

# **QDC: Open Book on sub-contracts that are not Qualifying Sub-contracts**

**DEFCON 802**  
Edition 12/14

1. In this Condition the following words and expressions shall have the following meaning given to them, except where the context requires a different meaning:

a. "Group undertaking" has the meaning given by section 1161 of the Companies Act 2006.

b. "Material Single Source Sub-contract (Non-Qualifying)" means a sub-contract entered into by the Contractor where:

(1) the sub-contract is entered into at the same time as, or after, the Contract was entered into;

(2) the sub-contract is entered into for the purposes of the Contract;

(3) the award of the sub-contract is not the result of a "competitive process" as defined in Regulation 59 of the Single Source Contract Regulations 2014 (SSCR) for Qualifying Sub-contracts (QSC);

(4) the value of the sub-contract is of, or above £1,000,000;

(5) at least 50% of the sub-contract (by value) is required either to enable performance of the Contract or to enable the combined performance of the Contract and any other Qualifying Defence Contract (QDC), or prospective contract, under the SSCR, to which the Contractor or any group undertaking of the Contractor is a party, or might become a party; and

(6) the sub-contract is not a QSC as defined in the SSCR.

2. Except where the Authority expressly agrees otherwise in writing, the Contractor shall use reasonable endeavours to include in any Material Single Source Sub-contract (Non-Qualifying) the terms specified in Appendix I to this Condition (inserting relevant party names and / or definitions where appropriate).

3. Before entering into a Material Single Source Sub-contract (Non-Qualifying) the Contractor shall promptly notify the Authority where it is unable to include the terms specified in Appendix to this Condition, or where it believes that the inclusion of those terms will prevent the achievement of a fair and reasonable price for that Sub-contract.

## APPENDIX to DEFCON 802

### Provisions To Be Included In Material Single Source Sub-contracts (Non-Qualifying)

1. The following words and expressions shall have the following meaning given to them, except where the context requires a different meaning:

- a. "Group undertaking" has the meaning given by section 1161 of the Companies Act 2006.
- b. "Material Single Source Sub-contract" means a sub-contract entered into by the Sub-contractor where:
  - (1) the sub-contract is entered into at the same time as, or after, the date on which this Sub-contract was entered into;
  - (2) the sub-contract is entered into for the purposes of the Sub-contract;
  - (3) the award of the sub-contract is not the result of a "competitive process" as defined in the Single Source Contract Regulations 2014 (SSCR) for Qualifying Sub-contracts (QSC);
  - (4) at least 50% of the sub-contract (by value) is required either to enable performance of the Sub-contract or to enable the combined performance of the Sub-contract and any other Qualifying Defence Contract (QDC) or QSC, or prospective QDC or QSC, to which the Sub-contractor or any group undertaking of the Sub-contractor is a party, or might become a party;
  - (5) the value of the sub-contract is of or above £1,000,000; and
  - (6) the sub-contract is not a QSC.
- c. "Relevant records" means accounting and other records:
  - (1) which the Sub-contractor may reasonably be expected to keep; and
  - (2) which are sufficiently up-to-date and accurate for use by the Authority for any of the purposes listed in clause 3 below.
- d. "Representatives" means employees, agents, officers, advisers and other representatives of the Authority.
- e. "Sub-contract completion date" means:
  - (1) the date described in the sub-contract as the contract completion date; or
  - (2) if no such date is described in the sub-contract, the date on which the sub-contractor completes all obligations which entitle it to final payment under the contract;
  - (3) if the sub-contract is terminated before the date described in clause 1.e.(1) and (2) above, the date on which the sub-contract is terminated.

2. The Sub-contractor shall maintain relevant records from the date on which the Sub-contract was entered into for the period ending on the sixth anniversary of the end of the accounting period to which those relevant records relate or two (2) years after the Sub-contract completion date, whichever is the sooner.
3. The Authority, or its Representatives, may examine relevant records maintained by the Sub-contractor where reasonably required for one or more of the following purposes:
  - a. verifying whether a cost of the Sub-contractor is an Allowable Cost;
  - b. verifying the reason for any difference between an estimated and actual Allowable Cost;
  - c. verifying any other matter relating to the price payable under the Sub-contract; and
  - d. monitoring the Sub-contractor's performance of its obligations under the Sub-contract.
4. The Authority must give to the Sub-contractor at least twenty (20) working days written notice of its intention to examine the relevant records and the purposes for which the examination is required.
5. The Authority may only examine the records on any working day between the hours of 09:00 and 17:00.
6. Where required by the Authority, the Sub-contractor shall make copies available (in hard or electronic form) for the purposes of enabling those records to be examined.
7. Where required by the Authority, the Sub-contractor shall provide further information or explanation relating to the relevant records, whether after the examination of the relevant records or otherwise.
8. The Authority agrees that, where exercise of the rights granted at clauses 3 and 7 of this Condition would cause significant time and effort to be incurred by the Sub-contractor, and / or other significant disruption to the Sub-contractor, the Authority's exercise of that right shall be proportionate. When determining what is proportionate for that purpose, the Authority shall consider the benefit which may be achieved through the exercise of the rights and the disruption caused to the Sub-contractor. This shall include but not be limited to the impact on the Sub-contractor's provision of the subject-matter of the Sub-contract.
9. Except where the Authority notifies the Sub-contractor in writing that it is not required, the Sub-contractor shall use reasonable endeavours to include in any Material Single Source Sub-contract equivalent terms to those specified in this Condition (inserting relevant party names where appropriate).
10. Before entering into a Material Single Source Sub-contract (Non-Qualifying) the Sub-contractor shall promptly notify the Authority where it is unable to include equivalent terms to those specified in this Condition, or where it believes that the inclusion of those terms will prevent the achievement of a fair and reasonable price for that Sub-contract.

The Contractor and Sub-contractor agree that terms have been included in this Condition which are for the benefit of the Authority. Notwithstanding any contrary provisions in this Sub-contract, the Contractor and Sub-contractor agree that the Authority shall be able to enforce those terms which confer a benefit on the Authority in accordance with the terms of the Sub-contract.