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INVESTMENT COMMITTEE
PROCEDURES AND PRACTICES FOR CONDUCTING NSIP
INTERNATIONAL COMPETITIVE BIDDING USING
BEST VALUE EVALUATION METHODOLOGY

Note by the Secretary

References: (a) AC/4-D(2008)0002-REV1
(b) AC/4-N(2014)0040; -DS(2014)0027, item 5.2.1

1. Following five years of application of and experience with the procedures and practices for conducting NSIP International Competitive Bidding (ICB) using the Best Value evaluation methodology agreed with reference (a), the Investment Committee agreed to assess the use and added value of Best Value procurements in terms of capability delivery.

2. The Committee's assessment took into account lessons-learned in the conduct of Best Value competitions, mainly from the NATO C&I Agency (NCIA), and the recommendations from the Board of Arbitration on the dispute concerning the award of a project on Logistics Functional Services at reference (b). The result is a number of changes, both editorial and substantive in nature, to further improve transparency and objectivity in the conduct of ICB Best Value evaluations. The next review of the Best Value procedures and practices is proposed in three years' time.

3. It is worth highlighting, firstly, that although the Best Value evaluation methodology is mostly used by the NCIA, its provisions apply to all Host Nations. Secondly, although the methodology is primarily being applied for procurement of complex technology projects, Host Nations are encouraged to also consider its use for other complex procurements with a view to ensuring the most economically beneficial offer.

4. At its meeting on 14 July 2015, the Investment Committee agreed the revised procedures and practices for conducting NSIP ICB using the Best Value evaluation methodology (AC/4-WP(2015)0002-REV5), as reproduced at Annex 1.

(Signed) C. BEDDING

1 Annex

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-1-



**PROCEDURES AND PRACTICES FOR CONDUCTING NSIP
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INTRODUCTION

1. The NATO Security Investment Programme (NSIP) procedures for International Competitive Bidding (ICB) are detailed in AC/4-D/2261 (1996 Edition). This document was designed primarily for classical infrastructure projects, such as civil works. Later, the ICB was also utilized for other NSIP projects. These procedures are based upon contract award to the bid that complies, both administratively and technically, with the requirements of the Invitation for Bid (IFB) and gives the lowest price. This is known as the lowest compliant bid.
2. An attempt to overcome the shortcomings of the basic procedure has been made by the introduction of a variation - a Best Value (BV) procedure. BV procurement methods are well known and widely used in national procurement actions. The BV procedure takes into consideration several factors relating to the overall value and quality of the offer - such as bidder's recognized international certifications, supportability, management approach, quality assurance regime, delivery schedule, and technical merit which can be adequately taken into consideration during the bid evaluation. Introduction of BV procedures into NSIP procurements has yielded a new, effective and comprehensive procedure. The BV procedure is primarily a risk mitigation measure in the implementation of complex projects.
3. This document describes the BV procedure, aimed mainly at the procurement of complex C4IRS systems and services, where the best value, i.e. the most economically beneficial offer, can be determined in an easy to understand and consistent way.

AIM

4. The aim of this document is to provide guidance to the Host Nation regarding BV competitions to be conducted in line with AC/4-D/2261(1996 Edition), Annex X (AC/4-D/2261-ADD2(1996 Edition) refers). This revised version takes into account lessons-learned in the conduct of BV competitions, essentially from the NATO C&I Agency (NCIA), and the recommendations from the Board of Arbitration¹ on the dispute concerning the award of a project on Logistics Functional Services.² This is to further improve transparency and objectivity in the conduct of ICB Best Value evaluations.

¹ AC/4-N(2014)0040

² Consolidate Existing LOG System to Provide Logistic Functional Services (LOG FS) – Part II – Develop LOG FS – Spiral 1.

RELATIONSHIP TO AC/4-D/2261(1996 Edition)

5. BV procedures can be described as an alternative bid evaluation methodology within the ICB procedures as laid down in AC/4-D/2261(1996 Edition). As such the procedures laid down in the document apply equally to the BV procedure, with the following basic exceptions:

5.1. Under standard ICB procedures, contract award is based upon the lowest compliant bid. Under BV procedures, contract award would be based upon the quality of the bids, as well as the bid price.

5.2. The other area where the BV procedure differs from lowest compliant bid ICB procedures relates to the dispute procedures in Annex X of AC/4-D/2261(1996 Edition).

6. Regarding how bids are technically evaluated, there are also some differences. Under AC/4-D/2261(1996 Edition), the technical portions of the bid are evaluated only to determine compliance with the technical requirements. Under the BV procedure, the technical evaluation consists of rating each bid based upon how well it responds to the requirements of the “cahier des charges”, which is expressed in a set of evaluation criteria that, in accordance with their importance, are assigned different weighting factors. It involves a much more detailed technical evaluation.

USING THE BV PROCEDURE

7. **Deciding when to use the BV procedure.** The BV procedure is intended to be used mainly for those projects where the contractor's selection should not be made exclusively on the basis of the lowest compliant bid. It is appropriate for, but not necessarily limited to, the following cases:

7.1. complex system acquisitions dependent on extensive system integration and/or software development efforts with significant implementation risk;

7.2. less complex acquisitions that feature at least one identifiable area of significantly high implementation risk;

7.3. procurements based, primarily, on performance/functional specifications where innovative technical solutions are encouraged and bidders are expected to submit differing approaches; and

7.4. the acquisition of services based on complex/advance technology and/or specialized methods, where depth and quality of experience and expertise of companies and individuals are critical to performance and success of projects.

8. **When not to use the BV Procedure.** BV shall not be the recommended procurement method for standard goods and services of a non-complex and low risk nature available in general in the market place, i.e. Commercial Off The Shelf (COTS).

9. **Agreement to use the BV procedure.** The intention of a Host Nation to apply the BV procedure for the implementation of a project should be indicated at the earliest possible moment, i.e. when the Host Nation submits a request for Advance Planning Funds (APF) so that the Investment Committee may provide any advice it considers useful. Indication to apply the BV procedure must be made not later than in the Type B Cost Estimate (TBCE) and request for First Stage Authorization, which should include the pertinent justification. Use of the BV procedure shall be subject to agreement by the Infrastructure Committee (IC); ICB (AC/4-D/2261(1996 Edition)), lowest compliant bid, remains the default method unless another is agreed.

10. Definitions

10.1. **Top-level criteria** are the highest level summary categories that will be used to evaluate bids; these are price (P) and technical (T);

10.2. Second-level **technical criteria** are defined as elements (such as engineering, management, and supportability) against which the bidders' technical proposal will be evaluated and scored.

11. The Host Nation shall include in the TBCE at least the following information:

11.1. a detailed risk analysis identifying those areas of risk on which the risk characterization of the project is based;

11.2. the two top-level criteria – price and technical;

11.3. the second-level technical sub-criteria³ and the associated weighting factors⁴, which should logically map the identified risks; with a general description of what is to be evaluated under each second-level technical sub-criteria. The recommended second-level technical sub-criteria will usually cover project management, bidder's recognized international certifications, technical approach/proposal, supportability, risk mitigation plan, life-cycle considerations, intellectual property rights, availability of proven products and services, etc. They shall be subject to agreement by the IC. The second and lower-level technical sub-criteria shall be prepared in a way as to mitigate the identified risks while respecting the proportionality principle and fostering competition;

11.4. Technical criteria shall normally make up 50 percent of the overall weighting with price constituting the remaining 50 percent. The Host Nation may propose alternate weighting arrangements, supported by clear justification;

11.5. the price not to be exceeded in the bids, which will be 125% of the amount authorised (excluding contingencies, National Administrative Expenses (NAE fees); Architect/Engineer (A/E fees) or Agency project management cost) unless agreed

³ Second-level technical sub-criteria (T1, T2, ...) are the different elements that constitute the Technical Criterion.

⁴ Weighting factors (a%, b%, ..., z%) indicate the relative importance of the top-level criteria and the second-level technical sub-criteria.

otherwise by the IC; the Host Nation may request a deviation from this requirement before issuing the cahier des charges⁵; and

11.6. whether the Host Nation will evaluate the bid price on the basis of the investment cost or on the basis of the life-cycle (investment and operation and maintenance) cost; where life cycle costs are proposed as part of the bid evaluation, the Host Nation shall provide details regarding the services bidders must provide, such as when the bidder will start providing the service, the duration of the life cycle portion of the contract, and other details deemed relevant. Where life cycle costs are included and where NATO's commitment for total life cycle costs expands over a period of more than eight years, the price to be evaluated shall be determined by the Present Value of the investment payments and the operation and maintenance (including outsourced manpower that might be required) payments over the estimated life cycle of the system.

12. Authorisation by the IC

12.1. The request to use the BV procedure must be addressed in the screening report by the International Staff⁶, with special reference to the advantages and disadvantages and the mapping between identified risks and the recommended technical criteria and their weights.

12.2. In addition to those items specified in AC/4-D/2261-ADD1(1996 Edition), the authorization granted by the IC shall include the "not-to-exceed" cost that will be included in the "cahier des charges", and the basis on which the price criterion will be evaluated (investment or life-cycle cost).

12.3. If the Host Nation's request to an alternate technical/price breakdown is not agreed, the overall weighting reverts to the default 50/50 ratio.

12.4. The inclusion of life cycle costs as part of the bid evaluation process shall be subject to agreement by the IC.

13. **Other Considerations.** In order to avoid specifying requirements for a level of performance that is impossible to meet with the existing and available technology or to avoid unrealistic cost estimates, the Host Nation shall consider the use of the Optional Preliminary Bidding Procedure (Annex II of AC/4-D/2261(1996 Edition), i.e. Request For Bidder Views (RFBV), and/or market surveys, when proposing to use BV procedures and document their actions/recommendations in the TBCE. The Host Nation shall provide a justification if she does not elect to use this option.

14. **BV Requirements in the "Cahier des Charges".** The "cahier des charges" shall include the top-level criteria and the second-level technical sub-criteria together with the associated weighting factors, as authorized by the IC, and all third-level technical sub-

⁵ The request should be supported by data from a market survey, bidders' conference or other source.

⁶ Also for reports on pre-financing statements or when the Host Nation requests agreement to the procurement strategy.

criteria⁷ that will be subject to evaluation in descending order of importance. The “cahier des charges” will further contain a general summary of the key elements of guidance and lower level criteria which the evaluators will use in determining third level scores. Additionally, the “not-to-exceed” cost, and both price realism and statistical tie provisions must be included along with those administrative and contractual criteria which must be met in order to consider the bid compliant.

CONDUCT OF BV BID EVALUATIONS

15. The Host Nation shall establish a Host Nation Source Selection Body (HNSSB) at the release of the IFB at the latest. The HNSSB will consist of, at least, a Source Selection Authority (SSA), a Contract Award Board (CAB), a Project Evaluation Board (PEB) and Evaluation Team(s) as appropriate. If required, the PEB Chairman will be supported by “Assistants to the PEB Chairman”. This function will provide administrative support, such as assembling data, reviewing findings and preparing reports for the PEB Chairman’s review.

16. Major issues identified by the Host Nation during the bidding process that would affect the scope or authorised amount, for example, unrealistic performance or cost estimates, shall be referred back to the Infrastructure Committee.

17. The bid evaluations shall follow a formal process approved by the SSA. A Source Selection Plan (SSP) should be finalised before the IFB is released and must be approved before bid opening. Any amendments to the IFB that affect the SSP must be formalised through an amendment to the SSP; this must occur prior to bid opening. All activities performed during the bid evaluation shall be documented and auditable.

18. The steps involved in conducting a bid evaluation under the BV procedure shall include, as a minimum:

18.1. Establishing the Evaluation Criteria;

18.2. Third-level technical sub-criteria.

19. The weighting factors for the third level (and any possible lower level) technical sub-criteria shall not be included in the IFB but shall be predetermined by the HNSSO before the bids are opened. Only the Chairman of the CAB and a nominated expert will have a complete knowledge of all weighting factors. They shall not be made known to bidders or the Evaluation Team members.

⁷ Third-level technical sub-criteria are the different elements in which each second-level technical criterion can be broken down as decided by the HN.

Evaluation Methodology

20. The detailed method in which the Host Nation evaluators shall conduct their evaluation shall not be made available to bidders. Once approved by the SSA, the method for evaluating bids shall not be changed. The SSA shall ensure that the evaluation is fully documented, i.e. procedures are formally approved, officials are properly appointed, scores are recorded, etc, and carried out in a manner which is totally consistent with what has been approved and with what has been described to bidders in the IFB.

Compliance Issues

21. Once the bids are received, they shall be checked by the CAB for administrative compliance with the requirements of the IFB. If a Host Nation considers a bid to be non-compliant and intends to eliminate it from the evaluation, it shall act as described in AC/4-D/2261(1996 Edition), Annex X.

Bid Evaluation Phases and Scores

22. The evaluation shall take part in three phases. First, the technical evaluation (evaluation of the third-level (and any possible lower level) technical sub-criteria) is conducted. Once the technical ratings are received from the evaluators, the price evaluation will begin. Upon completion of the price evaluation, the weighting formula will be applied.

23. Phase 1. Technical evaluation

23.1. The participation in the Evaluation Team is limited to selected members of the HNSSO, who will be properly briefed on their responsibilities and will have to sign "Non-Disclosure Statements" for the specific evaluation.

23.2. Each evaluator on the Evaluation Team shall work independently from the other evaluators, without the advice or assistance from others, and evaluate the assigned third-level technical criteria under the supervision of the PEB Chairman.

23.3. Each of the ratings must be accompanied with a narrative explaining why the rating was assigned, which shall be included in the PEB report. Once submitted and as a rule, the members of the evaluation team shall neither alter - subject to the provisions of paragraph 23.4 below - nor compare their scores.

23.4. Once the evaluators have finished their technical evaluation ratings for each of the third level technical criteria and submitted their evaluation reports, these are compiled by the PEB Chairman, who then determines a composite score for each of the third-level technical sub-criterion. The PEB Chairman shall ensure that any anomalous scoring is reviewed with the evaluator(s) to confirm that there is a common understanding of the bid properties and that, if required, corrective action is undertaken. The composite score will be derived by simple average of the scores assigned by each evaluator and shall not be further modified or aggregated.

23.5. The PEB chairman will forward the results of the technical evaluation to the CAB for review and approval of the composite scores for all criteria (raw technical scores).

24. Phase 2. Price Evaluation and Determination of the Price Score

24.1. **Determination of the Price Score.** Once the technical report has been approved by the CAB and all issues of compliance completed, the price quotations will be opened and evaluated. The Price Score shall be determined according to the following formula:

$$\text{PS} = 100 * (1 - (\text{Bid Price} / (2 \times \text{Average Bid Price})))$$

where: Bid Price and Average Bid Price will be the investment cost or the Present Value of the system life-cycle cost as per the authorisation.

24.2. Price Realism

24.2.1. In the event that the successful bidder has submitted a price quotation that is less than two-thirds of the average of remaining compliant bids, the Host Nation must ensure that the successful bidder has not artificially reduced the offered price to assure contract award. As such, the Host Nation will request the firm to provide clarification of the bid and will inform the national delegation of the firm. In this regard, the bidder shall provide an explanation to both the Host Nation and their national delegation on the basis of one of the following reasons:

- an error was made in the preparation of the price quotation. The bidder must document the nature of the error and show background documentation regarding the preparation of the price quotation that convincingly demonstrates that an error was made by the bidder. In such a case the Bidder may request to remain in the competition and accept the contract at the bid price, or to withdraw from the competition;
- the bidder has a competitive advantage due to prior experience or internal business/technological processes that demonstrably reduce costs to the bidder resulting in an offered price that is realistic. The bidder's explanation must support the technical proposal offered and convincingly and objectively describe the competitive advantage and the savings achieved by this advantage over the standard market costs, practices and technology;
- the bidder understands that the submitted price quotation is unrealistically low in comparison with the level of effort required. In this case, the bidder is required to estimate the potential loss and show that the financial resources of the bidder are adequate to withstand such a reduction in revenue.

24.2.2. If a bidder fails to submit a comprehensive and convincing explanation for one of the bases above, the Host Nation shall declare the bid non-compliant and the bidder⁸ will

⁸ In accordance with AC/4-D/2261(1996 Edition), also notified are the diplomatic representative of the country of origin of the firm concerned in the capital of the Host Nation (or in the case of a NATO Agency or

be so notified in accordance with the procedures set forth in paragraph 13(iii)(b) of AC/4-D/2261(1996 Edition). Non-compliance for reasons of bid realism is a basis for lodging a complaint under the dispute procedure.

24.2.3. If the Host Nation accepts the bidder's explanation of a mistake and allows the Bidder to accept the contract at the bid price or the explanation regarding competitive advantage is convincing, the bidder shall agree that the supporting pricing data submitted with his bid will be the basis for determining fair and reasonable pricing for all subsequent negotiations for modifications or additions to the contract and that no revisions of proposed prices will be made.

24.3 **Price Control.** In the case of incrementally funded projects, the cost and pricing methodology used by the winning bidder on the base contract will be used as the basis for all follow-on contracts or amendments to the base contract where these are proposed for IC agreement without competition.

25. Phase 3. BV Final Score and Selection of the Successful Bid

25.1. Upon approval of the price evaluation report, the CAB will open the technical weighting scheme and apply the technical weight to the raw technical score to produce the weighted technical score.

25.2. The weighted Technical Score will be determined according to the following formula:

where: $TS = a\% \cdot TS1 + b\% \cdot TS2 + c\% \cdot TS3 + \dots$
 $TS1, TS2, TS3, \dots \leq 100$ are the technical score of each of the authorised second-level or published third-level technical sub-criteria; and
 $a\%, b\%, c\%, \dots$ are the related weighting factors for each of the second-level or third-level technical sub-criteria adding to 100.

25.3. The BV Final Score (FS) will be the sum of weighted TS plus PS. The compliant bid with the highest score shall be the successful bid.

where: $FS = PS \cdot z\% + TS \cdot (1 - z\%) \leq 100$
 $z\%$ is the authorised weighting factor for the Price Criterion.

25.4. The bid having the highest BV final score will be selected as the successful bid unless there is a statistical tie.

Strategic Command, in the capital of the country in which the Agency or SC is located), NATO delegation of the country of origin, and the International Staff.

26. **Statistical Tie**

26.1. A statistical tie is deemed to exist when the final scores of the highest scoring bids are within one point of each other. The Host Nation will then resolve the statistical tie by awarding the contract to the bid with the highest weighted technical score.

26.2. The tie-break mechanism shall be included in the “cahier des charges”.

27. **Notification of the Results of the BV Competition.** The procedures in AC/4-D/2261(1996 Edition), Annex X are to be followed.

28. **Reporting.** The normal reporting procedure as laid down in AC/4-D/2261(1996 Edition) applies. In addition, Host Nations shall provide to each bidder that requests a debriefing, a written summary of the technical evaluation of their bid, with a view to providing clarity. The written summary must, as a minimum, include all third-level criteria scores of the bid and a general assessment of where the technical elements of the bid could have been improved.

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