

Duty of Care to Suppliers Policy Information Note

DFID has implemented a new Duty of Care to Suppliers Policy with effect from 19 July 2012. The policy clarifies the DFID position on Duty of Care to Suppliers, how it will be applied in practice and who is responsible for Duty of Care (DoC) when DFID contracts with a Supplier for the provision of Goods and Services (of any type or value). Under this new Policy, DoC must be considered at the beginning of any procurement process and managed throughout the life of the contract. This policy does not apply to DFID Accountable Grant arrangements.

What is “Duty of care”?

“Duty of Care” is a legal obligation requiring an adherence to a standard of reasonable care to prevent foreseeable harm. The duty stems from the relationship of the participants in a given situation being sufficiently close that it is reasonable for the law to infer that a duty is owed. Where it exists, such as between an employer/employee, it requires due care to be taken (which will always depend on the circumstances). The focus should be on what needs to be done or prevented to provide adequate care. In general terms, a Duty of Care will arise towards someone whom you should be aware of as being potentially at risk from some act or inaction on your part.

Who is responsible for duty of care?

All Supplier Personnel (including their employees, sub-contractors or agents) engaged under a DFID contract will come under the Duty of Care of the lead Supplier. The Supplier is responsible for the safety and well-being of their Personnel and any Third Parties affected by their activities, including appropriate security arrangements. This approach is not new, but our DoC policy, competitive processes and contract documents make our position clearer for both DFID staff and suppliers.

Suppliers must comply with the general responsibilities and duties under relevant health and safety law including appropriate risk assessments, adequate information, instruction, training and supervision, and appropriate emergency procedures. These responsibilities must be applied in the context of the specific requirements the Supplier has been contracted to deliver.

What will DFID provide in relation to duty of care?

DFID will carry out a risk assessment (of foreseeable risks) for all new procurements and a risk rating of Low, Medium or High will be applied (See Annex A for an example). The Terms of Reference will provide any further DoC information DFID considers appropriate. In exceptional circumstances DFID may offer to provide specific DoC arrangements and if applicable, these will also be specified in the Terms of Reference. The provision of DoC information or special arrangements by DFID does not relieve the Supplier of their DoC responsibilities under any contract awarded.

How will this impact on the suppliers’ selection process?

For Procurements rated as Low risk there is no change to the supplier selection process and DFID standard processes continue to apply.

Procurements rated as Medium or High risk will require suppliers to provide evidence that they have the capability to take on and effectively manage their Duty of Care Responsibilities throughout the life of the contract. As part of the procurement process suppliers will be asked to respond to a set of standard DoC questions (See Annex B for a copy of the standard questions) and to provide supporting evidence in the form of text (the number of pages required may vary and will be specified in the procurement pack). The assessment of DoC will be on the basis of suppliers demonstrating in their response that they have the Knowledge, Experience and Resources to adequately deal with their responsibilities in the context of the specific procurement. The DoC assessment will be on a Pass / Fail basis:

- For High Value procurements that are being competed under the EU Restricted Route, the assessment will be carried out at the Pre-Qualification Questionnaire (PQQ) stage. The standard DoC questions will be included in our PQQ Template. This assessment is completed separate

from (and prior to) the Technical Evaluation / Scoring of the PQQ. If a supplier fails the DoC assessment, their PQQ Response will be excluded from the Technical Evaluation and they will not be shortlisted for ITT. DFID may revisit their earlier DoC (PQQ) "Pass" decision if at the ITT stage the more detailed risk management information provided in the Supplier's Tender raises significant concerns in relation to their DoC capability.

- For Low Value procurements (under the EU threshold of £113K), the standard DoC questions and request for evidence will be included in the Terms of Reference provided in the Invitation to Tender (ITT) pack. The Supplier DoC response will be provided as part of their Technical Tender. The assessment of Supplier DoC capability is completed separate from (and prior to) the Technical Evaluation / Scoring of the Tender. If a supplier fails the DoC assessment, their Tender will be excluded from the Technical Evaluation/Scoring.
- DFID will not award a contract to a Supplier who cannot demonstrate that they are willing to accept and have the capability to manage their DoC responsibilities in relation to the specific procurement.

How will this impact on the contractual arrangement?

Our standard contract for suppliers will include the following clause in relation to DoC:

"The Supplier is responsible for all acts and omissions of the Supplier's Personnel and for the health, safety and security of such persons and their property. The provision of information by DFID shall not in any respect relieve the Supplier from responsibility for its obligations under this Contract. Positive evaluation of proposals and award of this Contract (or any future Contract Amendments) is not an endorsement by DFID of the Supplier's security arrangements".

We will also be in touch with Framework Suppliers to agree the inclusion of this clause in section 2 of the Framework Agreements. In line with this policy, Framework Suppliers will be assessed for DoC capability as part of any mini-competition under the Frameworks. A Call-down contract will not be awarded to a Framework Supplier who cannot demonstrate that they are willing to accept and have the capability to manage their DoC responsibilities in relation to the specific procurement.

How will DoC be managed post contract award?

The Supplier is responsible for managing all aspects of DoC for the duration of the contract (in line with the contract Terms and Conditions). When, in exceptional circumstances DFID is providing specific DoC arrangements these will be detailed in the Terms of Reference and agreed in the contract.

The Terms of Reference will provide an outline of any on-going briefing arrangements that DFID are willing to provide. This will vary in relation to the procurement. The level of appropriate briefing provided by DFID will be decided at the sole discretion of DFID.

DFID will maintain an overview of on-going supplier contracts and may decide that changes are required to contractual arrangements to alleviate concerns on Supplier capability to manage DoC responsibility throughout the life of the contract in a changing risk environment. This could in some instances result in termination of a contract.

If you have questions who do you contact?

Questions on the general application of the Duty of Care to Suppliers Policy should be directed to the e-mail address: dutyofcare@dfid.gov.uk

Questions on application of the Policy in relation to a specific procurement must be directed to the named Contract Officer via the DFID Portal (in line with the related Supplier Instructions provided as part of the competitive process).

DFID will develop a Q & A section for suppliers during the early implementation period to assist understanding and embed implementation. Suppliers should maintain a regular check on this Information Note to keep up to date with Q & A developments.

SUMMARY RISK ASSESSMENT MATRIX - EXAMPLE

COMMERCIAL IN CONFIDENCE
(when completed)

**DFID Overall Project/Intervention
Summary Risk Assessment Matrix**

Project/intervention title:

Location:

Date of assessment:

Assessing official:

Theme	DFID Risk score	
	Parts of Country X	Other Parts of Country X
OVERALL RATING¹		
FCO travel advice		
Host nation travel advice		
Transportation		
Security		
Civil unrest		
Violence/crime		
Terrorism		
War		
Hurricane		
Earthquake		
Flood		
Medical Services		
Nature of Project/ Intervention		

1 Very Low risk	2 Low risk	3 Med risk	4 High risk	5 Very High risk
Low		Medium	High Risk	

¹ The Overall Risk rating is calculated using the MODE function which determines the most frequently occurring value.

Standard Duty of Care Questions

- a) Have you completed an initial assessment of potential risks that demonstrates your knowledge and understanding, and are you satisfied that you understand the risk management implications (not solely relying on information provided by DFID)?
- b) Have you prepared an outline plan that you consider appropriate to manage these risks at this stage (or will you do so if you are awarded the contract) and are you confident/comfortable that you can implement this effectively?
- c) Have you ensured or will you ensure that your staff are appropriately trained (including specialist training where required) before they are deployed and will you ensure that on-going training is provided where necessary?
- d) Have you an appropriate mechanism in place to monitor risk on a live / on-going basis (or will you put one in place if you are awarded the contract)?
- e) Have you ensured or will you ensure that your staff are provided with and have access to suitable equipment and will you ensure that this is reviewed and provided on an on-going basis?
- f) Have you appropriate systems in place to manage an emergency / incident if one arises?