

HISTORICAL RECORD / HISTORIQUE

NATO SUPPORT AND PROCUREMENT ORGANISATION (NSPO) REGULATION No. 4200 / RÈGLEMENT N° 4200 DE L'ORGANISATION OTAN DE SOUTIEN ET D'ACQUISITION (NSPO)

NSPO PROCUREMENT REGULATIONS

RÈGLEMENT DES ACHATS DE LA NSPO

First Revision of the Regulation approved by the NSPO Agency Supervisory Board on 05 December 2017

(Revision of the document to update it to the Charter of the NATO Support and Procurement Organisation and introduction of Competitive Dialogue concept at Para. 5.6).

[AC/338-D(2017)0096 dated 26 September 2017 and AC/338-R(2017)0012, Item 6]

Première révision du règlement approuvée par le Comité de surveillance d'agence de la NSPO le 5 décembre 2017

(Actualisation du document pour le mettre en cohérence avec la Charte de la NSPO actuelle et introduction du concept de dialogue compétitif au § 5.6).

[AC/338-D(2017)0096 du 26 septembre 2017 et AC/338-R(2017)0012, point 6]

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**Effective date:
5 December 2017**

REGULATION No. 4200

FIRST REVISION

NSPO AGENCY SUPERVISORY BOARD

**NATO SUPPORT AND PROCUREMENT ORGANIZATION (NSPO)
REGULATION No. 4200**

NSPO PROCUREMENT REGULATIONS

1. PURPOSE

The purpose of these Regulations is to:

- 1.1 Set forth the policy that governs the procurement of materiel and services by NSPA, and
- 1.2 Establish levels of responsibility within NSPO for the development of procurement regulations, procedures and management controls to implement this policy and any subsequent changes or additions.

2. APPLICABILITY

- 2.1 These Regulations apply to all NSPA nationally and multinationally funded procurement activities in execution of tasks entrusted to NSPA pursuant to the NSPO Charter. Exceptions will be submitted to the Agency Supervisory Board (ASB) for approval.
- 2.2 The policy is applicable in times of peace, crisis or war.

3. CONCLUSION AND SIGNATURE OF CONTRACTS

- 3.1 Pursuant to the NSPO Charter, the authority to conclude contracts, acquire and dispose of property in the name of NATO, is hereby delegated to the NSPA General Manager.
- 3.2 However the NSPA General Manager shall not conclude a contract involving the government of a non NATO nation or with an international organization without advance approval in principle of the NAC.

3.3 The General Manager's sub-delegation of his/her authority to approve and sign contracts on the basis of the amounts, or extended line item value in the case of materiel, is further described in the NSPA Procurement Operating Instructions.

4. PROCUREMENT POLICY

4.1 Objective

A principal objective of the NSPA is to obtain, through international competitive bidding, the most economical prices for materiel and services. The most economical proposal meeting the technical and contractual requirements stipulated in the Request for Proposal (RFP) shall normally be accepted.

4.2 Competitive Solicitation from Commercial Sources

NSPA shall normally acquire materiel and services applying international competitive bidding rules described in these Regulations.

4.3 The procurement policy will be based on the principles of integrity, transparency and equal treatment.

4.4 NSPA will publish its Future Business Opportunities and Requests for Proposals as described in the NSPA Procurement Operating Instructions.

4.5 Geographical Limits of Procurement

4.5.1 Procurement shall normally be limited to firms or governmental services located within NSPO Member Nations.

4.5.2 Contracts may be let to firms in Nations that are not members of NATO:

4.5.2.1 where those Nations are Member Nations of a NSPO Programme or participate in a NSPO Support Partnership (SP), for requirements of that Programme or SP;

4.5.2.2 in those cases where the only known available source of a materiel or service is located in a non NATO Nation. However, contracting or use of subcontractors for materiel or services from sources in countries under Communist Control require prior ASB approval. Such cases shall be reported by NSPA to the ASB annually by 31 January concerning contracts awarded during the preceding year;

4.5.2.3 where those Nations are authorized by the NAC to contribute to a NATO led operation and have signed an agreement on support cooperation with NSPA, for such nations' operational requirements during the NATO led operation;

4.5.2.4 where those Nations or Groups of Nations contribute to the NATO / Partnership for Peace Trust Fund Policy for project requirements for which the NSPA is the Executing Agent.

4.5.3 If a Programme Board or a SP Committee so decides, RFPs may, subject to approval by the ASB of the pertinent NSPO Regulations containing such provision:

4.5.3.1 be issued only to firms in specified geographical areas, and/or

4.5.3.2 be subject to the application of certain criteria designed to give preference to firms located in such geographical areas. In this instance, the criteria must be clearly stated to permit standing application by NSPA.

4.6 Award of Contracts to Non-NATO Member Nations

4.6.1 Contracts shall not be placed with non-NATO Governments or with firms in non-NATO Member Nations or with firms whose legal residence or main production facilities are located outside NATO Member Nations except where the provisions of paragraph 4.5.2 apply.

4.6.2 Deviations from the above rules require advance approval of the ASB.

4.7 Procurement from USA - Foreign Military Sales (FMS)

4.7.1 The acquisition by the NATO Airlift Management Programme of C-17 aircraft and the related support will be executed through FMS cases in accordance with US Security Assistance Management Manual requirements. The provisions of articles 4.7.2 through 4.7.6 below do not apply to this programme.

4.7.2 Subject to the approval of an FMS case, procurement from USA military sources may be made when the extended line item value does not exceed Financial Level B. Approval of FMS cases will be subject to the procedure that governs the approval of sole/single source procurements.

4.7.3 FMS requisitions with an extended line item value that exceeds Financial Level B must be the subject of a commercial solicitation provided that commercial suppliers of the requirement can be identified.

4.7.4 In the event that no viable commercial offer(s) is obtained, the requirement may be met under an existing FMS case with the approval of the NSPA Competition Advocate or the responsible Contracting Officer.

4.7.5 FMS requirements that deviate in any way from the approved FMS case, require further approval by the authority that approved the initial FMS case.

4.7.6 Procurement from USA military sources under a Cooperative Logistics Supply Support Arrangement (CLSSA) is subject to approval by the ASB on a case-by-case basis. The procedure for obtaining such approvals is described in the NSPA Procurement Operating Instructions.

4.8 Non-Competitive Solicitation

NSPA shall promote and provide for full and open international competition in soliciting offers and awarding contracts. However, under specific circumstances, solicitation procedures other than full and open international competitive bidding may be utilized.

Circumstances under which competitive bidding rules need not be strictly followed are:

4.8.1 Sole Source

There is only one known source capable of providing the materiel or service required.

4.8.2 Single Source

Procurement circumstances, noted below, may justify a decision to restrict the solicitation process to only one source, although other potential sources may exist.

4.8.2.1 Urgency

Urgency conditions exist where application of the competitive bidding rules would delay the supply of materiel or services, defined by the customer as emergency requirements, beyond the delivery date specified by that customer.

4.8.2.2 Low Value

If the extended contract value involved is below Financial Level A.

4.8.2.3 Security

If security requirements prohibit or limit the distribution of the RFP data.

4.8.2.4 Commonality of Equipment

If the customer requests that for reasons of training and maintenance the equipment to be procured must be from the same manufacturer as the equipment already in its inventory.

4.9 Selection of Sources for Competitive Solicitation

4.9.1 Normally only sources registered in the NSPA source file are authorized to participate in NSPA solicitations. Exceptions to this rule will be specified in the NSPA Procurement Operating Instructions.

4.9.2 The number of sources to be solicited shall be reasonable in relation to the total estimated value of the order to be processed. The minimum number of sources to be solicited shall be specified in the NSPA Procurement Operating Instructions.

4.9.3 Firms in all NSPO Member Nations shall have equal opportunities to submit proposals unless otherwise decided by a Support Partnership Committee or Programme Board.

4.10 Balancing of Production

4.10.1 NSPA shall balance the distribution of production exclusively among NSPO member nations to the greatest practicable extent possible. The following shall apply :

The industrial return position of each NSPO member nation is determined using the ratio between the value of contracts placed in the country and the value of sales made to the country. Depending on their ratio, countries fall into one of the following categories:

- well placed;
- less-well placed;
- poorly placed.

The most economical RFP compliant offer will be accepted. However, when making financial comparison of offers, the member position in terms of industrial return shall be taken into consideration under the conditions defined in the NSPA Procurement Operating Instructions.

5. OPERATIONS

5.1 Source File

The primary purpose of the source file is to facilitate an efficient and effective source selection process to enhance the chance of successful competitive procurement.

5.2 Inclusion of Firms

Inclusion of firms in the source file shall be governed by the following factors:

5.2.1 Firms Located in NSPO Member Nations

NSPA will accept and retain in its source file and consider for NSPA contracts commercial firms and governmental entities.

The qualifications required for commercial firms, to be included in the NSPA source file, are described in the NSPA Operating Instructions.

For matters related to security and general inquiries about firms, ASB members shall designate a focal point to NSPA.

5.2.2 Firms Located in Non-NATO Member Nations

5.2.2.1 When the General Manager determines that it is in the best interest of NSPO Member Nations to deal with firms in non-NATO nations, he/she, or his/her designated representative, may decide, on a case-by-case basis, to include such firms in the source file temporarily; that is, for the duration of a specific contract.

5.2.2.2 Firms in PfP Nations with whom NSPO has signed an MOU on logistics support cooperation and which are associate or member states of a NSPO Programme or Support Partnership, may for this Programme's or SP's requirements, be included in the NSPA source file.

5.2.2.3 Firms in those Nations that are authorized by the NAC to contribute to a NATO-led operation and with whom the NSPA has signed an agreement on support cooperation, may, for the related operational requirements, be included in the NSPA source file.

5.2.2.4 Firms in those Nations that have a partnership programme with NATO may for this partnership's requirements, be included in the NSPA source file.

5.2.2.5 Firms in Nations or groups of Nations which contribute to a NATO / PfP Trust Fund Project may be included in the NSPA source file for Trust Fund Projects to which those Nations contribute.

5.3 Requests for Proposals (RFPs)

RFPs shall be designed in such a way to avoid the need for pre-award negotiations so that the resulting offers can, on acceptance by NSPA, constitute the basis for a legally binding contract.

RFPs shall be as informative as possible and contain an accurate and detailed description of each item and/or service required and shall also include provisions governing sub-contracting.

5.4 Indication of Potential Bidders by NSPO Member Nations and PfP Nations with whom NSPO has signed an MOU on logistics support cooperation and which are associate or member states of a NSPO Programme or Support Partnership.

A customer may request that a particular source be included amongst the potential bidders for a requirement.

However, NSPA shall not comply with requests which intend to direct particular procurement contracts to particular sources.

5.5 Pre-Award Contacts with Suppliers (Competitive Solicitations)

5.5.1 Pre-award negotiations may be held in exceptional cases as described in the NSPA Procurement Operating Instructions.

5.5.2 In any case, pre-award negotiations shall be conducted in such a manner as to retain the integrity of the procurement process.

5.6 Competitive Dialogue (Major Systems Acquisition)

5.6.1 In the case of particularly complex acquisition contracts of new major systems, where NSPA is not objectively able to define the technical means of satisfying its need or of assessing what the market can offer in the way of technical solutions, the Agency may use the Competitive Dialogue procedure. The intended use of the Competitive Dialogue procedure must be identified at the initial stages of procurement planning.

5.6.2 With this procedure, NSPA normally invites all qualified companies registered in its source file to express an interest in participating. It then conducts a dialogue with those candidates selected to take part in the procedure on the basis of their initial submissions in response to the Agency's description of general requirements. The Agency conducts a dialogue with the candidates selected with the aim of developing one or more suitable alternatives capable of meeting its requirements.

5.6.3 In keeping with NSPO's Procurement principles, NSPA shall ensure during this procedure, the non-disclosure of all information provided by candidates to any other candidates and the strict protection of the candidates Intellectual Property Rights.

5.6.4 Award shall be on the sole basis of the award criteria adopted to identify the best value tender.

5.6.5 The NSPA Procurement Operating Instruction 4200-01 provides detailed direction on the use of the Competitive Dialogue procedure and warrants that the integrity of the procurement process is maintained.

5.7 Pre-Award Survey

Before awarding a contract, NSPA shall make a determination concerning the responsibility, capability and financial stability of the prospective contractor, which may include a pre-award survey at the contractor's premises.

5.7.1 NSPA Customer Price Approval

5.7.1.1 No price approval will be sought for brokerage procurement, unless a nation requests such price approval in the purchase requisition:

5.7.1.2 not exceeding Financial Level A (extended line item value) or

5.7.1.3 which has been identified as "high priority" or "urgent" in the purchase requisition.

5.7.2 In those cases where a procurement is exceeding Financial Level A and price approval was requested, the customer shall respond to NSPA price approval requests within 28 calendar days. If no response is received within this period, NSPA will assume that the customer decided to cancel the requirement.

5.8 Receipt and Selection of Proposals

5.8.1 Safeguarding of Proposals

All proposals shall be regarded as commercially sensitive and details thereof shall only be communicated to persons with a need to know.

5.8.2 Late Proposals

Proposals received after the closing date for competitive solicitations shall not be considered for award, except in exceptional circumstances as described in the NSPA Procurement Operating Instructions. However, proposals received after the bid closing date but before contract award and which have a proven submission date before the bid closing date, will not be considered late proposals.

5.8.3 Evaluation of Proposals

Proposals received shall be evaluated to determine the most economical technically and contractually compliant proposal.

5.9 Contract Award

Contract Award Committee

Proposals shall be considered by a Contract Award Committee as described in the NSPA Procurement Operating Instructions. The Contract Award Committee shall authorize award of the contract to the winning bidder.

5.10 Notification of Unsuccessful Bidders

5.10.1 Unsuccessful bidders shall be informed that their proposal has not been accepted, as described in the NSPA Procurement Operating Instructions.

5.10.2 ASB members may require, through the NSPO independent Secretariat, additional clarification from NSPA, requesting free access to the pertinent documents, safeguarding the confidentiality of bids.

6. TERMS OF CONTRACTUAL INSTRUMENTS

6.1 NSPA shall normally use standard terms and conditions in its contracts.

6.2 Contracts that depart from the NSPA Standard terms and conditions described in the NSPA Procurement Operating Instructions, shall be approved by the General Manager or his/her delegated representative as described in the NSPA Procurement Operating Instructions.

6.3 For contracts covering basic, non-complex supplies and services at a firm fixed price not exceeding Financial Level B, the commercial terms and conditions of the supplier may be accepted as described in the NSPA Procurement Operating Instructions.

6.4 NSPA contracts shall specify the contractor's responsibility for obtaining manufacturing licenses from the holders of proprietary rights and for indemnifying NSPA against claims for infringement of patent rights, etc., with regard to the materiel to be delivered to NSPA. NSPA will inform the contractor when it is aware of existing proprietary rights.

7. NATIONAL/NATO PROCUREMENT SERVICES

NSPA shall maintain appropriate contacts with the National procurement services of each NSPO member nation and the NATO procurement services with a view to availing itself of their knowledge and experience.

8. DURATION OF CONTRACTS

8.1 NSPA will normally conclude contracts of such duration as to ensure completion of the requirements. The duration of these contracts will normally not exceed a 5-year period, including option periods.

8.2 If, after consultation with the customer, it is determined that it would be in the best interest of the customer to conclude a contract with a duration longer than 5 years, the General Manager will request the ASB to approve the award of such a contract.

9. ADMINISTRATIVE PROCEDURES

9.1 Procurement contracts shall provide for follow-up surveillance.

9.2 All financial limits and thresholds are subject to change in accordance with the financial levels as determined in accordance with the NSPO Financial Regulations.

10. NOTIFICATION OF CONTRACT AWARDS

Contract awards with a value of Financial Level C and above shall be published periodically on the pertinent NSPA electronic information system, mentioning the purpose of the contract, the contractor's name and country of origin and where appropriate the total amount of the contract. This procedure will not apply to classified contracts or when the customer has stipulated that publication is not wanted.

11. PRE CONTRACT AWARD CLAIM AND DISPUTE PROCEDURE

The NSPA Procurement Operating Instructions will include provisions for a pre-contract award claim and dispute resolution mechanism for contracts with an estimated value exceeding Financial level E. This procedure will be restricted to cases where:

- the wording of the Request for Proposal restricts competition unduly, and / or
- a firm contests the declaration of non-compliance of its proposal with the requirements of the RFP.

This procedure shall specify a standstill period.

12. PROCUREMENT OPERATING INSTRUCTIONS

12.1 The General Manager shall issue NSPA Procurement Operating Instructions necessary to implement these Regulations.

12.2 Any proposed changes to clauses of the NSPO Procurement Regulations which the General Manager deems appropriate, shall be sent to the members of the ASB and the members of the NSPO Finance Administration and Audit Committee for approval.

13. DEVIATIONS

13.1 Whenever, in the opinion of the General Manager, the strict application of the principles in these Regulations would distort their intention and time does not permit the problem to be referred to the ASB, he/she is authorized to vary the application of these principles. Such exceptions shall not be considered precedents and shall be subject to full and prompt reporting to the ASB. If any related, follow-on decisions are required, they will be taken by the ASB.

13.2 Upon receipt of advice from competent authority of the existence of crisis or war, or in support of NATO Council approved operations, the General Manager may, to the extent that he deems necessary, authorize the procurement of materiel and services without adherence to one or more of the provisions contained in the following paragraphs of these Regulations:

13.2.1 Paragraphs 4.5.1 and 4.5.2 (Geographical limits of procurement)

13.2.2 Paragraph 4.7 (Procurement from USA -FMS)

13.2.3 Paragraph 5.2.2. (Firms located in Non-NATO Member Nations)

13.2.4 Paragraph 5.4 (Indication of potential bidders)

13.2.5 Paragraph 5.7 (Pre-award survey)

13.2.6 Paragraph 5.7.1 (Customer Price Approval)

Exercise of authority under this provision shall be reported to the ASB on a quarterly basis.

14. ETHICS AND STANDARDS

Transactions relating to the expenditure of NSPA nations' funds require the highest degree of trust and an impeccable standard of conduct, integrity and impartiality. NATO Code of Conduct will be strictly followed.