

CONSEIL DE L'ATLANTIQUE NORD NORTH ATLANTIC COUNCIL

N A T O U N C L A S S I F I E D

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(1996 Edition)

INFRASTRUCTURE COMMITTEE

THE NATO SECURITY INVESTMENT PROGRAMME

PROCEDURES FOR INTERNATIONAL COMPETITIVE BIDDING
(1996 Edition)

Note by the Chairman

1. Infrastructure Committee agreement to the attached 1996 Edition of the Procedures for International Competitive Bidding for NATO Security Investment Programme works became final on 28th November 1995 (AC/4-DS(95)29, Item I.1.(a)). The Committee agreed that the revised version would be named AC/4-D/2261(1996 Edition).

2. The Committee agreed that the 1996 Edition will be the applicable document for all projects for which Notification of Intent to Invite Bids in accordance with paragraph 6 of the procedure will be issued as from 1st March, 1996. Additionally, the Committee agreed that the 1996 Edition will also apply for the ACCS LOC1 project.

3. For all ongoing procurements for which Notification of Intent to Invite Bids has been issued prior to 1st March, 1996, the 1987 Edition will continue to apply.

(Signed) H. de Vos

This document includes: 9 Annexes

NATO
1110 Brussels

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(i) AC/4-D/2261(1996 Edition)

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THE NATO SECURITY INVESTMENT PROGRAMME

PROCEDURES FOR INTERNATIONAL COMPETITIVE BIDDING

1. Introduction

- (a) The guiding principles in these procedures are :
- to assist the timely implementation of NATO Security Investment projects so that the operational needs of NATO are met and the available resources are used in the most cost-effective way;
 - to foster an environment conducive to maximising the participation of qualified firms in the NATO Security Investment Programme;
 - to avoid discrimination against firms of participating countries interested in participating in NATO Security Investment projects.
- (b) This document describes firstly the basic One-Step International Competitive Bidding (ICB) Procedure. However, over the years the character of the projects commonly-funded in the framework of the NATO Security Investment Programme has changed and an increasing proportion of the Programme now consists of relatively complex projects. For the procurement of these projects specific rules have been developed and agreed. These rules are incorporated in the Optional Preliminary Bidding Procedure (two-step) at Annex II and the three-Step ICB Procedure described at Annex III. The applicability and detailed arrangements thereof can also be found in these Annexes.
- (c) Should a host nation wish to deviate from these agreed procedures, it must obtain prior approval of the Infrastructure Committee.
- (d) The procedures establish the responsibilities and rights of host nations, firms, countries of origin and the Infrastructure Committee up to and including contract signature. Annex I to this document describes the action to be taken in case of a dispute.

- (e) With the aim of avoiding misunderstandings and disputes, the nations should bear in mind the following points:
- (i) the purpose of these procedures is to meet only the Minimum Military Requirement as soon as possible, and at the least possible cost; and therefore the procurement process should minimise operational, technical and financial risks when seeking to fulfil stated requirements. Host nations are encouraged to look at "off-the-shelf" solutions first and should carefully consider the risk of research and development work. Discussion of these aspects should take place in the technical working groups before authorisation in the Infrastructure Committee;
 - (ii) the greater the clarity of the "cahier des charges" the less the likelihood of a dispute, and host nations are encouraged, in drafting the "cahier des charges" for complex projects to reflect the performance specifications required rather than detailed technical specifications;
 - (iii) the host nation is invited to consult the bidder concerned, and if necessary, the International Staff and the appropriate Major NATO Command, if it is not certain whether a bid meets the requirements of the "cahier des charges". It should be clear, however, that whilst consultation with bidders is desirable in the interest of clarity, no alterations of bids (including technical, financial and schedule changes) after closing date are permissible;
 - (iv) when alternative solutions could be offered other than those foreseen by the "cahier des charges" and trade-offs could be made, consideration by the host nation should be given to application of the two- or three-step bidding procedure;
 - (v) when carrying out an ICB exercise or when raising an ICB dispute, nations are invited to take into consideration the general recommendations made by Boards of Arbitration in previous ICB disputes.

2. Definition of Terms

For the purposes of this document, the following definitions will apply :

"CAHIER DES CHARGES":	bidding documents issued by a host nation containing technical, administrative and contractual requirements/conditions;
"CLASSIFIED INFORMATION":	information which requires security protection;
"COMMITTEE":	the Infrastructure Committee
"COMPLIANCE":	conformity with the "cahier des charges";
"CONTRACTOR":	a firm of a participating country which has signed a contract with a host nation to perform a service, manufacture a product, or carry out works for NATO;
"COUNTRY OF ORIGIN":	home country of a contractor or sub-contractor;
"DELEGATIONS":	delegations to NATO of participating countries
"ELIGIBLE FIRM":	a firm for which the country of origin has given a "Declaration of Eligibility" as in paragraph 5(ii)(a);
"FIRM OF A PARTICIPATING COUNTRY":	firm legally constituted or chartered under the laws of, and geographically located in, or falling under the jurisdiction of, a participating country; the work cannot be physically undertaken in a non-participating country;
"HOST NATION":	a participating country, Major NATO Command or a NATO Agency which is responsible for implementing a Security Investment project;
"PARTICIPATING COUNTRY":	a NATO country which has undertaken to share the cost of the Security Investment project involved;
"PROCUREMENT AGENCY":	agency which conducts an ICB exercise or procurement on behalf of one or more host nations.

3. Security

The security procedures and requirements for NATO classified Security Investment projects are described in the latest edition of C-M(55)15 (Final), which sets out the general rules for the protection of NATO classified information. Classification of bidding documents should be kept at the lowest possible level compatible with the requirements of this document.

4. Principle of Non-Discrimination

- (a) In all cases where an ICB is prescribed, host nations must ensure that eligible firms of all participating countries are given the same opportunity and that the bids of all eligible competitors are treated in the same way.
- (b) Consistent with the requirements of paragraph 1, host nations must avoid producing specifications biased toward a specific equipment.
- (c) The host nation is free to issue ICB documents either in its own language or in one of the official NATO languages, but it is encouraged to use one of the official NATO languages. The bidders' responses to the "cahier des charges" must be either in the official language(s) of the host nation or in one of the official NATO languages unless the choice of language were specifically determined by the host nation and stated in the "cahier des charges";
- (d) To stimulate competition, the Infrastructure Committee agreed in 1978 and confirmed in 1981, that host nations must provide for timely availability of names of potential bidders on common funded projects, as laid down in the procedure "Dissemination of information on invitations to tender". The full text of this procedure is at Annex IV.

5. Eligibility¹

- (i) A host nation must admit to the bidding any eligible firm of another participating country. Bidding instructions to firms and manufacturers shall state that firms from other than participating countries are excluded from acting as contractor, sub-contractor or manufacturer. The underlying rule here is that, unless otherwise decided by the Committee, all work and manufacture should be carried out in the participating countries. Unless the host nation has been authorised to proceed otherwise, bidding instructions to contractors and sub-contractors, should therefore, state the following :
- (a) none of the work, including project design, labour and services, shall be performed other than by firms from and within participating countries;
- (b) no materials or items of equipment down to and including identifiable sub-assemblies² shall be manufactured or assembled by a firm other than from and within a participating country;

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Paragraph 5 relates throughout to declarations provided by countries of origin for specific NATO projects, and not to the index of eligible firms maintained by some host nations. Where these standing lists are provided the country of origin should show the firms in alphabetical order and state their respective specialisations. The list should be given a serial number and any amendments to the list should also bear a serial. N.B. These lists do not count as a "Declaration of Eligibility" under the terms of paragraph 5 above.

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Assembly : An item forming a portion of an equipment, that can be provisioned and replaced as an entity and which normally incorporates replaceable parts of groups of parts (MAS(TC)30-AAP-6/1(10th March 1986)Definitions

Sub-Assembly : A portion of an assembly consisting of two or more parts that can be provisioned and replaced as an entity - this definition purposely excludes components and/or parts (as defined in ACodP-1), which are not subject to the provisions herein

Manufactured : Made on an industrial scale.

Assembled : Fit together parts of.

Made in : Form from parts in.

(ii) (a) subject to the provisions of paragraph 7, eligibility of firms is established by means of a "Declaration of Eligibility". A specimen declaration is at Annex V. This is to be issued to a responsible authority of the host nation by the government of the potential contractor's country of origin, or by another authority designated for this purpose. This "Declaration of Eligibility" will contain the full statutory name and address of that firm.³

(b) the country of origin must declare that, if responsible for awarding a contract for similar work, it would itself admit the firm as a competitor. This declaration signifies that the firm is technically, financially and professionally capable of undertaking a project of the scope envisaged in the invitation for bids (IFB).

The firm should have provided or be presently providing goods and services similar to those specified therein to other customers or can be expected to show to the host nation the capability of doing so through its response to the IFB in question, and has expressed an interest in responding to that IFB. Countries of origin should avoid including the names of firms which would not be likely to bid for the kind of work envisaged;

(c) if the contract will involve passing on of NATO classified information to firms, or requires firms to have access to restricted areas of military installations, the declaration must, in addition, include the security classification of the firm which must be equal to or of a higher level than the requirement of the host nation;

(iii) (a) countries of origin of firms are at liberty to make declarations either individually or collectively, but collective lists are preferable. Declarations should be supplied to the host nation through the

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Whenever possible it should also show the section/branch responsible for handling the work, with the telephone number, telex number and name of individual concerned.

diplomatic representative of the country of origin in the capital of the host country;⁴

- (b) the fact that a firm is not covered by a "Declaration of Eligibility" or that such a declaration is incomplete does not immediately eliminate this firm. This case will be handled in accordance with paragraph 7 below.

6. Notification of Intent to Invite Bids

(A) Standard procedure

At the earliest possible moment, which may be before the request for authorisation to commit funds is submitted, the host nation must issue a Notification of Intent to Invite Bids. This notification must be received in writing within at least 28 days, and in cases where security clearances are required 35 days, before the final date by which firms must make known their desire to be invited to bid. The notification must be submitted to the diplomatic representative of the participating countries in the capital of the host nation, with copies to NATO delegations of participating countries and to the International Staff and will contain the following information :

- (a) a summary description and rough cost estimate of the project and, when available, an indication of the reference number of the NATO document (s) containing the request to commit funds or the prefinancing statement, and the reference number of the International Staff's screening report, if any, together with an indication as to how the project might be divided into different contracts and lots, and, if known, the anticipated time to complete the contract;
- (b) the final date by which firms must have formally expressed their desire to be invited to bid;

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Declarations of Eligibility shall normally be supplied as in 5(iii)(a) but, if required, a country of origin may determine that such declarations will be transmitted from its NATO delegation via the NATO delegation of the host nation provided advance notice is given to the host nation.

- (c) the date by which the host nation intends to distribute the "cahier des charges";
- (d) the intended closing date for bids;
- (e) the bid validity date and procedures applicable after that date⁵;
- (f) the type of classified information, if any, which must be passed on to firms to enable them to bid, and its security classifications;
- (g) the address of the relevant bureau or section of the agency responsible for handling the call for bids, including telephone number, telex number and name of individual concerned;
- (h) the reference which will be used subsequently to identify the project;
- (i) the envisaged method of bidding (the One, Two or Three Step Procedure);
- (j) life cycle consideration, if applicable;
- (k) whether a host nation intends to use a questionnaire to carry out a general financial and technical screening of firms.

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The host nation should endeavour to ensure that the validity procedure is clearly stated in the "cahier des charges", but should there be no provision for a procedure after the bid validity date, and should it appear likely that the bid validity period would expire prior to any possible contract award, then the host nation shall, before the validity date expiration, request the advice of the Infrastructure Committee as to what measures should be taken in regard to extending bids.

Unless the Infrastructure Committee should agree to a re-bid, or a re-pricing of bids, the choice of the lowest bidder shall be based on prices submitted at the bid closing date and any agreed adjustments applied only to that lowest bid.

(B) Accelerated procedure

- (i) If the Committee agrees, following a request from the host nation, that instead of the standard procedure under 6(A) above, an accelerated notification procedure should be adopted, NATO delegations must, within 21 days of the day after the Committee's decision, inform the host nation's delegation of the names of the firms interested in bidding for the project, together with a statement of eligibility as provided for under 5(ii).
- (ii) Under this accelerated procedure, the host nation's request to the Committee should include the information described in 6(A) above.
- (iii) Extensions of the 21 days' time limit are discouraged. If an extension of more than 7 days is proposed by the host nation then it shall revert to the normal procedure. On expiry of the time limit referred to in 6(B)(i) above, the normal rules will apply.

(C) General

- (i) With respect to section 6(A) and (B) above, if after twelve months following the final date by which firms must make known their desire to be invited to bid, the host nation has not invited bids, then the eligibility list of prospective bidders should be re-opened for a period of not less than 21 days for the addition of any other eligible bidders and/or deletion of existing bidders.
- (ii) The regulations applicable to dissemination of information are attached at Annex IV.

7. Procedures governing cases where eligibility is in question

- (i) If a firm has not been the subject of a declaration of eligibility (see sub-paragraph 5(ii)) and asks, before the date specified in paragraph 6(A)(b) above, to be invited to participate in a call for bids officially notified by the host nation in accordance with paragraph 6 above, the host nation must refer the firm to its embassy. The host nation shall not be required to delay issuing the "cahier des charges" under such circumstances.

A host nation may allow late nominations but is not required to do so. Should the late nominations of a firm be accepted, of course any other late nominations received up until the receipt of the accepted late nomination, must also be accepted. Acceptance of late nominations will not be considered as a valid reason for any request for extension to the bidding period.

- (ii) (a) provided that the principle of non-discrimination as described in paragraph 4 above is strictly observed, the host nation is free to carry out a general financial and technical screening of any firm; but before doing so, it must advise the diplomatic representative of the country of origin of its intent;
 - (b) where the host nation decides to use a questionnaire for this purpose, it must allow 28 days for replies from firms to be received as from the date on which the host nation notifies the diplomatic representative of the country of origin in the capital of the host nation that the questionnaire has been sent; copy of this notification must be sent to the delegation of those countries of origin;
 - (c) the questionnaire must clearly state that no response by a firm to the questionnaire will result in automatic elimination of that firm from the bidding and that failure to answer any question or insufficient answers could lead to elimination. Should a firm respond that it does not wish to be considered as a prime contractor then it will not be sent the "cahier des charges".
- (iii) (a) should the host nation intend to eliminate a firm on the basis of the procedure laid down in sub-paragraph 7(ii) above, it must give notice to this effect to that firm and to that firm's country of origin through the diplomatic representative of the country of origin in the capital of the host nation, and will also notify the NATO delegation of the country of origin;
 - (b) where the elimination results from a screening, as provided under paragraph 7(ii) above, the "cahier des charges" must not be distributed to any firm earlier than 21 days after the date of the notice indicated in sub-paragraph 7(iii)(a) above, unless

the country of origin has accepted elimination before the end of that period, in which case the "cahier des charges" may be issued immediately.

8. Reduction of the Number of Competing Firms

If the number of firms included in the Declarations of Eligibility is so large as to be incompatible with an efficient handling of contract bidding and the host nation desires to reduce the number, it should propose a method of making such a reduction. This proposal should be submitted to the Committee as soon as possible after the date on which the firms have formally expressed their desire to be invited to bid and request the guidance of the Committee. The reduction method approved by the Committee and its implementation must not in any case violate the basic principle of non-discrimination as described in paragraph 4 above.

9. Type of Contract

- (a) Unless otherwise agreed by the Committee, fixed price contracts are to be used, i.e. with or without price variation. The determination as to whether price variation will be included or not shall be made by the host nation as specified in the "cahier des charges" and shall apply to all bidders. Host nations are encouraged to utilise the standard price variation clause at Annex VI.
- (b) Any such clause shall not restrict price variation only to work performed in the host nation but shall allow price variation in accordance with the appropriate government indices of the countries where costs are incurred.

10. Execution of IFB

(a) Time allowed for submitting tenders

- (i) The closing date for bids must normally be not less than 84 days for large-scale or complicated projects and not less than 42 days for other works and supplies, reckoned from the date on which the cahier des charges has been distributed. The decision on whether a project should be considered

large-scale or complicated is a host-nation responsibility and not subject to dispute.

- (ii) The host nation is encouraged to use the most expeditious means of transmission, i.e. airmail, and must provide notification of the issuance of the "cahier des charges" to the diplomatic representative of the country of origin in the capital of the host nation.

(b) Requests for extensions of time limits

- (i) Requests for extensions of the time limits in subparagraph (a) (i) above may be submitted to the host nation only by the delegation of the country of origin of a firm which has been invited to tender or by that country's Embassy in the host nation.
- (ii) Requests for extension of the time limit should be submitted to the address in sub-paragraph 6(A)(g) above no later than 14 days prior to the bid closing date.
- (iii) Requests for an additional 21 days or less, following the initial bid closing date, must be granted automatically. Requests for more than 21 days may be granted at the discretion of the host nation.
- (iv) Where additional time is required for bidding firms to make a translation of the "cahier des charges" or a translation of their bid, the time limit must be extended by up to a further 21 days, according to the requests submitted to the host nation.
- (v) When extensions are granted the host nation must immediately advise the diplomatic representatives of the countries of origin in the capital of the host nation, the NATO delegations, and all of the firms concerned, by the most expeditious means of transmission (eg fax).

(c) Bidders Conference

- (i) A bidders conference may be held, not later than 28 days before the closing date of the bid, to provide clarifications whenever the host nation

feels this is necessary or useful. The Host Nation must extend the bid closing date, if necessary, to enable this 28 days period to be met;

- (ii) The results of the bidders conference must be provided, in writing, to all bidders, either at the conference or immediately thereafter. In the latter case, the most expeditious means of transmission available must be used, i.e. fax or telex, if possible. In case clarifications or changes to the "Cahier des Charges" are notified after the bidders conference, not less than 28 days from the notification must be allowed before the closing date of the bid.

(d) Requests for clarification

- (i) Whether there is a bidders' conference or not, bidders must seek clarification as soon as possible. Such requests for clarification must be received by the host nation no later than 28 days before the bid closing date.
- (ii) Should a host nation receive a request for clarification later than 28 days before the bid close date, the host nation shall decide whether or not to action the request. This decision shall not be the subject for a dispute.
- (iii) On receipt of a request for clarification, and unless the information is provided at a bidders' conference in accordance with paragraph 10(c) above, the host nation must:
 - (1) notify all bidders of any clarification or change to the "cahier des charges" not less than 28 days before the closing date of the bid. If necessary, the host nation must extend the bid closing date to enable the 28 day period to be met;
 - (2) send the information to all bidders by the most expeditious means of transmission, i.e. fax or telex, if possible;
 - (3) inform the diplomatic representative of the countries of origin in the capital of the host nation accordingly.

- (e) Queries regarding the consequences of clarifications or changes to the "cahier des charges"
 - (i) Any further requests for clarifications resulting from the clarifications or changes made by the host nation under sub-paragraph 10(d)(iii) above should be submitted no later than 14 days prior to the closing date for the bid.
 - (ii) Should a host nation receive a request later than 14 days before the bid close date, the host nation shall decide whether or not to action the request. This decision shall not be a subject for dispute.
 - (iii) Actions by the host nation as a result of a request under sub-paragraph 10(e)(i) shall be in accordance with the provisions of sub-paragraph 10(d)(iii) above.

11. Requests for Review of Bid Specifications

- (a) Any delegation may, without invoking the agreed formal dispute procedure, request that the International Staff and/or the appropriate MNC examine the specifications of the "cahier des charges" should it consider that the principles of paragraph 4 have not been observed. The delegation must specify the items of the "cahier des charges" it considers to be contrary to the principles of paragraph 4.
- (b) Such requests must be made no later than 14 days before the closing date for the submission of bids and the Infrastructure Committee must be advised by the International Staff or the appropriate MNC that an examination of the technical specification is under way.
- (c) The results of such examinations will be reported to the Infrastructure Committee for its consideration, ideally within two months. Until the Committee has considered the examination, the ICB shall be suspended and all firms interested in bidding so notified by the host nation. It is not expected that the Committee consideration would last for more than two meetings. Any bids received before the suspension shall be returned to the firm if so requested by them.
- (d) The closing date for submission of bids shall be deferred by the host nation as a minimum by the length

of time taken for the examination of the bid specifications by the International Staff or the appropriate MNC and the consideration of the results of the examination by the Committee. In case the bid specifications are modified, not less than 28 days from the notification of the change must be allowed before the closing date of the bid.

12. Evaluation of Bids

(i) General

Host nations are encouraged to develop and follow formalised procedures for the evaluation of bids to ensure complete objectivity and non-discrimination.

(ii) Discussions with Bidders (Offerers) during evaluation process

In accordance with the general principles expressed in paragraph 1 of this document, host nations are encouraged to discuss the offer made with the bidder concerned in order to clarify what is being offered and to resolve any potential areas of non-compliance. The objective of this process should be to achieve the maximum number of technically compliant bids and thus reduce the chances of dispute in this respect and allow selection to be made on the straightforward question of price. However, no alteration of bids (including technical, financial and schedule changes) are permissible.

(iii) Comparison of bids without taxes and duties :

- (a) bids will be compared on a tax exclusive basis;
- (b) to achieve this, all bids will be certified as not including any identifiable taxes. Identifiable taxes are defined as host nation VAT, customs/import duties and such other taxes as may be required by host nation legislation;
- (c) however, where host nations do not exempt NATO Infrastructure procurements from taxation and duties and the taxes and duties are charged and collected but borne by the host nations, contractors will, if so required, add to their basic bid the taxes and duties they expect to be

levied, it being understood that contract award would be made on the basis of the principle of bid comparison set forth in sub-paragraph (a) above. To assist contractors, the "cahier des charges" should inform bidders of national taxes and duties that the host nation may expect to levy. In such a case these expenses will be listed as a separate item.

13. Award of Contracts

- (i) the host nation will normally award a contract to the lowest compliant bidder⁶. However, should the host nation intend to award the contract to another compliant bidder it must seek the approval of the Committee before making the award;
- (ii) in the case of projects other than those covered by sub-paragraph (iii) below, the following provision shall apply:
 - (a) if a host nation considers that the lowest bid is not compliant and intends to eliminate such a bid then it will notify the firm concerned in writing at the earliest possible stage, clearly stating the reasons for rejection⁷. It will, at the same time, notify in similar terms the diplomatic representative of the country of origin of the firm

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Price quotations will be expressed by the contractor in the currency in which he incurs expenses unless the host nation has specified that the price quotations will be in the currency of the host nation. In the evaluation of such bids the exchange rates to be applied will be the average of the official commercial buying and selling rates quoted at the close of business of the working day previous to the bid closing day by the specified source in the country where the price envelopes are opened (see Annex VII). When host nations do not permit contracts to be expressed in foreign currencies the procedure is given in Annex VIII.

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This does not necessarily imply that the rejected bid is compliant in all other respects. However, the stated reasons for its rejection should be sufficient for the host nation to justify its case should the dispute procedure in Annex I be invoked by the country of origin of the rejected firm. A statement of reasons for rejection made subsequent to the original statement cannot be entertained.

concerned in the capital of the host nation (or in the case of a Major NATO Command or a NATO Agency, in the capital of the country in which the Major NATO Command or the Agency is situated), the NATO delegation of the country of origin and the International Staff. A period of 21 days from the date of receipt of these notifications by the diplomatic representative of the country will be allowed for the receipt of a possible protest from the government of the country of origin against the proposed disqualification of the bid;

- (b) after completion of the procedure under sub-paragraph (a) above, and after the settlement of any dispute under the procedure in Annex I to this document, the host nation will award the contract and notify unsuccessful bidders at the earliest possible date;
- (iii) in the field of complicated projects and also in those cases where the Committee specifically so directs, the host nation will arrange for bids to be submitted in separate envelopes, one containing the contractual and technical part of the bid, the other only the prices. Before opening the price bids, the host nation will determine whether the bid is compliant :
 - (a) if it considers that all bids are compliant the host nation will then open the price bids and select the lowest bid. The choice 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 lowest bidder;
 - (b) the host nation may however consider a bid to be non-compliant (and therefore propose to eliminate it) even after clarifying discussions with the firm(s) concerned. In this case it will apply the procedure in sub-paragraph (ii)(a) above, and will postpone opening price bids. Only after completion of this procedure will the host nation proceed as in sub-paragraph (iii)(a) above;
- (iv) the right of appeal against a notification of rejection 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;

- (v) following a declaration of non-compliance and the completion of any dispute procedures, the host nation must return the unopened price envelope.

14. Results of Calls for Bids

As soon as possible after contract award under ICB, but in no case later than one month after contract award, the results of all calls for bids shall be forwarded to the International Staff for immediate communication to delegations.

This communication should therefore include the data given at Annex IX i.e. the name, nationality and amount submitted by the successful bidder and the name, nationality and amount submitted by the two next lowest compliant bidders and the date of contract signature. It should also contain a statement as to whether or not the contract signed covers the full project as authorised, and if not, the extent (estimated percent) to which it covers the project as authorised. When known the same data should be mentioned with regard to major sub-contractors of the successful bidder.

15. Procedure in case of renewed Calls for Bids

- (i) When the host nation decides not to award a contract on the basis of the bids received, unless such decision results from procedures under paragraphs 13(ii)(a) and 13(iii)(b) above, the host nation must explain the reasons for its action, whether financial or due to the necessity to revise the "cahier des charges" for technical or other reasons. The host nation will promptly inform the Committee of the situation with the reasons for such a decision, at which time the Committee may give any advice it feels useful, e.g. a review of the projects by the NATO International Staff and/or an appropriate working group, with the participation of the host nation.
- (ii) Thereafter, the full procedure will again apply, although the Committee may allow such deviations from the normal procedure as it thinks justified by the particular circumstances of the case.
- (iii) If it wished to propose such a special procedure for the new call for bids, the host nation will, when notifying the Committee as in (i) above, submit to the Committee the proposed conditions under which this new call would be held for the Committee's approval.

16. Transmission of Information

All notifications by host nations to be made under these procedures will be sent by the most expeditious means of transmission. Maximum feasible use of telex is encouraged. When sent by air/express mail, the date and time of the postmarks will be the governing factor unless a later date is specified by the host country. The Host Nations should issue the "cahier des charges" either by registered mail or by some other means whereby a receipt is returned by the prospective bidder showing date of receipt.

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PROCEDURE FOR SETTLEMENT OF DISPUTES ARISING FROM
INTERNATIONAL COMPETITIVE BIDDING

INTRODUCTION

Many cases involving divergencies of interest among participating countries concerning the application of rules for international competitive bidding are settled either by informal consultation or discussion around the conference table. In the pre-arbitration period, nations should be prepared to reconsider their position if they want to reduce delays in implementation. There remain, however, exceptional cases where agreement cannot be reached by these means sufficiently quickly to avoid delaying unduly the implementation of the work to which the dispute relates.

In order to solve such cases a procedure has been developed which, within prescribed time limits, provides countries of origin with a means of ensuring that host nations do not discriminate against their firms. Only those disputes based on alleged deviations of the rules as defined in paragraph A.2 below and raised by a country whose firm has been nominated to participate in a bid will be considered by NATO. Therefore a dispute is limited to the country of origin of the nominated bidder on one side and the host nation on the other.

To avoid delays in the procurement as much as possible, time periods mentioned in the dispute procedure should be strictly adhered to.

A. SCOPE OF PROCEDURE AND TIMING

1. The procedure set forth hereafter shall apply to disputes about the correct application of the principles and procedures for international competitive bidding approved by NATO, which arise prior to the signature of a contract for NATO Security Investment works or prior to the host nation having formally committed itself 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.

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2. The disputes are limited to :

- (a) the non-observance of procurement procedures contained in this document, if it can be demonstrated that this has led to discrimination against one or more firms;
- (b) the non-admission of a firm to submit a bid;
- (c) the sending out of invitations to bid in such a manner that some eligible firms are not able to submit a bid if they so desire;
- (d) the wording of a "cahier des charges" in such a way as to restrict competition unduly;
- (e) the determination of the price of a bid conforming with the "cahier des charges";
- (f) the non-conformity of bids received with the "cahier des charges";
- (g) the non-observance by the host nation of the time limits prescribed in paragraphs 6, 7 and 10 of the international competitive bidding procedures, if this leads to discrimination against a (prospective) bidder;

3. Depending on the nature of the complaint, the time limits for the procedure in paragraph 4 below are as follows :

- (a) complaints under paragraph 2, sub-paragraphs (a), (b), (c) and (d) above should be lodged with the host nation and notified to the Committee before the closing date for submissions of bids as established by the host nation in accordance with para.10 of the international competitive bidding procedure;
- (b) complaints under paragraph 2, sub-paragraph (e) and (f) above, should be lodged before expiry of the time limit of 21 days provided for under paragraphs 13(ii)(a) and 13(iii)(a) of the international competitive bidding procedure;
- (c) complaints under paragraph 2, sub-paragraph (g) above should be lodged within 14 days after expiry of the time limit(s) which the host nation has not respected.

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B. SUSPENSION OF PLACING OF CONTRACTS AND NOTIFICATION OF DISAGREEMENTS

4. Should a delegation allege the incorrect application of the agreed principles and procedures for international competitive bidding within the limitations given in paragraph 2 above it will submit, within the time limit specified in paragraph 3 above, a formal request to the delegation of the 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.

5. The host nation will immediately comply with the request submitted by the delegation lodging the complaint. A period of 21 days from the date of notification to the Committee will be allowed for discussions between the host nation and the other party (or parties to the disagreement), with the object of arriving at an amicable settlement. At this stage the International Staff may be invited to present their views on the matter under dispute.

6. At the meeting of the Committee upon the expiration of the 21 day period referred to in paragraph 5 above, the parties concerned shall either orally or in writing report to the Committee on the progress of their discussions. If at this meeting the Committee feels that an extension of the "talking period" is justified due to progress in the discussions and if the disputants request an extension even though they have not reached agreement, an extension of not more than 7 days may be granted. If an extension is not granted, a formal dispute will be deemed to exist and the Committee will open discussion on the points in dispute during the meeting. The issue may be discussed at not more than two consecutive meetings of the Committee.

C. ARBITRATION

7. If at the conclusion of the Committee discussion period as per paragraph 6 above, no agreement is reached, between the disputants, the Committee shall, at the end of the second and last discussion, submit the dispute to arbitration and a Board of Arbitration (hereafter referred to as the Board) shall be formed in accordance with paragraph 8 below and based on the Terms of Reference (see Appendix to this Annex).

8. The Committee, concurrently with the submission of a dispute to arbitration, shall ask the Secretary General to

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request three participating countries in no way concerned in the dispute each to designate a member to serve on the Board. Alternatively, the Committee may ask the Secretary General to designate an officer of the International Staff, or a NATO Agency, and to request two participating countries each to nominate a member. It is desirable that the persons designated should be familiar with the NATO Security Investment Programme. These persons shall act impartially according to their individual good judgement. NATO Headquarters will provide assistance and expertise whenever necessary.

9. The Secretary General shall inform each individual designated to the Board of the subject of the dispute in broad terms; each individual shall then signify to the Secretary General in writing within the time specified:

- (a) his acceptance of the position of arbitrator in the dispute, and
- (b) his acceptance of the obligation not to disclose except as provided in paragraph 12 below, the views held by any of the arbitrators or the nature of their deliberations and discussions.

10. When the composition of the Board has been settled the Secretary General shall take the following action :

- (a) forthwith inform the Committee at which time the dispute is closed to discussion in the Committee;
- (b) the Secretary General, or the official acting on his behalf, shall charge the Board; inter alia, he shall mention the subject of the dispute and the rules that apply.

11. The Board shall meet as soon as possible and in any case not later than 14 days after the date of notification to the arbiters of their appointment to the Board. It shall establish its own rules of procedure in accordance with the Terms of Reference at Appendix to this Annex which, inter alia, will provide for :

- (a) an exchange of memoranda in which the parties in dispute shall state their position;
- (b) each nation involved should be entitled to comment upon the memoranda submitted by the other involved nation;

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- (c) at least one hearing of each party concerned in the dispute;
- (d) nations should be allowed the assistance of technical experts of industry and/or of the firm involved.

12. The decision of the Board shall be based on the principles and procedures of international competitive bidding as contained in this document and on the evidence produced. The decision shall be the majority view and shall not show the minority view, if any. It shall be presented in writing to the Committee not later than 28 days after the Board's first meeting. The decision of the Board shall be final, binding and no appeal shall be allowed.

13. Participating nations concerned shall, with due speed, take the necessary steps to implement the Board's decision.

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TERMS OF REFERENCE FOR A BOARD OF ARBITRATION

I. INTRODUCTION

The guiding principles in the ICB procedures are:

- to assist the timely implementation of NATO Security Investment projects so that the operational needs of NATO are met and the available resources are used in the most cost-effective way;
- to foster an environment conducive to maximising the participation of qualified firms in the NATO Security Investment Programme;
- To avoid discrimination against firms of participating countries interested in participating in NATO Security Investment projects;

II. COMPOSITION

The Board of Arbitration shall comprise representatives from participating countries, NATO agencies or the NIS, in no way concerned with the disputes; individual backgrounds shall be such that the Board has collective experience of the relevant aspects of the subject under dispute. The International Staff of NATO headquarters will provide assistance and expertise whenever necessary.

III. TERMS OF REFERENCE

1. The Board shall establish its own rules of procedure in respect of each dispute to be considered.
2. The Board shall have access to all documentation relevant to the disputes, including but not limited to, the cahier des charges, results of the bidders' conference, the bids, the statements of non-compliance and relevant records.

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3. The Board shall call for memoranda from the country of origin and from the host nation, fully reflecting the views of each. All such memoranda shall be made available to each of the nations concerned in the particular dispute.
4. The Board shall conduct at least one hearing of the country of origin in the presence of the host nation and of the host nation in the presence of the country of origin.
5. The Board should be able to have private hearings of each disputing country without the presence of the other.
6. The Board shall, if so requested by a country of origin, allow bidders to provide further technical clarification during the hearings. Such clarification shall not result in a change to the technical proposals or the bid price.
7. If the dispute is related to action described in paragraph 2.(f) of Annex I, the Board shall determine whether in the light of all the evidence and the clarifications provided, the bid is in conformity with the cahier des charges, or whether sufficient reasons in these respects justify a decision of non-compliance. The decision of the Board in this matter shall be based on the guiding principles contained in AC/4-D/2261 (1996 Edition).
8. The decision shall be the majority view and shall not show the minority view. It shall be presented to the Council with detailed reasons as soon as possible, and in any case not later than 28 days after the Board's first meeting. The decision of the Board shall be final and no appeal shall be allowed.

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THE OPTIONAL PRELIMINARY BIDDING PROCEDURE

Introduction

1. The purpose of this Annex is to describe a supplementary bidding stage which may be employed before, and in addition to, the basic one-stage bidding procedure, outlined in Document AC/4-D/2261 (1996 Edition).

Objective

2. The objective of the optional preliminary bidding procedure is to allow the host nation to adopt a more flexible approach in its dealings with bidders. This flexibility should provide bidders with a better understanding of the NATO requirements and make the host nation aware of industrial capabilities. Such co-operation between the host nation and bidders should also decrease the risk of disputes during the second stage of the bidding procedure.

The Procedure

3. The action to be undertaken by the host nation is described below:

- (a) the host nation will issue a notification of intention to call for bids and establish a list of eligible firms in accordance with paragraphs 5 and 6 of Document AC/4-D/2261 (1996 Edition).
- (b) the issue of a Request for Bidder Views (RFBV) on their system approach to the problem but excluding an actual Technical Bid Proposal. During the entire procurement cycle up to the issue of an Invitation for Bid (IFB) in accordance with Document AC/4-D/2261 (1996 Edition) the term "system approach" will be used solely to distinguish the first step of the two-step procurement procedure;
 - (i) The RFBV will provide the eligible firms with a comprehensive insight into the technical factors, criteria and/or problems which they should consider - as a minimum - in preparing their initial response. It will also indicate the basis on which preliminary discussions with potential bidders will be conducted and also that on

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which evaluation of their final technical proposals will be carried out; this will help to ensure that all eligible firms solicited have a common understanding of the requirement and of the way in which host nations intend to conduct the preliminary round of discussions and handle the final evaluation of bids;

(ii) RFBV will include :

- the best practicable description of the requirement;
- the requirements of the proposed system approach and a statement that no pricing information nor the bidder's detailed technical proposal should be submitted;
- a statement that potential bidders will be free to respond with their system approach in whatever depth they would wish, but excluding their final technical proposal;
- prospective contractual terms and conditions applicable to this project;
- a closing date for submitting system approach proposals; this closing date must be at least 42 days after the issue of the RFBV;
- a notification that the optional preliminary bidding procedure is being used; eligible firms will be informed that the host nation will discuss their system approach proposal with them (and that all eligible firms established in accordance with paragraphs 3(a) above will be permitted to submit a bid in the second step of the procurement cycle, even if they did not desire to participate in step 1);

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- (c) system approach proposals submitted in response to the RFBV will then be reviewed by the host nation. Discussions will be held with each participating firm to identify and clarify any difficulties foreseen in the implementation of the project;
 - (i) during discussions with the firms, all personnel involved in the discussions will be cautioned against furnishing to one firm any additional information that may afford it a competitive advantage over the other eligible firms; if general information is provided to one firm on a particular subject which would aid him in preparing his bid, the same information will then be provided to all the other eligible firms, by means of an amendment to RFBV document; disclosure of such information within the host nation will be on a "need to know" basis only;
 - (ii) host nation will take every step to safeguard information contained in the system approach received from eligible firms; in cases when system approach include descriptive literature or materials or special technical data in which the firms have proprietary or other interest, and which they do not want disclosed to the public or used by the host nation for any purpose other than evaluation of their system approach, special instructions in the RFBV will provide guidance to the eligible firms on how to identify and mark the data which falls in this category;
- (d) upon completion of the discussions, the host nation may decide to amend/modify certain requirements contained in the RFBV in the light of the exchanges made with industry; any amendments and modifications of this nature will be submitted to all eligible firms and by this manner the preparation of the final IFB package will be implemented according to a common and well understood baseline;

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- (e) from this point on, the procedure will be held in total accordance with that described in Document AC/4-D/2261 (1996 Edition); the list of eligible firms as mentioned in paragraph 3(a) above will still be used for distribution of the final IFB; copies will be sent out to all eligible firms even if they did not respond to the RFBV.

Application of the Procedure

4. This procedure is considered applicable to large projects involving high technology; a host nation should decide at the earliest possible stage whether it would wish to use the optional preliminary bidding procedure to supplement the procedure as set out in Document AC/4-D/2261 (1996 Edition) and preferably prior to the use of the "notification of intent to call for bid"; a host nation wishing to adopt the optional procedure in paragraph 3 above should so inform the Infrastructure Committee of its intention, and ask for its guidance and advice.

Modifications to the Procedure

5. In pursuance of the basic objectives of the International Competitive Bidding procedures (see paragraph 1 of Document AC/4-D/2261 (1996 Edition) host nations are encouraged to propose amendments to the bidding procedure described above, to suit the needs of the procurement in question. Any modifications of this sort must be agreed by the Committee before their application.

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INTERNATIONAL COMPETITIVE BIDDING

Foreword to the Three-Step Bidding Procedure

1. Following the remit from the NICSO Review, the Infrastructure Committee has considered a three-step ICB procedure to be applied in the appropriate cases instead of the one-step or two-step procedure for international competitive bidding. While agreeing in principle to the 3 step procedure, the Committee noted that several aspects of the procedure still remained unresolved. The Committee therefore determined that it was preferable to obtain experience with the procedure in some representative practical cases, before passing judgement on those aspects. It is therefore important that the Committee, the International Staff and the host nations be aware of the unresolved issues and take appropriate measures in those test cases to ensure that the arrangements with industry are not in doubt.

2. The primary unresolved issue is the dispute arrangement. One of the most important features of the three-step ICB procedure is that it eliminates firms at stage I of the process on other than objective compliancy grounds. Some nations have objected to this idea and wanted to leave the possibility open, at Step 3, for all interested firms to be enabled to submit a bid and for the bid to be judged on technical grounds. On the other hand, some nations pointed out the iterative process that governs the three-step ICB procedure, and the virtual impossibility that "outsiders" could offer a valid bid. The main concern of the nations is to protect their legitimate economic/industrial interest in these projects. Some nations felt in this context that those economic/industrial interests could better be safeguarded in other ways. (Production sharing, mandatory sub-contracting, balanced consortia, etc.) It was pointed out that, were a firm to be rejected as the responsible main contractor, it could of course stay in competition as sub-contractor or member of a consortium. The fact that all parties (industry, host nation, International Staff, users/MNC) are in continual contact with each other also reduces the risk of disputes. In practice, it is expected that the number of interested main contractors would be fairly limited for projects foreseen for the three-step procedure. It must, therefore, be possible to establish an acceptable selection/elimination process as well as clarifying the dispute procedure to be applied. In any case, this must be done before entering into the three-step bidding procedure.

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3. Several other aspects are not completely defined :

- (a) The question as to who decides whether or not the three-step procedure is applied and, if so, whether or not deviations should be allowed

At present, the three-step procedure is intended "as the basic procedure which the host nation should normally apply in the case of complicated projects."

- (b) The relationship between the host nation and the International Staff/users/other nations during the selection process.

The present text suggests a rather strong relationship and permanent dialogue in this respect. Some nations stressed the responsibilities of the sovereign host nations, whilst other nations stressed the necessity for regular involvement by the International Staff, user nations/MNCs, and nations other than the host or user nation. Also, with respect to this aspect, practice will have to show whether a workable relationship can be established that does justice to all interests.

4. When a host nation offers a project to the Infrastructure Committee to which the three-step procedure could be applied, the above-mentioned aspects should be discussed and agreed by the Committee with the aim of reaching clarity, before entering into a three-step ICB bidding exercise.

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INTERNATIONAL COMPETITIVE BIDDING

THREE-STEP BIDDING PROCEDURE

I. INTRODUCTION

1. The three-step bidding procedure laid down in the following paragraph is intended as the basic procedure which host nations should normally apply in the case of international competitive bidding for complicated NATO Security Investment projects. The steps can be summarised as :

- Step 0 : Concept Formulation: in-house discussions to define requirements
- Step 1 : Feasibility: preparation of a "Request for bidders' views" based upon the concept for circulation to industry and evaluation of their responses
- Step 2 : Project Definition: initiation of project definition contracts, their examination and inclusion in the TBCE
- Step 3 : Development/
Production Stage: preparation and distribution of IFB for evaluation under the rules of AC/4-D/2261(1996 Edition).

2. Host nations may depart from this procedure, if circumstances of a particular project so demand, provided the Infrastructure Committee has agreed to such a departure for that project.

3. A host nation should decide at the earliest possible stage, or the Committee may direct a host nation to use the three-step procedure at the fund request stage.

4. In this document the term "Host Nation" covers implementation of a project either by a sovereign nation or by a designated NATO body.

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5. Examples of "Complicated NATO Security Investment projects" which may qualify for implementation, under the three-step procedure, are :

- (i) projects requiring R&D and where such R&D has not been acquired independently (for instance, via a project definition contract);
- (ii) projects where the necessary clarification of risk areas, until mutual satisfaction is reached, cannot be achieved via the "optional preliminary bidding procedure";
- (iii) projects where selection of one technological approach may restrict competition.

Objective

6. The objective of the three-step bidding procedure is:

- (i) to allow a step-by-step approach to the implementation of complicated NATO Security Investment projects;
- (ii) to identify risk areas at the earliest possible stage and to reduce them;
- (iii) to ensure that there is full understanding between the host nation, user nation(s) and the contractor(s) of the requirements involved and of the methods and means to meet them.

7. Under the procedure, the host nation, user nation(s) and MNC(s) should formulate and refine their operational requirements which should then be reflected in baseline functional requirements and performance specifications. The responsibility for formulating and refining the system approach and technical specifications should rest with industry. Thus the host nation should refrain, to the extent possible, from becoming involved in the formulation of technical solutions and specifications; the primary task of the host nation being to judge whether or not the solutions to be offered by industry would meet the stated requirements.

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II. THE PROCEDURE

8. The various stages of this procedure are described in detail in the paragraphs below and shown in a tabular form at Appendix 1. Appendix 1 also summarises the relationship between the operational user(s), the host nation and industry. The terms used hereunder are to be interpreted as laid down in paragraph 2 of Document AC/4-D/2261 (1996 Edition).

STEP 0 - CONCEPT FORMULATION STAGE

Summary

9. During the Concept Formulation Stage the MNC(s) in co-operation with the host nation(s), user nation(s) and the International Staff establishes the basic operational goals of the project on the basis of which the host nation develops the Type "A" cost estimate (TACE). Preliminary technical investigations might be necessary to translate the goals into a TACE; if so, NATO Infrastructure funds may be authorised by the Infrastructure Committee to hire consultants or a study contractor to assist in such investigations. The products resulting from this stage are :

- The Mission Need Document (MND)¹
- the Outline NATO Staff Target (ONST)²
- the TACE

¹ Mission Need (Document)

A statement based on a mission analysis identifying in broad outline a quantitative or qualitative operational deficiency that cannot be solved satisfactorily with existing or planned forces and/or equipment.

² Outline NATO Staff Target

A very broad outline of the function and desired performances of a new weapon or equipment to satisfy a mission need, before the possibilities of achievement and the financial aspects have been examined.

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Action to be taken

10. In accordance with established procedures :

- (i) the NMAs prepare and validate the "Mission Need" document (MND), outline the "NATO Staff Target" (ONST) on which the project should be based and recommend planning funds for programming;
- (ii) the host nation issues a Type "A" cost estimate (TACE) in which the functional baseline requirements are stated and on which the performance specifications should be based. The host nation indicates, if possible, already at this stage which bidding procedure will be used;
- (iii) the NMAs include the project in a Capability Package (CP) (or, exceptionally, submit it as a "stand alone") and submit the package to the Senior Resource Board which screens and endorses the package and recommends it for approval to the Council/DPC;
- (iv) the Infrastructure Committee authorises, if necessary, advance planning funds and agrees to the procurement procedure, the application or non-application of a dispute procedure and, if appropriate, the evaluation procedure to be followed.

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STEP 1 - FEASIBILITY STAGE

Summary

11. At the feasibility stage the NMAs in coordination with the user refine the ONST to a NATO Staff Target (NST)³. The host nation solicits the names of appropriate firms from the nations, and issues the "Request for Bidder's Views" (RFBV), taking into account any changes in the requirement now incorporated in the NST.

12. The RFBV will provide nominated firms with a comprehensive insight into both the relevant operational concepts to be implemented and requirements to be met, as well as the technical factors and/or problems which they should consider when preparing their initial response. It should also indicate the scope of the proposed project, definition efforts, on the basis of which preliminary discussions with potential bidders will be conducted and also the criteria and rating factors for the evaluation of the final technical proposals and the selection of two or three potential bidders for the Project Definition Study.

3

NATO Staff Target

A broad outline of the function and desired performance of new equipment or weapons system(s), before the feasibility or method of meeting the requirement, or other implications have been fully assessed.

Based upon the findings of any prefeasibility study(ies), the NATO Staff Target lists, in greater detail, operational characteristics and certain technical specifications which are desired and which have been shown to be broadly feasible. It may also contain broad cost parameters when required.

This document is used as a basis for the request for proposals from industry for feasibility study on candidate system solutions.

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Action to be taken

13. The action to be taken under this stage will be as follows :

- (a) The NMAs prepare and validate the NST;
- (b) the host nation issues an initial Type "B" Cost Estimate (TBCE) for the follow-on project itself as well as a notification of intent to call for bids in accordance with Document AC/4-D/2261 (1996 Edition) indicating therein that the three-step procedure would be applied;
- (c) The host nation issues the RFBV together with the high level performance specifications covering the project. The RFBV will provide nominated firms with a comprehensive insight into the relevant operational concepts and the baseline functional requirements and/or foreseen problems which should be considered in preparing initial responses. Through a common understanding of the requirement and of the procurement procedure being adopted, the RFBV will thereby offer a basis for preliminary discussions and inform the nominated bidders of the criteria and rating factors for the evaluation of final technical proposals and the selection of the bidders (e.g. two or three) for the project definition study. The RFBV will include :
 - (i) an indication of the scope of the proposed project;
 - (ii) a statement that the three-step procedure will be applied;
 - (iii) guidance on the basic information to be submitted in the bidder's response, i.e. the proposed system approach, the bidder's technical proposals for meeting the stated requirements together with a budgetary estimate for the production of the required system and a broad production timescale;
 - (iv) a statement as to whether bidders should feel free to include in their brochures proprietary information which will not be

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disclosed, or whether the procurement agency will consider that any information submitted in brochures is available to NATO and the procurement agency to improve the performance specification of the project;

- (v) the standard terms of the contract that will apply to any subsequent contract award;
- (v) a statement about the cost sharing arrangement of the project definition study and the project itself where applicable;
- (vii) a description of the dispute procedure to be followed, if appropriate, at this stage;
- (viii) a closing date for the submission of the RFBV response (this closing date must be at least 42 days after the issue of the RFBV) and an indication as to whether or not requests for extension in accordance with the provisos in paragraph 10(iv)-(v) of Document AC/4-D/2261 (1996 Edition) would be admissible.

14. Handling of Responses by Firms to the RFBV

- (a) Firms reply with brochure⁴ responses which set out their general approach to meeting the requirement, their qualifications in the technological area concerned, and their estimate of time and cost for project definition (PD) studies. The industrial part of this feasibility stage is not funded by NATO. On receipt of the responses the Host Nation assesses the replies. Face-to-face discussions will then be held between the Host Nation and each firm, on the basis of its RFBV response, in order to identify and clarify any difficulties foreseen in the implementation of the project.
- (b) During the discussions with the firms, all personnel involved in the discussions will be cautioned against furnishing to one firm any

4

The term "Brochure" is used to cover whatever response a firm elects to make.

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additional information that may afford it a competitive advantage over the other eligible firms; if information is provided to one firm on a particular subject which would help it in any way, the same information will then be provided to all the other eligible firms, by means of an amendment to RFBV document; disclosure of such information within the Host Nation will be on a "need to know" basis only.

- (c) In cases where firms have proprietary or other interest in the information submitted with their responses, including descriptive literature or materials or specific technical data, they should so specify in their response. Host Nations will take every measure to safeguard the information contained therein which the firms do not want disclosed to the public or used by the Host Nation for any purpose other than evaluation of their system approach; special instructions in the RFBV will provide guidance to the eligible firms on how to identify and mark the data which falls in this category.
- (d) The objective of the above actions is to select the bidders (e.g. two or three) deemed to be most clearly capable of meeting the stated requirements and which should therefore conduct the project definition studies. In the selection process, the host nation should ensure that the major users, the International Staff and the MNCs are adequately informed and consulted on a timely basis as the technical, financial and procedural aspects of the project develop, and that irreconcilable differences will be notified to the Infrastructure Committee⁵;

5

In the case of complicated projects involving several or all member nations and MNCs, NATO should consider tasking a special body (NATO agency) with the role of Host Nation, as is the case with NACISA for NATO Communications Systems. Where an agency is made responsible for a procurement, arrangements should also be made to involve the major users, the International Staff and the MNCs in the contractor selection process.

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- (e) The host nation will notify the firm(s) selected of its decision, it will also notify the firms not selected.

15. The Host Nation, at the conclusion of this stage will develop the TBCE for the Project Definition Studies to be considered under the next stage. The Infrastructure Committee authorises the Project Definition Study together with the necessary amount of funds and notes the initial TBCE for the total project.

STEP 2 - PROJECT DEFINITION STAGE

Summary

16. The purpose of the project definition study is to explore all aspects of the project in question more thoroughly and especially to identify and eliminate the high risk areas of those parts of the project involving high technology and the development of new hardware and software. The study should be used, inter alia, to clarify any ambiguities in the requirement, to examine in greater detail the areas of development, to produce (if necessary) prototypes of the more complicated parts of the system, to develop a test plan and to provide detailed and realistic costings and implementation schedules -including trade-offs, and, finally to produce a system design which the firm in question would have to implement if it were to gain a production contract.

17. In the project definition stage, the NMAs again refine the requirements, producing a validated NATO Staff Requirement (NSR)⁶. The Host Nation prepares the PD work statement and lets contracts to the selected contractors. The Host Nation should have in-depth discussions with the contractors during this stage. The PD products will include detailed specifications prepared by the contractors (the B-level specifications) and include a detailed description of the test programme and the contractor effort to be devoted to this programme. This Host Nation then assesses the outcome of the PD stage and recommends the

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NATO Staff Requirement

A detailed statement of the required design parameters and operational performance of the equipment or weapon system(s).

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development/production stage. If it is decided to proceed then the Host Nation updates the TBCE for the total project and starts to prepare the IFB including any revision for refinement of performance specifications proposed by the major users in the light of the project definition studies.

Action to be taken

18. The action to be taken under this stage will be as follows :

- (a) The NMAs prepare and revalidate the NATO Staff Requirement.
- (b) The Infrastructure Committee, at the request of the host nation, authorises funds for the PD study, and determines the amount to be paid to each firm, taking into account any cost sharing arrangements between NATO and industry⁷.
- (c) Following authorisation by the Infrastructure Committee the host nation awards the PD study contracts, as indicated above, to the firms selected.

19. During the project definition study phase, the competing contractors are to be treated equally by host nations and NATO Authorities concerned. Each must be given the same information, and there should be a regular exchange of views between the host nation and the firms concerned. Special care must be taken to ensure that the privileged views and concepts being proposed by one contractor are not compromised or passed on to another contractor.

20. A realistic timescale should be set for the completion of project definition studies - normally six months - and each study should then be evaluated by the Host Nation. With the delivery of the PD study NATO (unless otherwise specified in the contract) acquires the proprietary right to the PD study/the right to implement the project according to the firm's proposal.

⁷

The amount of money to be paid for these studies might have an influence on the proprietary rights.

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21. Representatives of the major users and the International Staff should be closely involved during the project definition study phase and should, for example, be invited to attend all meetings between the host nation and the firms concerned and to assist in the evaluation of PD studies.

22. The NMAs update and re-validate the NATO Staff requirement on the basis of the PD study results.

23. On the basis of the PD study results, the host nation updates the TBCE for the project. It should be based on the updated baseline functional requirements which resulted from the updated performance specifications. They should in no case be specifically tailored to one of the systems and technical solutions proposed by the PD study contractors but those updated baseline requirements should normally be met by one or more of the systems technical solutions.

24. ICB disputes are not admissible at the end of the Project Definition Study.

25. The host nation submits the updated TBCE to the Infrastructure Committee. In accordance with the established procedures the Committee authorises the implementation of the project together with the funds as required on the understanding that the project would be open to international competitive bidding.⁸

STEP 3 - DEVELOPMENT/PRODUCTION STAGE

Actions to be taken

26. The Host Nation issues the IFB which should be based on the approved final Type "B" cost estimates and include the required legal, contractual and financial clauses. The IFB should also contain a statement to the effect that the contractor

⁸

Originally it was intended to limit the final ICB to the remaining firms only. As nations were not in a position to agree to this idea unanimously the methodology of selecting the firms which are allowed to bid in the final step of the three-step procedure will have to be decided by the Infrastructure Committee on a case-by-case basis during the trial period (see also cover letter).

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who would be finally selected will be committed to his own design as regards both the system and technical specifications as far as it is reflected in the TBCE and specifications.

27. The group of experts mentioned in paragraphs 14(d) and 21 above should, if necessary, be called upon to assist the Host Nation in drafting the final IFB.

28. The Host Nation awards the contract in accordance with Document AC/4-D/2261 (1996 Edition).

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DISSEMINATION OF INFORMATION ON INVITATIONS TO TENDER

1. Contracts for other than civil engineering projects

- (a) In order to provide for timely availability to nations of the names of potential bidders of common funded projects of an estimated value of IAU 100,000 or above, as defined in sub-paragraph (b) hereunder, immediately after the final date by which firms must have expressed their desire to tender, the host nation must forward, only to those delegations and embassies of participating countries which have duly notified the Infrastructure Committee of their wish to receive this information (and, if applicable, to the International Staff) (see sub-paragraph (c) hereunder), the list of eligible firms which have expressed their interest in bidding. This list is intended to provide information for the benefit of potential sub-contractors who themselves would be eligible to participate in the project;
- (b) the above regulation will not apply to contracts for civil engineering works and associated services whatever their value. However, it will apply to contracts or parts of contracts for equipment, supplies and the provision of services (other than for civil works).
- (c) the Infrastructure Committee, when granting an authorisation to commit funds or when noting a pre-financing statement, shall record which, if any, nations (or the International Staff) wish to receive the list of eligible firms which have expressed their interest in bidding (see also paragraph 3).

2. Civil engineering contracts

- (a) Whenever ICB is applied for civil engineering projects where the part for steel supply is estimated at IAU 300,000 or more, the host country has the choice between the following options :

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EITHER

- (i) in order to provide for timely availability to nations of the names of potential bidders on common funded projects immediately after the final date by which firms must have expressed a desire to tender, the host nation must forward only to those delegations and embassies of participating countries which have duly notified the Infrastructure Committee of their wish to receive this information (and, if applicable, to the International Staff) (see paragraph 2(b) hereunder) the list of eligible firms which have expressed their interest in bidding. This list is intended to provide information for the benefit of potential sub-contractors who themselves would be eligible to participate in the project;

OR

- (ii) issue a separate invitation to tender for the steel construction works under normal or accelerated (if agreed) ICB procedures;

OR

- (iii) solicit from participating countries the names of interested steel sub-contractors; these names will then be furnished to the potential prime contractors, at the same time as the distribution of the "cahier des charges", who will take into consideration any offer made by an eligible sub-contractor.
- (b) The Infrastructure Committee shall determine at the budgetary control or prefinancing stage whether the procedure in paragraphs 2(a)(i), 2(a)(ii) or 2(a)(iii) is applicable or necessary and the host nation shall state at that stage which of the three options it intends to select.
- (c) Should the host nation intend to select option 2(a)(i) the Infrastructure Committee, when granting authorisation to commit funds or when

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noting a prefinancing statement, shall record which, if any, nations (or the International Staff) wish to receive the list of eligible firms which have expressed their interest in bidding (see also paragraph 3).

3. Notwithstanding the provisions in paragraph 1(c) and paragraph 2(c) above, any participating nation which was omitted at the Infrastructure Committee stage to request receipt of the list of eligible firms, may do so subsequently on a bilateral basis and in a timely manner.

4. Non-compliance with the procedure set forth in paragraphs 1, 2 or 3 shall not constitute a basis for a formal dispute within the terms of Annex I to Document AC/4-D/2261 (1996 Edition).

5. The Infrastructure Committee is invited to take note of the updated version of the Committee's decision and to state, when granting authorisations to commit funds or noting prefinancing statements, that the host nation shall conform with these rules when going out to ICB within the framework of its obligations.

6. Alternatively, the Infrastructure Committee may, on a case-by-case basis and at its discretion, agree to dispense with the application of this procedure.

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SPECIMEN DECLARATION OF ELIGIBILITY

To : Host Nation Delegation to NATO

SUBJECT : EXPRESSIONS OF INTEREST IN ICB
REF. NO. XYZ

1. With reference to the above quoted ICB exercise, the following (nationality of origin) firms have expressed an interest in receiving the bidding documents :

- (a) 'A' Co. Ltd.,
Address,
Contact : Mr. A.N. Other
Tel. No.:
Telex No. :
- (b) 'B' Co. Ltd.,
etc.
- (c) 'C' Co. Ltd.,
etc.

2. I certify that these firms have the necessary financial, technical and professional competence to be admitted by the Government of (country of origin) as bidders were it responsible for awarding a contract of this nature. All the firms listed above are security cleared to the level required for this project.

(Signed) (Country of Origin)

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PRICE VARIATION CLAUSE

1. Price Variation

a. The price of this contract is subject to adjustment or revision within the limits defined herein.

b. If during the performance of this contract a variation occurs in the cost of wages and/or materials forming part of the basic contract price, that price shall vary in accordance with the movement of that price factor whose variation will determine the extent of the revision of the basic contract price in accordance with the following General Principles:

2. General Principles

$$P = \frac{P_o}{100} (a + b \frac{M}{M_o} + c \frac{L}{L_o})$$

In which

P = Final invoice price inclusive of variation.

Po = Basic contract price of deliverable items at the effective date of contract.

a = Invariable portion of the basic contract price stated in the cahier des charges

b = [Fixed] material portion of the basic contract price.

c = [Fixed] labour portion of the basic contract price.

M = Mathematical average of the index of raw materials during the periods extending from the effective date of contract to months after contract award.

Mo = Basic index of the same raw materials at the effective date of contract.

L = Mathematical average of the index of wages and salaries (inclusive of recognised social charges) during the periods extending months after contract award to the last day of the month prior to the month of delivery in accordance with the Delivery Schedule.

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Lo - Basic Index for the same wages and salaries at the effective date of contract.

a.b.c. represent the percentage of the basic price attributed to each price factor ($a+b+c = 100$).

3. Indices

For the purposes of calculating the adjustment in price subsequent to the effective date of contract, the following indices shall be used :

Materials: Table
published in
by
(Index at EDC =)
Labour - Table
published in
by
(Index at EDC =)

4. Maximum Variation

The increase to the basic total contract price shall not exceed...% per annum, within an overall maximum of ...% for the whole duration of the contract or any agreed extension thereof, and shall be calculated to the nearest whole month on the basic prices of those items agreed to be subject to variation in accordance with this condition. Calculation and payments shall be made in the same currencies attributable to each deliverable and all the prices may be varied in accordance with this provision unless specifically excluded in the schedule or elsewhere in this contract.

5. Payment of Price Variation

- (a) Calculations of price increases shall be made as soon as possible after publication of the last index figure relating to the approved period of application of the variable.

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- (b) Where any index figure published is stated to be a provisional figure, the contractor may opt
- either: to use that provisional figure in his calculation and present an appropriate invoice,
- or: to delay presentation of his invoice until a definitive index figure is published.
- No further adjustment will be allowed, up or down, following revision of any index figure if an invoice is presented using provisional indices.
- (c) Payment of price variation increases will be made on simple presentation and verification of an invoice, supported by details of the calculation(s), in accordance with the invoicing instructions of this contract.

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OFFICIAL COMMERCIAL BUYING AND SELLING RATES OF EXCHANGE

Please find hereunder the list of official sources from which the exchange rates defined in the footnote to paragraph 13(i) may be obtained :

BELGIUM : Banque Nationale de Belgique
Boulevard Berlaimont, 5
1000 BRUXELLES

CANADA : The "Bank of Canada"
234 Wellington Street,
OTTAWA, Ontario, KIA OG9

Publishes daily, at noon Ottawa time, a list of currency exchange rates determined by inter-bank transactions on the Toronto and Montreal Foreign Exchange markets.

DENMARK : Danmarks National Bank,
Havnegade 5
1058 COPENHAGEN K.
Telephone (+45) 33141411
Telefax (+45) 33145902

FRANCE : Banque de France,
Direction générale des services étrangers,
39 rue Croix des Petits Champs
75001 PARIS.

GERMANY : Devisenbörse Frankfurt/M,
D-6 FRANKFURT/M,
Börsenplatz.

GREECE : Bank of Greece,
Eleutheriou Venizelou 21,
ATHENS.

ITALY : The Italian Treasury publishes daily the official commercial exchange rates in the "Official Gazette of the Italian Republic".

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LUXEMBOURG:	Banque Nationale de Belgique, Boulevard de Berlaimont, 5 1000 Bruxelles.
NETHERLANDS:	De Nederlandse Bank N.V. Westeinde 1, AMSTERDAM. Tel: (20) 235332
NORWAY:	Norges Bank, Bankplassen 4, OSLO 1.
PORTUGAL:	Banco de Portugal, Rua do Comercio 148, 1100 LISBOA.
SPAIN:	Banco de España, Alcala 50, 28014 MADRID.
TURKEY:	Turkiye Cumhuriyet Merkez Bankasi, Ataturk Bulvari, ULUS-ANKARA.
UNITED KINGDOM:	The Bank of England, Gold and Foreign Exchange Office, Threadneedle Street, LONDON EC2R 8AH.
UNITED STATES:	Office, Fiscal Assistant Secretary, US Treasury, WASHINGTON DC 20220.

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PROCEDURE TO PREVENT LOSSES OR GAINS BY CONTRACTORS DUE TO
CHANGES IN EXCHANGE RATES

1. When host nations do not permit contracts to be expressed in foreign currencies the procedure as below will be followed in order to prevent losses or gains by contractors due to the effects of official devaluation, revaluation or other changes in the value of the currencies of the host nation or other NATO countries in which a contractor has expenses.

2. In their bid submission bidders will be required to specify the extent to which they and/or their sub-contractors will have expenses in currencies other than that of the host nations. The host nation will record those amounts in the contract, together with the rate of exchange of those currencies in relation to its own currency, taking the average of the official commercial buying and selling rates quoted at the close of business of the working day previous to the bid closing day by the specified source in the host nation (see Annex VII). This will establish an overall contract price consisting of fixed amounts of host nations currency (to cover costs incurred in that currency) and variable amounts of host nation currency (to cover costs incurred in other currencies). On dates of payment, the host nation will appropriately adjust the variable amounts in its own currency to compensate for fluctuations that may have occurred in the parties established in the contract for the currencies of other NATO countries to the extent that the contractor in fact has expenses in those stipulated currencies and to the limits specified in the contract.

Dependent on the terms of the contract and/or its own practice in such matters, the host nation will make payments of the adjusted amount either in those other currencies (in the amounts stipulated in the currency) or in its own currency. Thus, in the latter case, the host nation will adjust the amounts of its own country's currency paid so as to ensure that the contractor can, at rates of exchange in effect on the respective dates of payments, convert the host nation's currency into the required numbers of units of other currencies up to the limit specified in the contract.

3. When bidding for a contract hosted by a NATO agency, bidders in their bid submission will be required to specify the extent to which they and/or their sub-contractors will have expenses in currencies other than that of the bidder's country. NATO agencies will permit contracts to be either fully expressed in the currency of the contractor's country or in the currencies of both the contractor's country and those other NATO countries

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in which the contractor will have expenses. For accounting purposes, the total contract amount will be expressed in the currency of the contractor's country. For the determination of the amounts requested to be paid in other currencies, the average of the official commercial buying and selling rates between the contractor's currency and that of the other countries quoted at the close of business of the working day previous to the bid closing day by the specified source in the country where the NATO agency is established, will be utilised (see Annex VII). The NATO agency will record these amounts and rates of exchange in the contract. This will establish an overall contract price consisting of fixed amounts of currency of the contractor's country (to cover cost incurred in that currency) and variable amounts of currency of the contractor's country (to cover costs incurred in other currencies). On dates of payment, the NATO agency will appropriately adjust the variable amounts in the currency of the contractor's country to compensate for fluctuations that may have occurred in the parities established in the contract for the currencies of other NATO countries to the contract to the extent that the contractor in fact has expenses in those stipulated currencies and to the limits specified in the contract.

4. The NATO agency will make payments in those currencies in the amounts stipulated in the contract.

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10. Where that project has been open to ICB:

Compliant bidders (Name of firm)	Nationality of bidder	Bid price IAU - Nat. Currency
-------------------------------------	--------------------------	----------------------------------

1.

2.

3.

11. Contract awarded to bidder No.

12. Where no ICB took place for the project:

<u>Name of contractor</u>	<u>Nationality</u>
---------------------------	--------------------

13. If applicable, major sub-contractors of the contractor:

<u>Name</u>	<u>Nationality</u>	<u>Value of sub-contract</u>
		<u>IAU</u> <u>Nat. Currency</u>

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