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The PASS Mark Health Check reviews your:

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- knowledge of public sector tendering legislation
- tendering process controls
- practices for responding to "Expressions of Interest"
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- presentation of tender response documentation
- knowledge of your clients' processes and practices, including their evaluation techniques
- understanding of when and how to address government initiatives



The PASS Mark Health Check is a process-based evaluation technique that helps identify how your company can develop more effective processes when tendering for public sector contracts.

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THE DEFENCE INDUSTRIAL POLICY

PART TWO OF TWO

The UK Ministry of Defence (MoD) is the largest customer of the private sector in the UK. An understanding of its Defence Industrial Policy (DIP) is therefore vital to those companies in the private sector that either currently supply to, or intend to supply to, the MoD.

The Defence Industrial Policy was launched in October 2002, after 18 months of discussion between the UK MoD, the Department of Trade and Industry (DTI) and industry. The Policy covers four broad areas – Acquiring Capability for the Armed Forces; Market Access; Research and Technology; and the Future.

There were six 'Overarching Themes':

- Provide required equipment at best value for money at a price the UK can afford.
- Review policy and implementation.
- Treat all defence suppliers that create value in the UK fairly, regardless of ownership.
- Maximise economic benefit to the UK from defence expenditure.
- Maintain close dialogue with industry.
- Sustain an environment that enhances the competitiveness of the defence industry.

The House of Commons Defence Select Committee examined the Policy in last year's Defence Procurement report and concluded: "We very much welcome the publication of the Defence Industrial Policy, bringing as it does a useful, though overdue, increase in transparency to this important area. The way its provisions and statements should be interpreted will inevitably have to be developed; by further debate and through 'case law'. Indeed, in some areas, including the use of competition and open markets



and in risk management (two of the perhaps more contentious of its themes), the Policy's utility will be evident only with the passage of time."

This guidance, based on a report from the Defence Select Committee, looks at the ownership of companies, open markets and access to technology, and relations between the MoD and industry.

OWNERSHIP OF COMPANIES

In terms of ownership of companies, Sir Peter Spencer KCB, Chief of Defence Procurement, would not comment on recent cases, but noted that "the Ministry of Defence is able to make representations on two principles, one is security and the Office of Fair Trading will be looking at competitive issues". He added that "the whole process is becoming increasingly global. We need to be very clear about the principles which apply here and security of supply during future operations and over time is clearly a key concern of the Ministry of Defence."

In Sir Peter's view: "The restructuring will be inevitably ... a matter for the shareholders of the companies concerned, and there are limits as to the ability of the Ministry of Defence to alter any of that ... If hypothetically you get a change of ownership which gives a strong underpinning of a company to ride out the peaks and troughs of our own demand on industry because they are able to provide work from elsewhere, that can actually be very helpful as a component of nurturing the industrial base over time."

Defence Procurement Minister Lord Bach told us that: "BAE Systems, and other British companies, have bought and purchased companies all over the world, particularly in the United States, and are absolutely entitled to do that. We also, in this country, are willing and happy to see companies that originated in other countries buy into the United Kingdom too."

However, on the issue of overseas companies acquiring UK companies he told us that: "Of course it is a concern," but noted that "these companies that are owned abroad and invest heavily in the United Kingdom and create and sustain jobs here, sustain and create technology here, as far as we are concerned, and this must be commonsense in the global defence market, are to be treated as British companies."

We recognise that defence is a global industry and that consolidation in the defence industry can bring advantages, such as gaining access to a wider market. However, there are also possible disadvantages in that UK defence companies which are owned by overseas companies are more likely to be susceptible to job losses or cuts in investment if the parent company experiences problems. It is of real concern that in recent months, the UK's only defence helicopter manufacturer has been taken over by an overseas company, and the UK's main armoured vehicle manufacturer was almost taken over by an overseas company. When overseas companies bid for UK defence companies, we expect the MoD to consider fully issues of security and the impact on competition, and make the necessary representations where appropriate. It would be a terrible loss if the UK's remaining defence companies merely became 'metal bashers' for overseas defence companies. We expect the MoD and the DTI to stand ready to take action to counter this risk.

OPEN MARKETS AND ACCESS TO TECHNOLOGY

The Defence Industrial Policy states that: "Protectionism is not a viable way forward, but we recognise that not all governments approach acquisition with similar openness. We will continue to press for freer access to overseas markets. We aim to improve the flow of defence information and technology access across borders, and to enable the UK defence industry to compete on merit in other markets."

We examined the issue of open markets and access to technology in last year's report on defence procurement. We were happy to lend our weight to a campaign to address the lack of open markets in other countries and looked to ministers and their officials to maintain pressure for reciprocal treatment from other defence manufacturing countries. We concluded that: "the UK defence industry would suffer more than most from a retreat into protectionism. It is precisely because of the success abroad of UK firms that pressure must be maintained on the US and European countries to level the playing field."

In terms of the progress that had been made in opening up markets, Sir Peter Spencer told us that "we have been working hard ... both in the United States and within Europe". However, UK contractors were

still experiencing difficulties selling to overseas markets. Sir Richard Evans, Chairman of BAE Systems, told us that "in defence terms, the UK is the only genuine open market in the world today ... For UK contractors to compete in America or to compete in many ... European countries is exceedingly difficult. ... it is in everybody's interest that all the markets are as open as possible and that is how we generate real competition and get the benefits from it."

There are alleged to be signs that the defence market in France is changing – John Howe, Vice-Chairman of Thales UK, told us that "as far as the French market is concerned, I would not argue that it is as open as the British market is, though it has been opening and the French part of Thales would argue that now they do have to win their business in competition which is much stiffer than it would have been a few years ago". However, it is not clear whether this meant international competition.

The VT Group suggested that a new industry/government approach to securing greater access to global defence markets should be developed and implemented. They considered that, by developing a common position on this issue, both industry and government would be able significantly to strengthen their understanding of what trade barriers actually exist at present. This seemed to us to be something which should be taken forward.

In 2003's report on defence procurement, we examined a number of issues relating to the United States – including the threat of a more protectionist approach and delays in securing a UK waiver from the US International Traffic in Arms Regulations (ITAR). The Government's Response to our report noted that: "On his recent visit to Washington, the Prime Minister secured an agreement with President Bush radically to improve the sharing of defence information and technology between our two countries. The Government is also working with the US Administration to secure a waiver for the UK from the US International Traffic in Arms Regulations." Sir Peter acknowledged that: "this Committee has been extremely supportive of ministers and of the Ministry of Defence in discussing in the United States the general concerns about access to technology, and the results of that were the prospective Buy American legislation which was passed last year was a good deal less problematic than it might have been."

Despite the efforts that have been made by Ministers and the MoD, it was disappointing to learn that little progress has been made and that the issue of protectionism in the US has re-emerged. At a UK/US Defence Industry Seminar held in London on 2 June 2004, Lord Bach raised his concerns about protectionism in the US and noted that, in contrast to European moves to reduce market barriers, there were some in the US who wished to move in the opposite direction – to close off opportunities for cooperation and to erect barriers in the marketplace. Lord Bach told his audience that this would "undoubtedly harm the UK both in capability and industrial terms, and will also damage US industry with which we have a close relationship and from which we acquire important elements of our national capability".



Lord Bach added: "Last year we had to deal with the implications of the Defense Authorizations Bill which sought to introduce overt protectionist measures to US defence procurement. It seems like we have escaped from that damaging proposal only to be confronted with another. It's got a new name – 4200, new wording and a new strategy. But its supporters and its intentions are the same. And I have no doubt that once again we will need to expend time and effort in countering these proposals ... I am encouraged to learn that the US Administration has expressed its opposition to this language in the House version of the bill ... We have seen some concrete actions from the Administration. For instance we agreed the terms of the ITAR waiver in May last year. Delivery of the waiver is now long overdue and the frustration that we feel and the messages that it sends are counter-productive. I note that the House version of the 2005 Defense Authorizations Bill also includes language which, if enacted, will further impede the introduction of an ITAR waiver. Again I am pleased to see that this language has been opposed publicly by the US Administration."

A recent defence journal article claimed that the UK Government "has threatened to ban US contractors from significant defence work here if protectionist measures proposed by US House Armed Services Committee Chairman Duncan Hunter become law".

We are dismayed that a waiver for the UK from the US International Traffic in Arms Regulations has still to be secured and that the introduction of protectionist measures in the US has re-emerged. In addition to the potential damage to both the UK and US defence industries, there is a real risk that the close relationship between the UK and US could be harmed. We note that the US Administration has provided support to the UK on these matters, but it is essential that that support is translated into real results. We again lend our support to Ministers and the MoD in addressing these issues.

On the issue of problems with access to technology, Sir Richard Evans cited the example of the Joint Strike Fighter (JSF). He told us that: "I think the JSF is a classic example. It is no good when you have signed up and paid your cheque over then trying to go back to negotiate the release of technology." He pointed out that in the case of the Joint Strike Fighter there would probably be two or three major updates throughout the programme, and that these would be undertaken by Lockheed in the US, and not in the UK.

We raised this concern with Sir Peter Spencer who told us that the issue of access to technology was an extremely sensitive area for the United States. He said that a Bilateral Defense Acquisition Committee has been set up. This is a senior forum between the US Department of Defense and the UK Ministry of Defence and its terms of reference include to 'develop and co-ordinate efforts to improve information and technology exchange including the timely release of classified and sensitive information.' He said that: "we have identified the specific areas which need to be followed through, including the Joint Strike Fighter ... So far as access to technology which is needed by British Aerospace to discharge its responsibilities as subcontractor to Lockheed Martin on Joint Strike Fighter, we have been getting there." He added that: "We need to know that we can operate this thing effectively in operations, not join a queue and get the thing fixed six months later."

The issue of access to technology on the Joint Strike Fighter was also raised by Lord Bach at the UK/US Defence Industry Seminar on 2 June 2004. He noted that "we had a difficult start to exchanging the necessary data and technical information on this programme, but a concerted effort at the most senior levels on both sides has delivered success". However, some reports in the media have suggested that there was continuing concern among the collaborative partners on the project about US restrictions on information sharing.

Information transfer delays, on programmes such as the Joint Strike Fighter, can prevent cooperating industrial partners from fulfilling their contractual obligations. We note that a Bilateral Defense Acquisition Committee, involving the UK and US, has been established and that it is tasked with developing and



coordinating efforts to improve information and technology exchange including the timely release of classified and sensitive information. We note that the MoD considers that, on the Joint Strike Fighter programme, the necessary data and technical information is now being exchanged, and we expect the MoD to ensure that this remains the case.

RELATIONS BETWEEN THE MoD AND INDUSTRY

Minister of State Adam Ingram has said that, since the launch of the Defence Industrial Policy, "our close and productive relationship with industry has developed further". However, in the run-up to our evidence session with the Defence Industries Council, a number of press articles had reported that the relationship between the MoD and the UK's largest defence contractor – BAE Systems – had reached an all-time low.

We asked Sir Richard Evans about his company's relationship with the MoD. He considered it to be pretty robust but thought it would get quite a bit tougher given the issues presently under discussion.

However, Sir Richard also believed that: "We need to put this behind us and have a fresh start on this ... I want it to be quite clear that in the context of my position and indeed Dick Oliver, who is taking over from me in July, our objective is to have a proper and good relationship with the most important single customer that we have."

We were interested in Lord Bach's view on the MoD's relations with industry and, specifically, with its largest supplier. Lord Bach told us that: "I really do not think the fact that there is tension between industry, on the one side, and the Ministry of Defence, on the other, is necessarily a bad thing ... as far as BAE Systems are concerned ... the relationship is often satisfactory, and sometimes good or better ... I actually accept what you said to Sir Richard – which was that it was important that all sides do their best to make sure that the relationship was a workable one, and one that got better rather than worse." Lord Bach considered that was happening.

For the Defence Industrial Policy to succeed, it is important that there is a constructive relationship between the MoD and the defence industry. We are disappointed to learn that there have been difficulties in the relationship between the MoD and the UK's largest defence contractor – BAE Systems. We note that both the MoD and BAE Systems recognise the need to rebuild their relations, and we encourage them to push forward with their efforts to do so.