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**DOCUMENT**  
AC/4-D(2011)0009-FINAL

## **INVESTMENT COMMITTEE**

### **NON-ARTICLE 5 NATO-LED OPERATIONS**

#### **ALLIANCE OPERATIONS AND MISSIONS NSIP PROCUREMENT REGULATIONS**

- References: (a) PO(2005)0098, Revised Funding Policy for Non-Article 5 NATO Led Operations  
 (b) AC/4-D(2010)0016 P&C  
 (c) AC/4-D/2261(1996 Edition) and AC/4-D/2905  
 (d) Annex X to AC/4-D/2261(1996 Edition) (AC/4-D/2261(1996 Edition)-ADD2)  
 (e) AC/4-D(2008)0002-REV1

### **GENERAL PRINCIPLES**

1. The aim of all procurement for Alliance operations is to deliver the capabilities required as expeditiously as possible within realistic timelines and with due consideration of investment costs, achieved wherever possible through a competitive bidding process. In doing so, best practices will be used, including web-based applications, to maximise participation of eligible firms. Where applicable and when possible, life cycle considerations are to be taken into account as part of the acquisition process. Over time, a move towards a harmonisation of all NATO contracting in-theatre would simplify procedural aspects for host nations, especially NATO agencies.

2. NSIP Procurement Regulations for Alliance operations and missions (AOM) apply primarily to in-theatre requirements that are in direct support of Council-approved operations and that fall under Council-approved funding arrangements specific to the operation or generic guidelines (reference (a)). The procurement regulations apply to territorial host nations, NATO agencies, and strategic commands. So-called "hybrid" projects involving substantial physical scope that is not directly related to the mission must be clearly identified and developed in a manner that would allow the non-AOM portion to be implemented using standard NSIP procurement methods, if the Committee so decided.

3. Proper planning of operational requirements is an essential aspect of timely capability delivery. The Alliance Operations and Missions Requirements and Resources Plan (ARRP), regularly produced for each operation, provide visibility regarding emerging projects. In addition, the revised NSIP management of authorisations encourages, wherever possible, the use of advance planning funds, first stage authorisation and Authority to Issue the IFB for AOM requirements. These working methods provide opportunities for measured procurement planning by host nations. In so doing the number of truly urgent requirements, needing expedited action at every step of the approval and procurement stage can be minimised.

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4. Procedural issues relating to NATO procurement need to be tailored to take into account the special circumstances that apply to AOM procurement. Due regard needs to be given to such factors as the out-of-area aspect of operations, geographical separation, size of the theatre of operations and the security environment. All of these can have important influences on the selection and execution of procurement activities.
5. A competitive bidding process is an important feature of procurements for Alliance operations. It helps ensure the best use of NSIP funds by achieving the lowest price possible or the best value for the price. Abandoning a competitive bidding process in favour of directed procurement should be exceptional and based on a well-justified and rational argument. Due regard for the time required for the bidding process needs to be taken into account in the establishment of a realistic timeline, preparation and approval of the military requirement and development of the technical solution.
6. The differences in the business processes for civil works requirements and CIS requirements is more pronounced for Alliance Operations than for typical projects in capability packages. This is especially true for out-of-area operations where the theatre is geographically remote from the static operational headquarters as is the case for ISAF and NTM-I. Civil works projects will routinely require the use of local firms or local sources of supply for building materials, i.e. non-NATO sources. With some exceptions, CIS projects can normally be sourced from NATO participating countries; however, issues such as transportation into and intra-theatre take on added importance. Additionally, urgency for CIS projects often differs from civil works for operational reasons and means that the scope must be divided into many contracts. Finally, commonality of equipment and the need to avoid support and management of multiple similar systems may require directed procurement towards certain suppliers after the first contract has been awarded for CIS equipment. These basic differences need to be recognized and taken into account during both the decision-making by the IC and the procurement process.

## SCOPE

7. The scope of the framework document includes the full spectrum of activities related to procurement for Alliance operations and missions. Specifically, the roles and responsibilities of various parties, agreed procurement methods including an AOM ICB, the use of web-based technology, reporting mechanisms, life cycle costing, procurement of high volume items and improvements to procedural issues have been addressed. This document does not address programming of projects supporting AOM.

## ROLE OF AC/4-D/2261(1996 EDITION) FOR PROCUREMENTS FOR ALLIANCE OPERATIONS AND MISSIONS

8. The use of AC/4-D/2261(1996 Edition) for procurement in support of Alliance operations has, in practice, been restricted by the required operational timelines set by military authorities. Faster and simpler methods of procurement have been used (Annex 3). An alternate procurement procedure for AOM has been developed that speeds up the process but also embodies the fundamental principles incorporated into the basic document (Annex 2). This becomes the default method for procurements in support of AOM as laid out in paragraphs 26,27, and table 1. AC/4-D/2261(1996 Edition) remains the default method for AOM procurements in excess of EUR 20 million, albeit with the AOM ICB dispute procedure in lieu of the standard dispute procedure.

**RESPONSIBILITIES OF VARIOUS PARTIES IN EXPEDITING PROCUREMENT FOR ALLIANCE OPERATIONS AND MISSIONS****User**

9. SHAPE will exercise the responsibilities of the user, except in rare instances where a lead nation fulfils this role. A first responsibility for the user is for timely capabilities planning in order to identify requirements as early as possible – the ARRP is an essential tool in providing visibility to the MC, the NATO headquarters resources community and also to the host nation. In support of the capability delivery process SHAPE is expected to maintain regular, comprehensive contact with host nations and the International Staff for planning and implementation monitoring purposes. The co-operation and consultation of the user – including as needed an O&M authority – is essential during planning, development, design, acceptance testing and handover. The user shall establish the key requirements that the technical solution must meet. Additionally, the user is expected to establish a realistic required delivery date for the provision of the requirement, so that the host nation can provide the IC with an implementation schedule. Finally, the user must support IC implementation management responsibilities via impact and other statements and support the AOM Joint Formal Acceptance Inspection (JFAI) procedure.

**Host Nation**

10. The host nation is responsible for the timely delivery of the capability to the user and is accountable to the Investment Committee for the appropriate management of the project in line with NSIP procedures for procurement for AOM. Host nations have the responsibility to engage with the user (and International Staff) at an early stage in the planning process. To the maximum extent possible, the host nation should make use of advance planning funds not only to support project planning but also to give the IC early visibility and thus facilitate NSIP financial planning. The user's requirements must be accounted for in the planning and design process. The host nation must take advantage of early project visibility to formulate a procurement strategy that promotes both competition and early capability delivery. Establishing a realistic project implementation schedule and adhering to it will be important for both operational and NSIP financial management reasons.

11. Host nation management responsibilities include completing the source selection process as quickly as possible and informing the International Staff of the result within 30 days. Additionally, host nations must establish an appropriate presence in-theatre to facilitate consultation with representatives of the user nation and to ensure technical delivery and handover of the capability. Establishment of internal management mechanisms to ensure modern source selection methods and project management as well as adequate monitoring of projects towards their milestones must be established. Finally, host nations will be required to report to the Investment Committee periodically for implementation management purposes, annually on the management of their AOM project portfolio, and on specific issues as requested. The host nation must also fully support the AOM JFAI procedure in terms of timeliness and content provided and also support the audit.

**International Staff**

12. The International Staff is expected to become involved at an early stage in the planning process for requirements in support of AOM. A well-defined role for the Staff exists in relation to the development of the ARRPs. Additionally, the Staff will engage with the host nation and user early in the process with a view to providing advice and assistance on eligibility issues and technical matters that will save time at later stages through early identification of problems. The Staff is also expected to be aware of the progress of projects through the ACO approval process and of the development of the technical solution by the host nation. Screening of the host nation first stage submission by the International Staff must take into account the current eligibility for common funding, the operational situation, the duration of the operation or mission, criticality and affordability issues and the implementation milestones. Where possible and appropriate, the view of the Working Group of National Technical Experts shall be sought. At the Authority to Issue the IFB stage, the Staff will make appropriate recommendations to the IC leading to the authorisation and agreement to the implementation schedule and expenditure profile. Once screened, the requests must be brought immediately to the IC for consideration. The International Staff will also promptly support prefinancing statements submitted by nations. After notation by the IC, this will include keeping track of the number of requests and the financial volume, so that these may be organized according to the level of support.

**Investment Committee**

13. The main role for the Investment Committee in expediting projects for AOM is to ensure timely consideration of the requirement at a scheduled meeting or by extraordinary meetings, silence procedure, or delegated authority to the International Staff. Authorisations should be granted in line with the stated aim of AOM procurements. Also, the IC must fulfil its responsibilities for implementation management [ ] to ensure proper accountability by host nations. Finally, through application of the other agreed reporting mechanisms, the Committee can ensure proper visibility on all aspects of requirements in support of AOM and thus provide management oversight.

**AOM JFAI PROCEDURE**

14. A distinct JFAI procedure for AOM projects is required to reflect the clear differences as compared with capability package projects. In particular, the remoteness of many of the projects and the physical danger, difficulty and cost of conducting an inspection argue in favour of adapting the current JFAI policy developed for strategic projects in NATO countries towards a tailored AOM JFAI process suitable for out-of-area operations. At the same time, the basic requirements of a JFAI regarding acceptance into the NATO inventory and the audit need to be respected.

15. The AOM JFAI process will not involve a full JFAI team on-site inspection; exceptionally, the International Staff may perform an inspection on selected projects but with the aim of remaining within the JFAI timeline. As a general rule, members of the International Staff will include in their visit programme in-theatre, inspections of all AOM projects underway at the locations visited. Observations and input from host nation staff and military authorities will be recorded in the Staff's trip report and included in the file for the project. The Staff may include the information from these "progress inspections" in the JFAI report.

16. The JFAI request must be submitted to the International Staff by the host nation within three months of earliest date of either acceptance of work from the contractor or handover to the user. The Staff will handle the JFAI request as a priority and present a report to the Committee as expeditiously as possible.

17. The format of the JFAI request submission should generally be in accordance with existing JFAI procedures. For simple and straightforward projects the content should be abbreviated as much as possible, particularly when the implementation has been fully in line with the authorisation. Additional works completed during the course of the project must be clearly identified and an estimate of the overall cost. In general, the following should be provided:

17.1 for civil works projects: a site plan showing the location of the works, as built drawings, and digital photographs of the completed facility where available;

17.2 for projects providing equipment and/or services: a list of equipment supplied, a description of services rendered, and as-built drawings where this is applicable;

18. Correction of deficiencies will not be included in the AOM JFAI document. If, at the time of handover and JFAI request preparation, it is evident that the capability provided did not meet the key requirements, then three courses of action are open. The very minor contractual discrepancies will be corrected in the course of the finalization of the project as is normal. Or, after consultation with the International Staff, additional scope may be recommended for authorisation by the IC. In such a case, the original JFAI request may be handled as a partial JFAI with the future action indicated. Alternatively, a new project may be recommended; this course of action will be generally selected when: the follow-on works do not hinder the use of those already provided, or when the follow-on works are separate and distinct from those already provided, or where eligibility, affordability or criticality issues require careful scrutiny. The procurement strategy for the follow-on works will be an important element in selecting the course of action. The JFAI request will be submitted for the completed project.

19. Regarding financial matters, excess works may be recommended for IC authorisation as part of the AOM JFAI process. These must be requested by the host nation and the International Staff must be satisfied with the documentation provided. Funds not required to complete the project should be recommended for deauthorisation.

20. Prefinanced AOM projects will be a significant challenge for the AOM JFAI procedure, especially where there is a lengthy time period between project completion and submission of the fund authorisation request. Host nations may wish to consider submitting the Type C Cost Estimate (TCCE) within three months of completion, with the further understanding that this information will, in most cases, be sufficient to satisfy the requirements of the AOM JFAI procedure. Authorisation will be in line with the policy for Monitoring and Managing NSIP Reimbursements for Prefinanced and Completed Projects (reference (b)). Prompt submission of prefinanced and completed AOM projects will do much to ensure that the closeout of such projects is facilitated.

21. The AOM JFAI procedure will apply to all AOM projects not physically complete at the time of agreement of this document.

**ELIGIBILITY OF LOCAL (non-NATO) FIRMS IN PROCUREMENT FOR ALLIANCE OPERATIONS AND MISSIONS**

22. Out-of-area operations have had an inevitable impact on the NSIP requirement that only firms from participating countries can perform work and only materials or items of equipment (including sub-assemblies) can originate from participating countries without prior authorisation of the IC (reference (c)). In practice, under certain circumstances there has been no option, for example, sole source for leased circuits to the local PTT or a contract with a local internet service provider. At other times, the use of local firms or materials was due more to reasons of practicality or economy, for example using local contractors and materials for construction. However, use of local firms and materials mainly for reasons of reconstruction and development of the local economy is prohibited unless mandated by the NAC for the specific operation.

23. The procurement strategy for the capability to be delivered will need to reflect any guidance provided by Council and/or the Resource Policy and Planning Board (RPPB) that is specific to the operational theatre, particularly in relation to local firms.

24. Host nations may make use of local firms and materials for the execution of projects in support of AOM when this is needed for reasons of urgency to meet the required timeline, or for cost effectiveness, or when there are no practical options to the general principle that all necessary materials are sourced from NATO nations. In all circumstances, the host nations must respect the current policy requirement and seek prior waivers from the Investment Committee. For civil works projects, including those executed by means of troop labour, host nations may use local materials for roadworks, foundations and similar horizontal construction without requiring a Committee waiver.

**AGREED PROCUREMENT METHODS FOR PROJECTS IN SUPPORT OF ALLIANCE OPERATIONS AND MISSIONS**

25. Allowing host nations discretionary rights to choose from procurement methods previously agreed by the IC **can** expedite capability delivery into theatre. The main advantage is improved planning based upon the knowledge that a procurement method would not be altered by the Committee thus permitting earlier preparations and better predictions of the timeline required. Linking various procurement methods to a financial scale will ensure that the competitive process is commensurate with the financial value of the project. The table below outlines the procurement methods attached to the levels. The principle is that host nations have the right to select from the procurement methods that the Committee has agreed are valid for the financial value of the overall project. This consists of a minimum level of competition plus the right to use procurement methods for higher financial levels if the host nation considers this to be more suitable. The choice of procurement method will be confirmed at the time of the first stage authorisation.

**Table 1: Agreed Procurement Methods for Projects Supporting Alliance Operations and Missions**

	<b>Financial Limit</b>	<b>Procurement Competition Requirements</b>	<b>Status</b>
Level 1	up to 20% of Minor Works ceiling <sup>1</sup>	Sole source to the winner of a previous competitive bid on an NSIP project <sup>2</sup>	all at host nation discretion
		Troop Labour and Materials	
		Level 2 agreed methods	
Level 2	in excess of Level 1 up to 50% of Minor Works ceiling	Limited Competition (solicitation of bids from at least 3 eligible bidders) <sup>3</sup>	all at host nation discretion
		Level 3 agreed methods	
Level 3	from 50% to 100% of Minor Works ceiling	NC3A <sup>4</sup> Basic Ordering Agreement	all at host nation discretion
		Bi-SC Directive 60-70 including NSIP Bidders Lists	
		NAMSA <sup>4</sup> Procurement Regulations including NSIP Bidders Lists	
		National Competitive Bidding	
		Level 4 agreed methods	
Level 4	in excess of the Minor Works ceiling up to Level 5	Alliance Operations and Missions (AOM) ICB Procedure (Annex 2)	default method
		Level 5 agreed method	host nation discretion
Level 5	in excess of EUR 20,000K	AC/4-D/2261(1996 Edition) with AOM ICB dispute procedure	default method
		Other Procurement Methods as described in paragraph 28	IC agreement required

26. When a host nation wishes to deviate from the agreed methods and use a procurement method agreed for a lower financial level for a higher financial value project, for example a Level 1 method for a Level 4 project, then agreement by the IC will be required. Agreement of the Committee will also be required when the host nation wishes to use multiple procurement methods for a single project. However, all contracts with a Level 1 financial value may use Level 1 default procurement methods whether part of a

<sup>1</sup> The Minor Works ceiling is EUR 750K per AC/4-D(2011)0010. For AOM Civil Works projects, the financial limits applicable are calculated based on doubling the Minor Works ceiling.

<sup>2</sup> Making use of all existing options in a contract or, alternatively, by negotiation within one year of award of a contract.

<sup>3</sup> Solicitation of a greater number of bids is encouraged. In all cases the identification of three potential bidders shall not be grounds to exclude others.

<sup>4</sup> Or successor Agencies following implementation of NATO Agencies Reform – currently foreseen are the NATO Communications & Information Agency and the NATO Support Agency.

multiple project procurement or a self-standing project. Host nations are encouraged to seek Committee agreement for deviations at an early stage where this will improve planning and expedite delivery, for example using options to existing contracts. As a matter of principle, requirements will not be sub-divided, either by the user or the host nation to fit into lower levels. Similarly, small acquisitions that are the forerunners of larger projects for which directed procurement (sole source or named brand) will later apply need to be identified.

27. Annex 2 of this document details the ICB procedure applicable to procurement for projects in support of Alliance operations and missions. This is the default method of procurement for projects supporting AOM only. The main features of this procedure are as follows: much reduced timelines for various steps, use of the Internet for notifications of intent, lack of automatic extensions to the bidding period, and a simplified dispute procedure. Host nations may use this for any procurement action and this is the preferred method for projects in Level 4 of the table.

#### **OTHER PROCUREMENT METHODS SUITABLE FOR USE FOR PROJECTS SUPPORTING ALLIANCE OPERATIONS AND MISSIONS**

28. For those projects where the host nation proposes using neither the default procurement method for AOM nor AC/4-D/2261(1996 Edition) the Committee may be requested to agree to the use of the following methods: National Competitive Bidding (NCB), NCB with nominations from participating nations (NCB+), Limited Competition, Basic Ordering Agreements (BOA), BOA with nominations from participating nations (BOA+), Sole Source, Troop Labour, Bi-SC Directive 60-70, NAMSAC Procurement Regulations, or the Best Value Evaluation Method for use with the AOM ICB procedure. These have been elaborated in Annex 3 of this document. When agreement cannot be reached on alternate procurement methods for projects in Level 4, the ICB Procedure for Alliance Operations and Missions must be used. However, the host nation may elect to use AC/4-D/2261(1996 Edition) if this procedure is more suited to the project.

#### **Use of Best Value Evaluation Methods**

29. Use of the Best Value Procedure as elaborated in references (d) and (e) is permitted in conjunction with the AOM ICB procedure. The host nation should identify candidate projects for Best Value at a very early stage so that the procedural aspects to agreement by the IC do not slow down capability delivery.

#### **Dispute Procedure**

30. The dispute procedure included with the AOM ICB procedure (Annex 2) was developed to ensure that the legitimate complaints of nations could be dealt with expeditiously and thus permitting the timeline for delivering the capability to be respected. The main features of this dispute procedure are: a reduced period of time for nations to lodge a complaint, a shortened period for amicable settlement, and a Standing Board of Arbitration with a reduced timeline to resolve the issue.



**USE OF WEB-BASED TECHNOLOGY TO EXPEDITE PROCUREMENT FOR ALLIANCE OPERATIONS AND MISSIONS**

31. The NC3A and NAMSA, acting as NSIP host nations for AOM procurement, are expected to maximize the use of web-based technologies to speed up the source selection process. This should include early posting of business opportunities, preferably through targeted contacts with eligible firms and timely publication of notifications of intent with links to national authorities as specified by delegations. Alerting technologies will also be incorporated as part of the suite of on-line tools. In addition, mechanisms for rapidly contacting firms participating in the bidding process with a view to optimizing timelines for requests for clarification should be established. Accountability for the advancement and success of these initiatives will be taken through the Committee's reporting mechanisms.

32. SHAPE and territorial host nations are strongly encouraged to develop web-based solutions that will suit the purpose of expediting AOM procurement. In addition, all participating nations should, to the maximum extent possible, develop ways to quickly inform national firms of AOM investment opportunities as a way to encourage a highly competitive bidding process.

**USE OF AGENCY BIDDERS LISTS**

33. NATO agencies and SHAPE are encouraged to maintain and to make use of bidders lists comprised of firms nominated by nations for the current and previous procurements of a similar nature. The intent is to ensure that the procurement process is as competitive as possible, as free from additional administrative burdens for participating nations as it can be made, and as expeditious as can be achieved. Firms that are already on Agency source lists and BOA are eligible to bid but still require a Declaration of Eligibility (DoE) to be issued by their national authorities. For these firms, one DoE will be valid for a period of two years. Annually, the host nations will remind nations of their nominated firms and will accept additional nominations. However, information regarding firms in source files or with BOA agreements should be accessed via normal bi-lateral consultation between nations and the NATO body.

**PROCUREMENT OF REPETITIVE AND HIGH VOLUME ITEMS**

34. Host nations, in consultation with the user nation, are expected to identify items that will be the subject of repetitive procurement, such as modular accommodation or workstations, and to bring this to the attention of the IC. Additionally, items for which sole source will be later requested for reasons of system integrity or O&M considerations – for example, routers and servers, Counter-Improvised Explosive Device systems, and so forth – should also be identified to the IC. This has the objective of ensuring both full visibility to nations and also the best possible price through a competitive process that takes into account the possibility of increased volumes later. Finally, this will also expedite the procurement of follow-on requirements. Host nations are thus encouraged to set-up "definite duration indefinite quantity" contracts by means of ICB/BOA procedures for items of repetitive procurements. In all cases, no investment costs would be incurred for follow-on items until the authorisation had been granted and task orders placed against the contract.

**USE OF LIFE CYCLE COSTING IN SPECIFICATIONS AND BID EVALUATION**

35. Life Cycle Costing (LCC) is a method whereby the total cost, including acquisition, running and disposal costs, of a product or system over its service life is determined and taken into account as part of the procurement process. Host nations are strongly encouraged to consider at an early stage if a requirement is a suitable candidate for the application of LCC to the procurement process. A key consideration for NSIP procurements in support of AOM is that running costs are normally borne from the Military Budget and the Budget Committee must be consulted. In addition, in the AOM context, O&M by contract generally falls under outsourcing and may thus require the prior approval of the RPPB. As a consequence, the staffing process will be longer than for a normal acquisition and this will need to be reflected in the implementation schedule.

36. For every project where the O&M costs will be substantial, the host nation must determine whether considering LCC in the procurement strategy is appropriate and, the reasons for deciding for or against must be included in the TBCE. In LCC decision-making, the host nation must initially consult with the user to determine the in-service use and maintenance plan and with the International Staff on the advisability and mechanics of the approval process. The bid evaluation process will need to properly reflect the investment and user interests. As a general rule, LCC will be taken into account as part of a Best Value bid evaluation for which specific provisions involving the IC apply. Budget Committee policy and procedures will need to be followed.

**PREFINANCING STATEMENTS**

37. The stipulations of this document apply fully to projects prefinanced by territorial host nations. As such, the agreed procurement methods specified in this document must be followed. The business opportunity should be posted on the web-site of either NC3A or NAMSA, as appropriate, thus allowing firms to be aware of the upcoming project and to contact their national representative. Territorial host nations are encouraged to maximise the use of web-based technology for procurement-related communications.

**Superseded Document**

38. Upon agreement of this document, AC/4-D(2007)0003 + Addenda will no longer be in force.

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**ALLIANCE OPERATIONS AND MISSIONS**  
**INTERNATIONAL COMPETITIVE BIDDING PROCEDURES**

1. Introduction
  - 1.1 The aim of this procurement method is to deliver capabilities required for Alliance operations as expeditiously as possible with realistic timelines and with due consideration of investment costs, achieved wherever possible through a competitive bidding process. In doing so best practices will be used, including web based applications, to maximise participation of eligible firms.
  - 1.2 This document describes the Alliance Operations and Missions International Competitive Bidding Procedure.
  - 1.3 Should a host nation wish to deviate from these agreed procedures, it must obtain prior approval of the Investment Committee.
  - 1.4 The procedures establish the responsibilities and rights of host nations, firms, countries of origin and the Investment Committee up to and including contract signature. Appendix 1 to this document describes the action to be taken in case of a dispute.
  - 1.5 With the aim of avoiding misunderstandings and disputes, the nations should bear in mind the following points:
    - 1.5.1 The purpose of these procedures is to meet only the Minimum Military Requirement as quickly as possible, and at the lowest possible cost<sup>5</sup>, and therefore the procurement process should minimize 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 risks of research and development work.
    - 1.5.2 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;
    - 1.5.3 The host nation is invited to consult the bidder concerned, 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

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<sup>5</sup> Additionally, and when so authorised by the Infrastructure Committee in line with the Best Value procedure outlined in AC/4-D/2261(1996 Edition) Annex X (circulated under AC/4-D/2261-ADD2(1996 Edition)) and AC/4-D(2008)0002-REV1.

of clarity, no alteration of bids (including technical, financial and schedule changes) after closing date is permissible:

2. Definition of Terms – for the purposes of this document, the following definitions will apply:

“BEST VALUE BIDDING PROCEDURES”

bidding evaluation method that considers criteria other than lowest cost.

“CAHIER DES CHARGES”

bidding documents issued by a host nation containing technical, administrative and contractual requirements/conditions;

“CLASSIFIED INFORMATION”

information that requires security protection;

“COMMITTEE”

the Investment 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 work 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;

“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;

“HOST NATION”

a participating country, Strategic Command or NATO Agency which is responsible for implementing a Security Investment project;

“LOCAL (NON-NATO) FIRMS”

firm legally constituted or chartered under the laws of, and geographically located in, or falling under the jurisdiction of, a non-NATO country;

**“PARTICIPATING COUNTRY”**

a NATO country which has undertaken to share the cost of the security investment project involved;

**SOURCE LIST**

List of potential suppliers identified to be candidates for a bid solicitation.

**“TERRITORIAL HOST NATION”**

a host nation, other than a Strategic Command or NATO Agency, that is responsible for implementing a Security Investment project.

3. Security – The security procedures and requirements for NATO classified Security Investment projects are described in the latest edition of C-M(2002)49, 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. Principles of Non-Discrimination
  - 4.1 In all cases where the AOM ICB procurement method 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.
  - 4.2 Consistent with the requirements of paragraph 1, host nations must avoid producing specifications biased toward specific equipment unless specifically authorised by the Investment Committee.
  - 4.3 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”. Host nations issuing ICB documents in other than a NATO official language must allow additional time for translation;
  - 4.4 To stimulate competition and provide the best opportunity for support to Alliance Operations and Missions the host nation must provide for timely availability of names of potential bidders on projects as laid down in the procedure “Dissemination of information on invitations to tender”. The full text of this procedure is at Appendix 2 to this document.

5. Eligibility<sup>6</sup>

5.1 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. There may be exceptional occasions where host nations may, upon receiving prior approval from the Investment Committee, make use of local (non-NATO) firms and materials for the execution of the projects for reasons of urgency, cost effectiveness or where there are no other practical options. Unless the host nation has been authorised to proceed otherwise, bidding instructions to the contractors and sub-contractors, should therefore, state the following:

5.1.1 None of the work, including project design, labour and services, shall be performed other than by firms from and within participating countries;

5.1.2 No material or items of equipment down to and including identifiable sub-assemblies<sup>7</sup> shall be manufactured or assembled by a firm other than from and within a participating country;

5.2 Declaration of Eligibility

5.2.1 Subject to the provisions of paragraph 7, eligibility of firms is established by means of a "Declaration of Eligibility". A specimen declaration is at Appendix 3 to this document. 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"

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<sup>6</sup> 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 specializations. N.B. These lists do not count as a "Declaration of Eligibility" under the terms of paragraph 5 above.

<sup>7</sup> 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 (10 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.

will contain the full statutory name and address of that firm<sup>8</sup>. In the case where NATO agencies are host nations, firms that are already identified on their source lists and Basic Ordering Agreement arrangements are automatically eligible to submit a bid but still require a Declaration of Eligibility be issued by their national authority in the case of bidders lists. There may be instances where it is not necessary for the applying firm to have a security clearance at the time of bidding the requirement, but may require a security clearance by final bid submission date. Security clearance requirements will be identified by the host nation in the invitation for bids.

- 5.2.2 The country of origin must declare that, if responsible for awarding of 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 names of firms which would not be likely to bid for the kind of work envisaged;
- 5.2.3 If the contract will involve passing on of NATO classified information to firms, or requires firms to have access to restricted areas of military installation, 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;
- 5.2.4 Countries of origin of firms are at liberty to make declarations either individually or collectively, but collective lists are preferable. The "Declaration of Eligibility" should be supplied to the host nation through the National representative of the respective NATO nation of the potential bidder as identified in the Notification of Intent (NOI).
- 5.2.5 The fact that a "Declaration of Eligibility" does not cover a firm 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

### 6.1 Standard procedure

- 6.1.1 At the earliest possible moment, which may be before the Authority to Issue the IFB is submitted, the host nation must issue a notification of intent (NOI) to invite bids. This notification will be published on <http://www.namsa.nato.int> or

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<sup>8</sup> Whenever possible it should also show the section/branch responsible for handling the work, with the telephone number, email and name of individual concerned.

<http://boa.nc3a.nato.int> Territorial host nations for CRO projects shall also publish their requirements on these websites. The NOI shall be published for a minimum of 10 days. The NOI will also identify the contact in each NATO nation responsible for the issuance of the “Declaration of Eligibility”<sup>9</sup> to the host nation. The NOI will also state that the IFB/RFQ cannot be issued to a potential bidder until a Declaration of Eligibility is received by the host nation from the Government of the potential bidder’s country unless the firm has a Basic Ordering Agreement with the NATO Consultation Command and Control Agency (NC3A). Companies already identified on the NATO Maintenance and Supply Agency (NAMSA) eligible bidders list still require a Declaration of Eligibility issued by national authorities. Nations will be notified upon issuance of the NOI by agencies<sup>10</sup>. The NOI will contain the following information:

- 6.1.1.1 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 pre-financing statement, and the reference number of the International Staff 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;
- 6.1.1.2 the final date by which firms must have formally expressed their desire to be invited to bid<sup>11</sup>;
- 6.1.1.3 the date by which the host nation intends to distribute the “cahier des charges”;
- 6.1.1.4 the intended closing date for bids;
- 6.1.1.5 the bid validity date and procedures applicable after that date;
- 6.1.1.6 the type of classified information, if any, which must be passed on to firms to enable them to bid, and its security classification;
- 6.1.1.7 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;

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<sup>9</sup> All nations must provide up to date contact information for the organization responsible for the preparation of Certificates of Eligibility to the host nations/agencies.

<sup>10</sup> Nations shall also be notified upon issuance of the IFB and for all clarifications, requests for bid extensions, and information issued related to paragraphs 6.1.2.1, 7.1, 9.1.2, 9.3.2, 9.3.3, 9.4.3.1, 9.5.2, 12.2.1, 13, 14.1 of this Annex.

<sup>11</sup> Host nations are encouraged to accept late nominations if there are extenuating circumstances in the preparation of the “cahier des charges” to ensure maximum competition. Late nominations will not be a sufficient condition for the host nation to extend the bid closing date.



- 6.1.1.8 the reference which will be used subsequently to identify the project;
- 6.1.1.9 life cycle consideration, if applicable;
- 6.1.2 General
  - 6.1.2.1 with respect to 6 a. above, if after 12 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, the eligibility list of prospective bidders should be re-opened for a period of not less than one half the duration of the initial bid period for the addition of any other eligible bidders and/or deletion of existing bidders.
- 7. Procedures Governing cases where eligibility is in question.
  - 7.1 If a firm has not been the subject of a declaration of eligibility (see sub-paragraph 5 above) and asks, before the date specified in paragraph 6.1.1.2 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 representative identified in the NOI. The host nation shall not be required to delay issuing the "Cahier des Charges" under such circumstances.
- 8. Type of Contract
  - 8.1 Unless otherwise agreed by the IC, 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.
  - 8.2 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.
  - 8.3 As long as best-value procurement is an agreed procedure in the Investment Committee, contracts based on best value criteria as outlined in AC/4-D(2004)0001-ADD1-AS1 can be considered.
- 9. Execution of Invitation For Bids (IFB)
  - 9.1 Time allowed for submitting tenders
    - 9.1.1 The closing date for bids must normally be not less than 35 days for large-scale or complicated projects and not less than 20 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.

- 9.1.2 The host nation is encouraged to use the most expeditious means of transmission, i.e. email or password protected website and must provide notification, only if requested, to the representative of the country of origin identified in the NOI.
- 9.2 Requests for Extension of Time limits –To deliver the capabilities in the most expeditious manner, in support of Alliance Operations and Missions, host nations are encouraged not to accept requests for extensions. In exceptional cases, the host nation may honour a request for extension if it is viewed there is no feasible alternative. Ultimately, the final decision shall rest with the host nation. When ICB bid documents are issued in a language other than an official NATO language, if so requested, extensions will be granted to allow time for translation taking into account the size and complexity of the bid documents and the urgency of the project. It is recommended that extensions of the bid period to allow for translation be granted equivalent to one half of the bid period or 10 days, whichever is less. If the request for extension is made within 5 days of the closing of the bid period then an extension of no more than 5 days shall be granted.
- 9.3 Bidders Conference
- 9.3.1 Conducting Bidders Conferences for projects supporting Alliance Operations and Missions should only be done on a very select basis to ensure that AOM requirements are being met as expeditiously as possible.
- 9.3.2 If a bidders' conference is required it may be held, to provide clarifications whenever the host nation feels this is necessary or useful. The host nation must do their utmost to schedule the bidders conference at the earliest possible moment in the bidding process, ideally during the first half of the bidding period, to avoid the requirement to extend the bid closing date.
- 9.3.3 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. email, secure website, or fax if possible. In case clarifications of changes to the "Cahier des Charges" are notified after the bidders conference, not less than 15 days must be allowed before the closing date of the bid. The host nation must do their utmost to ensure the timing of the issuance of such clarifications of changes will avoid the requirement to extend the bid closing date.
- 9.4 Requests for clarification
- 9.4.1 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 before half of the bidding period has passed.

- 9.4.2 Should a host nation receive a request for clarification later than after half of the bidding period has passed, the host nation shall decide whether or not to action the request. This decision shall not be the subject for a dispute.
- 9.4.3 On receipt of a request for clarification, and unless the information is provided at a bidders' conference in accordance with paragraph 9 (c) above, the host nation must:
  - 9.4.3.1 Notify all bidders of any clarification or change to the "Cahier des Charges" as soon as possible to avoid extending the closing date of the bid. Where clarifications of bidder questions lead to changes to the "Cahier des Charges" after the mid-point of the bidding period has passed, the host nation will grant an extension of the bid closing date to allow for revised bid proposals. The extension will be commensurate with the number of days past the mid-point of the bid period that the changes are issued.
  - 9.4.3.2 send the information to all bidders by the most expeditious means (i.e. email or a password protected section of a website)
- 9.5 Queries regarding the consequences of clarifications or changes to the "Cahier des Charges"
  - 9.5.1 The host nation, at their discretion, may refuse any further requests for clarifications resulting from the clarifications or changes made by the host nation under sub-paragraph 10 d. above.
  - 9.5.2 In the rare case where the host nation deems it necessary to address further requests for clarifications, the bid closing date shall be extended at the discretion of the host nation. Such extensions shall not be the subject of a dispute.
- 10. Requests for Review of Bid Specifications of the "Cahier des Charges"
  - 10.1 Any Delegation may, without invoking the agreed formal dispute procedure for Procurement in support of Alliance operations and missions, request that the International Staff and or appropriate authority 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 contrary to the principles of paragraph 4.
  - 10.2 Such requests shall be made no later than after half of the bidding period has passed and the Investment Committee must be advised by the International Staff or the appropriate Authority that an examination of the technical specifications is underway.
  - 10.3 The results of such examinations will be reported to the Investment Committee for its consideration, as soon as possible, ideally within 14 days of the request. 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.

- 10.4 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 for the bid specifications by the International Staff or the appropriate authority and the consideration for the results of the examination by the Committee.

#### 11. Evaluation of Bids

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

- 11.2 Discussions with Bidders 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 area of non-compliance. The objective of this process should be to complete the bid evaluation as soon as possible to allow the winning bid selection to be made. As a result of this discussion process with bidders, note however, no alteration of bids (including technical, financial, and schedule changes) is permissible.

- 11.3 Comparison of bids without taxes and duties;

- 11.3.1 Bids will be compared on a tax exclusive basis.

- 11.3.2 To achieve this, all bids will be certified as not including any identifiable taxes. Identifiable taxes are identified as host nation VAT, customs/import duties and such other taxes as may be required by host nation legislation;

- 11.3.3 However, where host nations do not exempt NATO Investment 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.

12. Award of Contracts

- 12.1 The host nation will normally award a contract to the lowest compliant bidder<sup>12</sup>. However, should the host nation intend to award the contract to another compliant bidder it must seek approval of the Committee before making the award<sup>13</sup>;
- 12.2 In the case of projects other than those covered by sub paragraph c below, the following provision shall apply:
- 12.2.1 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 reason for rejection<sup>14</sup> It will, at the same time, notify in similar terms the Investment Committee Representative of the Country of the firm concerned and the International Staff. A period of 10 days from the date of receipt of these notifications 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.
- 12.2.2 After completion of the procedure under sub-paragraph 12.2.1 above, and after the settlement of any dispute under the procedure in Appendix 1 to this document, the host nation will award the contract and notify unsuccessful bidders at the earliest possible date;
- 12.3 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;
- 12.4 Following a declaration of non-compliance and the completion of any dispute procedures, the host nation must return the unopened bid submission envelopes<sup>15</sup>.

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<sup>12</sup> Best value procurement procedures as outlined in AC/4-D(2004)0001-ADD1-AS1 may also be applied on Alliance Operations and Missions projects on a case-by-case basis as authorized by the Infrastructure Committee.

<sup>13</sup> 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 specific source in the country where the price envelopes are opened. When host nations do not permit contracts to be expressed in foreign currencies the procedure is given in Appendix 4.

<sup>14</sup> 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.

<sup>15</sup> Host nations may request in the IFB the right to dispose of locally, in accordance with NATO security of information procedures, once a contract has been awarded, all unsuccessful bids. Alternatively bidders may choose to have their bid submissions returned at their expense.

13. Results of the Calls for Bids – as soon as possible after contract award, 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 include the name, nationality, and amount submitted by the successful bidder 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 authorized, and if not, the extent (estimated percent) to which it covers the project as authorized. When known, the same data should be mentioned with regard to major sub-contractors of the successful bidder.

14. Procedure in case of renewed call for bids

14.1 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 12.2.1. 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.

14.2 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.

14.3 If it wishes to propose such a special procedure for the new call for bids, the host nation will, when notifying the Committee as in 14.2 above, submit to the Committee the proposed conditions under which this new call would be held for the Committee's approval.

15. Transmission of Information

15.1 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 electronic means of transmission 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 password protected website or exceptionally by registered mail whereby a receipt is returned by the prospective bidder showing date of receipt.

## **ALLIANCE OPERATIONS AND MISSIONS INTERNATIONAL COMPETITIVE BIDDING PROCEDURE FOR SETTLEMENT OF DISPUTES**

### **Introduction**

1. Nations should work in a fashion to avoid disputes for procurements supporting Alliance Operations and Missions.
2. Many cases involving divergences of interest among participating countries concerning the application of rules for international competitive bidding are settled either by informal consultation or discussion. Invariably there may be exceptional cases where agreement cannot be reached by these means to avoid undue delay in the implementation of the work to which the dispute relates.
3. In order to solve such cases, the following procedure has been developed which provides a mechanism to safeguard against discrimination against nations firms. Only those disputes based on alleged deviations of the rules as defined in paragraph 6 below and raised by a country whose firm has been nominated to participate in a bid will be considered. As such, the dispute is limited to the country of origin of the nominated bidder on one side and the host nation on the other.
4. To avoid delays in procurement as much as possible, time periods mentioned in the dispute procedure should be strictly adhered to.

### **Scope of Procedure and Timing**

5. The procedure set forth hereafter shall apply to disputes about the correct application of the principles and procedures for 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.
6. 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 6,9, and 10 of the Alliance Operations and Missions International Competitive Bidding Procedure, if this leads to discrimination against a (prospective) bidder;
7. Depending on the nature of the complaint, the time limits for the procedure in paragraph 8 to 25 below are as follows:
- a. Complaints under paragraph 6, 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 paragraph 9 of the Alliance Operations and Missions International Competitive Bidding Procedure;
  - b. Complaints under paragraph 6, sub-paragraphs e., and f. above, should be lodged before expiry of the time limit of 10 days provided for under paragraph 12.2.1 of the Alliance Operations and Missions International Competitive Bidding Procedure;
  - c. Complaints under paragraph 6, sub-paragraph g. above should be lodged within 10 days after expiry of the time limit(s) which the host nation has not respected

### **Suspension of Placing of Contracts and Notification of Disagreements**

8. Should a delegation allege the incorrect application of the agreed principles and procedures for international competitive bidding within the limitations given in paragraph 6 above it will submit, within the time limit specified in paragraph 7 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.

9. The host nation will immediately comply with the request submitted by the request submitted by the delegation lodging the complaint. A period of 10 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.

10. At the meeting of the Committee upon the expiration of the 10 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 the discussions. If at this meeting the Committee feels that an extension of the "discussion period" is justified due to progress in the discussions and if the disputants request an extension of not more than 7 additional days may be granted. In an extension is not granted, a formal dispute will be deemed to exist and the Committee will immediately proceed to the Arbitration Stage identified below.

### **ARBITRATION**

11. If at the conclusion of the Committee discussion period as per paragraph 10 above, no agreement is reached, between the disputants, the Committee shall, submit the dispute to the Standing Board of Arbitration (hereafter referred to as the Board). The Standing Board of Arbitration shall be formed in accordance with paragraph 17 below and based on the Terms of Reference (see attachment to this Appendix).

12. The Committee, concurrently with the submission of a dispute to the Standing Board of arbitration, shall ensure three participating countries selected from the Standing Board Members, that are in no way concerned in the dispute, each serve on the Board. The Board of Arbitration shall work with support from a designated expert officer of the International Staff, or a NATO Agency, (in no way associated with the dispute), who will provide assistance and expertise when necessary. The Members of the Board of Arbitration shall act impartially according to their individual good judgement.

13. The Board of Arbitration Members have the obligation not to disclose except as provided in paragraph 15 below, the views held by any of the arbitrators or the nature of their deliberations and discussions.

14. The Board shall meet as soon as possible and in any case not later than 7 days after the date of the Committee decision to proceed to the Arbitration Stage. 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;
- c. at least on 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.

15. 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 14 days after the Board's first meeting. The decision of the Board shall be final, binding and no appeal shall be allowed. Participating nations concerned shall, with due speed; take the necessary steps to implement the Board's decision.

## **TERMS OF REFERENCE FOR A BOARD OF ARBITRATION**

### **INTRODUCTION**

The guiding principles in the AOM 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;

### **COMPOSITION**

16. The Board of Arbitration shall be comprised of representatives from three participating countries. The Board shall be selected from the Standing member nations as described below.

17. The Investment Committee will select on an annual basis, in the early meetings of the Fall session, a minimum of eight member nations as the standing member nations of the Arbitration Board. These eight nations shall nominate a national representative to be appointed as Standing Members of the Board of Arbitration. Each year at least **25%** of the standing board members should change to allow for an equitable sharing of the responsibility.

18. The three members of Board of Arbitration shall be appointed by the Investment Committee from the Standing Members concurrent with the Committee's decision to proceed to the arbitration stage. In the selection process, the Investment Committee shall consider availability and previous service on the Board of Arbitration amongst the selection criteria. If correct representation is not available, the Investment Committee may consider appointing a member of the NATO International Staff to the Board of Arbitration.

## TERMS OF REFERENCE

19. The Board shall establish its own rules of procedure in respect of each dispute to be considered.

20. 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. The Board shall have access to the NATO International Staff to provide technical clarifications as necessary.

21. 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.

22. 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.

23. The Boards should be able to have private hearings of each disputing country without the presence of the other.

24. 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 of the technical proposals or the bid price.

25. If the dispute is related to action described in paragraph 6. (f) of Appendix 1, the Board shall determine whether in the light of all the evidence and the clarifications provided, the bid is in conformity with 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 on this matter shall be based on the guiding principles contained in Alliance Operations and Missions International Competitive Bidding Procedure.

26. The decision shall be the majority view and shall not show the minority view. It shall be represented to the Investment Committee with detailed reasons as soon as possible and in any case not later than 14 days after the Board's first meeting. The decision of the Board shall be final and no appeal shall be allowed.

**DISSEMINATION OF INFORMATION ON INVITATIONS TO TENDER**

1. In order to provide for timely availability to nations of the names of potential bidders of common funded projects of an estimated value of the Minor Works ceiling or above, immediately after the final date by which firms must have expressed their desire to tender, the host nation must forward, only to those participating nations which have duly notified the Investment 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;
2. The Investment Committee, when granting an authorisation to commit funds or when 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.
3. 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 2 to AC/4-WP(2007)0001.
4. The Investment Committee is invited to take note of the updated version of the Committee's decision and to state when granting authorizations to commit funds or noting prefinancing statements, that the host nation shall conform with these rules when using the Alliance Operations and Missions International Competitive Bidding Procedure
5. Alternatively, the Investment Committee may, on a case-by-case basis and at its discretion, agree to dispense with the application of this procedure.

**Specimen Declaration of Eligibility**

To: Host nation Delegation to NATO or NATO Agency

Subject: Expression of Interest in ICB Ref no. xyz abc

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

- a. Company Ltd.  
Address,  
Contact:  
Tel. No.  
Email  
Website
- b. Company Ltd. etc.
- c. Company 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)

**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 another currency 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 and by the specific source<sup>16</sup>. This will establish an overall contract price consisting of fixed amounts of host nation 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.
3. 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 currencies (in the amounts stipulated in the currency) or 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 number of units of other currencies up to the limit specified in the contract.
4. 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 bidders' 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 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

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<sup>16</sup> NATO rate applicable the day previous to the bid closing day.

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.

5. The NATO Agency will make payments in those currencies in the amounts stipulated in the contract.

**DESCRIPTION OF NSIP PROCUREMENT METHODS  
AVAILABLE FOR USE ON AOM PROJECTS**

1. International Competitive Bidding (ICB), AC/4-D/2261(1996 Edition): The basic procurement method for NSIP procurement and for which host nations must be granted deviations in order to use any other procurement method.
2. Best Value – International Competitive Bidding (ICB), Annex X to AC/4-D/2261(1996 Edition)<sup>17</sup> and AC/4-D(2008)0002-REV1 apply.
3. National Competitive Bidding (NCB): A deviation from AC/4-D/2261(1996 Edition) that enables territorial host nations to use national procedures for NSIP procurements.
4. National Competitive Bidding with Nominations from Participating Nations (NCB+): On request of one or more nations in committee, the host nation has been required to accept the nomination of firms from participating countries. In some cases this involves the publication of a notification of intent.
5. Limited Competition: Under this procedure the number of firms is restricted, usually for reasons of prior approval by a NATO body (for example, cryptographic equipment) but occasionally for geographic reasons (firms operating in a specific area related to a NATO operation or mission).
6. Basic Ordering Agreements by the NC3A (BOA), AC/4-D(2002)002 (Final): An agreed procedure whereby the NC3A can solicit bids from firms that are registered in the BOA programme. Other host nations may also use the NC3A BOA service.
7. BOA with Nominations from Participating Nations (BOA+), AC/4-D(2002)002 (Final), paragraph 15.1: This gives participating countries the opportunity to have other firms included in the bid solicitation. The approved procedure states that “Firms without a BOA can only be added with agreement of the Investment Committee at the authorisation stage.”
8. Sole Source: A contract awarded without competition to a firm. In many instances this involves exercising an option in a contract awarded earlier following a competitive bidding process. However, it may also be a case of negotiation with a qualified and eligible firm usually for reasons of urgency, commonality with previously acquired equipment or services, geographical availability and so forth.

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<sup>17</sup> Circulated under AC/4-D/2261-ADD2(1996 Edition)



9. Troop Labour: The host nation sometimes requests that projects be executed using military personnel and purchased construction material (example, gravel for road restoration).
10. Bi-SC Directive 60-70: A procurement directive developed by military authorities for use at NATO military headquarters.
11. NAMSA Procurement Regulations, NAMSA Regulation 251-01 1st Revision including Amendment 1 dated 19 October 2005: Procurement methods approved by the NAMSO BOD for use within the agency.