

Defence and Security Public Contracts Regulations 2011

Chapter 16 - Standstill Period, Contract Award and Voluntary Transparency

Purpose

1. This guidance explains what procurers need to consider once you have made the contract award decision in order to award the contract under the Defence and Security Public Contracts Regulations (DSPCR) 2011.
2. Specifically, the guidance covers:
 - a. Award Decision Notices, i.e. notices you use to inform tenderers and candidates of the procurer's decision to award the contract or conclude a framework agreement (often referred to as the "standstill notice");
 - b. Standstill period, i.e. what procurers need to do in applying the mandatory standstill period within the DSPCR, especially the correct calculation of the 10 day period;
 - c. [Contract Award Notices](#), i.e. notices used to notify the details of the contract awarded by publication in the Official Journal of the European Union (OJEU);
 - d. [Voluntary Ex-Ante Transparency Notice](#) (VEAT), also known in the Ministry of Defence (MOD) as a Voluntary Transparency Notice (VTN), and the principle of standstill for procurements where you did not publish a contract notice.

What are standstill period, contract award and voluntary transparency?

3. By "standstill period and contract award", we mean the process where procurers inform the participants in the procurement procedure of its result, allow a pause in the procedure for participants to consider (i.e. the standstill period), and, if there is no legal challenge, award the contract.
4. By "voluntary transparency", we mean the process where procurers send a "VEAT" to the OJEU that announces an intention to enter into a contract where you did not publish a contract notice in the OJEU.

What is the legal framework?

5. Regulations 32 and 33 of the DSPCR detail the specific rules relating to Award Decision Notices and related information, contract award notices and the keeping of records and reports. Regulation 34 details the specific rules relating to the standstill period and its effects.

6. The specific rules setting out what a VEAT (VTN) is and in what circumstances you may use one are set out in Regulations 60(3) and (4) of the DSPCR.

When do you use an Award Decision Notice?

7. Procurers must use an Award Decision Notice for all procurement procedures except:

- a. where there is no obligation to advertise the contract in the OJEU (e.g. the requirement is below threshold, or a Part B services contract or when using the non-competitive negotiated procedure). However, in these circumstances in order to avoid the possibility of a finding of ineffectiveness if you use the procedure incorrectly procurers should consider publishing a VEAT;
- b. where there is only one tenderer and there are no other candidates, for example;
 - (1) you received only one request to participate from a supplier following the publication of the contract notice in the OJEU, and this supplier became the only tenderer;
 - (2) you received several requests to participate from suppliers following the publication of the contract notice in the OJEU, but you only selected one supplier to tender and you properly notified the other suppliers of the reasons for their rejection at the supplier selection phase;
- c. in above-threshold call-off contracts under a framework agreement, but see the VEAT guidance (paragraph 48) on the use of voluntary standstill periods for call-offs subject to mini-competition.

The Award Decision Notice

8. You must inform tenderers or candidates of your decision to award a contract or conclude a framework agreement, as soon as possible after making your decision. You must inform them by notice in writing, by the quickest practicable method. This notice is an Award Decision Notice. The definitions of "candidate" and "tenderer" are:

- a. A "candidate" is a supplier (other than a tenderer) who applied to participate in the procurement procedure but the procurer did not:
 - (1) select the supplier to tender or negotiate the contract; and
 - (2) inform the supplier of its rejection and the reasons for it.
- b. A "tenderer" is a supplier who submitted an offer and has not been "definitely excluded" by the procurer from the procurement procedure. A supplier is "definitely excluded" from the procurement procedure when:
 - (1) the procurer excludes the supplier's offer from further consideration in the procurement procedure ; and

- (2) the procurer informs the supplier of the exclusion; and either
 - (a) the exclusion was held to be lawful under proceeding under Part 9; or
 - (b) the time limit for starting proceedings has expired, i.e. the 30 day period from the date when the economic operator was informed of his exclusion.

9. For MOD procurers, you must send the “Contract Award Decision Notice – Winning Tenderer”, at Annex A, to the winning tenderer(s). Other procurers are free to use the text of Annex A without the various references to the MOD’s DEFFORMs.

10. For MOD procurers, you must send the “Contract Award Decision Notice – Unsuccessful Tenderers”, at Annex B, to the unsuccessful tenderer(s). Other procurers are free to use the text of Annex B without the various references to the MOD’s DEFFORMs. In all cases the unsuccessful tenderers notice must include:

- a. the criteria for the award of the contract;
- b. the reasons for your decision, including the characteristics and relative advantages of the successful tender, the scores (if any) obtained by the tenderer and the successful tenderer(s) and any reason that the tenderer did not meet the technical specifications or security of information or security of supply requirements;
- c. the name of the winning tenderer(s); and
- d. a precise statement of either:
 - (1) when, in accordance with Regulation 34, the standstill period is expected to end and, if relevant, how the timing of its ending might be affected by any, and what, contingencies; or
 - (2) the date before which the procurer will not, in accordance with Regulation 34, enter into the contract or conclude the framework agreement.

11. For MOD procurers, where the notice is to a candidate, you must send the “Contract Award Decision Notice – Candidates”, at Annex C, to the candidate. Other procurers are free to use the text of Annex C without the various references to the MOD’s DEFFORMs. In all cases the candidates notice must include:

- a. the reasons why the candidate was unsuccessful; and
- b. all the same information that would be sent to unsuccessful tenderers except for the “relative advantages” of the successful tenderer(s).

What do you need to tell suppliers?

12. You must give tenderers and candidates the full reasons for the award decision. The information you provide should detail the characteristics and relative strengths of:

- a. the successful tender against the award criteria (and sub criteria if applicable); and
- b. other than for candidates, the unsuccessful tender of the tenderer to whom the notice is being sent.

13. You could meet this requirement by providing the scores (of the winning tenderer and the unsuccessful tenderer to whom you are sending the notice) against each criteria and a supporting narrative that explains why the winning tenderer scored more heavily in the relevant areas.

14. The information you give the unsuccessful tenderer must be sufficient in detail to ensure it has enough detail to determine whether your decision to award the contract to the winning tenderer is in accordance with the published evaluation criteria.

15. In providing this information, you should take care to protect the confidential and commercially sensitive aspects of the winning tender (e.g. the supplier's intellectual property, line item or unit costs).

Debriefing unsuccessful tenderers

16. If, subsequent to the Award Decision Notice in paragraph 5, you receive a request in writing from an unsuccessful supplier for further information on the reasons why they were unsuccessful, you must respond at the earliest opportunity and at least within 15 days. You must provide the following information:

- a. The reasons why the supplier was unsuccessful, including:
 - (1) any reason how the supplier did not meet the technical specifications;
 - (2) any reason how the supplier did not meet the security of information and security of supply requirements.
- b. If the supplier submitted an admissible tender, you must also inform them of the characteristics and relative advantages of the successful tender, and:
 - (1) the name of the tenderer to be awarded the contract; or
 - (2) the names of the parties to the framework agreement.

17. Ordinarily, you should give this information in the Award Decision Notice so it is likely that the unsuccessful supplier is looking for clarification or more details of the decision. However, if the request highlights that your original Award Decision Notice did not comply with the DSPCR (e.g. it did not contain the full reasons) then you should restart the standstill period, this time providing the full reasons.

18. Not providing the full information could result in legal challenge, as this is an essential precondition of starting the standstill period.

Grounds for withholding information

19. You may withhold any information to be provided in the Award Decision Notice or which you are obliged to provide under a request in writing referred to in paragraph 12, if to disclose it:

- a. would impede law enforcement;
- b. would otherwise be contrary to the public interest, in particular defence or security interests or both;
- c. would prejudice the legitimate commercial interest of any person (whether the procurer, the tenderer or a candidate); or
- d. might prejudice fair competition between suppliers.

20. You may withhold certain information including for the protection of defence or security interests. In particular, procurers should take care to protect the confidential and commercially sensitive aspects of the winning tender (e.g. the supplier's intellectual property, line item or unit costs).

The standstill period

21. The standstill period is a period of at least 10 days, during which the contract award process is suspended. Procurers must apply a standstill period where you issue an Award Decision Notice. As a matter of policy, procurers in the MOD are required to apply a standstill period to all awards of contracts or framework agreements under the DSPCR, including the procurement of Part B services.

22. The "date of knowledge" is the date of one of the following:

- a. the VTN for non-competitive procurement;
- b. the Award Decision Notice for competitive procurement
- c. the Contract Award Notice if there is no VTN for non-competitive procurement or an aggrieved party does not receive an Award Decision Notice.

23. The standstill periods in DSPCR are the same as those for the Public Contracts Regulations (PCR) 2006 and detailed below. Miscalculating the standstill period is a breach of the DSPCR so procurers must take particular care in calculating the last day of the standstill.

Where you send a notice electronically

24. Where the procurer sends an Award Decision Notice to all the relevant suppliers by facsimile or electronic means, the standstill period ends at midnight at the end of the 10th day after the day you sent the Award Decision Notice to the suppliers. "Sending" electronically, means forwarded from an internal server to the servers of the suppliers, not just when the message enters an internal network of the sender.

Where you send a notice by non-electronic means

25. Where the procurer sends an Award Decision Notice to all the relevant suppliers by other than electronic means (for example, by post) the standstill period ends at whichever of the following occurs first:

- a. midnight at the end of the 15th day after the relevant sending date; or
- b. midnight at the end of the 10th day after the date on which the last of the suppliers to receive the notice receives it.

26. The phrase “relevant sending date” means the date on which you send the Award Decision Notices to the suppliers. If you sent the notices to different suppliers on different dates, the relevant sending date is the date on which you send the last of the notices. By “sending by post”, we mean handing over to the Royal Mail or another postal service provider or courier, and not just putting the postal item into an internal mail system.

Where you send a notice by mixed means

27. Where the procurer sends a notice to one or more of the suppliers electronically but to others by another means (for example by post), the standstill period ends at whichever of the following times occurs latest:

- a. midnight at the end of the 10th day after the date on which the last notice is sent by facsimile or electronic means; or
- b. the time when whichever of the following occurs first:
 - (1) midnight at the end of the 15th day after the date on which the last notice is sent by other means;
 - (2) midnight at the end of the 10th day after the date on which the last of the suppliers to receive a notice sent by any such other means receives it.

Where the last day of Standstill is not a working day

28. Where the last day of the standstill period is not a working day, you must extend the standstill period to midnight at the end of the next working day.

Standstill period for framework agreements

29. The mandatory standstill period applies at the stage at which a framework agreement itself is awarded, but not during subsequent call-offs or mini-competitions within framework agreements.

30. The standstill obligation does not apply to above-threshold call-off contracts from a framework agreement. However, where the call-off is subject to the mini-competition rules, ineffectiveness will apply, in principle if you breach those rules.

31. To mitigate the ineffectiveness risk, procurers can apply the standstill period voluntarily, as expressly provided for in Regulation 60(7), in which case ineffectiveness will not apply to breaches of the call-off rules, providing you apply

the standstill period properly. This is unnecessary for below threshold call-offs as the standstill period does not apply to such contracts.

32. To achieve the desired protection from ineffectiveness in call-offs from framework agreements, a cautious approach would be to send the standstill notice to all suppliers on the framework agreement, to ensure that framework suppliers that you did not invite to the mini-competition (who may be aggrieved by their non-invitation) have the chance to seek pre-contractual remedies.

33. Alternatively, if the procurer identified a clear subset of framework suppliers on the framework agreement that have the necessary capability to perform the contract, for example all the suppliers in the relevant lot in the framework agreement, then the procurer may prefer only to send standstill notices to that subset. This is on the basis that no other framework suppliers could raise a grievance.

34. In multiple-supplier frameworks where you can award the call-off by applying the terms laid down in the framework agreement, i.e. without running a mini-competition, then the standstill and ineffectiveness rules need not apply. However, there is still an element of risk that the procurer may be incorrect in their view that they do not need a mini-competition. Consequently, one of the other framework suppliers might bring proceedings on the grounds that the call-off procedural rules were breached due to the failure to run a mini-competition. If a court agreed, and had there been no standstill period, then the call-off contract could be at risk of ineffectiveness.

35. Procurers therefore need to have a high level of confidence in the justification for not holding a mini-competition when calling off multi-supplier frameworks. An alternative protection would be to apply a voluntary standstill period and send the notices to the other framework operators, which would offer the opportunity for pre-contractual remedies and so disengage the ineffectiveness provisions.

36. It may therefore be safer to apply the standstill period to above-threshold call-offs where a mini-competition takes place to limit the risks of ineffectiveness as much as possible. However, this may be unattractive in some circumstances, in which case the procurer may prefer to accept the ineffectiveness rules applying, and consider other risk-reducing options. For example, a standstill period may be impracticable where the goods, services or works are:

- a. urgently required (for example, for military operations or civil emergencies);
- b. purchased on a commodity market (for example, oil or agricultural products) where price cannot be held during the standstill; or
- c. procured through brokers (for example air or ship charter) where price or availability cannot be held during the standstill.

37. For above-threshold call-offs for Part B Services, there are no obligations to apply either the standstill or ineffectiveness rules. However, it may be possible that a Court could rule that you miscategorised a framework as Part B, when it should have been Part A, in which case the standstill or ineffectiveness rules would apply to the call-offs made from it. For that reason, procurers may wish

to consider applying the standstill period to above threshold call-offs for Part B Services.

38. Procurers calling off a framework agreement that does not require a mini-competition, for example single supplier frameworks or multi-supplier frameworks where there is only one supplier that is suitable according to the terms of the framework, do not need to make a choice about applying the standstill period; neither standstill nor ineffectiveness apply to these call-offs.

Standstill period for e-auctions

39. You must have a standstill period before entering a contract after a stand-alone electronic auction (e-auction) (i.e. an auction run outside of a framework agreement). The general guidance above on applying the standstill period applies here. E-auctions held within framework agreements are for specific call-offs and so they should follow the same approach outlined above for above-threshold call-off contracts.

40. For e-auctions that are not part of a framework agreement, you may need to alter the standard terms and conditions to ensure that you do not form the contracts at the same time as acceptance of the final bid, to ensure compliance with the DSPCR.

What happens if the award decision is challenged?

41. If a supplier brings proceedings challenging a contract award decision during the standstill period, then an automatic suspension comes into effect preventing the conclusion of the contract (see Chapter 17 – Legal Review, Remedies and Ineffectiveness for further details about the time limits for starting Court proceedings).

What happens at the end of the standstill period?

42. At the end of the standstill period, if the procurer has not received a challenge to the decision, for MOD procurers through the Treasury Solicitor, then it is safe to enter into the contract.

43. For MOD procurers, you must send the “Standard Notice of Entry Into Contract”, at Annex D, to the winning tenderer(s). Other procurers are free to use the text of Annex D without the various references to the MOD’s DEFFORMs. You now have 48 days to publish a Contract Award Notice in OJEU.

Benefits of following the rules

44. Procurers must adhere to the rules for the standstill period, as this reduces the risks of falling foul of the severe penalty of ineffectiveness. Situations in which ineffectiveness can arise include some failing on behalf of the procurer to provide for an opportunity for a review of its award decision. The standstill period explicitly provides for this pre-contractual review and so adhering to it can substantially reduce the risks of a future ineffectiveness claim.

Contract Award Notice

45. When you award a contract or conclude a framework agreement, you must publish details of the award or conclusion in the OJEU within 48 days of the award or conclusion in the form of the [Contract Award Notice](#).

46. You may omit from the Contract Award Notice, on a case-by-case basis, any of the information specified in paragraph 42, if publication:

- a. would impede law enforcement;
- b. would otherwise be contrary to the public interest, in particular defence or security interests or both;
- c. would prejudice the legitimate commercial interest of any person; or
- d. might prejudice fair competition between suppliers.

47. You do not need to send a contract award notice to the OJEU for call-off contracts you award under a framework agreement.

What about procurements where there has not been a Contract Notice?

48. The principles of openness and transparency also apply to procurements such as non-competitive negotiated procedure and Part B services. Suppliers also have the option to challenge the award decision for these procurements. You apply the standstill process to these procurements through use of a VEAT.

When should you consider using a VEAT?

49. You should consider using a VEAT in the following circumstances:

- a. Where you award a contract using the non-competitive negotiated procedure under the Regulation 16.
- b. Where you award a Part B services contract as defined by Regulation 3(2)(b), particularly where there is doubt as to whether it should be classified as a Part A or Part B services contract.
- c. Where a procurer, in good faith, considers that a legal exemption from the need to advertise in the OJEU applies, even if a Court subsequently finds that this is not the case (e.g. the procurer has misinterpreted or misapplied the law).
- d. Where there has been an OJEU advertisement but there are question marks as to whether the subsequent contract is potentially outside of the scope of the initial contract notice; and
- e. Where an existing contract is subject to change, but you believe the scope and scale of the change does not need a new OJEU advertisement.

What are the benefits of using a VEAT?

50. A VEAT offers protection from a finding of ineffectiveness where a procurer has made a decision to award a contract and the standstill rules do not apply as the DSPCR did not require the procurer to publish a contract notice in the OJEU.

51. Publishing a VEAT is voluntary but we recommend it because it mitigates the risk that the procurer was wrong in thinking that an OJEU contract notice was not needed at the beginning of the process.

52. Publishing a VEAT also allows interested parties to challenge an award decision within a 10 day period before the contract is entered into. This allows the courts to consider whether the contract should be placed.

When should you publish a VEAT?

53. If you decide to use a VEAT, you should publish the VEAT in the OJEU once the decision to award a contract is made but before formally entering into the contract, so as to:

- a. give industry an opportunity to raise objections if they consider that the award is illegal and / or in breach of the DSPCR; and
- b. provide complete protection for the procurer from a finding of ineffectiveness for failure to advertise in OJEU if the procurer has:
 - (1) considered that not advertising was permitted by the DSPCR;
 - (2) published the VEAT in the prescribed form expressing its intention to enter into the contract, providing the prescribed information;
 - (3) ensured that at least 10 days elapse between the publication of the VEAT and entering into the contract. The period begins on the day after publication, not on the day of publication itself.

54. Early publication of the VEAT may flush out objections before the procurer is too entrenched in the procurement.

55. As a matter of policy, Ministry of Defence (MOD) procurers are therefore required to publish a VEAT when you take the procurement strategy decision to award a single source contract under the non-competitive negotiated procedure, and you know all the information you require to compete the VEAT.

What information should you publish in the VEAT (VTN)?

56. A VEAT must contain the following:

- a. the name and contact details of the procurer;
- b. a description of the object of the contract;
- c. a justification of the decision of the procurer to award the contract without the prior publication of a contract notice;
- d. the name and contact details of the supplier to be awarded the contract; and
- e. where appropriate, any other information which the procurer considers it useful to include;

57. Other fields in the VEAT are not mandatory.

Do you still need to publish a contract award notice?

58. Yes, after publication of the VEAT, you must still publish a Contract Award Notice in the OJEU following placement of the contract in all those circumstances where a Contract Award Notice is required.

What are the key points to remember?

1. You must inform tenderers and candidates, in writing, and as soon as possible, of a decision to award a contract or conclude a framework agreement.
2. You must have a standstill period of at least 10 calendar days, see Annex E, suspending the procurement to allow challenge of the award decision, before you enter into the contract.
3. You must ensure that the Award Decision Notice contains the full reasons for the award decision, while protecting the suppliers commercially sensitive information, in order to meet your obligations under DSPCR.
4. You must publish a Contract Award Notice in the OJEU for all contracts you award or framework agreements you conclude under the DSPCR within 48 days.
5. You must prepare and keep certain records and information relating to each contract you award or framework agreement you conclude, and report that information to the EU Commission upon request.
6. You must consider placing a VEAT for procurements where there has not been a contract notice, in order to give suppliers the opportunity to challenge the award decision and protect the contract awarded from ineffectiveness.

Annex A

Standard Notice of Contract Award Decision (Winning Tenderer)

For use by MOD users only if you have included DEFFORM 47 DSPCR (Edn 12/11) in Invitation to Tender documents.

CONTRACT AWARD DECISION NOTICE – WINNING TENDERER EU (Edn 02/12)
Date of Issue: **{insert date}**

Dear Sirs,

Notice of Contract Award Decision Tender Reference **{insert}**

1. Thank you for your Tender dated {as clarified by dated} for the supply of
2. This letter notifies you of the MOD's decision to award the **{insert either "contract" or "framework agreement" or "call-off contract under {insert names of framework agreement}"}** to **{insert name of successful tenderer(s)}** (the "Winning Tenderer").
3. The criteria used to **{insert either "award the contract" or "conclude the framework agreement"}** are set out below:

{List criteria here – see Guidance Note 3}
4. The score you obtained against the criteria for contract award was **{insert}**.
5. As set out in DEFFORM 47 DSPCR (Edn 12/11) of the Invitation to Tender (Special Notices and Instructions), the MOD is required to allow a standstill period of at least 10 calendar days to elapse between the announcement of the contract award decision and the date of contract award.
6. The standstill period starts the day after the date of issue of this letter and is expected to end at midnight at the end of **{insert date; see Guidance Note 4}**. Should the MOD be required to extend the standstill period, you will immediately be notified of when the revised period ends.
7. Your attention is drawn to your obligation to hold your Tender open for acceptance during the period specified in paragraph 6 of DEFFORM 47 DSPCR (Edn 12/11).
8. Accordingly the **{insert either "contract" or "framework agreement" or "call-off contract"}** will not come into existence until the MOD sends you written notification of its entry into the **{insert either "contract" or "framework agreement" or "call-off contract"}** in accordance with (for MOD only) paragraph 8 of DEFFORM 47 DSPCR (Edn 12/11). The MOD shall therefore not be responsible in any way whatsoever:
 - (i) for any work undertaken by you; nor

- (ii) for any costs incurred by you
prior to the MOD's entry into the **{insert either "contract" or "framework agreement" or "call-off contract"}**.
9. When the MOD enters into the **{insert either "contract" or "framework agreement" or "call-off contract"}**, you should proceed with the performance of the **{insert either "contract" or "framework agreement" or "call-off contract"}** in accordance with its terms.

Yours faithfully

Guidance Notes for using Contract Award Decision Notice - Winning Tenderers

1. This Notice should only be used where the Invitation to Tender Documents¹ include DEFFORM 47 DSPCR (Edn 12/11).
2. You must send this notice to the winning tenderer only. There are different forms for unsuccessful tenderers and candidates (Annexes B & C).
3. Contract award criteria – if the contract award is on the basis of the lowest price then insert "lowest price" as the criteria. If it on the basis of the most economically advantageous tender then insert the award criteria.
4. Standstill Period - Acquisition teams will issue contract award decision notices to tenderers (and Candidates if applicable) by electronic means (or fax) on the same day. The standstill period ends at midnight at the end of the 10th day after the send date. This means, for example, if you send the award decision notices on 01/01/11, the standstill ends midnight on 11/01/11. Therefore the first date on which you can award the contract is 12/01/11 providing that this is a working day, if not you must extend the standstill to midnight at the end of the next working day.

¹ Invitation to Tender Documents means: Invitation to Tender (ITT), Invitation to Negotiate (ITN) or Invitation to Participate in Dialogue (ITPD).

Annex B

Standard Notice of Contract Award Decision (Unsuccessful tenderers)

For use by MOD users only if you have included DEFFORM 47 DSPCR (Edn 12/11) in Invitation to Tender documents.

CONTRACT AWARD DECISION NOTICE – UNSUCCESSFUL TENDERERS EU (Edn 02/12)

Date of Issue: {insert date}

Dear Sirs,

Notice of Contract Award Decision Tender Reference {insert}

1. Thank you for your Tender dated {as clarified by dated} for the supply of
2. This letter notifies you of the MOD's decision to award the **{insert either "contract" or "framework agreement" or "call-off contract under {insert names of framework agreement}"}** to **{insert name of successful tenderer(s)}** (the "Winning Tenderer").
3. The criteria used to **{insert either "award the contract" or "conclude the framework agreement"}** are set out below:
{List criteria here – see Guidance Note 4}
4. The score the Winning Tenderer obtained against the criteria for contract award was **{insert Winning Tenderer's score here – see Guidance Notes 3-5}**.
5. The score you obtained against the criteria for contract award was **{insert}**.
6. The reasons for the decision are **{insert an explanation of why it has been decided to award the contract to the Winning Tenderer, including the characteristics and relative advantages of the successful tender when compared with the tender for which the notice relates – see Guidance Note 6}**.
7. As set out in (MOD only) DEFFORM 47 DSPCR (Edn 12/11) of the Invitation to Tender (Special Notices and Instructions), the MOD is required to allow a standstill period of at least 10 calendar days to elapse between the announcement of the contract award decision and the date of contract award.
8. The standstill period starts at the date of issue of this letter and is expected to end at midnight at the end of **{insert date; see Guidance Note 7}**. Should the MOD be required to extend the standstill period, you will immediately be notified of when the revised period ends.
9. Whilst the MOD considers that this notice gives a full explanation of the decision as required by the Defence and Security Public Contracts Regulations 2011, should you have any questions, please contact **{insert}**.

Yours faithfully

Guidance Notes for using Contract Award Decision Notice – Unsuccessful Tenderers

- a. You should only use this Notice where the Invitation to Tender Documents² include DEFFORM 47 DSPCR (Edn 12/11).
- b. There is a separate notice for the winning tenderer (Annex A) and for candidates where applicable (Annex C). You must send all notices by fax or electronically on the same day.
- c. You should provide each unsuccessful tenderer with the score they obtained against the award criteria. However, you should not divulge these scores to the other tenderers or suppliers.
- d. Contract award criteria - if the contract award is on the basis of the lowest price then insert "lowest price" as the criteria. If it is on the basis of the most economically advantageous tender then insert that award criteria.
- e. You can only give scores in paragraphs 4 and 5 where contract award is on the basis of the most economically advantageous offer and you used a scoring evaluation method. Where contract award is on the basis of the lowest price, you should replace the wording in paragraph 4 in the notice with "The price submitted by the Winning Tenderer was the lowest price tendered."
- f. The reasons for the decision at paragraph 6 must include the characteristics and relative strengths of the successful tender against the award criteria and by comparison to the unsuccessful tender to which this notice applies. The information you give to the unsuccessful tenderer must be in sufficient detail to ensure that they have enough information to determine whether the decision is well founded (e.g. the score awarded to price, compliance with the technical requirements and terms and conditions). At the same time you must take care to protect the confidential aspects of the successful tender (e.g. the supplier's intellectual property, line item or unit costs). For further advice on protecting commercially sensitive information, see the Protection of Information topic in the MOD's Commercial Toolkit.
- g. **Standstill Period** – procurers will issue contract award decision notices to tenderers (and candidates if applicable) by electronic means (or fax) on the same day. The standstill period ends at midnight at the end of the 10th day after the send date. This means, for example, if you send the award decision notices on 01/01/11, the standstill ends midnight on 11/01/11. Therefore the first date on which you can award the contract is 12/01/11 providing that this is a working day, if not you must extend the standstill to the next working day.

² Invitation to Tender Documents means: Invitation to Tender (ITT), Invitation to Negotiate (ITN) or Invitation to Participate in Dialogue (ITPD).

Annex C

Standard Notice of Contract Award Decision (Candidates)

For use by MOD users only if you have included DEFFORM 47 DSPCR (Edn 12/11) in Invitation to Tender documents.

CONTRACT AWARD DECISION NOTICE - CANDIDATES

EU (Edn 02/12)

Date of Issue: **{insert date}**

Dear Sirs,

Notice of Contract Award Decision Tender Reference **{insert}**

1. Thank you for the request to participate in response to the Contract Notice dated for the supply of
2. This letter notifies you of the MOD's decision to award the **{insert either "contract" or "framework agreement" under {insert names of framework agreement}"}** to **{insert name of successful tenderer(s)}** (the "Winning Tenderer")
3. The criteria used to **{insert either "award the contract" or "conclude the framework agreement"}** are set out below:
{List criteria here – see Guidance Note 5}
4. The score the Winning Tenderer obtained against the criteria for contract award was **{insert Winning Tenderer's score here – see Guidance Note 5}**.
5. The reasons why your request to participate was unsuccessful were **{insert a full explanation of why the supplier was not invited to tender – see Guidance Note 4}**.
6. The reasons for the award decision are **{insert an explanation of why it has been decided to award the contract to the Winning Tenderer, including the characteristics of the successful tender and its relative strengths against the award criteria – see Guidance Note 6}**.
7. The MOD is required to allow a standstill period of at least 10 calendar days to elapse between the announcement of the contract award decision and the date of contract award.
8. The standstill period starts the day after the date of issue of this letter and is expected to end at midnight at the end of **{insert date, see Guidance Note 7}**. Should the MOD be required to extend the standstill period, you will immediately be notified of when the revised period ends.
9. Whilst the MOD considers that this notice gives a full explanation of the decision as required by the Defence and Security Public Contract Regulations 2011, you should contact **{insert}** in writing if you require further information.

Yours faithfully

Guidance Notes for Contract Award Decision Notice - Candidates

1. You should only use this Notice should where the Invitation to Tender includes DEFFORM 47 DSPCR (Edn 12/11).
2. **You must send this notice to candidates only.**
3. For these purposes a “candidate” is:
 - a. An applicant who did not pass the PQQ and has not been told of the reasons for that failure. Though in practice this should not happen; or
 - b. An applicant who was invited to tender or negotiate the contract, or be a party to a framework agreement, but who withdrew from the process prior to submitting a tender; or
 - c. any supplier who was not invited to submit a final tender at the end of the dialogue phase of the Competitive Dialogue procedure (that is, you rejected their solution during the dialogue phase).
4. **Selection of tenderers** – if you did not select the candidate to tender (e.g. para 3a above) you will need to provide full reasons against the published **selection criteria**. Where paras 3b or 3c are applicable you should insert N/A.
5. **Contract Award** – you can only give scores in paragraph 5 only where you base the contract award on the most economically advantageous offer and you used a scoring evaluation method. In this case, you will need to insert the award criteria. If you based the contract award on the lowest price, you should replace the wording in paragraph 5 in the notice with “The price submitted by the Winning Tenderer was the lowest price tendered.”
6. Insert the reasons for the decision including an indication of the characteristics of the winning tender against the award criteria (e.g. the score awarded to price, compliance with the technical requirements and terms and conditions) while taking care to protect its confidential aspects (e.g. the supplier’s intellectual property, line item or unit costs). For further advice on protecting commercially sensitive information, see the Protection of Information topic in the Commercial Toolkit.
7. **Standstill Period** – the procurer will issue contract award decision notices to tenderers (and candidates if applicable) by electronic means (or fax) on the same day. The standstill period ends at midnight at the end of the 10th day after the send date. This means, for example, if you send the award decision notices on 01/01/11, the standstill ends midnight on 11/01/11. Therefore the first date on which you can award the contract is 12/01/11 providing that this is a working day, if not you must extend the standstill period.

Annex D

Standard Notice of Entry into Contract

For use by MOD users only if you included DEFFORM 47 DSPCR (Edn 12/11) in Invitation to Tender documents.

STANDARD NOTICE OF ENTRY INTO CONTRACT

EU (Edn 02/12)

Date of Issue: **{insert date}**

Dear Sirs,

Notice to Winning Tenderer of MOD's Entry into Contract Reference **{insert}** for the Supply of **{insert}**

Reference:

A. Notice of Contract Award Decision Tender Reference **{insert}** dated **{insert}**.

1. Further to Reference A, I refer to your obligation to hold your Tender open for acceptance during the period specified in paragraph 6 of (MOD only) DEFFORM 47 DSPCR (Edn 12/11) of the Invitation to Tender Documents (Special Notices and Instructions).
2. The MOD hereby accepts your Tender, as referred to in Reference A, and enters into the **{insert either "contract" or "framework agreement" or "call-off contract under {insert names of framework agreement}"}** in accordance with paragraph 8 of DEFFORM 47 DSPCR (Edn 12/11).
3. Therefore the **{insert either "contract" or "framework agreement" or "call-off contract"}** is in force between the Secretary of State and you in accordance with its terms and you should proceed accordingly with performance of the **{insert either "contract" or "framework agreement" or "call-off contract"}** and as from today's date.
4. Please kindly acknowledge receipt of this letter.

Yours faithfully

Annex E

Standstill Flowchart

