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**DOCUMENT**  
AC/4-D/2261-ADD2(1996 EDITION)

**INFRASTRUCTURE COMMITTEE**

**POLICY FOR CONDUCTING INTERNATIONAL COMPETITIVE BIDDING USING BEST  
VALUE EVALUATION METHODOLOGY  
POST-TRIAL PERIOD PROCEDURES**

**Note by the Secretary**

Reference: AC/4-D(2009)0002; -DS(2009)0017, item 2.1.4 & Action Sheet

At reference, the Infrastructure Committee agreed to the coming into force of Annex X to AC/4-D/2261(1996 Edition). The agreed text of Annex X is attached hereby and should be incorporated in the basic document. There are now 10 valid Annexes to AC/4-D/2261(1996 Edition). This Addendum 2 supersedes all previous Addenda including related revisions and action sheets previously issued.

(Signed) B. HÜTTEN

Original: English

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**PROCEDURES FOR CONDUCTING INTERNATIONAL COMPETITIVE BIDDING  
USING BEST VALUE BID EVALUATION METHODOLOGY**

**Introduction**

1. The purpose of this Annex is to establish an alternate method of bid evaluation to be used in lieu of the lowest compliant bidder method to award an NSIP contract. Documents AC/4-D/2261-ADD1(1996 Edition) (INV), AC/4-D(2004)0001(INV), AC/4-D/2261-ADD1-REV1(1996 Edition), AC/4-D(2004)0001-ADD1 having to do with the Best Value Bid Evaluation methodology trial period and the procedures used during trial are superseded.

**Objective**

2. The objective of the Best Value (BV) Bid Evaluation Methodology is to improve the contract award process by introducing and evaluating several factors relating to the overall value and quality of the offer which could not be included in the lowest compliant bid method. The Best Value procedure is primarily a risk mitigation measure in the implementation of complex projects, especially in the Consultation, Command, Control, Communications, Intelligence, Reconnaissance and Surveillance (C4ISR) field.

**The Procedure**

3. The host nation shall comply with extant Infrastructure Committee policy, procedures and guidance regarding the decision to use BV, the information requirements of the IC for decision-making, and the required detail for the "Cahier des Charges"<sup>1</sup>.

4. The provisions outlined earlier in AC/4-D/2261(1996 Edition) (called the main body), including annexes, apply to this annex except as specifically noted herein.

5. The Notification of Intent, issued in line with the provisions in the main body, will contain the additional information that the best value bid evaluation methodology will be used to determine the successful bidder.

6. The "Cahier des Charges" requirements used in the execution of the IFB will be in line with agreed IC procedures and practices<sup>1</sup> regarding, as applicable: top-level criteria, second-level technical sub-criteria with weighting factors, third-level technical sub-criteria, the "not-to-exceed" cost and statistical ties.

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<sup>1</sup> This is AC/4-D(2008)0002 and future revisions.

**7. Administrative Compliance**

- 7.1 Bids shall be checked for administrative compliance with the requirements of the IFB. If a HN considers a bid to be non-compliant and intends to eliminate it from the evaluation, it shall follow the provisions of paragraph 13(ii) (a) of the main body with respect to the timeline to be followed and informing the firm and diplomatic representative, delegation and the International Staff. This stage, including the settlement of any dispute that might follow, will not delay the technical evaluation of the remaining bids.

**8. Evaluation of Bids**

- 8.1 The formalised procedures followed by the host nation are subject to explanation and review as part of the dispute procedure.
- 8.2 If a bid is evaluated against any third-level technical sub-criteria as having a score less than 20% of the maximum possible score (raw and unweighted) for that criterion, the bid may be determined to be technically non-compliant. In such a case, a full written assessment shall be made to support a determination of non-compliance. Any firm determined to have submitted a technically non-compliant bid will be so notified in accordance with the procedures set forth in paragraph 13(iii)(b) of the main body with respect to the modalities for informing the firm, diplomatic representative of the country of origin of the firm concerned in the capital of the host nation (or in the case of a NATO Agency or Strategic Command, in the capital of the country in which the Agency or SC is located), NATO delegation of the country of origin, and the International Staff.
- 8.3 The firm shall then have a period of 14 days from the date of receipt of notification to request a debriefing by the HN. Thereafter, handling of complaints shall follow the BV dispute procedure. The host nation shall postpone opening price quotations pending the resolution of the complaint either amicably or by the Board of Arbitration.
- 8.4 The right to appeal any declaration of non-compliance expressly excludes the right to correct, alter, add to or delete any part of the bid. Any such appeal must be restricted to explaining why the host nation is deemed to be in error in its evaluation of the bid.
- 8.5 Following a declaration of non-compliance and the completion of any dispute procedures, the host nation must return the unopened price envelope.

- 8.6 Once it considers that all bids remaining in the competition are compliant, the host nation will then open the price bids<sup>2</sup>, apply the price formula, apply the technical weighting factors and thus determine the highest score. This will include resolving a price realism and/or statistical tie situation in line with Infrastructure Committee guidance<sup>3</sup> and host nation procedures. The selection of the winning bid should be immediately made known to all bidders. No earlier than 21 days after the date of such notification the contract may be let to the successful bidder.

**9. Notification of the Results of the Best Value Competition**

- 9.1 Upon completion of the bid evaluation stage, bidders will be notified by the host nation of the results of the competition. Unsuccessful bidders will be provided with a statement indicating the relative position of their bids in terms of price and technical score, their weighted technical score and the price and technical score of the winning bidder. All bidders will be afforded an opportunity to have the host nation explain the process and the third level scoring of their bid by requesting a debriefing within 14 days of the date of notification. If no debriefing is requested, the host nation shall take it that the unsuccessful bidder accepts the results of the competition.

**10. Debriefing Bidders**

- 10.1 The debriefing must take place within 14 days of the date of the written request of a bidder. The debriefing to the bidder will be with a view to providing clarity about the process and the basis for the technical evaluation score assessed for the bid. Representatives of the bidder's national delegation may attend at their discretion. Following the debriefing, the delegation may initiate the Best Value Dispute Procedure as set out in paragraph 12 and thereafter.

**11. Award of Contracts**

- 11.1 Award of the contract to the successful bidder shall be postponed until the completion of the allowed period following debriefing, and subsequently any dispute resolution.

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<sup>2</sup> Footnote 6 in the main body, regarding price quotations, is applicable.

<sup>3</sup> This is AC/4-D(2008)0002 and future revisions.

**PROCEDURE FOR SETTLEMENT OF DISPUTES ARISING FROM ICB – PROVISIONS  
APPLICABLE TO BEST VALUE COMPETITIONS**

**Limitations**

12. These provisions complement the dispute procedure described in Annex I of the main body. They apply only to complaints lodged subsequent to the bid closing date (paragraph 7). In all other cases Annex I of the main body applies.

**Scope**

13. The procedure set forth hereafter shall apply to disputes about the correct application of the principles and procedures for ICB undertaken using the Best Value evaluation methodology approved by NATO, which arise prior to the signature of a contract for NSIP works or prior to the host nation having formally committed in writing to award a contract to a particular firm. It will apply to disputes between one or more participating countries and the host nation.

14. Disputes are limited to the following:

- 14.1 non-observance by the host nation of Infrastructure Committee procedures for conducting Best Value competitions following the bid closing date;
- 14.2 non-observance by the host nation of its own internal processes including the non-conformity of the internal procedures with those set out in the “Cahier des Charges”;
- 14.3 selection of sub-criteria and application of weighting factors below second-level that violates the principle of non-discrimination against firms;
- 14.4 a declaration of non-compliance for reasons of price realism by the host nation that is not in line with the explanation presented to the host nation by the firm;
- 14.5 a lack of evidence to support that the evaluation was conducted in an unbiased, logical, and predictable manner, including a lack of documentation supporting the conclusion reached.

**Notification of Complaints and Suspension of Placing of Contracts**

15. Once the notification of results of the BV has been promulgated, a delegation has a period of 14 days from the date of the host nation’s debriefing with the unsuccessful bidder to lodge a complaint. Within the time limit specified above, a formal request will be made to the host nation delegation (or NATO body acting as host nation) to suspend the placing of the contract and to refrain from any action which might prejudice the rights of the parties concerned. At the same time, the delegation making the request shall notify the Committee that it has done so.

16. Paragraphs 5 and 6 of Annex I of the main body, dealing with the discussion period, timelines, and reporting to the Infrastructure Committee apply. During the 21-day discussion period, the host nation will provide an explanation of the conduct of the bid evaluation and an analysis of the bid upon which the complaint was lodged. At the discretion of the nation lodging the complaint, representatives from the national firm could be present. Apart from the provisions of paragraph 9.1, no additional information regarding bids by other firms will be disclosed by the host nation. At this stage the International Staff may be invited to present their views on the matter under dispute.

### **Arbitration**

17. Should there be no agreement between disputants at the conclusion of the Committee discussion period, the Committee shall submit the dispute to arbitration and a Board of Arbitration (referred to as the Board) shall be formed, and shall meet and conduct its decision-making, all according to the timelines and procedures in Annex I of the main body, including the terms of reference.

18. The Board shall reach a decision without conducting or ordering a separate and independent bid evaluation. On the basis of the evidence produced, the Board shall decide among the following courses of action:

- in case of non-compliance (paragraphs 7.1 and 8.2 to 8.5), whether the bid shall be re-instated in the Best Value competition;
- the host nation may proceed with the contract award process;
- the host nation shall cancel the competition.

19. The decision of the Board shall be the majority view and shall not show the minority view, if any. The decision shall be final, binding and no appeal shall be allowed. Participating nations concerned shall, with due speed, take the necessary steps to implement the Board's decision.

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