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- Ensuring compliance with disposal requirements;
- Discharging safety and environmental responsibilities if selling the equipment on to a third party.

Corresponding Advice:

- Produce a comprehensive disposal plan at an early stage of the project. Use and maintain it to ensure that any relevant issues are taken into account when negotiating the original contract.
- Assume that the UK will have to dispose of its equipment and ensure sufficient funds to do so are in place. These funds should also allow for changes in disposal legislation. To do so it will be necessary to:
  - Maintain safety and environmental legislation registers;
  - Update and maintain the disposal plan.
- If planning to sell equipment, the MOD must understand its legal obligations to provide safety and environmental statements and data for the equipment. The MOD may also have a duty of care as an equipment supplier. These obligations should be captured in the safety and environmental legislation registers.
- If selling the equipment onto provide clear limitations on how the equipment is to be used.

**(c) Supplementary Guidance for Public Private Partnerships and Private Finance Initiative projects**

Public Private Partnerships (PPPs) are partnerships that bring together, for mutual benefit, a public body and a private company in a long-term joint venture for the delivery of high quality public services. PPPs cover a wide range of different types of contractual and collaborative partnerships including Private Finance Initiative (PFI) projects. A PFI project is a project that involves the public sector contracting to purchase quality services with defined outputs, from the private sector on a long term (typically 25 years) basis, and including maintaining and constructing the necessary infrastructure so as to take advantage of the private sector management skills and incentives by having private finance at risk.

Potential differences in areas such as the balance of shared MOD/contractor safety and environmental responsibilities, contracting methods, information flow and the use of civilian staff in the military environment requires the intelligent application of POSMS and POEMS to PPP and PFI Projects.

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There are different types of PPP and PFI projects, each with the potential for different permutations of:

- MOD/Contractor equipment and facility ownership; and
- MOD/Contractor interaction in providing the service.

As such, it is not possible to apply a common prescriptive process to ensure the appropriate safety and environmental management of PPP and PFI projects. This additional guidance aims to provide advice in applying POSMS and POEMS to PFI and PPP Projects.

**(c.1) Safety and Environmental Responsibilities May Hinder a Total ‘Hands Off’ Output Specification Approach (SMP 01 and EMP 01)**

Possible Issues:

In many instances with PPP and PFI contracts, the IPTL will be aiming to contract for a service based upon an output specification and not define the way in which the Service Provider will achieve the outputs. Such an approach allows the Service Provider room for innovation and freedom in fulfilling the contract. However, there is potential that safety and environmental regulations can constrain this approach. Depending on the project circumstances, the IPTL is or can be:

- The representative of the organisation who instigated the work; and/or,
- An ‘intelligent customer’.

As the IPTL will retain overall responsibility for safety and environmental performance, he/she will need to be sufficiently involved with, and informed of, the Service Provider’s competence, procedures and practices to satisfy him/herself that all the safety and environmental issues associated with the project are being adequately addressed.

Corresponding Advice:

The IPTL is to establish as early as possible his/her safety and environmental management responsibilities and what actions are to be taken in order to discharge these responsibilities. It is recommended that:

- The IPTL consults with appropriate System Safety Groups, regulators, and legal advisors in order to establish:
  - The IPTL’s safety and environmental management roles and responsibilities;

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- The extent to which the IPTL can transfer safety and environmental activities to the Service Provider. Whilst ownership of safety and environmental risks should be transferred to other parties best placed to address them (such as the Service Provider), overall responsibility will still reside with the IPTL. Even if direct risk can be transferred, the consequent reputational risk from an incident will remain with the IPTL, and may be influenced by public perceptions of PPP/PFI projects and private sector priorities;
- If the risk owner has the correct skill set to hold any delegated authority;
- The extent of assurance activities that an IPTL has to undertake in order to discharge his/her responsibilities. Here, over and above meeting any legal requirements, the IPTL should consider a risk based approach where oversight and assurance activities focus on those aspects of the service provision that pose the greatest safety and environmental risks;
- The division of safety and environmental work, obligations and authority between the IPT and the contractor, on issues such as:
  - Holding and updating the safety and environmental case documentation;
  - Authority to make ALARP decisions for hazards of different risk levels;
  - Obligations under environmental Duty of Care legislation regarding waste;
  - Planning for and undertaking continual review of the effectiveness of operational controls.
- Decisions are formally recorded and reflected in the IPT Safety and Environmental Case Reports, Strategies and Plans.

**(c.2) Interaction of Civilian and Military Equipment, Personnel, Procedures and Facilities will be complex (SMP 01 and EMP 01).**

Possible Issues:

PPP/PFI Service Provision Contracts can involve:

- The interaction of civilian and military equipment, personnel, procedures and facilities;

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- Contractor personnel undertaking activities that were once undertaken by MOD personnel;
- Activities that are undertaken under a mix of military and civil regulatory regimes.

Corresponding Advice:

- Define and document the detailed boundaries between civil and military operations and manage the interfaces between the two.
- Do not underestimate the effort and resources required to define the interfaces between the contractor and the MOD. The overarching interface between the stakeholders is to be recorded in the project safety and environmental management systems.
- Potential safety and environmental risks may be reduced if interface issues can be addressed early in the project life, for example via Customer Supplier Agreements (CSAs), Service Level Agreements (SLAs) and Internal Business Agreements (IBAs).
- Engage early with Defence Estates (DE). Failure to do so may result in breach of environmental-related planning law.
- The hazard assessment process should give consideration to the safety risks that result from civilians working in a military environment.
- Ensure that the IPT and the contractor thoroughly understand all aspects of the service to be provided and the environment in which it is to be provided. Be wary of contractor over-optimism in taking on responsibilities that they are not able to discharge. Ownership of risks should be transferred to the organisation best-placed to address them; however, the IPTL will retain overall responsibility for safety and environmental performance.
- It is good practice to allow bidding contractors access to relevant MOD stakeholders to ensure that they have good understanding of what they are being asked to do. However, it is important that the IPT manages and controls the communication of information between the contractors and other MOD stakeholders. During a tender process, MOD must ensure that the same information is given to all potential bidders.
- Do not assume that MOD exemptions will apply to contractors undertaking activities. MOD exemptions apply only to MOD staff and organisations; they do not apply to contractors.

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- The draft contractual requirements should be informed by safety and environmental assessments and reviewed by all appropriate stakeholders and against other stakeholder requirements as defined in the interface management documents to ensure coherency and consistency.
- At some point in the project life cycle, the immediate responsibility for managing the use of the equipment and services may transfer to the front line command chain of command. Include front line commands in an up-front stakeholder engagement process, and in particular ensure that they are involved in the hazard identification and analysis and in the environmental and risk assessment process to ensure that mitigations are actually achievable on the ground.
- Ensure that IPT and Contractor Safety and Environmental Management Systems agree and document how other line of command issues are to be addressed, such as:
  - How civilians are to respond to orders from military personnel, especially if the order is to operate equipment outside the safety and environmental case limitations or if emergency procedures rely on execution of commands;
  - How military personnel are to work under civilian instruction;
  - Who has overall jurisdiction/liability/responsibility for the activities.

Note that legal health and safety obligations between the employee and the employer will continue to be applicable.

**(c.3) The Contract Must Include Safety and Environmental Requirements to De-Risk the Project (SMP 10 and EMP 06).**

Possible Issues:

- Some PPP/PFI and Provision of Service Contracts can extend over a lengthy period. Requisite standards of safety and environmental management have to be established and maintained.
- It is unlikely that necessary safety/environmental activities or information requirements omitted from the original contract will be undertaken or satisfied at no extra cost to the IPT.
- Variations to contract post-award can be disproportionately expensive. It is much better to plan ahead to ensure that the contract adequately covers all assessment, management and assurance obligations.

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- The contractor may employ various levels of sub-contractor who may or may not conform to the prime contractor's required standards.

Corresponding Advice:

- Any potential contractor can be asked to demonstrate their performance in EMS and SMS by completing a Pre-Qualification Questionnaire (PQQ). It is also considered good practice to perform a PQQ for single source contracts.
- It is important that the IPT has clearly identified the Safety risks and Environmental impacts/risks at an early stage to ensure they understand the extent of management and assurance they will require from a potential contractor.
- Any contract should clearly stipulate exactly what is required but not how the contractor should produce it. The IPT may contract for the production of an EMS and SMS or simply the required components in order to produce their own. However, the contract may include provisions for the MOD to agree/endorse contractors' plans as to how particular activities are to be undertaken.
- ISO14001 is a recognised standard for environmental management of an organisation. However, it does not necessarily provide assurance that environmental risks are being well managed. Placing ISO14001 requirements on a contractor will not go as far as satisfying the IPT's obligations under POEMS. ISO14001 should not be used as a general requirement on contractors without suitable consideration of the implications, shortcomings and supplementary provisions necessary.
- For projects that involve new acquisitions made by the contractor, put in place a mechanism to ensure a consistent flow down of contractual and sub-contractual requirements such that they adequately and comprehensively reflect the IPT, contractor and sub-contractor safety and environmental obligations.
- The contract should include a requirement stipulating the level of safety performance to be achieved.
- Ensure that correct sub-contractual arrangements are set in place and in particular that appropriate safety and environmental contract clauses and requirements are flowed down to sub-contractors. Where possible encourage the prime contractor to use Def Stan 00-56 in sub-contracts.
- Ensure suitably qualified and experienced personnel review draft safety and environmental contract clauses.

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**(c.4) The Contract Must Include Safety and Environmental Requirements (continued) (SMP 10 and EMP 06).**

Possible Issues:

- IPTL will have through-life safety and environmental responsibilities.

Corresponding Advice:

- Continual Review Arrangements: - it is recommended that the contract allows for review of the effectiveness of operational controls early after the contract is placed or in the service provision and, if necessary, the implementation of remedial changes. Revised safety and environmental assumptions or operational changes (like using equipment in a different operational theatre to that originally intended etc.) should trigger review of operational controls.
- To ensure the provision and transparency of contractors' processes, the IPT should consider including contract clauses to giving them the right to see any information (including inspection and audit of activities) deemed necessary to satisfy the IPTL that his/her safety and environmental responsibilities are being satisfied.
- The review mechanism defined in a contract depends largely on the nature of the project itself. MOD has mandatory safety and environmental reporting procedures. Requirements for safety and environmental committee meetings should ensure review of safety hazards and environmental impacts/risks.
- Ensure that the contract allows for IPT access to the contractor and sub-contractor facilities and records for audit purposes.
- Ensure that the contract comprehensively captures all necessary safety/environmental activities or information requirements, such as:
  - The safety and environmental activities to be undertaken by the contractor;
  - Information to be delivered in the correct format and in a timely manner to other stakeholders who have safety or environmental management and assurance responsibilities;
  - Access to contractor documents and facilities for audits and reviews.

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