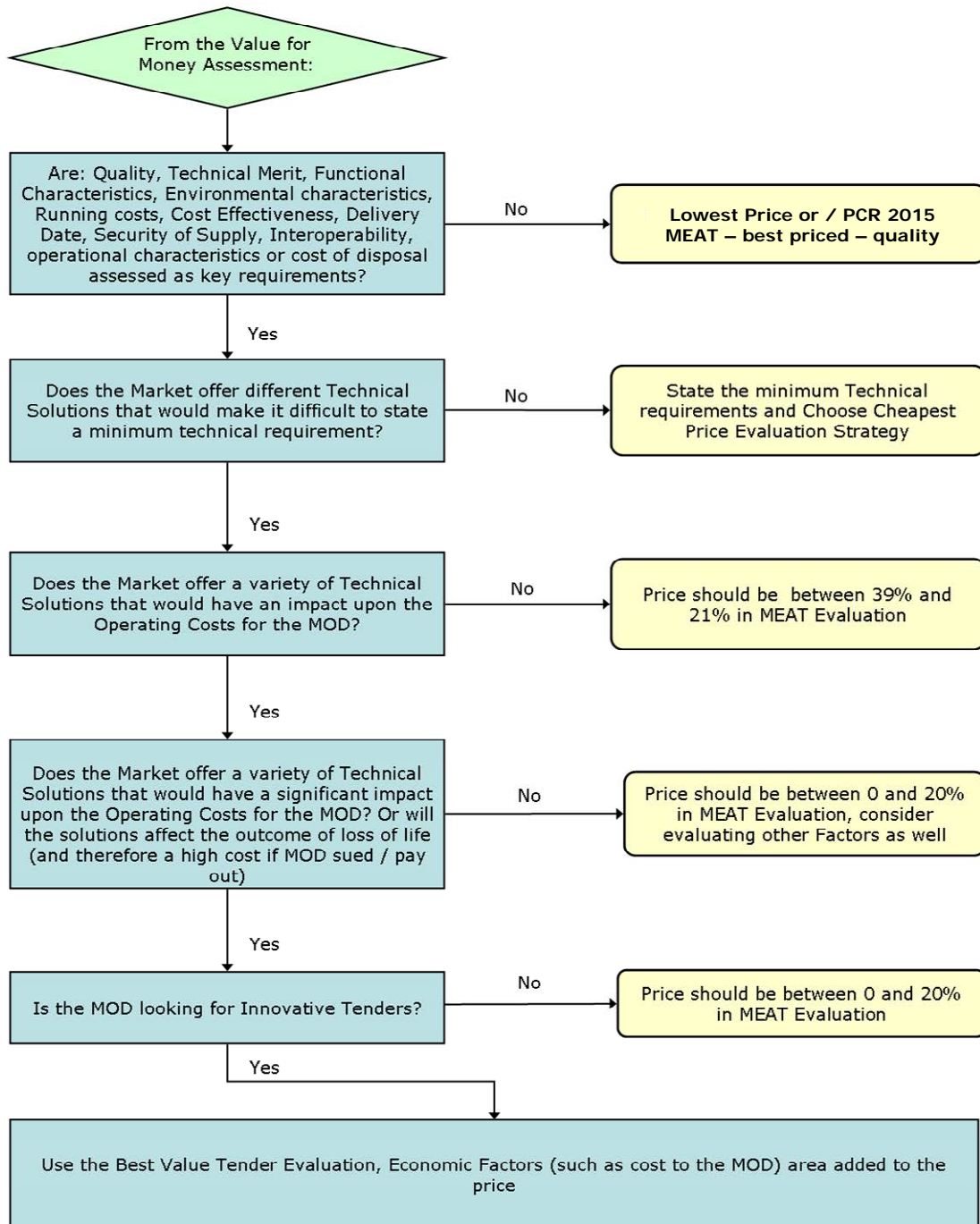
31. It is important that you evaluate the soft issues (in addition to the normal hard issues) when your commercial strategy is to enter into a long-term relationship delivering complex and / or potentially costly procurements. By their nature, the relationship between the buyer and tenderer becomes more significant. You must evaluate the tenderers' characteristics of being responsive partners in large and / or long-term arrangements, and understanding customer needs while managing their own businesses effectively.

32. Tenderers must provide hard evidence of compliance in this area. Hard evidence could be in the form of existing processes, plans or strategies, past experience, or previous (recent) contract performance (these should be capable of being verified). You should give low scores to responses that provide promises to change on winning the contract, or give aspirational accounts of how the tenderer will perform in the questioned subjects, but do not provide evidence.

33. There are sample questions contained in Annex G.

## Annex F

# Guide<sup>1</sup> to Deciding the Split between Price and other Factors



<sup>1</sup> This is a guide only; the percentage splits will be specific to each requirement.

## Annex G

### Sample Evaluation Criteria - Commercial

Topic	Question	Evidence	What to look for	What it tells you
Mandatory	Has the tenderer responded to all Mandatory requirements?	Responses have been received in respect of:	<ul style="list-style-type: none"> <li>• Montreal Protocol Substances</li> <li>• Dangerous Articles and Substances</li> <li>• Elimination of Asbestos</li> <li>• Customs Import Duty</li> <li>• Nominated FOIA or Environmental Information Regulations (EIR) Enquiries Point of Contact</li> <li>• Completion of (with original signatures) the DEFFORM 47 (OFFER).</li> <li>• Statement whether the Company is regarded as an Small Medium Sized Enterprise (SME) i.e. have 250 employees or less.</li> <li>• Statistical data re. overseas and UK sub-contractors and % of value.</li> <li>• Acceptance of Mandatory Terms and Conditions.</li> </ul>	This is a pass or fail element of the Evaluation. Failure to confirm acceptance of the Mandatory requirements means they cannot be awarded a contract.
Skills Levels	Has the tenderer provided CVs?	Are the skill sets used those required to fulfil the requirement?	Look for exceptionally high or low skill sets. You don't need a rocket scientist to clean the office and neither do you want trainees to provide advice on highly technical issues.	Use of the right skills set means the tenderer is familiar with and understands the requirement, increasing the chance of success. It also provides a check against the prices.

Topic	Question	Evidence	What to look for	What it tells you
Options	Has the tenderer provided priced options?	A list of priced options.	In addition to the list of priced options you need to look for any caveats, such as you can only take up this option if you give 3 months notice, or it is only valid until ....	This gives an idea about set up, if manufacturing you may need to give several months notice to ensure there aren't any additional set up cost.
Pricing	Has the tenderer provided prices and break-downs required?	A list of prices, a list of break-downs if required.	Exceptionally high or low prices. Look at the day rates. A low day rate may explain the low overall price, as do high rates. Where additional time is added to complete tasks, has a lot of risk been included?	Prices are compared against other tenders in the Tender Evaluation. Low day rates may be an indicator of high staff turn over and ability to deliver a consistent output. You will need to check against other evaluation criteria. High pay may indicate low staff turnover, or a rare skill set. Has the right level of staff been used to fulfil the task?
Pricing	Has the tenderer provided responses offering discounts for early payment?	% indicators of which level of discount will be provided in return for given early payment times.	Look for clear statements supporting terms for payment in response to an invoice raised within 3/7/10/15 working days. Ensure that any penalty for not achieving the agreed payment date does not exceed the value of the benefit. Consider the payment structure and the potential risks to achieving early payment.	That the tenderer values the cash flow improvements electronic trading can bring and are willing to share that saving with the MOD. Offers proposing "Advance payment" will require special dispensation and it should be stated in this may be allowed in the tender documentation.

Topic	Question	Evidence	What to look for	What it tells you
Payment Plans	Has the tenderer provided a payment plan / List of Milestones?	There is a list of payment plans and Milestones	<ul style="list-style-type: none"> <li>The payment plan is minimal i.e. there isn't a payment every month, which would involve an increase in MOD effort and therefore internal costs.</li> <li>Each milestone or payment is for a clearly defined deliverable. It needs to be SMART (Specific, Measurable Achievable, Realistic and Time-Bounded). This assists with accruals and ensures that we only pay for something that is capable of being delivered. <b>Your project manager will need to provide advice on this.</b></li> </ul>	<ul style="list-style-type: none"> <li>Payment Plans that have a huge number of milestones may be an indicator of a high level of staff costs or may be an indicator of a company with cash flow issues. If you accept it you will need to monitor the situation carefully.</li> <li>These indicate the tenderer's understanding of the requirement and whether they realistically believe they can deliver.</li> <li>Further guidance can be read in the <a href="#">Payment - Interim Payments and Contract Payment Administration CPS</a>.</li> </ul>
Break Point	Has the tenderer accepted the need for a review and a breakpoint?	Confirmation of Acceptance.	You need positive acceptance of the need for a breakpoint in the contract. Look at alternatives to ensure that you can break it unilaterally. Remember the Tenderer is keen to retain your business and cash flow so may want to make it difficult to break the contract.	Where a tenderer asks for more than 3 months notice, you will need to investigate whether this is an industry norm, e.g. if there are facilities that need to be decommissioned. If a service contract, only one tenderer requests more than 3 months notice may indicate a cash flow or staff turnover issue.

Topic	Question	Evidence	What to look for	What it tells you
Acceptance of Contract Deliverables	Has the tenderer accepted the definitions of success and what happens if deliverables are not delivered / up to standard?	Conformation of acceptance or reasonable alternatives suggested.	You need positive acceptance of success factors, as if you don't get this there may be an issue afterwards. This is especially critical for Service Contracts as the outputs are less clearly defined. The agreed deliverables and action plan if not met must be SMART and clearly defined as these link to the Break Point and any Performance DEFCONs such as Default. You must look for any caveats that seek to limit the Authority's ability to call on these DEFCONs or seeks to make the deliverables unclear.	Where a tenderer is not happy accepting the conditions you need to compare with the other Tenders. Is it an Industry norm or is it specific to one or two tenderers? Where it is specific to tenderers you may need to manage this carefully if they end up winning the contract. This should be linked to your <a href="#">Integrated Test, Evaluation and Acceptance Process</a> . <b>Your project manager will need to provide you with the details.</b>
Key Performance Indicators (KPIs)	Has the tenderer accepted the KPIs?	Confirmation of acceptance or proposed alternative KPIs.	You need positive acceptance of success factors, as if you don't get this there may be an issue afterwards. The KPIs must be SMART and clearly defined and easy to measure. These are linked to any narrative Break Points and any Performance DEFCONs such as Default. You must look for any caveats that seek to limit the Authority's ability to call upon these DEFCONs or seeks to make the KPIs unclear.	Where a tenderer is not happy accepting the conditions you need to compare with the other Tenders. Is it an Industry norm or is it specific to one or two tenderers? Where it is specific to tenderers you may need to manage this carefully if they end up winning the contract.
Changes in Key Personnel	Has the tenderer confirmed acceptance of key personnel requirement?	Confirmation of Acceptance.	You need positive acceptance of the need for the Authority (MOD) to approve the change of key personnel.	

Topic	Question	Evidence	What to look for	What it tells you
Import VAT, Duties and Tax	Is the procurement exempt from Customs Duty?		During the tender evaluation you must assess whether customs duty can be waived. Even if the Procurement is duty free any import may attract import / customs duty. You must add this onto any prices where duty applies and also add in the cost of the administrative burden to give a true base-line.	
Conflict of Interest (COI)	Has the tenderer confirmed they are independent from the Supply End?	Confirmation of Independence or an example of how the Conflict of Interest will be managed.	Confirmation from the tenderer that they are independent from the Supply Chain or area you stipulated. Look for confirmation that they understand you may terminate a contract if a conflict is subsequently found. If the tenderer confirmed there is a COI and have provided a compliance regime, you must assess the compliance regime in accordance with the <a href="#">COI CPS</a> .	
Limitation of Liability	Has the tenderer asked for any their liabilities under certain conditions to be limited?	A request for liability to be limited in the tender.	A written request from the tenderer to limit their liability under any resultant contract is normal business practice, where the potential liability is greater than the insurance cover they can buy.	The tenderer is looking to protect its shareholders against the risk that the MOD may sue them. You should handle all Limitations in accordance with the <a href="#">Limiting a Contractors Liabilities and Indemnities CPS</a> . Where a tenderer is seeking to limit their liability under performance you should be concerned as this would indicate they are not confident in their ability to deliver the requirement.



<b>Topic</b>	<b>Question</b>	<b>Evidence</b>	<b>What to look for</b>	<b>What it tells you</b>
Supply Chain	Has the tenderer accepted the requirement to maintain the supply chain and report SME information?	Confirmation of acceptance from the tenderer.	The tenderer must confirm their acceptance of the need to maintain the supply chain and report information on SMEs to the MOD. Where they are only willing to accept part of the condition or reject the condition, you must assess the risks, impact to the price and supply chain network. This is done in conjunction with the acquisition team.	Rejecting the condition may imply the tenderer does not have a good relationship with the supply chain, however it may mean they already have systems in place. Normally the tenderer would state they have a system in place and give details in the tender how this system works.

## Sample Evaluation Criteria - Management

Topic	Question	Evidence	What to look for	What it tells you
Management of Project	How do you intend managing this project?	Links to previous projects of a similar size, evidence of lessons learnt.	<ul style="list-style-type: none"> <li>• Consistency and coherence across different parts of the project.</li> <li>• Realism – is the communication strategy realistic, does it take into account risks?</li> <li>• Who is leading the project, and are they autonomous from the Company or is there a lot of Company input?</li> <li>• What is the Management Structure, how many levels are there?</li> <li>• How easy is it for the Manager to make key decisions?</li> </ul>	It tells you about potential issues with Managing the Project.
Consortium / Special Purpose Vehicle (SPV)	How will the Consortium / SPV be managed?	Management Plan.	<ul style="list-style-type: none"> <li>• Is there coherency / interaction between different companies?</li> <li>• What is the balance of power between each of the companies, do they have 1 vote per company, 1 vote per £ invested or is one the prime with the power to veto?</li> </ul>	If there is lack of coherence between the parties and it is unclear how decisions are made there is an increased risk the requirement may not be delivered?
Communication	Provide an example of current communication channels.	Communication Plan, examples of how managed in previous projects and links to lessons learnt.	How will effective communication and information management be facilitated, e.g. Shared Data Environment?	Tells you about communication. Good communication and data sharing increases the chances of success.

Topic	Question	Evidence	What to look for	What it tells you
Retention of staff	How will you ensure retention of suitably SQEP (Skilled, Qualified and Experienced Personnel)?	Figures of staff turn over, a retention plan and a plan for building the skills of existing staff.	<ul style="list-style-type: none"> <li>• Is there the average expected turnover for their area of the country and Industry?</li> <li>• How will they build the skills of staff and are there any plans on retention?</li> </ul>	Staff that are invested in tend to remain loyal to a company, this increases the chance of success of the project.
Skills Transfer	How will you transfer skills to the Ministry of Defence?	A plan for building the skills of MOD staff.	<ul style="list-style-type: none"> <li>• How will the tenderer transfer skills to the MOD?</li> <li>• What plans do they have, is it limited to training on the job or more detailed transfer, how will they measure success?</li> </ul>	Gives an indication of how the MOD may become an intelligent customer and detailed responses give an idea of success.

## Sample Evaluation Criteria – Soft Issues

Topic	Question	Evidence	What to look for	What it tells you
Soft Issues	How will your communications foster a partnering culture?	Communications plan, mature communications network within the organisation.	Communications are managed strategically, and open communications are part of everyday business life. The tenderer is open to joint communication and single, coherent messages.	Recognition that effective collaborative relationships depend on excellent communications.
Soft Issues	What is the attitude of your organisation to Open-book accounting?	A commitment to share all information relevant to the project.	Evidence may vary from awareness that Open-book is important to building relationships to the offer of full Open-book coupled with previous experience of operating such a policy	Open-book accounting is a benchmark issue in co-operative relationships. It gives visibility to closely defined commercial parameters in all parties, and is a trust-builder.
Soft Issues	What is your organisation's attitude towards change?	A managed process for allocation and mitigation of all events (unpredictable and forecastable) that impact on risk allocation.	<ul style="list-style-type: none"> <li>• Need for change is well received.</li> <li>• Change strategy in place.</li> <li>• Change is actively encouraged and pursued.</li> <li>• Considered essential to a relationship with the MOD.</li> </ul>	Recognition that change is a feature of relationships with the MOD.

Topic	Question	Evidence	What to look for	What it tells you
Soft Issues	What procedures are in place to foster a continuous improvement culture in your organisation relevant to the contract?	Procedures, a strategy, or evidence or development work.	<ul style="list-style-type: none"> <li>Proactive exploration of opportunities.</li> <li>Well developed and mature mechanisms in place.</li> </ul>	Commitment to continually seek better ways of working , reduce waste and improve the service to the end user are key to effective relationships.
Soft Issues	Please explain your understanding of the military ethos.	Developed understanding of the special nature of doing business with the MOD.	<ul style="list-style-type: none"> <li>Previous experience of working with the military.</li> <li>Policy of encouraging and supporting reservists within workforce.</li> </ul>	Tenderer understands how the contract supports defence.
Soft Issues	Explain how the offer provides solutions which enhance the capability of the MOD to meet objectives most effectively.	Commitment to customer focus, with evidence of MOD decision making processes.	<ul style="list-style-type: none"> <li>Understanding of MOD needs, MOD decision making process.</li> <li>Track record of having built enduring formal and informal relationships with MOD decision makers and significant personnel.</li> </ul>	Tenderer committed to customer focused relationship.

Topic	Question	Evidence	What to look for	What it tells you
Soft Issues	Please explain how your organisation's staff development policy is relevant to the project.	Human Resources (HR) and training policies in place.	<ul style="list-style-type: none"> <li>• HR policies in place to recruit and retain suitably skilled staff.</li> <li>• Dedicated training resources in place.</li> <li>• Development schemes in operation.</li> </ul>	Tenderer values and invests in workforce – contented staff work better.
Soft Issues	Please describe your organisation's Industrial Relations strategy, and how it contributes to the delivery of the project.	Formal procedures in place.	<ul style="list-style-type: none"> <li>• Formal or informal communication / consultation procedures in place.</li> <li>• Staff kept involved in progress.</li> </ul>	Risk of disruption from industrial relations is reduced.
Soft Issues	Please explain your organisation's approach to creativity and innovation.	Schemes and procedures in place.	<ul style="list-style-type: none"> <li>• Staff suggestion and reward schemes.</li> <li>• Evidence of innovation and improvements implemented.</li> <li>• Innovation and creativity part of tenderer culture and underwrites tenderers market position.</li> </ul>	Tenderer seeks and implements innovation.

Topic	Question	Evidence	What to look for	What it tells you
Soft Issues	Please explain how you will approach problem identification and notification.	Management strategy in place.	Processes in place for identifying and resolving problems.	Tenderer understands a basic principle for co-operative working.
Soft Issues	Please explain your approach to dispute mitigation.	Management strategy in place.	<ul style="list-style-type: none"> <li>• Phased approach to resolving disputes.</li> <li>• Litigation / legal involvement resisted.</li> <li>• Tenderer commitment to alternative dispute resolution and reconciliation.</li> </ul>	
Soft Issues	Please explain how your organisation's senior staff will become involved in the partnering relationship.	Demonstration of senior staff commitment and engagement.	<ul style="list-style-type: none"> <li>• Senior staff willingly demonstrate commitment to actively participate from the outset.</li> <li>• Culture of co-operative working encouraged.</li> </ul>	Senior executive commitment and leadership for co-operative working.
	Please describe your approach to co-operative working practices.	Commitment to co-operative working wherever possible.	<ul style="list-style-type: none"> <li>• Commitment to joint working practices.</li> <li>• Proactively seeks opportunities.</li> <li>• Open to co-location.</li> <li>• Commitment to BS11000 (or other) Relationship Management standard.</li> <li>• Use of SCRIA.</li> </ul>	Tenderer understands and invests in co-operative relationships.

Topic	Question	Evidence	What to look for	What it tells you
Soft Issues	Please describe your organisations approach to responsible corporate social responsibility.	Strategy or processes in place that address transparency, remuneration, accountability.	<ul style="list-style-type: none"> <li>• Systems in place for effective communication with shareholders, and other stakeholders.</li> <li>• Shareholders regularly engaged and involved.</li> <li>• Disclosure of remuneration and interests in annual reports / accounts.</li> </ul>	Demonstration of transparent business.
	Please describe how your organisation engages, involves and manages its supply chain, relating this to the contract in question.	Formal tenderer rating mechanisms, policy of early tenderer involvement.	<ul style="list-style-type: none"> <li>• Longer term relationships with key tenderers.</li> <li>• Co-operative relationships with tenderers.</li> <li>• Tenderers performance monitored and feedback is given.</li> <li>• SCRIA or other tools in evidence.</li> </ul>	Supply chain risks and vulnerabilities reduced. Tenderer demonstrates further commitment to collaboration.



## Annex H

### Tender Evaluation Panel (TEP) Sample Terms of Reference

Tender Evaluation Panel Member	
Role	Evaluate Tenders against the stated criteria.
Date of Tender Return	Tenders are due to the Tender Board on [Insert time and date due to tender board]. You can expect a copy of the tenders to be given to you within 2 working days of receipt.
Tender Evaluation Panel	The Tender Evaluation Panel will meet on [insert date] at [insert time] in [insert meeting room]. You must bring all details of your evaluation with you.

Procurement Background
Insert the following information: <ul style="list-style-type: none"><li>• Aim of the Procurement</li><li>• Procedure advertised under and how this restricts the evaluation</li><li>• Evaluation Strategy</li><li>• Any Evaluation Tools</li><li>• Date of Reverse Auction (if applicable)</li><li>• Whether it is part of an existing framework and any restrictions this will apply to the evaluation</li></ul>

Mandatory Requirements of the Panel Member
Before proceeding you must declare any relationship you have with any of the Tenderers to the Senior Commercial Officer (SCO), in accordance with the <a href="#">Civil Service Code</a> .
During the evaluation you must: <ul style="list-style-type: none"><li>• Not discuss your scoring with anyone else (especially other TEP members as it may influence their scoring);</li><li>• Make notes of why you have awarded the score you have, as this will form part of any Tenderer debrief. Any evaluation documentation is subject to the Freedom of Information Act, therefore you must record decisions accurately.</li></ul>
After the Evaluation you must not work for the successful Tenderers for at least 2 years after the evaluation took place.

### Conducting the Evaluation

- You can only evaluate the information that is within the Tender. You cannot include any information that is not stated in the Tender.
- You must not make assumptions, such as the ability for a Tenderer to transfer skills from one industry to another or people having certain skills.

**Project No:** [Insert Contract Number]

**Name:** [Name of Tender Panel Member]

**Post:** [Post of Tender Panel Member]

1. I acknowledge my duty of confidentiality owed to my employer concerning information received in the course of my employment as a Crown Servant. I also acknowledge my responsibility to perform my duties in support of the [Insert Contract Title] in a manner consistent with the Department's expectations of honesty and integrity in all those tasks connected with defence procurement in connection with those support duties.

2. I undertake not to copy, release, divulge or communicate, either in writing, orally or by any other means, any tender-related information of a commercially sensitive nature, whether or not it carries a protective marking, in particular any information relating to the tenders received or to recommendations made to senior staff or Ministers, to any person, firm or company without the authorisation of the Project's Commercial Officer. I will at all times have regard to others' need to know such information.

3. I understand that failure to comply with these terms of reference is a serious disciplinary offence.

4. This undertaking will remain in effect whether I am transferred from my present post, or leave Government service, and will continue to apply unless and until I am expressly released from its provisions in writing. In the event of my leaving Government service or transferring to a new post outside of the Project, I shall inform the Senior Commercial Officer and acknowledge I will no longer be entitled to receive or hold copies of the information concerned.

Name:

Signed:

Branch:

Date: