



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

**NATO UNCLASSIFIED**

PRE-CONTRACT AWARD COMPLAINTS  
PROCEDURE OPERATING INSTRUCTION (OI)  
4200-08

# Pre-Contract Award Complaints Procedure

**OI 4200-08**

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**AMENDMENT RECORD**

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## PRE-CONTRACT AWARD COMPLAINTS PROCEDURE

### 1. REFERENCES

- A. NSPO Regulation No. 4200 - Procurement Regulations
- B. NSPA OI 4200-01 - Procurement Operating Instruction
- C. NSPA OI 4200-02 - Sourcing Operating Instruction
- D. NSPA OI 4200-06 - The Role of the Competition Advocate
- E. NSPA OI 4200-09 - Terms of Reference of the NSPA Award Review and Debarment Board
- F. NSPA OI 4400-01 - NSPA Code of Conduct
- G. NSPA OP-P-2 - NSPA Supplier Code of Conduct

### 2. PURPOSE

The purpose of this Operating Instruction is to establish a pre-contract award complaints procedure for vendors to challenge certain decisions made by NSPA in the context of NSPA procurements.

### 3. SCOPE

This instruction is applicable to all competitive solicitation processes up to contract award and Notifications of Planned Sole Source Award (NPSSA) concerning requirements  $\geq 800K\text{€}$  conducted by NSPA.

### 4. GENERAL PRINCIPLES

4.1 The following principles shall apply to the complaint procedure:

4.1.1 All complaints and appeals shall be made in good faith.

4.1.2 Complaints and appeals against NSPA decisions and determinations are inadmissible if the bidder was ineligible for the relevant competitive solicitation process.

4.1.3 Breaches or errors that do not materially affect the outcome of the final decision shall not lead to the annulment of said decision.

4.2 Complaints that fail to adhere to any of the principles above shall be dismissed as will complaints from bidders that acknowledge non-compliance with any one mandatory requirement.

## 5. SUBMISSION OF COMPLAINTS

5.1 Bidders may challenge NSPA decisions for one of the reasons set out in Paragraph 5.3 below.

5.2 When submitting complaints, bidders are precluded from correcting, altering, adding or deleting any part of their bid.

5.3 Grounds for Challenge

5.3.1 A bidder may contest Requests for Proposals (RFP) provided the bidder can establish that the requirements unduly limit competition.

5.3.2 Any bidder in a Best-Value Procurement or the bidder having a lower priced proposal than that selected for award of a contract may contest a determination of commercial or technical non-compliance of its proposal with the requirements of the RFP.

5.3.2.1 A bidder may appeal the attribution of points/scores to specific criteria in "Best Value" competitive solicitation processes pursuant to Paragraph 8.1.3.5 of Reference B.

5.3.3 Bidders may contest an erroneous determination of the sole source character of a requirement relating to contracts  $\geq 800K\text{€}$  pursuant to Paragraph 6.3.4 of Reference B.

5.4 Exclusion of Certain Complaints

The following are not subject to challenge:

5.4.1 decisions made in the context of a competitive solicitation process, as well as planned contract awards on a sole-source basis,  $< 800K\text{€}$  euros as determined by the NSPA's procurement regulations;

5.4.2 decisions relating to contract awards on single-source basis;

5.4.3 complaints from vendors who did not participate in the competitive solicitation process; and,

5.4.4 complaints from vendors who have not been prejudiced by the alleged infringement.

## 6. PROCEDURE

6.1 Informal Dispute Resolution

Before submitting the complaint, bidders shall make good faith efforts to resolve amicably the dispute. The start of the informal dispute resolution process does not suspend the time limits for submitting a complaint unless expressly agreed to by the Competition Advocate.

6.2 Timelines

The time limits for filing complaints depend on the decision being contested and are provided in Paragraphs 6.2.1 – 6.2.4 below. If the specific RFP instructions or other relevant document

mention different time limits, such time limits for submitting complaints shall prevail over those listed under this Paragraph.

#### 6.2.1 Complaints for Unduly Restrictive Specifications

Complaints based on grounds set out in Paragraph 5.3.1 above shall be submitted:

- a. Not more than 15 calendar days after the release of the RFP and not less than 10 calendar days prior to the bid closing date; or
- b. Not more than five calendar days after the Bidders Conference.

#### 6.2.2 Complaints for Determinations of Non-Compliance

Complaints based on grounds set out in Paragraph 5.3.2 above shall be submitted within 10 calendar days from the non-compliance notification.

#### 6.2.3 Complaints Relating to Notifications of Planned Sole Source Awards

Complaints based on grounds set out in Paragraph 5.3.3 above shall be submitted in accordance with the timelines specified in the Notification of Planned Sole Source Award.

### 6.3 Requirements for the Complaint

Bidders shall submit complaints in English or French to the Procurement Officer responsible for the competitive solicitation process and copy the Competition Advocate at [competition.advocate@nspa.nato.int](mailto:competition.advocate@nspa.nato.int).

#### 6.3.1 The complaint must include:

6.3.1.1 reference number of the competitive solicitation process and a description of the decision being challenged;

6.3.1.2 a concise statement of the grounds for the complaint, which shall include reasons for the complaint with reference to the applicable RFP document and paragraph number, its factual and regulatory basis, and the alleged violations or irregularities;

6.3.1.3 any other relevant document that substantiates the arguments made in the complaint; and

6.3.1.4 the remedy sought listed under Paragraph 7 below, including an explicit request that NSPA suspend the procurement process.

6.3.2 The Procurement Officer responsible for the competitive solicitation process must record receipt of the complaint in the NSPA Vendor Complaint Management (VCM) system and update as required throughout the process.

### 6.4 First-Level Review by the Senior Procurement Officer/Technical Team

6.4.1 The Procurement Officer shall, in consultation with the Technical Team when applicable, examine the complaint within 10 NSPA business days following its receipt and determine whether it warrants an amendment or re-issuance of the RFP or a re-evaluation of the proposal.

6.4.2 If the Procurement Officer determines that the complaint is unfounded, the Procurement Officer shall submit the complaint, all documents received from the bidder along with the reasons for rejecting the complaint to the Competition Advocate for a second review.

#### 6.5 Second-Level Review by the Competition Advocate

6.5.1 The Competition Advocate shall be responsible for ensuring a fair and impartial review of the complaint and shall consider all relevant information, evidence, and arguments presented by the bidder.

6.5.2 In cases of conflicts of interest, the Competition Advocate may designate another official to address the complaint. In exceptional circumstances, the Competition Advocate may seek further information from subject matter experts not involved with the RFP (e.g. technical experts).

6.5.3 The Competition Advocate shall issue a written decision, stating their findings and reasons for the decision, normally within 15 NSPA business days from the receipt of the complaint.

#### 6.6 Appeal Procedure before the NSPA Award Review and Debarment Board

6.6.1 The bidder may challenge the Competition Advocate's decision, by referring the dispute to the NSPA Award Review and Debarment Board (ARDB) for adjudication.

6.6.2 The adjudication shall be conducted in accordance with the ARDB's Terms of Reference (Reference E).

6.6.3 The decision of the ARDB shall be final.

## 7. REMEDIES

### 7.1 Remedies for Complaints for Unduly Restrictive Requirements

If the complaint for unduly restrictive requirements pursuant to Paragraph 5.3.1 is well-founded, NSPA shall amend the RFPs by removing unduly restrictive specifications or requirements and re-advertise the RFP. NSPA may also discontinue the competitive solicitation process.

### 7.2 Remedies for Complaints for Determinations of Non-Compliance

If the complaint for a determination of non-compliance pursuant to Paragraph 5.3.2 is well-founded, NSPA shall amend the technical evaluation report or conduct a new technical/commercial evaluation. NSPA may also discontinue the competitive solicitation process.

### 7.3 Remedies for Complaints Relating to Notifications of Planned Sole Source Awards

If the complaint for an erroneous determination of the sole source character of a requirement pursuant to Paragraph 5.3.3 is well-founded, NSPA shall cancel the Notification of Planned Sole Source Awards and issue a competitive RFP. NSPA may also discontinue the process.

**8. INAPPLICABILITY OF REMEDIES DUE TO SECURITY CONCERNS**

Notwithstanding Paragraphs 7.1 to 7.3 above, if the remedies could have serious security implications, upon the recommendation of the General Manager, the Competition Advocate may dismiss the complaint. This decision shall not be subject to appeal.

**9. ENTRY INTO FORCE**

This procedure shall enter into force on 26 June 2025. From the effective date, all pre-award complaints submitted to NSPA shall be subject to this procedure.

Stacy CUMMINGS  
General Manager

