

# Grand Challenge

## Commercial Proposal

### COMMERCIAL PROPOSAL (Group 1 only)

1. There are two key parts to the Commercial Proposal required.
2. Firstly, **unequivocal acceptance of the proposed contract terms and conditions** (as included in the Grand Challenge Contract Template included in the Grand Challenge website), particularly those associated with Intellectual Property Rights – Defence Conditions (DEFCONs) 531, 632, 705 and Condition 9).
3. Secondly, a **“fair and reasonable” (but keen) price** for the programme is being offered.

### CONTRACT TERMS AND CONDITIONS

#### Introduction

4. Included in the Grand Challenge website is a draft contract document template. The intent of this template is that it should normally be the form in which the Authority contracts participants against the Grand Challenge proposals which have been selected by the Assessment Panel as deserving Group 1 funded research contracts under this initiative.

5. The contract template has been deliberately drafted in as simple a form as is possible, to reflect the nature of the work envisaged, the likely total value and the participants we envisage undertaking such studies. Notwithstanding this, the Authority reserves the right to consider alternative or additional contractual provisions if individual circumstances dictate. Any such alternative provisions will be mutually agreed with the relevant tenderer prior to contract award.

#### General

6. The MoD has agreed a number of standard conditions with industry entitled Defence Conditions (DEFCONs). These are intended to simplify the contracting process, especially where the DEFCON covers issues associated with UK legislation or a simple process issue. Many of these DEFCONs are mandated for MoD contracting, whilst others are applied where a specific need arises. All have been agreed, centrally by MoD, with industry and are in common usage in MoD contracting.

7. In constructing the Grand Challenge Contract Template, an attempt has been made to significantly reduce the number of DEFCONs applicable to the Grand Challenge – a list detailing those applicable to the Grand Challenge is included in the web-site. The majority of these DEFCONs are relatively straightforward in terms of their applicability. Full guidance on the specific DEFCONs listed can be found in the “DEFCON Series” and “Conditions Guide” under the DEFCONs tab on the following link:

<http://www.ams.mod.uk/ams/content/docs/toolkit/index.htm>

8. Brief details on the most significant DEFCONs are detailed below:

Contractor's Personnel at Government Establishments (DEFCON 76)

a. This DEFCON applies to a situation where the contractor may be required to carry out the work (or some portion of it) at a government establishment. The provisions of this Defcon will be required to cover the contracted Grand Challenge Teams for their participation at the trials to be held at Copehill Down. The provisions of Defcon 76 may also apply to other aspects of the contracted bids.

Failure of Performance (DEFCON 92)

b. Allows for termination of the contract if it is unlikely to be or has not been satisfactorily completed within the specified period, subject to payment of a fair and reasonable price (excluding profit) for authorised work and commitments. The Authority does not normally invoke this provision without first consulting the contractor on the relevant deficiencies and allowing an opportunity to correct such deficiencies or otherwise recover the programme of work.

Price Fixing Condition for Contracts of Lesser Value (DEFCON 127)

c. Sets out information the contractor is required to provide to ensure a fair and reasonable price can be agreed. The condition facilitates agreement of prices in contracts and for any subsequent amendments to the contract of lesser value.

Law (English) and Dispute Resolution (English Law) (DEFCONS 529 & 530)

d. Provides for the contract and dispute resolution (respectively) to be governed by English Law.

e. If a tenderer is registered in Scotland and would wish for Scots Law to apply then DEFCONS 529A and 530A (respectively) would apply instead. Tenderers must formally request the application of Scots Law in their tender proposals and provide evidence of their registration in Scotland.

Radio Transmissions (DEFCON 607)

f. Requires the contractor to obtain a licence before making transmissions. The contractor must obtain approval from the acquisition team for the frequencies to be used.

g. Tenderers should advise in their tender proposals if this is likely to be applicable or not.

Customs Duty Drawback (DEFCON 619A)

h. Provides for the contract price to be inclusive of any UK Customs and Excise or other duty payable.

Break (DEFCON 656)

i. Allows MOD unilaterally to break the contract.

j. Whilst DEFCON 656 is not usually included in research and study contracts of low value and short duration, where there is no intention to extend such contracts, clearly the Grand Challenge initiative is likely to involve the award of contracts which are of a longer duration

and higher value. The application of this provision will be applied on a case-by-case basis and, whilst the Authority is prepared to consider representations from tenderers on the applicability (or otherwise) of the DEFCON to a Grand Challenge contract, the decision of the Authority is final.

k. The contractor is required to ensure a period of notice that accords with the provisions of this DEFCON is flowed down to the subcontractors/suppliers.

#### Intellectual Property Rights Research and Technology (DEFCON 705 (Edn 11/02))

l. The normal arrangements, under UK Government policy, for research work funded from the public purse is that the research provider owns the Intellectual Property Rights (IPR) in the results – subject to the grant of a licence to the funding department for use of the results.

m. The MoD follows this policy and details the IPR arrangements in DEFCON 705 - Intellectual Property Rights – Research and Technology.

n. DEFCON 705, amongst other things, states that foreground IPR (i.e. that created under the funded contract) vests in the Contractor (the research provider - as he is best placed to exploit it) and details the circumstances under which the MoD is granted use of the IPR.

o. Whilst there are other IPR arrangements (DEFCON 703 and the Design and Development IPR suite – DEFCON 14, 15, 90 & 91) these are not considered appropriate to the Grand Challenge initiative and, in view of this, the MoD intends that all contracts awarded, as a result of Grand Challenge, shall be subject to DEFCON 705.

## **INTELLECTUAL PROPERTY**

9. It is a requirement that all technical deliverables, detailed in Proposals by Tenderers, shall be “Full Rights Versions”, in accordance with DEFCON 705 Sub-Clause 1.d. However, Tenderers may make representations if they consider that this will require the provision of significant proprietary background information which should not be provided within a Full Rights Version. If this should be the case, a detailed breakdown of the relevant background information should be provided. Tenderers are required to explicitly state, in their tender proposals, their compliance (or otherwise) against this requirement. If agreed by the Authority, any proprietary information shall be included within an additional Limited Rights version of the technical deliverable, in accordance with DEFCON 705.

10. The Authority shall require, in accordance with Clause 4 of DEFCON 705, that sub-contractors sign a DEFFORM 177 - Design Rights and Patents (Sub-Contractors) Agreement. A copy appears at Annex 2. Tenderers shall confirm that their sub-contractors would be prepared to enter into such an agreement. This Agreement will be required when a sub-contractor is to retain ownership of the IP generated under the sub-contract. It will not be required where the prime contractor will acquire sole ownership of the IP generated under the sub-contract. The Authority does not wish to mandate the ownership of IP between the contract/sub-contract parties.

11. Further details on the provisions of DEFCON 705 itself, guidance on its usage and other IPR issues can be accessed on the MoD's Acquisition Management System (AMS) / Contracts Toolkit website:

<http://www.ams.mod.uk/ams/content/docs/toolkit/index.htm>

12. Tenderer's proposals shall clearly state their **unequivocal acceptance of the terms and conditions contained in the Grand Challenge Contract Template**. If, for any reason, there are areas of non-compliance on this issue proposals must provide full supporting reasons, for the non-compliance, for the Authority's consideration.

**PRICE**

13. The Authority requires that all prices quoted for Grand Challenge proposals shall be on the basis that they are Firm (non variable). That is to say prices quoted are not subject to the effects of escalation or exchange rate variation.

14. Tenderers will appreciate that both technical merit, innovation and value for money will be amongst the deciding factors in selecting successful proposals under the Grand Challenge initiative. Technical merit will be determined by way of the Tender Assessment Criteria detailed in the Grand Challenge website. The overall assessment process will, additionally, take into account value for money considerations.

15. To aid the consideration of 'value for money' prices must be supported by a full cost breakdown in the form of the table below:

Grand Challenge – Proposal Price Breakdown

*All figures in £ (VAT Excl)*

	FY 07/08	FY 08/09
Direct Labour effort ( <i>man-hours*/man-days*</i> ) ***		
Direct Labour costs (@ £... per man-hour/day **) ***		
Travel & Subsistence ( <i>please specify if over 2% of total cost</i> )		
Subcontracts ( <i>please specify</i> )		
Bought-in Items ( <i>please specify</i> )		
Other Costs ( <i>please specify</i> )		
Total Cost		
Profit		
Total Firm Price		

\* Delete as applicable

\*\* Insert labour cost per man-hour or man-day as appropriate to tenderer's costing structure

\*\*\* If more than one grade of labour effort is applicable then Direct Labour effort and Direct Labour costs rows should be expanded to detail these separately

16. The Authority expects all quoted labour rates to be competitive and, where a tenderer has agreed MoD rates, they should not exceed those rates agreed with the UK MoD Pricing and Forecasting Group (PFG). Consequently, in the case of the latter, proposals shall be supported by evidence that they do not exceed labour rates already agreed with the UK MoD. In addition, year on

year escalation factors (used to generate future years labour rates) are to be detailed in tender responses, with supporting statements if they exceed the current normal levels assumed (of the order of 2% p.a.)

## PAYMENT

17. The Authority's normal policy is to make payment on the satisfactory completion of all work under a contract. In this respect, contracts awarded as a result of the Grand Challenge initiative are no different – see Contract Template Condition No 5.

Further details are available in the AMS/Contracts Toolkit :

[http://www.ams.mod.uk/ams/content/docs/toolkit/content/topics/int\\_pay.htm](http://www.ams.mod.uk/ams/content/docs/toolkit/content/topics/int_pay.htm)

18. The AMS/Contracts Toolkit goes on to state that the Authority is prepared to consider payment of advances against the contract price during the course of the contract where the proposed contract is of a sufficiently long duration or high value that would put an unsustainable financial burden on the contractor. It indicates, as a guide, contracts in excess of 12 months or more than £250K in value.

19. However, the Authority is cogniscent of the nature of the work being solicited under this Grand Challenge initiative and the possible status of some of the tenderers who may provide proposals in response. In view of this, the Authority is prepared to consider requests for advances against the contract price, in cases which are below the above stated thresholds, but only where there is a demonstrably stated financial case for so doing. Tenderers wishing to make such a case must provide thorough and comprehensive reasoning in their proposals.

**Tenderers, requesting advances against the contract price, must explicitly state their unequivocal acceptance of the replacement contract conditions and annexes (attached at Appendix 1) in addition to that given in response to paragraph 12 above.**

20. In addition, tenderers must propose a stage payment plan **supported by a detailed expenditure profile in tabular form** i.e. effectively breaking down the financial year totals provided in the Proposal Price Breakdown (detailed at paragraph 37 above) into projected monthly expenditure figures. The stage payment plan must provide clearly defined and achievable work stages and payments, by which satisfactory progress can be measured and confidence of timely and satisfactory completion progressively built up. Payment related milestones should be key activities leading to achievement of the programme and should ideally be on the critical path of the programme. In addition, tenderers shall propose dates (in the form X months from start of contract (T<sub>0</sub>)) for when the stage payments could be expected to fall due, given satisfactory performance under the contract. If agreed by the Authority, these stages and payments will be used to populate the proposed Annex F (above).

21. In generating their Milestone Payment Proposals tenderers shall comply with the following:

- a. **The Authority will not pre-fund any expenditure.** Consequently, all milestone payment claims must not include costs that have not been incurred by that point in time.
- b. No more than 4 to 6 Milestone Payments are to be proposed per annum.
- c. The last payment, entitled “Satisfactory completion of all work under the Contract”, shall be 20% of the total quoted Firm Price.

## **DOCUMENT MARKINGS OF CONTRACT DELIVERABLES TO MOD**

22. It is a requirement of DEFCON 705 (Clauses 17 & 18) that Technical Deliverables are marked in an appropriate manner to make clear ownership of IP rights, consistent with the Authority's rights of use. To ensure consistency of approach, attached at Appendix 2 (to this Guidance Note) are draft document markings for Technical Deliverables.

23. Tenderers shall detail, in their tender proposals, whether they are agreeable to using the draft Document Marking Scheme (attached) or whether they propose an alternative marking regime which, nevertheless, is compliant in principle with the attached draft. Drafts of such alternative regimes must be provided as part of tender responses.

## **GOVERNMENT FURNISHED ASSETS**

24. Government Furnished Assets (GFA), whether they be Government Furnished Equipment (GFE), Government Furnished Facilities (GFF), Government Furnished Information (GFI) or Government Furnished Resources (GFR), are government owned assets which are loaned (on a free of charge basis) to a contractor to assist in the completion of the contract. The provision of GFA, by the Authority, is not granted lightly and is only undertaken where there are substantial and pressing reasons for so doing (e.g. where financial or quality benefits would accrue as a result of utilising GFA).

25. The Authority recognises that access to Copehill Down, for the purposes of the reconnaissance visit (Summer '07) and the Finale (July '08), will be a GFA requirement and has, consequently, included the appropriate GFA provisions (Defcons 601, 611 and 694, Condition 10 and Annex E) for this purpose. However, it does not believe that additional GFA is likely to be a requirement for a Grand Challenge contract. That said, if a tenderer has a demonstrable need for further GFA this should be detailed in the proposal (as additions to Annex E), together with a robust supporting case.

Further details can be found in the AMS/Contracts Toolkit:

<http://www.ams.mod.uk/ams/content/docs/toolkit/content/topics/gfa.htm>

## APPENDIX 1 TO GRAND CHALLENGE – COMMERCIAL PROPOSAL

### Contract Changes Necessary to Accommodate Stage Payments

If Stage Payments are agreed for the purposes of a Grand Challenge contract then the following changes in contract conditions apply:

i) the following DEFCON applies:

“DEFCON 649 (Edn 07/99) - Vesting”

ii) the following Stage Payments Condition (in place of the existing Condition 5 – Payment) applies:

#### **“5 STAGE PAYMENTS**

5.1 The Authority shall, subject to the following provisions of this Condition, make to the Contractor advances against the Contract Price payable for Item 1 in accordance with the Stage Payment Scheme set out in Annex F to the Contract.

5.2 The Contractor shall be entitled to advances against the Contract Price, to be requested in accordance with DEFCON 522, in respect of the satisfactory completion or performance of each stage under the Stage Payment Scheme. The Contractor shall have satisfactorily completed or performed each stage under the Stage Payment Scheme when:

5.2.1.1 the Contractor has completed all work comprised in the stage for which the stage payment is sought; and

5.2.1.2 the stages have been completed sequentially unless otherwise agreed between the parties; and

5.2.1.3 the Contractor shall have complied with all his contractual obligations that impinge on progress of the work covered by the Stage Payment Scheme including, where required under the Contract, the provision of information required by the Authority for the purposes of assessing contractual performance; and

5.2.4 provided that the Authority shall not be obliged to make a stage payment to the Contractor in respect of a completed stage if the Authority shall have reasonable cause to believe that the Contractor will be unlikely to render complete performance of his obligations in respect of Item 1 of the Contract.

5.3 Where the Authority intends to rely on Clause 5.2.4 as the basis for rejecting any claim for an advance against the Contract Price which the Contractor may make, the Authority shall give to the Contractor notice in writing of his intention together with the Authority’s reasons for the rejection.

5.4 The appropriate forms for claiming payments under this Condition are detailed in DEFFORM 522A included as Annex D to the Contract.”

iii) the following “DEFFORM 522A Payment Annex” will apply (in place of the existing Annex D):

**“ANNEX D TO CONTRACT NO RT/COM/...**

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

<b>Line Item plus further description if necessary</b>	<b>Relevant Form</b>	<b>Representative of the Authority</b>
Item 1 - For stage payments, other than for the last stage payment	AG Form 210	<i>RD [name]</i> (see Box 2 of the Appendix to Contract)
Item 1 - The last stage payment	AG Form 173	<i>RD [name]</i> (see Box 2 of the Appendix to Contract)

Note: All claims for payment shall initially be sent to RAO Finance, HG 8, Hackett Building, Shrivenham, Wiltshire SN6 8JU who will arrange for certification by the representative of the Authority

With regard to paragraph 3 of DEFCON 522, the Contractor shall submit all claims for payment to the Bill Paying Branch using a properly completed DAB Form 10.”

iv) the following Stage Payments Annex (appropriately completed and agreed) shall apply:

**“ANNEX F TO CONTRACT NO RT/COM/.....**

**STAGE PAYMENTS**

<b>Milestone Number</b>	<b>Description</b>	<b>Due Date T<sub>0</sub> +months</b>	<b>Payment (£)</b>
1			
2			
Etc			
Etc			
Etc	Satisfactory completion of all work under the Contract		20%

## APPENDIX 2 TO GRAND CHALLENGE – COMMERCIAL PROPOSAL

### DOCUMENT MARKINGS OF CONTRACT DELIVERABLES TO MOD

#### DEFCON 705 – Full Rights Version

Full Rights Version
Protective Marking
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**Note:** *If subcontractor information is included in reports subject to DEFCON 705 then, unless the IPR in that information is owned by the Prime Contractor, the text in brackets should be amended, in the first case, to refer to the subcontractor(s) by name in addition to the Prime Contractor and, in the second case, by referring to the companies concerned.*