

Introduction

This Supplier Notice is to brief LLWR's Supply Chain about revisions to the NDA Intellectual Property (IP) Policy.

Revised IP Process

An improved and more flexible process for implementing the IP provisions set out in the contracts between NDA and its Site Licence Companies (SLCs) has been agreed and is to be used as the basis for dealing with IP aspects of procurement across the NDA estate.

This process recognises that it is not always possible or desirable to include standard, non-negotiable, IP clauses in subcontracts and that a range of contractual conditions may need to be considered to accommodate the objectives of the NDA and each SLC, whilst at the same time encouraging and supporting innovation in the supply chain.

The basis of NDA's position is that:

- NDA needs to obtain technology for use across its estate in pursuit of its mission;
- In doing so, the NDA pays substantial sums of money for sourcing and developing technology and is obliged to obtain value for money (VFM);
- In many situations, the NDA is likely to wish to own Developed IP (IP that is developed by each SLC's subcontractors pursuant to contracts entered into with the relevant SLC) but NDA and each SLC recognise that there may be circumstances in which it is appropriate for Developed IP to be owned by subcontractors in the supply chain, in cases where this will result in VFM and / or lead to its further development;
- NDA requires the SLC to have visibility of any Background IP (IP that is owned by or licensed to a subcontractor that relates to deliverables under a particular subcontract and is required to exploit such deliverables) and to have clarity on commercial and other terms for its usage and exploitation prior to the SLC entering into the contract with the subcontractor.

SLC obligations:

- Represent NDA's interests which includes consideration of the needs of other SLCs across the NDA estate, where appropriate, in accordance with Commercial Guidance issued by the NDA and agreed by the SLC;
- Comply with the Public Contracts Regulations 2006 which, amongst other things, sets out the principal rules governing SLC procurement strategy and limits the scope for negotiation of contractual terms at later stages of the procurement process.

Standard terms and conditions are being prepared by the SLCs taking account of these matters to address a range of contractual scenarios. These recognise that in certain circumstances it would be beneficial for subcontractors in the supply chain to retain ownership of Developed IP subject to the NDA being granted rights to use and exploit the IP within the SLC and, where appropriate, further across the NDA estate.

As exploitation of the results of the work often requires access to Background IP, the SLCs' priority is to ensure that the terms for accessing Background IP are understood and agreed at the outset of the work.

In order to address any previous misunderstanding that may have been held by some subcontractors in the supply chain, concerning the degree of access required by NDA to Background IP, the SLCs wish to emphasise that they and the NDA recognise that supply chain IP is valuable and that many Small to Medium Enterprises (SMEs) wish to control the access that they permit to their IP.

The SLC requirements, which arise from the factors detailed above, are as follows:

- To achieve clarity over commercial, financial and other terms and any restrictions or limitations (perhaps arising from commitments to third parties) that may apply to the use and exploitation of IP provided by the supply chain;
- To ensure that sufficient IP rights are obtained to enable the contract to deliver its intended output. In the case of contracts providing for a contractor to trial a particular technology for more general use, this will require adequate rights to be granted to enable subsequent usage consistent with the specified contract strategy;
- To ensure that the NDA's ability to use any supply chain IP within the NDA estate is understood and agreed before work starts.

There may not be a need to seek unrestricted rights to Background IP if this would be commercially unworkable or unattractive to subcontractors, nor to impose any such obligation on lower tier suppliers. What is necessary, however, is to have visibility and acceptance of the commercial terms for such IP and an understanding of any risks or limitations associated with access to Background IP.

The SLC will select the most appropriate contractual terms and conditions for the ownership and licensing of IP and incorporate these into draft contracts issued with Invitations to Tender (ITTs). In many cases, it is anticipated that the terms will enable the supply chain to identify terms that it wishes to apply to the use of its IP, noting that these will form part of its commercial offering.

Further Information and Questions

If you require any further information or have any queries relating to this Supplier Notice, please contact your nominated LLWR Contract Officer or send an e-mail to the LLWR Procurement Team:

procurement@llwrsite.com