



Ministry
of Defence



[REDACTED]
DE&S Secretariat



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DESSEC-FOI@mod.uk



Defence Equipment & Support
Maple 0A, #2043
MOD Abbey Wood
Bristol BS34 8JH



28-Sep-16 Our Reference:
FOI2016/08287

Dear [REDACTED]

Thank you for your email of 5 September 2016 which requested the following information:

I write to request specific information concerning the legal arrangements for the provision of defence procurement services under Section 1 of the Defence Reform Act 2014.

During the course of written evidence, Public Bill Committees and readings of the Defence Reform Bill, repeated requests were made by interested parties for documents pertaining to the procurement procedure for the GOCO including any draft tender documentation, redacted, where necessary, to protect confidential and/or commercially sensitive information. There were indications that even if full tender documents could not be disclosed (which could prejudice bids at the time), more detailed information might be issued on the bids themselves in due course. I appreciate that certain of that information may continue to require protection pending a possible revival of the GOCO proposition as enabled under Section 1. However, for the purposes of my research, could you kindly:

- 1. confirm if any documents pertaining specifically to the unsuccessful procurement process (e.g. full contract notices, pre-qualification/qualification documents, tender documents etc) have been publicly disclosed/released and, if so, where these documents can be publicly accessed.*
- 2. provide a clear explanation of the precise legal bases on which the above information is or is not available.*

I am treating your email as a request for information under the FOI Act 2000. A search for the information has now been completed within the Ministry of Defence (MOD), and I can confirm that some information in scope of your request is held.

The only document published in relation to the Government Owned Contractor Operated (GOCO) procurement procedure was the contracts notice for “*the Materiel Strategy Programme – Contract for the procurement and management of defence equipment, support and logistics*”. This was published on Defence Contracts Online on 25 April 2013.

Defence Contracts Online is a public database which provides details of UK MOD contract opportunities. It is available at the following link: <https://www.contracts.mod.uk/>. For ease of reference, I have attached the text as it appears on the system.

With regard to your second question, the precise legal basis on which any requested documentation is disclosed or not disclosed is the Freedom of Information Act 2000 and the provisions contained therein.

If you are not satisfied with this response or you wish to complain about any aspect of the handling of your request, then you should contact me in the first instance. If informal resolution is not possible and you are still dissatisfied then you may apply for an independent internal review by contacting the Information Rights Compliance team, 2nd Floor, MOD Main Building, Whitehall, SW1A 2HB (e-mail CIO-FOI-IR@mod.uk). Please note that any request for an internal review must be made within 40 working days of the date on which the attempt to reach informal resolution has come to an end.

If you remain dissatisfied following an internal review, you may take your complaint to the Information Commissioner under the provisions of Section 50 of the Freedom of Information Act. Please note that the Information Commissioner will not investigate your case until the MOD internal review process has been completed. Further details of the role and powers of the Information Commissioner can be found on the Commissioner's website, <http://www.ico.org.uk>.

Yours sincerely,

A solid black rectangular box used to redact the signature of the sender.

DE&S Secretariat

FOI2016-08287 - MOD Contracts Notice extract

Notice Type: MOD Contract Notice

GB-Bristol: Materiel Strategy Programme - Contract for the procurement and management of defence equipment, support and logistics
Region Codes: UKK1

Section I: Contract Title

1. Contract Title: GB-Bristol: Materiel Strategy Programme - Contract for the procurement and management of defence equipment, support and logistics

Section II: Identification Numbers

1. MOD Contract Notice Nr: MatStrat0001

Section III: Relevant Dates

1. Deadline for Expression of Interest: 17/05/2013
2. Proposed/Estimated ITT Issue Date: 01/07/2013
3. Proposed/Estimated ITT Return Date: 24/02/2014
4. Proposed Issue Date of Contract: 17/09/2014
5. Proposed Completion Date of Contract: 18/09/2023

Section IV: Issuing Branch / Organisation Details

1. Notice Address

Materiel Strategy Team, DE&S
Maple 0c #2056, MOD Abbey Wood South, Stoke Gifford, Bristol, BS34 8JH, United Kingdom
Tel. 03067930035, Email: DESCMD-MatStrat-CommercialTeam@mod.uk
Contact: Head of Commercial Materiel Strategy, Attn: Mr Andrew Baker

Section V: Product / Service Descriptor Code

1. Industry Codes:
75220000 - Defence services.

Section VI: Summary of Requirements / Description of Work, Goods and Services

1. Summary of Requirements / Description of Work: Defence services. SUMMARY OF REQUIREMENTS / DESCRIPTION OF WORK

Background

Defence Equipment and Support (DE&S) is the part of the Ministry of Defence (MOD) that procures defence equipment, its support and logistics and manages that equipment and support through its life on behalf of the Secretary of State for Defence. A more detailed description of the activities and functions undertaken by DE&S is set out in the Contract Notice Supporting Document which will be provided to Interested Parties (potential Contracting Entities) upon request, once such a party has entered into a Non-Disclosure Agreement with the MOD.

Scope

Under the Materiel Strategy the MOD is proposing to let a Contract with a private sector Contracting Entity (Management Company) to: (i) own and operate on behalf of the MOD a limited company (Operating Company) into which certain services currently being provided by DE&S will be transferred together with the employees providing those services; and (ii) provide and improve the MOD's defence equipment, support and logistics acquisition services, enhancing business capabilities through processes, tools and skills, and controlling the management and operation of DE&S. The proposed approach offers a substantial opportunity to operate in a vital, demanding and high-profile role on behalf of the UK Government.

It is anticipated that any Departmental and wider Government roles currently performed by DE&S that can only be performed by the Government, as well as some existing services currently undertaken by DE&S, will be retained by the

MOD. Services currently provided by DE&S but expected to be initially out of scope include: DE&S services relating to Naval Bases, the Atomic Weapons Establishment, Defence Munitions and parts of Information Systems and Services. The scope of services required from the Contracting Entity will vary over time to reflect (a) programmes already underway to outsource components of the DE&S, such as the Logistics and Commodity Services (Transformation) programme, (b) any MOD in/out of scope considerations and (c) more general changes to the defence programme.

Presently DE&S has an annual expenditure of some £19Bn, which is roughly half (c.48%) of the current Defence budget and includes approximately £15Bn in contracting with industry for the procurement and support of equipment, a further £2Bn for logistics and other services provided to MOD and additional expenditure of £1.4Bn for its own manpower and operating costs. It is estimated that DE&S currently places 5,000 contracts per year of varying size and scope. DE&S also uses contractors from private industry to provide specialist support (for example, in engineering, safety and finance, to facilitate programme management or to deliver independent advice). Its workforce totals some 17,800 staff (77% civilian; 23% military). However, plans exist to reduce DE&S civilian and military workforce to approximately 14,200 staff by 31 March 2015.

Corporate Model

Subject to value for money, affordability and Government approval, it is currently envisaged that the Contracting Entity via the Operating Company will act as the MOD's agent for the provision of defence equipment, support and logistics acquisition services. The Operating Company may also, on a case-by-case basis and subject to MOD approval, be permitted to provide services to other Government organisations.

It is intended that the Operating Company, subject to certain delegated authority from the Secretary of State via a control framework in the Contract, will have the authority to tender for, award, agree, amend and terminate contracts on behalf of the MOD; manage, monitor and, enforce contracts; accept goods/services and authorise payments; and enforce other MOD contractual rights. The MOD will ultimately retain contractual obligations, liabilities and indemnities of the procurement contracts that the Operating Company is managing as MOD's agent. Defence acquisition programme costs (payments to suppliers) will not flow through the Contracting Entity or the Operating Company, but rather direct from the MOD to the industry supply chain following payment authorisation by the Operating Company.

The operating model is intended to be the Government Owned Contractor Operated (GOCO) model (described further in the Contract Notice Supporting Document) in which the appointed Contracting Entity owns 100% of the ordinary shares in the Operating Company into which the DE&S functions have transferred, only for the duration of the Contract. It is also intended that the Government would own a Special Share in the Operating Company on national security grounds. On expiry or termination of the Contract, the Contract, including the 'ownership' of the Operating Company, would be re-competed in the market place. The ordinary shares in the Operating Company would transfer to the successful new Contracting Entity in any such competition or to MOD if the competition is not successful. The final form of the Contract will be determined during the competitive process and may therefore differ from that described above.

Under this model, MOD expects that existing DE&S UK employed civilian staff will be transferred, in accordance with Transfer of Undertakings (Protection of Employment) Regulations 2006 to the Operating Company. Military staff will be provided to the Operating Company through secondment or other such arrangements as agreed, with safeguards to prevent conflicts of interest. It is envisaged that DE&S assets, initially required for the provision of the Contract will be made available to the Operating Company.

Implementation

The transfer of DE&S services would be carried out in three discrete phases: Transition, Transformation and Full Operation. Further information is provided in the Contract Notice Supporting Document.

Payment

More comprehensive details of the payment regime currently envisaged by the MOD will be provided as a supplementary note to the Contract Notice Supporting Document, which will be issued together with the Pre-Qualification Questionnaire.

Required Skills

The Contracting Entity will require, and will be required to demonstrate during the procurement process the capability and capacity to manage defence equipment delivery, equipment support, logistics and related services efficiently and effectively through-life to reflect demand. The Contracting Entity must also offer solutions that optimise decision-

making, provide value for money and are affordable. The Contracting Entity's competencies therefore need to include:

- Managing a very large professional acquisition programme management organisation;
- Business transformation;
- Project and programme management (including risk and stakeholder management);
- Engineering and technology management;
- Safety management;
- Logistics and inventory management;
- Investment case development;
- Procurement and contract management;
- Financial management;
- Human resource and talent management;
- Partnering;
- GOCO operation experience (or other similar models such as operating complex Public Private Partnership type arrangements).

Further explanation of the required competencies will be set out in the Pre-Qualification Questionnaire (PQQ).

Dependencies

Notwithstanding the above, the ability of the MOD to award the Contract will depend on putting in place the appropriate legislation and full business case approval. The scope and nature of the proposed Contract may therefore need to vary from that described above to accommodate any requirements arising from such dependencies.

DURATION OF THE CONTRACT

An initial nine-year base term, which would comprise:

- three-six months for transition;
- Approximately two years transformation of the initial scope transfer (including another three-six months transition relating to the remaining scope);
- Remaining term, Full Operation (including approximately two years transformation for the remaining scope).

Options to extend this term may be required by the MOD and will be communicated in the Invitation to Negotiate.

CONDITIONS RELATING TO THE CONTRACT

Details of the main conditions relating to the Contract will be set out in the Invitation to Negotiate.

Legal form to be taken by the group of Economic Operators to whom the contract is to be awarded: Potential Contracting Entities will need to demonstrate a broad range of experience and competencies. In order to do this, potential Contracting Entities may elect to form a consortium. Where the Contract is awarded to a consortium, each consortium member will be required to assume joint and several liability for the performance of the Contract. In order to safeguard UK national security the Contracting Entity and the Operating Company must be UK registered and the Contract will only be awarded to a UK registered legal entity.

Other particular conditions to which the performance of the Contract is subject, in particular with regard to security of supply and security of information: Other particular conditions will be set out in the Invitation to Negotiate but it is anticipated that certain posts can only be filled by suitably security cleared UK nationals.

NATIONAL SECURITY

In order to safeguard UK national security the Contracting Entity and the Operating Company must be UK registered and the overwhelming majority of the Contract shall be performed in the UK. In addition there are restrictions on passing information to parent companies. Potential Contracting Entities will need to satisfy MOD that they can meet the national security restrictions which will include a number of areas where only UK nationals can have access to information.

As the MOD expects that most of the existing DE&S staff will transfer to the Operating Company, and will continue to be subject to maintaining security clearance, the principle area of concern will be new staff introduced by the Contracting Entity. Not all staff will be required to be UK nationals, however, some restriction will be mandated including potentially some Board level positions.

The applicable conditions will be set out in the Invitation to Negotiate.

SUPPLIER SELECTION CRITERIA

Potential Contracting Entities will be selected to negotiate on the basis of (a) their eligibility; (b) their economic and financial standing; (c) their ability to manage any conflicts of interest, actual or potential, that may arise either during the procurement process or in the operations phase following their appointment; (d) their ability to process store and transmit classified information, security of supply and dealing with intellectual property; (e) their demonstrable capacity to perform a Contract of this scope and scale; and (f) their capability to manage defence equipment delivery, equipment support, logistics and related services. Relevant information and formalities will be set out in the PQQ and will include the criteria applied to the selection of potential Contracting Entities.

However, interested parties should note that Conflicts Of Interest (COI), perceived, actual or potential, are a key concern. In particular, COI could arise where normal conditions of competition (including for this competition and for any future procurement for defence equipment, its support or logistics undertaken by the Contracting Entity (or possibly another part of the MOD)) are distorted as a result of bidding for and winning the Contract. The MOD will not place any COI restriction on who can express an interest in the Contract or be invited to submit a PQQ. However, the MOD will test for COI at the PQQ stage where MOD (at its sole discretion) will determine which potential Contracting Entities do or do not have perceived, actual or potential COI. COI will continue to be monitored and managed throughout the procurement process and for the duration of the Contract. Details of the MOD's approach to COI are set out in the Materiel Strategy Conflict of Interest Requirement document which will be provided together with the Contract Notice Supporting Document subject to potential Contracting Entities having entered into a Non-Disclosure Agreement.

The MOD plans to make the PQQ available to potential Contracting Entities, subject to signature of a Non-Disclosure Agreement, from 03 May 2013. The deadline for submission of completed PQQ responses is 12.00 hours on the 14 June 2013 and will not be extended. While PQQ evaluation will comprise two-stages, the MOD reserves the right – subject to the number and nature of PQQ responses – to select potential Contracting Entities based on the first stage only within a target duration of two weeks. If the second stage is required the evaluation process will take longer than two weeks.

CONTRACT AWARD PROCESS

Phased procurement process under an exemption from the application of the Defence and Security Public Contracts Regulations (DSCPR) 2011. Full details will be provided with the Invitation to Negotiate. The MOD reserves the right to reduce the number of solutions and/or potential Contracting Entities during the negotiations prior to the selection of a preferred bidder.

LIMITATIONS ON THE NUMBER OF OPERATORS WHO WILL BE INVITED TO TENDER / PARTICIPATE

Envisaged number between two and five although the MOD reserves the right to invite a greater number.

MOD will choose a sufficient number of potential Contracting Entities to ensure genuine competition. Further details are provided above (Supplier Selection Criteria) and will be set out in the PQQ.

AWARD CRITERIA

The decision to award the Contract is predicated on whether any proposals are considered by the MOD to (a) be the most economically advantageous (when compared against each other and a Value for Money Comparator); (b) be affordable; and (c) on condition that any necessary primary legislation has achieved Royal Assent. The specific criteria against which bids will be assessed will be set out in the Invitation to Negotiate.

The MOD reserves the right not to award any Contract as a result of the procurement process, including, but not limited to, if the proposals are not deemed value for money or if the proposals fail to meet the MOD's requirements.

ADMINISTRATIVE INFORMATION

All responses and involvement in the procurement process are at the respondees' discretion. No bid costs will be payable or reimbursed to respondees. Potential Contracting Entities are referred to the Important Notice, of the Contract Notice Supporting Document for further information in this regard.

ADDITIONAL INFORMATION

The MOD may use AWARD to assist in the management of the PQQ evaluation process and/or any subsequent Tender

Evaluation.

Potential Contracting Entities, subject to formally having expressed an interest, are invited to attend an industry event during the week commencing 20 May 2013 (the date, time and venue is subject to confirmation). At the event speakers from MOD will present key aspects of the DE&S transformation and on the Contract procurement process. Attendees will be invited to submit questions ahead of the event which will be answered in an open forum on a non-attributable basis. Please register for the event by e-mailing DESCMD-MatStrat-CommercialTeam@mod.uk by no later than 23:59 hrs 17 May 2013. Please note potential Contracting Entities may be asked to restrict numbers of attendees depending on the level of interest for the event.

The dates set out in this Contract Notice (including the industry event) are provisional and MOD may alter the timetable or alter or terminate the procurement process in any way at its sole discretion and without prior notice. Potential Contracting Entities are referred to the Important Notice, of the Contract Notice Supporting Document for further information in this regard.

2. Main Place of Performance or Delivery: Gloucestershire, Wiltshire and Bristol/Bath area

3. Can a supplier bid alone for only a part of the contract?: No

Section VII: Reverse Auction

1. Reverse Auction: No. A Reverse Auction, conducted using electronic means, will not be used as part of the procurement process for this requirement.

Section VIII: Estimated Value of Requirement

1. Estimated Value of Requirement: Category A: 400M GBP and above

Section IX: QA Standards

1. QA Standards: Other

2. If Other please specify: Further details on any QA Standards will be provided in the Invitation to Negotiate.

Section XII: Additional Information

1. Additional Information:

Suppliers interested in working with the MOD should register on its Supplier Information Database (SID), available at www.contracts.mod.uk. The SID is a catalogue of potential suppliers available to all MOD procurement staff, and is the main supplier database used by MOD. Please note that the registration and publication of a company profile on the SID does not mean or imply that the supplier has in any way been vetted or approved by the MOD. Suppliers wishing to compete for a contract opportunity must respond to any specific call for competition by submitting a separate expression of interest in accordance with the instructions in the contract notice.