



**NATO Support and
Procurement Agency
(NSPA)**

NATO UNCLASSIFIED

OPERATING INSTRUCTION

NSPA PROCUREMENT OPERATING INSTRUCTION

This Operating Instruction supersedes:

1. OI 4200-01 (Rev. 2) – NSPA Procurement Operating Instruction, dated 13 May 2019.
2. NI-251-02 (Rev. 6) - Procurement from United States Military Sources, issued under the authority of NAMSA, dated 18 March 2002
3. NI-251-03 (Rev. 3) - Procurement contract administration, dated 29 October 2012.
4. NI-251-05 (Rev. 2) – Balancing of production distribution among NAMSO Member Countries, issued under the authority of NAMSA, dated 23 July 2010

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NSPA PROCUREMENT OPERATING INSTRUCTION**1. PREAMBLE****1.1 Purpose**

The present Operating Instruction details the implementation of the NSPO Procurement Regulations No 4200.

It sets forth the rules to be followed in the solicitation, award and contract administration of procurement contracts signed by the Agency with its contractors. It provides all NSPA personnel involved in the placement and administration of contractual instruments or in technical, administrative contract management, with the policy and procedure required to guide their performance to ensure provisions of contracted support in accordance with the customer requirement, as well as separation of functions and to avoid duplication of effort.

1.2 Scope

This Operating Instruction covers the rules applicable from the time a requirement is identified for procurement of materiel, services, and/or construction works until the obligations of each party under the contract have been fulfilled.

It is applicable to procurement contracts for materiel, services and works concluded under the provisions of the NSPO Procurement Regulations NR 4200.

1.3 Applicability

This Operating Instruction applies to procurement of all materiel, including major end item and weapon systems, services and civil works conducted by all organisational entities of the NSPA, nationally or multi-nationally funded from the Administrative and/or Operational Budgets and the related contracts by whatever means such procurement may be performed. All procurement activities will be the responsibility of the Procurement Divisions to include those of non-procurement staff working with a Procurement delegation. Investment Committee and Budget Committee acquisition rules will apply to common-funded procurements, unless deviations have been agreed by these committees.

1.4 Deviations

Unless otherwise stated, exceptions to, or deviations, from this Operating Instruction may not be made unless authorised and approved on a case-by-case basis by the Director of Procurement or the General Manager upon recommendation by the Director of Procurement. Any request for exception or deviation shall be submitted in writing to the Director of Procurement through the responsible Procurement Division Chief, and state in detail the circumstances considered to justify any proposed exception or deviation.

1.5 Implementation

This Operating Instruction may be further implemented by appropriate technical instructions (Operating Procedures) proposed by the Procurement Divisions and

promulgated by the Director of Procurement. All modifications and amendments to these technical instructions will also be promulgated by the Director.

2. DELEGATIONS, FUNCTIONAL CONTROL OF PROCUREMENT OPERATIONS

2.1 General Manager A7

Pursuant to the NSPO Charter, The North Atlantic Council grants to the NATO Support and Procurement Organisation, within the scope of its functions, authority to conclude agreements and contracts, and acquire and dispose of property in the name of NATO.

This authority is delegated by the NSPO Agency Supervisory Board to the NSPA General Manager by the Procurement Regulations.

2.2 Director of Procurement A6

The General Manager delegates to the Director of Procurement his/her authority to approve contracts above 2.5 times Financial Level “E” and to sign contracts up to 100 M€.

The Director of Procurement exercises functional control over all procurement activities of NSPA organisational entities.

He/she delegates his/her authority to approve and sign contracts on the basis of the amounts to the NSPA Procurement Division Chiefs and to their respective Procurement personnel upon their recommendation.

Upon recommendation of the senior procurement representative assigned to the relevant programme and of the responsible Procurement Division Chief, he/she signs delegations to issue Call-Off Purchase Orders against Outline Agreements to logistics staff of the Agency Business units within financial thresholds appropriate to fulfil their mission.

He/she delegates, within the framework of the NSPA Purchasing Card Programme, the authority to use a Purchase Card and to approve the related transactions within the limit of Financial Level “A”.

2.3 Deputy Director of Procurement A5

The Deputy Director of Procurement receives delegation from the Director of Procurement to approve contracts above 2.5 times Financial Level “E” and to sign contracts up to 100 M€ when deputising for the Director of Procurement in the latter’s absence.

2.4 Procurement Division Chiefs A5

The Chiefs of the Procurement Divisions are responsible to the Director of Procurement to ensure that all NSPA procurement operations are carried out in full compliance with applicable rules and regulations for their respective Division, with efficiency and effectiveness and in accordance with the customer requirements. They receive

delegation of authority to approve contracts up to 2.5 times Financial Level “E” and to sign contracts under his/her responsibility up to 75 M€.

2.5 Purchasing Branch Chiefs A4

The Purchasing Branch Chiefs are Procurement A4 executives responsible to their respective Procurement Division Chief for exercising functional control of the procurement activities performed by Procurement Division staff under their supervision collocated in programme offices. This functional supervision extends to the procurement activities of non-procurement staff with procurement delegations working in these programme offices.

They are responsible for the proper implementation of the relevant NATO Support and Procurement Organisation (NSPO)/NSPA prescriptive documents, applicable NATO procurement procedures and providing guidance in all areas of procurement.

They exercise a role of functional advisor for the assigned Procurement staff or other staff with Procurement delegation.

2.5.1 Supervision of contracting / procurement activities of Programmes, Programmes Offices and Offices.

The Purchasing Branch Chiefs exercise an Ex-Post control for all contracts below 2.5 times Financial Level “C” which are the purpose of a delegation to Procurement and non-Procurement staff.

They conduct an Ex-Ante control on all solicitation above 2.5 times Financial Level “C”, in particular as to the suitability of the requirement to be placed on contract, the contract strategy, the contract type and terms and conditions to be used for programmes under their supervision.

The Purchasing Branch Chiefs receive delegation of authority to approve contracts up to 1.5 times Financial Level “E” and to sign contracts under their responsibility up to 50 M€.

2.5.2 Supervision of contracting / procurement activities of Programmes and Programmes Offices with a Procurement Team Leader A4

In these Programmes and Programme Offices, the Purchasing Branch Chiefs exercise an Ex-Post control for all contracts below 2.5 times Financial Level “D” which are the purpose of a delegation to Procurement and non-Procurement staff assigned to the Programmes.

They conduct an Ex-Ante control on all solicitations above 2.5 times Financial Level “D”, according to the modalities described in paragraph 2.5.1. above.

2.5.3 Supervision of projects with a Principal Procurement Officers A4

For major projects within dedicated organisational entities with a Principal Procurement Officer A4, the Purchasing Branch Chief exercises an Ex-Post control for all contracts below 1.5 times Financial Level “E” in cooperation with the Procurement Internal Control Officer.

2.6 Procurement Team Leaders A4

The Procurement Team Leader is an A4 procurement executive assigned to a Programme Office with portfolio of high value and complex activities justifying a sizeable Procurement Team. Under the operational control of the Programme Manager and functional control of the relevant Procurement Division Chief, he/she is responsible for the day-to-day planning, organising, directing, controlling and distributing the Procurement workload of the Programme office. He/she manages, both from a technical and administrative point of view, the procurement personnel assigned to the Programme, Programme office or office and the non-procurement staff with procurement delegation for their procurement activities. The Procurement Team Leader plays a critical role communicating with Programme and Project Managers and supporting programme and project initiatives.

He/she is the focal point for all Programme Procurement, and the representative of the Procurement function in the official communication forums (Support Partnerships, Programme Management Reviews).

He/she reviews and submits high value/complex files to the Procurement Branch Chief, when the value is above his/her Procurement delegation. Reports through the Chief of MMC and Purchasing Branch Chief to the Programme Manager and Procurement Division Chief, potentially novel and contentious implications of NSPA Procurement strategy, policy and implementation, while keeping his/her Programme Manager and the concerned Project Manager informed.

He/she is responsible for EPMS reporting of the Procurement personnel assigned to the Programme pursuant to the terms of the OI 4400-12 NSPA Policy for EPMS. He/she should provide input to the EPMS reporting for Logistics & Technical staff with Procurement delegation for their procurement activities.

The Procurement Team Leader receives a delegation of authority to approve contracts up to 2.5 times Financial Level "D" and to sign contracts under her/his responsibility up to 50 M€.

2.7 Principal Procurement Officers A4

A Principal Procurement Officer is an A4 procurement executive, under the operational control of the Programme Manager, functionally responsible to the Chief of the relevant Procurement Division for performing procurement activities exclusively in support of a Category A project conducted by the Agency.

He/she exercises functional control of the procurement activities directly associated to the project structure, as defined in his / her delegation, in accordance with the relevant NATO Support and Procurement Organisation (NSPO)/NSPA prescriptive documents, applicable NATO procurement procedures and provides guidance in all areas of procurement.

He/she recommends, among other things, the procurement strategy, the type of contracts and terms and conditions to be used and prepares procurement plans as related to the project he/she supports.

The Principal Procurement Officer receives a delegation of authority to approve contracts up to 1.5 times Financial Level "E" and to sign contracts under his/her responsibility up to 50 M€. These activities are subject to Ex-Post control by the Procurement Internal

Control/Contract Quality Control officer acting with the support of the responsible Purchasing Branch chief.

Activities above his/her delegated authority are the purpose of an Ex-Ante control by the relevant Procurement Division Chief or the Director of Procurement as appropriate.

2.8 Senior Procurement Officers A3

In the absence of a collocated Procurement Team Leader A4 in a programme, the Senior Procurement Officers are functionally responsible to the Purchasing Branch Chief for all contracts issued by their procurement teams, from the negotiation through to the closeout stage.

They are the Programme Managers' advisers for procurement related matters. They recommend *inter alia* the type of contracts to be awarded and prepare or supervise the preparation of the procurement plans when required.

They submit RFPs and draft Contracts for requirements with a value of more than 2.5 times Financial Level C to the relevant Purchasing Branch Chief for review and approval. The file review presented to the Purchasing Branch Chief will clearly indicate which template was used and state whether it is with or without changes (with the references of the changes if any).

They solicit formally, through their Procurement Division Chief, delegated procurement authority for procurement and non-procurement personnel of their team. They exercise functional supervision of the procurement work of all persons with delegated procurement authority within their team.

The Senior Procurement Officers receive a delegation of authority to approve contracts up to 2.5 times Financial Level "C" and to sign contracts under his/her responsibility up to 30 M€ upon approval by a CAC.

2.9 Procurement Officers A2

The Procurement Officers are responsible to the Senior Procurement Officer for performing procurement activities in his / her buying team. They assist in supervising the buying team and assume overall responsibility for contracting activities assigned by the Senior Procurement Officer, from Purchase Requisition (PR) receipt through to the closeout stage.

They propose to their Senior Procurement Officer, delegations of procurement authority for procurement and non-procurement personnel working in their team.

The Procurement Officers receive a delegation of authority to approve contracts 2 times Financial Level "C" and to sign contracts under his/her responsibility up to 20 M€ upon approval by a CAC.

2.10 Senior Buyers (B6), Buyers (B5), Junior Buyers (B4), Senior Clerks (B3), Clerks (B2)

The incumbents of these positions are responsible to the Senior Procurement Officer or Procurement Officers for executing the complete range of duties within the prescribed limits of their delegations and their position descriptions.

They prepare, negotiate and administer services or supply contracts, as required, covering requirements of NSPA internal and external customers in accordance with the relevant prescriptive documents.

They assume overall responsibility, on behalf of the Procurement Officer, for contracts of increased complexity, criticality and financial value according to their grade, from the conclusion of negotiation through to the contract closeout stage.

Buyers and Clerks receive the following delegations:

Position and Grade	Authority to Approve contracts	Authority to Sign contracts
Senior Buyer, B6	Up to EFL "C"	Up to EFL "C"
Buyer, B5	Up to EFL "C"	Up to EFL "C"
Junior Buyer, B4	Up to EFL "C"	Up to EFL "C"
Senior Clerk, B3	Up to EFL "B"	Up to EFL "B"
Clerk, B2	Up to EFL "B"	Up to EFL "B"

2.11 Delegation to Non-Procurement Divisions Staff

Authority to issue Call-Off Purchase Orders against Outline Agreements awarded by the Agency can be delegated to non-Procurement Divisions staff upon recommendation of the assigned Procurement Team Leader, the Senior Procurement Officer or Procurement Officer and endorsed by the relevant Procurement Division Chief.

The Procurement delegation designates the delegatee and his/her position, defines its scope, its financial threshold, its effective date and duration. It is signed by the sponsoring Senior Procurement Officer or Procurement Officer (in the absence of assigned Senior Procurement Officer), the delegate, the Procurement Division Chief and the Director of Procurement.

The delegatees have procurement functional responsibilities for their procurement activities for which they are accountable to the procurement functional chain.

Their delegation to sign Call Off Purchase Orders shall not exceed 2.5 times Financial Level "C".

Authority to compete, award and administer Stand-alone purchase order can also be the purpose of a delegation not exceeding Financial Level "A".

2.12 Delegations within the framework of the NSPA Purchase Card Programme

Purchase Card Holders receive delegation to execute transactions using a Purchase Card for selected buys below Financial Level "A". Each transaction is the purpose of a release by an Approving Official having received delegation by the Director of Procurement to authorize the transaction.

Reporting and control mechanisms are described in the OI 4200-05 NSPA Purchase Card.

3. INTERNAL CONTROL AND QUALITY CONTROL

3.1 The Procurement Internal Control Officer A4

To ensure that NSPA's procurement operation activities are being conducted properly and efficiently, the Procurement Internal Control Officer, an A4 Procurement Executive of the Procurement Directorate, will perform internal inspections.

Reports of the findings resulting from these inspections will be provided to the Director of Procurement. They will support the establishment of the annual Procurement Statement of Assurance submitted to the General Manager and the Financial Controller through the Internal Control Officer.

The functions of Procurement Internal Control officer are merged with the functions of Contract Quality Control officer.

3.1.1 Contract Quality Control activities

The Contract Quality Control Officer (CQCO) reviews Requests for Proposals (RFPs) and draft Contracts for requirements with a value of more than 2.5 times Financial Level "E", which contain deviations to the approved DMS templates. The draft Contract Terms and Conditions in these cases have to be formally approved by the CQCO.

For requirements over 2.5 times Financial Level "E" which do not contain deviations from the approved DMS templates, and are consequently not reviewed by the CQCO at the time of the RFP, the resulting contract will be presented to the CQCO at the time of contract award.

For purchasing documents forwarded for review/approval by the CQCO or the Purchasing Branch Chiefs, the "track changes" functionality must be activated, allowing easy identification of ALL changes from the approved DMS template.

3.1.2 Ex-Post Controls by the Procurement Internal Control Officer

Ex-Post controls by the Procurement Internal Control Officer are conducted at his/her initiative. Contract Management Reviews conducted three times a year will entail the Ex-Post control of three contracts selected by him/her in each programme and will be the purpose of a report.

3.2 Shared key managerial responsibilities

Internal control of operations, compliance and accurate reporting and quality control are key responsibilities shared by all the line managers throughout the Procurement Divisions and the Procurement Directorate.

4. RISK MANAGEMENT

4.1 Importance of Risk Management

The NSPO Charter makes it the responsibility of the Agency Supervisory Board to ensure that effective risk management measures are in place and monitor performance execution on that basis. It further spells out as a responsibility of the General Manager to report regularly to the Agency Supervisory Board on an adequate risk management process associated to the plans and objectives set.

4.2 Policy and key features of NSPA Risk Management

The Functional Directive 2500 on Risk Management provides guidance regarding the identification and management of risk within NSPA. It defines the risk governance structure, the roles and responsibilities, and the risk management process. It lists the categories of risks (i.e.: Category A for large scale and strategically important projects, Category B for medium scale projects of specific importance, Category C for smaller scale projects) and establishes an Agency Risk Register. It spells out the concept of Risk Tolerance and the way to report it with a HEAT Map.

The NSPA OI 4600-20 outlines the policies, principles and process to implement a robust and effective Risk Management process within NSPA. It is complemented by an Operating Procedure AM-20 dated 11 March 2019 on Risk Management going further into the identification of Roles and Responsibilities associated to this function.

4.3 Procurement Actors of Risk Management

At each stage of the procurement process, risks may exist that if not identified, assessed and dealt with in an acceptable manner, can negatively affect the establishment of a contract or its delivery. Identifying and managing procurement risks is primarily the responsibility of the procurement professional managing the requirement. They will be supported by those who participate in any stage of its procurement process, delivery and contract closeout. This has to be understood as a collective responsibility.

4.3.1 The Procurement Directorate Risk Manager

The Contract Quality Control Officer / Procurement Internal Control Officer is the Procurement Directorate risk Manager.

His/her responsibilities include:

- Providing a quarterly review of the Procurement Directorate and Procurement Divisions risks registers and associated HEAT Maps during a Directorate stand up meeting,

or whenever required in case of significant new events impacting the risk level of the procurement activities;

- Acting as the Director's risk management adviser;
- Preparing risk management documents required by the Director;
- Participating in the Risk Community of Interest.

4.3.2 POD Procurement Risk Management Focal Points

The Procurement Risk Management Focal Point in the POD's is the Procurement Team Leader assigned to the Programme or the Senior Procurement Officer(s).

These focal points keep the Procurement Directorate Risk Manager informed of the evolution of the risks or they report directly on the Procurement Divisions' Risk registers regarding significant risk or events influencing the risk level of their activities.

Their respective Procurement Division Chief formally appoints them as Procurement Risk Focal Point in the programmes.

4.3.3 Procurement Risk Owners

The Procurement Risk Owner is the Procurement staff in charge of a procurement task eligible for identifying the risk related thereto when considering its category and its impact.

4.4 Typology of risks of specific relevance for Procurement activities

The degree of risk a procurement activity may be exposed to, can be influenced by project timelines and complexity. Risk areas in procurement that procurement personnel must be aware of include but are not limited to:

- Unrealistic timelines, biased specifications or those that unduly restrict competition or are vague in nature;
- Inappropriate procurement strategy, contract terms and conditions and evaluation criteria;
- Inadequate sources of supply, supplier reliability, or supplier misrepresentation, hidden directed procurement;
- Failure to evaluate bids in accordance with the stated evaluation criteria and methodology;
- Inability to secure reasonable pricing, contract terms and conditions and delivery timelines;
- Fraud, corruption or release of commercially sensitive information; and
- Unauthorised contract changes, payment or failure by either party to fulfil the conditions of the contract.

The above mentioned risks may vary in degree and potential impact and therefore may have different mitigation strategies. With proper risk identification and management, the possibility of a procurement activity failing is minimized.

5. PROCUREMENT – GENERAL PRINCIPLES

5.1 Objective

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

Most economical does not just mean the lowest priced technically compliant bid. The most economical proposal may be determined on the basis of a weighted combination of price and other relevant factors, used to obtain related 'scores'. This is sometimes termed 'best value'.

5.2 Operations

Procurement shall be carried out only by NSPA staff specifically having received delegated authority and exercising same within the designated value limit.

5.2.1 Unauthorised procurement. Ratification procedure. Consequences

Purchases accomplished by staff in excess of their delegated authority, or by persons without any such authority are "unauthorised procurements". When and if such actions occur they must be brought to the attention of the Chief of the Procurement Division concerned.

Depending on the circumstances, they can be "legalised" or "ratified" by the Director of Procurement upon recommendation by the Chief of the Procurement Division involved. If not justified an unauthorised procurement may result in disciplinary action. The appropriate contract or purchase order format will be utilised for this ratification process.

5.2.2 Procurement through NAM Air Incident Fund

The NAM Programme Manager is delegated the authority to execute emergency Air Incident (AI) Fund procurements, exclusively committed from the Air Incident Fund, up to 10 M USD, in order to protect NAM Programme-owned assets and Heavy Airlift Wing (HAW) personnel and to respond to humanitarian needs of third parties from an AI, in conformity with the following procedure.

5.2.2.1 Emergency AI PRs will include a clear explanation of immediate need, amount, source, and cash management strategies needed to continue SAC Program operations.

5.2.2.2 These procurement requests must be performed in consultation with the NSPA General Manager, the NSPA Financial Controller or his/her delegate and the Chairpersons of the NAM Programme Board and SAC Steering Board and ensure that;

- Adequate budget is in place;
- Adequate cash is available to support AI procurements and to continue other SAC Program operations;
- Compliance with FD2300 for requests to commit appropriations is achieved.

5.2.2.3 All expenditures under this authority will be reported to the Chairpersons of the NAM Programme and SAC Program Claims Committees after payment has been made.

5.2.2.4 All procurements beyond 10M USD will require positive advance approval by the NAM Programme Board.

5.2.3 Procurement through Multinational MRTT Fleet (MMF) Air Incident Fund

By decision of the MMF Support Partnership, an Air Incident fund has been for the MMF.

The MMF System Manager is delegated the authority to execute emergency Air Incident (AI) procurements, exclusively committed from the Air Incident Fund, up to 10M EUR, in order to protect NSPO-owned assets, SPC Nations, passengers, cargo and MMF Multinational Unit (MMU) personnel and to respond to humanitarian needs of third parties from an AI, in conformity with the following procedure.

5.2.3.1 Emergency MMF AI procurement requests will include a clear explanation of immediate need, amount, source, and cash management strategies needed to continue MMF operations and must be performed in consultation with the NSPA General Manager, the NSPA Financial Controller and the Chairpersons of the MMF Support Partnership Committee and MMF Multinational Executive Board (MEB);

5.2.3.2 It will ensure that:

- Adequate budget credit authority is in place;
- Adequate cash is available to support AI procurements and to continue other MMF operations;
- Compliance with FD2300 Rule 25 for requests to commit appropriations is established.

5.2.3.3 AI expenditures under this authority will be reported to the Chairperson of the MMF Support Partnership Committee after payment has been made.

5.2.3.4 AI procurements beyond 10M EUR will require positive advance approval by the MMF MEB and MMF Support Partnership Committee.

5.2.4 Archiving

5.2.4.1 Contract/RFP records shall be retained by NSPA for five (5) years after completion of the last procurement action, except for NATO common-funded requirements which shall be retained until the relevant funding committee (IC or BC) has confirmed project closure.

5.2.4.2 Hard copies of original contracts, Supplemental Agreements, Contract Amendments, Change Orders and Contract Award Committee (CAC) memoranda, together with any other original non-electronically held information (letters from Contractors, originally signed documents etc...) shall be held on hardcopy files.

5.2.4.3 Electronic copies including e-mails should be held in an electronic format in w:drive. An Operating Procedure developed with the support of the Information System Division should be developed for this purpose.

5.3 Balancing of Production

NSPA balances the distribution of production exclusively among NSPO member nations to the greatest practicable extent possible.

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

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

5.4 Conclusion and Signature of Contracts

The authority to conclude contracts, acquire and dispose of property in the name of NATO, is delegated by the NSPO Charter to the NSPA General Manager.

NSPA General Manager delegates his/her authority to approve and sign contracts on the basis of the amounts, or extended line item value in the case of materiel.

5.5 Administrative Procedures

Procurement contracts shall provide for follow-up surveillance.

All financial limits and thresholds are subject to change in accordance with the Financial Levels as determined in accordance with the NSPO Financial Regulations (NSPO FD 2300).

The implementation of this process is described in paragraph 17 below.

6. POTENTIAL SOURCES

6.1 The Source Identification Section

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

The Source Identification Section of the Procurement Directorate is responsible for developing and maintaining a centralized Source File to support the Agency's procurement operations.

All vendors shall be registered in the NSPA Source File for award of a NSPA contract.

6.1.1 Responsibility

The Source Identification Section is responsible for the implementation of the principle of equality of access to public procurement by the Agency. It permanently and proactively identifies and encourages qualified companies to register in the Source File.

The Source File shall include past, present and potential vendors, including vendor performance data, as well as vendor materiel and service cross-references.

Sources recommended by the end-users will be the purpose of a Source File registration. Documented poor performance of a contractor will be recorded and may lead to restrictions including temporary or definitive suspension.

6.1.1.1 One time vendor

As an exception to 6.1, potential vendors not already registered, and for whom there is no indication of potential repeat business (i.e. a one-off requirement), may, for award of a contract below NSPA Financial Level A, be registered as a 'one-time vendor', for that particular requirement. To be solicited again, a "one-time vendor" has to complete a Source File registration, to become a potential future supplier whenever possible.

6.1.1.2 Staffing of Sole Source

The Source Identification Section is responsible for declaring after due enquiry that the source identified or proposed for a given procurement action, is the only source of supply or services known by the Agency and registered in Source File. The Source File Section keeps a record of the Sole Source Statements it releases.

Sole Source requests exceeding 2.5 times Financial Level "E" will be assessed by the Source Identification Section. The recommendation will then be staffed to the Competition Advocate for decision.

6.1.1.3 Regular updates of the Source File database

The Source Identification Section conducts a permanent effort to update the Agency Source File database. Upgrade of the hardware and software components of the database are coordinated with the IS Division through the Agency Information System Management Committee.

6.1.2 Supplier Qualification for Registration in the Source File

6.1.2.1 Inclusion of Firms

The firms located in NSPO Member Nations will be considered for inclusion in the Source File, generally, upon spontaneous application for registration. NSPA will accept and retain these firms in its Source File upon confirmation of their eligibility by their national authorities.

NSPA considers for contracts commercial firms and governmental entities authorised under their national laws to have commercial activities.

Firms in Partnership for Peace (PfP) Nations with whom NSPO has signed a Memorandum of Understanding (MOU) on logistics support cooperation and which are associate or member states of a NSPO Programme or Support Partnership (SP), may for this Programme's or SP's requirements, be included in the NSPA Source File.

Firms in those Nations that are authorised by the North Atlantic Council (NAC) to contribute to a NATO-led operation and with whom NSPA has signed an agreement on

support cooperation, may, for the related operational requirements, be included in the NSPA Source File.

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

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

6.1.2.2 Supplier's eligibility factors

Supplier's eligibility will be based on the following factors: legal residency, national eligibility status, present capability, financial standing and past performance. The final decision of a firm's eligibility remains with NSPA.

6.1.2.2.1 Legal residence

The country of the legal residence of a firm is the country where this company is registered in the Register of Commerce or equivalent register and incorporated. The criteria of the country of legal residence may not be met by companies registered in a NATO Country but known to be owned or controlled by interests in countries under Communist control, subject to formal trade embargo to be observed by NATO, or NATO sanctions regime.

6.1.2.2.2 Main production facility and principal place of business

The place of main production facility will be as mentioned in the application. For companies incorporated in two or more countries, the principal place of business will be the place where the company's high level officers direct, control and coordinate the company's activities.

Limitations identified for companies controlled by countries under Communist control, subject to formal trade embargo to be observed by NATO or to NATO sanctions regime, apply to the location of the main production facilities and principal place of Business.

6.1.2.2.3 Firms in countries not members of NSPO

Firms whose legal residence or main production facilities are located outside a NSPO member nation shall be considered as "firms in countries which are not members of NSPO".

When the Chief of a Procurement Division determines that it is in the best interests of NSPO member nations to deal with such a firm, he/she will send a recommendation to the Director of Procurement, for authorisation to do so. Such recommendation shall be in writing and state in detail the reasons believed to justify the inclusion of that firm in the Source File.

The inclusion of such a firm in the Source File will not be considered if that firm has its legal residence or main production facility in a country presently under Communist control, under trade embargo or the purpose of restrictions of relationship enforced by the North Atlantic Council.

6.1.3 Vendors Registration

Vendor registration can be submitted on-line through the NSPA portal by the suppliers, or in hard copy format. Along with the Source Mailing List Application submitted, it allows the allocation of a NSPA Supplier Number under "R" status (Certificate of Eligibility Requested).

At this stage, the company is not cleared for Business with NSPA but may receive RFP's and submit offers. If considered for award a waiver has to be requested by the Buyer or the Procurement Officer in charge (see below). The Source Identification Section requests from the relevant national authorities designated (i.e. Ministry of Defence, Ministry of Industry, Ministry of Economic Affairs...) the confirmation of the proper legal capacity, fiscal and financial standing. Positive answers can take the shape of a Declaration of Eligibility, a Declaration of Capabilities, or a Declaration of non-Ineligibility. These declarations lead to the establishment of a clearance for Business for the companies considered.

In case of formal rejection by the national authorities, the company is blocked in the Agency registration system (status N).

In case of no response, the company keeps its "R" status.

For companies with "R" status a waiver can be granted upon request by the Buyer or Procurement Officer in charge to their respective Branch Chief. The Source Identification Section will be consulted.

The Source Identification Section shall maintain a database containing information on the performance of suppliers with whom NSPA has concluded contracts. The information should as a minimum cover cases of late delivery and discrepancies.

6.1.4 Purchase Card Vendors

For some purchases for which using the Purchase Card is allowed, a vendor may not be already registered in the Source File. For such vendors, a Purchase Card vendor record will be created by the Purchase Card Holder during the generation of a Purchase Card transaction. Such records indicating the name of the company, its sector of activity and its country of incorporation, will constitute qualification for Purchase Card transactions only, unless replaced by a standard registration which complies with the checks set out at 6.1.2. to 6.1.3 above.

Specific provisions of OI 4200-05 on the NSPA Purchase Card apply.

6.2 Future Business Opportunities (FBO)

6.2.1 The NSPA Procurement Directorate makes special efforts to stimulate competition during the RFPs. In this context, all potential or known supply and service requirements, which may result in contracts with an estimated total value of Financial Level "C" or above, including Sole Source requirements, are posted as Future Business Opportunities on the NSPA e-portal.

6.2.2 Exceptions are single source requirements and requirements for which the Customer has specifically requested no FBO publication due to national security restrictions.

6.2.3 The requiring entity aware of a potential future supply or service requirement with an estimated value at or above Financial Level "C" shall provide, as soon as possible, all the related information to the Buying staff in its MMC or Programme Office to allow prompt publication.

7. INITIATION OF PROCUREMENT ACTION

7.1 Principle

Procurement action is normally initiated on receipt of a PR for goods and services. Alternatively, procurement action may be commissioned when a project is formally established upon agreement of the related business case or Internal Project mandate¹.

7.2 Purchase Requisitions (PRs)

7.2.1 Procurement action to purchase materiel and/or services shall be taken by the Procurement Officer/buyer only after receipt of a PR for materiel and/or services from an entity authorised to issue such a PR.

7.2.2 PRs shall be accepted for execution only when presented in a manner, which will permit prompt procurement action. PRs, upon receipt by the Procurement Officer/buyer, shall be checked for completeness. PRs which are considered incomplete or which may be processed only after research and investigation, shall be referred to the requiring entity for refinement, clarification, and further appropriate action.

7.2.3 PRs should contain an accurate and detailed description of each required item and/or service, including, as appropriate, NATO stock number, manufacturer's part number, nomenclature, necessary drawings and specifications, statement of work, outline project management plan, approved procurement plan, quantity to be purchased, a realistic estimated unit price, the customer, the required delivery date, if any, the delivery point, the Quality Assurance Requirements in accordance with OI 2401-04² and other information the market needs to understand in relation to the requirement for its solicitation. If an estimate of the unit price has been given by the customer, or if the customer has requested specific sources to be included in a solicitation, the PR shall be accompanied by appropriate information to this effect.

7.2.4 Consolidation of requirements is, as a matter of principle, a logistics responsibility. Nonetheless, the Procurement Officer/buyer should make every effort to consolidate requirements NSPA-wide, where appropriate during the procurement cycle, taking into account the timelines set by the customer.

7.2.5 PRs must be submitted in a timely manner to allow procurement lead-time compatible with the project overall timeline.

¹ As per Project Management OI 4100-10

² Definition of contractual quality requirements and use of AQAPs & GQA.

7.2.6 The originator of a PR may at any time amend the PR when changes thereto are required, e.g. regarding materiel and/or services requested, additions, cancellations, changes of the required delivery date, etc. The Procurement Officer/buyer will inform the originator of the PR of the consequences of the requested action, if any, and obtain concurrence thereto. Thereafter, the Procurement Officer/buyer will alter the procurement action accordingly.

7.2.7 NSPA requirements shall not be divided for the purpose of using less complex procedures or to avoid the requirement being reviewed or processed by a higher approval authority and/or the NSPA Procurement Division.

7.2.8 Initiation of procurement action as a result of Fund Reservation Requests without issuance of a PR or a PO are ruled by the provisions of OI 4300-07 on prior-approval of commitments in the NSPA Administrative Budgets.

7.3 Establishment of a Project

The Procurement staff assigned to a project (i.e. from Principal Procurement Officer to Buyer, as appropriate) are part of the project team under the operational control of Programme Manager. Procurement staff must work closely with other project team members during project initiation and throughout the project lifecycle. They are responsible for the Procurement Plan which will be incorporated in the Project Management Plan and other key procurement documents as defined within the NSPA Project Management process.

7.4 Price & Availability, letter of interest, pre-solicitation conference and RFI

Exceptionally for the purpose of procurement planning or obtaining technical information related to a mature potential project, Price and Availability (P&A), Letter of Interest or conducting a Pre-solicitation Conference, may be pursued.

7.4.1 Requests for Price and Availability

The general NSPA policy is to solicit bids or proposals in respect of requirements only when there is a definite intention to award a contractual instrument. If a P&A is necessary for other reasons, i.e. for procurement planning or information (exploratory) purposes, the Procurement Officer must approve its issue. However, the request must clearly state its purpose. It must also clearly state that neither contract award nor payment for the information solicited is intended by NSPA.

7.4.2 Letter of Interest

It may be necessary to contact industry prior to formal Solicitation (see 8 below). Information may be required for a number of reasons, e.g. to determine the interest of various firms in forthcoming procurements, to examine the scope and details of the materiel and/or services to be purchased, to help evaluate potential plans for facility development or to keep abreast of the technical capabilities of the market place. Contacts with industry may be made either through the use of a Letter of Interest or pre-solicitation conferences.

The Letter of Interest should only solicit an expression of interest or technical information. They shall not be used to solicit detailed costs or prices of a "quotation" nature that could serve as an offer. Letters of Interest shall only be issued by the Procurement Officer.

7.4.3 Pre-Solicitation Conferences

Pre-solicitation conferences permit NSPA personnel to discuss the proposed work with prospective bidders after advertisement where appropriate and to determine whether they are interested in responding to such requirements. The Procurement Officer shall Co-chair such conferences with a programme representative.

8. SOLICITATION

8.1 Competitive Solicitation from Commercial Sources

NSPA shall normally acquire materiel and services applying international competitive bidding rules described in the NSPO Regulations 4200.

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

Military and other governmental sources of NSPO member nations may be solicited in NSPA competitions.

Competitive solicitations shall be carried out using one of the following methods following coordination within the project team and stakeholders, and documented appropriately.

8.1.1 Lowest Price Technically Compliant

A competitive method in which the offers are judged to see if they meet all the requirements expressed in the RFP'. Award is made to the lowest-priced of those offers ruled compliant, either directly or upon approval by a CAC. Note that a stand-still period may apply prior to Contract award (see 10.10).

8.1.2 Reverse Auctions

Reverse Auctions should be considered for service or supply requirements with an estimated value above Financial Level "C" where competition is possible and more than one offer may be expected. Reverse Auctions are most appropriate and effective for commodity items or items defined by a NATO Stock Number, within a competitive market (i.e. for requirements that are precisely defined for direct comparison). The final decision to use a Reverse Auction is taken by the Procurement Officer.

The detailed procedure for Reverse Auctions at NSPA is laid out in NSPA Operating Procedure PP-39.

8.1.3 Best Value

The objective of the Best Value method is to meet customer needs by improving the contract award process through introducing and evaluating several factors relating to the overall value and quality of the offer which could not be included in the Lowest Price Technically Compliant method.

The NSPA Best Value methodology set out below is an adaptation of the Investment Committee procedure and practices for conducting Best Value International Competitive Bidding AC/4-D(2008)0002-REV2 dated 15 July 2015.

8.1.3.1 Texts applicable to Best Value RFPs conducted by NSPA

Provisions of the present Operating Instruction related to the Best Value procedure apply only to RFPs conducted pursuant the NSPO Procurement Regulations 4200.

They do not apply to Best Value International Competitive Biddings conducted pursuant to the Investment Committee rules and procedures AC/4-D/2261 edition 1996 dated 12 January 1996.

8.1.3.2 Using the Best Value Procedure

The application of the Best Value Method to projects above 1.5 times Financial Level "E" will be a Procurement strategy decision made by the relevant Procurement Division Chief in close consultation with the Project Manager, and associated Programme Manager with the aim of meeting customer requirements.

Best Value shall not be the recommended procurement method for standard goods and services of a non-complex and low risk nature (i.e. Commercial Off the Shelf).

8.1.3.3 Conduct of the Best Value RFP Procedure

In the Project Execution Phase, and following publication of an FBO in accordance with 6.2 above, the RFP process will start with the release of the PR.

The Source Identification Section will establish upon request of the Procurement staff assigned to the project, the Source List identifying all the companies registered in the NSPA Source File as having the required capabilities and qualifications.

After finalisation of the Statement of Work and its validation for release, the RFP package is released to the potential bidders identified in the Source List and published openly on NSPA website.

8.1.3.4 Criteria used to evaluate the bids

These criteria are split in three categories:

- Top level criteria: Price (P) and Technical (T) aspects of the bids that will be used to evaluate them;
- Second level technical criteria with associated weighting factors. Have a general description of what is to be evaluated under each second-level technical sub-criteria. They 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...
- Third level technical sub- criteria as applicable depending on the second-level technical criteria if relevant and as proposed by the Project Manager and approved by the Programme Manager or Project Executive (if applicable).

Weighting arrangements can be adjusted between Technical (T) criteria and Price (P) to reflect the expectations and priorities officially presented by the Customer or the funding bodies.

These criteria apply to the requirements as defined in the Statement of Work and/or the RFP.

Only the top-level criteria (T) and (P) will be communicated to the bidders with their relative weight.

8.1.3.5 Conduct of Best Value Bid Evaluation

The detailed method in which NSPA evaluators will conduct their evaluation will not be communicated to the bidders.

The Best Value Bid Evaluation is split in three phases:

- The Technical evaluation of the third level and possible lower level technical sub-criteria;
- The Price evaluation once the technical ratings are received;
- Application of the weighting formula upon completion of the Price Evaluation.

Each evaluator will be briefed on their responsibilities and sign a “Non-Disclosure Agreement” and a “Financial Disclosure Statement and Affidavit of Impartiality” in accordance with the provisions of NSPA Operating Instruction 4400-11 on NSPA Integrity and Ethics Policy.

The method for evaluation will describe as precisely as possible the criteria used and their rating with a short narrative on the elements justifying each rating to be allocated by the evaluators from the lowest to the highest. The purpose is to ensure a qualitative assessment, avoiding subjectivity.

The method of evaluation and criteria to be employed are required to be defined in the Source Selection Plan to be approved by a CAC prior to release of the RFP. Once approved, the method for evaluation and criteria must not be changed.

The evaluation shall be fully documented by the evaluators, consistent with the method approved and the information communicated to the bidders in the RFP.

PHASE 1. Technical Evaluation, Commercial Evaluation

❖ Technical Evaluation

The Technical Evaluation is conducted by a Technical Evaluation Team established under the authority of the Project Manager. It takes into account the project requirements as defined in the Source Selection Plan.

Each member of the Technical Evaluation Team shall work independently from the other members, without advice or assistance from others and evaluate the assigned third-level technical criteria under the supervision of the Project Manager.

The Head of the Technical Evaluation Team compiles the technical evaluation ratings of the members of the Technical Evaluation Team and determines the composite score for each third level technical sub-criterion.

The Head of the Technical Evaluation Team will discuss anomalous scoring with the Technical Evaluator(s) to achieve common understanding or, if required, undertake corrective action.

The composite score will be derived by simple average of the scores assigned by each Technical Evaluator and shall not be further modified or aggregated.

If a bid is evaluated against any third-level Technical sub-criteria as having a score less than 20% of the maximum possible raw and unweighted score for that criterion, the bid may be determined to be Technically Non-Compliant. Then, a full written assessment shall be made to support a determination of non-compliance.

❖ Commercial Evaluation

The Commercial Evaluation will be conducted by the Procurement Evaluation Team led by the Senior Procurement executive assigned to the project.

❖ Right to appeal a declaration of Technical or Commercial non-compliance

Any firm determined to have submitted a Technically or Commercially non-compliant bid will be so notified in accordance with the procedure set forth in paragraph 10.9 below and will have 14 days from the date of receipt of the notification to request a de-briefing by the Agency.

The right to appeal any declaration of non-compliance expressly excludes the right to correct, alter, add to or delete any part of the bid.

NSPA shall not close the Technical and Commercial Evaluation phase until the resolution of the complaint conducted under the terms of paragraph 10.10 below, either amicably or by Board of Arbitration.

The Technical Evaluation Report is to be signed by the Programme Manager.

The Commercial Evaluation Report is to be signed by the Senior Procurement executive supporting the project.

Both reports are submitted for approval to the CAC at the end of the Technical and Commercial Evaluation phase.

PHASE 2. Price Evaluation and Determination of the Price Score

Price quotations will be considered for evaluation only upon approval of the Technical Evaluation Report by the CAC.

The Price evaluation will be carried out by the Procurement Evaluation Team under the supervision of the Senior Procurement executive assigned to the project, assisted as appropriate by subject matter experts.

The provisions of paragraph 9.5 below apply. They are complemented by the following specific provisions:

The Price score shall be determined using the following formula:

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

The fairness and reasonableness of the price will be assessed considering the competitiveness of the prices submitted by the bidders and NSPA market analysis.

A price deemed not reasonable can be maintained as contractually binding if the bidder has a competitive advantage due to prior experience or internal processes that demonstrably reduce costs to the bidder resulting in a realistic offered price.

If a bidder fails to submit a comprehensive and convincing explanation for a price deemed not reasonable, NSPA shall declare the bid non-compliant.

This decision can be the purpose of a complaint under the terms of paragraph 10.10.3 below.

The Price Evaluation Team will submit a Price Evaluation Report to the CAC only after closure of possible claims submitted by the bidders against decision of non-compliance.

PHASE 3. Best Value Final Score and selection of the Successful Bid

Phase opened by the CAC after receipt of the Price Evaluation Report.

Consists in the application of the Technical weight to the raw Technical score to produce the weighted Technical score. Each of the second level – or third level if applicable – Technical criteria will be applied a related weighing factor adding to 100.

Formula: $TS = a\% * TS1 + b\% * TS2 + c\% * TS3 + \dots$
 TS1, TS2, TS3... technical score of each of the authorised 2 level or third level criteria
 a%, b%, c% related weighting factors adding to 100.

The Best Value Final Score (FS) will be the sum of weighted Technical Score (TS) and Price Score (PS).

Formula: $FS = PS * z\% + TS * (1 - z\%) \leq 100$

The bid with the Highest Score shall be the successful bid unless there is a statistical tie.

There is a statistical tie when the Final Score of the highest scoring bids are within one point of each other. The CAC will resolve this statistical tie by awarding the contract to the bid with the Highest Weighted Technical Score.

Notification of award will comply with the provisions of paragraph 10.11 below.

8.1.4 Competition with Negotiation

Exceptionally within the framework of a competition for more complex requirements, the relevant Procurement Division Chief can expressly allow negotiation and iterative bidding

when included in the RFP. Due to the need to maintain equality of treatment among all the bidders, if changes of substance such as quantity, quality, value or time are required, all bidders must be given the opportunity to improve or adapt their bids.

8.1.5 Competitive Dialogue

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

8.1.5.1 Principles

Following publication of an FBO in accordance with 6.2 above, NSPA may pre-qualify FBO respondents to be invited to participate in Competitive Dialogue. The Competitive Dialogue procedure allows a formal, structured dialogue phase with selected participants. It usually consists of a mixture of discussion and further solution development at meetings with individual participants.

The Competitive Dialogue process shall be notified to potential bidders in the form of a letter enclosing a draft RFP. The letter shall set out a timetable setting dates or periods for events such as:

- Submission of Questions for a Bidders Conference;
- Bidders Conference;
- Competitive Dialogue Period;
- Release of Final RFP;
- Offer Binding Period.

The letter should give other useful background and request firms to confirm their intention to participate or not, noting that there will be no payment for costs incurred in taking part. It should notify interested parties of:

- a) Mandatory Terms and Condition — (Heads of Terms only);
- b) Mandatory Key User Requirements (KURs);
- c) Mandatory Other Requirements.

8.1.5.2 Bilateral meetings

All Bilateral Meetings and dialogue or correspondence between NSPA and individual bidders during the Dialogue Period shall be kept confidential.

Following each Bilateral Meeting, each bidder and NSPA shall complete the actions agreed during the meeting.

Each Bilateral Meeting and the preparation and actions after each meeting will form a Bilateral Meeting Cycle. The duration of the bilateral cycle shall be specified and sufficient as required by the extent of the dialogue necessary.

NSPA, acting reasonably, reserves the right to hold further Bilateral Meetings as deemed necessary and require the bidders to attend. All bidders shall be afforded the opportunity of the same amount of time in meetings with NSPA.

Each bidder shall provide a programme setting out the timelines for proposal submission in accordance with the Indicative Timetable. This programme should facilitate consultation between NSPA and the bidder as to the acceptability or not of the bidders' proposals in order to:

- Permit each bidder to discuss the basis of their evolving proposals; and
- Allow discussion of alternatives and commercial issues so that NSPA can, if it so chooses, provide further clarification as to the acceptability of such proposals.

Within three (3) Business Days of each Bilateral Meeting, NSPA will issue to the bidder an agreed record of all discussions at the Bilateral Meeting including any drafting which the parties agreed should be prepared by NSPA. In parallel, the bidder will prepare and issue drafting for which it is responsible.

The information exchanged during the competitive dialogue remains strictly confidential and cannot be further disseminated.

8.1.5.3 Legal and Commercial Dialogue under the Competitive Dialogue procedure

The overall objective of the Legal and Commercial Dialogue is to allow NSPA to discuss with each bidder the material Terms and Conditions for the potential Contract and the Pricing Provisions while strictly respecting the principle of equality of treatment.

The Terms and Conditions shall comprise the relevant Clauses (which may be amended prior to release of the Final RFP to incorporate amendments to the documentation which are not bidder specific) and a schedule of agreed Bidder specific amendments which will reflect issues discussed and agreed with each bidder during the Legal and Commercial Dialogue.

Bidder Dialogue Submission. To facilitate the Legal and Commercial Dialogue, bidders will be required to submit as part of their agenda for each Bilateral Meeting, any specific areas or issues arising from their review of the Draft Terms and Conditions that they wish to discuss.

The issues lists submitted by bidders as part of the agenda for each Bilateral Meeting will form the basis of the Legal and Commercial Dialogue. The NSPA may elect to have separate discussions with each bidder on any such issues in addition to having those discussed at the Bilateral Meetings.

8.1.5.4 Technical (Operational and Management) Dialogue under the Competitive Dialogue procedure

The overall objective of the Technical Dialogue is to allow NSPA to obtain further detail from each bidder in respect of their proposals. Bidders will be required to describe the processes and procedures that they intend to develop and implement.

The Technical Dialogue shall also establish the bidders' approach to delivering the requirement as described in the Draft RFP.

8.1.5.5 Communication Procedure under Competitive Dialogue procedure

All communications by NSPA and by the bidders shall be carried out between the Bidders' Nominated Person and NSPA's Nominated Person.

8.1.5.5.1 Commercially Sensitive – Confidential and NATO Restricted Communications

If the nature of the Project so requires, some of the bidders' communications will be treated by NSPA as commercially sensitive/confidential.

When a bidder wishes NSPA to treat a communication as commercially sensitive/confidential the procedures to be followed are:

- a. Communications of a commercially sensitive/confidential nature shall be issued separately from all other communications;
- b. Commercially sensitive/confidential communications shall be clearly marked "commercially sensitive/confidential"; and
- c. Commercially sensitive/confidential communications may be communicated over Public internet (Domain) however documents shall be sent to the Nominated Person password protected. The Password will be sent to the NSPA / Bidders nominated POCs in a separate referenced e-mail.

NSPA will treat all information submitted and/or discussed during the Dialogue Period in the strictest COMMERCIAL IN CONFIDENCE. NSPA does, however, reserve the right to discuss aspects of the bidders' proposals with customer Nations, and relevant stakeholders. Such discussions between NSPA and the above shall be conducted in the strictest COMMERCIAL IN CONFIDENCE and covered by appropriate non-disclosure agreement.

During the solicitation process, documents marked as NATO Restricted shall be managed between the bidders and NSPA Nominated Representatives using an authorised Courier service.

8.1.5.5.2 Publicity and Public Relations

During the solicitation process, the bidders shall not make any press release or public statement concerning any matters relating to the solicitation process without the prior written approval of NSPA. The bidder shall not use the name, emblem or official seal of NSPA / NSPO or any abbreviation of the name of NSPA / NSPO in connection with its business or otherwise, unless prior authorised in writing by NSPA.

Notwithstanding that NSPA may not have objected to nor rejected a bidder's outline proposals during the Dialogue Period, those proposals shall not be considered to have been approved by NSPA.

8.2 Non-Competitive Solicitation

8.2.1 Sole Source

8.2.1.1 If materiel and/or services are known to be available from only one authorised source (Sole Source), a confirmation by the Chief, Source Identification Section, stating that the source retained for solicitation is the only one known to be available, is required.

8.2.1.2 Requirements considered as Sole Source shall be advertised as Future Business Opportunities.

8.2.1.3 If NSPA registered sources, different from the firm hitherto identified as Sole Source, respond by declaring their capacity and interest in the subsequent competition, and if NSPA considers the request acceptable, then a competition may be run, overturning the Sole Source nature of the requirement.

8.2.1.4 In the absence of response from industry to the advertisement of the Sole Source Future Business Opportunity, a Sole Source RFP shall be issued by NSPA, containing clauses designed around a non-competitive process. The Sole Source RFP shall be published on the NSPA website unless publication is waived in the interests of national security by the relevant Procurement Division Chief on request of the end user Customer, submitted through the Programme Manager.

8.2.1.5 In some cases, a Customer's relevant national technical authorities have conducted a qualification process at national level that determines the Sole Source for their requirement on technical considerations. The current qualification decision signed by the empowered national authority will be obtained by the Programme and used as supporting documentation.

8.2.1.6 Confirmation of the registration of the company and recognition of its Sole Source status for the requirement considered will be sought from the Chief of the Source Identification Section by submitting the official qualification documents established by the recognized national authority.

8.2.1.7 Copies of the official qualification decisions and other relevant documents shall be listed and referenced in the technical evaluation annexed to the CAC Memorandum.

8.2.1.8 The Agency does not accept the results of an RFP conducted by national adjudicating authorities as a justification for a Sole Source.

8.2.1.9 Sole Source procedures justified by national qualifications restricting competition will be the purpose of publication as Future Business Opportunities.

8.2.2 Single Source

8.2.2.1 Requirements below Financial Level "A" are normally considered exempt from competition. If no sources are known, however, competition may be used. Fairness and reasonableness of the price have to be established.

8.2.2.2 Requests for Single Source procurements with an estimated value greater than Financial Level "A" but less than or equal to 4 times Financial Level "A", shall be submitted in writing by the requiring Programme to the responsible Senior Procurement Officer for approval.

In these cases, the justifications are those described in NSPO Procurement Regulations 4200 paragraph 4.8.2:

- Urgency,
- Security,
- Commonality of equipment.

The decision, justification and approval must be maintained on the file and the purpose of an annual report to the Procurement Internal Control Officer.

8.2.2.3 Requests for Single Source procurements with an estimated value in excess of 4 times Financial Level "A", shall be submitted in writing by the requiring Programme to the Competition Advocate, with copy to the Procurement Officer concerned.

8.2.2.4 The approval of the Competition Advocate must be obtained prior to releasing the PR to the Procurement Officer. The Procurement Internal Control Officer shall receive a copy of the Competition Advocate decisions and have access to the log of these decisions.

8.2.2.5 Requests for Single Source procurements valued above 4 times Financial Level "A" shall clearly describe the reasons and justification for the request. Single Source requests triggered by Customer(s) decision to acquire an equipment to be procured from an indicated manufacturer for "commonality of equipment" reason (i.e. the equipment is already in its inventory) will be accompanied by a written declaration of such, signed by the Customer.

8.2.2.6 The Single Source approval decision, if granted by the Competition Advocate, will only be valid for this specific Customer. In case another Customer would want to use the contract (where an Outline Agreement or an e-cat contract is established), a new Single Source request for this new Customer, must be submitted for approval to the Competition Advocate, applying the same procedure.

8.2.2.7 The above described approval process is not required for Single Source procurement in the event of an option exercise or due to named security requirements.

8.2.3 Cost and Price Analysis. Fairness and Reasonableness of the Prices for non-competitive solicitations

The Buyer and/or Procurement Officer shall include a determination of fairness and reasonableness of price, proportionate to the value of the requirement, in making the award. The first reference point should be previous buys, which may include NSPA contracts or other known Government contract prices. A secondary reference point is the price estimation of the PR.

Considering the financial amount at stake, a cost estimation or analysis may be necessary. This should be performed by a Procurement Officer who may rely on National Pricing Authorities for advice.

8.2.4 Emergency Procurement and/ or Low Value Purchase

In cases of Emergency Procurement up to Financial Level "A" and/or Low Value Purchases, where there is no competitive solicitation, the most advantageous, appropriate and reliable source shall be selected, based upon best judgment and past experience.

8.2.5 Pre-award contacts with the suppliers

Pre-award negotiations may be held in exceptional cases and will safeguard the integrity of the procurement process.

8.2.5.1 Written communication

The Senior Procurement Officer will ensure that the communication handled by the buying staff is in the appropriate form and properly written to avoid any misinterpretation or interpretation detrimental to Agency interests on the part of the receiving party. Special

attention has to be paid to communication by emails. These provisions apply also to post contract award written communication.

8.2.5.2 Approval for Release of written correspondence

After the release of an RFP, written documents issued by the Agency can be used to support a pre-award claim of a potential bidder. Correspondence with technical content has to be coordinated with the technical staff of the programme.

Below 2.5 times Financial Level "C", whenever the buying staff considers that double-checking is required, review by the Senior Procurement Officer or Procurement Officer will be sought.

Above 2.5 times Financial Level "C", the information will be systematically reviewed by the Senior Procurement Officer, or Procurement Officer in the latter's absence.

The statement "APPROVED FOR RELEASE BY + name of the Senior Procurement Officer" will be affixed in both cases.

8.2.5.3 Pre-solicitation Conference

Under the conditions of paragraph 3.4.3. above, the participants will be informed that elements exchanged – verbally, or in writing - during this information session, cannot be construed as generating any legal obligation for the Agency.

8.2.5.4 The Bidders' Conferences. Questions and Answers

The Bidders Conference, held after the release of the RFP, should be only organised on a "need-to" basis, for complex procurements. They are to be chaired by the Senior Procurement Officer.

NSPA representatives at Bidders' Conference must avoid casual, spontaneous informal verbal statements throughout the Bidders' Conference. Answers and statements have to be coordinated with the Senior Procurement Officer chairing the Conference.

Questions posed during the Bidders' Conference or otherwise during the Bidding period of an RFP, together with answers to those questions will be transmitted to all firms solicited and posted appropriately on the NSPA web site with the RFP package after review by the Senior Procurement Officer.

8.3 Procurement from US Military Sources (FMS)

8.3.1 Procedures

The procedures below are to be used within NSPA for the establishment and administration of Foreign Military Sales (FMS) Cases with the United States Government.

8.3.1.1 These procedures apply without restrictions for the establishment and administration of FMS Cases except where deviations are expressly authorised by the NSPO Agency Supervisory Board.

8.3.1.2 In accordance with NSPO Procurement Regulations 4200 paragraph 4.7, the acquisition by the NATO Airlift Management Programme of C-17 aircraft and the related support will be executed through FMS cases in accordance with US Security Assistance Management Manual (SAMM) requirements. The provisions of paragraphs 8.3.4.1 to 8.3.4.3 below, do not apply to the NATO Airlift Management Programme.

8.3.2 NSPA FMS Security Cooperation Codes

- K2 - C-130
- K7 - AWACS
- M5 – Weapons (MLRS & PATRIOT)
- N4 - NSPA General
- N7 - HAWK Logistics Management
- W4 – AGS
- W7 – Agent Sales

8.3.3 Definitions

For the definition of the FMS terms used in this Instruction, reference is made to DSCA Manual 5105.38-M Security Assistance Management Manual (SAMM).

Instructions for completion of the Supply Discrepancy Report (SDR), Standard Form (SF) 364 are found in the Defense Logistics Management System (DLMS) Manual, DLM 4000.25-M, Volume 2, Chapter 17

8.3.4 Determination to procure through FMS

As the Agency's primary objective is to promote the use of international competitive bidding procedures to meet Customers' requirements, and the FMS process is strictly limited to the procurement of US-based defense articles and services, the use of FMS by NSPA may be done on an exceptional basis when normal competitive procedures cannot, or do not result in a viable commercial offer.

8.3.4.1 Approval of basic FMS cases will be subject to the procedure that governs the approval of NSPA Sole/Single source procurements.

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

8.3.4.2 Subject to the approval of a Blanket Order FMS case, procurement from US military sources may be made when the extended line item value does not exceed Financial Level "B".

8.3.4.2.1 FMS requisitions (orders issued under Blanket Order cases) with an extended line item value that exceeds Financial Level "B" must be the subject of a commercial solicitation if commercial suppliers of the requirement can be identified.

8.3.4.2.2 In the event that no viable commercial offer(s) is obtained, the requirement may be met under an existing FMS case with the approval of the NSPA Competition Advocate (or the responsible Procurement Officer up to 4 times Financial Level "A").

8.3.4.3 Procurement from USA military sources under a Foreign Military Sales Order I (FMSO I) Cooperative Logistics Supply Support Arrangement (CLSSA) is subject to approval by the Agency Supervisory Board on a case-by-case basis.

8.3.5 Circumstances not requiring competition before a request of approval of a FMS case to the Competition Advocate

While the use of FMS to fulfill Agency requirements is subject to the approval procedures governing limitations to competition under paragraph 8.2 Non-Competitive Solicitation, the following circumstances do not require competition prior to requesting approval of the Competition Advocate or their delegated representative to establish an FMS case:

8.3.5.1 Blanket Order FMS Cases

Established for undefined requirements to provide a category of unclassified, non-Significant Military Equipment (SME) items or services, with defined requirements issued through requisitions only when the need arises. These cases have a specified dollar value and the requisitions, or call-offs, are subject to the competitive procedures defined at 8.1. above.

8.3.5.2 Contractor Logistics Supply Support Arrangement (CLSSA) Foreign Military Sales Order II (FMSO II) FMS Cases

Established for pre-stock and storage of Department of Defense-stocked non-SME items used on a recurring basis.

Similar to Blanket Order FMS Cases, requisitions are issued to replenish spare and repair parts to replenish stock only when the need arises. These cases have a specified dollar value based on forecasted need, and the requisitions, or call-offs, are subject to the competitive procedures defined at 44.1.

8.3.5.3 FMS-Only Designation

Occurs when the required goods or services are only available from US sources and the United States Government has designated the requirement to be procurable through FMS only. This FMS-only designation will be evidenced by the relevant US agency through an official policy document or correspondence from the responsible US Implementing Agency.

8.3.5.4 Sole Source

When the only known source capable of providing the goods or services is a US-based source, and FMS is the only method of procuring from that source.

8.3.6 Lead-Nation Procurement Letters of Offer and Acceptance

Defined in Defense Security Cooperation Agency (DSCA) Policy Memoranda 14-24 and 17-11, the Lead-Nation Procurement Initiative provides up-front, flexible, retransfer

authority among a defined group of participants for the procurement of commonly configured defense articles. Use of this FMS model will be done on a case-by-case basis, in consultation with the NSPA FMS Procurement Representative, DSCA, and the responsible US Implementing Agency. Competition Advocate approval is required.

8.3.7 Agent Sales Initiative

Defined in DSCA Policy Memorandum 18-08, allows NSPA to act as an Agent on behalf of a single or multiple FMS-eligible nations, to procure defense articles and services. Although the DSCA policy does not specify the type of equipment and services that can or cannot be processed through the Agent Sales model, it is understood that it is intended to facilitate multinational procurements and lifecycle support of high value systems or major defense articles. Competition Advocate approval is required.

8.3.7.1 Conditions

Agent Sales can only be initiated when a government official of a nation, with the authority to sign a Letter of Offer and Acceptance (LOA), has designated the Agency to act as its agent for the purpose of procuring defense articles or services through FMS in a formal letter. The nation or nations, defined as Principal, must include the following in the letter:

- A description of the defense articles and or services which NSPA is authorised to procure on behalf of the nation;
- An acknowledgement of the nation's agreement to adhere to the terms and conditions entered into by NSPA on behalf of the nation in the LOA; and
- An acknowledgement and agreement of ultimate financial responsibility for any financial obligations incurred by NSPA on behalf of the nation in the resultant LOA.

This FMS model will only be used on a case -by-case basis, in consultation with the NSPA FMS Procurement Point of Contact (POC), DSCA, and the responsible US Implementing Agency.

8.3.8 Development of FMS requirements

Depending on the nature and complexity of the requirement, delegated FMS representatives of the Programme Manager (PM) and Material Management Center (MMC) may have to engage with relevant US Implementing Agencies to determine if the requirement must be procured through the FMS process, as well as collaborate on the development of the statement of work for the requirements.

The delegated FMS representatives of the PM/ MMC shall coordinate this engagement with the US Implementing Agencies through the NSPA Procurement FMS Section for all defined order requirements

8.3.8.1 Initiation of the procedure

Once the determination has been made to fulfill customer requirements through the FMS process, delegated FMS representatives within the PM/MMC will complete the Form "Request for Foreign Military Sales – Requirements Checklist and Approval", a combined description of requirements and request for approval to use FMS.

The PMs/MMCs will route the Form to the appropriate approval authority (Competition Advocate or Chief of Source File or their delegated representative) for approval, with the Procurement FMS Section in copy.

This applies to the establishment of new FMS cases, amendments or modifications to existing FMS cases, and requests for price and availability data.

8.3.8.2 Processing of the request by the NSPA Procurement FMS Section

Prior to initiating the FMS request with the NSPA Procurement FMS Section, PMs/MMCs shall ensure that FMS requirements are adequately covered by their relevant budgets taking into account the Total Package Approach used in the FMS process, including logistics, engineering, technical, and administrative support costs.

- Preparation of the Letters of Request

The NSPA Procurement FMS Section will prepare Letters of Request (LORs), utilizing the inputs provided by the PMs/MMCs in the required Form. If the requirement qualifies for the Administrative Surcharge Fee Waiver, the Procurement FMS Section will route the LOR to the Office of the United States Representative to NSPA for assignment of an Administrative Fee Waiver number and signature. The Procurement FMS Section will issue the LOR to the relevant US Implementing Agency for action.

Depending on the nature of the requirement, information in addition to the Form may be required in order to prepare a comprehensive, actionable LOR. The Procurement FMS Section will consult DSCA Policy Memoranda, along with the various US Implementing Agencies and weapons systems-specific checklists when developing the LOR.

- Requests for Price and Availability

For new and/or complex requirements, PM/MMCs should consult with the NSPA Procurement FMS Section to discuss the option of obtaining Price and Availability (P&A) data if required for planning purposes.

- Forecasting

PMs/MMCs should attempt to provide forecasts to the Procurement FMS Section for further coordination with the US Implementing Agencies. While not applicable to all requirements, forecasting allows for development of procurement strategies for the US, which can help improve price and delivery schedules. Additionally, efforts should be made to request increases to existing case values factoring in LOA case development timelines.

- Administrative Surcharge Fee Waiver

At a minimum, PMs/MMCs will be requested to provide forecasts of requirements, which may qualify to have the Administrative Surcharge Fee waived. The Procurement FMS Section is responsible for coordinating the forecasts and calculating the distribution of the waiver funds across the Agency. The final distribution of funds is coordinated through the Office of the United States Representative to NSPA and the Life-Cycle Management Directorate for further approval by the US Mission to NATO.

8.3.9 Offer and Acceptance

Upon receipt of the Letter of Offer and Acceptance (LOA), the Procurement FMS Section will initiate the approval process with the relevant PM/MMC (or other NSPA service). The PM/MMC will be responsible for the following:

8.3.9.1 Technical Approval

The PM/MMC will review the LOA in its entirety to ensure technical conformance to the requirement. Exceptions must be immediately communicated to the Procurement FMS Section to request a restatement of the LOA or a Pen and Ink Change, as appropriate.

8.3.9.2 Financial Approval

The PM/MMC will contact its Finance representative to obtain financial review and approval of the LOA and to confirm that sufficient funds are available.

Blanket Order Cases and FMSO II CLSSA Cases only require a prior approval of commitment if and when requisitions are issued against the FMS case or line. However, Defined Order Cases or lines require commitment at time of LOA signature.

Attention should be given to FMS cases containing a combination of both Blanket Order and Defined Order lines in the financial approval. The request for financial approval to the PM/MMC Finance representative financial approval should clearly make this distinction.

- Specific Agent Sales Billing Procedure

The Special Billing Procedure Memorandum of Understanding between the Agency and DSCA does not apply to Agent Sales FMS cases. Therefore, the PM/MMC must coordinate with Finance in order to ensure the initial deposit is submitted at the time of LOA signature, as well as notify Finance of the requirement to observe the payment schedule identified in the LOA.

8.3.9.3 Purchase Request (PR)

The PM/MMC will create the Outline Agreement SAP PR utilizing the line structure included in the LOA. The PR will be provided to the Procurement FMS Section for creation of the FMS case in SAP at the time of LOA signature.

8.3.9.4 Mark-For, Freight Forwarder, and Advice Codes

Basic LOAs require identification of the mark-for and freight forwarder codes at the time of signature. The advice codes are required as part of the SAP OA creation for Blanket Order and FMSO II CLSSA supply cases.

The "Mark For" block of the LOA, which also appears in the Military Standard Requisitioning And Issue Procedures (MILSTRIP) document, permits identification of the internal NSPA Account/Project.

These codes are also important for proper routing of supply status and billing data. Depending upon the priority of the shipment requirement, different NSPA Freight Forwarder

address codes may apply. These will appear in column 47 of the MILSTRIP document. Code 1 = Priority Surface Code 2 = Routine Surface Code 3 = Airlift

8.3.9.5 Customer Price Approval

Customer price approval of the LOA is a pre-requisite of the financial approval and may be provided indirectly through approval of the operational budgets. In all other instances, confirmation of price approval directly from the customer will be provided.

- Price Approval for Lead-Nation FMS Cases

In addition to Customer Price Approvals, lead-nation FMS cases require that each transferee identified in the LOA as a Participating Nation sign the LOA Standard Terms and Conditions for Transferees prior to signature of the LOA.

- Price Approval for Agent Sales FMS Cases

The customer approval process may vary by nation and type of requirement and must be taken into account when obtaining the required approvals. Examples include review and approval at the nation's Ministry of Defense or Congress.

8.3.9.6 Procurement FMS Section CAC Approval of LOAs

A CAC shall not be required for LOAs with a total case value at or below 2.5 times Financial Level "E". The total case value should be considered for basic LOAs and amendments; therefore, amendments resulting in a new total case value at or above 2.5 times Financial Level "E" will require a CAC.

A CAC meeting will be called for LOAs with a total case value at or above 2.5 times Financial Level "E". The Contract Quality Control Officer must review the Terms and Conditions for basic LOAs, but is not required to review the Terms and Conditions for amendments.

For awards at or below 2.5 times Financial Level "E", the approval of the LOA will be done ex-committee, with signatures obtained at the appropriate financial threshold level. The CAC form should contain the signature of the Finance rep in the program. The Procurement FMS Section will distribute the duly signed LOAs to the following recipients, at a minimum:

- The responsible US Implementing Agency Country observing applicable acceptance instructions;
- The assigned DSCA Country Portfolio Director;
- Defense Finance and Accounting Service (DFAS);
- The US Mission to NATO Representatives if an Administrative Fee Surcharge Waiver applies;
- The responsible PM/MMC POCs (or other NSPA service) for information;
- The FMS Finance representative; and
- The NSPA Transportation POC if material will be sent through the NSPA Freight Forwarder.

All FMS cases, regardless of type, are created in SAP as Outline Agreements. Upon approval and signature of the LOA, the Procurement FMS Section will create and release the FMS case in SAP using the PR provided by the PM/MMC.

The PM/MMC will create any required SAP Purchase Orders (POs) for Defined Order cases or Defined Order line items at the time of signature.

The POs for Blanket Order or CLSSA FMS cases or line items are not required at the time of LOA signature and are a responsibility of the PM/MMCs, as described in FMS Case Execution and Administration below.

8.3.9.7 FMS case execution and administration

Once an FMS case is signed and implemented, it enters into the case execution phase, the longest phase of the FMS case life cycle.

The level of FMS case administration will vary depending on case type and nature of requirement. However, the following represent some of the activities involved in case execution: logistics, acquisition, supply, transportation, financial management, case management, case documentation, case amendment or modification, case reconciliation, and case closure.

Roles and responsibilities for general case administration, financial case management, and transportation are outlined below.

8.3.9.8 General Case Administration

Successful FMS case execution requires oversight and coordination of the above activities with the various US Implementing Agencies and responsible program offices.

The administration of FMS cases is a shared responsibility between the Procurement FMS Section and the PM/MMC FMS POCs, with the majority of internal case administration delegated to the PM/MMC FMS POC for routine, standard FMS cases.

The Procurement FMS Section is the interface between NSPA and the US FMS Implementing Agencies, DSCA, and other stakeholders in the FMS process. Generally, if these individuals are involved, the Procurement FMS Section will take the lead. Procurement FMS Section responsibilities include the following:

- Establishing and maintaining a separate file for each FMS Case, which contains all case documentation and relevant correspondence associated with each particular case;
- Initiating requests for changes to LOAs – the Procurement FMS Section is the only group within NSPA authorised to initiate LORs with the US Implementing Agencies. Changes to any aspect of an approved LOA that would result in a modification or amendment to an FMS case must be requested through the Procurement FMS Section;
- Tracking requests for FMS actions from the PM/MMCs;
- Management and tracking of the Administrative Surcharge Fee Waiver funds;
- Resolution of non-standard FMS issues that may arise during case execution, in coordination with the delegated PM/MMC FMS POC.

- Meet with the PMs/MMCs on a periodic basis to ensure active reconciliation of FMS cases. This includes being responsible for the various FMS case reviews required throughout the lifecycle of an FMS case.
- Inform the MMCs and NAMP about FMS policy changes.
- Acting as NSPA's focal point of contact for the US on FMS related matters.

8.3.9.9 Role of the delegated PM/MMC FMS POC

The delegated PM/MMC FMS POC will interface with the customer, PP FMS Section, the Finance and Transportation Divisions, and the relevant US Program Office during case execution. The delegated PM/MMC FMS POC is responsible for:

- Maintaining an auditable FMS contract administration file by FMS Case, containing all relevant correspondence and transaction history. The files will contain records of the following (either electronic or hard copy):
 - availability/status of funds for the FMS Case in question;
 - all requisitions, orders, related documentation and the total value of orders placed, based on the latest known price or the obligated value provided by the U.S.;
 - the total payments for the FMS Case executed by Finance;
 - Supply Discrepancy Reports (SDRs) (receipt or financial) with status indication (e.g. open, closed or other));
 - Write-off actions;
 - Requesting.
- Requesting Procurement FMS Section to modify or cancel the FMS Case if required by the customer or deemed in the interest of NSPA. Extreme emphasis shall be laid on the importance of the financial consequences of such changes or cancellations, as well as on the coherence between availability of funds and value of orders placed or to be placed;
- Obtaining Procurement FMS Section advice on any question relevant to the LOA or FMS policy and process;
- Maintaining adequate financial and logistical control to support active case reconciliation. This includes actively tracking delivery schedules and expenditure of funds. The PM/MMC FMS POCs should actively track funding commitments, requisitions, invoicing and billing documents, and other program documents as material is delivered and services are performed;
- Referring directly to LS (Transportation and Warehousing Division) for resolution of transportation problems;

- Lead-Nation tracking and quarterly reporting – NSPA, as Lead Nation, is responsible for reporting any transfers that occur for the items procured through a Lead-Nation style FMS case. Therefore, it is critical to maintain a tracking mechanism for transfers and report those transfers on a quarterly basis, to the US Department of State Bureau of Political-Military Affairs, Office of Regional Security and Arms Transfers (PM/RSAT).
- Submitting requisitions relevant to FMSO II and Blanket Order Cases. The Chief of the Procurement Division delegates his/her authority for FMS Case requisitioning of Blanket Order and CLSSA FMSO II FMS cases by official Letter of Delegation to a Logistician of the MMC, hereinafter referred to as the Contract Ordering Officer (COO). This delegation is countersigned by the Director of Procurement and the relevant Procurement Officer.

Requisitions must be in accordance with the threshold authorised by the present Operation Instruction otherwise a waiver must be obtained through the CO from the Competition Advocate.

8.3.10 Financial Case Management

Financial case management encompasses all financial activities associated with the FMS case, to include the financial commitments, payment processing, and invoicing and billing. These activities are primarily captured in OP-FF-18 FMS Case Management.

8.3.10.1 Financial Terms and Conditions

Payments on FMS Billing Statements shall be made under observation of financial terms and conditions as agreed by signature for the Case concerned or such other agreements as may be made.

The Special Billing Arrangement Memorandum of Understanding between NSPA and DSCA allows for alternative deposit and quarterly billing procedures to be used for all of NSPA Security Cooperation Codes, with the exception of W7 – Agent Sales. Any FMS case issued under W7 must follow the initial deposit and payment schedule as specified in the LOA.

8.3.10.2 NSPA Finance Division responsibilities

The Financial Division is responsible for:

- The financial recording of payments regarding FMS Cases;
- Execution and accounting for payments regarding FMS Cases;
- Distribution of US Department of Defense Form DD 645 to the PM/MMC and filing of one copy centrally;
- Passing the details of FMS Cases on magnetic support to the Information Systems Division (AO) for processing;
- Controlling and posting of charges of FMS Cases;
- Controlling and administration of the NSPA Holding Account.

8.3.10.3 Payment Processing Procedure

❖ Quarterly Billing Information

Finance receives on a quarterly basis FMS billing information from the DFAS in both hard copy and EDP processable form. All data received concerning FMS Cases will be passed on to the Information Systems Division for processing, while the accompanying Quarterly Billing Statements (QBS DD Form 645) will be processed by Finance as required.

❖ Out-of-Cycle Billing Information

Occasionally, the total value of cases implemented since submission of the previous QBS is substantial and requires additional deposits into NSPAs Trust Fund Account. In those instances, DSCA will notify the Finance FMS and Procurement FMS POCs for further action by a certain suspense date.

8.3.10.4 Identification and Segregation

The Information Systems Division will process the detail of the quarterly billing, sorted by account. An error list will be returned to each MMC, which will perform research and initiate corrective action. This list must be cleared within 90 days.

8.3.10.5 Alert Report

The Information Systems Division will furthermore provide each MMC with an alert report for all FMS Cases for which QBS lines remain uncertified more than 45 days after their initial processing by the Information Systems Division.

NOTE: Amounts, which cannot be matched against deliveries, shall be the subject of a Supply Discrepancy Report (SDR). However, as the Defense Finance and Accounting Service (DFAS) has already deducted the amounts billed from the advance, all billed amounts must be verified

8.3.11 Transportation and Deliveries

With minor exception, the transportation and delivery of FMS material is handled through NSPA's Freight Forwarder. As such, it is important that the PM/MMC FMS POCs involve NSPA Transportation Division in FMS case development and execution, particularly if transportation is anticipated to be non-standard. It is critical address records and transportation plans are maintained and up-to-date to avoid errors or delays in shipments.

8.3.11.1 Assistance Program Address Directory (MAPAD)

The MAPAD contains the addresses for the release of shipments and related documentation by the US Implementing Agencies. The MAPAD includes ship-to addresses for materiel; addresses for receipt of Notices of Availability; addresses for forwarding shipping documentation; addresses for supply and shipment status; and mark-for addresses for in-country destinations or ultimate consignees.

Additions, revisions and deletions to the MAPAD, to cover new Programmes or to reflect organisational changes or the phasing out of a Programme, will be submitted for action to Procurement FMS Section. Such requests shall normally be made not later than 60 days before the desired implementation date.

Transportation Plans (TP) are only required for LOAs containing items designated as Classified, Sensitive, including Controlled Cryptographic Items (CCI), or Arms, Ammunition, & Explosives (Security Risk Categories I - IV).

The TP covers all movement including final receipt by a designated representative of the Agency. Material classified as TOP SECRET must always be transferred via government courier.

Although the US Implementing Agency is responsible for development of the TP, the PM/MMC FMS POC is responsible for providing inputs for development and reviewing the document before acceptance.

A Notice of Availability (NOA) (DD Form 1348-5) is sent by Shipping Activities to the appropriate MAPAD address to notify NSPA or the Freight Forwarder that an item is ready for shipment. The purpose of the NOA is to coordinate release of materiel requiring special receipt, export processing, or special storage procedures, to allow sufficient time to prepare for its receipt and/or processing. Therefore, a NOA is not required for all items.

The Offer Release Code (ORC), which is included in an LOA, identifies how materiel should be released and whether a NOA is required. The ORC is transferred from the LOA into FMS MILSTRIP numbers via SAP FMS OA creation for proper cargo and document release.

8.3.11.2 Status of Deliveries and Shipments

For Defined Order cases, the LOA includes an estimated Months of Service (MOS) for supply line items to provide an estimated timeline for delivery of the items. As execution of the case evolves, the US Implementing Agencies, responsible Program Offices and FMS Case Managers may be able to provide NSPA with more up-to-date information once contracts have been awarded. The PM/MMC FMS POC will be responsible for tracking the estimated delivery dates and obtaining updates from the US, involving Procurement FMS Section if necessary.

8.3.11.3 Tracer action (Blanket Order and FMSO II Cases)

The "AS" shipment status provided by the US Implementing Agencies is regarded as notice of shipment and as such constitutes the reference for receipt suspense control.

The COO shall initiate tracer action by consulting the applicable SAP shipping notification records as soon as shipments are overdue. An item is considered overdue if it has not been received at NSPA or at the customer destination within 4 months after "AS" status.

In case of incomplete or missing data necessary for tracer action, the COO will request relevant data from the concerned US Implementing Agency.

When tracer action has not allowed for locating the material, action as outlined in para 7.6 will apply.

8.3.11.4 Losses in shipments of supplies

- ❖ Between FMS Source of Supply and NSPA Freight Forwarder or other authorised destinations (classified or otherwise)

Transfer of title takes place at the point of delivery designated in the FMS Case. NSPA is responsible for in-transit control and settlement of claims against common carriers. For shipments to the NSPA Freight Forwarder, the point of delivery is normally FOB point of origin.

The FMS Cases are generally negotiated "option code 'A' " meaning that the material will be shipped automatically to the designated Freight Forwarder without prior notice of availability. Shipments are made providing traceable means (i.e. Government Bill of Lading (GBL), insured mail, United Parcel Service, etc.). A duly executed GBL or carriage receipt voucher is considered to be proof of delivery of the material to NSPA.

When tracer action on an overdue shipment reveals that the item has not been manifested by the NSPA Freight Forwarder, the COO will raise a SDR.

The SDR will contain the following statement:

"Research of NSPA Freight Forwarder records has not revealed any trace of delivery to the NSPA Freight Forwarder as reported on shipment status data. Request proof of delivery to NSPA Freight Forwarder be provided within 30 days in the form of a freight document signed on behalf of the NSPA Freight Forwarder. If such proof cannot be provided, request proof of passage of title be provided within 30 days in the form of a duly executed bill of lading, postal voucher or other proof of execution of carriage so that NSPA Freight Forwarder may place a claim on behalf of NSPA against the carrier, in order that NSPA may fulfill its obligations under paragraph 5 of the LOA Standard Terms and Conditions."

If evidence of receipt by the NSPA Freight Forwarder is furnished, the COO will request the NSPA Transportation and Warehousing Division to raise a claim against the NSPA Freight Forwarder for the material lost.

If evidence of shipment is provided, and evidence of receipt by the NSPA Freight Forwarder could not be furnished, the COO will raise an inquiry/claim against the carrier. The NSPA Transportation and Warehousing Division will arrange for any carrier liability payment to be credited to NSPA. The COO will propose any difference to be written-off. In the case of material relative to brokerage requisitions, customers will be billed as foreseen in NAMSO Directive 252 General Provisions for Sales.

If evidence of shipment is not provided by the U.S. Service, the SDR shall be maintained as unresolved and be referred to PP FMS Section for resolution.

- ❖ Between the NSPA Freight Forwarder and the Final Destination

Such losses shall be handled exclusively by the NSPA Transportation and Warehousing Division:

- Between the FMS Source of Supply and Final Destination where Transportation is a U.S. Service Responsibility

- In a limited number of FMS Cases, normally for the supply of classified materiel and explosives, the U.S. Military Sources are fully responsible for transportation to the final destination. In such cases, advance notices from the U.S. Military Sources are provided and will be the basis for initiating tracer actions in the event of non-receipt of materiel. When a tracer action proves negative, the COO will initiate a SDR.
- ❖ Losses in return shipments of repaired items

Normally NSPA is responsible for any such losses. Should such losses occur while the materiel is under control of the NSPA Transportation System; the claim will be referred to the NSPA Transportation and Warehousing Division for resolution. If the items concerned are classified or are of an explosive nature, losses in transportation shall be handled in accordance with the provision above.

8.3.12 Supply Discrepancy Reports (SDRs)

Supply discrepancies result from shortages or overages, improper packing or marking, duplicate shipments, incorrect items, and condition or quality discrepancies, including damage, *prior to release to the carrier by the originating shipper*.

Supply discrepancies also result from documentation and/or billing errors, deficiencies in the performance of services, and instances where no evidence of shipment (signed carrier receipt and shipping document) can be produced by the shipper. The LOA Standard Terms and Conditions detail the Agency's responsibilities for submission of SDRs.

8.3.12.1 Timeframe for SDR Submission

SDRs shall be submitted as soon as the discrepancy is discovered to ensure proper resolution and acceptance by the US Government. For supplies, the SDR must be submitted no later than one year after delivery or after passage of title to the defense articles, whichever comes first.

For services, the SDR must be submitted no later than one year after the end of the scheduled period of performance of the service. In addition, some line items have individual warranty periods with SDR submission timelines that differ from the standard, which must be carefully observed.

Although the PM/MMC FMS POC will be primarily responsible for managing the SDR process, coordination will be required with the Procurement FMS Section. Differences in how the US Implementing Agencies execute their SDR process may require increased involvement from Procurement FMS Section.

8.3.12.2 Actions incumbent to the PM/MMC FMS POC

The PM/MMC FMS POC will:

- Prepare Standard Form (SF) 364 to include any documentation required to support the SDR submission. Discrepancies shall be reported based on the LOA Standard Terms and Conditions and DLA SDR Instructions in order to present:
 - The condition of the item at the time of receipt with respect to its quality, quantity or documentation which affects the serviceability, usability or identification of the item;

- Discrepancies related to invoices (e.g. double billings, erroneous shipments, mathematical errors, etc.).
- Issue the SDR to the relevant US Implementing agencies, ensuring the Procurement FMS Section is on copy for informational purposes;
- Periodically follow-up with the appropriate US Implementing Agency to ensure resolution and closure of the SDR;
- Transfer any SDR older than twenty-four months to Procurement FMS Section for resolution, unless notification of forthcoming credit has been received from the U.S. Services. Transfers should include any correspondence relative to SDRs for further action;
- When a credit has been received against SDRs ,process the corresponding Billing Statement (DD 645);
- Provide an annual report to Procurement FMS Section and the Finance Division (by project/budget) on the value of still outstanding SDRs raised as a result of billing from the U.S.

8.3.12.3 Actions incumbent to the Procurement FMS Section

The Procurement FMS Section will:

- Monitor and control FMS SDR administration, to include maintaining an SDR Master File which contains data required for the tracking, management and control of FMS SDRs;
- Receive SDR status reports from U.S. sources and disseminate the information to the PM/MMC FMS POCs;
- Conduct periodic reconciliation of the SDRs with the PM/MMCs and the relevant US Implementing Agencies;
- Accept files of unresolved SDRs, transferred by the PM/MMCs for further action or provide recommendation of final disposition (e.g. write-off, etc..) to the PM/MMC. A copy of the recommendation shall be sent to the NSPA auditors.

8.3.13 FMS case reviews

FMS case reviews provide an opportunity to obtain the status of a case or program, resolve outstanding issues, and conduct financial reconciliation. There are several categories of reviews, each with a different scope and purpose.

The type, frequency and timing of the reviews are driven by the requirement or program, taking into consideration USG and Agency resources, political visibility or sensitivity of a project, and the size and complexity of a program.

8.3.13.1 Responsibilities of the Procurement FMS Section in the review of FMS cases

The Procurement FMS Section will:

- Chair or co-chair the case review meetings, with assistance and contributions from the PM/MMC FMS POCs;
- Based on the inputs received from the PM/MMCs, will work with the US to determine the type and frequency of these reviews;
- Coordinate the meeting,

- Identify objectives for the review,
- Create the agenda,
- Define post-review deliverables and desired outcomes.

The following general categories of case reviews listed below will be conducted as follows..

8.3.13.2 Security Assistance Management Review/ Financial Management Review (SAMR/FMR)

This type of case review is a high-level, strategic review chaired by DSCA and requires an Agency Flag officer or civilian equivalent co-chair.

Representatives from all major Implementing Agencies attend, along with DFAS, and Security Cooperation Officer (SCO) staff tied to the Agency.

The SAMR/FMR focuses on the programmatic, financial, and logistical aspects of the Agency's FMS cases, and provides a forum to address FMS policies and procedures and other Security Cooperation issues with DSCA.

This type of review can be opened up to include other NATO agencies, if deemed appropriate. DSCA and the Procurement FMS Section will determine the frequency of the review.

8.3.13.3 Service-Level Review

The US Implementing Agency chairs this type of case review, intended to provide a general overview of FMS cases, including outstanding issues and FMS policy and procedures.

8.3.13.4 Program-Level Review

This type of review is chaired by the Implementing Agency and the US Program Management Office and can include contractor personnel. This type of case review covers all aspects of a specific weapon system, program, or case.

The US provides a detailed review of the FMS case lines or contract, to include the status of obligations or contract awards, expenditures, unused funds, and deliveries. This also provides a forum to address SDRs and other discrepancies, and discuss the programming of current and future requirements. Because the focus of this review is on the program execution, the development of the agenda and topics of discussion will be the responsibility of the PM/MMC.

8.3.14 Annual Case Review/Reconciliation

Annual reconciliation meetings will be conducted between the Implementing Agencies and NSPA and can be coupled with the Service-level case review or FMR meetings noted above. A primary objective of the annual reconciliation meetings will be to identify FMS cases and lines to be marked Supply/Services Complete to further initiate case closure.

In order to ensure active reconciliation is being performed, Procurement FMS Section will meet with the PMs/MMCs on a quarterly basis to review the status of FMS cases and determine any required actions concerning the financial and logistical status of the cases.

To support both the internal NSPA and annual reconciliation with the US Implementing Agencies, the PM/MMC will be responsible for providing the following information:

❖ Supply Cases/Lines

A listing by FMS Case of:

- Unbilled work_orders, in FMS Case sequence, giving country or NSPA code, year and maintenance requirement number.
- All outstanding SDRS, including those transferred to Procurement FMS Section for resolution.

❖ Service Cases/Lines

A listing by FMS Case of:

- Unbilled work_orders, in FMS Case sequence, giving country or NSPA code, year and maintenance requirement number.
- All outstanding SDRS, including those transferred to Procurement FMS Section for resolution.

8.3.14.1 An identification of FMS cases that are considered Supply/Service Complete, or for which a Case Closure Certificate has been provided by the US Implementing Agency. This excludes FMSO I Cases.

8.3.14.2 An identification of FMS cases that the PM/MMCs wish to remain open for further use, requests for follow-on FMS cases, and program decision on the use of residual values.

8.3.15 Case reconciliation and closure

The objective of case reconciliation is to ensure proper accounting of financial and logistical actions and allows for prompt resolution of inconsistencies between what was requested and what was delivered/performed.

Both the Procurement FMS Section and delegated PM/MMC FMS POCs are responsible for performing active case reconciliation, starting from case implementation until the case is marked Supply/Services Complete (SSC). Once a case is marked SSC, reconciliation for closure can begin.

8.3.15.1 Financial Data reconciliation

The Finance Division will conduct its own financial reconciliation and ensure that actions are taken to settle outstanding differences between DFAS and NSPA financial records. For

SAMR/FMR meetings, the Finance Division will be responsible to present and report on this data.

The PP FMS Section will be responsible for:

- Gathering the reconciliation inputs from the PMs/MMCs and conduct the annual reconciliation meetings with the various US Implementing Agencies.
- Conduct the reconciliation of Receipts Unmatched to Invoices and SDRs and ensure that actions decided during reconciliations are recorded and taken;
- Negotiate final termination of SDRs that prevent FMS Case close-out.

8.3.15.2 Case closure

Case closure is the final phase of the FMS life cycle and occurs when:

- All lines on a case are identified as SSC, all material was delivered, all services were performed;
- Other requirements of the LOA were satisfied;
- Known financial transactions (including collections) were completed;
- and NSPA receives the final billing statement in the DD Form 645.

It is important to note however, that a closed case may remain open from a DoD accounting perspective due to the possibility that a financial transaction may occur after case closure.

❖ Process

FMS cases are submitted for closure once reconciled according to the Non-Accelerated Case Closure Procedures (non-ACCP).

Once the US determines a case is ready for closure, a Case Closure Certificate is prepared and the Final Billing Statement (DD 645) will be issued. The Agency's case closure process requires coordination between the PM/MMC FMS POCs, the Finance Division, and PP FMS Section as outlined below:

Upon receipt of the Final Billing Statement, the NSPA Finance Division will complete NSPA Form 301 (Transmittal of Final Billing Statement) and forward it to the delegated PM/MMC FMS POC, along with the final billing statement.

Within 60 days after receipt of NSPA Form 301, the PM/MMC will complete PART I of NSPA Form 300 and provide a copy to the Finance Division and Procurement FMS Section. The purpose of NSPA Form 300 is to confirm the relevant FMS case is ready for closure by verifying:

- The statement of the financial situation pertaining to the Case, as reported by the Finance Division;
- All items have been received and/or services performed and billed and that no outstanding discrepancies exist.

If discrepancies exist preventing case closure, the PM/MMC will immediately notify the Procurement FMS Section for further action or resolution by the US Implementing Agency.

❖ Role of the Finance Division

The Finance Division will certify NSPA Form 300 (PART II) if it has been established that:

- No unpaid invoices remain;
- No advances in excess of invoices remain to be recovered; and
- All financial discrepancies on the Case have been settled.

Subsequently the completed NSPA Form 300 shall be sent to Procurement FMS Section for further action.

❖ Role of the Procurement FMS Section

The Procurement FMS Section will:

- Verify that the SDR Master File does not contain any outstanding SDRs regarding the Case under consideration;
- Confirm Final Case Closure Status with the US Implementing Agencies;
- Complete PART III of NSPA Form 300 and distribute to the PM/MMC FMS POC and the Finance Division.

8.3.16 Periodical inspection

The Chiefs of the Procurement Divisions or their respective delegated replacements will perform periodical inspection on FMS Case administration delegated to the COO in accordance with this NSPA Instruction.

8.3.17 FMS case archives

Procurement FMS Section will retain the Case file in archives for 5 years following the date of the final administrative action.

All other records (e.g. SDR files, single line item shipping/receipt documents) will be retained by the PM/MMC in archives for 5 years following the date of the final administrative action.

▪ **Forms used for FMS**

The forms used in the context of FMS are:

- LOA Standard Terms and Conditions;
- Request for Foreign Military Sales – Requirements Checklist and Approval Agent Sales Appointment Letter – Designation of NSPA as Agent;
- Transmittal of Final Billing Statement, NSPA Form 301;
- Contract Records Disposition Notice, NSPA Form 300;
- Abbreviations and Acronyms (Appendix A of DOD 5105.38-M) Selection of Sources for Competitive Solicitation.

8.4 Selection of Sources for Competitive Solicitations

NSPA shall normally select the sources from the NSPA Source File and through publication of FBOs and RFPs on NSPA's website after due registration of new potential sources identified this way.

The number of sources to be solicited shall be reasonable in relation to the total estimated value of the order to be processed. Competitive proposals shall be sought at least from the sources identified in the Source List by the Source Identification Section for this procurement.

8.4.1 In addition to manufacturers, any other responsible potential suppliers should be solicited where it is believed that their proposals may be responsive and competitive. In selecting sources, due consideration shall be given to the following factors:

8.4.1.1 For procurements with an estimated value below Financial Level "C", but above Financial Level "A".

The Source Identification Section is responsible for determining which of the sources registered in the Source File will be contacted for solicitations.

Where the number of such sources makes it possible, solicitations shall in principle be rotated among them so that an equitable balancing of solicitations among all sources over a period will be assured.

The foregoing notwithstanding, if experience shows that a source is consistently among the lowest responsive bidders there should be no restriction placed upon its solicitation.

8.4.1.2 For procurements with an estimated value of Financial Level "C" or above

- all known qualified sources will be solicited;
- an open solicitation will be posted on the NSPA ePortal, when not constrained by security or other appropriate considerations;
- The requirement will be published on NSPA ePortal (unless constrained by security or other considerations), and those firms listed on the 'all known sources' Source List shall be notified by the Buyer/Procurement Officer.

8.4.1.3 The entity issuing the PR or P&A Request may recommend sources to be included in the competitive solicitation.

8.4.1.4 The inclusion of firms in the source list at the written request of a Customer is possible under the following conditions:

- They have past experience with the firms in the domain of the capacity required;
- If not based in a NATO country, these firms are a reference in the industry and are authorised to have activities with NSPA under the terms of article 4.5 of the NSPO Procurement Regulations 4200.

The Agency does not accept directed procurement.

8.4.1.5 If the sources as determined above are not considered adequate to ensure effective competition, the Procurement Officer/Buyer may, prior to initiating competition, request the Deputy Director of Procurement to contact the appropriate authorities of NSPO member nations for information on additional qualified sources.

8.5 Geographical Limits of Procurement

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

Contracts may be let to firms in Nations that are not members of NATO in the cases listed in paragraph 4.5.2 of the NSPO Procurement Regulations 4200.

If a Programme Board or a SP Committee so decides, RFPs may, subject to approval by the Agency Supervisory Board of the pertinent NSPO Regulations containing such provision, be issued only to firms in specified geographical areas, and/or be subject to the application of certain criteria designed to give preference to firms located in such geographical areas. In this instance, the criteria must be clearly stated to permit standing application by NSPA.

A Customer may request that a particular source be included amongst the potential bidders for a requirement. However, NSPA shall not comply with requests, which intend to direct particular procurement contracts to particular sources.

8.6 Requests for Proposals (RFPs)

RFPs shall be designed in such a way to avoid the need for pre-award negotiations so that the resulting offers can, on acceptance by NSPA, constitute the basis for a legally binding contract. They shall be as informative as possible and contain an accurate and detailed description of each item and/or service required and shall also include provisions governing sub-contracting

8.6.1 RFPs for materiel shall stipulate the required delivery dates (when provided by the Customer), that fixed unit prices are to be provided and shall indicate any other condition to be met.

RFP's will contain adequate provisions for liquidated damages based on payment to NSPA of a percentage of the price of materiel and/or services which are not delivered by the contractual delivery date.

Such liquidated damages provisions should normally not be included in RFPs with an estimated value less than 4 times Financial Level "A" (extended line item value for materiel).

8.6.2 RFPs for services shall normally require fixed prices, delivery schedule and other terms for each unit or man-hour and for materiel, other than spare parts, needed for the performance of the services.

8.6.3 The RFP may indicate that prices are subject to increase/decrease in line with the appropriate official indices or may be fixed as a result of the offer and acceptance process. Firm Fixed prices, however, are preferred.

8.6.4 Spare parts required for the performance of services shall normally be furnished by the contractor and only in exceptional cases by NSPA. In either case, the RFP shall specify the

categories of spare parts to be furnished by NSPA and/or by the contractor. When spare parts are to be furnished by the contractor, the RFP shall stipulate the requirement that the contractor must identify all the costs associated with those parts, to include handling, transportation, packing and crating, etc...

8.6.5 RFPs for maintenance/repair services where the contractor will have to provide spare parts to prevent or terminate a work stoppage, shall indicate that NSPA approval is required in advance of purchase. Reimbursement of costs will be as indicated above.

8.6.6 RFPs for materiel shall request delivery in accordance with the INCOTERMS edition 2020 published by the International Chamber of Commerce.

8.6.7 If a subsequent requirement for the materiel and/or services is anticipated, the RFP will request quotations including a scale of prices for increased quantities and/or extended delivery terms. The increased quantities and/or extended delivery terms should be established as options within the contract.

8.6.8 RFPs shall contain detailed information on the methodology and criteria to be used in the commercial and technical evaluation of proposals and the contract award process.

8.6.9 RFPs for simple, non-complex supplies and services with an estimated value not exceeding Financial Level "C", Best Value shall normally not apply.

RFPs covering basic, non-complex supplies and services at a Firm Fixed price not exceeding Financial Level "B" will contain provisions that allow for acceptance of the bidders commercial terms and conditions provided that those commercial Terms and Conditions do not represent undue risk for NSPA.

8.6.10 RFPs for more complex supplies and services, with an estimated value in excess of Financial Level "C", may specify Best Value Award criteria. If Best Value is the chosen approach the RFP must state clearly that award will be made to the proposal considered as Best Value, set out all of the information required of the bidder to allow assessment, and state the weighting factors to be applied to the First Level Criteria: Price and Technical aspects as spelt out in paragraph 8.1.3. above.

8.6.11 RFPs may include a requirement for bidders to provide evidence to demonstrate such characteristics as capability, good standing with other customer's, and adherence to international standards and responsibility.

8.6.12 The RFP shall specify the closing date for the submission of proposals to the Procurement Division central registry (or to the Procurement Officer/Buyer when the Low Value Purchase procedure is used).

8.6.12.1 In fixing this closing date, due consideration shall be given to the urgency of the procurement action, the anticipated date of receipt of the RFP by all addressees and the estimated time required by them to prepare a realistic proposal.

8.6.12.2 In case of change of the bid closing date during an open competition, special care must be taken to ensure that bidders are treated equally and transparency of the procedure be safeguarded. Following steps must be taken expeditiously and the same day;

- All bidders in receipt of a direct solicitation must be immediately informed of the change in date;
- All SAP RFP's must be updated to show the new date;
- The ePortal publication, if applicable for the competition, must be also updated.

8.6.13 The RFP shall inform any addressee that the relevant NSPA General Provisions shall be applicable to any resulting contractual instruments, and shall specify the required duration of the validity of any proposal.

8.6.14 The means to be used for submitting proposals is left to the discretion of the bidder. Proposals may be sent in the post, by private mail service, by telefax, by e-mail or on the Internet. The RFP must clearly indicate these possibilities, with a clear preference for electronic submission. A proposal that is received "incomplete" when the bid closing date is reached, cannot be accepted.

8.6.15 Oral solicitations and oral proposals, except for Low Value Purchases, shall not be utilized.

8.6.16 Changes to proposals shall not be accepted unless submitted in writing by an authorised individual of the bidder and received by NSPA before the bid closing date.

8.6.17 Each RFP will indicate that the NSPA Procurement Operating Instruction is available on the NSPA website.

8.6.18 Currency: the RFP will normally indicate that bidders may quote in any of the currencies of NSPO Member Nations.

8.6.19 Taxes and Duties: The Ottawa Agreement establishes that NSPA is exempt from excise duties and indirect taxes, such as sales taxes and Value Added Tax (VAT). The RFP will identify the exemption status of NSPA as stated by inclusion of Clause 6 of the General Provisions for Fixed - Price Contract for Materiel (Annex I) or of Clause 7 of General Provisions for Fixed – Price contract for Services (Annex II).

8.6.20 Contracting Period: RFPs for services and for materiel Outline Agreements shall specify the anticipated contracting period (i.e. the period in which Purchase Orders can be issued).

8.7 Balancing of Production in the solicitation

RFPs shall contain an explanation of NSPA's "balancing of production" policy as follows:

8.7.1 In the award of contracts exceeding Financial Level "C", NSPA shall implement a "Balancing of Production" policy.

8.7.2 Under this policy, when offers from firms of different NSPO member nations are otherwise similar, contract award is made to that bidder whose country, at the time of award, is worse placed in terms of balance, provided that his offer does not exceed the lowest offer by more than 10% or 20% depending on the relative position of the countries in terms of balancing and provided he agrees to match such lowest offer.

8.7.3 Relative positions of the countries in terms of production balancing are determined using the ratio "R": value of the contracts placed by NSPA in these countries compared with the value of sales to these same countries. In the NSPA scale of balancing, the worst-placed country is that in which this ratio is lowest. Formula of this ratio "R" given in paragraph 9.7 below.

8.8 Claims against unduly restrictive RFPs

8.8.1 RFPs issued for a requirement estimated to exceed Financial Level "E" for goods, services and Works must contain the following wording :

"If your company believes that the wording of this Request for Proposals unduly restricts competition, a formal complaint may be submitted to the Senior Procurement Officer (SPO) with a copy to the Competition Advocate not less than 10 days prior to the bid closing date (or not more than 15 days after the release of the RFP, or not more than five days after the Bidders Conference - at the buyer's discretion and to be clearly identified in the RFP).

8.8.1.1 The formal complaint must detail the specific areas in which it is believed that the requirements of this RFP unduly restrict competition and request that NSPA suspend the procurement process.

8.8.1.2 The Agency will evaluate the complaint and, within 14 days of receipt, respond by:

(1) either amending the RFP at the initiative of the Senior Procurement Officer in consultation with the technical team;

(2) or rejecting the complaint by decision of the Competition Advocate upon consideration of the case after the statement by the Senior Procurement Officer that an amendment of the RFP is impossible and subsequent transmission for ruling. The complaint will be presented to a committee chaired by the Competition Advocate, gathering a member of Procurement staff, a technical subject matter expert and a neutral staff member not involved in the project. The solicitation will be suspended until the decision of the committee is made. The decision of the Agency's Competition Advocate in such cases shall be final.

8.9 Solicitation method

Offers shall be solicited among sources selected in accordance with the requirements of Paragraph 4 above by distributing the RFPs by the safest and most suitable means, which may include:

8.9.1 transmission by e-mail (by attachment or link) or postal service of the complete RFP to the selected source(s);

8.9.2 publication of the complete RFP on the NSPA website (which is mandatory for RFPs for requirements with an estimated extended line item value of Financial Level "C" and above), excluding :

- RFPs for single source requirements;
- classified RFPs where the Customer requests non-publication due to national security regulations;
- RFPs for small arms and light weapons and munitions.

8.9.3 A combination of the above

When RFPs are published on the NSPA website, the selected sources should be directly notified. If the RFP is password protected (in case restricted competition was approved by the Competition Advocate) the notification shall also contain information as to how to log on to the secure area.

8.10 Integrity of the Procurement Process

Special care shall be exercised to preserve the integrity of the procurement process between the time the RFP is issued and the time the contract is awarded. Only the Procurement Officer or the designated buyer shall have contact with the bidders during this period.

The RFP will name the person to be contacted for information and who will represent NSPA for this purpose in coordination with the Project Manager. Other personnel shall deal, as necessary, with prospective contractors only through the Procurement Officer or the designated buyer.

This policy is necessary as any answer to one firm's question during the solicitation period could give that firm a competitive advantage. In the event of an informal inquiry from a bidder being made and additional details or data being provided to that bidder, the same information must be supplied to all firms solicited.

The Procurement Officer shall be responsible to the Project Manager to inform him/her of all communications held with the bidders, especially when these might have an impact on the cost, schedule, scope, and quality of the project.

8.11 Contractor's Responsibility

The responsibility for the performance of the contract arising from the RFP will be defined in each RFP and contract as follows:

"The contractor is solely responsible for the performance of the contract resulting from this Request for Proposals. The fact that NSPA allows the contractor to subcontract or to call upon a third party for the performance of any part of the contract does not relieve the contractor of its responsibility".

8.11.1 Sub-contracting in NSPA Contracts

Unless otherwise specified in the RFP or the Contract, a sub-contract is defined as a Contract established by the Contractor with another contractor (sub-contractor) to provide goods and/or services specifically designed for integration of materiel or services which NSPA is seeking to buy.

Sub-contracting to a NATO country based firm is authorised without limitation and subject to declaration when exceeding 30% of the value creation.

Sub-contracting to a firm in a country, which is not a member of NSPO, but not under Communist control, subject to formal trade embargo to be observed by NATO, is subject to prior approval and cannot exceed 30% of the value creation.

Sub-contracting to a firm in a country under Communist control in Sole Source situation requires prior approval by the Agency Supervisory Board.

Sub-contracting to a firm in a country under Communist control subject to formal trade embargo to be observed by NATO is not allowed.

8.11.2 Supply contract in execution of NSPA Contracts

Contracts for consumables bought by the Contractor from a supplier who remains responsible for their specification and which are handed out piecemeal in general manufacture are not regarded as sub-contracts but as simple supply contracts.

Commodities and raw material supply contracts fall in the same category.

No limitation shall apply to this type of contract for the satisfaction of supply requirements in support of Crisis Response Operations in a non-NATO country, which justify procurement from the local market.

For supply or service contracts awarded to NATO firms, leveraging international supply chains stretching beyond the NATO Nations (e.g. Catering contracts, fuel supply contracts...), the RFP will require formal declaration of the origin of supplies.

In case of a Sole Source situation, supply contracts sourced from companies in countries under Communist control must be authorised by the Agency Supervisory Board prior to award.

Award of supply contracts sourced from countries subject to formal trade embargo to be observed by NATO is prohibited.

8.12 Duration of Contracts

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

8.12.1 When the contracting strategy developed in coordination with the customer leads to the conclusion that it is in its best interest to conclude a contract with a duration longer than 5 years, a request to the Agency Supervisory Board is staffed immediately through the Procurement functional chain with advice of the Competition Advocate for signature by the General Manager.

8.12.2 This procedure does not entail any restriction to the competitive aspect of the initial RFP considered that seeks the submission of offers with a duration longer than 5 years.

9. RECEIPT AND SELECTION OF PROPOSALS

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

9.1 Safeguarding of Proposals

9.1.1 The Procurement Divisions will take appropriate measures to ensure that all incoming proposals are adequately safeguarded, that no persons without special authorisation from the Chiefs of the Procurement Divisions have access to them and that if

they are sent by post they remain unopened until the official opening time. When proposals are sent by other means (e.g. by telefax or e-mail), all necessary steps shall be taken to ensure that they are properly safeguarded.

9.1.2 Only personnel with a "need-to-know" having signed a Non-Disclosure Agreement, and Financial Disclosure Statement and Affidavit of Impartiality, with the necessary options crossed out, shall have access to them. This generally means those personnel directly involved in that specific procurement action.

9.2 Opening of Proposals

9.2.1 After the bid closing date of a competitive solicitation, the proposals received shall be opened and pre-registered by designated staff in Central Procurement.

9.2.2 For competitive RFPs with an estimated value exceeding Financial Level "E", the name of the companies who provided an offer before the closing date will be published on the NSPA e-portal the Monday following said bid closing date.

9.2.2.1 Previous weeks publications will be accessible in an archive folder.

9.2.2.2 This procedure is the purpose of a Procurement Divisions Operating Procedure spelling out the steps of the process, its actors and the forms used.

9.3 Late Proposals

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

9.3.1 If a competitive solicitation is made and the only proposal received is a late proposal from a qualified source and the Chief of the Procurement Division determines that there is no evidence to suggest that a re-solicitation of proposals would produce any different result, the award process may be continued without re-solicitation. In this instance, cost and price analysis may be required to determine the fairness and reasonableness of the price.

9.3.2 For amounts below Financial Level "B", the award process may be continued using the late offer under the authority of the Procurement Officer.

9.4 Unsolicited offers

Unsolicited offers can be a source of valuable information. Under normal circumstances, they will not be considered for award unless they offer a technically viable and reliable alternate solution specifically invited by the terms of the RFP (e.g. functional approach as opposed to descriptive).

Unsolicited offers will be considered in the strict respect of the intellectual property rights attached to the solution proposed.

9.5 Evaluation of Proposals

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

Timely proposals shall be examined and compared by the procurement officer and/or buyer. The entity having issued the PR shall furnish any required technical assistance.

9.5.1 Commercial Evaluation

The Commercial Evaluation has two parts: the Price Evaluation and the Contractual Evaluation. The determination of the commercial compliancy of an offer will be evaluated and/or decided by the Buyer and/or Procurement Officer, depending on the Financial Level of the award.

9.5.1.1 Price Evaluation

Price Evaluation will be conducted in accordance with the evaluation criteria specified in the RFP. The Prices considered for evaluation will be without VAT.

Comparison of the price quotations shall be made in EURO; the exchange rates to be used for the purposes of such price comparison shall be the rates established by the Finance Division for the week of the bid closing date.

If any proposal is judged to be unrealistic or uneconomical, or contains obvious errors, or if a proposal is not based upon exactly the same criteria as set forth in the RFP and, therefore, a realistic comparison cannot be made, the Procurement Officer may (and, where proposals are in excess of Financial Level "C", shall) ask for additional information and clarification.

An effective competition will normally establish that the price of the lowest compliant offer is fair and reasonable. In the absence of an effective competition, the Buyer and/or Procurement Officer shall include a determination of fairness and reasonableness of price in making the award.

The Agency shall maintain, whenever possible, sufficient and adequate documentation for the justification of fair and reasonable pricing of sole source / single source contracts.

9.5.1.2 Contractual Evaluation

Proposals received in reply to an RFP will be contractually evaluated. The evaluation will consider:

- The completeness of the offer;
- The eligibility or non-eligibility status of the company;
- The adherence or deviations to the NSPA Terms and Conditions contained in the RFP;
- Specific provisions of the RFP (e.g. financial standing)

9.5.2 Technical Evaluation

9.5.2.1 Technical staff of the programme offices shall evaluate proposals for their technical merits. Subject matter expert(s) of the relevant customers may also evaluate in support of NSPA Technical Evaluation report to determine whether the proposals are compliant with the requirements specified in the RFP. For requirements exceeding 2.5 times Financial Level "E", the Technical Evaluation Panel must consist of a minimum of two personnel, in addition to the authorising Programme Manager.

9.5.2.2 A proposal is compliant if it meets the requirements specified in the RFP. The modalities of this technical evaluation are spelt out in the OI on Technical Evaluation.

9.5.2.3 When considering the results of the Technical Evaluation submitted by the programme manager or his/her delegate, the Procurement Officer in charge of the conduct of the Procurement action considers, following coordination at technical staff level, that he/she has objective reasons (e.g. flagrant inconsistencies, manifest errors...) to reject its conclusions, he/she will inform immediately the Programme Manager, his/her Branch chief and the relevant Procurement Division Chief.

9.5.2.4 Upon consideration by the Procurement Division Chief, and if required, the Procurement Officer in charge may then request a revised Technical Evaluation.

9.5.3 Unsuccessful RFP

In the event that all proposals received are considered not awardable, the Senior Procurement Officer will declare the RFP unsuccessful and a new solicitation may be performed.

9.6 Selection of Proposals

9.6.1 After evaluation of proposals and except as indicated in paragraph 9.5 below, the winning proposal will be selected applying the award criteria as set out at paragraph 10.

9.6.1.1 When evaluating proposals submitted in response to RFPs specifying award to the lowest-priced technically compliant offer, transportation costs may be taken into consideration in the calculation of lowest cost, if so specified in the RFP award criteria.

9.6.1.2 Proposals submitted in response to RFPs specifying Best Value Award criteria shall be strictly evaluated using the criteria and the weighting factors set out in the RFP. Transportation costs will be taken into consideration if so specified in the RFP award criteria.

9.6.1.3 When evaluating multiple-line item offers to determine the successful bidder, the NSPA administrative costs associated with awarding and administering multiple contracts as opposed to a single contract should be considered. It may be more advantageous, for example, to award one contract for all the line items even though multiple awards would result in lower prices for some line items.

9.6.2 Proposals, which are conditional upon NSPA's agreement to waive one or more of NSPA's General Provisions, or other contractual provisions set out in the RFP, shall not normally be considered for award if another proposal exists which is fully compliant with the RFP. However, if the price is lower and the waiver requested does not confer undue operational, technical or legal risk for the Agency, it may be considered at the decision of the

Procurement Officer. In such cases, the Procurement Officer shall seek the approval of the relevant Procurement Division Chief.

9.7 Balancing of Production Procedure

With a view to balancing the production among countries to the greatest practicable extent, the following criteria shall be applicable when the lowest-priced offer exceeds Financial Level "C" (extended line item value for materiel contracts). When making the financial comparison of offers, account shall be taken of the countries' positions in terms of the categories defined hereafter.

9.7.1 The Procedure, Business Information & Analysis Section of the Procurement Directorate will make the breakdown per country of the total purchases made by the Procurement Divisions during the year from commercial sources and through FMS.

9.7.2 It will collect the breakdown per country of the total NSPA billing issued during the year provided by IS-IT Division and consolidated by the Finance Division (annual Finance Sales by Country Report).

9.7.3 On this basis, it will calculate for each NSPO member country the ratio "R", defining the countries positions in terms of "Industrial Return" computed on a three-year period.

9.7.4 For various reasons (e.g. time slippage between contract and billing), the overall value of contracts let by the Agency may not be equal to the overall value of billing for sales. As a consequence, the ratio "R" is not calculated as a direct comparison between the absolute values of contracts and billing for sales for each country, but on a comparison between the share of each country in the total NSPO contracts value and its share in the total NSPO sales.

9.7.5 The following formula is applied:

$$\text{"R"} = \frac{\text{\% of total contract value let to each NSPO country}}{\text{\% of total sales value to each NSPO country}}$$

9.7.6 The annual report on "Balancing of Production" based on the 3 previous years will be submitted to the Director of Procurement annually, and no later than 15 May each year.

9.7.7 The Director of Procurement will, annually and no later than 15 June, publish this report to all who need to know inside the Agency. This report will become effective on 1 July of the year of its publication (until 30 June of the following year) and will be used by the Procurement Divisions to determine the relative positions of NSPO Member Nations in terms of "balancing of production".

9.7.8 Each country's position in terms of industrial return is determined by using the ratio "R": value of contracts placed in a country / value of sales made to a country. Countries fall into one of three categories, depending on their "R" ratio:

- Well-placed countries: "R" ratio equal to or greater than 0.80;
- Less-well placed countries: "R" ratio equal to or greater than 0.25 and less than 0.80;

- Poorly placed countries: "R" ratio less than 0.25.

9.7.9 Balancing of production does not apply to:

- NATO budget and Investment Committees funded projects;
- Trust Fund funded initiatives involving non-NATO Countries as contributors;
- Non-NATO nations participating in NAC approved operations;
- Best Value RFP's.

9.7.10 The country of the bidder is considered to be its legal residence as established by a NATO-based national authority certifying its eligibility status.

9.7.11 The price to be matched is the price quoted in accordance with the requirements of the RFP.

9.7.12 If the lowest-priced offer comes from a firm located in a well-placed country and if higher offers are submitted by bidders from poorly-placed countries, the Agency shall give such bidders, beginning with the originator of the next priced offer, the opportunity to match the lowest-priced offer provided that the next priced offer does not exceed the lowest one by more than 20%.

9.7.13 If necessary, a second phase shall be initiated in which offers from bidders in less-well-placed countries shall be taken into account. The Agency shall give such bidders, beginning with the originator of the next priced offer, the opportunity to match the lowest-priced offer, if the next priced offer does not exceed the lowest one by more than 10%.

9.7.14 If the lowest-priced offer comes from a less-well-placed country and if higher offers are submitted by bidders from poorly-placed countries, the Agency shall give such bidders, beginning with the originator of the next priced offer, the opportunity to match the lowest offer, provided that the next priced offer does not exceed the lowest one by more than 10%.

9.8 Award of Contracts to Non- NATO Member Nations

Contracts shall not be placed with non-NATO Governments or with firms in non-NATO Member Nations or with firms whose legal residence or main production facilities are located outside NATO Member Nations except where the provisions of paragraph 4.5.2 of the Procurement Regulations 4200 apply.

9.9 Pre-Award Survey

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

Pre-award surveys will normally not be performed for contracts with a value less than Financial Level D or when award to a company well-known to the Agency is intended.

As such, surveys occur in advance of CAC meetings, and must be chaired by a Procurement Officer. This will be the purpose of a report highlighting the findings of the capabilities on site.

9.10 NSPA Customer Price Approval

Unless a nation requested such price approval in the PR, no price approval will be sought for brokerage procurement or low value supply, services or maintenance requirements, below Financial Level “A” (extended line item value) or identified as “high priority” or “urgent” in the PR.

In those cases where a procurement is above Financial Level “A” and price approval was requested by the nation, the customer shall respond to NSPA price approval requests within 28 calendar days of NSPAs Price Approval Request. If no response is received within this period, NSPA will assume that the Customer decided to cancel the requirement.

Customer Price Approval, where required, shall be requested and followed up by programme staff and will not name the company being awarded.

10. AWARD

10.1 Authority

The acceptance of a proposal for which the award has been approved by a CAC will be made by the NSPA Procurement Official having delegated contract signature authority in accordance with paragraphs 2.2 to 2.11 above or as individually sub-delegated by the Chairman of the CAC³.

10.2 Contract Award Committee (CAC)

The CAC shall authorise award of the contract to the winning bidder. A CAC meeting shall not be required for the award of contracts of a value lower than Financial Level C.

10.3 Composition of the CAC

10.3.1 The CAC is responsible for identifying and approving the proposal to be accepted. The CAC shall be composed of NSPA officials holding the position and appropriate level of authority in accordance with a scale related to financial value.

10.3.2 The Chairman of the CAC will invariably be a NSPA Procurement Official. Decisions will be based on unanimity. Should unanimous agreement not be reached during the meeting, then the matter will be referred to the NSPA Procurement Official who is superior to the Chairman of the CAC for final decision.

³ Such sub-delegation may be given where there is no material change to NSPA DMS approved template terms and conditions and no deviations to NSPA General Provisions. The CAC Chairman will also consider the actual commitment value of the award and the associated risk assessment.

10.3.3 . The NSPA Procurement Official with delegated contract signature authority is responsible for the contractual sufficiency of the contractual instruments used to accept the proposal that has been approved for award by the CAC. At his / her discretion, the NSPA Procurement Official may seek the coordination of the CAC, NSPA Legal Advisor, the Contract Quality Control Officer or other NSPA officials to the text and/or content of the contractual instrument in question, particularly for more complex contracts.

10.3.4 Contracts which require a CAC chaired by the Director of Procurement (value above 2.5 times Financial Level "E") shall be submitted to the Contract Quality Control Officer for review prior to the CAC meeting, except when the terms and conditions of the contract were approved by the Contract Quality Control Officer during the RFP review process, and have been accepted without any change by the successful bidder.

For these CACs, the composition of each CAC is as follows:

Amount	CAC Approval	Prior approval of commitment	Signature (acceptance)
>2.5 times Financial Level "E"*	P (Chairman), PP, PP Branch Chief, PO, PMO*	FINCON or representative	SPO/PO up to 100 M€
≤2.5 times Financial Level "E"	PP (Chairman), PP Branch Chief, PO, PMO*	Finance Division Chief or representative	SPO
<1.5 times Financial Level "E"	PP Branch Chief (Chairman), PO, PMO*	Finance Division representative assigned to the Programme	SPO
<2.5 times Financial Level "C"	SPO (Chairman), Buyer, PMO*	Finance Division representative assigned to the Programme	PO
Financial Level "C"	PO approval only	Not required	Buyer
Financial Level "B"	Buyer only	Not required	Buyer

*PMO (Programme Manager Office) representation should be at the appropriate level, depending on the CAC value. For a CAC of a value exceeding 1.5 times Financial Level "E", the Programme Manager personally (or, in his absence, the acting Programme Manager) should represent the Programme. For CACs of a lower value, the MMC Chief or Technical Officer knowledgeable of the project can act as PMO.

In case it is envisaged to increase the total estimated contract value by more than 30%, a new CAC should be convened at the level appropriate to the new total value.

10.4 Responsibility of the CAC

10.4.1 Verifying that the PR, the RFP and the proposal to be authorised for award coincide as regards the service and/or materiel to be purchased, and also any special terms and conditions relating thereto.

10.4.2 Verifying that the award decision is in consonance with the RFP evaluation criteria and any particular requirements of the associated legal framework (e.g. Support Partnership Agreement, Sales Agreement, Programme Directive etc...).

10.4.3 Verifying whether quality assurance requirements, risk and media opportunities have been duly considered.

10.4.4 Verifying whether balancing of production rules have been complied with, if applicable.

10.4.5 Verifying whether customer price approval was required and obtained, if applicable.

10.4.6 Verifying whether customer approval was required for any advance and/or progress payments, if applicable (see paragraphs 9.10 and 13.2.2).

10.4.7 Ascertaining that the proposal to be authorised for award was submitted in due time.

10.4.8 Verifying whether customs duties were taken into consideration in establishing the most economical proposal, if applicable.

10.4.9 Ensuring, in more general terms, that this NSPA Procurement Operating Instruction has been duly complied with regarding the authorisation of award in question.

10.5 Approval of the Award

The decision of the CAC shall be evidenced by a record of the name, date and signature of each member in attendance at the meeting with the following decision, either Agree/Do not Agree/See comments.

Where the CAC decision is Agreed, signature of the CAC form or abstract of proposals shall constitute approval of the award and shall be recorded on the procurement file.

10.6 Refusal of Liquidated Damages Provision

No contract award shall be made to a firm, which refuses to accept a liquidated damages provision without prior written authorisation of the Director of Procurement.

Awards of sole/single source contracts are excepted from this provision; in these cases waiver may be granted at Procurement Officer level and duly documented.

10.7 Awards of Sole/Single Source Contracts and Extensions

Awards of Sole/Single Source contracts, sole bids in competitive solicitations and extensions of any type of contracts will be supported by findings that the prices are fair and reasonable. Such findings shall be justified by the results of price and/or cost analyses (including national price investigation where available) and/or by comparison with previous prices and/or prices for similar contracts, if any.

10.8 Increase of an existing contract value

In case of a request for additional requirements to an existing contract, two alternatives will be considered:

10.8.1 The additional requirement is within the scope of the initial contract (i.e. the material or service to be added is identical - essentially the same in form, fit and function interchangeably with the one already contracted). In this case the additional order can be added to the remaining contract without further approval provided that the value of the addition remains below 30% of the initial contract value.

10.8.2 The value of the addition is in excess of 30%, or the additional requirement is out of the scope (i.e. the material or service to be added is different from the one already contracted, a new line item would need to be added).

In this case, the requirement will be the purpose of a new competition. Single Source is to be sought only if the conditions of paragraph 4.8.2. of the NSPO Procurement Regulations 4200 apply.

10.9 Notification of Unsuccessful Bidders

Unsuccessful bidders shall be informed that their proposal has not been accepted.

10.9.1 The notification to unsuccessful bidders will take the form of a letter signed by the Senior Procurement Officer, Procurement Officer or Buyer according to the value and significance of the proposed award. A standard letter of notification will be sent to bidders up to Financial Level "C".

10.9.2 For contracts exceeding Financial Level "C" and up to 2 times Financial Level "D", a letter will be sent to all unsuccessful bidders informing them that their proposal has not resulted in an award.

10.9.3 For contracts exceeding 2 times Financial Level "D", the unsuccessful bidders will be informed of the reasons why their proposal was not accepted, and the price of the winning bid.

10.9.4 Where a price is not readily identifiable or against a pricing scenario, the calculation of the winning bid and of the unsuccessful bid will be given. Additional information or formal debrief will be provided upon request of an unsuccessful bidder without divulging commercial sensitive or proprietary data from other proposals.

10.9.5 For contracts exceeding Financial Level "E" for supplies, services and civil works, where the lowest bidder was rejected due to the non-compliance with the requirements of the RFP, the bidder will be informed of the possibility to transmit a pre-award claim within 10 calendar days from the non-compliance notification. This period can be shortened at the decision of the relevant Procurement Division Chief. The dispute settlement procedure is described in paragraph 10.10 below.

10.10 Stand-still Procedure, Pre-contract Award Claim and Dispute Resolution

This procedure applies for contracts exceeding Financial Level "E" for supplies of goods, services and works.

10.10.1 Complaints alleging RFP wording is unduly restricting competition

This type of complaint must be submitted by the bidder as detailed in paragraph 8.8. above.

When such a complaint is made, the Agency will endeavour to address it within a 10 working days stand still period within 14 calendar days.

If an amendment of the wording proves itself impossible at the level of the programme conducting the procedure, the complaint will be presented to a committee chaired by the Competition Advocate, gathering a member of Procurement staff, a technical subject matter expert and not involved in the project and a neutral member.

10.10.2 Claim disputing a declaration of technical or commercial non-compliance.

When the Agency intends to reject a lowest offer declared non-compliant with the requirements of the RFP, the letter to the unsuccessful bidder, as detailed in paragraph 10.9 above will be sent prior to the notification of contract to the winning bidder, to allow said unsuccessful bidder the possibility to transmit a pre-award claim within 10 calendar days from the non-compliance notification.

10.10.3 Dispute Resolution Procedure

Following a claim made under the provisions of the paragraphs 10.10.1 and 10.10.2 above, a period not exceeding 14 calendar days (the Amicable Settlement Period) from the date of claim, will be allocated for a debriefing by the NSPA Procurement Officer with the subject matter expert technical evaluators, when so requested by the claimant and for discussions leading to resolution of the claim.

The award of the contract will be suspended until the dispute has been resolved. If at the end of the amicable settlement period no agreement is reached then the case will be submitted to a Board of Arbitration.

10.10.3.1 Board of Arbitration

This Board of Arbitration is chaired by the Competition Advocate and composed of senior contracting and technical staff from the NSPA who are not involved in the disputed procurement action.

The decision of this Board shall be the majority view. It shall be presented in writing to the claimant not later than 10 calendar days after the Board's first meeting. The decision of the Board shall be final, binding and no appeal shall be allowed.

10.11 Notification of contracts award and information

Contract awards with a value of Financial Level C and above shall be published periodically on the pertinent NSPA electronic information system, mentioning the collective number of the RFP, the purpose of the contract, the contractor's name and country of origin and where appropriate the total amount of the contract.

This procedure will not apply to classified contracts or when the customer has stipulated that publication is not wanted.

Once the contract has been awarded, copies (if formally requested and approved by the customer and contractor involved) may be provided to officials of NSPO member nations who are or were directly involved in that procurement under non-disclosure agreement.

11. WITHDRAWAL OF SOLICITATION

If an RFP is cancelled before the bid closing date, official notice shall be given to all sources solicited and where published.

12. TYPES OF CONTRACTUAL INSTRUMENTS

12.1 General considerations

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

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

For contracts covering basic, non-complex supplies and services at a firm fixed price not exceeding Financial Level B, the commercial terms and conditions of the supplier may be accepted in accordance with paragraph 8.6.9 above.

NSPA contracts shall specify the contractor's responsibility for obtaining manufacturing licenses from the holders of proprietary rights and for indemnifying NSPA against claims for infringement of patent rights, etc...

With regard to the materiel to be delivered to NSPA, the Agency will inform the contractor when it is aware of existing proprietary rights.

Contracts shall be written in accordance with good commercial practices, giving due consideration to the peculiarities of the procurement involved and, in general, to the purchase of materiel and/or services for military use; further, the utmost care shall be taken to ensure that the risk involved for NSPA in each contractual action is kept to the minimum.

12.2 Standard Types of Contractual Instruments

Depending upon the specific terms required, the following standard types of contractual instruments shall be utilized exclusively:

12.2.1 Fixed-Price Contracts

Fixed-Price contractual instruments provide for acquisition of materiel and/or services at fixed unit prices. This type of contractual instrument shall be utilized unless another type is more appropriate.

12.2.2 Outline Agreements

Outline agreements establish terms and conditions, specifications, nature and price of deliverables or the method according to which these are determined; they establish the minimum value or quantity of such goods or services.

Outline agreements are implemented by issuing successive call-off purchase orders as required. Each individual purchase order specifies which of the goods or services described in the outline agreement are required, the quantity and price.

12.2.2.1 Where the volume and occurrence of the requirement cannot be assessed in advance, an outline agreement may be concluded without a minimum or a maximum amount. However, the Agency will strive to commit itself at least to a minimum quantity.

12.2.2.2 In the cases described in paragraphs 12.2.2. and 12.2.2.1. above, when on the duly substantiated grounds that it is impossible for a single company to provide all the deliverables in most advantageous conditions or that it is necessary to provide for guaranteed provisioning, outline agreements covering batches of identical deliverables may be concluded with several contractors provided the agreements explicitly set out the conditions under which purchase orders may be issued to the various contractors involved.

12.2.3 Cost Reimbursement Contracts

12.2.3.1 There are many different types of cost reimbursement contracts and fixed-price contracts that contain some cost reimbursement features. Generally, NSPA does not use "cost reimbursement" contracts. NSPA does use, however, contracts with a mixture of fixed price and cost reimbursement features.

12.2.3.2 Cost reimbursement contracts have a reimbursement concept that guarantees the contractor payment of its allowable, allocable and reasonable costs legitimately incurred in the accomplishment of his tasks. The contractor is reimbursed costs up to the stated limitation of liability. Contracts of this type, or any contract with a cost reimbursement feature, require the approval of the relevant Purchasing Branch Chief.

12.2.3.3 Time-and-material and fixed man-hour rate contracts are varieties of cost reimbursement contracts. The contractor is generally entitled to reimbursement for expending his time and effort in performing the specified task. These contracts require considerably more effort to administer.

The method of pricing and administration should be set out in the Procurement plan.

12.2.3.4 All contracts of this type (regardless of their reimbursement methodology) shall have performance objectives or specified end products identified as contract deliverables. Service-type cost reimbursement contracts, wherein NSPA will pay simply for time expended, should be avoided.

In those rare cases where they must be utilized, they must be approved by the Chief of the Procurement Division. Payment terms shall define transparent certification of time expended and materials consumed.

12.2.3.5 For IT consultancy services where the contractor is paid only for time spent, a derogation letter signed by the Information Systems Division Chief, and initialed by the Chief Information Officer, will be issued for the approval by the relevant Purchasing Branch Chief prior to the release of the PR.

12.2.4 Other features of Cost Reimbursement type contracts

12.2.4.1 They require the establishment of a total estimated cost plus fixed fee. The profit may vary in relation to the total allowable costs incurred.

12.2.4.2 The total estimated cost shall not be exceeded by the contractor without the prior written consent of the Procurement Officer.

12.2.4.3 Reimbursement amounts relating to materiel or travel, transportation or other such costs (handling costs for example) can be expressed as a fixed amount or percentage amount to be added to the cost of the material or travel expense. The supplementary costs must be carefully analysed.

This is not to be construed as being a "Cost Plus a Percentage of Cost" type contract, which is prohibited. This type of contract would allow a contractor to be reimbursed all his allowable, allocable and reasonable costs plus a predetermined percentage of those costs as his fee or profit.

12.2.4.4 A services contract may contain a price escalation clause based on the most suitable official price and wage indices, related to the requirement, of the NSPO member nation in whose currency the contract price is expressed.

12.2.5 Ceiling Price Contracts

12.2.5.1 Ceiling Price contractual instruments provide for acquisition of materiel and/or services at ceiling prices, i.e. prices that cannot be exceeded.

12.2.5.2 The ceiling price shall be converted into a Firm Fixed Price following agreement provision of price justifications that were not available at the time of award.

12.2.5.3 Such price justifications shall be furnished by the contractor or by national pricing authorities of the country in which the contractor's facilities are located. In exceptional cases, NSPA may opt to verify prices at the contractor's site.

12.2.5.4 Following price verifications, the ceiling price can only be confirmed or reduced, not augmented.

12.2.6 Basic Contractual Instruments

12.2.6.1 Basic contractual instruments (BCIs) set forth the negotiated contract clauses which shall be applicable to future procurements entered into during the term of the BCI, except for the quantities, the places of delivery of goods or execution of the services, the timelines of execution and the price conditions

12.2.6.2 BCIs are appropriate for use when experience and plans indicate that a substantial number of separate contracts may be entered into with a contractor during the term of the BCI, and substantial recurring negotiating problems exist with a particular contractor.

Additionally, some BCI's are used as a basis for competition among the BCI Holders to allow, upon communication of the elements of its execution the submission of a priced offer.

12.2.6.3 BCIs shall in no way commit NSPA to place future orders or contracts with the contractor.

12.2.6.4 BCIs with Catalogue prices and info-Hub interface.

As a variation of the 'standard' BCI above, a BCI may be established with a Contractor showing agreed item prices and published through the info-hub interface for the information of Customers.

Orders may be placed under the conditions and prices of the BCI if:

- The total order value (extended line item value) is less than Financial Level "B" or;
- The total order value (extended line item value) is less than 4 times Financial Level "A" and Sole Source was confirmed by the source identification section;
- Total order value (extended line item value) is less than 4 times Financial Level "A" and Single Source approval is granted by the Senior Procurement Officer or Competition Advocate.

12.2.7 Assured Access Contracts

This is a type of Contract placed to secure the availability of goods or services – usually transport services - for which a mission cannot be guaranteed but which may be required with great urgency and need, possibly in the face of sudden and vigorous competition in the market-place. Guaranteed availability of assets is secured through the payment of a sum of money purely for the availability, whether called-for or not.

Hence, an Assured Access Contract normally takes the form of an Outline Agreement, which bears one or more lines simply for the availability and other lines to call-off individual missions. The first Call-Off Purchase Order is normally issued with the Outline Agreement itself, or immediately thereafter to assure access to the assets. Individual requirements, if and when they arise, are the subject of further Call-Off Purchase Orders.

12.2.8 Other Types of Contractual Instruments

Other types of contractual instruments may not be utilized except upon authorisation and approval by the Procurement Directorate. Appropriate requests shall be submitted in writing and state in detail the circumstances believed to justify their use.

12.2.9 Letter Contracts

12.2.9.1 A letter contract is a written preliminary contractual instrument that authorises the contractor to begin performance immediately. It is used:

- when NSPA's interest demand that the contractor be given a binding commitment so that work can start immediately; and

- when completing a definitive contract is not possible in time to meet the requirement. However, the letter contract should be as complete and definite as feasible under the circumstances.

12.2.9.2 Letter Contracts shall contain a mutually agreed finalisation schedule to include: the date for the contractor's price or costed proposal, the date for the start of negotiations and a target date to conclude (finalise) all contract terms and conditions. This date shall not be more than 180 days from the date of contract issuance, or, prior to the completion of 40% of the work to be performed, whichever occurs first;

NSPA's maximum liability (the estimated amount necessary to cover the contractor's requirements for funds before finalisation) will not normally exceed 50% of the estimated value of the definitive contract.

12.2.9.3 Letter Contracts require the specific endorsement of the responsible Procurement Division Chief.

12.2.10 Letters of Intent

Letters of Intent, i.e. the written statement of the intent to enter into a formal contract, shall not be used unless approved by the Director of Procurement.

12.2.11 On-line Outline Agreements

12.2.11.1 On-line outline agreements establish the specifications, nature and price of deliverables without establishing the minimum quantity of such goods or services to be supplied. These agreements are made accessible to authorised customers either through a password protected Internet portal or through a dedicated network.

12.2.11.2 Ordering under on-line outline agreements is performed directly by authorised customers by issuing successive call orders as required. Each individual call order specifies which of the goods and/or services described in the agreement are required, the quantity and the delivery terms.

12.2.11.3 All financial liabilities deriving from the implementation of on-line outline agreements are vested in the authorised customer that has issued the call orders.

12.3 Parties to the Contractual Instrument

The parties to the contractual instrument shall be indicated as:

- NATO Support and Procurement Agency (NSPA);
- and a Contractor (full name and address of legal residence).

13. TERMS OF CONTRACTUAL INSTRUMENTS

13.1 Special Terms

13.1.1 The contract shall specify the materiel and/or services to be provided; prices, delivery schedule and any/all other specific terms necessary to accurately reflect the terms

and conditions of the RFP, the contractor's technical proposal, and the results of any subsequent negotiated agreements. Additionally, the responsibility for the performance of the contract will be defined in the contract as stated in paragraph 17.

13.1.2 Contract Prices

Contract prices and payments to be made under contracts should normally be expressed in the currency of the country of the contractor or in the currency of that country in which the main contract performance is to take place. Contracts may be priced in the currency of any NSPO member nation. However, the currency chosen by contractors in which to bid and that used for the resulting contract and payments thereunder must be the same.

13.1.3 Delivery Terms

The special terms shall provide for delivery of materiel by using the INCOTERMS appropriate to the nature of the purchase and the risks inherent to each delivery. Particular attention shall be given to the need of complying with national export licensing arrangements and to ensure that assumption of transportation risks by NSPA take place only when necessary. When dealing with dangerous goods or hazardous material, Procurement Officers and Buyers shall pay particular attention to the selection of the appropriate INCOTERMS and place of delivery.

Provision shall be made for the delivery of equipment incident to services performed at or near contractor's or subcontractor's facilities, as appropriate. Return of the equipment after completion of the services shall be delivery FCA named place, or DAP/DAT named place of destination as appropriate (applicable INCOTERMS).

When dealing with dangerous goods or hazardous material, Procurement Officers and Buyers shall pay particular attention to the selection, in coordination with the requisitioner, of the appropriate INCOTERMS and place of delivery.

13.1.4 Marking and Shipping Instructions

Marking and shipping instructions shall be complete, unambiguous and readily understandable, in order to permit delivery without unnecessary delay.

13.1.5 Bid/Performance Bonds

At the discretion of the Procurement Officer, the contractor may be required to furnish a bond or equivalent security for the purpose of assuring adherence to his / her bid and / or the performance and/or fulfilment of his obligations under either the RFP or the contractual instrument as the case may be. Authority to release this bond or equivalent security is delegated to the Branch chief for transactions above 2.5 Financial Level "C".

13.2 Payment

Provision shall normally be made for payment to the contractor within thirty (30) days after submission of a properly substantiated invoice.

13.2.1 Advance Payments

13.2.1.1 Advance payments are advances of money by NSPA to a contractor before and in anticipation of complete performance under a contract. They are to be liquidated from payments due to the contractor incident to his performance. Since they are not measured by performance, they may be used only when all of the following conditions are met :

- adequate consideration is received from the contractor;
- they are backed-up by a bond or other adequate security⁴;
- they do not exceed 30% of the (estimated) contract costs;

In addition, for nationally funded brokerage requirements, any advance payments must be approved by the Customer.

13.2.1.2 As an exception to 13.2.1.1., an advance payment may be allowed for Commercial off the Shelf (COTS) software subscriptions or related software maintenance, where it is assessed and documented on file that the risk tolerance level of proceeding in such a manner is acceptable. Advance payment may also be allowed for Low Value purchases (up to Financial Level A) for a Sole or Single Source and "cash with order" is the only method to obtain the materiel. The Director of Procurement must approve any deviation to the above.

13.2.2 Progress Payments

Progress payments are made in relation to the percentage of work performed and the sum of costs incurred by the contractor as work progresses under the contract. The combined total of advance and progress payments normally should not exceed 80% of the contract value.

13.2.3 Liquidation of Advance/Progress Payments

Advance and progress payments are recouped by NSPA through proportional deductions from payments that would otherwise be due to the contractor for completed contract items. The liquidation rate shall be included in the contract.

13.3 NSPA furnished property

Any contract entered into between NSPA and another organisation or a contractor, whereby it is contemplated that property shall be entrusted to such organisation or contractor, shall provide for the assumption by that organisation or contractor of full responsibility as accounting Officer and/or custodian and/or administrator, as appropriate, and the related property management responsibility, as more fully described in current directives applicable to Property Accounting.

13.3.1 If, prior to the issuance of an RFP, a customer whose property is to be worked on under the resultant contract has indicated its desire that its property be insured against loss or damage caused by the perils, excepted by the General Provisions the RFP and the Schedule of the contract, shall specifically fix the responsibility for such loss or damage on the Contractor, and therefore require the Contractor to obtain insurance.

13.4 Codification

⁴ Corporate guarantees are considered on a case-by-case basis for acceptability, based on criteria related to the size of the company, its financial stance and its rating.

When applicable, the following codification clauses will be included in contracts:

- the contractor shall furnish the Agency designated by the National Codification Authority of the producing country with engineering drawings, specifications and related documentation conveying item identification data, and also draft item identification if required, as specified by the producing country, for those items designated by NSPA to support the equipment covered by the contract, and for which new item identification must be prepared.
- For items procured by the contractor from a subcontractor or vendor, the contractor shall furnish the name of the actual manufacturer(s) and his/their drawings or part numbers or applicable technical data, plus draft item identification if required. All necessary data and related draft item identification required will be submitted at the earliest practicable date but in all instances not later than forty-five (45) days prior to delivery, unless otherwise specified in the contract.
- For the life of the contract, the contractor shall provide updating information regarding all modifications or design changes made to the equipment or spare parts. When draft item identification is to be furnished, it will be provided in accordance with the guide for the preparation of item identification furnished by the designated agency of the producing country. The contractor will contact the National Codification Authority in the producer country immediately for further particulars.

13.5 General Terms

13.5.1 Every formal contract and letter contract (except those contracts covered by paragraph 12.2.8) shall include the appropriate NSPA General Provisions for Contracts (see Annexes I and II). Deviations from General Provisions shall be indicated specifically in the special provisions.

13.5.2 All deviations from the General Provisions shall be authorised by the Chief of the Procurement Division, except for procurement from Countries under Communist control.

13.6 Acceptance of Contractor's Terms

For contracts covering basic, non-complex supplies and services at a firm fixed price not exceeding Financial Level B, the commercial terms and conditions of the supplier may be accepted, partially or in their entirety, at the discretion of the Procurement Officer. In this case, it is the responsibility of the Procurement Officer to ascertain that the Agency's interests are preserved.

14. LOW VALUE PURCHASES

14.1 Application of Low Value Purchase Procedures

14.1.1 The objective of the simplified purchase procedures described herein is to reduce administrative costs in accomplishing low value purchases and to eliminate costly and time-consuming processes.

14.1.2 For PRs with an estimated value below Financial Level "A" non-competitive procurement is acceptable provided that the prices quoted by this Single Source are considered reasonable. In absence of price history in SAP, two price references must be recorded in the file to ascertain the reasonable character of the price. The price quotation may be obtained by telephone, however, a written offer is preferred which may be directly entered into the RFP to be converted into a purchase order. A written log will be kept in SAP for each transaction above 0.5 times Financial Level "A".

14.1.3 If an RFP is issued, the abbreviated low value provisions will be used, unless any of the following criteria applies, in which case, the standard NSPA terms and conditions modified as appropriate, must be used :

14.1.3.1 where the materiel and/or services to be furnished are classified or where the vendor would require access to classified information;

14.1.3.2 where the procurement requires vendor's adherence to complicated specifications not readily available to the contractor;

14.1.3.3 where the required quality level exceeds the requirements of AQAP 2110, or equivalent, and/or where GQA services are required.

14.1.4 Low value purchases shall not be subject to the provisions of paragraph 8.6 (Request for Proposals) and paragraph 9 (Receipt and Selection of Proposals) of these Operating Instructions unless a decision is made to publish the RFP on the NSPA eportal.

14.2 Restrictions on the Use of Low Value Purchase Procedures

Oral solicitations and oral proposals are not permitted for classified RFPs or if a customer so decides.

15. AVAILABILITY AND COMMITMENT OF BUDGETARY CREDITS

15.1 Availability

Contractual instruments will only be awarded after confirmation that the necessary appropriations to cover the contractual obligations undertaken have been allocated.

15.2 Certification of availability of funds and compliance with financial requirements.

The provisions of the OI 4300-09 and 4300-7 regarding Prior Approval of commitment in the NSPO operational budgets and in the administrative budgets apply.

16. AMENDMENTS TO CONTRACTUAL INSTRUMENTS

16.1 Requirements for Amendment

Contractual instruments may be amended as necessary to reflect changes in requirements or to implement changes of NSPO policy.

When the changes in requirements of contracts with an estimated value above Financial Level E, competitively awarded, represent an increase of scope of more than 30% they are considered as constituting a new requirement and should normally be the purpose of a new RFP.

16.2 Policy

16.2.1 Only Procurement Officers/buyers acting within the scope of their delegated authority are empowered to execute contract modifications on behalf of NSPA. Other NSPA staff shall not:

- execute contract modifications;
- direct or encourage the contractor to perform work that should be the subject of a contract modification.

The latter will constitute unauthorised procurement and may implicate financial liability under the terms of the NFR.

16.2.2 Contract modifications, including changes that could be issued unilaterally, shall be priced before their execution. If a significant cost increase could result from a contract modification and time does not permit negotiation of a price, at least a ceiling or not to exceed price shall be negotiated.

16.3 Types of Contract Amendments

Contract amendments are categorized as follows:

16.3.1 Supplemental Agreements

A supplemental agreement is a bilateral contract modification signed by both the contractor and NSPA. Supplemental agreements are used to:

- Make equitable adjustments resulting from the issuance of change order;
- Definitize letter contracts, and
- Reflect other agreements of the parties modifying the terms of the contract.

16.3.2 Change Orders

A change order is a unilateral contract modification signed only by the Procurement Officer/buyer. Change orders are used to:

- Make administrative changes;
- Make changes authorised by contract clauses, such as exercise of options.

16.4 Processing of Amendments

16.4.1 Amendments shall be expeditiously processed. If the contractor refuses to agree to a supplemental agreement, or if he agrees subject to an increase in price for the materiel and/or services, or subject to an important change of other essential terms of the contractual instrument, the Procurement Officer/buyer shall notify the requisitioner accordingly.

16.4.2 Supplemental agreements and change orders shall be signed by the person having signed the basic contract, or by his replacement.

16.4.3 Authorisation to award a supplemental agreement which changes or extends the scope of the initial contract is covered by the same approval/authorisation process as applies for basic contracts (e.g. authorisation by the appropriate award committee).

17. ADMINISTRATION OF CONTRACTUAL INSTRUMENTS

17.1 General Rules

17.1.1 The administration of a contractual instrument begins with the effective date of a contract award and issuance to the Contractor. It includes certification of invoices with all required supporting documentation, and authorisation to Finance Division for payment through the Central Invoice Management Office.

17.1.2 Contracts will be administered by the Procurement Officer or the Buyer in liaison with the technical Authority, the contractor and, when necessary, with the customer.

17.1.3 Contractual instruments shall, under the responsibility of the Procurement Officer, be administered in such a manner as to ensure that the contractual obligations of the contractor and NSPA are correctly and promptly fulfilled and that NSPA's rights under the terms of the contractual instrument are exercised lawfully and in the best interests of NSPA and its customers.

17.2 Procurement Officer Technical Representative

17.2.1 The Procurement Officer will retain the overall responsibility for the direction of all procurement actions. However, he/she may delegate authority in writing to the Technical authority who becomes Procurement Officer Technical Representative, to perform all or some administration of contracts except such actions that require interpretation of contractual terms or which may have the effect of changing the contractual obligations of the parties.

17.2.2 The delegatee thereupon becomes responsible to the Procurement officer for the accomplishment of his/her delegated authority. A key element of this delegation is to inform the Procurement Officer immediately of any non-compliance of the Contractor with its contractual obligations.

17.2.3 Notwithstanding the appointment of a Procurement Officer Technical Representative, where the technical officer supervising contract delivery becomes aware of or believes that the contractor is failing to meet its contractual obligations, this shall be immediately reported to the Procurement Officer.

17.2.4 The Procurement Officer Technical Representative shall notify the Procurement Officer of the acceptability of goods and services provided under the Contract so that the Procurement Officer may perform the formal acceptance of the Contracted work.

17.3 Surveillance of Contractor Performance

Procurement staff or Logisticians/Technicians having received a delegation of authority charged with Call-Off purchase order administration shall strive to ensure that:

- All contractual obligations are correctly fulfilled by the parties concerned and within the specified time limits;
- The rights of the parties are exercised in conformity with the contractual terms;
- Where applicable, action is taken to ensure that bank guarantees remain valid for the period required to cover advance payments made to the Contractor;
- Quality of materiel and/or services called for has been inspected and verified in compliance with the Quality Control provisions of the contract;
- Shipping instructions are complied with;
- Discrepancies, discovered after delivery, are separately identified and properly settled.

17.3.1 Whenever deemed appropriate by the Procurement Officer, a letter of concern shall be issued to notify the first indication of the contract performance being considered at risk.

17.3.2 When the Procurement Officer believes that the contract performance is seriously endangered, a "cure notice" shall be issued in the form of a letter to the contractor to the effect to inform that the company is running the risk of failing to perform its contractual obligations. Such letter will provide for a certain interval, e.g. 10 days, during which the contractor will make delivery or show to the satisfaction of NSPA that its prospective delinquency will be "cured".

17.3.3 If the contractor has failed to respond to, or has unsatisfactorily responded to a cure notice, the Procurement Officer shall issue a registered "Show Cause" letter to the contractor, with the prior concurrence of the relevant Chief of Procurement Division. This will notify the contractor that it is delinquent in the performance of the contract and request the contractor to furnish within a specified time the reasons why it should not be held to be in default under the terms of the contract.

17.3.4 In the event that a contractor fails to respond to a Show Cause letter within the time specified, or if the facts adduced by the contractor in its timely response to a Show Cause letter to justify its delinquency do not, in fact, justify its delinquency under the terms and conditions of the contract, the Procurement Officer shall so notify the Chief, Procurement Division who will take other appropriate measures deemed necessary, which may include Default action.

17.4 Procedures applicable to the administration of Purchase Orders / Call Off Purchase Orders

17.4.1 An original contract file comprising the contractual instrument and all basic documentation pertaining thereto will be maintained by the Procurement Officer or Buyer. Copies of Contracts will be made available to other parties within NSPA to allow the performance of the responsibilities assigned to them under the contract.

17.4.2 The Procurement Officer, Buyer or Logistician acting in accordance with his/her delegation of authority will:

- Establish and/or update the appropriate contract file;
- Control delivery dates to ensure compliance with the contractual delivery terms;
- Preside over formal meetings between the Agency and the contractors;
- Inform the customer of the contractor's potential termination costs and after having received the customer concurrence, pursue cancellation or termination action as appropriate in the best interest of the Agency;
- Provide formal acceptance of goods and services where required by the Contract. This is particularly key in bigger Contracts including Progress Payments based on the achievement of Key events or Milestones. The support of the Procurement Officer Technical Representative or Programme Technician is integral to this.
- Analyze discrepancies or complaints and obtain corrective actions from the contractor. If satisfaction is not obtained, report to higher authorities;
- In case of actual delinquencies, and after the contractor has failed to answer, or has unsatisfactorily answered prior requests for information as to the status of deliveries, initiate termination for default action;
- Upon receipt of the contractors' invoices make appropriate checks for the purpose of certification prior to payment, including advance/progress payments made. For Purchase Orders made through SAP this is done using the Central Invoice Management Office (CIMO) procedure.

17.5 Liquidated Damages

17.5.1 In principle, no action will be taken for collecting penalties in an amount less than 500,00€ or its equivalent, unless for particular reasons the application of the penalty clause in a lower amount is deemed appropriate.

17.5.2 Procurement Officer / Buyer discretion is allowed in the decision to apply penalties when the items are delivered "a few days late" dependent of the value. In all cases however, penalties will be applied when the delivery is 30 days late or more.

17.5.3 The authority to waive the application of a Liquidated Damages clause is vested in the Chiefs of the Procurement Divisions who delegate this authority for up to Financial Level "B" per case (value of the Liquidated Damages) to their respective Purchasing Branch Chiefs.

17.5.4 The authority delegated by virtue of this paragraph may not be re-delegated. If the Purchasing Branch Chiefs, to whom such authority has been delegated, are prevented from exercising the latter, it shall be exercised by the Procurement Division Chief.

17.6 Quality Assurance

Contracts shall contain appropriate Quality Assurance provisions to ensure that the quality standard of materiel and/or services set by the requirement owners are met.

17.7 Transportation and Insurance

17.7.1 Transportation

Transportation of materiel and equipment shall be effected through shipping agents, common carriers, or military services of NSPO member countries or NSPA subordinate activities, when appropriate. In selecting the means of transportation, i.e. air, ship, rail, truck or postal service, due consideration shall be given to the urgency of the procurement action, costs and other related factors.

17.7.2 Insurance

The transportation arrangements contracted by NSPA includes legal minimum value insurance. If a Customer desires his/her material to be insured for a higher value during transportation, he/she will indicate so when tasking the Agency. The cost of the special insurance contracted will be borne by the Customer.

17.8 Examination and Certification of Invoices

17.8.1 Invoices submitted by the contractor for materiel and/or services shall be examined and verified for compliance with the appropriate provisions of the contractual instrument.

Such examination and verification shall be extended to the supplementary documents which are required to support the invoice, and shall cover the unit and total prices, advance/progress payments, quantities of materiel and/or services specified by the contractual instrument, proof of satisfactory inspection, evidence of delivery, and the fulfilment of such other obligations by the contractor as may be set forth in the contractual instrument.

17.8.2 In services contracts of an administrative or management support nature involving a type of reimbursement scheme where time/effort expended incurs an obligation for NSPA to pay, the contractor's "time cards" shall be examined as partial validation that the claimed effort expressed in man-hours/days, etc. was indeed expended. The contractor shall certify these time records as accurate and complete at the time of submission. The Procurement Officer or Buyer will require these time cards, to be validated by the Procurement Officer Technical Representative (POTR) or other official representative as appropriate, as supporting documents to the certification of invoices for payment.

17.8.3 The examination and verification of invoices shall be performed expeditiously in order to ensure that payment can be made to the contractor promptly, and within the period specified in the discount provisions, if any.

17.8.4 If the result of such examination and verification is not satisfactory, the Procurement Officer/buyer shall take appropriate action to correct the deficiencies.

17.8.5 If the result of such examination and verification is satisfactory, the invoice shall be certified as true and correct according to established procedures and submitted for payment to the appropriate finance activity.

17.8.6 All the steps are generally covered in the central invoice management office procedures.

17.9 Discrepancies

17.9.1 Quantity and Quality

Discrepancies as to quantity or quality between the materiel and/or services invoiced and those actually delivered and which are discovered after payment has been made to the contractor shall require the appropriate corrective actions by the Procurement Officer/buyer under the terms of the contractual instrument at the request of the appropriate activity. If any claim against the contractor results therefrom, the Finance representatives shall be fully informed.

17.9.2 Warranty

Discrepancies of quality or condition discovered after payment has been made may, at the discretion of the Procurement Officer, be settled by application of the contractual Warranty terms and General Provisions. This may be used as grounds for a negative vendor assessment report if the Procurement Officer so decides.

17.10 Termination for Convenience of NSPA

17.10.1 When the requiring entity determines it necessary to terminate for the convenience of NSPA an order for materiel and/or services, immediate notification shall be provided to the responsible Procurement Officer. The Procurement Officer shall take such actions as are necessary and appropriate under the terms of the contractual instrument to effect settlement at the lowest possible cost.

17.10.2 Termination action will need to be approved at the level of the originating CAC or abstract signatories.

17.11 Closure of the contract

A Contract Closure occurs when a contract has met all its terms and all administrative actions have been completed, all disputes settled, and final payment has been made.

It is the purpose of a report in the ERP System.

A contract file shall not be closed if:

- (1) The contract is in litigation;
- (2) In the case of a termination, all termination actions have not been completed;
- (3) Liquidation of advance payments has not been verified as complete by the Finance Division.

18. DEFAULT BY THE CONTRACTOR

18.1 Non fulfilment of the contractor's obligations

If the contractor does not fulfil his/her obligations according to the terms of the contractual instrument (e.g. delivery schedule, service standard, date, quantity and quality), the Procurement Officer shall take such action as he deems appropriate within the terms of the contractual instrument. In such cases, the Procurement Officer shall first exert his/her best efforts to arrive at an amicable solution of the difficulty.

18.2 Termination for Default

If there is a failure to arrive at an amicable solution, the Procurement Officer will follow the procedures of paragraph 17.3 to terminate the contractual instrument for default by the contractor, invoking the appropriate provisions of the NSPA General Provisions for Contracts.

19. DISPUTE RESOLUTION

19.1 Settlement

If during the performance under a contractual instrument, any disagreement with the contractor arises, the Procurement Officer shall attempt to settle the disagreement.

19.2 Preliminary steps to Arbitration

If the Procurement Officer anticipates that a dispute may arise within the meaning of the appropriate disputes clause of the NSPA general provisions for contracts, or if the contractor desires to resort to arbitration, the procurement officer shall immediately submit a detailed written report through his/her Purchasing Branch Chief, Procurement Division Chief and the Procurement Directorate for the Legal Advisor's attention, accompanied by complete documentation related to the dispute.

19.3 Arbitration procedure

If the efforts to amicably settle the disagreement fail, and if the disagreement can be settled only by arbitration under the "disputes" clause the responsible Senior Procurement Officer will submit a report to the relevant Procurement Division Chief.

This report shall be coordinated with the Programme Manager who will be made aware of the potential costs incurred in case of arbitration and the potential liabilities associated to the case. It set forth a summary of the facts of the disagreement, draw conclusions and proposes to the Chief of the Procurement Division that the provisions of the "disputes" clause be implemented.

20. ETHICS AND STANDARDS OF BEHAVIOUR

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

20.1 Standard of Conduct

It is of the utmost importance to the mission entrusted to NSPA that all personnel who may be exposed to procurement matters maintain unquestionable integrity and impartiality and avoid strictly any conflict of interest or even the appearance of a conflict of interest in NSPA contractor relationships.

The application of this policy concerns not only NSPA procurement personnel but all NSPA personnel.

Non NSPA NATO personnel that have access or knowledge of NSPA procurement sensitive and non-releasable material that would provide contractors with internal information about their competitors remain bound by the relevant NATO policies and directives, including the NATO Code of Conduct and will be invited to sign a Non-Disclosure Agreement.

20.2 Favours

20.2.1 Provisions of OI 4400-11 on Integrity and Ethics apply.

As a general rule, no NSPA staff member may solicit or accept, directly or indirectly, any favour from anyone who has or is seeking to obtain NSPA business, or has interests that may be substantially affected by the performance or non-performance of the staff members' official duties.

20.3 Samples from Industry

20.3.1 It may be necessary to request industry to provide production samples for testing and quality evaluation prior to award of a contract or authorising shipment. In such cases, the bidding instructions and where applicable, contract, must contain provisions regarding the cost and disposition of the samples.

20.3.2 In the event samples are not subject to destructive testing and/or are not to be returned to the source of supply and exceed a collective value of 30 EUR, it must be reported to the NSPA Competition Advocate through line management using the appropriate form within OI 4400-11.

Peter DOHMEN
General Manager

ANNEX I - GENERAL PROVISIONS FOR FIXED-PRICE CONTRACTS**(MATERIEL)****1. Clause I - DEFINITIONS**

As used throughout this contract, the following terms shall have the meaning set forth below:

The term "NSPA" means "NATO Support and Procurement Agency", L - 8302 Capellen, Grand-Duchy of Luxembourg.

All correspondence and contacts concerning contracts for materiel shall be with the Procurement Officer/Buyer unless otherwise directed.

The term "NSPO Member Nation" means a member nation of the NATO Support and Procurement Organisation (NSPO).

The term "Customer Country" means that particular NSPO Member Nation for which NSPA is obtaining the materiel called for under this contract, or a part thereof.

The term "Contractor" means the party who has entered into this contract with NSPA.

The term "Contract" means the contractual instrument to which these General Provisions apply.

The term "Subcontract" means, except as otherwise provided in this contract, any agreement, contract or order made by the Contractor with any other party in fulfilment of any part of this contract, and any agreement, contract or subcontract or order thereunder.

2. Clause 2 – CHANGES

2.1 Except as otherwise provided in this contract, NSPA may at any time within the general scope of this contract, by a written order make changes in any one or more of the following:

2.1.1 stock numbers, part numbers or descriptions, if erroneous, or if a superseding part is desired by NSPA;

2.1.2 marking, method of shipment or packing;

2.1.3 place of delivery, and;

2.1.4 place of inspection and acceptance.

2.2 If any such change causes an increase or decrease in the cost of, or the time required for, the performance of this contract or of any part of the work under this contract, whether changed or not changed by any such order, an equitable adjustment shall be made

and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this Clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change, provided, however, that NSPA, if it decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be considered a dispute within the meaning of the Clause entitled "Disputes" in these General Provisions. Pending arbitration the Contractor shall proceed with the contract as changed, without delay.

2.3 Where the cost of property made obsolete or excess as a result of a change is included in the Contractor's claim for adjustment, NSPA shall have the right to prescribe the manner of disposition of such property.

2.4 Any other change in the terms of this contract, including but not limited to, changes in price, quantity, delivery schedules, or performance schedules, may be made only by agreement in writing executed by both parties.

3. Clause 3 – ASSIGNMENT

3.1 Except as otherwise provided in this contract, this contract shall not be assignable by the Contractor or operation of law without the prior approval of NSPA in writing. No such assignment shall become effective until the assignee has received written approval from NSPA. Any request for such approval shall be accompanied by a true copy of the intended instrument of assignment. NSPA will not unreasonably withhold any such approval of assignment.

3.2 NSPA shall have the right to assign in part or in full to another NATO Subsidiary Body, NATO Agency or any other entity acting on behalf of NATO the rights, obligations, title and interest in and to this Contract. Such assignment will not entitle the contractor to any additional payments or any other consideration. NSPA will notify such assignment in writing to the Contractor.

4. Clause 4 - PATENT INDEMNITY

Except as otherwise provided in this contract, the Contractor agrees to assume all liability for the infringement, if any, of patents in force in the countries where the items will be manufactured, under this contract and in other countries where the patents are in force; and will be responsible for obtaining any patent licenses necessary for the performance of this contract and for making any other arrangements required to protect NSPA from any liability for patent infringement in said countries. The Contractor will notify NSPA of any claims of which it has knowledge, or may be notified, of patent infringement pertaining thereto.

5. Clause 5 - SECURITY

If any plans, specifications or other similar documents relating to the contract or the performance of same are marked "Cosmic Top Secret", "NATO Secret", "NATO Confidential", or "NATO Restricted", the Contractor shall safeguard NATO security by:

- ensuring that no such document is accessible to any person not entitled to knowledge of such document;
- complying with the national security regulations currently in force in its country;
- complying with any special NATO or NSPA security Operating Instructions which may be supplied by NSPA.

6. Clause 6 - TAXES AND DUTIES

6.1. NSPA, as a subsidiary body of NATO, is, by application of the Agreement on the status of the North Atlantic Treaty Organization, National Representatives and International Staff signed in Ottawa on 20 September 1951 (the Ottawa Agreement), exempt from all taxes and duties, including taxes on the sale of movable and immovable property, which form part of the price such as VAT, in relation to purchases made for the official use of NATO.

6.2. Where applicable, the Contractor shall invoice NSPA without VAT in consideration of any applicable exemption, including the exemption from indirect taxes under the Ottawa Agreement. The Contractor may request NSPA to provide an official exemption certificate to confirm that the exemption provided for in the Ottawa Agreement is applicable.

6.3. NSPA possesses a VAT number issued by the Government of Luxembourg, which is LU 15413172.

6.4. Where no exemption under the Ottawa Agreement is applicable, the Contractor shall use the NSPA VAT number to issue an invoice exclusive of VAT. Where the intracommunity triangular regime applies, the Contractor may request from NSPA the VAT number of the final beneficiary of the goods provided by the Contractor.

6.5. In cases where paragraphs 6.2 and 6.4 do not apply, the VAT will be charged by the Contractor as identified in its proposal and shall be paid by NSPA. Failure of the Contractor to have identified in its proposal the applicable taxes or duties, or correct amount of such taxes or duties, may result in the Contractor being liable for the payment of such taxes or duties.

6.6. If as a result of a change to this Contract in accordance with Clause 2 or in legislation implemented after the effective date of this Contract, the Contractor is compelled to pay any readily identifiable tax or duty in relation to this Contract, it will indicate such tax or duty as a separate item of cost on its invoice(s). Any such tax or duty shall be fully identified by reference to the governmental law or regulation pursuant to which such tax or duty is enforced.

6.7. The Contractor shall not be responsible for differences between the amount of VAT specified or determinable in the Contract and the amount of VAT claimed by fiscal authorities if such difference is due to unforeseen legislative amendments or to erroneous information provided by NSPA.

7. Clause 7 - SPECIAL AREAS

7.1 Except as otherwise provided in this contract, the Contractor shall not, in the performance of this contract, subcontract with firms located in countries which are:

7.1.1 subject to a formal trade embargo to be observed by NATO;

7.1.2 known to disregard international trade conventions in respect of copyright;

7.1.3 under communist control:

- China (PRC)
- Cuba
- Laos
- North Korea
- Vietnam.

8. Clause 8 – WARRANTY

8.1 Except as otherwise provided in this contract, the items called for by this contract shall be unused and in new condition, of the latest production, and conform to the latest applicable specifications, drawings, and other descriptions, if any, of appropriate military and/or civilian agencies, and, if any, of the Contractor and shall be free from defects in material, design and/or workmanship for a period of two years.

8.2 The provisions of this clause are equally applicable to any item replaced under warranty.

8.3 The warranty period shall be extended by a period equal to the time taken by the Contractor to repair or replace the item under warranty. This warranty is only applicable insofar as NSPA shall have complied with such conditions of storage, preservation, removal from storage, use and operation, and maintenance of the item as have been reasonably recommended by the Contractor.

8.4 In the event that all or any of the defects enumerated in paragraph 8.1 shall be confirmed in respect of an item covered by the warranty, whenever discovered, the Contractor shall at its own expense, including all transportation costs associated with the warranty claim. Replace or correct the item, or lots of such item, which is/are defective in material or workmanship or otherwise not in conformity with the requirements of this contract.

8.5 Alternatively, the Contractor shall, if NSPA so wishes, credit or reimburse it with the value of the item at the purchase price paid by NSPA, plus any costs incurred by it for the delivery of the defective item and its return to the Contractor.

8.6 Within thirty days of the receipt of a warranty claim, or as otherwise agreed, on the item in respect of which the claim is made, the Contractor shall assess the validity of the claim. The repaired or replaced item shall be sent to NSPA with the minimum of delay and in any case not later than six weeks after receipt of the defective item, or as otherwise agreed. In the event that the Contractor shall not have disputed the validity of the claim within the said thirty days, the claim shall be considered as accepted by the Contractor.

8.7 NSPA shall have the right, without invalidating the warranty, to repair a defective item in accordance with the overhaul manual or other written instructions of the Contractor.

This right shall not prejudice the possibility on the part of the Contractor to dispute the validity of the claim under warranty. To this end, all reasonable facilities shall be granted to the Contractor or his / her representatives.

8.8 The Contractor expressly authorises that NSPA may offer the whole or part of these warranty conditions to third parties with the intent that such third parties and the Contractor shall be bound thereby as if both were parties to a contract made between them in which this warranty were expressly set forth.

9. Clause 9 - DEFAULT

If the Contractor fails to deliver the materiel within the time specified, formally seeks protection from bankruptcy, becomes bankrupt, or otherwise fails to comply with his / her obligations under this contract, NSPA may by written Notice of Default to the Contractor terminate the whole or any part of this contract at no cost to NSPA. Thereafter, NSPA may procure or otherwise obtain the items so terminated, and the Contractor shall be liable for any damages and/or extra costs incurred by NSPA and/or its customer(s) as a direct consequence of the Contractor's failure to comply with his / her obligations under this contract, unless Contractor's failure to perform is due to causes beyond his / her control and without his / her fault or negligence. The Contractor shall continue to perform under this contract to the extent not terminated hereunder.

10. Clause 10 - TERMINATION FOR CONVENIENCE OF NSPA

In the event NSPA determines that an item, or items, ordered is (are) no longer required, the Contractor undertakes to use its best endeavours to cancel the supply of such item, or items, on terms as favourable to NSPA as can be granted or obtained, as more fully set forth in this contract.

11. Clause 11 – DISPUTES

11.1 Any dispute arising out of this contract shall be settled by arbitration.

11.2 The party instituting the arbitration proceedings shall advise the other party by registered letter, with official notice of delivery, of his/her desire to have recourse to arbitration. Within a period of thirty days from the date of receipt of this letter, the parties shall jointly appoint an arbitrator. In the event of failure to appoint an arbitrator, the dispute or disputes shall be submitted to an Arbitration Tribunal consisting of three arbitrators, one being appointed by NSPA, another by the other contracting party, and the third, who shall act as President of the Tribunal, by these two arbitrators. Should one of the parties fail to appoint an arbitrator during the fifteen days following the expiration of the first period of thirty days, or should the two arbitrators be unable to agree on the choice of the third member of the Arbitration Tribunal, within thirty days following the expiration of the said first period, the appointment shall be made, within twenty-one days, at the request of the party instituting the proceeding, by the Secretary General of the Permanent Court of Arbitration in the Hague.

11.3 Regardless of the procedure concerning the appointment of this Arbitration Tribunal, the third arbitrator will have to be of a nationality different from the nationality of the other two members of the Tribunal.

11.4 Any arbitrator must be of the nationality of any of the member nations of NATO and shall be bound by the rules of security in force within NATO.

11.5 Any person appearing before the Arbitration Tribunal in the capacity of an expert witness shall, if he / she is of the nationality of one of the member nations of NATO, be bound by the rules of security in force within NATO, if he / she is of another nationality, no NATO classified documents or information shall be communicated to him.

11.6 An arbitrator who, for any reason whatsoever, ceases to act as an arbitrator shall be replaced under the procedure laid down in the first paragraph of this article.

11.7 The Arbitration Tribunal will take its decisions by a majority vote. It shall decide where it will meet and, unless it decides otherwise, shall follow the arbitration procedures of the International Chamber of Commerce in force at the date of the signature of the present contract.

11.8 The awards of the arbitrator or of the Arbitration Tribunal shall be final and there shall be no right of appeal or recourse of any kind. These awards shall determine the apportionment of the arbitration expenses.

12. Clause 12 - DISCREPANT SHIPMENTS

12.1 The Contractor recognizes that the materiel of this contract has been ordered by NSPA for the purpose of eventual delivery by NSPA to one or more of the NSPA customers. For this reason the Contractor agrees that where shipments of materiel susceptible to complete and immediate inspection at the place and time of delivery are concerned, submission by NSPA of claims to it in the form of Discrepancy Reports relating to (a) overages, (b) shortages, (c) condition, (d) misidentification and, (e) damages will not be protested solely on the basis of failure of timely notification if they are submitted within twelve (12) months of the date of delivery to NSPA of the said materiel. However, where sealed shipments are concerned, i.e. shipments of materiel which because of their nature must remain in sealed containers until required for use, the Contractor agrees not to protest such Discrepancy Reports solely on the basis of failure of timely submission if submitted within eighteen (18) months of the date of delivery to NSPA of the said materiel. This provision shall in no way be interpreted so as to modify in any way any guaranty or warranty of any type concerning the said materiel and given by the Contractor elsewhere in this contract or applicable to identical materiel in the normal course of the Contractor's sales to other customers.

12.2 The submission of Discrepancy Reports by NSPA to the Contractor under the provisions of this clause requires the Contractor to investigate such Discrepancy Reports if submitted within the above-mentioned time limits, but does not imply that the Contractor will accept responsibility for them.

13. Clause 13 - GOVERNING LAW

Except as otherwise provided in this contract, this contract shall be governed, interpreted and construed in accordance with French law and such law shall govern in the event of arbitration.

14. Clause 14 - EXAMINATION OF RECORDS

14.1 This clause is applicable to this contract only:

14.1.1 if the price, or any of the prices, to be paid for the materiel to be furnished hereunder is/are other than (a) firm fixed price(s); or

14.1.2 if this contract is terminated by NSPA, in whole or in part, and the Contractor submits a termination claim as a result thereof; or

14.1.3 in the event a dispute arises between the parties and arbitration proceedings are instituted pursuant to the clause of this contract entitled "Disputes".

14.2 The Contractor agrees that NSPA or any of its duly authorised representatives shall, until the expiration of three (3) years after final payment under this contract, have access to and the right to examine any pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract.

14.3 The Contractor further agrees to include in all his subcontracts hereunder a provision substantially as set forth in this clause, including this paragraph. In addition a provision is to be added in such subcontracts to the effect that the auditing of the subcontractors' books, documents, papers and records involving transactions related to the subcontract may be performed by the subcontractors' national auditing services.

14.4 The period of access and examination described in 14.2. and 14.3 above for records which relate to either appeals under the "Disputes" clause of this contract or litigation, or the settlement of claims arising out of the performance of this contract, shall continue until such appeals, litigation or claims have been disposed of.

15. Clause 15 – MISCELLANEOUS

15.1 The entire agreement between the contracting parties is contained in this contract and is not affected by any oral understanding or representation whether made previous to or subsequent to this contract.

15.2 The Contractor is considered to have fully read all terms, clauses, specifications and detailed special conditions stipulated in this contract. He / she unreservedly accepts all the terms thereof.

15.3 In the event of any disagreement between the original text of this contract and any translation into another language, the original text will govern.

15.4 All written correspondence and reports by the Contractor to NSPA shall be in the language in which this contract is written.

ANNEX II - GENERAL PROVISIONS FOR FIXED-PRICE CONTRACTS

(SERVICES)

1. Clause I – DEFINITIONS

As used throughout this contract, the following terms shall have the meaning set forth below:

1.1 The term "NSPA" means "NATO Support and Procurement Agency", L - 8302 Capellen, Grand-Duchy of Luxembourg.

1.2 All correspondence and contacts concerning contracts for services shall be with the Procurement Officer/buyer unless otherwise directed.

1.3 The term "NSPO Member Nation" means a member nation of the NATO Support and Procurement Organisation (NSPO).

1.4 The term "Customer Country" means that particular NSPO member nation for which NSPA is obtaining the services called for under this contract, or a part thereof.

1.5 The term "Contractor" means the party who has entered into this contract with NSPA.

1.6 The term "Contract" means the contractual instrument to which these General Provisions apply.

1.7 The term "Subcontract" means, except as otherwise provided in this contract, any agreement or contract made by the Contractor with any other party in fulfilment of any part of this contract, and any agreement, contract or subcontract hereunder.

2. Clause 2 – CHANGES

2.1 Except as otherwise provided in this contract, NSPA may at any time, within the general scope of this contract, by a written order make changes in any one or more of the following:

2.1.1 specifications, or make additions thereto, issue additional instructions, require modified or additional services, within the scope of this contract; or change the amount of NSPA furnished property;

2.1.2 marking, method of shipment or packing;

2.1.3 place of delivery; and

2.1.4 place of inspection and acceptance.

2.2 If any such change causes an increase or decrease in the cost of, or the time required for, the performance of this contract or of any part of the work under this contract, whether changed or not changed by any such order, an equitable adjustment shall be made and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this Clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change, provided, however, that NSPA, if it decides that the facts justify such action may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be considered a dispute within the meaning of the Clause entitled "Disputes" in these General Provisions. Pending arbitration the Contractor shall proceed with the contract as changed, without delay.

2.3 Where the cost of property made obsolete or excess as a result of a change is included in the Contractor's claim for adjustment, NSPA shall have the right to prescribe the manner of disposition of such property.

2.4 Any other change in the terms of this contract, including but not limited to, changes in price, quantity, delivery schedules, or performance schedules, may be made only by agreement in writing executed by both parties.

3. Clause 3 - ASSIGNMENT

3.1 Except as otherwise provided in this contract, this contract shall not be assignable by the Contractor or operation of law without the prior approval of NSPA in writing. No such assignment shall become effective until the assignee has received written approval from NSPA. Any request for such approval shall be accompanied by a true copy of the intended instrument of assignment. NSPA will not unreasonably withhold any such approval of assignment.

3.2 NSPA shall have the right to assign in part or in full to another NATO Subsidiary Body, NATO Agency or any other entity acting on behalf of NATO the rights, obligations, title and interest in and to this Contract. Such assignment will not entitle the contractor to any additional payments or any other consideration. NSPA will notify such assignment in writing to the Contractor.

4. Clause 4 - PATENT INDEMNITY

Except as otherwise provided in this contract, the Contractor agrees to assume all liability for the infringement, if any, of patents in force in the countries where the services will be performed under this contract and in other countries where the patents are in force; and will be responsible for obtaining any patent licenses necessary for the performance of this contract and for making any other arrangements required to protect NSPA from any liability for patent infringement in said countries. The Contractor will notify NSPA of any claim of which it has knowledge, or may be notified, of patent infringement pertaining thereto.

5. Clause 5 - SECURITY

If any plans, specifications or other similar documents relating to the contract or the performance of same are marked "Cosmic Top Secret", "NATO Secret", "NATO Confidential", or "NATO Restricted", the Contractor shall safeguard NATO security by:

- 5.1 ensuring that no such document is accessible to any person not entitled to knowledge of such document;
- 5.2 complying with the national security regulations currently in force in its country;
- 5.3 complying with any special NATO or NSPA Security Operating Instructions, which may be supplied by NSPA.

6. Clause 6 - IMPORT AND EXPORT FORMALITIES

The Contractor shall be responsible for compliance with all applicable national import and export customs regulations and formalities, including payment of fees incident thereto and the posting of a customs bond, if required, and further, including all required licenses, customs declarations and other documentation, concerning the entry to and the exit from the Contractor's facility, including delivery to final destination, of all items or materiel pertinent to the Contractor's performance under this contract except as otherwise provided herein.

7. Clause 7 - TAXES AND DUTIES

7.1. NSPA, as a subsidiary body of NATO, is, by application of the Agreement on the status of the North Atlantic Treaty Organization, National Representatives and International Staff signed in Ottawa on 20 September 1951 (the Ottawa Agreement), exempt from all taxes and duties, including taxes on the sale of movable and immovable property, which form part of the price such as VAT, in relation to purchases made for the official use of NATO.

7.2. Where applicable, the Contractor shall invoice NSPA without VAT in consideration of any applicable exemption, including the exemption from indirect taxes under the Ottawa Agreement. The Contractor may request NSPA to provide an official exemption certificate to confirm that the exemption provided for in the Ottawa Agreement is applicable.

7.3. NSPA possesses a VAT number issued by the Government of Luxembourg, which is LU 15413172.

7.4. Where no exemption under the Ottawa Agreement is applicable, the Contractor shall use the NSPA VAT number to issue an invoice exclusive of VAT. Where the intracommunity triangular regime applies, the Contractor may request from NSPA the VAT number of the final beneficiary of the goods provided by the Contractor.

7.5. In cases where paragraphs 7.2 and 7.4 do not apply, the VAT will be charged by the Contractor as identified in its proposal and shall be paid by NSPA. Failure of the Contractor to have identified in its proposal the applicable taxes or duties, or correct amount of such

taxes or duties, may result in the Contractor being liable for the payment of such taxes or duties.

7.6. If as a result of a change to this Contract in accordance with Clause 2 or in legislation implemented after the effective date of this Contract, the Contractor is compelled to pay any readily identifiable tax or duty in relation to this Contract, it will indicate such tax or duty as a separate item of cost on its invoice(s). Any such tax or duty shall be fully identified by reference to the governmental law or regulation pursuant to which such tax or duty is enforced.

7.7. The Contractor shall not be responsible for differences between the amount of VAT specified or determinable in the Contract and the amount of VAT claimed by fiscal authorities if such difference is due to unforeseen legislative amendments or to erroneous information provided by NSPA.

Clause 8 - SPECIAL AREAS

8.1 Except as otherwise provided in this contract, the Contractor shall not subcontract with firms located in countries which are:

8.1.1 subject to a formal trade embargo to be observed by NATO;

8.1.2 known to disregard international trade conventions in respect of copyright;

8.1.3 under communist control:

- China (PRC)
- Cuba
- Laos
- North Korea
- Vietnam.

8. Clause 9 - WARRANTY

9.1 Contractor hereby guarantees that he / she will perform all services under this contract in a good and workmanlike manner, in accordance with any technical orders or other instructions as specified in this contract and that the items on which the work is performed will be guaranteed for a period of two years

9.2 If Contractor supplies any spare parts hereunder, unless otherwise specified in this contract, such items shall be unused and in new condition, of the latest production, and conform to the latest applicable specifications, drawings, and other descriptions, if any, of appropriate military and/or civilian agencies, and, if any, of the Contractor and shall be free from defects in material, design and/or workmanship.

9.3 If any equipment incident to services or component thereof to which this guarantee applies, fails to provide such service due to defective services of the Contractor or defective spare parts furnished by the Contractor, the Contractor agrees either to repair the equipment, or component, at its own expense, including any transportation costs, or reach an agreement with NSPA for an equitable settlement. The Contractor shall undertake, if he / she chooses to carry out the repair work, to grant the same guarantee for the repaired equipment as was applied to the original equipment. Failure to reach such an agreement shall be a dispute within the meaning of the clause entitled "Disputes" in these General Provisions.

9. Clause 10 - DEFAULT

If the Contractor fails to perform the services within the time specified, becomes bankrupt, or otherwise fails to comply with his obligations under this contract, NSPA may by written Notice of Default to the Contractor terminate the whole or any part of this contract at no cost to NSPA. Thereafter, NSPA may procure or otherwise obtain the services so terminated, and the Contractor shall be liable for any damages and/or extra costs incurred by NSPA and/or its customer(s) as a direct consequence of the Contractor's failure to comply with his obligations under this contract, unless Contractor's failure to perform is due to causes beyond his / her control and without his / her fault or negligence. The Contractor shall continue to perform under this contract to the extent not terminated hereunder.

10. Clause 11 - TERMINATION FOR CONVENIENCE OF NSPA

In the event NSPA determines that services ordered hereunder are no longer required, the Contractor agrees to cease its work hereunder and cancel any subcontracts hereunder and will use its best endeavours to effect such stoppage and/or cancellation on terms as favourable to NSPA as can be granted or obtained, or as may be more fully set forth in this contract.

11. Clause 12 - NSPA FURNISHED PROPERTY

12.1 It is the policy of NSPA that the Contractor shall furnish all property, including spare parts, necessary for the successful and timely performance of the services required under its maintenance contracts. Therefore, the following provisions are applicable to this contract only if NSPA furnishes NSPA property to the Contractor for his use in the performance of this contract, or requires the Contractor to acquire property, to which NSPA will assume title, for such use.

12.2 NSPA Furnished Property

NSPA shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described as NSPA furnished property in the contract, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "NSPA furnished property"). The delivery or performance dates for the materiel or services to be furnished by the Contractor under this contract are based upon the expectation that NSPA furnished property suitable for use will be delivered to the Contractor at the times stated in the contract,

or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that NSPA furnished property is not delivered to the Contractor by such time or times, NSPA shall, upon timely written request made by the Contractor, make a determination of the delay, if any, occasioned the Contractor hereby, and shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by any such delay, in accordance with the procedures provided for in the clause of this contract entitled "Changes". In the event NSPA furnished property is received by the Contractor in a condition not suitable for the intended use the Contractor shall, upon receipt thereof, notify NSPA of such fact and, as directed by NSPA, either (i) return such property at the NSPA expense or otherwise dispose of the property, or (ii) effect repairs or modifications. Upon the completion of (i) or (ii) above, NSPA upon written request of the Contractor shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by the rejection or disposition, or the repair or modification, in accordance with the procedures provided for in the clause of this contract entitled "Changes". The foregoing provisions for adjustment are exclusive and NSPA shall not be liable for breach of contract by reason of any delay in delivery of NSPA furnished property or delivery of such property in a condition not suitable for its intended use.

12.3 Changes in NSPA Furnished Property

12.3.1 By notice in writing, NSPA may (i) decrease the property provided or to be provided by NSPA under this contract, or (ii) substitute other NSPA property for property to be provided by NSPA, or to be acquired by the Contractor for NSPA under this contract. The Contractor shall promptly take such actions as NSPA may direct with respect to the removal and shipment of property covered by such notice.

12.3.2 In the event of any decrease in or substitution of property pursuant to paragraph 12.3.1 above, or any withdrawal of authority to use property provided under any other contract, which property NSPA had agreed in the contract to make available for the performance of this contract, NSPA, upon the written request of the Contractor (or, if the substitution of property causes a decrease in the cost of performance, on his / her own initiative), shall equitably adjust such contractual provisions as may be affected by the decrease, substitution or withdrawal, in accordance with the procedures provided for in the "Changes" clause of this contract.

12.4 Title

12.4.1 Title to all property furnished by NSPA shall remain in NSPA. In order to define the obligations of the parties under this clause, title to each item of facilities, special test equipment, and special tooling acquired by the Contractor for NSPA pursuant to this contract shall pass to and vest in NSPA when it has been fully paid for by NSPA either through amortization under this contract or otherwise.

12.4.2 All NSPA furnished property, together with all property acquired by the Contractor title to which vests in NSPA under this paragraph, is subject to the provisions of this clause and is hereinafter collectively referred to as "NSPA property". Title to NSPA property shall not be affected by the incorporation or attachment thereof to any property owned or leased by the Contractor, nor shall such NSPA property or any part thereof be or become a fixture or lose its identity as a personality by reason of affixation to any realty. For the purposes of this clause, it shall be assumed that title to property furnished under this contract is vested in NSPA even though it may, in actuality, be owned by one or more NSPA customers or NATO member countries.

12.5 Property Administration

The Contractor shall comply with the provisions of this contract identified as "Property Administration".

12.6 Use of NSPA Property

NSPA property shall, unless otherwise provided herein or approved by NSPA be used only for the performance of this contract.

12.7 Utilization, Maintenance and Repair of NSPA Property

The Contractor shall maintain and administer, in accordance with sound industrial practice, and in accordance with any other applicable provision as may be specified in the contract, a program for the utilization, maintenance, repair, protection and preservation of NSPA property, until disposed of by the Contractor, in accordance with this clause. In the event that any damage occurs to NSPA property the risk of which had been assumed by NSPA under this contract, NSPA shall replace such items or the Contractor shall make such repair of the property as NSPA directs; provided, however, that if the Contractor cannot effect such repair within the time required, the Contractor shall dispose of such property in the manner directed by NSPA. The contract price includes no compensation to the Contractor for the performance of any repair or replacement for which NSPA is responsible and an equitable adjustment will be made in any contractual provisions affected by such repair or replacement of NSPA property made at the direction of NSPA, in accordance with the procedures provided for in the "Changes" clause of this contract. Any repair or replacement for which the Contractor is responsible under the provisions of this contract shall be accomplished by the Contractor at his own expense.

12.8 Risk of Loss

12.8.1 Except for losses, destruction or damage resulting from a failure of the Contractor due to wilful misconduct or lack of good faith of any of the Contractor's managerial personnel as defined herein, to maintain and administer the program for the maintenance, repair, protection and preservation of NSPA property as required by paragraph 12.7 hereof, and except as specifically provided in this contract, the Contractor shall not be liable for loss or destruction or damage to the NSPA property provided under this contract:

12.8.1.1 caused by any peril while the property is in transit off the Contractor's premises; or

12.8.1.2 caused by any of the following perils while the property is on the Contractor's or subcontractor's premises or on any premises where such property may properly be located, or by removal therefrom because of any of the following perils, called "excepted perils":

- fire, lightning, windstorm, cyclone, tornado, hails; explosion; riot, riot attending a strike, civil commotion; vandalism and malicious mischief; sabotage; aircraft or objects falling therefrom; vehicles running on land or tracks; excluding vehicles owned or operated by the Contractor or any agent or employee of the Contractor; smoke; sprinkler leakage; earthquake or volcanic eruption; flood, meaning thereby rising of a body of water; nuclear reaction, nuclear radiation or radioactive contamination; hostile or warlike action, including action in hindering, combating, or defending against an actual, impending or expected attack by any government or sovereign power (de jure or de facto), or by any

authority using military, naval, or air forces; or by an agent of any such government, power, authority or forces; or,

- other peril, of a type not listed above, as may be specified in the contract.

12.8.2 If the Contractor transfers NSPA property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of or damage to the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of or damage to the property while in the latter's possession or control, except to the extent that the subcontract, with the prior approval of NSPA, provides for the relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all NSPA property in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of the prime contract.

12.8.3 The term "Contractor's managerial personnel" as used herein means the Contractor's directors, Officers and any of his / her managers, superintendents, or other equivalent representatives who have supervision or direction of:

- all or substantially all of the Contractor's business;
- all or substantially all of the Contractor's operation at any one plant or separate location at which the contract is being performed;
- a separate and complete major industrial operation in connection with the performance of this contract.

12.8.4 The Contractor represents that he/she is not including in the price hereunder, and agrees that he/she will not hereafter include in any price to NSPA, any charge or reserve for insurance (including any self-insurance funds or reserve) covering loss or destruction of or damage to the NSPA property caused by any excepted peril.

12.8.5 Upon the happening of loss or destruction of or damage to any NSPA property caused by an excepted peril, the Contractor shall notify NSPA thereof and shall take all reasonable steps to protect the NSPA property from further damage, separate the damaged and undamaged NSPA property, put all the NSPA property in the best possible order, and furnish to NSPA a statement of:

- The lost, destroyed and damaged NSPA property;
- The time and origin of the loss, destruction, or damage;
- All known interests in commingled property of which the NSPA property is a part; and
- The insurance, if any, covering any part of or interest in such commingled property.

12.8.6 The Contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made by him/her in performing his / her obligations under this subparagraph

12.8.5 In accordance with the procedures provided for in the "Changes" clause of this contract.

12.8.7 With the approval of NSPA after loss or destruction of or damage to NSPA property, and subject to such conditions and limitations as may be imposed by NSPA, the Contractor may, in order to minimize the loss to NSPA or in order to permit resumption of business or the like, sell for the account of NSPA any item of NSPA property which has been damaged

beyond practicable repair, or which is so commingled or combined with property of others, including the Contractor's, that separation is impracticable.

12.8.8 Except to the extent of any loss or destruction of or damage to NSPA property for which the Contractor is relieved of liability under the foregoing provisions of this clause, and except for reasonable wear and tear or depreciation, or the utilization of the NSPA property in accordance with the provisions of this contract, the Contractor assumes the risk of, and shall be responsible for, any loss or destruction of or damage to NSPA property, and such property (other than that which is permitted to be sold) shall be returned to NSPA in as good condition as when received by the Contractor in connection with this contract, or as repaired under paragraph 12.7 above.

12.8.9 In the event the Contractor is reimbursed or compensated for any loss or destruction of or damage to the NSPA property, caused by an excepted peril, he/she shall equitably reimburse NSPA. The Contractor shall do nothing to prejudice NSPA's rights to recover against third parties for any such loss, destruction or damage and, upon the request of NSPA, shall at NSPA's expense, furnish to NSPA all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favour of NSPA) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of or damage to NSPA property, the Contractor shall enforce the liability of the subcontractor for such loss or destruction of or damage to the NSPA property, for the benefit of NSPA.

12.9 Access

NSPA and any person it designates, shall at all reasonable times have access to the premises wherein any NSPA property is located, for the purpose of inspecting the NSPA property.

12.10 Final Accounting and Disposition of NSPA Property

Upon the completion of this contract, or at such earlier dates as may be fixed by NSPA, the Contractor shall submit, in a form acceptable to NSPA inventory schedules covering all items of NSPA property not consumed in the performance of this contract (including any resultant scrap) or not theretofore delivered to NSPA, and shall prepare for shipment, deliver F.O.B. origin, or dispose of the NSPA property, as may be directed or authorised by NSPA. The net proceeds of any such disposal shall be credited to the contract price or shall be paid in such other manner as NSPA may direct.

12.11 Restoration of Contractor's Premises and Abandonment

Unless otherwise provided herein, NSPA:

12.11.1 may abandon any NSPA property in place, and thereupon all obligations of NSPA regarding such abandoned property shall cease; and

12.11.2 has no obligation to the Contractor with regard to restoration or rehabilitation of the Contractor's premises, neither in case of abandonment of property, disposition thereof on completion of need of the Contractor, nor otherwise, except for restoration or rehabilitation costs which are properly included in an equitable adjustment under paragraph 12.8.5 above.

12.12 Communications

All communications issued pursuant to this clause shall be in writing.

12. Clause 13 - DISPUTES

13.1 Any dispute arising out of this contract shall be settled by arbitration.

13.2 The party instituting the arbitration proceedings shall advise the other party by registered letter, with official notice of delivery, of his / her desire to have recourse to arbitration. Within a period of thirty days from the date of receipt of this letter, the parties shall jointly appoint an arbitrator. In the event of failure to appoint an arbitrator, the dispute or disputes shall be submitted to an Arbitration Tribunal consisting of three arbitrators, one being appointed by NSPA, another by the other contracting party, and the third, who shall act as President of the Tribunal, by these two arbitrators. Should one of the parties fail to appoint an arbitrator during the fifteen days following the expiration of the first period of thirty days, or should the two arbitrators be unable to agree on the choice of the third member of the Arbitration Tribunal, within thirty days following the expiration of the said first period, the appointment shall be made, within twenty-one days, at the request of the party instituting the proceedings, by the Secretary General of the Permanent Court of Arbitration in the Hague.

13.3 Regardless of the procedure concerning the appointment of this Arbitration Tribunal, the third arbitrator will have to be of a nationality different from the nationality of the other two members of the Tribunal.

13.4 Any arbitrator must be of the nationality of any one of the member nations of NATO and shall be bound by the rules of security in force within NATO.

13.5 Any person appearing before the Arbitration Tribunal in the capacity of an expert witness shall, if he/she is of the nationality of one of the member nations of NATO, be bound by the rules of security in force within NATO, if he / she is of another nationality, no NATO classified documents or information shall be communicated to him.

13.6 An arbitrator who, for any reason whatsoever, ceases to act as an arbitrator shall be replaced under the procedure laid down in the first paragraph of this article.

13.7 The Arbitration Tribunal will take its decisions by a majority vote. It shall decide where it will meet and, unless it decides otherwise, shall follow the arbitration procedures of the International Chamber of Commerce in force at the date of the signature of the present contract.

13.8 The awards of the arbitrator or of the Arbitration Tribunal shall be final and there shall be no right of appeal or recourse of any kind. These awards shall determine the apportionment of the arbitration expenses.

13. Clause 14 - GOVERNING LAW

Except as otherwise provided in this contract, this contract shall be governed, interpreted and construed in accordance with French law and such law shall govern in the event of arbitration.

14. Clause 15 - EXAMINATION OF RECORDS

15.1 This clause is applicable to this contract only:

15.1.1 if the price, or any of the prices, to be paid for the supplies and/or services to be furnished hereunder is/are other than (a) firm fixed price(s);

15.1.2 if this contract is terminated by NSPA, in whole or in part, and the Contractor submits a termination claim as a result thereof, or

15.1.3 in the event a dispute arises between the parties and arbitration proceedings are instituted pursuant to the clause of this contract entitled "Disputes".

15.2 The Contractor agrees that NSPA or any of its duly authorised representatives shall, until the expiration of three (3) years after final payment under this contract, have access to and the right to examine any pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract.

15.3 The Contractor further agrees to include in all his / her subcontracts hereunder a provision substantially as set forth in this clause, including this paragraph. In addition a provision is to be added in such subcontracts to the effect that the auditing of the subcontractors' books, documents, papers and records involving transactions related to the subcontract may be performed by the subcontractors' national auditing services.

15.4 The period of access and examination described in paragraphs 15.2 and 15.3 above for records which relate to either appeals under the "Disputes" clause of this contract or litigation, or the settlement of claims arising out of the performance of this contract, shall continue until such appeals, litigation or claims have been disposed of.

15. Clause 16 - MISCELLANEOUS

16.1 The entire agreement between the contracting parties is contained in this contract and is not affected by any oral understanding or representation whether made previous to or subsequent to this contract.

16.2 The Contractor is considered to have fully read all terms, clauses, specifications and detailed special conditions stipulated in this contract. He unreservedly accepts all the terms thereof.

16.3 In the event of any disagreement between the original text of this contract and any translation into another language, the original text will govern.

16.4 All written correspondence and reports by the Contractor to NSPA shall be in the language in which this contract is written.

ANNEX III – LIST OF ABBREVIATIONS

AQAP	Allied Quality Assurance Publication
ASB	Agency Supervisory Board
BCI	Basic Contractual Instrument
CAC	Contract Award Committee
CLSSA	Cooperative Logistics Supply Support Arrangement
FMS	Foreign Military Sales
GQAR	Government Quality Assurance Representative
ISO	International Standardization Organisation
MOU	Memorandum of Understanding
NSPA	NATO Support and Procurement Agency
NSPO	NATO Support and Procurement Organisation
NATO	North Atlantic Treaty Organisation
PfP	Partnership for Peace
PO	Purchase Order
PR	Purchase Requisition
RFP	Request for Proposals

ANNEX IV – DEFINITIONS

Agreement

A consensus of two or more persons in respect of anything done or to be done. Although used as synonymous with “contract”, agreement may have a broader meaning.

Assured Access Contract

A contractual agreement that guarantees the availability of defined goods or services to the Agency through the payment of an assured access fee.

Basic Contractual Instrument

A contractual agreement setting the terms and conditions upon which the Agency and a Contractor shall trade, with the price to be agreed at the time of ordering, excluding the price of goods and services to be supplied.

Buyer

A "Buyer" is a NSPA “B” grade official, who is empowered, within the limits of the procurement authority delegated to him/her by the Director of Procurement, to commit or obligate NSPA via the establishment of contractual instruments and is responsible for the satisfactory implementation and administration of those instruments.

Call Off Purchase Order

An order issued under the authority of a duly authorised user against a particular standing offer (e.g. Outline Agreement).

Change Order

A Change to the contract which may be made unilaterally, without the agreement of the Contractor, usually exercising a right already secured in the Contract (e.g. exercise of an option or extension of duration).

Commitment

A contractual obligation upon the Agency to make a payment to a third party or otherwise fulfil a duty or refrain from carrying out an action.

Contract

A mutually binding legal relationship obligating the seller to furnish the supplies or services (including works) and the buyer to pay for them.

Contract Administration

Pre-award and Post-award functions related to the administration of contracts assigned to Procurement Divisions staff or other NSPA staff members having received delegations to perform these functions from the Director of Procurement.

Contract Amendment

A change to a Contract agreed between the parties to the Contract.

Contract Authority

“Contract authority “is the authority given to the Budget Holder by the appropriate regulatory authority to incur legal obligations against a contract in the current financial year for the provision of goods, services and works for contracts in future financial years considering the procedures XXV and XXVII of the FD 2300 NSPO Financial Rules and Procedures.

Contract Award Committee Memorandum

The document submitted to the CAC recommending agreement for award of a NSPA contract.

Contracting

Means purchasing, renting, leasing, or otherwise obtaining supplies or services from commercial sources. It includes description (but not determination) of supplies and services required, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration. It does not include making grants or cooperative agreements.

Delegation of Procurement Authority

A "Delegation of Procurement Authority" is a written assignment to perform certain procurement functions. The letter of delegation must specifically indicate the responsibilities in question and the monetary values associated therewith. The delegation has to be accepted by the delegatee in writing upon proposal of the Senior Procurement Officer in the Programme. This delegation has to be endorsed by the responsible Division Chief and signed by the Director of Procurement.

The Procurement Directorate issues periodically a list of all staff with a delegation of Procurement Authority to the Financial Controller.

End User

The ultimate consumer of a product or service, especially the one for whom the product or service has been designed.

Ex-Ante Control

Applies to a control exercised before the release of a Purchase Order, a Purchase Card Transaction or a contractual instrument committing the Agency legally and financially.

Ex-Post Control

Applies to a control exercised after the release of a Purchase Order, a Purchase Card Transaction or a contractual instrument committing legally and financially the Agency upon reception inspection and acceptance of goods or execution of services.

Framework Contract

See BCI

Outline Agreement

A contract with a supplier to provide goods and/or services to NSPA at prearranged prices or pricing basis and under set terms and conditions for a specified period on an as-and-when requested basis.

Procurement Executive

Throughout this Operating Instruction, an "A" grade at A4 level or above, appointed primarily as the individual responsible for the implementation of the applicable procurement policies, regulations and standards of NSPA.

Procurement Officer

The "Procurement Officer" (PO) is a NSPA "A" grade official of the Procurement Division who is, within the limits of the procurement authority delegated to him/her by the Director of Procurement, empowered to commit or obligate NSPA via the establishment of contractual instruments and responsible for the overall satisfactory implementation and administration of those instruments.

Procurement Officer Technical Representative (POTR)

A Procurement Officer's Technical Representative (POTR) assists the Procurement Officer in the technical monitoring or administration of a contract. To this end he/she receives from the Procurement Officer a letter of designation co-signed by the relevant Procurement Division Chief describing his/her duties and responsibilities.

Purchase Order

An offer by NSPA to buy supplies, services and works, including research and development, upon specified terms and conditions.

Purchase Requisition

The Purchase Requisition establishes the need for materials, services or transportation to be acquired by the logistic or administrative functions of NSPA, and tasks the procurement/logistic function to provide the materials, services or transportation in the required quantity within a predetermined timeframe. It is an internal document for use within NSPA only.

Procurement

All stages involved in the process of acquiring supplies or services, beginning with the determination of a need for supplies of services and ending with contract completion or closeout.

Requisition

A request to obtain materiel or services and authority to commit funds to cover the purchase.

Source Selection Authority

The body responsible for identification of sources to be invited to bid, bid evaluation criteria, evaluation of bids received and final recommendation for contract award to the CAC.

Sub-contracting

Contract(s) placed by the Contractor or any of its Sub-Contractors, at any tier of sub-contracting, specifically designed for integration of supply or services in or towards fulfilment of any obligation on the part of the Contractor under the Contract.

Supplemental Agreement

A change to an NSPA Contract agreed between the parties to the NSPA Contract.

Technical Authority

The "Technical Authority" is the NSPA official, usually designated in the contract, responsible to ensure that the technical requirements of a specific contractual instrument are complied with. The duties of the Technical Authority include providing technical direction and guidance as necessary to the contractor with respect to the contract specifications or statement of work; monitoring contractor technical performance/progress; assessing quality and quantity of contractor effort (necessity for same in Time and Material contracts, i.e. hours expended and appropriateness for same in the performance of tasks), acceptance storage and transportation.

Termination for Convenience

"Termination for Convenience" permits NSPA to unilaterally terminate a contract by giving a written notice of the intention to do so in accordance with the provisions outlined in EXHIBIT: TERMINATION FOR CONVENIENCE OF NSPA....

Termination for Default

"Termination of a contract or part of contract as a result of the breach of an essential contract obligation."

ANNEX V TABLE OF DELEGATIONS

	AUTHORITY TO APPROVE	AUTHORITY TO SIGN PURCHASE ORDER & CONTRACT
General Manager	Unlimited	Unlimited
Director of Procurement Deputy Director of Procurement	Above 2.5 times EFL “E”	Up to 100 M€
Procurement Division Chiefs	Up to 2.5 times EFL “E”	From 50 M€ to 75 M€
Purchasing Branch Chiefs A4	Up to 1.5 times EFL “E”	Up to 50 M€
Principal Procurement Officer A4	Up to 1.5 times EFL “E”	Up to 50 M€
Procurement Team Leader A4	Up to 2.5 times EFL “D”	Up to 50 M€
Senior Procurement Officer A3	Up to 2.5 times EFL “C”	Up to 30 M€
Procurement Officer A2	Up to 2 times EFL “C”	Up to 20 M€
Senior Buyer B6	Up to FL “C”	Up to FL “C”
Buyer B5	Up to FL “C”	Up to FL “C”
Junior Buyer B4	Up to FL “C”	Up to FL “C”
Senior Clerk B3	Up to FL “B”	Up to FL “B”
Junior Clerk B2	Up to FL “B”	Up to FL “B”
Non PP NSPA Staff	Up to 2.5 times FL “C” Call Off only	Up to 2.5 times FL “C” Call Off only

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