

# MoD contract terms and conditions

## Overview

This very practical two-day workshop analyses the content and implications of key MoD terms and conditions of contract. The programme explains the principles and terminology of the contractual aspects of defence procurement as well as considering a number of relevant policies and initiatives. The course covers key components, constructs and methodologies associated with any commercial venture entered into with the UK MoD.

Starting at the MoD organisational level the workshop sets the scene by looking at the acquisition process and organisation, detailing the various roles and responsibilities of MoD personnel. The workshop provides an in-depth examination of MoD DEFCONs and many narrative terms, setting them in the context of the organisation and its structures. The workshop helps participants to gain an understanding of the content and purpose of the range of MoD DEFCONs and narrative conditions commonly used throughout the acquisition lifecycle. It includes a review of Part 2 of the Defence Reform Act 2014 regarding Single Source Pricing, which comes into effect in 2015 and is already starting to be applied to significant contracts.

## Learning objectives

On completion of this programme the participants will understand the terminology associated with the MoD terms and conditions of contract and will have an accurate view of their relevance, usage and their legal basis and how they can affect contractual and commercial decision-making. They will have gained an insight into defence acquisition contracting and they will be more commercially aware.

## Who should attend?

This workshop is suitable for all staff who are required to deal with the MoD within a contractual capacity. The course is designed principally to provide commercial, business development and engineering/project staff with an understanding of the terms and conditions of MoD contracts in the new environment. It is suitable for both prime- and sub-contractors.

## Course format

An inter-active two-day workshop.

## The expert trainer

Alison is an independent consultant and trainer specialising in commercial, contractual and bidding issues. She has a particularly strong background in aerospace and defence.

Before starting her consultancy, in 2008, Alison was Commercial Director, Lockheed Martin UK INSYS Ltd where she played a key role in the integration of INSYS into the Lockheed Martin organisation at the same time as drafting and negotiating a wide range of contracts covering design, development and production, SLAs, software development, modelling and licensing, feasibility and research studies, evaluation and loan arrangements to customers in the UK, Europe and the USA. Prior to that she had spent eight years with Hunting Engineering, rising from Assistant Contracts Manager to Company Commercial Manager. While at Hunting she worked in the UK and internationally on contracts valued from several hundred thousand pounds to more than £300m and was deeply involved with all the commercial aspects of bid preparation, contract negotiation and management. Her career began

at British Aerospace Dynamics Group (latterly as Contracts Manager – Procurement Contracts) where she spent ten years working on a range of UK and overseas bids and projects.

It was while she was with British Aerospace that she first began delivering training courses on commercial issues.

Alison's clients include the trade association ADS, ITT Defence, The Institution of Engineering and Technology, Morgan Armour, Britten Norman, Dytecna, MASS Consultants Ltd, Aircraft Research Association, Pankl Racing Systems, Aspire Consulting, Porchester Microtools, APP Ltd, EDF Energy, Drumgrange, LINCAD, Helmet Integrated Systems Ltd, Cambridge University (Department of Physics), Northrop Grumman, Supreme Group, Chemring, Raytheon and the Niteworks project (a collaboration between MoD and Industry led by BAe Systems).

As commercial consultant to the ADS Trade Association and as a member of the ADS Commercial and Legal Board, Alison is very up-to-date with commercial arrangements and issues between industry and MoD and, indeed, for ten years she was Chairman of the Defence Manufacturers Association (DMA) Commercial Committee and she is still a member of DMA Council, a member of the joint Industry/MoD Commercial Policy Group (a high level group reporting at Ministerial level) and industry co-chairman of the Project Management Reform Group (originally part of the 'More Effective Contracting' initiative but now subsumed into the DIS Commercial Issues group).

## Course outline

### DAY ONE

#### 1 Acquisition organisation

- Key roles and responsibilities of the MoD organisations at the heart of the acquisition process

#### 2 Tendering to MoD

- An appraisal of some of the obligations placed upon contractors when they are submitting a proposal to the MoD pre-contract.

#### 3 Standardised contracting

- MoD have introduced non-negotiable standardised contracts for certain levels of procurement. This section considers their use and relevance to defence contracting.

#### 4 Pricing, profit, post-costing and payment

- The parameters specific to a costing structure and the differences between competitive and non-competitive bidding.
- The role of the QMAC, the profit formula, the requirements for equality of information and post-costing.
- Different types of pricing and issues surrounding payment.

#### 5 Defence Reform Act – Single Source Pricing

- Single Source Pricing under Part 2 of the new Defence Reform Act.
- Changes from the existing position, how contractors are affected and the compliance regime that accompanies the new requirements.

#### 6 Delivery and acceptance

- Specific requirements and the significance and impact of failing to meet them.
- Acceptance plans.

- Non-performance and the remedies that may be applied by the Customer – breach of contract, liquidated damages and *force majeure*.

## DAY TWO

### 7 Protection of information and IPR

- Contractor's and MoD's rights to own and use information.
- How to identify background and foreground intellectual property.
- Technical information and copyright in documentation and software.
- How to protect IPR at the various stages of the bidding and contracting process.

### 8 Defence Transformation and Defence Commercial Directorate

- Widening and increasing roles and functions of the Defence Commercial Directorate.
- Background to the Defence Reform Act 2014.

### 9 Legal requirements

- Terms used in MoD contracts to reflect basic legal requirements.
- Records and materials required for MOD contracts and therefore the obligations, responsibilities and liabilities that a company undertakes when it accepts these conditions.
- Overseas activities.

### 10 Subcontracting and flowdown

- Understanding the constructs required by the MoD for subcontracting.
- Which terms must be flowed down to the subcontractor and which are discretionary.

### 11 Termination

- Termination of a contract for default.
- Termination for convenience.
- How to optimise the company's position on termination.

### 12 Warranties and liabilities

- Obligations and liabilities a company might incur and how they might be mitigated.
- MoD policy on indemnities and limits of liability.

### 13 Electronic contracting environment

- Electronic forms of contracting.
- Progress toward a fully electronic contracting environment.

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