Pricing - Equality Of Information

Constraints

None.

Authoritative Guidance Summary

1. Non-competitive contracts are priced on the basis of 'equality of information' (E of I). This principle is enshrined in the 1968 Government Profit Formula Agreement which has now been carried forward in the 2006 Annual Review of the Profit Formula for Non-Competitive Government Contracts.

2. Equality of information is effected through DEFCON 643 (Equality of Information) and the E of I Pricing Statement. This Statement should be completed for all non-competitive contracts and amendments in excess of £250K (two hundred and fifty thousand pounds sterling).

3. The E of I Pricing Statement contains a confidentiality undertaking that is binding on both parties and the Ministry of Defence (MOD) expects contractors to be prepared to release all information material to the settlement of fair and reasonable prices, regardless of origin. Without such information acquisition teams may be unable to negotiate prices and place a contract - this should be made clear to the contractor.

4. MOD accepts that the E of I principle is mutual and has agreed a statement about the release of information to contractors. Within the constraints of Government policy, MOD should be as open as possible about any pending procurement decisions that may affect the usage of a company's capacity and, through that, its overhead rates.

5. The E of I Pricing Statement should be signed before the contract is let. A period of up to a fortnight should be allowed to enable both parties to check the validity of the information that they have provided before they sign the Statement. This period is not an opportunity to re-open the prices but rather to check that the data is still sound.

6. E of I Pricing Statements are vital to the process of post costing and for references to the Review Board.
Authoritative Guidance

7. All non-competitive contracts are priced on the basis of equality of information (E of I). The principles in paragraph 9 of the 1968 Government Profit Formula Agreement, now carried forward in the 2006 Annual Review of the Profit Formula for Non-Competitive Government Contracts, remain the basis of all non-competitive pricing (including No Acceptable price No Contract (NAPNOC)) between the MOD and Industry. These are set out below:

a. It is intended that as a result of equality of information the Government and the contractor will be in the same position at the time the price is fixed.

b. The Government will not normally expect more information from a contractor than is available to him up to the time of fixing the price.

c. The Government must have access to information adequate for price fixing purposes. In general, this will be information from the contractor’s normal accounting system.

d. The Government will therefore limit any demand for further information to what can reasonably be shown to be necessary for price fixing purposes.

8. No agreed definition of the phrase equality of information exists; the presumption is one of good faith between the parties to bring to one another’s attention, information which is material to the agreement of a fair and reasonable price.

E of I Application: DEFCON 643

9. To give effect to E of I in the pricing of subsequent contract amendments, DEFCON 643 (Equality of Information) must included in all non-competitive and competitive contracts where it is intended to agree a price for changes to the contract on the basis of forward estimates of cost. When included in a competitive Invitation to Tender (ITT), the condition is to be annotated:

‘For the purposes of amendments and extensions to contract only.’

10. DEFCON 643 as a contract condition, cannot, however, effectively be applied to prices agreed before placement of a contract. Accordingly, an alternative mechanism, the agreement and signature of an E of I Pricing Statement prior to contract award, was agreed with Industry in 1995 to ensure that E of I would also be achieved in NAPNOC contracts.
11. All new non-competitive contracts, (including proprietary goods and
subcontracts priced directly between MOD and the subcontractor) above £250K
(two hundred and fifty thousand pounds sterling) in value require an E of I
Pricing Statement provided at Annex A. Annex B provides a check list of
information required in support of E of I Pricing Statement. This E of I Pricing
Statement is signed by the relevant parties (MOD and contractor or MOD and
subcontractor) on conclusion of price negotiations but before the contract is
let. The obligations incorporated in this are binding on both parties.

12. The E of I Pricing Statement is linked to the contract by the use of
DEFCON 652 (Remedy Limitation). In the event of a dispute, each party's
course of redress will be limited by this condition to a reference to the Review
Board and the E of I Pricing Statement will form a vital part of the
documentary evidence to be presented to the Board. It follows from this that
all non-competitive risk contracts, including NAPNOC contracts that include
DEFCON 648/648A (Availability of Information) and DEFCON 650/650A
(Reference To The Review Board Of Questions Arising Under The Contract),
will continue to be referable to the Review Board.

13. The E of I Pricing Statement refers to the facts and pricing assumptions to
be set out in Annex 2 to the Statement. Annex 2 to the Statement contains an
illustrative list of the categories of information that will normally be
appropriate, at least for contracts valued above £1M (one million pounds
sterling). This specimen list is not necessarily comprehensive, and the actual
list in each Statement will be for agreement by the negotiators. Even where
goods are proprietary and truly unique (i.e. there are no similar items available
on open market for price comparison purposes) an E of I Pricing Statement
should be completed. The E of I Pricing Statement, and its Annexes, should set
out, however briefly, the assumptions that have been used to arrive at the
negotiated price.

**Industry E Of I Obligations**

14. Acquisition teams, in conjunction with Cost Assurance and Analysis
Service (CAAS) (formerly known as Cost Assurance Service (CAS)), must
scrutinise thoroughly prices and pricing data supplied by the contractor and
request any further data that may be required in order to achieve a fair and
reasonable price. The E of I Pricing Statement requires the contractor to
declare that he is not aware of any material omission of pricing data required
for the agreement of a price.

15. Under NAPNOC where pricing takes place before contract commitment,
Industry has had concerns about rights of access to data, rights to remove
data, confidentiality and related matters that could be compromised in the
absence of a contractual framework. The E of I Pricing Statement contains at
paragraph 4 confidentiality undertaking that is binding on both parties and that
should satisfy these concerns. This undertaking cannot extend to any statutory obligations(s) or duty of MOD or its staff to disclose documents or information to, for example, the National Audit Office, Public Accounts Committee and other Parliamentary Committees, or in connection with the administration of justice. These disclosures will nevertheless identify the confidential nature of the documents or information revealed to each recipient.

16. It will be for the prospective contractor, in negotiation, to decide the extent he is prepared to meet requirements from MOD for information but, without it, MOD may be unable to negotiate prices and thus to place the contract. In the event that sufficient visibility is not provided, the matter should be referred to a commercial officer at Band B2 level or above in order that an assessment can be made of the consequences for MOD of delaying the contract or re-assessing the procurement strategy.

**MOD E Of I Obligations**

17. MOD accepts that the E of I principle is mutual and in response to a request from Industry MOD has agreed a statement about the release of information by CAAS to contractors during pricing negotiations. This statement is attached at Annex C.

18. While the contractor will always hold more information than MOD does on prices and pricing assumptions, MOD’s knowledge will largely be in relation to its internal procurement decisions that may affect the usage of a company's capacity and, through that, its overhead rates. Within the constraints of Government policy, MOD should be as open as possible about its procurement decisions in so far as these relate to the contractor's likely workload. This should not be a problem provided that:

   a. MOD does not guarantee that a programme will survive until completion (which is why DEFCON 656 (Break) is included in MOD contracts);

   b. MOD does not promise new programmes however optimistic it may feel; and

   c. in negotiating overheads, MOD presents its best assessment of any procurement decisions likely to affect future workloads, but without commitment.

19. Pricing teams should not be disclosing to Industry, for example, undeveloped ideas underlying the early planning stages of new work. They should concentrate on firm and factual data about decisions made or imminent, but not yet in the public domain, which are likely to have consequential impact.
on the pricing in hand. Pricing teams should also check with others to ensure that there are no plans or issues that might affect their activities:

a. local senior finance staff at Band B2 level or above;

b. the appropriate Commercial Co-ordinating Officer (CCO) or the acquisition team whose area handles the most work with the company concerned (the policy sponsor can advise); and

c. other acquisition teams that may have an interest (e.g. where mature equipment is supported by Defence Equipment and Support (DE&S) and is also the subject of procurement activity such as mid-life up-dates).

20. The onus is on the pricing team to ensure that all that can reasonably be done, is done, to fulfil MOD’s E of I obligations. Any cases of doubt should be referred to the appropriate commercial officer at Band B2 level or above for resolution.

E Of I Uncertainties

21. There may be situations where there is uncertainty on either side about equipment programmes, corporate restructuring or other forward plans. In such cases, each side should advise the other that impediments have arisen and consult on how best to proceed. In the context of a particular Reference to the Review Board, the Board stated that the unpredictable nature of probable or possible events which, if they occurred, materially affect likely contract costs are not sufficient grounds for their non-disclosure (by the contractor) as part of the pricing process.

Signing E Of I Pricing Statements

22. The E of I Pricing Statement should be signed before the contract is let. A period of up to a fortnight should be allowed to enable both parties to check the validity of the information that they have provided before they sign the Statement. This period is not an opportunity to re-open the prices but rather to check that the data is still sound. Where this checking process reveals inaccuracies in the facts or assumptions which have been used in the negotiation of prices, then the negotiators will agree what, if any, price or other adjustment may be necessary, prior to their signature of the Pricing Statement.

23. The E of I Pricing Statement must be signed by the commercial officer responsible for the negotiation of the contract price and its related terms and
conditions. Where negotiation of the price is delegated to a CAAS officer, it is that CAAS officer who must sign the E of I Pricing Statement.

Associated Documents

- [Annex A - Equality Of Information - Pricing Statement](#)
- [Annex B - Specimen Equality Of Information Check List](#)
- [Annex C - CAAS Investigations And Price Negotiations: Release Of Information To Contractors](#)

Essential Reading

- [Pricing - Team Approach topic](#)
- [Pricing - Charging Rates topic](#)
- [Pricing - NAPNOC topic](#)
- [Pricing - Post Costing topic](#)
- [Pricing - Government Profit Formula topic](#)

Further Reading

- [National Audit Report Into Non-competitive Procurement In The MOD](#)
- [Pricing - Subcontracts topic](#)
- [Prime Contracting topic](#)