

GUIDELINES ON TECHNICAL INFORMATION REQUIREMENTS AND USES

Introduction

- A The French Republic, the Federal Republic of Germany, the Italian Republic, the Kingdom of Spain, the Kingdom of Sweden, and the United Kingdom of Great Britain and Northern Ireland have entered into an agreement concerning Measures to Facilitate the Restructuring and Operation of the European Defence Industry signed at Farnborough on 27 July 2000 (hereinafter referred to as the "Framework Agreement"),
- B Pursuant to Article 59 of the Framework Agreement, the Ministry of Defence of the French Republic, the Federal Ministry of Defence of the Federal Republic of Germany, the Ministry of Defence of the Italian Republic, the Ministry of Defence of the Kingdom of Spain, the Government of the Kingdom of Sweden represented by the Ministry of Defence, and the Ministry of Defence of the United Kingdom of Great Britain and Northern Ireland (hereinafter referred to as "Participants") have concluded an Implementing Arrangement dated, 16 April 2004 relating to the Treatment of Technical Information (hereinafter referred to as the "TTI IA").
- C As part of the Implementation process for the TTI IA, it is intended that the adoption of the following guidance will facilitate industrial restructuring in accordance with the Framework Agreement and should lead to harmonisation among the Participants as regards their requirements for delivery and use of Technical Information in development, production and in service support contracts. This should reduce barriers to market entry and promote a more competitive European defence technological base in the global defence market
- D It is intended that these Guidelines should not bind any Participant, but serve as examples or aids for defining Technical Information requirements, which if adopted, will lead to the further harmonisation as envisaged by Article 42 of the Framework Agreement.

The Guidelines

SECTION 1 DEFINITIONS

The following definitions are taken from the TTI IA to ensure that this document is complete in itself. If there is any inconsistency between the definitions in this document and those of the TTI IA, the definition in the TTI IA applies.

"Background Technical Information" means Technical Information needed to achieve the objectives of the contract concerned, but which was generated otherwise than in the performance of the contract.

"Contracting Participant" means a Participant who is placing a contract or on behalf of whom a contract is placed.

"Contract Item" means any item or part thereof which is the subject of a contract concerned and which may, or may not, be a Defence Article or Defence Service and which may comprise, wholly or partially, software, material or a process and includes documents.

"Commercial Item" means any Contract Item which:

- (a) has been sold or licensed in the commercial (civil or military) market;
- (b) has not been sold or licensed, but has been offered for sale or licence in the commercial (civil or military) market;
- (c) is not yet available in the commercial (civil or military) market, but will be available for commercial delivery in a reasonable period of time; or
- (d) is described in definitions (a), (b) or (c) above and would require only minor modification in order to meet the requirements of the Contracting Participant.

For the avoidance of doubt, any Contract Item developed under a contract placed by the Contracting Participant concerned is not a Commercial Item.

"Defence Article" means any weapon, weapon system, munitions, aircraft, vessel, vehicle, boat, or other implement of war and any part or component thereof and any related Document.

"Defence Purposes" means the use by or for the armed forces, or the security or intelligence forces of a Contracting Participant in any part of the world and includes but is not limited to study, evaluation, assessment, research, design, development, manufacture, improvement, modification, maintenance, repair, refurbishment, and product acceptance and certification, operation, training, disposal and other post design services and product deployment. This includes the sale, loan or transfer by a Contracting Participant of obsolete or surplus equipment and associated material solely for the support of that equipment, but does not include any other sale, loan or transfer.

"Defence Services" means any service, test, inspection, maintenance and repair, and other post design services, training, technical or other assistance, including the provision of Technical Information, specifically involved in the provision of any Defence Article;

"Deliverable Technical Information" means Technical Information set out in a defence contract that is stated to be a deliverable under the contract.

"Dissemination" relates to the disclosure of knowledge by written, oral or electronic means.

"Document" means any recorded information regardless of physical form or characteristics, e.g. written or printed matter (inter alia, letter, drawing, plan), computer storage media (inter alia, fixed disc, diskette, chip, magnetic tape, CD), photograph and video recording, optical or electronic reproduction of them.

"Foreground Technical Information" means Technical Information that is generated in the performance of a contract.

"Government Purposes" means use by or for any governmental organisation or an administration of a government.

"IPNR" means a person appointed in accordance with Section 11 of the TTI IA.

"Technical Information" means recorded or documented information of a scientific or technical nature whatever the format, documentary characteristics or other medium of presentation. The information may include, but is not limited to, any of the following: experimental and test data, specifications, designs and design processes, inventions and discoveries whether or not patentable or otherwise protectable by law, technical descriptions and other works of a technical nature, semiconductor topography/mask works, technical and manufacturing data packages, know-how and trade secrets and information relating to industrial techniques. It may be presented in the form of Documents, pictorial reproductions, drawings and graphic representations disk and film recordings (magnetic, optical and laser), computer software both programmatic and data base, and computer memory printouts or data retained in computer memory, or any other form.

SECTION 2 GENERAL

- (1) The intellectual property principles described in the TTI IA on the Treatment of Technical Information are generally adequate to cover Participant's needs and rights.
- (2) If there is any doubt as to whether a Contracting Participant has the legal right to receive, use or disseminate an item of Technical Information, specialist advice should be obtained, which may include advice from industry at the Contracting Participant's discretion.

SECTION 3 TECHNICAL INFORMATION REQUIREMENTS

- (1) Examples of the Technical Information that may be required under a contract are set out below, and as appropriate as further described in the Annexes:

- (a) Information to reproduce and/or modify Contract Items. Subsets of such information may include information needed for procuring spare parts, modification and post design services work (Annex A);
- (b) Refurbishment, Repair, Overhaul and Maintenance schemes and instructions (Annex B);
- (c) Support Information (Annex C) including
 - (i) acceptance, health and safety, environment, regulatory and like information (Annex C1);
 - (ii) information for training schemes and aids (including simulators) ; interoperability and interface information (Annex C2);
- (d) Management and Development Information (Annex D and Appendices 1 and 2)
- (e) Technical reports not falling under (a), (b) (c) or (d) above.

This description is for illustration only and without prejudice to national practices.

- (2) To the maximum extent practicable, Participants' Technical Information requirements should be specifically set out in relevant contracts or associated regulations even if delivery is deferred until a date after the completion of the contract.
- (3) A Contracting Participant may, at its option, require Technical Information to be delivered to a particular national or international standard, or one as used by the contractor.
- (4) A contract should stipulate the standard (if any) expected for each Contract Item or category of Technical Information. It is anticipated that different standards may be appropriate for different kinds of Technical Information (e.g. between that relating to replication or modification and that relating to support). In the case of Technical Publications recognised standards should be used whenever possible.

SECTION 4 - DISCLOSURE AND USE OF TECHNICAL INFORMATION.

- (1) Best practice is that disclosure of Technical Information of a commercially sensitive nature should only be done on a need to know basis.
- (2) Contracting Participants should normally only use Deliverable Technical Information of a commercially sensitive nature provided under a contract for Defence Purposes or Government Purposes (as appropriate) in line with Section 6 of the TTI IA.
- (3) Contracting Participants may, however, require that Technical Information required for health and safety, environmental and other regulatory requirements, and for use for in-service support and safe disposal of the Contract Items, should include all necessary Background Technical Information necessary for these purposes.

- (4) In addition to Section 6 of the TTI IA, Participants may make clear in their contracts that they have unrestricted rights, free of charge, to copy, use or have used any Technical Information which is provided by a contractor in connection with a contract and which:
- (a) was already in the receiving party's possession without restriction at the time of receipt from the other party;
 - (b) has become public knowledge (other than through a breach of an obligation of confidence imposed under the contract);
 - (c) is Technical Information which the contract permits to be released once the intellectual property rights protecting it have expired;
 - (d) is in the public domain at the time of communication; or
 - (e) can be shown to have been acquired legitimately without restriction by the Contracting Participant from sources other than the contractor.

Technical Information listed in paragraphs (a) to (e) is not regarded as commercially sensitive.

- (5) Following the principles of paragraphs (1) to (4) above, Contracting Participants should, to the extent permitted by law, protect Technical Information of a commercially sensitive nature provided in potential suppliers' formal tenders.
- (6) Technical Information of a commercially sensitive nature may also be disclosed to the extent necessary to comply with a statutory, judicial or parliamentary obligation.
- (7) Participants may wish to provide that:
- (a) the contractor may disclose Technical Information in confidence to sub-contractors to the extent necessary for the purposes of the contract;
 - (b) to the extent provided in national regulations and policies, each sub-contractor should be provided with the same conditions as defined in the prime contract in respect of Intellectual Property Rights (including but not limited to notification and registration of rights, use and dissemination of Technical Information, exploitation, and levies)
 - (c) Participants will normally require that contractors only use and disclose to sub-contractors Technical Information made available by the Contracting Participant for the purposes of the contract. Where such Technical Information is of a particularly sensitive nature, as specified by the disclosing Contracting Participant or as otherwise apparent from the circumstances of the contract, disclosure to sub-contractors may not be permitted without the prior written consent of the Contracting Participant;
 - (d) in the case of particularly sensitive information, information can be passed directly between the sub-contractor or potential sub-contractor and the Contracting Participant (*or vice versa*)

- (8) In case of reproduction or modification by a party other than a contractor who originally developed a Contract Item, the Participants should include in any such contracts the following obligations:
- (a) that the party should keep confidential the documents, information or advice supplied to him and to use them only for the reproduction or modification of the Contract Items concerned.
 - (b) to obtain and guarantee the same commitment on the part of his sub-contractors.

SECTION 5 – RESERVATIONS AND RESTRICTIONS

- (1) Potential suppliers should be asked when tendering for a contract:
- (a) to state if they have entered into any arrangements or licence agreements relating to Technical Information concerning the subject of the tender, the performance of the contract or any subsequent use by or on behalf of the Contracting Participant of the outcome of the contract (including any necessary maintenance or refurbishment arrangements);
 - (b) to supply copies of documents recording the arrangements or licence agreements specifying the rights granted and potential limitations, or an appropriate extract thereof, with the tender.
 - (c) to identify any arrangement or agreement related to the Technical Information that would result in costs to be borne directly or indirectly by the Contracting Participant.
 - (d) to identify any Background Technical Information the use of which by or on behalf of the Contracting Participant for reproduction or modification purposes would be the subject of a licence in accordance with Section 7(2) of the TTI IA;
 - (e) to identify any Commercial Item that would be the subject of Section 8 of the TTI IA;
- (2) Where for legitimate reasons it has not been possible for a contractor to have provided the information required under 5(1)(a) prior to a contract being placed, the contractor should be required to provide that information immediately it becomes aware of relevant circumstances.
- (3) If
- (a) as a result of a commitment to a third party, or
 - (b) because Intellectual Property Rights not paid for by the Contracting Party will be used under the contract, or
 - (c) for any other reason,

the potential supplier wishes to make any reservation on the rights of use, as foreseen and defined in the TTI IA of any data, including documentation, related to the work under the contract, such proposed restriction may be clearly defined and justified in the tender. It may be

taken into account in the evaluation and if contrary to the stated objectives of the tender, might render it unacceptable.

SECTION 6 EXPORT CONTROLS

- (1) Potential suppliers should be asked to identify anything to be used in or delivered under a contract that will be subject to export control restrictions, and identify the conditions of the arrangement that would permit its dissemination to or use by the Contracting Participant. It may be taken into account in the evaluation and if contrary to the stated objectives of the tender, might render the tender unacceptable.
- (2) If, at the time of the tender process, it is not possible to identify an item which might be supplied under a contract and which is subject to export control restrictions, it and the relevant restrictions should be identified as soon as the situation is realised. A Contracting Participant should consider whether to accept supply of such an item, in the light of export control restrictions that affect its use or dissemination.

SECTION 7 RECORDS AND MARKING

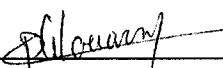
- (1) The Contracting Participant may record ownership, user rights, restrictions (see Section 5) and export control restrictions relating to the Technical Information (See Section 6).
- (2) Copies of contracts and any agreements in which rights are secured should be retained by the Contracting Participant throughout a project's life and as long thereafter as might be appropriate.
- (3) Contractors should be recommended to mark all supplied Documents to indicate the name of the owner (i.e. contractor, sub-contractor, or any third party), the date of creation of the document, its classification, its commercial sensitivity, and the contract number. Such action should, for example, enable easier identification of supplied Technical Information for specialist advices, discussion of claims, secure future uses, and help prevent wrongful disclosure. Oral disclosure shall be confirmed in writing with the same type of specifications within a specified time limit.
- (4) To avoid any confusion regarding the rights of dissemination and use, no marks which are inconsistent with the contract conditions should be permitted on the documents.

SECTION 8 PROTECTION BY INTELLECTUAL PROPERTY

- (1) Contracts may encourage the protection of Technical Information by registrable intellectual property rights (such as patents) wherever it is possible to do so. Nevertheless, the owner should be free to decide the best means by which to protect such Technical Information.
- (2) Participants may wish to consider in appropriate circumstances, where it is consistent with national procedures, that:

- (a) where knowledge is capable of industrial or commercial application, arrangements should be made for its adequate and effective protection;
 - (b) where a contractor does not intend to protect any intellectual property arising from the contract, or wishes to abandon such protection, whether it should be required promptly to inform the Contracting Participant before any deadline after which ability to protect will be lost. Contracting Participants will also want to consider whether to provide for measures to protect the intellectual property in such cases;
 - (c) the contractor should be invited to make comment on any proposal made by a Contracting Participant under (b). If it can demonstrate that its legitimate interests will be significantly impaired, the Contracting Participant may take into account the comments.
- (3) Contracting Participants may require advance notification of any desire on the part of a contractor to transfer to a third party any intellectual property related to a contract with that Contracting Participant, to ensure the Contracting Participants' interests are safeguarded.

Representative for the Ministry of
Defence of the French Republic in
Subcommittee 5



Signature

Ph. LE LOUARN

Name

French IPNR

Title

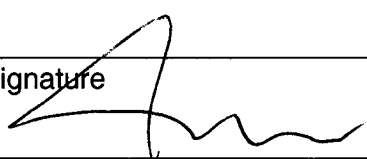
PARIS

Location

7 March 2007

Date

Representative for the Federal Ministry of
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Germany in Subcommittee 5



Signature

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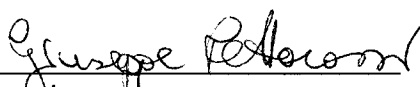
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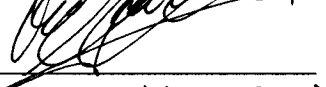
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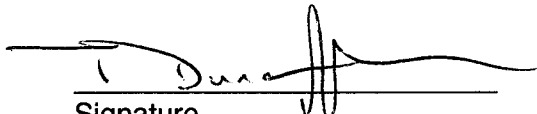
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**ANNEX A - INFORMATION TO REPRODUCE AND/OR MODIFY
CONTRACT ITEMS (INCLUDING SPARES AND SOFTWARE)**

TYPICAL DATA CONTENT	TYPICAL USES
<p>Data (including process and materials specifications,) necessary to reproduce and /or modify contract items including information relating to jigs and tools to be used for such purposes; subsets of such information may include information needed for modification and post design services work;</p> <p>Drawings and parts lists;</p> <p>Object code, source code and software design information</p>	<ul style="list-style-type: none"> • Reproducing and modifying the contract items; • Reproducing and modifying spare parts; • Acceptance or rejection of contract items; • Refurbishing of contract item; • Project management, audit and review purposes; • Making decisions on later stages of a project; • Disposal or scrapping contract item or materials. • Making decisions on service support, modifications, integration, interfacing and interoperability issues; • Preparing technical publications including repair and maintenance manuals; • Achieving interoperability or interfacing with other contract item as required by the Participant; • Configuration control.

ANNEX B - REFURBISHMENT, OVERHAUL, REPAIR AND MAINTENANCE SCHEMES AND INSTRUCTIONS

TYPICAL DATA CONTENT	TYPICAL USES
<p>User documentation including:</p> <ul style="list-style-type: none"> • Instructions for installation and setting to work; • Operating instructions and manuals; • Information to ensure safe disposal or scrapping of the contact items; • All other information relevant to the operation of the equipment. • Refurbishment, overhaul, repair and maintenance manuals and schemes for the contract items; • Inspection standards • Calibration standards • Infrastructure information • Drawings and parts lists. 	<ul style="list-style-type: none"> • To use and dispose of the contract items safely • To refurbish, overhaul, repair, and maintain contract item to ensure that it is in good working condition; • To ensure that operators of the contract items are competent. • To prepare and write maintenance, repair and overhaul schemes for contract item; • To prepare and write refurbishment schemes; • To maintain configuration control.

ANNEX C - SUPPORT INFORMATION (PART 1)

TYPICAL DATA CONTENT	TYPICAL USES
<p>Acceptance, health, safety, environment information such as:</p> <ul style="list-style-type: none"> • Test and evaluation Information and reports; • Acceptance test reports; • Health and safety cases including relevant data sheets; • Safety management plans; • Airworthiness, seaworthiness (including naval authority certification , ordnance safety and like certification cases); • Environmental cases; • Qualification plans; • Test plans (including environmental assessments and environmental management plans); • Certificates of conformity; • Information to enable codification of parts; • Information on preparing and setting to use in special situations and all other information relevant to acceptance or safety matters (including safety in use and on disposal). 	<ul style="list-style-type: none"> • contract item acceptance, health and safety, and certification matters; • To enable re-acceptance of a contract item following any maintenance repair or overhaul; • Qualification and acceptance; • To generate and inform health, safety and environment cases. • For reproduction, modification, repair and maintenance activities; • In service support or use of contract item; • To maintain configuration control.

ANNEX C (PART 2)- SUPPORT INFORMATION

TYPICAL DATA CONTENT	TYPICAL USES
<p>Information required to support training and interoperability such as:</p> <ul style="list-style-type: none"> • Training information and manuals; • Information for the construction of training aids (such as simulators); • Interoperability and interface information. 	<p>As in Annex C (Part 1) together with:</p> <ul style="list-style-type: none"> • Training; • Creating and/or writing training schemes; • Designing and making training aids; • Safely interfacing the contract items, allowing the contract items to operate effectively with other items. Modifying other items to operate effectively or interface with the contract items. To ensure communication between items. • As in Annex C (Part 1).

ANNEX D - MANAGEMENT AND DEVELOPMENT INFORMATION

TYPICAL DATA CONTENT	TYPICAL USES
<p>Management information including those items set out in Appendix 1.</p> <p>Development information including those items set out in Appendix 2.</p>	<ul style="list-style-type: none"> • Project management by or on behalf of the Participant; • Audit and review; • Budgeting • Record keeping; • To step into take over provision of contract items (including operation of services previously provided by the Contractor); • Monitoring of contractor or service provider's performance.

APPENDIX 1 - Management Information (Annex D)

Management Information Includes:

- programme plans, programme schedules progress, status reports and milestone reports;
- quality plans (including both for hardware and software);
- details of management information systems and any master records index (MRI);
- risk management plans, and risk management reports (including but not limited to technical matters, delays, quality matters);
- total cost of ownership reports (including but not limited to cost of main systems and equipment, including associated infrastructure - eg storage requirements, training, manpower resources, in-service costs);
- estimates, pricing/costing data, reports and information;
- disaster recovery plans;
- configuration management plans;
- Government Furnished Equipment (GFE) accounting, register of GFE;
- register of tools and equipment charged to the contract;
- commercial exploitation reports and returns;
- industrial organisation information, data relating to prime contractors and sub-contractors.

APPENDIX 2 - Development Information (Annex D)

Development Information includes:

- concept reports;
- assessment reports;
- information arising from development necessary to complete development or secure reproduction of contract items, or to secure provision of a service;
- technical data packs for individual items as development proceeds;
- system design specifications;
- interface specifications(including but not limited to interfaces between equipment and/or sub-systems and system interfaces);
- design reports (eg description / comparison of technical solutions, hardware / software / functional architecture)
- design justifications
- man - machine interfaces and specifications;
- technical and performance specifications and reports;
- security specifications and reports;
- functional and performance specifications and reports;
- reports on design trade off options;
- reliability reports and maintainability reports;
- health, safety, and environmental impact assessments, statements and reports;
- obsolescence reports;
- Configuration management plans.