

NATO INTERNATIONAL STAFF

PROCUREMENT MANUAL

0. TABLE OF CONTENTS

1.	INTRODUCTION AND PURPOSE OF THIS MANUAL	12
1.1.	Introduction	12
1.2.	Amendments and revisions	13
1.3.	Supplementation	13
1.4.	Applicability	13
2.	REGULATIONS, ROLES AND RESPONSIBILITIES	14
2.1.	Applicable rules	14
2.1.1.	NATO Financial Regulations (NFR)	14
2.1.2.	Civilian Personnel Regulations (CPR)	14
2.1.3.	Office Notices (ONs)	15
2.2.	Roles and responsibilities	15
2.3.	Delegation of authority	15
2.4.	Financial Resources	16
2.4.1.	Budget & Financial Analysis Service	17
2.4.2.	NATO Procurement & Supplies Service	17
2.4.2.1.	Head of the Procurement and Supplies Service	17
2.4.2.2.	Procurements Units	17
2.4.2.3.	Supply Operation Section	18
2.4.2.3.1.	Reception, Inventory and Stores Unit	18
2.4.2.3.2.	Handymen Unit/Team	18
2.4.3.	NATO Procurement & Supplies' Computerized Systems	18
2.5.	Requisitioning Offices	19
2.6.	Administrative Officers	20
2.7.	Office of Financial Control	21
2.8.	Contract Awards Committee (CAC)	21
2.8.1.	General functions of the Contract Awards Committee	21
2.8.2.	Composition of the Contract Awards Committee	22
2.8.2.1.	Voting members	22
2.8.2.2.	Members "ex officio"	22
2.8.3.	Chairperson	23
2.8.4.	Secretary of the Contract Awards Committee	24

2.9.	NATO Office of Security (NOS).....	24
2.9.1.	Security classification.....	25
2.9.2.	NATO Protective Security Branch.....	25
3.	PRINCIPLES AND STANDARDS OF CONDUCT	27
3.1.	NATO regulatory framework	27
3.2.	NATO Code of Conduct	27
3.2.1.	Introduction	27
3.2.2.	Background.....	27
3.2.3.	Applicability.....	28
3.2.4.	Implementation	28
3.3.	Content of NATO Code of Conduct.....	29
3.3.1.	Integrity	29
3.3.2.	Impartiality.....	29
3.3.3.	Loyalty.....	30
3.3.4.	Accountability	30
3.3.5.	Professionalism.....	31
3.4.	Procurement standards of conduct	31
3.5.	General Procurement Principles	32
3.5.1.	Loyalty and respect for rules and regulations.....	32
3.5.2.	Integrity	33
3.5.3.	Avoidance of the appearance of impropriety.....	34
3.5.4.	Accountability.....	34
3.5.5.	Professional proficiency	34
3.5.6.	Responsiveness/due diligence.....	34
3.5.7.	Transparency	35
3.5.8.	Confidentiality	35
3.5.9.	Uniformity	36
3.5.10.	Competition.....	36
3.5.11.	Impartiality, fair treatment and positive business partnering	36
3.6.	Ethical risks and mitigating measures.....	37
3.6.1.	Conflict of interest	37
3.6.2.	Declaration.....	37
3.6.3.	Gifts and hospitality.....	38
3.7.	Organizational conflicts of interest	38
3.7.1.	Responsibilities of Procurement Officers regarding organizational conflicts of interest	39

3.7.2.	General rules	39
3.7.3.	Providing systems engineering and technical direction.....	40
3.7.4.	Preparing Specifications or Statements of Work.....	41
3.7.5.	Providing evaluation services.....	42
3.7.6.	Obtaining access to proprietary information.....	42
3.7.7.	Procedures and contract clauses.....	42
3.7.8.	Examples	43
4.	PLANNING AND BUDGET CONTEXT	45
4.1.	Reference to NATO Objective Based Budgeting	45
4.2.	Procurement Planning.....	45
4.2.1.	Initiation - Identification of a need.....	45
4.2.2.	Start of the Procurement Planning	47
4.2.3.	Short-term planning.....	48
4.2.4.	Long-term planning	48
4.2.5.	Annual planning	48
4.2.6.	No financial commitment without available budget.....	49
4.2.7.	Consultant contract categories.....	49
5.	DEFINITION OF REQUIREMENTS AND SPECIFICATIONS.....	51
5.1.	Introduction	51
5.2.	Purpose.....	51
5.3.	Responsibility	52
5.4.	Process: writing Specifications/Statements of Work	53
5.4.1.	Preparation of Specifications for goods.....	53
5.4.2.	Preparation of Specifications for systems	56
5.4.3.	Preparation of Statements of Work for services.....	57
5.4.4.	Preparation of Statements of Work for works and construction	58
5.4.5.	Specifications/Statement of Work description.....	58
5.5.	Consultation with the Office of the Legal Adviser.....	65
5.6.	Approval by NATO Office of Security	65

6.	CONTRACT STRATEGY	66
6.1.	Introduction	66
6.2.	Identifying NATO's pricing objectives.....	66
6.3.	Identifying price-related evaluation factors.....	67
6.4.	Non-price evaluation factors	68
6.5.	Types of contracts.....	68
6.5.1.	Fixed-Price contracts	68
6.5.2.	Cost-Reimbursements and Cost-Plus contracts	70
6.5.3.	Delivery Order contracts and Task Order contracts	71
	6.5.3.1. Definite-Quantity contracts	72
	6.5.3.2. Indefinite-Quantity contracts.....	72
	6.5.3.3. Requirements contracts	73
6.5.4.	Time and Material contracts.....	73
6.5.5.	Labour-Hour contracts	74
6.5.6.	Letter contracts	74
6.5.7.	Basic Ordering Agreements.....	75
6.6.	Security assistance and cross-servicing arrangements	75
6.7.	Factors in selecting contract types	76
6.7.1.	List of factors.....	76
6.7.2.	Negotiating contract type	77
7.	INITIATION OF BIDDING PROCESS	78
7.1.	Initiation of procurement action	78
7.1.1.	Use of Procurement Requests	78
7.1.2.	Requisition splitting ("slicing")	79
7.2.	Consequence of incomplete Procurement Requests	80
7.3.	Timeline	80
7.4.	Market survey	82
7.4.1.	Request for price and availability	83
7.4.2.	Letter of interest	83
7.4.3.	Pre-Solicitation conferences	83

8.	COMPETITIVE BIDDING – SOURCE SELECTION PROCESS AND TECHNIQUES.....	84
8.1.	Introduction – Financial Limits of Discretionary Powers (EFL)	84
8.2.	Mandatory competition requirements and procurement procedures	84
8.2.1.	Simplified Procurement Procedures.....	87
8.2.1.1.	Petty cash	87
8.2.1.2.	Purchase card (P-Card) Programme.....	88
8.2.1.3.	Purchase Orders (POs).....	88
8.2.1.4.	Blanket Purchase Agreement (BPAs)	88
8.2.2.	Formal Procurement Procedures	89
8.2.2.1.	Invitation for Bid (IFB)	90
8.2.2.2.	Request for Proposal (RFP).....	90
8.2.3.	Particular reference to International Bidding	91
9.	SUPPLIER SELECTION	92
9.1.	Preparation and issuance of Solicitation Documents	92
9.1.1.	Introduction	92
9.1.2.	Instructions for the preparation of offers.....	92
9.1.3.	Prospective contract document.....	93
9.1.4.	Special contract provisions	93
9.1.5.	General contract provisions	95
9.1.6.	Requirements Specifications/Statement of Work	95
9.1.7.	Source Selection Plan.....	96
9.1.8.	Evaluation methods.....	98
9.1.8.1.	Reference to the Best Value for Money Principle.....	98
9.1.8.2.	Lowest responsive/compliant/acceptable offer.....	100
9.1.8.3.	Trade-off process	101
9.1.8.4.	Price/cost analysis	104
9.1.9.	Language	105
9.2.	Period of validity of bids	105
9.3.	Delivery time and place.....	105
9.4.	Bid Bond	105
9.5.	Performance Bond	106
9.6.	Liquidated damages.....	106
9.7.	Questions and answers exercise	106

9.8.	Mandatory visit.....	107
9.9.	Bid Closure	108
10.	VENDOR DATABASE	109
11.	TREATMENT OF SUBMISSIONS.....	110
11.1.	Introduction	110
11.2.	Receipt of bids	110
11.3.	Registration and safeguarding of bids.....	110
11.4.	Withdrawal of bids.....	111
11.4.1.	Prior to Bid Closure.....	111
11.4.2.	After Bid Closure.....	111
11.5.	Modification of bids	111
11.5.1.	Prior to Bid Closure.....	111
11.5.2.	After Bid Closure.....	111
11.5.3.	Alternations due to errors and omissions.....	112
11.5.3.1.	Errors in totalling prices.....	112
11.5.3.2.	Apparent errors in price.....	112
11.5.3.3.	Failure of prospective vendor to furnish data/information.....	112
11.5.3.4.	Errors in affixing signature.....	112
11.6.	Late Bids	113
11.7.	Bid Opening	114
11.8.	Handover to Procurement function.....	114
11.9.	Rejection of bids.....	114
12.	EVALUATION – SOURCE SELECTION.....	116
12.1.	Introduction	116
12.2.	Evaluation Panel (or Proposal Evaluation Team).....	116
12.3.	Evaluation criteria.....	117
12.3.1.	Formal criteria	119

12.3.2. Technical criteria	119
12.3.3. Management criteria	120
12.3.4. Financial criteria	121
12.4. Evaluation of bids	121
12.4.1. Preliminary examination of bids	121
12.4.2. Technical/quality evaluation	121
12.4.3. Financial/commercial evaluation	122
12.5. Clarification of bids	122
12.6. Competitive negotiations (discussions)	122
12.6.1. Pre-negotiation exchanges	123
12.6.2. Determination of the competitive range	124
12.6.3. Conducting negotiations	125
12.6.4. Negotiation practices	127
12.6.5. Generic structure of a face-to-face negotiation process	127
12.6.5.1. Stage 1: Pre-negotiate	127
12.6.5.2. Stage 2: Meet the other party	128
12.6.5.3. Stage 3: Negotiation	128
12.6.5.4. Stage 4: Post-negotiations	128
12.6.6. Documentation	128
12.6.7. Obtaining proposal revisions	129
12.7. Evaluation Report	129
13. HANDLING EXCEPTIONS	130
13.1. Waivers from competitive bidding	130
13.2. Departure from Call for Bids procedure – Applicable rule	130
13.3. Justification for waivers	130
13.4. Security	131
13.5. Urgency	131
13.6. Standardization	132
13.7. Other Practical considerations	132
13.7.1. No competitive market place	132
13.7.2. “Piggy Backing” on recent competition	133
13.7.3. Recent competition failed	133
13.7.4. Purchase or lease of real property	133

13.7.5. Professional services that cannot be objectively evaluated	133
13.7.6. Follow-on to existing services	133
13.7.7. Formal Solicitation will not give satisfactory results	133
13.8. Procedural aspects by requesting a waiver.....	133
13.9. Procurement Process for waivers	135
13.10 Unauthorized procurement and regularization	135
14. CONTRACT AWARD	137
14.1. Recommendation of award	137
14.1.1. Award of contract below Level 2 X B of the EFL	138
14.1.2. Award of contract above Level 2 X B of the EFL	138
14.2. Post-award negotiations.....	138
14.3. Protests.....	139
14.4. NATO IS Protest Resolution Procedure	139
14.4.1. Procedures	140
14.4.2. Timing	140
14.4.3. Suspension of award	140
14.4.4. Processing protests	141
14.4.5. Remedies.....	142
14.5. Protests through NATO implementing committees	142
14.6. Judicial resolution of protests	143
15. CONTRACT FINALIZATION AND ISSUANCE	144
15.1. Introduction	144
15.2. Contract negotiation	144
15.3. Contract preparation	145
15.4. Contract review and signature	145
15.5. Contract filling	147
15.6. Notification of award and debriefing of unsuccessful bidders.....	147

15.7. General elements of a contract	148
15.7.1. Legal elements of a contract	148
15.7.2. Terms and conditions of a contract	149
15.7.3. Standard contract documentation	150
15.7.4. Standard contract elements	150
15.8. Contract amendments	150
15.9. Options and multi-year contracting	153
15.10. Novation agreements	154
16. CONTRACT MANAGEMENT	156
16.1. Introduction	156
16.2. Vendor performance evaluation	156
16.2.1. Vendor performance rating	157
16.2.2. Pre-performance conference	158
16.3. Contract performance monitoring and control	159
16.3.1. Control points	159
16.3.2. Monitoring methods	160
16.3.2.1. Direct observation	160
16.3.2.2. Indirect observation	160
16.3.3. Receipt, inspection and acceptance procedures	160
16.3.3.1. Sensory and dimensional checks	160
16.3.3.2. Physical performance checks	161
16.3.3.3. Destructive tests	161
16.3.4. Acceptance or rejection standards	162
16.3.5. Types of reports	162
16.3.5.1. Receipt and inspection documentation	162
16.3.5.2. Progress meetings	162
16.3.5.3. Written reports	162
16.3.6. Variance analysis	163
16.3.7. Taking corrective action	164
16.3.8. Follow up	164
16.4. Change management	164
16.4.1. Financial changes	165
16.4.1.1. Cost overruns versus cost growth	165
16.4.1.2. Cost overrun	165
16.4.1.3. Cost growth	166
16.4.2. Delays and variations	166

16.4.2.1. Excusable delays	166
16.4.2.2. Non-excusable delays	167
16.4.3. Remedies.....	167
16.5. Default.....	168
16.5.1. Cure notice	168
16.5.2. Show cause notice.....	169
16.6. Termination	169
16.6.1. Termination for default	169
16.6.2. Termination for convenience.....	172
16.7. Past performance.....	174
16.8. Contractor suspension/debarment	175
16.9. Dispute management and resolution.....	175
16.9.1. Basic rules	176
16.9.2. Additional rules	176
16.9.3. Keys to effective dispute resolution.....	177
16.9.4. Mediation	177
16.9.5. Escalation process.....	178
16.9.6. Arbitration	178
16.9.6.1. NATO Standard Arbitration Clause	178
16.10. Financial management/payment	179
16.10.1. Advance payment	180
16.10.2. Partial payment.....	180
16.10.3. Progress payment.....	181
16.10.4. Final payment	181
16.10.5. Holdback.....	181
16.11. Contract completion and close out.....	181
16.11.1. NATO's furnished equipment and material	182
16.11.2. Warranties	182
16.11.3. Liquidation of securities	183
16.12. Supplier's performance report.....	184
16.13. Claims	184
16.14. Lessons learned.....	185
16.15. Contract file and documentation	185
16.16. Storage of files	186

1. INTRODUCTION AND PURPOSE OF THIS MANUAL

1.1. INTRODUCTION

Procurement is the end-to end process from identification of an unmet business need to satisfying the requirement with suitable and sustainable goods and services.

The ultimate objective of procurement is to add value to the Organization in fulfilling its goals and objectives. Procurement activities support organizational mandates on a daily basis by obtaining the necessary inputs for the Organization to do its work.

The North Atlantic Treaty Organization (NATO) needs to procure goods and services to support its activities at its Headquarters (HQ) in Brussels as well as in the different missions away from the Headquarters. At NATO HQ, procurement is the responsibility of the Procurement Service (PS), within the International Staff (IS). At NATO missions away from the HQ, officers in charge are responsible for local procurement and may also request the Procurement Service to perform procurement on their behalf.

The purpose of this Procurement Manual is to promulgate policy, state roles and responsibilities and outline procedures for the procurement of goods and services funded through the NATO Civil Budget or from any other international or national funding sources for which the procedures outlined in this Manual will be approved and applied.

In order to achieve process alignment at NATO wide level, this Manual has been developed by benchmarking to manuals from other NATO bodies, in particular the SHAPE Bi-SC Directive 60-70, the NAMSAs Procurement Regulation 251-01, and NSIP Procurement Regulations such as AC/4-D/2261.

This Manual aims to provide guidance on procurement policies and procedures, harmonize procurement approaches, encourage consistency and thus increase efficiency between all staff members involved in the Procurement Process. It clarifies the principle of segregation of responsibilities between requisitioning entities and the Procurement Service by specifying several of such separate and distinct functions within the overall Procurement Process. Moreover, cooperation between the requisitioning entities and the Procurement Service is essential and of utmost importance to ensure that NATO obtains good quality products and services that meet the needed specifications at competitive prices, within the time frame required. This Manual covers the rules to be followed from the time a Procurement Request is received for procurement of goods or services, until the obligations of each party under the contract have been fulfilled. All staff members of NATO's International Staff are required to comply with the provisions of this Manual.

The procedures in this Manual are designed to ensure that the Procurement Service can enable those seeking business with NATO to be confident that their submissions are considered and assessed in a fair and transparent manner.

1.2. AMENDMENTS AND REVISIONS

This Manual is subject to change from time to time as deemed necessary by the Procurement Service. These changes will be provided as amendments to the Manual, or if necessary, a new version will be issued.

The Deputy Assistant Secretary General for Financial Resources (DASG-FR) is responsible for the maintenance, improvement and distribution of this Manual and its amendments.

1.3. SUPPLEMENTATION

The Head of the Procurement Service is authorised to issue additional policy and standard operating procedures to supplement the guidance provided in this Manual. Such supplements may provide expanded information regarding topics addressed in this Manual, but will not conflict with the rules, policies, and procedures contained in this document.

1.4. APPLICABILITY

This Manual applies to all NATO HQ International Staff procurement activities within the framework of the Civil Budget in accordance with NATO Financial Regulations (NFR). The present Manual does not supersede the provisions of the NFR.

2. REGULATIONS, ROLES AND RESPONSIBILITIES

2.1. APPLICABLE RULES

2.1.1. NATO FINANCIAL REGULATIONS (NFR)

Procurement within NATO is governed by the NATO Financial Regulations (NFR), approved by the Council (C-M(81)30). The NFR establish the basic policy applicable to all NATO bodies.

The Financial Rules and Procedures (FRP) for NATO's International Staff in implementation of the NFR are established by the Secretary General and approved by the Budget Committee (BC). In accordance with the NFR, sub-articles 18.2 and 18.3. The principles they contain form the basis for the issue by the Secretary General of supplementary administrative and financial directives (Preamble, article 2).

They must be read in conjunction with the basic regulations and may in no way be construed as superseding any of the NFR provision. Any amendment to the latter which requires a change to the FRP shall be regarded as a paramount until appropriate changes are made therein.

These Regulations shall govern the financial administration of all civilian and military headquarters and other Organizations established pursuant to the North Atlantic Treaty and financed through international budgets (NATO bodies).

In case of any conflict or inconsistency between the NFR or FRP and this Manual, the NFR and the FRP shall prevail. The Financial Controller reviews and approves any formal interpretations of the NFR regarding procurement based on advice from the Head of the Procurement Service.

2.1.2. CIVILIAN PERSONNEL REGULATIONS (CPR)

The Civilian Personnel Regulations (CPRs) for NATO Staff have been approved by the North Atlantic Council. They are applicable to all NATO bodies and govern personnel administration in each NATO body for personnel of the following classes:

- International civilian personnel.
- Consultants.
- Temporary (civilian) personnel.

Any NATO body wishing to diverge from these Regulations shall seek Council approval to do so.

Any proposals for amendments to the Regulations shall normally be submitted to the Council for adoption once a year, in accordance with the procedure applicable to the final approval of the present Regulations.

2.1.3. OFFICE NOTICES (ONs)

Office Notices are the administrative documents of NATO's International Staff. They may only be issued by the Assistant Secretary General for Executive Management or the Director of the NATO Office of Security. They are distributed to NATO IS in order to raise awareness on issues of general importance and to provide guidance on the implementation of NATO policy as it pertains to security, human and financial resources.

ONs are also used to communicate information of a temporal nature, such as repair works. They do not constitute NATO record and are destroyed when no longer current.

For the purposes of procurement, ONs may specify detailed procedures, implementing instructions or guidance that complement or amplify the provisions contained in the NFRs and FRPs and that are applicable for all staff involved in any Procurement Process.

2.2. ROLES AND RESPONSIBILITIES

Depending upon the complexity of the issue, procurement activities involve different entities among NATO's International Staff. NATO has developed an administrative structure based on segregation (or in some cases separation) of responsibilities for procurement. This structure typically recognises that the requisitioner, budget controller, buyer and payer should be separated, in order to provide appropriate organizational checks and balances and to permit specialisation in their respective professional areas.

The main purpose is to reduce the possibility of corruption and to emphasize accountability of all key players in the Procurement Process.

2.3. DELEGATION OF AUTHORITY

NATO has established delegations of authority to implement procurement activities. Such delegations are intended to reduce administrative bottlenecks and provide increased responsiveness by locating decision making authority nearer to the activity. The procurement delegation provides authorisation to award and/or issue payment upon confirmation that the correct procedures have been followed. By exercising the authority, the staff member becomes accountable for the action and potentially financially liable for error (misconduct).

Under no circumstances shall NATO IS personnel (other than duly appointed Procurement Officers and other individuals specifically authorised by them) enter into formal negotiations, place orders or execute contracts or modifications for the provision of supplies or services to NATO, or in any way obligate NATO.

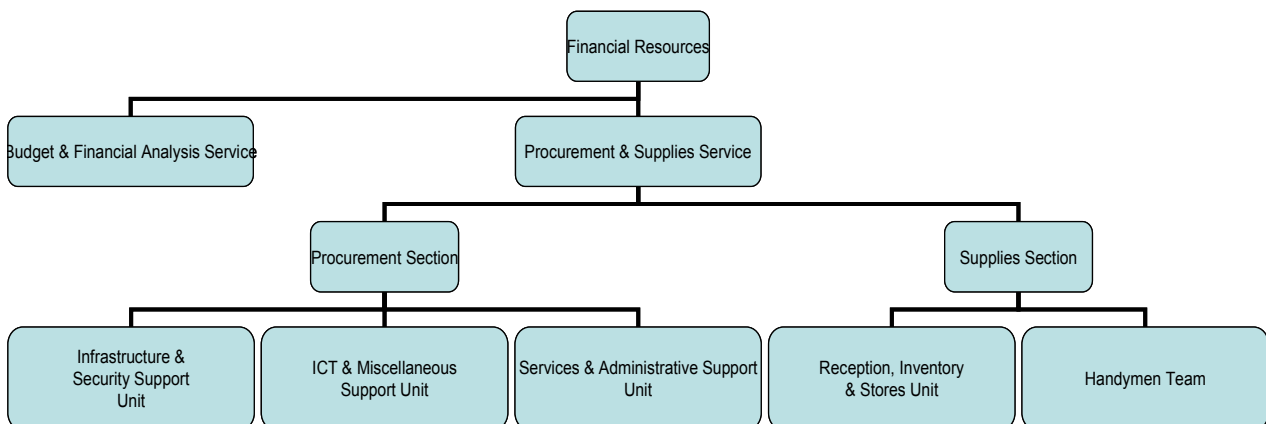
To reinforce the control points in the execution of NATO commonly funded budgets, a number of steps are established depending on the amount category, to avoid that one single authority keeps enough individual power in spending public credits, by introducing counter-signing authorities.

Delegation of signatory power for internal budget commitments and issuance of contracts/purchase orders may be established. The Office of Financial Control is informed of such delegation of signatory power.

2.4. FINANCIAL RESOURCES

Under the general direction of the Deputy Assistant Secretary General for Financial Resources (DASG FR), Financial Resources, within the Executive Management Division, is organized into two different services: the Budget and Financial Analysis Service and the Procurement and Supplies Service.

An organization chart of Financial Resources is shown below.



2.4.1. BUDGET & FINANCIAL ANALYSIS SERVICE

Under the general direction of the Deputy Assistant Secretary General for Financial Resources, the Budget & Financial Analysis Service is responsible for developing civilian international policies and procedures related to budgetary matters that affect the International Staff and the different Divisions and Independent Offices at NATO Headquarters.

This Service analyses, proposes for approval and discusses the NATO Civil Budget. It monitors the execution of the Civil Budget, in conjunction with the NATO Office of Financial Control (OFC). The NATO Civil Budget operates in an Objective-Based Budgeting (OBB) System.

2.4.2. NATO PROCUREMENT AND SUPPLIES SERVICE

The Procurement Service reports directly to the Deputy Assistant Secretary General for Financial Resources. Under the direction of the Head of Procurement, the service is organised into three Procurement Units and an Administrative Support.

2.4.2.1. HEAD OF THE PROCUREMENT AND SUPPLIES SERVICE

Under the general direction of the Deputy Assistant Secretary General for Financial Resources, the Head of Procurement and Supplies is responsible for direction and management of the work of the Procurement and Supplies Service and the efficient, effective and economical administration of the procurement programme and related support services at NATO Headquarters.

The Head of Procurement and Supplies maintains liaison with the Delegations and NATO military agencies located in Brussels and provides them with procurement and supply support, as required.

2.4.2.2. PROCUREMENT UNITS

Procurement staff is responsible for the procurement of goods and services for NATO HQ, including real property and works, or other requirements on behalf of the Organization. The overall procurement for NATO HQ is dispatched between the following three units:

- Infrastructure and Security Support.
- IT, Communications and Miscellaneous Support.
- Services Support.

Each unit is composed by a Head (Procurement Officer) and a small team of buyers.

2.4.2.3. SUPPLY OPERATION SECTION

The Supply Operation Section ensures supplies control and distribution priorities are inline with Organization objectives. Under the general direction of the Head, P&S and the supervision of the Head, Supply Operation Section, this Section is organised in two units, the Reception, Inventory and Stores Unit and the Handymen Unit/Team.

The Supply Operation Section maintains a catalogue of frequently procured items such as stationery products, which are available on-line in E-Supplies.

2.4.2.3.1. The Reception, Inventory and Stores Unit is in charge for the reception, accounting, storage, replenishment and distribution of both investment (capital, inventory) and consumables items (stock) in accordance with the approved rules in the subject matter.

Main accountabilities of the Reception, Inventory and Stores Unit are:

- Maintaining a schedule of planned deliveries based on information from the Procurement Section;
- Checking deliveries to ensure conformity with the Purchase Orders issued by the Procurement Section;
- Controlling the stock-keeping and storage of both capital/investment items and the consumables including office supplies and technical supplies;
- Ensuring that rigorous rules are applied in the distribution of supplies;
- Providing safe storage, maintenance and issue of personal protective equipment for NATO civilians deploying on North Atlantic Council approved operations and missions.

2.4.2.3.2. The Handymen Unit/Team is responsible for providing services of storage, transport and installation of furniture, material and supplies to NATO IS and the Delegations.

2.4.3. NATO PROCUREMENT & SUPPLIES' COMPUTERIZED SYSTEMS

Procurement staff is required to be fully familiar with the use of the computerized procurement and supplies management software systems used in their daily activity.

As NATO computerized working tools are installed in two different networks, Minerva and L.R.E, main tools used by the Procurement Service are also located in these two networks:

(a) Minerva

- The Procurement and Contracting Information System (PCIS), this application is the actual core procurement system used by the Procurement Service to maintain the supplier's database, generate Procurement Requests and raise budget commitments and raise purchase orders.
- "E-Supplies Electronic Ordering System"; gives access to the office supplies store catalogue of consumable articles necessary to the smooth operation of offices. It is available for consultation by all members of the International Staff, Agencies, Delegations and Missions. The articles available can be ordered via E-Supplies and are automatically delivered to the requester's office on the Thursday or Friday following the order. Only articles that have been ordered via the E-Supplies system will be delivered to the requester.

(b) L.R.E.

- NATO Procurement Service's webpage, located in NATO's official website, provides information for potential suppliers who are interested in doing business with NATO, as well as for member states and the general public. This page gives information on upcoming Call for Bids, recent awards, Procurement Planning, as well as information on the Procurement Process and contact information. It also enables the potential bidders to download the Solicitation Documents. NATO's official website address is www.nato.int.

2.5. REQUISITIONING OFFICES

Apart from the occasional support given by the Procurement Service to NATO Delegations/Missions in their procurement needs, main requesters for the Procurement Service are the different NATO HQ Divisions and Independent Offices. The requisitioners are responsible for identifying the concrete needs of their Division and for developing generic specifications to fulfil such needs.

Requisitioners shall have in mind the solutions that best serve the interests of the Organization (Best Value) when performing their responsibilities, when undertaking Procurement Planning, when establishing the Specifications for goods and services, when establishing Evaluation Criteria, when conducting the technical evaluation and when involved in contract management.

The requisitioner shall assess the market conditions and the risk factors related to the individual case. It is imperative that the requisitioner work closely with the Procurement Service to assess these market conditions and risk factors.

Requisitioning Offices order products and services by way of Procurement Requests processed and send to the Procurement Service through PCIS.

2.6. ADMINISTRATIVE OFFICERS

The Administrative Officers of the Divisions or Independent Offices, as budget holders, are responsible for the justification of the requirement funding. They act as liaison between their respective Division/Office and the Procurement Service. They are authorized to approve Procurement Requests after verification of existing funding for the concrete procurement.

Their main responsibilities with respect to procurement are as follows:

- Effect liaison with the Budget and Financial Analysis Service, Financial Resources and the Office of Financial Control, regularly to ensure the availability of funds for the different needed procurement and propriety of purchase;
- Review all requests received in order to establish the actual need for the requirement, certify the Procurement Request and transmit it to the Procurement Service through PCIS. The clearance and approval of the Administrative Officer is taken as a certification that funds are available and that a need exists for the goods or services requested;
- Ensure that comprehensive and unambiguous Technical Specifications or descriptions are developed and attached to the requisition for each item to be procured and not duly specified in PCIS. Such Specifications shall be clear and sufficiently detailed to enable vendors to compete fairly. The Specifications shall be generic. Specifications should not refer to brand names, catalogue numbers or types of equipment from a particular manufacturer, except when it has been decided that it is necessary to do so in order to guarantee the inclusion of a particular essential design, or characteristic of functioning, construction or fabrication. In these cases, the references should be followed by the words “or equivalent” together with the criteria for determining such equivalence. The Specifications should permit the acceptance of offers for equipment with similar characteristics that provide performance and service at least equal to that specified;
- Consolidate Procurement Requests by commodity grouping, class of equipment, or services to the extent possible;
- Once the Procurement Process ended and the contract awarded or Purchase Order issued, liaise regularly with the Procurement Service for contract management purposes;

2.7. OFFICE OF FINANCIAL CONTROL

The Financial Controller is appointed by the Council and is responsible for the call-up of funds and the control of expenditures within the framework of the Civil and Military Budgets and in accordance with NATO Financial Regulations. His Office consists of a Budget and Treasury Service and an Internal Control Service.

2.8. CONTRACT AWARDS COMMITTEE (CAC)

The Contracts Award Committee (CAC) is a standing board established within NATO IS to serve as the Organization's Source Selection Authority (SSA) for high-value contracts, all contracts in excess of level 2xB of the EFL (Part III of the NFR, art. 20.d.).

2.8.1. GENERAL FUNCTIONS OF THE CONTRACT AWARDS COMMITTEE

The CAC has full authority in awarding contracts for the benefit of NATO IS. The CAC ensures that the proposed procurement actions are based, inter-alia, on fairness, integrity and transparency, and as such are impartial and unambiguous.

The CAC decisions are normally based on unanimity. Should unanimous agreement not be reached, then the matter will be decided by the Chairman of the CAC.

The responsibilities of CAC shall include:

- Approval of the composition of the Evaluation Panel or Proposal Evaluation Team (PET) that are established for each competitive procurement;
- Approval of the evaluation criteria established for each source selection activity carried out by the Organization;
- Approval of the Source Selection Plan established for each source selection activity carried out by the Organization;
- Approval of the procedures used by the Source Selection Organization (SSO) to safeguard all information related to source selection; and
- Approval of evaluation reports and recommendations of award submitted by the Evaluation Panel (or Proposal Evaluation Team).

All correspondence submitted to the CAC shall be routed through the Head of the Procurement Service. This is to ensure that the Head of the Procurement Service is made aware of all recommendations to the CAC, and to afford him/her the opportunity to contribute his/her advice and recommendations as appropriate.

The CAC examines and provides general advice regarding the financial implications of any proposed procurement action, comment where appropriate as to whether, in its view, the proposed action, inter-alia, is in the best interest of the Organization, and advises to the extent to which it seems that the proposed contractual instrument is appropriate and practical to administer.

The CAC is not responsible for reviewing or providing advice on the affordability, eligibility, and operational adequacy or necessity of the requirement being met under the proposed procurement action.

The CAC proceedings are not public. Therefore, Procurement Officers will timely notify all unsuccessful bidders after the CAC has made a contract award, and will stand ready to provide a debrief or respond to bidders' queries so as to ensure the transparency of the decision process.

Unless for urgent reasons otherwise deemed necessary by the Financial Controller, the CAC meets every Thursday at 10.00 am.

2.8.2. COMPOSITION OF THE CONTRACT AWARDS COMMITTEE

Pursuant to Part III, Annex IV of the NFR, the CAC shall be composed of three voting members, including the Chairperson, and two members "ex officio" with non-voting capacity, from the following offices/sections:

2.8.2.1. Voting members:

- Financial Controller, Office of Financial Control (OFC) as Chairperson.
- Head of Budget & Treasury Service (BT), Office of Financial Control.
- Budget Officer, Financial Resources.

The head of each of the offices/sections identified above, shall nominate staff members from the same office/section, to serve as a member and/or alternate(s) on the CAC. The individuals designated shall have commercial, financial or legal experience, or other relevant qualifications or training or experience in procurement.

2.8.2.2. Members "ex officio"

- The Head of the Procurement Service shall attend and serve the CAC in a non-voting capacity.
- The Secretary of the CAC, not a member of the CAC, serving the CAC in a non-voting capacity.

If deemed necessary by the Head of Procurement, or if so requested by the Chairperson, any requisitioner having initiated a procurement action that requires CAC review shall attend, in a non-voting capacity, during the CAC review and consideration of said procurement action. In general, the requisitioner should be present during the CAC's review of the proposed procurement action.

If deemed necessary by the Head of Procurement, or if so requested by the Chairperson, a representative of the Office of the Legal Adviser shall attend, in a non-voting capacity in order to provide legal expertise in complex Procurement Processes.

In case of any question of a perceived conflict of interest the concerned member should disclose the matter to the CAC and if necessary reclude himself/herself from consideration of that matter. In such case, this person will be replaced by another member of the IS.

2.8.3. CHAIRPERSON

The Financial Controller shall act as Chairperson at the CAC. He is responsible for the following:

- Approving submissions for inclusion in the CAC agenda;
- Reviewing submission prior the CAC meetings and if necessary, requesting clarifications, and/or additional information from the Head of Procurement;
- Convening and chairing CAC meetings;
- Promoting fairness, integrity and transparency throughout the Procurement Process;
- Notifying the Head of Procurement, of rejected or deferred presentations by the CAC. Specifying at meetings and thereafter, in the CAC's written minutes, the reasons for rejections or deferrals of presentations, and making recommendations for remedial action, where appropriate;
- Approving and signing CAC minutes and recommendations previously signed by CAC members;
- Nominating a member of the CAC to serve as Acting Chairperson in his/her absence;

2.8.4. SECRETARY OF THE CONTRACT AWARDS COMMITTEE

The Secretary is not a member of the CAC and services the CAC in a non-voting capacity. Under the general supervision of the Chairperson, the Secretary is responsible for the following:

- Arranging and coordinating CAC meetings;
- Enduring the timely and efficient distribution of presentations and relevant documentation to CAC members;
- Drafting the minutes of CAC meetings and the CAC's recommendations;
- Preparing CAC related correspondence;
- Liaising with Procurement staff and requisitioning offices on issues involving CAC procedure, requesting additional information or clarifications to presentations, and any inquiries raised by CAC members regarding the procurement presentations under review;
- Maintaining a permanent record of all CAC minutes / recommendations and case presentations reviewed by it;
- Compiling statistics on the workload, activities and other matters pertaining to the CAC;
- Following approval by all members, signing CAC recommendations and minutes and promptly dispatching these for further actions.

2.9. NATO OFFICE OF SECURITY (NOS)

The NATO Office of Security Division (NOS) within NATO's International Staff is responsible for the overall coordination of NATO security among NATO civil and military bodies as well as Member Nations and Partners. In this frame it is responsible for ensuring the correct implementation of NATO security policy wide. The NOS is divided into three branches, Policy Oversight (POB), Security Intelligence (SIB) and Protective Security Branch (PSB).

Document C-M(2002)49 approved by the Council on 26th March 2002 establishes the basic principles and minimum standards of security to be applied by NATO nations and NATO civil and military bodies. This document has been developed in further Directives among which AC/35-D/2003, Directive on Industrial Security, on procurement related issues.

2.9.1. SECURITY CLASSIFICATION

Security of information is the application of general protective measures and procedures to prevent detect and recover from the loss or compromise of information. Security Classification shall be applied to information to indicate the possible damage to the security of NATO and/or its member nations if the information is subjected to unauthorized disclosure.

NATO Security Classifications and their significance are:

- COSMIC TOP SECRET (CTS) - unauthorized disclosure would result in exceptionally grave damage to NATO.
- NATO SECRET (NS) - unauthorized disclosure would result in grave damage to NATO.
- NATO CONFIDENTIAL - (NC) - unauthorized disclosure would be damaging to NATO.
- NATO RESTRICTED – (NR) – unauthorized disclosure would be detrimental to the interests or effectiveness of NATO.
- NATO UNCLASSIFIED information (NU) – refers to non-classified information.

2.9.2. NATO PROTECTIVE SECURITY BRANCH

NATO Protective Security Branch serves as the prime coordinator for protective security programmes and operations (including physical, personnel and INFOSEC measures) at NATO Headquarters and advises on protective security measures for the new Headquarters Building. It coordinates the security aspects of NATO Ministerial Meetings and other high-level conferences at NATO Headquarters and in NATO Member and Partner nations. It is responsible for the implementation of all protective security and safety measures, including physical, personnel, information security, cyber defence, fire prevention, first medical aid and chemical, biological, radiological and nuclear defence (CBRN) at NATO Headquarters.

The Headquarters Security Office (HQSO), within the NATO Protective Security Branch, is responsible for controlling the implementation of the security regulations within the NATO HQ and taking preventive and corrective security actions. It also ensures the correct implementation and execution of the policy governing the admission staff and visitors onto the NATO HQ site. It initiates and maintains the application of common and agreed security practices and procedures regarding access to the NATO Headquarters. Monitors general compliance with the security regulations at NATO Headquarters.

In this framework, the Headquarters Security Office works closely with the Procurement Service in determining the required level of security clearance for every procurement and subsequent contract.

Enclosure "G" of C-M(2002) 49 refers to security aspects of industrial operations that are unique to the negotiation and letting of NATO classified contracts and their performance by industry, including the release of NATO classified information during pre-contract negotiations. This Enclosure sets out the security policy for:

- The negotiation and the letting of NATO classified contracts;
- The security requirements for NATO classified contracts;
- The release of NATO classified information in contracting;
- Facility Security Clearance (FSCs) for NATO contracts;
- The international transportation of NATO classified material;
- International visits;
- Personnel on loan within a NATO project/programme.

This Enclosure is supported by Directive AC/35-D/2003 on Industrial Security, which sets out the detailed requirements and procedures. The directive includes the requirements for the negotiation and letting of NATO classified contracts, the security requirements for NATO classified contracts, national authorities for granting FSCs and PSCs, the authorities for international transport, the authorities for international visits, a list of the various entities that typically are involved in NATO classified contracts, and their responsibilities, and a list of NATO Programmes/Projects, participating nations and NATO Agencies.

3. PRINCIPLES AND STANDARDS OF CONDUCT

3.1. NATO REGULATORY FRAMEWORK

All staff members will particularly observe the rules contained in Chapter IV (Obligations and responsibilities) of NATO Civilian Personnel Regulations in the exercise of the procurement function and of any other task/function intimately related to it. As stated in article 13 of NATO Civilian Personnel Regulations, on accepting appointment with NATO, each member of the staff signs the following declaration:

“I solemnly undertake to exercise in all loyalty, discretion and conscience the functions entrusted to me as member of the staff of NATO and to discharge these functions with the interests of the Organization only in view. I undertake not to seek or accept instructions in regard to the performance of my duties from any government or from any authority other than the Organization / Headquarters.”

All NATO IS staff members are obliged to comply with the current Financial Rules and Regulations and with the administrative instructions issued in connection with and in development of those Rules and Regulations.

3.2. NATO CODE OF CONDUCT

3.2.1. INTRODUCTION

On 23rd February 2010 the North Atlantic Council (NAC) approved a new NATO-wide Code of Conduct (C-M(210)0016) that establishes five core values of the Organization: integrity, impartiality, loyalty, accountability and professionalism – with supporting principles to govern the conduct of all civilian and military staff assigned to the Alliance.

On 12th March 2010 a meeting of the Joint Consultative Board, staff and management of NATO bodies agreed to implement this Code and to engage in the information campaign that NATO Nations have mandated.

This Code is issued for the reference and use of all NATO staff and managers.

3.2.2. BACKGROUND

With the support of the Executive Management Division, nations took this initiative, noting that the national governments of virtually every nation in the Alliance have in place a code of ethical conduct that governs its civil service and/or military. Most international organizations and private sector companies have also seen the benefit of establishing a code of conduct for their staffs. While some individual NATO bodies had developed their own codes of conduct, there was no NATO-wide code, including for the HQ staff.

As is further noted in the report to Council, the rapidly changing socio-economic environment, and especially a growing demand for transparency, requires inter-governmental organizations to review and adjust mechanisms to ensure high standards of conduct in public office. Such public service ethics underpin the member nations' trust and are a keystone to good governance. A visible, well-adopted ethics framework will equip the Organization to make wise decisions under often difficult circumstances and instil confidence with the public in NATO's activities. It will help staff to make informed decisions that consider the best interests of NATO as an Organization and of its affected stakeholders.

The Code of Conduct is envisioned as a guiding document to clarify and communicate expectations, to assist staff in navigating situations that may arise in the course of their official duties, and to express to those outside the Alliance the principles by which those in this Organization will conduct themselves. The code is not intended to serve as a set of rules and regulations that can be "enforced" by management; rather it should be considered a guiding document. The Civilian Personnel Regulations (CPRs) remain the primary policy by which civilian staff conduct will be managed. Applicable national military regulations remain the policy by which military member conduct will be managed by their national military authorities.

3.2.3. APPLICABILITY

The Council has agreed that the Code of Conduct must have NATO-wide applicability, to include both NATO civilians and assigned military personnel (to the extent compatible with national military policy). This would include all civilians under contract, including permanent, temporary, and intern staff.

3.2.4. IMPLEMENTATION

It was recommended to the NAC to grant a primary role for NATO supervisory management in the implementation and oversight of staff ethical behaviour. A role is foreseen for the Legal Advisors, Human Resources Offices, Financial Controllers, and Procurement Officers in managing an effective ethics program. The first line of oversight of staff conduct will remain the supervisors. The Offices of the Legal Advisor would constitute the authority for both management and staff when questions of interpretation and proper ethical conduct arise. Human Resources and Procurement Offices will serve as authorities for advice, in the case of the CPRs and procurement regulations respectively.

The Council also decided that the Heads of NATO bodies should promote staff awareness of the Code, lend support to the values and principles therein, and incorporate the Code into the cultures and administration of their organizations. Such action could include the incorporation of ethics principles into performance measures and statements of work for service contracts. In addition, at NATO HQ all future civilian staff contracts, as well as renewal/extensions of existing contracts, shall include adherence to the Code of Conduct as a condition of NATO employment. Affected staff will be provided a copy when signing their contracts.

3.3. CONTENT OF NATO CODE OF CONDUCT

Service in NATO entails promoting the highest levels of trust and confidence in our integrity, impartiality, loyalty, accountability and professionalism.

Therefore, these five core values – and the principles that exemplify them – form the basis of this Code, which shall guide the conduct of NATO staff, whether they are civilian or military, in all NATO bodies. This Code sets forth the framework and standards for the personal and professional conduct which is to be expected of those entrusted with positions in the Alliance.

It is intended to be read in context of the NATO Civilian Personnel Regulations, other personnel policies, or applicable national military regulations.

3.3.1. INTEGRITY

As NATO staff, we are committed to maintain the highest standards of professional and personal conduct in such a way as to uphold the trust and confidence of the citizens of all our member states. As such, we affirm that we:

- Are honest and truthful in our dealings; fully presenting all facts in an unbiased and clear manner.
- Avoid situations that might result in real, perceived or potential conflicts between our personal interests and those of the Alliance.
- Take prompt action to remove ourselves from situations where conflicts of interest can or have occurred.
- Do not use non-public information obtained through our official position for private gain, either for ourselves or others.
- Avoid actions that could be perceived as an abuse of the privileges and immunities conferred on the Organization and its staff.

3.3.2. IMPARTIALITY

As NATO staff, we serve the Alliance's interests above our personal interests. As such, we affirm that we:

- Maintain our objectivity and independence in our professional dealings, striving to be fair, just and equitable in all our activities.

- Keep an international outlook and base our recommendations and decisions on what is best for the Alliance as a whole, rather than the views or interests of our own, or any particular nation or nations.
- Do not accept gifts which might compromise our impartiality or give rise to the perception of a lack of impartiality in the conduct of our official duties.
- Do not engage in unauthorized outside employment or other off-duty activities that might conflict with or otherwise call into question the performance of our official duties.
- Do not use our NATO position to unfairly secure future employment and will not use privileged information to unfair advantage after our NATO employment.

3.3.3. LOYALTY

As NATO staff, we are faithful and true to the enduring role of the Alliance, the principle of unity upon which it was founded, and in support of the current and future challenges it faces; As such, we affirm that we:

- Support the principles upon which the Alliance was founded.
- Demonstrate a unity of purpose focused on the goals and objectives of the Organization.
- Strive to make a personal contribution to NATO's success and foster a culture of results across the Alliance.
- Always put the interests of the Organization above our own and that of our individual nations, mindful of all applicable laws and regulations.
- Contribute to the development and maintenance of a positive team spirit.

3.3.4. ACCOUNTABILITY

As NATO staff, we are responsible and accountable for our actions and decisions, or failure to act, and accept the consequences of their outcomes. As such, we affirm that we:

- Are transparent in all we do, even when it does not reflect favourably upon us.
- Take full responsibility for our actions and take prompt action to resolve or correct any errors or omissions that we may make.
- Are mindful of the consequences of our actions and decisions before we take them.

- Stay vigilant to any fraud, waste, and abuse that may occur within the Organization and address them appropriately.

3.3.5. PROFESSIONALISM

As NATO staff, we are professionals who are entrusted to carry out our duties to the utmost of our abilities for the common good. As such, we affirm that we:

- Put forth an honest effort in the daily performance of our duties.
- Maintain the highest level of competence in our assigned areas and strive for continuous improvement of our knowledge, skills, and abilities.
- Care for and use prudently the limited resources of our Organization.
- Protect the security and confidentiality of information entrusted to us.
- Participate in maintaining the safety and security of our workplace.
- Take into consideration the effects of our work on the natural environment.
- Respect the privacy and diversity of our fellow staff members.
- Do not harass or discriminate against others in our workplace, and do not tolerate those who do.
- If supervisors, provide fair leadership and take responsibility for the actions or inactions of our subordinates, ensuring they provide NATO with the best possible service by encouraging and rewarding those who perform well, while correcting those who fail to live up to standards.

3.4. PROCUREMENT STANDARDS OF CONDUCT

Transactions relating to the expenditure of NATO customer nations funds require the highest degree of trust and an impeccable standard of conduct. It is therefore of the utmost importance to the mission entrusted to the Procurement Service that all personnel who may come into contact with procurement matters maintain unquestionable integrity and impartiality and avoid strictly any conflict of interest or even the appearance of a conflict of interest in NATO suppliers' relationships. The procurement activity is to be carried out in a manner consistent with the highest professional, ethical, moral and legal standards. The application of this policy concerns not only the Procurement staff but all NATO IS.

The funds used by NATO are entrusted by its member states. The transactions committing NATO shall be conducted at impeccable standards in order to ensure the highest degree of public trust. Hence, it is absolutely essential that all procurement activities be carried out in

a manner above reproach, with complete impartiality and with no preferential treatment.

NATO's Procurement Process, which includes the generation of specifications and scope of work, certification of the availability of funds, identification of potential suppliers, evaluation of received submissions, receipt and inspection and payment, is intended to allow suppliers to compete for NATO business on a fair basis. Staff associated with the procurement function, therefore, is responsible for protecting the integrity of the Procurement Process and maintaining fairness in NATO's treatment of all suppliers.

The standard of conduct for all staff involved in the Procurement Process includes, but is not limited to:

- NATO staff shall not allow any supplier access to information on a particular procurement before such information is available to the business community at large.
- NATO staff shall not intentionally use unnecessarily restrictive or "tailored" specifications or statements of work that can discourage or limit competition;
- Staff shall not solicit or accept, directly or indirectly any promise of future employment from anyone who has or is seeking to obtain NATO business;
- Staff shall not have a financial interest in any supplier responding to a NATO solicitation, and are prohibited from any involvement in the procurement action if they do;
- Staff shall not disclose proprietary and source selection information, directly or indirectly, to any person other than a person authorized to receive such information.

The actions of NATO staff in the Procurement Process shall be transparent so that it can be verified that these standards have been upheld.

3.5. GENERAL PROCUREMENT PRINCIPLES

In order to properly accomplish the procurement activity, the following procurement principles are underscored so as to develop a professional procurement framework, better serve the different customers/requisitioners and safeguard NATO interests and image.

3.5.1. LOYALTY AND RESPECT FOR RULES AND REGULATIONS

NATO's Procurement staff is charged with the highest standards of loyalty and discretion. In this framework, they shall:

- Stand by decisions that are in the Organization's interest even if they are unpopular;

- Understand the rules and regulations pertaining to his or her profession and organization;
- Know why the rules and regulations are necessary;
- Respect the need for the formality of rules and regulations;
- Interpret and apply rules in accordance with their intent;
- Be able to perform procurement responsibilities effectively and efficiently and still abide by the pertinent rules.

Permitted exceptions to requirements should be kept to a minimum and be fully justified and documented. If a rule or regulation must be reconsidered or changed, Procurement staff should pursue the appropriate process to submit the recommended revision through established channels and include complete documentation to explain and justify the proposed change.

During this process, the existing regulations, rules and procedures must be followed. Procurement staff must perform regulated tasks consistently according to the specified procedures and take a leadership role to help co-workers and stakeholders understand and follow them as well.

3.5.2. INTEGRITY

Throughout all phases of the Procurement Process, the highest standards of integrity will be maintained. As procurement involves the expenditure of NATO funds, personnel executing related processes must maintain the highest degree of honesty, trust and an impeccable standard of conduct. The general rule must be to avoid even the appearance of a conflict of interest when promoting NATO-suppliers relationships. Procurement must be conducted with the utmost professionalism and be in complete accord with current regulations.

Cultural differences including nationality, ethnicity, industry or profession, must be set aside. Generic principles of integrity that extend beyond and arise above such differences must be allowed to prevail, especially in connection with the business transactions conducted by NATO's Procurement staff.

Integrity, to Procurement staff in the international marketplace, means believing that the public trust is so important that it cannot be compromised. Procurement staff shall therefore demonstrate integrity by:

- Upholding the principles of the North Atlantic Treaty, which reaffirms the faith in the purposes and principles of the Charter of the United Nations and the desire to live in peace with all peoples and governments;

- Demonstrating the values of NATO, including impartiality, fairness, honesty and truthfulness in daily activities and behaviours;
- Acting without considerations of personal gain;
- Resisting undue political pressure in decision making;
- Not abusing power or authority;
- Taking prompt action in cases of unprofessional or unethical behaviour.

3.5.3. AVOIDANCE OF THE APPEARANCE OF IMPROPRIETY

Procurement staff must be constantly aware of how their actions appear to outside observers. Observers may not understand the pressures of their profession. Procurement staff shall always behave in such a way that observers could not misconstrue their actions as improper.

Acting properly in a “technical” sense is not enough; avoiding even the appearance of impropriety is also necessary. Not all societies have the same standards or traditions about what is proper and what is not. It is important to recognize cultural differences in appearances and to anticipate, in the most conservative terms, what might be perceived as improper conduct as “conservative” does not mean the same thing to staff from different cultures.

3.5.4. ACCOUNTABILITY

Procurement staff shall effectively discharge their personal procurement responsibilities by ensuring that effective contractual mechanisms are in-place for all procurement activities. All actions must be clear and auditable and must always consider ways to defend against or mitigate likely contractual risks.

3.5.5. PROFESSIONAL PROFICIENCY

Procurement staff must be qualified to perform their assigned functions and remain abreast of ever-evolving commercial practices. They shall use their professional judgment, and common sense in executing procurement activities. They will possess the required procurement education/experience and will be given the necessary training and opportunities for continued professional development.

3.5.6. RESPONSIVENESS/DUE DILIGENCE

Procurement staff shall serve as business advisors and must be as pro-active as possible in satisfying the needs of the mission. The employment of appropriated Procurement Processes that satisfy customer expectations in terms of price, quality and timeliness will

help to achieve this. At the same time, processes shall be streamlined so as to minimize administrative operating costs.

Due diligence refers to carrying out duties carefully and thoroughly and avoiding careless practices or techniques. Due diligence requires that all activities performed by Procurement staff will be pursued in a manner that goes beyond the minimum effort.

3.5.7. TRANSPARENCY

Transparency means unimpeded visibility. Because NATO procurement involves the use and accountability for member funds, transparency is paramount in all procurement activities.

The procurement system must employ procedures that are openly advertised to prospective bidders in advance of, and during, solicitation processes. Providing contractors with timely, accessible, and accurate information within the bounds of commercial confidentiality are proven means of ensuring transparency.

All procurement transactions are subject to scrutiny. Procurement staff must always conduct themselves in such a way that any scrutiny would not damage the Organization.

There are two degrees of transparency:

- Internal scrutiny. This refers to transparency within NATO, such as examination conducted by internal auditors. It seeks to ascertain compliance with NATO's own standards by NATO's own compliance officers.
- External scrutiny. This refers to transparency outside NATO, such as examination by NATO members, International Board of Auditors, the press or other outside observers. It refers to the notion that almost anyone can observe NATO activities and watch how NATO conducts its business.

Only for security reason or when something is truly of a confidential nature, such as proprietary data belonging to a supplier, or proposals being evaluated prior to contract award, should confidentiality be given a higher priority over transparency while still maintaining an overall transparent process.

3.5.8. CONFIDENTIALITY

Confidentiality needs extra consideration in NATO procurement, due first of all to security reasons, and also to the delicate nature of the information that is handled in Procurement Processes such as pricing of products, marketing strategies, etc. A breach in the confidentiality of the data handled in the Procurement Process could result in discredit of NATO and distrust from members, partners or suppliers.

Confidentiality might seem in contradiction with transparency, but what it means is, the way the overall Procurement Process is conducted needs to be clear and transparent, while truly proprietary and commercial data needs to remain confidential.

3.5.9. UNIFORMITY

Procurement staff shall ensure that the procurement approaches are standardized. They will provide additional procurement guidance through the issue of policy letters. This will promote greater efficiency by standardizing procurement policies and procedures. Through a consistency policy, the Procurement Service will enable suppliers to better understand NATO procurement and encourage them to respond more efficiently to NATO demands.

3.5.10. COMPETITION

NATO procurement requirements shall be met by maximizing competition amongst eligible/capable sources. When properly conducted, competition secures most favourable sourcing and pricing. Therefore it is the Procurement staff's responsibility to ensure statements of work or specifications are not biased toward a specific product, manufacturer or service provider. Procurement staff has full authority to approve the language of the specifications or performance objectives or capability shortfalls that will be described and advertised to the bidders. All efforts should focus on Procurement Processes that put a premium on obtaining solutions that best serve the interests of the Organization (Best Value), and avoid awarding exclusive rights to contractors, unless clearly justified.

3.5.11. IMPARTIALITY, FAIR TREATMENT AND POSITIVE BUSINESS PARTNERING

Bidders and contractors should be treated objectively and without discrimination, including protection of commercial confidentiality where required. Also, Procurement staff should not impose unnecessary burdens or constraints on suppliers. It is incumbent upon Procurement staff to cultivate positive business partnerships during all phases of procurement. Such relationships will encourage improvement and open-up avenues to resolve conflicts, while safeguarding NATO and suppliers' proprietary interests.

In the context of impartiality and fairness, Procurement staff shall:

- Set aside all personal and organizational biases.
- Apply the same standards of evaluation to all suppliers (equal treatment).

Fairness implies being reasonable as well as impartial, and treating NATO's suppliers with professional, businesslike courtesy, as well as with strict adherence to the policies and procedures for conducting the transaction.

3.6. ETHICAL RISKS AND MITIGATING MEASURES

3.6.1. CONFLICT OF INTEREST

NATO's Procurement staff is expected to maintain the highest ethical standards, keep the best interests of NATO in mind, and avoid even the slightest appearance of acting in the interests of personal gain. Therefore, they shall be impartial and objective when executing activities and resolving procurement matters.

A very common risk situation related to ethics in procurement is the risk of a conflict of interest. For this purpose conflict of interest can be defined as a direct or mutually exclusive clash between the interest of NATO and the private and personal interest of a staff member. It refers to any situation that might compromise the staff member's reliability and independence. A conflict of interest exists even if no improper act results from it and if it can create an appearance of impropriety that might undermine confidence in the staff member involved or in NATO.

Any staff member who finds him/herself in a conflict of interest or a potential conflict of interest shall immediately report this situation to his/her authorities.

Any staff member who suspects or discovers illegal collusion by bidders, suppliers, or a bidder or supplier and any other NATO staff member(s) shall immediately report this situation to his/her authorities.

In the context of procurement, any Procurement staff member shall:

- Declare with immediate effect any potential conflict of interest;
- Not use information obtained for professional reasons for personal profit;
- Disclose and dispose the financial interest involved;
- Not participate in any conflicting Procurement Process;
- Excuse or withdraw from any Procurement Process where the Procurement staff member may have a conflicting interest.

3.6.2. DECLARATION

Staff members involved in the Procurement Process, including those participating in Bid Opening and Evaluation Panel (or Proposal Evaluation Team) or CAC, shall sign, in advance of their duties, a declaration of non disclosure and non conflict of interest.

3.6.3. GIFTS AND HOSPITALITY

The Procurement Service of NATO's International Staff maintains a policy of zero tolerance in respect of receiving any favour, gift or hospitality from any individual or organization currently having or seeking to establish a commercial relationship with NATO's International Staff.

It is of overriding importance that the staff member acting in an official procurement capacity should not be placed in a position where their actions may constitute or could be reasonably perceived as reflecting favourable treatment to an individual or entity by accepting offers of gifts and hospitality or other similar considerations. The staff member should at all time behave in a way that upholds the values and the integrity and good reputation of NATO.

It is inconsistent that a Procurement staff member involved in any aspect of procurement accepts any gift from an outside source regardless of the value and regardless of whether the outside source is or not soliciting business with NATO. All staff members involved in procurement shall decline offers of gifts, including drinks, meals, tickets, hospitality, transportation, or any other form of benefits, even if it is in association with an official working visit.

Procurement staff shall:

- Be able to identify covert gifts;
- Not accept any gift from governmental or non governmental sources, but report them to the designated authorities;
- Be aware of the reasons for not accepting such benefits;
- Be aware of the impact on the Organization if accepting such benefits.

In case of doubt, the matter shall be brought to the attention of the Head of Procurement or DASG FR.

3.7. ORGANIZATIONAL CONFLICTS OF INTEREST

An organizational conflict of interest may exist, in the realm of the private sector providing services to NATO, where the same corporation may provide two types of services to the Organization that have conflicting interest or appear objectionable (i.e.: manufacturing parts and then participating on a evaluation team comparing parts manufacturers).

Organizational conflicts of interest implications are not limited to any particular kind of procurement action. However, organizational conflicts of interest are more likely to occur in contracts involving:

- Management support services;
- Consultant or other professional services;
- Contractor performance or assistance in technical evaluations; or
- Systems engineering and technical direction work performed by a contractor that does not have overall contractual responsibility for development or production.

An organizational conflict of interest may result when factors create an actual or potential conflict of interest on an instant contract, or when the nature of the work to be performed on the instant contract creates an actual or potential conflict of interest on a future procurement. In the latter case, some restrictions on future activities of the contractor may be required.

3.7.1. RESPONSIBILITIES OF PROCUREMENT OFFICERS REGARDING ORGANIZATIONAL CONFLICTS OF INTEREST

Using the general rules, procedures, and examples in this section, Procurement Officers shall analyze planned procurements in order to:

- Identify and evaluate potential organizational conflicts of interest as early in the Procurement Process as possible; and
- Avoid, neutralize, or mitigate significant potential conflicts before contract award.

Procurement Officers should obtain the advice of the CAC and the assistance of appropriate technical specialists in evaluating potential conflicts and in developing any necessary solicitation provisions and contract clauses.

Before issuing a solicitation for a contract that may involve a significant potential conflict, Procurement Officers shall recommend to the Source Selection Authority, the CAC, a course of action for resolving the conflict.

In fulfilling their responsibilities for identifying and resolving potential conflicts, Procurement Officers should avoid creating unnecessary delays, burdensome information requirements, and excessive documentation. The Procurement Officer's judgment need be formally documented only when a substantive issue concerning potential organizational conflict of interest exists.

3.7.2. GENERAL RULES

The general rules specified in this paragraph prescribe limitations on contracting as the means of avoiding, neutralizing, or mitigating organizational conflicts of interest that might otherwise exist in the stated situations. Some illustrative examples are provided in section

3.7.8. below. Conflicts may arise in situations not expressly covered in these paragraphs. Each individual contracting situation should be examined on the basis of its particular facts and the nature of the proposed contract. The exercise of common sense, good judgment, and sound discretion is required in both the decision on whether a significant potential conflict exists and, if it does, the development of an appropriate means for resolving it. The two underlying principles are:

- Preventing the existence of conflicting roles that might bias a contractor's judgment; and
- Preventing unfair competitive advantage. In addition to the other situations described in this section, an unfair competitive advantage exists where a contractor competing for award of any NATO IS contract possesses:
 - Proprietary information that was obtained from a NATO staff member or system without proper authorization; or
 - Source selection information that is relevant to the contract but is not available to all competitors and such information would assist that contractor in obtaining the contract.

3.7.3. PROVIDING SYSTEMS ENGINEERING AND TECHNICAL DIRECTION

A contractor that provides systems engineering and technical direction for a system but does not have overall contractual responsibility for its development, its integration, assembly, and checkout, or its production shall not:

- Be awarded a contract to supply the system or any of its major components; or
- Be a subcontractor or consultant to a supplier of the system or any of its major components.

Systems engineering includes a combination of substantially all of the following activities: determining specifications, identifying and resolving interface problems, developing test requirements, evaluating test data, and supervising design. Technical direction includes a combination of substantially all of the following activities: developing work statements, determining parameters, directing other contractors' operations, and resolving technical controversies. In performing these activities, a contractor occupies a highly influential and responsible position in determining a system's basic concepts and supervising their execution by other contractors. Therefore this contractor should not be in a position to make decisions favouring its own products or capabilities.

3.7.4. PREPARING SPECIFICATIONS OR STATEMENTS OF WORK

If a contractor prepares and furnishes complete specifications covering non-developmental items, to be used in a competitive procurement, that contractor shall not be allowed to furnish these items, either as a prime contractor or as a subcontractor, for a reasonable period of time including, at least, the duration of the initial production contract. This rule shall not apply to:

- Contractors that furnish at NATO request specifications or data regarding a product they provide, even though the specifications or data may have been paid for separately or in the price of the product; or
- Situations in which contractors, acting as industry representatives, help NATO prepare, refine, or coordinate specifications, regardless of source, provided this assistance is supervised and controlled by NATO IS representatives.

If a single contractor drafts complete specifications for non-developmental equipment, it should be eliminated for a reasonable time from competition for production based on the specifications. This should be done in order to avoid a situation in which the contractor could draft specifications favouring its own products or capabilities. In this way NATO can be assured of getting unbiased advice as to the content of the specifications and can avoid allegations of favouritism in the award of production contracts.

In development work, it is normal to select firms that have done the most advanced work in the field. These firms can be expected to design and develop around their own prior knowledge. Development contractors can frequently start production earlier and more knowledgeably than firms that did not participate in the development, and this can affect the time and quality of production, both of which are important to NATO. In many instances NATO may have financed the development. Thus, while the development contractor has a competitive advantage, it is an unavoidable one that is not considered unfair; hence no prohibition should be imposed.

If a contractor prepares, or assists in preparing, a work statement to be used in competitively acquiring a system or services—or provides material leading directly, predictably, and without delay to such a work statement—that contractor may not supply the system, major components of the system, or the services unless:

- It is the sole source;
- It has participated in the development and design work; or
- More than one contractor has been involved in preparing the work statement.

Requisitioners should normally prepare their own work statements. When contractor assistance is necessary, the contractor might often be in a position to favour its own

products or capabilities. To overcome the possibility of bias, contractors are prohibited from supplying a system or services procured on the basis of work statements growing out of their services, unless the conditions above are met.

3.7.5. PROVIDING EVALUATION SERVICES

Contracts for the evaluation of offers for products or services shall not be awarded to a contractor that will evaluate its own offers for products or services, or those of a competitor, without proper safeguards to ensure objectivity to protect NATO's interests.

3.7.6. OBTAINING ACCESS TO PROPRIETARY INFORMATION

When a contractor requires proprietary information from others to perform a NATO contract and can use the leverage of the contract to obtain it, the contractor may gain an unfair competitive advantage unless restrictions are imposed. These restrictions protect the information and encourage companies to provide it when necessary for contract performance. They are not intended to protect information:

- Furnished voluntarily without limitations on its use; or
- Available to the contractor from other sources without restriction.

A contractor that gains access to proprietary information of other companies in performing advisory and assistance services for NATO must agree with the other companies to protect their information from unauthorized use or disclosure for as long as it remains proprietary and refrain from using the information for any purpose other than that for which it was furnished. Procurement Officers shall obtain copies of these agreements and ensure that they are properly executed.

Contractors also obtain proprietary and source selection information by acquiring the services of marketing consultants which, if used in connection with a procurement, may give the contractor an unfair competitive advantage. Contractors should make inquiries of marketing consultants to ensure that the marketing consultant has provided no unfair competitive advantage.

3.7.7. PROCEDURES AND CONTRACT CLAUSES

If information concerning prospective contractors is necessary to identify and evaluate potential organizational conflicts of interest or to develop recommended actions, Procurement Officers first should seek the information from within NATO or from other readily available sources. Non-NATO sources include publications and commercial services, such as credit rating services, trade and financial journals, and business directories and registers.

As indicated in the general rules stated in section 3.7.2 above, significant potential

organizational conflicts of interest are normally resolved by imposing some restraint, appropriate to the nature of the conflict, upon the contractor's eligibility for future contracts or subcontracts. Therefore, affected solicitations shall contain provisions that:

- State the nature of the potential conflict;
- State the nature of the proposed restraint upon future contractor activities; and
- Depending on the nature of the procurement, state whether or not the terms of any proposed clause and the application of these rules to the contract are subject to negotiation and/or whether the assessment of proposed conflict mitigation strategies will be part of the proposal evaluation process.

If, as a condition of award, the contractor's eligibility for future prime contract or subcontract awards will be restricted or the contractor must agree to some other restraint, the solicitation shall contain a proposed clause that specifies both the nature and duration of the proposed restraint. Procurement Officers shall include the clause in the contract, first negotiating the clause's final terms with the successful bidder, if it is appropriate to do so.

The restraint imposed by a clause shall be limited to a fixed term of reasonable duration, sufficient to avoid the circumstance of unfair competitive advantage or potential bias. This period varies. It might end, for example, when the first production contract using the contractor's specifications or work statement is awarded, or it might extend through the entire life of a system for which the contractor has performed systems engineering and technical direction. In every case, the restriction shall specify termination by a specific date or upon the occurrence of an identifiable event.

3.7.8. EXAMPLES

The examples in the paragraphs below illustrate situations in which questions concerning organizational conflicts of interest may arise. They are not all inclusive, but are intended to help Procurement Officers apply the general rules specified in this section to individual contract situations.

- Company A is the systems engineering and technical direction contractor for system X. After some progress, but before completion, the system is cancelled. Later, system Y is developed to achieve the same purposes as system X, but in a fundamentally different fashion. Company B is the systems engineering and technical direction contractor for system Y. Company A may supply system Y or its components.
- Company A develops new electronic equipment and, as a result of this development, prepares specifications. Company A may supply the equipment.

- XYZ Tool Company and PQR Machinery Company, representing the “Tool Institute”, work under NATO supervision and control to refine specifications or to clarify the requirements of a specific procurement. These companies may supply the item.
- Before a procurement for information technology is conducted, Company A is awarded a contract to prepare data system specifications and equipment performance criteria to be used as the basis for the equipment competition. Since the specifications are the basis for selection of commercial hardware, a potential conflict of interest exists. Company A should be excluded from the initial follow-on information technology hardware procurement.
- Company A receives a contract to prepare a detailed plan for technical training of NATO’s personnel. It suggests a curriculum that NATO endorses and incorporates in its request for proposals to institutions to establish and conduct the training. Company A may not be awarded a contract to conduct the training.
- Company A receives a contract to define the detailed functional and performance characteristics NATO will require for a new system. Company A has not developed the particular system. When the definition contract is awarded, it is clear to both parties that the NATO will use the functional and performance characteristics arrived at to choose competitively a contractor to develop or produce the system. Company A may not be awarded this follow-on contract.
- Company A is selected to analyse existing NATO outsourcing arrangements. NATO intends to ask that firms that performed outsourced services make proprietary or commercial sensitive information available to Company A. The contract must require Company A to:
 - Enter into agreements with these firms to protect any proprietary information they provide; and
 - Refrain from using the information in supplying outsourced services to NATO or for any purpose other than that for which it was intended.

4. PLANNING AND BUDGET CONTEXT

4.1. REFERENCE TO NATO OBJECTIVE BASED BUDGETING

Since 2003, NATO uses an “Objective Based Budgeting (OBB)” system. As its name implies, this system allows us to see how much we will need to spend to attain specific objective and to request the necessary funding from the Nations. OBB also makes it easier to switch funds between objectives if priorities change.

Nations provide Political Guidance and establish objectives for the Alliance. These objectives cascade down the NATO pyramid through Assistants Secretary General (ASGs) to Directors and Sections, to the level of the activities (day-to-day) work undertaken. Budget resources are identified and attached to the activities that are carried out to realise objectives.

The OBB budget process can be summarised in the following phases:

- Council approves a Civil Budget Strategic Guidance.
- NATO IS, translates this Strategic Guidance into IS Global Objectives, i.e. practical working objectives, representing the IS contribution to achieving the strategic objectives.
- In turn, each Division/Independent Office turns the IS Global Objectives into Operational Objectives on the basis of their areas of work and expertise.
- Finally, each Division/Independent Office, Directorates and Sections identify the activities (tasks) they carry out on a daily basis in order to reach the operational objectives.
- The resources (costs) required to execute Activities and achieve Operational Objectives are then grouped in Resource Pools for each Division/Independent Office. Individual requests are then consolidated and aggregated before the total budget request is submitted to the Nations for approval.

4.2. PROCUREMENT PLANNING

4.2.1. INITIATION – IDENTIFICATION OF A NEED

A procurement action starts with the identification of a need. This can result from a deficiency, the end of an existing service, a policy requirement or any kind of initiative.

The first step is to confirm that this is more than just a good idea. The need should normally be defined in terms of outcome, impact or of performance, so that the benefit for

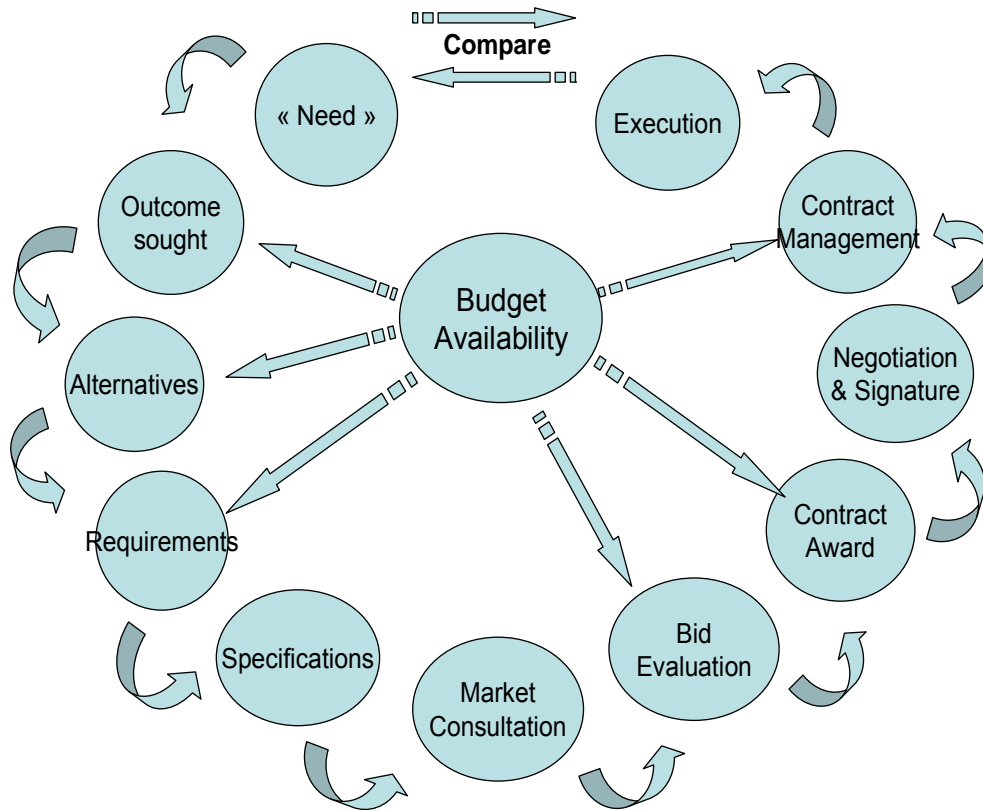
the Organization can be assessed. Two global questions must be answered. First, is the identified need indeed a NATO business requirement: does it contribute to the achievement of NATO IS Objectives? Second, does it improve performance: is the outcome best achieved through the provision of works, goods or services by an external supplier, thus requiring the initiation of the Procurement Process (i.e. the service is not available in-house, it is not provided by another NATO body, and the risk of doing nothing should not be taken)?

The next step is the conversion into requirements, usually in the form of an outline business case that would identify, the functional requirement, the outputs sought, related risks, indicative timelines, and rough cost estimates. All internal parties that would be concerned must be associated as required (NOS, Support Services, ICTM, other NATO bodies, etc) in order to identify all connected issues (functional and financial). Alternatives should be explored, such as using an existing contract; doing nothing and taking the related risk; full outsourcing of the service; buy, hire or lease; or sharing the service with other NATO bodies. At this stage, or even at an earlier stage, it might be required to establish a project board and manage the case as a standard project following project management standard methods such as PRINCE2.

If eventually the decision is taken to go ahead and procure related works, goods or services from the external market, then detailed specifications need to be developed and a market approach (Source Selection Plan) defined.

Budget availability is to be assessed at all stages on a continuous basis.

The above description applies to large or complex procurements. For the other cases, all steps might not be necessary.



4.2.2. START OF THE PROCUREMENT PLANNING

As soon as a need is identified and validated, and once it is likely that it will be funded, Procurement Planning should commence. This step includes a variety of actions all aimed at identifying potential sources, and determining the workflow and techniques to be used to satisfy these requirements. In fact, an initial review of national/international agreements, memorandum of understanding or agreement with other NATO Agencies or existing organic resources e.g., existing in-house capabilities or inventories/surplus may even eliminate the need to pursue a new commercial contract. The complexity of requirements will dictate the extent of the Procurement Planning. For very basic, routine and simplified purchases, detailed planning is not necessary.

Procurement Planning, including logistics, finance and other resources, is essential for the effective and timely solicitation of bids or proposals, award of contracts and delivery of the goods and services required. Requisitioners are responsible for the development of

procurement plans, and for cooperation with the Procurement Service and the Budget and Financial Analysis Service in making those plans available in a timely manner. Accordingly, requisitioners and Procurement staff must begin to communicate with each other early in the planning process, yet maintain their separate roles.

4.2.3. SHORT-TERM PLANNING

In order to ensure that NATO IS obtains good quality products and services at competitive prices, and within the time frame required, the requisitioning offices shall, to the extent possible, ensure the rational and optimal use of funds throughout the budget period.

The requisitioners shall, to the extent possible, avoid last minute requisitions, especially at the end of the budget period, as this may result in the loss of funding if the CBC does not allow carry-forward of the related credits, and as this may hamper the ability of NATO IS to ensure a transparent, open, efficient and timely Procurement Process.

4.2.4. LONG-TERM PLANNING

The requisitioning offices shall perform long-term planning, covering at least the remainder of the budgetary period and the forthcoming budgetary period, in order to lay the foundation for procurement on the best terms for the Organization. Long-term planning will also serve to demonstrate that the Organization manages its funds in a professional manner, in the interest of the Organization and for the benefit of all member states.

4.2.5. ANNUAL PLANNING

The requisitioning offices shall communicate, and to the extent feasible, meet on an annual basis with the Procurement Service and the Budget and Financial Analysis Service to set up spending plans, including procurement plans, for the forthcoming budget period.

The procurement plan shall contain the following information:

- Type of products or services;
- Estimated quantity;
- Estimated value;
- Delivery date or expected quarter when the products are required to be delivered or the services required to commence; and
- Any other relevant information.

The procurement plan should be completed and submitted to the Procurement Service in a timely manner, with any other information that would be pertinent.

The Procurement Service shall consolidate the inputs to the annual planning process and produce a NATO IS Annual Procurement Plan identifying all procurement actions to be undertaken throughout the year. The Procurement Service will release periodic updates of the NATO IS Annual Procurement Plan as changes occur.

A reduced version of the plan shall be communicated to industry through the NATO website and through the National Delegations to NATO so that interested firms are kept informed about upcoming business opportunities.

4.2.6. NO FINANCIAL COMMITMENT WITHOUT AVAILABLE BUDGET

The Procurement Process should only begin once an approved and budgeted requisition has been received.

Nonetheless, due to special exigencies, the initiation of the internal Procurement Process including issuance of solicitations could be accepted before formal receipt of an approved and budgeted requisition. Agreement to proceed rests with DASG Financial Resources.

In such exceptional circumstances, whenever solicitations are issued in advance of budget availability, potential suppliers should be informed that the solicitation is “in anticipation” of the availability of funds, and that procurement will only proceed when full authorization has been received. CAC decision (as required), signature of the eventual contract and corresponding creation of a financial commitment should clearly wait until confirmation of credit availability.

4.2.7. CONSULTANT CONTRACT CATEGORIES

When they concern individuals, consultants may be hired through an employment contract or through a commercial services contract.

An employment contract is characterized by the specific “employer to employee” relationship it creates between NATO IS and the individual. In employment contracts, NATO IS retains the function, and external personnel will staff the effort. Such contracts address supervision, responsibilities, furnished equipment, duration of services and other details of the employee relationship, but are normally not based on detailed output or deliverables. In NATO, these take the form of temporary hire or consultant contracts, the use of which is governed by the NATO Civilian Personnel Regulations (CPR). These contracts shall be issued and administered by Executive Management Human Resources.

NATO IS may also procure consultancy services through “management companies”. In this case, the function is delegated to a contractor. The specific contract defines deliverables and tasks to be performed by the contractor, instead of simply establishing direct supervision by NATO personnel. The contractor should be legally licensed, registered as an independent contractor and should have, if required, the appropriate authorization to perform the tasks and comply with any related obligations. The contractor may be an employee of the services company. The contractor can not claim to be a

NATO employee. These commercial services contracts are subject to the normal competitive procedures detailed in the NFRs and will be let and managed by the Procurement Service.

The Procurement Service and Human Resources shall work together to ensure that the correct contractual vehicle is utilised, and that staffing restrictions are not circumvented by the use of contractors through commercial service contracts.

5. DEFINITION OF REQUIREMENTS AND SPECIFICATIONS

5.1. INTRODUCTION

Requirement definition involves defining and describing what is needed and will be procured, collecting information, identifying appropriate solutions and specifying these in specifications for goods and equipment and/or statements of work (SOW) for works and services.

Specifications and SOW constitute the technical basis for the solicitation and the evaluation of offers to determine if they satisfy the requirements as stipulated in the Solicitation Documents. They become the “heart” around which the eventual contract is written and later administered. They have an effect on the procurement that lasts its entire lifetime – from planning, through bid evaluation, award and contract performance up to completion and post-contract evaluations. A clear and appropriate definition and description of the requirement is of utmost importance.

5.2. PURPOSE

Upon identifying a future requirement, either new or recurring, the requisitioner shall use his/her best effort to accurately describe such need and to develop the scope of the requirement through generic technical Specifications that would allow a prospective vendor to meet the identified need. To the extent possible, the requisitioner shall use generic Specifications, in order to achieve maximum competition among potential suppliers.

Specifications should not refer to brand names, catalogue numbers or types of equipment from a particular manufacturer. In exceptional circumstances it can be decided that it is necessary to do so in order to guarantee the inclusion of a particular design, or characteristic of functioning, construction or fabrication. In these cases, the references should be followed by the words “or equivalent” together with the criteria for determining such equivalence. Specifications should permit the acceptance of offers for goods or services with similar characteristics that provide performance and service at least equal to that specified.

Requirement definition should identify the exact need (technical and quality), aiming at avoiding over-specifications (as this may increase the cost) or under-specifications (where needs will not be met), as well as the timing, in order to avoid progress delays or losses for example due to extra storage and handling charges if delivered earlier than required.

Specifications shall be clear and sufficiently detailed to enable vendors to effectively respond to them. If the goods/services have been purchased previously, reasons shall be provided for any change in Specifications from those previously utilized.

Technical Specifications of goods and/or services being procured are the basis for the Organization's Solicitation Documents, evaluation of submissions, contracts, agreements and purchase orders. They fulfil the following essential features of procurement:

- Inform potential contractors of the nature of NATO IS requirement and what is expected to fulfil it;
- Constitute the basis for evaluating offers to determine if they satisfy NATO IS requirement; and
- Bind the winning vendor to perform in accordance with Specifications and pursuant to the terms and conditions of the purchase order or contract.

5.3. RESPONSIBILITY

Requirement definition is formally the responsibility of the requisitioner. However, Procurement staff is responsible for ensuring that the technical description provided by the requisitioner is free of ambiguities, is clear and generic, and promotes fair competition among the suppliers.

The Procurement Service plays a support role to the requisitioner in the following areas:

- Provides information on previous, current and upcoming procurement activities for similar products or services.
- Reviews of the requisition for completeness and ensure that the specifications or descriptions are not restrictive or biased towards a specific supplier.
- Assists in market studies to identify sources of supplies, pricing and availability information and extent of competition.
- Provides advice on the best method to obtain goods and services in a timely manner, at the best possible price.

A systematic and team approach between the requisitioner and the Procurement Service is recommended to develop a generic technical specification. Early involvement of the Procurement Service can add value due to experience with similar types of requirements. At the conclusion of this process, the requisitioner should review the finished description to ensure that it responds to the need identified. The final requirement definition should then be submitted including funds certification as part of a requisition to the Procurement Service.

5.4. PROCESS: WRITING SPECIFICATIONS/STATEMENTS OF WORK

Requirements capture is the key to successful procurement. Requirements capture is a deliberate process that requires clarity, discipline and consultation. User requirements express the organizational context and are best described in terms of what functions, roles and standards the good or service must meet, rather than in solutions terms. Indeed it is the vendor's role to propose solutions, not the requisitioner.

A vital role in requirements capture is the scoping. Resources are invariably scarce and requirements need to include all element vital to obtaining the objective, and be rigorous in exclude desirable or "nice to have" elements. Requirements must be assessed against the principle of "minimum essential requirement" so as to avoid the excess cost due to "gold plating" of requirements.

Within the IS sustainment of the good or service through the life cycle has often been challenging due to staff and financial restrictions. Reliability, sustainability, upgrade and support requirements shall be defined (over) so as to reduce in-service risk.

The requisitioner shall identify and fund the personnel, operating and maintenance costs associated with the in-service phase.

Based on the requirement analysis and information gathering, the requisitioner must write up the Requirements Specification. It is important to use clear language and be accurate in all descriptions, to minimize misinterpretation risks. It is good practice to engage a specialist to review and proof the specifications document (Requirements Specification and/or Statements of Work) before finalising.

The process for writing requirement specifications is the same for all procurement activities. However, detailed elements differ for procurement of goods, services and works. The following guidelines could be used to prepare requirement specifications for each of these situations.

5.4.1. PREPARATION OF SPECIFICATIONS FOR GOODS

Specifications or the description of physical or functional characteristics of tangible goods must provide a detailed description of the requirements. They should be generic in nature to enable the broadest possible competition.

Specifications may be stated as one or a combination of the following:

- **Functional:** concentrates on the output, i.e. on what a product is to do and is less interested in materials and dimensions.
- **Performance:** concentrates on the outcome, and describes what is to be achieved rather than providing a fixed description of how it should be done. To ensure the

quality, a reference to the concerned product standards and environmental requirements, should be made.

- Technical/Design: concentrates on the input. It defines exact design and details of a good (i.e. the physical attributes, material to be used, power input and output, the manufacturing process required, or in the case of a service, the working methods to be used). Due to its uniqueness, design specifications may limit competition because of differences in engineering practices. Brand-name or equal specifications are considered a type of design specification.

All three specification types can be combined. It is better, whenever possible; to use performance and functional specifications rather than technical specifications as this allows supplier to offer alternative and innovative ideas and solutions to problems, which often results in a more cost effective use of the resources. However, depending on the products and end-user needs, certain requirements may not be adequately defined in functional and performance terms alone.

In addition, minimum requirements should be stated. The supplier should never be put in the position of having to decide on which physical attributes are essential and which are not. Specifications must be clear and easy to understand. It is very important to develop adequate specifications, since it forms the basis of the bidding. Unclear, unnecessarily detailed and biased specifications will decrease the number of bidders participating in the solicitation process and reduce overall quality. Unclear specifications will also confuse bidders, which may cause rejection of bids. This may require the rejection of all bids and rescheduling of the solicitation with associated time delays.

All specifications shall be written in a bullet point format, starting with the most important characteristics of the item. Each bullet point should address only one characteristic. Each bullet point should be sequentially numbered so reference can be made to a specific requirement or characteristic.

Requisitioners shall avoid unnecessary details. The specification should focus on the key functional, performance, or design characteristics. Each characteristic listed should be required for evaluation. For example there is no need to specify the weight of an oscilloscope, although commonly given in manufacturers' specification sheets, since this is not a factor in deciding to purchase this item. 'Benchmarking' or 'hand-held' would be sufficient.

The use of technical literature for the development of Requirements Specifications is encouraged in order to ensure that requirements will be satisfied by Commercial Off-The-Shelf (COTS) products. However, the following guidelines shall be respected:

- Avoid preparing locked specifications that favour one supplier over others. Specifications shall be checked in order to confirm that are general enough to be met by typical suppliers dealing with such products.

- Do not include every specification listed in the literature. Only important key characteristics must be listed.
- Do not be too specific with the specifications when referring to catalogues. Unless they are standards, do not take measures literally. For example, if an engine power is given as 2325 watts in the literature, in the specification requisitioners should say 'minimum 2300 watts'.
- Requisitioners shall be careful when referring to specifications from different catalogues. This may result in a set of requirements that no manufacturer will be able to meet.
- Requisitioners shall bear in mind that technical literature is prepared for selling purposes. The language should be revised to reflect the required characteristics.
- Subjective statements such as "high quality", "easy to use", etc. shall be avoided. The equipment specifications must be objective, actual, and testable. Such statements are open for interpretation and are difficult to evaluate and verify.
- All standard accessories and optional accessories required must be listed at the end of the specifications. It is not acceptable to state full optional accessories required as different manufacturers have different set of optional accessories and this can prevent fair evaluation.
- If compatibility is an issue then the model and manufacturer can be specified. This is usually acceptable for IT software. For example it is acceptable to specify operating system or specific software if it has to operate with existing systems.
- Specifications shall be definitive not restrictive. The objective of writing technical specifications is to explain to the suppliers what is required. Even a simple item such as chair requires technical specifications. The bidders need to know what will be the material of the chair (plastic, wood, metal, etc), material of the cushion, if it has arms, if it has adjustable height, if it has rotating wheels and etc. If we don't give enough detail the bidder may be confused and will probably offer the cheapest available chair (since the standard selection criteria for standard items is to award contracts to the lowest offer that meets the specifications).

In summary, specifications must be detailed enough to leave no question in the bidders mind as to what is required, but should be generic enough to allow multiple manufacturers' equipment to be offered.

5.4.2. PREPARATION OF SPECIFICATIONS FOR SYSTEMS

The development of a System Requirements Specification (SRS) is a much more complex and resource intensive task that demands certain skills and resources which are not normally available within most of the Divisions (e.g., business analysts, systems engineers, software engineers, etc.)

Preferably, SRSs shall be developed in accordance with the standards and recommendations approved by the International Organization for Standardisation and the International Electrotechnical Commission (ISO/IEC) and by the Institute of Electrical and Electronics Engineers (IEEE). These standards provide specific guidance on the development of requirements for systems and on how to write an SRS. The following standards deserve special attention:

- IEEE Std 830-1998. IEEE Recommended Practice for Software Requirements Specifications. This standard provides a template of Software Requirement Specification.
- IEEE Std 1062, 1998 Edition(R2002). IEEE Recommended Practice for Software Procurement. This standard provides an overview of all the phases and activities involved in the procurement of software as well as checklists to assist in the implementation of a software Procurement Process, and a template of procurement plan.
- IEEE Std 1233, 1998 Edition (R2002). IEEE Guide for Developing System Requirements Specifications. This standard contains specific guidance on how to write well-formed system requirements and provides a template of SRS.
- IEEE Std 1362-1998. IEEE Guide for Information Technology - System Definition - Concept of Operations (ConOps) Document. The format and contents of a concept of operations (ConOps) document are described in this standard. A ConOps is a user-oriented document that describes system characteristics for a proposed system from the users' viewpoint. The ConOps document is used to communicate overall quantitative and qualitative system characteristics to the user, buyer, developer, and other organizational elements (for example, training, facilities, staffing, and maintenance). It is used to describe the user organization(s), mission(s), and organizational objectives from an integrated systems point of view.

Due to the complexity associated with the development of system requirements documentation, it is not unusual to outsource this task to external Organizations. If commercial firms are used for the development of system Requirements Specifications, requisitioners and Procurement Officers shall bear in mind the restrictions and considerations established in section 3.7. of this Manual with respect to the avoidance of Organizational conflicts of interests.

5.4.3. PREPARATION OF STATEMENTS OF WORK FOR SERVICES

The Statement of Work (SOW) for services should define the scope of work required and respective supplier and stakeholder responsibilities. An adequate and clear SOW is imperative for an understanding of the assignment, and to minimize any risk of ambiguities during the preparation of suppliers' proposals, negotiations and provision of services.

The SOW, often the supplier's first and main introduction to the assignment, forms the basis for the supplier's preparation of the technical and financial proposals, and also eventually become an integral part of the contract between the supplier and NATO IS. Clear and unambiguous SOWs will force the supplier to prepare clear and detailed proposals, leading to successfully implemented projects and limiting the risks of disputes and claims.

Unclear SOWs require suppliers to make assumptions. When various suppliers make different assumptions, comparing technical proposals becomes very difficult, and there will be problems in evaluating the proposals in a fair and transparent way. Unclear SOWs can also lead to less successful projects, as the winning supplier might not provide what is really needed. Further, there is a risk of disputes and claims, as it might not be clear who is responsible for what.

Whenever practicable, SOW Requirements shall be expressed in terms of service performance targets (service levels). The use of performance-based SOWs provides the following benefits:

- Better prices and performance;
- NATO is released from having to develop detailed specifications and define the process;
- The contractor has more flexibility on how to achieve the desired results;
- Less day-to-day surveillance and management is required; and
- Contractors are motivated to be innovative and to save money.

A performance-based SOW describes the requirements the contractor must meet in terms of outcome or results. In some extreme cases the SOW can be replaced by a simple Statement of Objectives (SOO) which is issued as part of the solicitation of offers. The successful bidder's approach will become the SOW of the contract. The performance standards that will be used to measure shall also be described, or the solicitation can request that each bidder submit their own suggested standards. The SOO is a very brief statement of objectives (2 to 10 pages, depending upon complexity), to which vendors respond.

If a performance-based SOW is used it is critical to define a system of incentives associated with the achievement of performance targets. These incentives may consist in some sort of award-fee, a system of service credits, or a system of payment holdback linked to the achievement of established service levels.

5.4.4. PREPARATION OF STATEMENTS OF WORK FOR WORKS AND CONSTRUCTION

The Statement of Work including design/drawings, bill of quantities (BoQ) and technical specifications, should describe the works in sufficient detail to identify the location, nature and any complexities involved. The term “works” generally includes all types of civil, mechanical, electrical or other engineering/installation services (other than consulting services) as well as the supply of construction materials and equipment included therein.

Expected construction period and time in weeks or months, or where alternative time schedules are permitted, the range of acceptable construction periods, should be defined. In addition, information should be provided on the topography, geotechnical conditions, access to the site, transport and communication facilities, project layout, services to be provided by NATO, method of measurement and payment of completed works.

The unique nature of works requires that detailed design specifications be provided and a complete description and specification of all goods, materials and works to be included in the delivery, including detailed drawings, the necessary qualifications the supplier should possess with respect to capacity and experience, and financial strength necessary to carry out the type of works requested.

5.4.5. SPECIFICATIONS/STATEMENT OF WORK DESCRIPTION

Requisitioners shall develop SOWs according to the following composition and guidelines:

1. GENERAL

1.1. Specify what the contractor must provide (i.e. personnel, equipment, tools, materials, supervision). Add the name of service (i.e. automobile lease, chemical latrine service) and name of the location where service is to be performed.

1.2. BACKGROUND INFORMATION

Include information providing the potential supplier with a good perspective on the history of the organization, and any special conditions under which the work is to be done.

2. DEFINITIONS AND ACRONYMS

Define all technical terms, abbreviations, or acronyms used in the SOW.

2.1. STANDARD DEFINITIONS.

The standard definitions specified below shall be included whenever applicable/relevant to the scope of the SOW

- 2.1.1.** *Acceptable Quality Level (AQL). The AQL is the maximum percentage of defects that, during (sampling) inspections can be considered acceptable.*
- 2.1.2.** *Procurement/Contracting Officer. A person duly appointed with the authority to enter into and administer contracts on behalf of the NATO IS.*
- 2.1.3.** *Authorised Technical Representative. An individual designated by the Procurement Officer to act as his/her representative to assist in administering a contract. This may be a NATO Project Manager or a Service Manager responsible for control of the works or the services specified in the SOW. The source and authority for an Authorised Technical Representative are contained in a written letter of designation or in the provisions of the contract.*
- 2.1.4.** *Customer Complaint. A mean of documenting certain kinds of contract service problems. A NATO program that is explained to every organization that receives service under this contract and which is used to evaluate a contractor's performance.*
- 2.1.5.** *Defective Service. A service output that does not meet the standard(s) of performance associated with it in the Performance Requirements Summary (PRS).*
- 2.1.6.** *Lot. The total number of service outputs in a surveillance period, as defined in the Performance Requirements column of the PRS.*
- 2.1.7.** *Performance Requirement. The point that divides acceptable from unacceptable performance. When the method of surveillance is other than random sampling, the performance requirement is the number of defects or the maximum percentage of defects in the lot before NATO will effect the price computation system in accordance with the Performance Requirements Summary and the clauses governing the inspection of services.*

- 2.1.8.** *Performance Requirements Summary (PRS). Identifies the key service outputs of the contract that will be evaluated by the government to assure contract performance standards are met by the contractor.*
- 2.1.9.** *Quality Assurance. Those actions taken by NATO to assure services meet the requirements of the SOW and all other service outputs.*
- 2.1.10.** *Quality Assurance Evaluator. A NATO IS staff member responsible for surveillance of contractor performance.*
- 2.1.11.** *Quality Assurance Surveillance Plan (QASP). An organized written document used for the quality assurance surveillance. The document contains specific methods to perform surveillance of the contractor.*
- 2.1.12.** *Quality Control. Those actions taken by a contractor to control the performance of services or works so that they meet the requirements of the SOW.*
- 2.1.13.** *Random Sampling. A sampling method in which each service/work output in a lot has an equal chance of being selected.*
- 2.1.14.** *Sample. A sample consists of one or more service/work outputs drawn from a lot. The number of outputs in the sample is the sample rate.*
- 2.1.15.** *Sampling Guide. The part of the surveillance plan which contains all the information needed to perform surveillance of the service/work outputs by the random sampling method of surveillance.*
- 2.2.** **TECHNICAL DEFINITIONS PECULIAR TO THIS SOW**
(In alphabetical order)
- 3.** **PERSONNEL**
Define all personnel related requirements.

- 3.1. Include any special personnel qualifications required of contract employees. (i.e. speak English, professional licenses, drivers licenses, security clearances, permits, uniform or badge requirements, neatness, ecological or cleanliness requirements, etc.). When written certifications or licenses are included here, cross reference the requirement to a Technical Exhibit, and require the contractor to submit this documentation as a required report.
- 3.2. Insert time limits here. Requisitioners must be reasonable, because it is very costly to have technical personnel at a moment's notice stand-by, or available 24 hours a day seven days a week.
4. **PHYSICAL SECURITY**
Include all requirements for security of NATO property (i.e. key control, reporting of lost keys, lock combinations, etc.)
5. **QUALITY CONTROL**
- 5.1. Describe the quality control system to be implemented by the contractor (if any) This information is normally included in a quality plan that can be requested and evaluated as part of the source selection process. (Sample text: *"The contractor shall establish and maintain a complete Quality Control Plan to ensure that the requirements of the contract are provided as specified. One copy of the contractor's Quality Control Plan shall be provided to the Procurement Officer not later than the pre-performance conference. An updated copy must be provided to the Procurement Officer on the contract start date and as changes occur. The plan shall describe the methods for identifying and preventing defects before the level of performance becomes unacceptable."*)
6. **QUALITY ASSURANCE.**
- 6.1. Describe the quality assurance/performance evaluation system to be used by NATO (Sample Text: *"NATO will evaluate the contractor's performance under this contract using the method of surveillance specified in Annex XX attached to this SOW. All surveillance observations will be recorded by NATO. When an observation indicates defective performance, the Authorised Technical Representative will obtain the contractor's representative's initials on the record of the observation."*)

- 6.2.** Performance Evaluation Meetings. Describe the frequency, participation, and documentation requirements associated with performance evaluation meetings (Sample Text: *“The contract manager may be required to meet periodically with the Authorised Technical Representative and the Procurement Officer during the period of contract performance. Meetings will be scheduled as needed. The contractor may request meetings whenever a Contract Discrepancy Report is issued. The written minutes of these meetings shall be signed by the contractor’s manager, Procurement Officer, and Authorised Technical Representative. If the contractor does not concur with the minutes it shall state any areas of non-concurrence within 10 days of receipt of the signed minutes.”*)
- 7.** **HOURS OF OPERATION.**
- 7.1.** Normal hours. (Specify the normal hours).
- 7.2.** Recognized holidays. (Specify recognized holidays affecting contract performance).
- 7.3.** Emergency services. (Include the contractor’s responsibilities to support contingencies outside normal duty hours described above).
- 8.** **CONSERVATION OF UTILITIES.** (Include specific instructions for preventing waste of utilities).
- 9.** **NATO FURNISHED PROPERTY AND SERVICES.**
Listing of facilities, equipment, materials, and services which NATO will provide to the contractor for contract performance at no cost. Services might include office space, utilities, postal or installation distribution, telephone, custodial services, refuse collection, insect or rodent control, grounds maintenance, equipment maintenance, fire protection, data processing, transportation, etc. Requisitioners must make sure that any NATO Furnished Property and Services are made available to the contractor, in good working condition, upon start of performance. Otherwise, the contractor will be entitled to compensation.
- 10.** **CONTRACTOR FURNISHED ITEMS AND SERVICES.**
Insert the following standard text: *“Except for those items or services specifically stated to be NATO furnished in Section 9 above, the contractor shall furnish everything required to perform the contract.”*

11. SPECIFIC TASKS.

This is the portion of the SOW where everything the contractor has to perform is described in detail. List the tasks in logical order, using graphic depictions such as flow charts, maps, or drawings as needed. If a task is not included, then the contractor is not obligated to perform it. Any ambiguities in the SOW will be interpreted in favour of the contractor.

In case of a performance-based SOW indicated the performance target or service level for each task. Sample text:

11.1. HELP-DESK SERVICES.

a. The Contractor shall provide 24/7 help-desk services for first level technical support and requests of remedial actions including initial problem logging, problem review/analysis and initial troubleshooting. The help-desk shall have access to files and data to track equipment trends and aid in troubleshooting. The Contractor shall provide the Authorised Technical Representative with a monthly report of calls attended by the help-desk service. The report shall specify as a minimum the dates and hours of calls, reasons for call, names of individuals who called, and the final outcome of the call (R-6).

b. Help-Desk - Performance Standards

<u>Ref No</u>	<u>SOW</u>	<u>Performance Standard</u>
PS-2	11.1.a	Help-desk 24/7 availability 99.9 % of the time

12. APPLICABLE PUBLICATIONS AND FORMS.

(List all Technical Manuals, Technical Orders, regulations, manuals, specifications, and supplements thereto, which the contractor will require to meet the requirements of the SOW, if the stated publications are not mandatory by law. If none are required, list none).

ANNEXES

Use annexes and technical exhibits to add detailed technical information to the SOW such as:

- A Performance Requirements Summary. An abstract of the Specific Tasks from the SOW in columnar form. The columns would include: A brief description of each required task under the contract; the paragraph from the SOW where the task is found; and the standard to which the task is to be performed.
- Maps and Work Area Layouts. Building floor plan of any NATO-owned facility or part of a facility to be provided for contractor use, as described in SOW; An area map showing the NATO facility, parking areas, location of refuse containers, which contractor may use, and any areas requiring grounds maintenance for which contractor is responsible; or additional maps to depict any areas or tasks which cannot be adequately described in writing.
- Required Reports. A list of all required reports, drawings, maps, technical information, or other data required to be provided to the contracting officer by the contractor.
- Performance Assessment Plan or Quality Assurance and Surveillance Plan. These plans are the written instructions by which the Authorised Technical Representative checks to ensure NATO is getting what is contractually required. These documents consist of written instructions for the Authorised Technical Representative and Quality Assurance Evaluators and a checklist containing items of contract performance which have been extracted from the SOW.
- Other type of information required for the performance of the contract or to price the effort associated with the execution of the services or works described in the SOW such as a System Requirements Specification, a list of workload projections, product descriptions, acceptance criteria, project schedules, etc.

5.5. CONSULTATION WITH THE OFFICE OF THE LEGAL ADVISER

In cases where the requisitioner or the Procurement staff member believes that procurement will be especially complex or sensitive (e.g., because the procurement is of an especially high value, presents novel legal issues, or possess a serious risk of damage to property or injury), and if time and circumstances permit, the Procurement staff member, upon consultation with the Head of Procurement, may seek to involve the Office of the Legal Adviser at an early stage of the Procurement Process in order to ensure that all legal issues implicated by the Solicitation Documents and/or any draft contract are addressed in a timely manner.

5.6. APPROVAL BY NATO OFFICE OF SECURITY

The requisitioner shall ensure that necessary reviews and approvals are identified and pursued prior to establishing the requisition. In particular and specially, NATO Office of Security's approval shall be granted prior to submission to the Procurement Service.

Furthermore, the requisitioner should liaise with the Procurement Service to identify and plan for additional reviews and necessary approvals before the Solicitation Documents are released or a contractual instrument is awarded.

6. CONTRACT STRATEGY

6.1. INTRODUCTION

At the conclusion of the Procurement Planning Phase, Procurement staff needs to devise a contracting strategy that weights risks and adequately protects NATO's interests. The scope and depth of the analysis supporting the objectives should be directly related to the overall value, importance, and complexity of the procurement, and be concluded before launching a formal solicitation. As such, the overall aim of contract strategy is both to determine an appropriate contract type, as well as develop cost/price analysis as a basis for later confirming price/cost reasonableness.

A prerequisite to effective contracting strategy is to fully understand the scope of the requirement. At the end of the planning phase, the type of requirement specification to be used must be determined. The different types of specification require different formats and associated areas of detail, flexibility and concentration.

When the procurement project is complex, the Organization may decide to request the support of other NATO bodies, such as NC3A or NAMSAs for instance. The Organization may also use external consultants to assist in preparing or reviewing Requirement Specifications. As stated in section 3.7. (Organizational Conflicts of Interest) a consultant engaged to prepare or review the Requirement Specifications and/or to assist in the evaluation of proposals concerning a particular requirement, shall not be allowed to recommend any vendor for solicitation or award of contract or to submit a bid or proposal for the requirement.

6.2. IDENTIFYING NATO'S PRICING OBJECTIVES

Procurement staff's primary pricing objective for all contract actions is to procure goods and services from responsible sources at fair and reasonable prices.

The Procurement Officer's primary objective in pricing a contract is to balance the contract type, cost, and profit or fee to achieve a total result i.e., a price that is fair and reasonable to both NATO and the contractor. When awarding contracts, Procurement staff must also:

- Price each contract separately and independently for example:
 - Not use proposed price reductions under other contracts as an evaluation factor, or
 - Not consider losses or profits realized or anticipated under other contracts.

- Not include in a contract price any amount for a specified contingency to the extent that the contract provides for price adjustment based upon the occurrence of that contingency.

The determination of whether an offer is fair and reasonable will be eventually a matter of judgment. There is no a unique formula. Although full and open competition should attract the best market response, determining what is fair and reasonable in a non-competitive environment depends on market conditions, the options for meeting the requirement, price-related factors, and the non-price evaluation factors that relate to a specific procurement.

In order to determine whether prices are fair and reasonable, Procurement staff shall use either price analysis techniques, for competitive non-negotiated procurement, or cost analysis techniques for negotiated procurement.

6.3. IDENTIFYING PRICE-RELATED EVALUATION FACTORS

A prudent Procurement Officer will consider differences in the cost of procuring a deliverable that are not covered by the contract price. To consider these price-related factors in a competitive procurement, the solicitation must provide for such consideration. For example:

- **Direct costs not included in the contract price.** The Solicitation Documents will indicate the applicable INCOTERM for the concrete procurement in order to be considered by the bidders while submitting offers. Evaluation criteria must provide for consideration of the shipping costs from origin point to destination.
- **Costs of ownership not included in the contract price.** Market research may indicate that several products could satisfy NATO's requirement. However, the products differ substantially in maintenance and repair costs. Evaluation criteria should provide for consideration of the related costs.
- **Costs of contract award and administration.** In a competitive procurement situation, Procurement staff may solicit line item prices and an aggregate price for all solicitation line items. The Procurement Officer could split the line items among five bidders, or award all line items to the single firm that offered the lowest aggregate price. To determine which method of award would provide the Best Value to NATO, evaluation criteria must provide for consideration of cost to NATO for awarding and administering multiple contracts.
- **Hidden costs.** In a non-competitive procurement, Procurement Officers should be alert to potential risks and costs not covered in the offered price. A price that seems reasonable on the surface may be unreasonable if proposed terms and conditions shift costs to NATO. For instance, an offered price may seem reasonable until it is discovered that the proposed terms and conditions have shifted responsibility for

furnishing the necessary tooling from the bidder (per the RFP) to NATO (per the proposal). Likewise, a bidder's proposed price, regardless of amount, might be unreasonable if conditioned on the use of a Cost-Reimbursement contract that transfers an inappropriate portion of the risk of cost growth to NATO.

6.4. NON-PRICE EVALUATION FACTORS

In some procurements, the test of reasonableness requires a trade-off analysis between price, price-related factors, and non-price factors such as past performance and relative technical capabilities of the competing bidders. In Best Value procurements, Procurement staff must develop a Source Selection Plan addressing as a minimum the evaluation factors, their relative importance and their rating scales.

The provisions of the solicitation documents should be based on the input provided by the Source Selection Plan.

6.5. TYPES OF CONTRACTS

Contract type selection is the principal method of allocating and mitigating risk between NATO and the contractor.

There is no single contract type that is right for every contracting situation. Selection must be made on a case-by-case basis considering contract risk, incentives for contractor performance, and other factors such as the adequacy of the contractor's accounting system and the resources available at the contracting Organization for monitoring contractor's performance and costs.

The Procurement Officer's objective should be to select a contract type that will result in a reasonable contractor risk with the greatest incentive for efficient and economical contract performance. Selecting the proper contract type will make the work more attractive to more potential bidders, thereby increasing competition.

Procurement Officers may select among the following main contract types:

6.5.1. FIXED-PRICE CONTRACTS (FP)

Fixed-Price contracts may adopt a variety of forms. The list hereafter is not exhaustive but a representative sampling of Fixed-Price contracts.

- **Firm Fixed-Price (FFP).** A Firm Fixed-Price contract provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. This contract type places maximum risk and responsibility for all costs on the contractor, as well as resulting profit or loss. It also provides for the biggest incentive for the contractor to control costs and perform effectively and imposes a minimum administrative burden upon the contracting parties. As such, a

Firm-Fixed-Price contract is most suitable for the purchase of common commercial items or for procuring other supplies or services for which the requirement is very well defined and understood e.g., based on strong past experience.

- **Firm Fixed-Price with economic price adjustment (EPA).** A Fixed-Price contract, with an economic price adjustment feature, may only be used when the Procurement Officer determines that it is necessary to protect NATO against significant fluctuations in labour or material costs or to provide for contract price adjustment should significant changes in the contractor's established prices be anticipated. In other words, Firm Fixed-Price with economic price adjustment may be used when there is serious doubt concerning the stability of market or labour conditions that will exist during an extended period of contract performance, and where contingencies that would otherwise be included in the contract price can be identified and covered separately in the contract. In this instance, a Fixed-Price contract with economic price adjustment provides for both upward and downward revision of the stated contract price based on the occurrence of specified contingencies e.g., established prices, labour or material cost indices. A good example of when this type of contract may be warranted is for the purchase of specific commodities such as oil or gas.
- **Level of Effort.** A Firm-Fixed-Price, Level-of-Effort term contract requires the contractor to provide a specified level of effort, over a stated period of time, on work that can be stated only in general terms. A Firm-Fixed-Price, Level-of-Effort term contract is suitable for e.g., general research and development studies and investigations. The product of the contract is usually a report showing the "level of effort" results achieved during a stated period. Unlike other contract vehicles, payment in this case is based on the effort expended rather than on the results achieved. This contract type may only be used when work required cannot otherwise be clearly defined; the required level of effort is identified and agreed upon in advance, and/or there is reasonable assurance that the intended result cannot be achieved by expending less than the stipulated effort.
- **Fixed-Price with Award Fees (FP-AF).** This type of contract has, in addition to the profit included in the fixed price, an award amount which may be earned in whole or in part as a result of contractor's performance. Its use is appropriate when performance is subject to improvement by the possibility of earning an additional fee for excellence. In order to facilitate such an incentive approach, evaluation criteria and rating scheme need to be included as part of the contract in the form of an Award Fee Plan (AFP). This is a tool used to motivate the contractor, in particular its management team, to continually achieve excellence. However, satisfactory performance is not worthy of an additional award fee. NATO will judgmentally determine and measure a contractor's performance within specifically designated performance categories, evaluation criteria, and evaluation periods. The award Fee Plan will also specify evaluation periods and the amount of award

fee available for each period, describe the general procedures to determine the earned award fee for each evaluation period, and define the evaluation criteria.

Additionally, it identifies the individuals, such as Fee Determining Official (FDO), voting members of the Award Fee Review Board (AFRB), and the Performance Monitors, by function with descriptions of their roles in the award fee process. The award fee review process is based on an evaluation of specific criteria for which there is a certain degree of subjectivity. However, resulting decisions will not be subject to contractor dispute.

- **Fixed Price with prospective price re-determination.** This contract type provides for a firm fixed-price for an initial period of contract deliveries or performance, and a prospective re-determination, at a stated time or times during performance, of the price for subsequent periods of time. This contract type is applicable for procurements of quantity production of services for which it is possible to negotiate a fair and reasonable price for an initial period, but not for subsequent periods of contract performance. Price control is paramount in this process.

6.5.2. COST-REIMBURSEMENT (CR) AND COST-PLUS CONTRACTS

This type of cost contract provides for payment of allowable incurred costs, to the extent prescribed in the contract. Such contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at its own risk) without the approval of the Procurement Service.

The biggest difference between Fixed-Price contracts and Cost-Reimbursement contracts is the assignment of risk. In Fixed-Price contracts, the contractor is required to deliver the product specified and there is a maximum limit on the amount of money NATO must pay. In Cost-Reimbursement contracts, the contractor is required to deliver a “best effort” to provide the specified product. All allowable costs must be reimbursed, regardless of delivery, up to the level specified in the contract.

Cost-Reimbursement contracts are suitable for use only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of Fixed-Price contract. Also, there are some other preconditions before Cost-Reimbursement contracts are employed, namely that the contractor's accounting system is adequate for determining costs applicable to the contract; appropriate NATO's surveillance during performance will provide reasonable assurance that efficient methods and effective cost controls are employed; cost-reimbursement contracts are not to be used for procuring commercially available goods or services.

The inclusion of special contract provisions establishing cost reimbursement shares, fixed or variable fees based on the achievement of established target costs, or awarded on the basis of excellence achieved in certain contract areas gives rise to main variants of Cost-

Reimbursement contracts, namely Cost-Sharing, Cost-Plus-Incentive-Fee, Cost-Plus-Award-Fee, and Cost-Plus-Fixed-Fee.

6.5.3. DELIVERY ORDER CONTRACTS AND TASK ORDER CONTRACTS

These contracts are set with stated limits of supplies or services during a fixed period:

- **Delivery Order Contracts** are intended for the purchase of supplies wherein no firm quantity of supplies, other than a minimum or maximum quantity is committed. Rather, separate delivery orders for specific supplies are issued during the period of the contract.
- **Task Order Contracts** are used in the procurement of services wherein no firm quantity of services, again other than a minimum or maximum quantity, is committed. Instead, task orders are issued for performance tasks, as they become known during the period of the contract.

Some of the benefits of using Delivery Order type contracts are that NATO's stocks may be maintained at minimum levels with direct shipment to users. Such contracts permit flexibility in both quantities and delivery scheduling and permit ordering of supplies (or services) after requirements materialize. Delivery Order contracts limit NATO's obligation to the minimum quantity specified in the contract, and may permit faster deliveries as the contractor may be willing to maintain stocks when NATO will obtain all of its actual purchase requirements from this contractor.

Individual orders against Delivery/Task Order Contracts must clearly describe supplies to be delivered or all services to be performed. Orders must be within the scope, period, and up to the maximum value of the contract. When services are involved, performance-based work statements must be used to the maximum extent practicable.

As a minimum, the following information shall be provided to placing orders:

- Date of order and contract number and order number.
- For supplies and services, contract item number and description, quantity, and unit price.
- Delivery or performance schedule and place.
- Any packaging and shipping instructions.
- Method of payment and payment office, if not specified in the contract.

There are three types of Indefinite Delivery (ID) contracts under Delivery/Task Order contracts:

6.5.3.1. DEFINITE-QUANTITY CONTRACTS (ID/DQ).

A Definite-Quantity contract provides for delivery of a definite quantity of specific supplies or services for a fixed period, with deliveries or performance to be scheduled at designated locations upon order. Typically, this type of contract may be used when it can be determined in advance that a definite quantity of supplies or services will be required during the contract period and the supplies or services are regularly available or will be available after a short lead time.

6.5.3.2. INDEFINITE-QUANTITY CONTRACTS (ID/IQ).

The most widely used of Delivery/Task Order Contracts, Indefinite-Quantity Contracts provide for an indefinite quantity, within stated limits, of supplies or services during a fixed period.

NATO places orders for individual requirements. Quantity limits may be stated as the number of units or in monetary terms. Also, the contract must require NATO to order and the contractor to furnish at least a stated minimum quantity of supplies or services. In addition, if ordered, the contractor must furnish any additional quantities, not to exceed the stated maximum.

The Procurement Officer should establish a reasonable maximum quantity based on market research, trends on recent contracts for similar supplies or services, survey of potential users, or any other rational basis.

The Procurement Officer shall ensure that:

- The minimum quantity must be more than a nominal quantity, but it should not exceed the amount that NATO is certain to order.
- The contract may specify maximum or minimum quantities that NATO may order under each Task or Delivery Order and the maximum that it may order during a specific period of time.
- A solicitation and contract for an indefinite quantity must:
 - Specify the period of the contract, including the number of options and the period for which NATO may extend the contract under each option.
 - Specify the total minimum and maximum quantity of supplies or services NATO will procure under the contract.

- Include a Statement of Work, specifications, or other description that reasonably describes the general scope, nature, complexity, and purpose of the supplies or services NATO will procure under the contract in a manner that will enable a prospective contractor to decide whether to submit an offer.
 - State the procedures that NATO will use in issuing orders, including the ordering media.
 - Include a description of those Procurement Officers authorized to issue orders, and related procedures for committing funds before delivery orders are issued.
- Should a Fixed Price contract contain indefinite quantity line items, then stating a minimum and maximum ordering amount is desirable. Otherwise, with no stated minimum, the contractor is not obligated to supply goods or perform services, just as NATO is not obligated to order supplies and services. Under such a scenario, delivery orders would have to be separately negotiated as specific requirements are identified.

6.5.3.3. REQUIREMENTS CONTRACTS

Although commercial Requirements Contracts maybe a convenient contractual instrument, NATO must maintain flexibility in sourcing the estimated foreseen or actual requirements and cannot grant exclusive supply rights to individual vendors.

Essentially, a Requirement Contract assures the availability of a contractor to provide support under pre-negotiated terms & conditions. Procurement staff should be cautious in selecting this contract-type as a Requirement Contract provides for filling all actual purchase requirements (supplies or services) during a specified contract period, with deliveries or performance to be scheduled by placing orders with the contractor.

In order to be enforceable, Requirements Contracts should award, explicitly or implicitly, exclusive rights to the contractor for the provision of the goods and services specified in the contract. Such an approach must be proven and fully justified for acquiring any supplies or services when NATO anticipates recurring requirements, but cannot predetermine the precise quantities of supplies or services that designated activities will need during a definite period.

6.5.4. TIME AND MATERIAL (T&M) CONTRACTS

A Time and Material contract may be used only when the result to achieve is well defined but it is not possible at the time of placing the contract to estimate accurately the extent or duration of the work or expected total costs with any reasonable degree of confidence.

As such, these contracts are used to procure supplies or services on the basis of direct labour hours at specified fixed and known hourly rates, to include wages, overheads, general and administrative expenses, and profit. Also, materials are typically provided at cost, to include any applicable material handling costs.

Because Time and Material contracts do not provide a positive incentive for the contractor to control costs and operate at maximum labour efficiency, contractor performance surveillance is particularly important.

Finally, this type of contract should only be used after the Procurement Officer determines that no other contract type is suitable and a ceiling price is firmly established.

6.5.5. LABOUR-HOUR (LH) CONTRACTS

A Labour-Hour contract is a variation of the Time and Material contract, differing only in that the contractor does not supply materials.

6.5.6. LETTER CONTRACTS

A Letter Contract is a written preliminary contractual instrument that authorises the contractor to begin immediately supplying goods or performing services. It may be used when there are compelling reasons and/or NATO's interests demand that the contractor be given a binding commitment so that work can start immediately and negotiating a definitive contract is not possible in sufficient time to meet the requirement.

However, a Letter Contract is no "last minute" substitute for poor planning, and must not be used to circumvent competition, and must reflect an overall price ceiling or Not-To-Exceed (NTE) price that is within available funding at the time of execution.

Procurement Officers must be cautious in dealing with a Letter Contract, as this will be binding NATO.

Additionally, Letter Contracts not awarded on the basis of price competition must define complete and definite requirements, plus clearly contain a final contract formation schedule that includes:

- Dates for submission of the contractor's cost/price proposal.
- A date for the start of negotiations, and a target date for contract finalisation, which shall be the earliest practicable date.

6.5.7. BASIC ORDERING AGREEMENTS (BOA)

Basic Ordering Agreements should be used when a substantial number of separate contracts may be awarded to a contractor during a particular period to prevent unnecessary recurring negotiations.

As the term suggests, a Basic Ordering Agreement is a written agreement, negotiated between a Procurement Officer and a contractor, that contains contract clauses applying to future contracts between the parties during its term and contemplates separate future contracts that will incorporate by reference or attachment the required and applicable clauses agreed upon in the basic agreement. A basic agreement is not a contract.

Commercial Basic Ordering Agreements may be used with negotiated fixed-price or cost-reimbursement contracts, and should incorporate commercial procedures to the maximum extent possible, especially in areas such as invoice/payment procedures and packaging.

In establishing a Basic Ordering Agreement, the following should also be considered:

- Using the established competition thresholds and procedures, Procurement Officers may establish agreements on prices and conditions for placement of orders for supplies and services.
- Basic Ordering Agreements may be competed on the basis of a “commercial sector or basket” of anticipated commodities characteristic of NATO’s requirements. These agreements will include an estimated maximum total order value over a specified time (including option years), which will limit the amount which may be ordered under that agreement without further competition.
- These agreements do not actually bind NATO to order material, and simply exist to expedite the process of awarding future individual transactions.
- Orders under such agreements require a separate contractual document to be prepared for each order placed.
- Procurement Officers may utilise Basic Ordering Agreements executed by other NATO Agencies on the condition that competitive requirements outlined earlier in this directive were satisfied during execution of the original agreement.

6.6. SECURITY ASSISTANCE AND CROSS-SERVICING ARRANGEMENTS

As a complement to commercial sources, Procurement Officers may elect to satisfy requirements through governmental sources for which standing contractual arrangements may be available. These arrangements may operate either as a normal contract with some special features due to the governmental nature of one of the parties (e.g., use of

special dispute resolution procedures) or as a cooperative support arrangement based on the principle of reciprocity.

Procurement Officers must determine the appropriate vehicle to execute customer requirements.

6.7. FACTORS IN SELECTING CONTRACT TYPES

6.7.1. LIST OF FACTORS

There are many factors that the Procurement Officer should consider in selecting and negotiating the contract type. They include, at least, the following:

- **Price competition.** Normally, effective price competition results in realistic pricing, and a Fixed-Price contract is ordinarily in NATO's interest.
- **Cost/Price analysis.** Cost/Price analysis, with or without competition, may provide a basis for selecting the contract type. The degree to which cost/price analysis can provide a realistic pricing standard should be carefully considered. It is essential that the uncertainties involved in performance and their possible impact upon cost/price be identified and evaluated, so that a contract type that places a reasonable degree of cost/price responsibility upon the contractor can be negotiated.
- **Type and complexity of the requirement.** Complex requirements, particularly those unique to NATO, usually result in greater risk assumption by NATO. This is especially true for complex research and development contracts, when performance uncertainties or the likelihood of changes makes it difficult to estimate performance costs in advance. As a requirement recurs, the cost risk should shift to the contractor, and a Fixed-Price contract should be considered.
- **Urgency of the requirement.** If urgency is a primary factor, NATO may choose to assume a greater proportion of risk or it may offer incentives to ensure timely contract performance.
- **Period of performance.** In times of economic uncertainty, contracts extending over a relatively long period may require economic price adjustment terms.
- **Contractor's technical capability, financial responsibility/ accountability.** For example, before agreeing on a contract type other than a Firm Fixed-Price, the Procurement Officer shall ensure that the contractor's accounting system will permit timely development of all necessary cost data in the form required by the proposed contract type. This factor may be critical when the contract type requires price revision while performance is in progress, or when a cost-reimbursement contract is

being considered and all current or past experience with the contractor have been on a fixed-price basis.

- **Concurrent contracts.** If performance under the proposed contract involves concurrent operations under other contracts, the impact of those contracts, including their pricing arrangements, should be considered.
- **Procurement history.** Contractor risk usually decreases as the requirement is repetitively procured. Also, product descriptions or descriptions of services to be performed can be defined more clearly.

6.7.2. NEGOTIATING CONTRACT TYPE

In certain circumstances, negotiating the contract type and negotiating prices are closely related and should be considered together. The objective is to negotiate a contract type and price (or estimated cost and fee) that will result in reasonable contractor risk and provide the contractor with the greatest incentive for efficient and economical performance.

A Firm-Fixed-Price contract, which best utilizes the basic profit motive of business enterprise, shall be used when the risk involved is minimal or can be predicted with an acceptable degree of certainty. However, when a reasonable basis for firm pricing does not exist, other contract types should be considered, and negotiations should be directed toward selecting a contract type (or combination of types) that will appropriately tie profit to contractor performance.

Each contract file shall include documentation to show why the particular contract type was selected. Exceptions to this requirement are Fixed-Price procurements made under Simplified Procurement Procedures.

7. INITIATION OF BIDDING PROCESS

7.1. INITIATION OF PROCUREMENT ACTION

7.1.1. USE OF PROCUREMENT REQUESTS

Requisitioning offices order products and services by way of Procurement Requests processed and send to the Procurement Service through PCIS. The Administrative Officer of the concerned Division, reviews all requests received in order to establish the actual need for the requirement, certify the Procurement Request and transmit it to the Procurement Service through PCIS.

Procurement action for the purchase of goods and/or services shall be initiated by the Procurement Service only after receipt of the Procurement Request. It shall be accepted for execution only when presented in a manner which will permit prompt procurement action. Procurement Requests, upon receipt by the Procurement Service, shall be checked for processability. Procurement Requests which are considered totally or partially non-processable or which may be processable only after research and investigation, shall be referred to the requisitioner for refinement, clarification, and further appropriate action.

The Procurement Request shall contain an accurate and detailed description of each required item and/or service, including, as appropriate, stock number, manufacturer's part number, nomenclature, necessary drawings and specifications, quantity to be purchased, estimated unit price, the customer, the required delivery date, if any, shipping instructions, and other pertinent information. If an estimate of the unit price has been given by the requisitioner, or if he/she has requested specific sources to be included in a solicitation, the Procurement Request shall be accompanied by appropriate information to this effect.

Procurement Requests are to be submitted early enough to provide the Procurement Service with sufficient procurement lead time. They shall provide known and unambiguous specifications including, where necessary, reference to technical documentation. In the absence of such specifications, the work required will be clearly stated in detail and such statement will constitute in itself an annex to the Contract/Purchase Order.

The originator of a Procurement Request may amend it during the Procurement Process when changes thereto are required, e.g.; regarding goods and/or services requested, additions, cancellations, changes of the required delivery date, etc. The Procurement Service will inform the requisitioner of the consequences of the requested action, if any, and obtain concurrence thereto. Thereafter, the Procurement Service will amend the procurement action accordingly.

7.1.2. REQUISITION SPLITTING (“SLICING”)

Requisitioners may not intentionally “split” requirements by processing them under two or more requisitions of lower monetary value in order to avoid mandatory competition requirements.

Consolidation of requirements is, as a matter of principle, the requisitioner’s responsibility. Nonetheless Procurement staff should make every effort to consolidate requirements where appropriate during the Procurement Cycle. Article 20.A of the FRP provides that:

“For goods and services which can be procured by a single contract or obtained from a single supplier, sub-division of the tender must not be made and the total amount shall determine the level under article FRP 20 b. above.”

In reality, the practice of splitting a requirement is a short-sighted business approach that is generally counter-productive, and undermines the integrity of the whole system.

Splitting a requirement actually hinders the Procurement Process because it:

- Does not allow the Organization to benefit from economies of scale and is therefore not cost effective.
- Restricts competition among potential suppliers.
- Contravenes the goal of obtaining solutions that best serve the interests of the Organization (Best Value).
- Increases the Procurement Service’s administrative workload, and monitoring problems.
- Subjects the Procurement Process to criticism from auditors and member nations for paying too much for goods and services while restricting competition.
- Prevents NATO IS from procuring supplies by the most advantageous order quantity and other volume discount practices offered by commercial suppliers.

The following examples concerning artificial division of procurements are offered as guidelines:

- Submitting two or more requisitions for the identical commodity on the same day or within the same week.
- Submitting two or more requisitions to the same vendor on the same day or within the same week when those requisitions cannot be sourced through an existing indefinite delivery contract.

- Submitting two or more requisitions to similar vendors for identical or similar commodities on the same day or within the same week (similar vendors are suppliers selling products within the same industry category, i.e., athletic, automotive, data processing, electrical, medical, office, scientific, etc.).
- Two or more requisitioners associated with different Divisions knowingly collaborate to submit separate requisitions for commodities to be used together which meet the criteria specified above.
- Regular recurring pattern of requisitioning over the course of a fiscal year exceeding Level 2XB of the Established Financial Limits (EFL) for the same commodity from the same or similar vendors (see section 8 for further information about EFLs and mandatory competition requirements) when those requisitions were not sourced through an existing indefinite delivery contract.

7.2. CONSEQUENCE OF INCOMPLETE PROCUREMENT REQUESTS

When a Procurement Request is incomplete, the Procurement Service will identify the deficiencies and request correction and re-submission. Timely submission of these corrections is critical because the Procurement Process does not normally begin until submission of a complete Procurement Request.

7.3. TIMELINE

The requisitioner shall establish at what time an identified need is to be fulfilled. He/she shall take into account all the steps of the Procurement Process, as set forth in this manual, in order to initiate the process of fulfilling said need in due time.

The requisitioner is encouraged to establish preliminary contact with the Procurement Service regarding any planned procurement for the forthcoming requisition in order to gain insight into the typical time required to complete contractual instruments and subsequent delivery time following receipt of a requisition.

The requisitioner shall provide adequate lead-time to the Procurement Service to properly conduct the Procurement Process. This process commences upon receipt of a sufficiently funded and completed requisition, including Specifications, from the requisitioner and ends with contract award. In its planning, the requisitioner shall take into account the time required for the preparation of bid documents, submission by vendors, evaluation of submissions, submission to and review by the CAC and the need for negotiation(s) and drafting of contract(s).

The following table shows typical timelines for various procurement activities, using estimated working days for each activity:

Activity	Single Tender	Restricted Bidding	Formal Bidding	International Bidding
Identification of the need	1-5	1-5	1-5	1-5
Development of the requirement	5-10	5-10	5-30	5-30
Distribution of the Procurement request to the Procurement Service	1	1	1	1
Analysis of the requirements	1-3	1-3	1-10	1-10
Development of Solicitation Documents	1-3	1-5	1-10	1-20
Identification of potential suppliers	1-3	1-5	1-10	1-15
Submission time for vendors	5-10	5-10	20	40
Opening of technical submissions	1	1	1	1
Evaluation of technical submissions	1-5	1-5	1-10	10-30
Opening of commercial submissions	1	1	1	1
Evaluation of commercial submissions	1-5	5-10	5-10	5-10
Evaluation / award by the CAC	N/A	N/A	1	1
Negotiation/request for Best and Final Offers, if appropriate	1	1	5-10	5-10
Final award by the CAC, if appropriate	N/A	N/A	1	1
Preparation of contractual instrument	1-3	1-3	5-10	5-10
Input/assistance by Office of Legal Adviser (if required)	N/A	N/A	5-10	5-10
TOTAL (working days)	24-53	24-53	54-100	83-180

The requisitioner shall take appropriate measures in order to avoid “urgency” cases. “Urgency” cases shall only be permitted, when it can be demonstrated that the requisitioner could not reasonably have foreseen that the need would materialize and require fulfillment in a time frame shorter than available for the use of the standard Procurement Process contained in this Manual. Such cases shall be handled in accordance with the procedures set forth in Section 14 below.

7.4. MARKET SURVEY

Conducting market surveys is within the scope of the procurement functions and market surveys should be conducted only by the Procurement Service. However, it is expected that requisitioners conduct their own technical research into their relevant industry section, and participate in professional discussions in various fora to keep abreast of technological and other developments within their area of expertise.

If additional information about potential methods to fulfil the identified need is necessary, the requisitioner should request the Procurement Service to conduct a market survey. Also, before developing new Specifications and before soliciting new products with which NATO IS is not familiar, the requisitioner should request the Procurement Service to perform a market survey. The market survey conducted by the Procurement Service shall be based on a generic, and preferably, performance-based description of the need to be fulfilled.

Upon receipt of a request to undertake a market survey, the Procurement Service shall evaluate the urgency, estimated value, complexity and past experience. The market survey shall involve obtaining information specific to the good or service sought. The intention is to build generic descriptions of available or potential methods to fulfil the identified need, and to obtain approximate cost and delivery timelines related to such methods.

To conduct the market survey the Procurement Service may:

- Contact knowledgeable individuals in the industry;
- Review the results of recent market survey undertaken to meet similar needs;
- Conduct internet communications with industry;
- Obtain source lists of similar items from other agencies, trade organizations or other sources;
- Review catalogues and other product literature;
- Issue “Requests for information” and/or “Price requests” to vendors registered in the Procurement Service’s vendors’ database as well to other sources identified by the Procurement Service.

The results of the market research shall be documented in the procurement case file.

7.4.1. REQUEST FOR PRICE AND AVAILABILITY

The Procurement Service's general policy is to solicit bids or proposals in respect of requirements only when there is a definite intention to award a contractual instrument. If solicitation is necessary for other reasons, i.e. for Procurement Planning or information (exploratory) purposes, the Procurement Service must approve it. 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 NATO.

7.4.2. LETTER OF INTEREST

It can be necessary to contact prospective contractors prior to solicitation. Information may be required for a number of reasons, e.g. to determine 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 prospective contractors may be made either through the use of a Letter of Interest or of pre-solicitation conferences.

7.4.3. PRE-SOLICITATION CONFERENCES

Pre-solicitation conferences allow NATO IS requesters to discuss the proposed work with prospective contractors and to determine whether they are interested in responding to such requirements. Procurement staff members shall chair such conferences.

8. COMPETITIVE BIDDING - SOURCE SELECTION PROCESSES AND TECHNIQUES

8.1. INTRODUCTION - FINANCIAL LIMITS OF DISCRETIONARY POWERS (EFL)

Article 18.a.4. of the Financial Rules and Procedures (FRP) of NATO Financial Regulations (NFR), establishes that:

“The Financial Controller shall ensure that financial limits of discretionary powers (EFL) delegated by the FRP are established and applied”.

These limits are five, namely A to E, and the above article establishes the calculation method, which is based on the approved salary of a NATO civilian staff member of grade A2/step 1, as paid on 1st January each year.

The EFL limits are taken into consideration to establish the different thresholds defining the application of different procurement procedures (see article 20. b. of the FRP, Bidding requirements).

The implementing rules and procedures approved pursuant to article 18.a.4. shall specify the estimated values in excess of which contracts for the procurement of services, equipment and supplies shall be awarded as a result of international competitive bidding and the conditions under which departure from this procedure may be authorized.

8.2. MANDATORY COMPETITION REQUIREMENTS AND PROCUREMENT PROCEDURES

Approaches to sourcing possibilities will be influenced by prevailing market conditions, national governmental capabilities, practical time constraints and NATO EFL. Unless given appropriate authority to deviate from standard procurement methods, the Procurement Service shall adhere to the following mandatory competition requirements and procurement procedures:

Estimated Value of the Contract (EFLs)	Mandatory Competition Requirements	Procurement Procedures
Up to LEVEL B	Single Tender - Solicitation of offers from an eligible single qualified commercial or NATO member governmental source	Simplified Procurement Procedures (see section 8.2.1. for further details)
Up to LEVEL 2xB	Restricted Bidding – Solicitation of offers from at least three qualified eligible commercial and/or NATO member governmental sources	
Up to LEVEL D	Formal Bidding - Solicitation of offers from at least five qualified eligible commercial and/or NATO member governmental sources	Formal Procurement Procedures (see section 8.2.2. for further details)
In excess of LEVEL D	International Bidding – Solicitation of offers from at least five qualified eligible commercial and/or NATO member governmental sources and submission of the solicitation package to national delegations to NATO (i.e., international bidding procedures)	

The estimated value of a contract for the purposes of this section shall be the value of the total consideration payable which NATO expects to be payable under the contract.

In determining the value of the total consideration Procurement Officers shall, where appropriate, take account of:

- Any form of option;
- Any renewal of the contract;
- Any prize or payment awarded by NATO to the eventual contractor;
- The premium payable and other forms of remuneration for insurance services;

- Fees, commissions, interest or other forms of remuneration payable for banking and other financial services; and
- Fees, commissions or other forms of remuneration payable for design services.

The estimated value for the purposes of this section of an indefinite delivery contract for the procurement of goods or services shall be:

- The aggregate of the value of the consideration which NATO expects to be payable under the contract including both the basic contract duration and any possible extension options; or
- The value of the monthly consideration payable under the contract multiplied by 60 if the term of the contract is indefinite or uncertain at the time the contract is entered into.

Subject to the limitations established in the following paragraph, where NATO has a single requirement for goods or services or for the carrying out of a work or works and a number of contracts have been entered into or are to be entered into to fulfil that requirement, the estimated value for the purposes of the identification of competition requirements of each of those contracts shall be the aggregate of the value of the consideration which the contracting authority expects to be payable under all those contracts.

Notwithstanding the paragraph above, in relation to a supply contract or a services contract, when the goods or services are required for the sole purposes of a discrete operational unit within the Organization (e.g., a deployed NATO mission in one of the partner countries) and the decision whether to procure those goods or services has been devolved to such a unit; and that decision is taken independently of any other part of the Organization; the valuation methods described in the paragraphs above shall be adapted by aggregating only the value of the consideration which was payable or NATO expects to be payable, as the case may be, under a supply contract or a services contract which was or is required for the sole purpose of that unit.

Procurement Officers shall not enter into separate contracts nor exercise a choice under a valuation method with the intention of avoiding the application of the rules specified in this section to those contracts.

In order to avoid the artificial splitting of requirements, Procurement Officers shall group, under the same contract action, all requirements of the same and similar commodities that can be reasonably foreseen at the time the contract is initiated and for which such bundling and/or consolidation is feasible (i.e., the future demand is certain) and economically advantageous to the Organization (considering relevant risks, transaction costs, and prevailing market conditions).

Nothing in this section will preclude Procurement Officers from splitting requirements in order to adapt the duration and volume of procurement actions to the market conditions of a specific commodity. The following examples are offered as guidelines:

- Commodities and services subject to considerable price volatility (e.g., fuel, paper, computers, vehicles, etc.); and
- Commodities and services for which the best terms and conditions are obtained through contracts of a specific duration (e.g., lease of vehicles).

8.2.1. SIMPLIFIED PROCUREMENT PROCEDURES

Simplified Procurement Procedures apply to the procurement of basic, non-complex goods and services. The advantage of Simplified Procurement Procedures is that they offer streamlined approaches, with little risk, to reduce administrative costs, promote efficiency, and avoid unnecessary burdens for both the Procurement Service and suppliers. Simplified Procurement Procedures vest Procurement staff with additional procedural discretion and flexibility, so that procurements may be solicited, offered, evaluated, and awarded in a simplified manner. The Procurement Service shall use Simplified Procurement Procedures to the maximum extent practicable for all purchases of supplies or services never exceeding 2xB of the EFL. Further, specific Simplified Procurement Procedures activities, to include details and results of the solicitation process undertaken, shall be meticulously recorded in applicable procurement files.

8.2.1.1. PETTY CASH

Petty cash is a cash fund of a fixed amount established by an advance of funds, without prior charge to a commitment for disbursement as needed from time to time in making payment in cash for relatively small amounts. Small procurement, totalling less than 5% of level A of the EFL, may be procured by use of advance accounts.

Where permitted by Host Nation law, local arrangements should be established to ensure that such transactions do not normally include payment of any Value Add Tax (VAT) or other taxes for which NATO is exempt.

Advance accounts are actually a payment method rather than a contract vehicle; the procurement itself is a retail “over-the-counter” purchase made without a written contractual document. Such procurements are executed under the authority of a Procurement Officer and are limited to items that are available for immediate delivery.

8.2.1.2. PURCHASE CARD (P-CARD) PROGRAMME

The main objective of this program is to streamline the Procurement Process of low-value goods and services through the delegation of procurement authority to end-users and the implementation of effective internal control mechanisms to prevent fraud and abuse.

The P-Card Programme allows Organizational elements to obtain goods and services much faster and easier while sharply reducing the administrative costs and processing time associated with the execution of purchases. All these benefits are achieved through the issuance of corporate purchase cards (a special type of credit card) to selected individuals (Cardholders) within each Division and Independent Offices so they can execute purchases independently without the intervention of the Procurement Service but under the supervision of a senior officer (Billing Officer) who is jointly responsible for the correct use of the card.

Cardholders may use P-Cards for the execution of purchases that do not exceed their authorized single purchase limit. This purchase limit is established by the Credit Card Coordinator responsible for the management of the NATO IS P-Card Programme. In no case the single purchase limit will exceed 15 % of Level B of the EFL.

The Procurement Service has established procedures for the implementation and operation of the P-Card Programme. These procedures establish pre-approval requirements for controllable items and other limitations and internal control mechanisms to avoid fraud, waste, and abuse.

8.2.1.3. PURCHASE ORDERS (POs)

Purchase Orders are generally issued for procurement of basic, routine and well-defined commercial items. A Purchase Order is a contractual instrument executable by the contractor by generally delivering goods or services based on the Procurement Officer's signature or executing an offer resulting from a Price Request (or Request for Quotation). The Purchase Order sent to the contractor shall always include NATO IS General Purchasing Terms and Conditions.

Purchase Orders shall be prepared and issued through "Open Solicitation" approaches, whereby contractor costing/pricing information may be readily obtained e.g., over the phone, Internet, via fax or e-mail. In some instances a simplified standard Request for Quotation (RFQ) form may be used by Buyers and Procurement Officers to document contractor's terms and conditions and the fulfilment of mandatory competition requirements.

8.2.1.4. BLANKET PURCHASE AGREEMENT (BPAs)

A Blanket Purchase Agreement is a simplified method of filling anticipated repetitive needs for basic supplies or services by establishing "charge accounts" with qualified sources of supply. Essentially, this procurement approach replaces the need to execute multiple

Purchase Orders. Blanket Purchase Agreements should address the frequency of ordering and invoicing, discounts, and delivery locations and times. For example, when the Procurement Service finds a schedule supply or service elsewhere at a lower price or when a Blanket Purchase Agreement is being established to fill recurring requirements, requesting a price reduction could be advantageous. The potential volume of orders under these agreements, regardless of the size of the individual order, may offer the requester the opportunity to secure greater discounts. Although the use of Blanket Purchase Agreements provides added purchasing flexibility, both the Procurement Service and requesters still need to carefully ensure that obligations and expenditures are still kept within established funding limits.

Transactions under Blanket Purchase Agreements shall not exceed level B of the EFL. The following are circumstances under which the Procurement Service may establish Blanket Purchase Agreements:

- A wide variety of items in a broad class of supplies or services exists and is generally purchased. However, the exact items, quantities, and delivery requirements are not known in advance and may vary considerably.
- There is a need to provide commercial sources of supply for one or more offices or projects in a given area that do not have or need authority to purchase otherwise.
- The use of this procedure would avoid the writing of numerous Purchase Orders for which administrative costs can be excessive.

8.2.2. FORMAL PROCUREMENT PROCEDURES

Contracts of which the consideration payable is estimated to exceed the equivalent of twice level B will be awarded through a “formal” Procurement Process. This formal process shall include:

- The preparation and release of a formal solicitation of offers in line with the provisions of the Source Selection Plan (SSP) and in accordance with the standard model described in section 9.1. of this Manual;
- The solicitation of offers shall include a copy of the standard contract format specified in section 9.1.2.;
- The evaluation of offers by a Proposal Evaluation Team (or Evaluation Panel) in accordance with the requirements established in section 12.2.;
- If the source selection process is based on a best-value award approach, the preparation of a Source Selection Plan specifying the award approach, the bid evaluation criteria, the award related clauses, the Organization of the

source selection process, and the schedule of source selection activities as described in section 9.1.6.;

- The award of the contract by the Contract Awards Committee described in section 2.8.; and
- The formal notification of the outcome of the source selection process to all bidders.

8.2.2.1. INVITATION FOR BID (IFB)

An Invitation for Bid shall be used for the procurement of goods and services of standard and firm Specifications (very clearly defined or continuously used deliverables) of the total estimated value in excess of level B of the EFL.

In these cases, the contract shall be awarded to the qualified bidder whose bid substantially conforms to the requirements set forth in the Solicitation Documents and is evaluated to be the lowest cost to NATO IS. In other words, the contract is awarded to the bid which is the "lowest cost technically acceptable and in the best interests of NATO IS".

The final contractual instrument will be a contract.

8.2.2.2. REQUEST FOR PROPOSAL (RFP)

A Request for Proposal shall be used for procurement of deliverables that cannot be quantitatively or qualitatively expressed in sufficient detail to allow for a decision based on mere compliance or non-compliance, and where the quality of the service is deemed of essence, such as for professional services or similar services. A Request for Proposal shall also be used for purchase of complex goods using functional specifications when proposals from the invitees are preferred. A Request for proposal shall also be used in the case of outsourcing non-core activities and services. Specifications shall be clear, comprehensive and preferably performance oriented, in order to ensure fair and equal treatment of the prospective vendors.

In these cases, the contract shall be awarded to the qualified bidder whose proposal, all factors considered (cost and quality), is the most responsive to the requirements set forth in the Solicitation Documents. The evaluation shall be in accordance with given weights and factors.

The final contractual instrument will be a contract, developed according to the specified requirement, including price and other factors, and, as applicable, negotiations with one or more of the prospective vendors.

8.2.3. PARTICULAR REFERENCE TO INTERNATIONAL BIDDING

For contracts of which the consideration payable is estimated to exceed level D of the EFL, in addition to the use of Formal Procurement Procedures, national delegations to NATO, and any other national agencies which they may designate, shall be notified of the intention to solicit formal tenders from suppliers known to meet the required technical and commercial standards, be informed of all suppliers to be solicited, and be provided with complete bidding instructions, technical specifications and all other pertinent documentation in the number of copies required.

9. SUPPLIER SELECTION

9.1. PREPARATION AND ISSUANCE OF FORMAL SOLICITATION DOCUMENTS

9.1.1. INTRODUCTION

The Procurement Service shall draft the solicitation documents in close cooperation with the requisitioner. Approval concerning security measures shall be sought from NOS.

The Solicitation Package will consist of the following main parts:

- Part I. Instructions for the preparation and submission of offers, including, as an annex, a copy of the prospective contract document;
- Part II. Special Contract Provisions;
- Part III. General Contract Provisions; and
- Part IV. Statement of Work or Requirements Specification and annexes

9.1.2. INSTRUCTIONS FOR THE PREPARATION OF OFFERS

The instructions for the preparation of offers shall include the following information:

- General information about the Organization and the scope of the contract action;
- The identification of the procedures that will govern the solicitation process and any eligibility and exclusion requirements that may be applicable;
- A short description of the contract type;
- The detailed description of the mandatory proposal contents and format requirements;
- Information about any mandatory or optional bidders' conference and/or site visits;
- Procedures for the submission of offers and clear identification of the closing date and time;
- Detailed information about the award approach, evaluation criteria, Source Selection Organization (SSO), the possibility of competitive negotiations, and

the sequence of source selection activities;

- Rules for the management of communications during the bidding period and contract formation phase; and
- A clear disclaimer of any liabilities associated with the unilateral cancellation or amendment of the solicitation;

9.1.3. PROSPECTIVE CONTRACT DOCUMENT

The prospective contract will be included as an annex to the instructions for the preparation of offers and shall conform to the standard format approved by the Head of Procurement. Bidders shall submit a completed and signed copy of the prospective contract document together with their offers. This will allow NATO IS to obtain an executed contract by just counter signing the prospective contract document submitted by the awardee.

The prospective contract document shall include the following:

- The identity and address of the parties;
- An order of precedence and merger clause incorporating by reference the various terms and conditions exchanged during the contract formation phase and establishing the order of precedence between them;
- A clause incorporating deviations from standard terms and conditions that were accepted by NATO during the contract formation phase;
- The total contract price;
- The effective date of the contract and the contract duration; and
- The signature blocks.

9.1.4. SPECIAL CONTRACT PROVISIONS

This part includes all the terms and conditions which are specific to the procurement. These clauses will be taken from an approved menu of special contract provisions according to the nature, contract type, specific objectives, and risks of the procurement. For the determination of the special contract provisions to be included in a given contract, Procurement Officers shall apply a set of expert rules, approved by the Head of the Procurement Service, which through a series of questions and answers will derive the specific contract clauses applicable to the contract. The following questions are offered as guidelines:

- What types of compensation arrangements are included in this contract (i.e., Firm Fixed-Price, Fixed Price with Economic Price Adjustment, Fixed-Price Award Fee, Time & Materials, etc.)
- Is this a multi-year contract?
- Does the contract provide for fixed-price purchase-options?
- Does the contract provide for extension options?
- Does the contract include the delivery of goods?
- Does the contract include the execution of services/works?
- Does the contract include the lease of property?
- Does the contract include the execution of civil works or construction?
- Does the contract include the execution of work or services on site?
- Does the contract include the development or provision of any kind of intellectual property (e.g., designs, reports, manuals, software, firmware, models, etc.)?
- Does the contract require the identification of Contractor's Key Personnel?
- Is there a risk of potential conflicts of interest?
- Does the contract require a non-disclosure agreement to protect confidential information?
- Does the contract include a payment schedule?
- Does the contract require a performance guarantee?
- Are dates and times specified in the contract of the essence?
- Does the contract include the provision of facilities to the contractor for the performance of the contract?
- Do we need to include a most favoured customer clause?
- Does the contract provide for the shipment of goods?

- Do we need to ensure a supply of parts for a number of years?
- Is this a performance-based contract?

9.1.5. GENERAL CONTRACT PROVISIONS

This part includes general terms and conditions which are relevant to all contract actions and can be fully specified at the time of the solicitation. These clauses are included in every contract regardless of the type or nature. The following examples are provided as guidelines:

- General contract interpretation clauses such as standard definitions and acronyms (e.g., NATO, PSD, CED, Day, Acceptance, NATO Participating Countries, etc.) and a clause establishing how to resolve inconsistencies between different language versions of the contract (e.g., inconsistency between English version and translation of the contract);
- Clauses establishing the contract governing law and the standard dispute resolution procedure;
- Clauses establishing standard requirements to be fulfilled by contractor's invoices;
- Clauses establishing restrictions associated with the nationality of contractors to comply with NFRs;
- Clauses referring to compliance with standard NATO internal regulations;
- Anti-corruption clauses establishing the prohibition of any gratuities and the consequences associated with the offering of these; and
- Clauses establishing restrictions on the release of general information associated with the contract.

9.1.6. REQUIREMENTS SPECIFICATION/STATEMENT OF WORK (SOW)

This part include shall include the specification of the services, works, and/or goods to be provided under the contract. The SOW shall be drafted in accordance with the standard structure specified in section 5.4.5. of this Manual.

9.1.7. SOURCE SELECTION PLAN (SSP)

The Source Selection Plan (SSP) is a planning document designed for internal use that describes how potential suppliers will be evaluated and a winning contractor selected. The SSP describes in detail how the various decision-aiding elements involved in a source selection process will be developed and relate to each other. This document also identifies the main actors of the source selection process and establishes other administrative details like the who, what, when, and how of the complete source selection process.

The purpose of the SSP is to develop and record a comprehensive plan of action for selection of the best possible source to meet procurement requirements. The plan should address all of the basic elements for executing any given task; the responsibilities of the individuals and groups involved; the standards that will be used to guide results; and a scheduled, sequential description of activities. As such, the SSP is a vital planning document. In order to complete the plan, Procurement Officers must identify the personnel resources necessary for source selection and define a fully integrated process. An evaluation model that reflects the basic objectives of the procurement should be developed and the relative importance of cost and non-cost factors should be reflected in this model.

In addition, the plan shall be used to inform participants of their role in source selection and allow these individuals to adjust their other duties and schedules accordingly. Because the SSP records the plans for evaluating offers, this document can be considered as part of an in-process review for the procurement.

The early development of a SSP forces the Organization to give proper thought to crucial aspects of the source selection process so as to be able to timely implement adequate measures to deal with any potential hiccups that may emerge throughout the Procurement Process. However, it should be noted that a SSP is not a static document. Its initial version must evolve with the Procurement Process, in an iterative manner, as requirements mature and the source selection process evolves.

In principle, the Procurement Officer is the individual that should take responsibility for the development of the initial version of the document and the facilitation of the development process but all relevant stakeholders – especially, the representatives of the requesting Divisions - should be included in the development process in order to guarantee the SSP logical correctness and legitimacy.

In summary, the use of a SSP would convey the following advantages to the buying Organization:

- Offers a way to document the objectives of the procurement;
- Serves to document the situation-dependent model of the source selection process;

- Offers a guide for the development and negotiation of the stated model among the various stakeholders involved in the procurement;
- Guarantees coherence between the various documents and activities carried out in the Procurement Process and the objectives of the procurement;
- Identifies suitable resources for the source selection process;
- Provides useful documentation and references for those involved in the process;
- Helps streamlining the Procurement Process;
- Minimises the complexity of the decision-making process;
- Ensures impartial and comprehensive evaluation of suppliers' attributes;
- Establishes standards against which the process can be verified.

In spite of the many advantages associated with the use of SSPs, their development and maintenance may become too cumbersome to justify their use for small, low risk procurement actions. Therefore, SSP shall be mandatory only for procurement actions which are subject to Formal Procurement Procedures (2 X EFL B) and where the award approach is based on the trade-off process described in section 9.1.8.3. below (Best Value).

The minimum contents of a SSP shall be as follows:

- Identification of the Source Selection Authority (normally the CAC);
- Identification of the chairperson and makeup of the source selection team including an organization chart or a brief statement describing how the team will be structured and the duties and responsibilities of each member;
- Brief description of the requirement;
- Description and prioritisation of the objectives of the contract action;
- Risk analysis;
- Explanation of the type of contract to be used (e.g., firm fixed price, Fixed price award fee, etc.) and the nature of the incentives or other specific features included in the contract;
- Plans for pre-solicitation activities such as issuance of a draft solicitation, a pre-solicitation conference and/or proposal conference;

- A detailed description of the evaluation model used for the evaluation of suppliers and standard sheets that will be used by the evaluators to record findings and evaluations;
- A schedule of the significant events that would occur prior to issuance of the solicitation of offers and between receipt of proposals and final selection;
- The specific provisions of the solicitation of offers that address the subject of evaluation of proposals and contract award;

9.1.8. EVALUATION METHODS

To evaluate bids, the Procurement Service may use one or a combination of the following evaluation methods:

- Lowest responsive/compliant/acceptable offer.
- Trade-off Process (Best Value).

The Solicitation Documents will clearly state the evaluation method that will be used in the concrete procurement.

9.1.8.1. REFERENCE TO THE BEST VALUE FOR MONEY PRINCIPLE

Best Value for Money is one of the general principles that should be given due consideration when exercising the procurement functions. When procuring good, services or works, the Procurement Service and all other stakeholders involved in procurement activities need to ensure that the best possible outcome has been achieved by taking into account all relevant costs and benefits over the entirety of the product or service life-cycle.

Best Value for Money is defined as the “Optimization of whole-life costs and quality needed to meet the user’s requirements, while taking into consideration potential risk factors and resources available”.

Its goal is to achieve maximum benefit for the Organization. Price alone is not necessary determinative of Best Value for Money. Procurement under the Best Value for Money Principle shall be conducted taking into consideration the following factors, while ensuring that the Best Value for Money principle has been applied:

- Cost-related factors: the entirety of the cost components that comprise the total cost of the ownership of the procured goods, services or works, whether direct or indirect, fixed or variable (e.g., price; ancillary support, such as maintenance, upgrade and storage; supplies and additional operating costs; disposal costs; volume discounts; and internal processing costs to support the transaction);

- Non cost-related factors; factors or attributes that are related to the Organization's needs and requirements, e.g., technical merits of the offered goods, services or works; compliance with specifications and requirements; quality; timeliness of delivery; competency, reliability and financial capacity of the prospective supplier; and compliance with contractual terms and conditions);
- Market environment: overall market maturity and availability of sources;
- Competitive, fair and transparent sourcing process;
- Risk factors: any risk that may jeopardize the successful outcome of a procurement (e.g., financial viability and capacity of the supplier; legal exposure and liability; geo-political circumstances; price stability; and dependency).

All factors that are relevant to the particular procurement need to be considered, and the relative importance of each factor determined on a case-by-case basis. As far as possible, all costs and benefits should be identified, compared and weighted against end-user need, evaluation criteria and risk factors. While Best Value for Money should be assessed as objectively as possible, professional judgment might be required as complex needs rarely have one clearly correct solution.

The Best Value for Money Principle is applicable throughout the Procurement Process. The main stages within the Procurement Process where it is applicable are:

- Definition of requirements;
- Sourcing / identification of potential supplier sources;
- Development of Source Selection Plan, including Evaluation Criteria and weighting (if applicable);
- Evaluation and source selection;
- Risk assessment and management; and
- Contract management (including vendor performance measurement and ensuring that the vendor complies with the terms and conditions of the contract).

The responsibility for ensuring that Best Value for Money is obtained is not limited to Procurement staff. Requisitioners and end-users also have a role in applying the Best Value for Money principle, during both the process of establishing requirements and contract management. The Office of Financial Control in reviewing and approving financial commitments has the responsibility for ensuring that the Best Value for Money Principle has been applied properly.

All those involved in the Procurement Process are responsible for establishing the steps taken to achieve Best Value for Money through proper documentation and filing.

9.1.8.2. LOWEST RESPONSIVE/COMPLIANT/ACCEPTABLE OFFER

When using this method, the award of a contract should be made to the supplier whose offer has been evaluated and determined as both:

- Responsive/compliant/acceptable, and
- Offering the lowest price/cost.

“Responsive/compliance/acceptable” can be defined as fully meeting the specifications and/or SOW required, or reaching a pre-defined threshold of a maximum attainable score based on the requirements stated in the specifications document.

The level of responsiveness/compliance/acceptability may be measured using straightforward pass/fail criteria or more complex approaches like a weighted scoring system.

There is a difference between the price proposed by the bidder and the cost to the Organization. When applying the concept of lowest cost, cost means price plus other related cost factors such as freight cost, operational cost of disposal, etc.

The “lowest responsive/compliant/acceptable offer” is the simplest method of evaluating offers whereby non responsive/compliant/acceptable offers are rejected as soon as this becomes apparent. Among the remaining responsive/compliant/acceptable offers the lowest one is selected.

This method may be used for procurement where:

- Requirement Specifications/SOW are clear.
- Responsiveness/compliance/acceptability is easy to determine.
- Price/cost is overriding evaluation criterion compared to other aspects of Value for Money.

The “lowest responsive/complaint/acceptable offer” methodology consists of the following steps:

- Determining which offers are responsive/compliant/acceptable, and reject non responsive/compliant/acceptable offers.

- Only bids offering goods/works/services meeting or exceeding the requirements in the specifications should be considered responsive/compliant/acceptable.
- Choosing the lowest cost offer among the responsive/compliant/acceptable.

Normally, a one-envelope system where suppliers submit one offer including all technical and financial information is used when applying this method of evaluation. However, a two-envelope method where technical and financial offers are sealed separately may also be used if it is deemed necessary to complete the technical evaluation without knowing the price of the respective offers, typically when responsiveness/compliance/acceptance is determined by a minimum threshold.

9.1.8.3. TRADE-OFF PROCESS

Cost or price is always an evaluation factor in any source selection. However, as it was explained above, many times other factors also need to be considered. NATO may need technical capabilities, qualifications, or experience that a low cost/price bidder may not possess. These factors may or may not be more important than cost/price, but they do have a strong bearing on the source selection decision. The Source Selection Authority needs flexibility to select the Best Value that may not be the lowest price or the highest technically rated bidder. The decision will involve a comparison of the combination of non-cost strengths, weaknesses, and risks and cost/price offered in each proposal and judgment as to which provides the best combination. The Source Selection Authority (the CAC described in section 2.8. of this Manual) will have to document the decision and why the selected source represents the Best Value to NATO. This is the essence of the trade-off process.

The trade-off process is particularly appropriate if:

- NATO's requirements are difficult to define, complex, or historically troublesome;
- Measurable differences in the design, performance, quality, reliability, or supportability are expected;
- Services are not clearly defined or highly skilled personnel are required;
- NATO is willing to pay extra for capability, skills, reduced risk, or other non-cost factors, if the added benefits are worth the premium;

Procurement Officers shall always consider the strengths and potential pitfalls of using a trade-off process to ensure that it is consistent with the overall procurement strategy:

- Strengths:
 - Allows greater flexibility to subjectively compare technical and cost factors to determine the value of the relative strengths, weaknesses, and risks of the proposals;
 - Enables selection of the best approach among a range of solutions and increases the likelihood of selecting suppliers who are most likely to provide quality products and services, on time, and at reasonable cost/price;
 - Takes advantage of the experience and independent judgment of the source selection team.

- Potential Pitfalls:
 - Using evaluation factors and sub-factors that are not derived from the market place and do not accurately reflect NATO's business requirements. This may result in award to a bidder that may not be the Best Value.
 - Using too many evaluation factors and sub-factors. A large number of factors and sub-factors dilutes consideration of those which are truly important.
 - Failure to make the appropriate investment in resources needed for a competent and defensible value analysis.
 - An inherently subjective process, and thus more difficult to evaluate and document.

The trade-off process generally consists of the following steps:

- Designing a strategy that best reflects the results of market research and the specific circumstances of the procurement.
- Establishing and documenting a source selection or technical evaluation plan. This plan includes the procurement goals and objectives, identification and relative importance of evaluation factors and sub-factors, the evaluation standards, and the selection process.
- Structuring the solicitation to effectively communicate NATO's requirements, mission objectives, the factors and sub-factors, their relative importance, the information bidders must submit for evaluation against the stated factors and sub-factors and the methodology for evaluating the proposals.

- Evaluating the offers on the basis of the Source Selection Plan and the evaluation factors and sub-factors in the solicitation and having discussions as needed.
- Comparing the strengths, weaknesses, risks, and cost/price or most probable costs of the proposals and deciding which combination, in accordance with the solicitation factors and sub-factors, represents the Best Value.
- Documenting the source selection decision including the tradeoffs and rationale used.
- Awarding the contract, notifying bidders and debriefing them upon their request.
- Documenting the lessons learned that may benefit future source selections.

The evaluation of proposals performed as part of the trade-off process must be supported by a rating system that uses a scale of words, colours, numbers or other indicators to denote the degree to which proposals meet the standards for the non-cost evaluation factors. Such a system helps evaluators assess a proposal's merit with respect to the evaluation factors and sub-factors in the solicitation. What is key in using a rating system in proposal evaluations is not the method or combination of methods used, but rather the consistency with which the selected method is applied to all competing proposals and the adequacy of the narrative used to support the rating.

The rating system shall be documented in the Source Selection Plan. The following rating systems or a combination of them shall be used:

- **Adjectival.** Adjectives (such as excellent, good, satisfactory, marginal, and unsatisfactory) are used to indicate the degree to which the bidder's proposal has met the standard for each factor evaluated. Adjectival systems may be employed independently or in connection with other rating systems.
- **Colour Coding.** This system uses colours to indicate the degree to which the proposal has met the standard for each factor evaluated. For instance, the colours blue, green, yellow, amber, and red may indicate excellent, good, satisfactory, marginal, or unsatisfactory degrees of merit, respectively.
- **Numerical/Weighted Average.** This system assigns point scores (such as 0-10 or 0-100) to rate proposals. This rating system generally allows for more rating levels and thus may appear to give more precise distinctions of merit. However, numerical systems can have drawbacks as their apparent precision may obscure the strengths, weaknesses, and risks that support the numbers. Therefore, these types of rating systems must be used with special care and after a proper analysis of the business logic behind the mathematical algorithms used for the calculation of scores. When using a weighted scoring method, the award of a contract should be made to the supplier whose offer has been evaluated and determined as

responsive/compliant/acceptable and having received the highest score out of a pre-determined set of weighted technical and financial criteria specific to the solicitation. Scores produced through the application of numerical rating systems can also be used to established compliance thresholds (e.g., a bid that does not achieve at least 60 % under each evaluation factors is determined as non-compliant).

- Narrative. Narrative shall be used in conjunction with a rating system to indicate a proposal's strengths, weaknesses, and risks. Adjectival, colour, and numerical ratings must be supported with narrative statements. Narrative statements can describe the proposals' relative strengths, weaknesses, and risks to the Source Selection Authority in a way that adjectives, colours, and numbers alone cannot. A narrative is required when evaluation standards are being applied, when a comparison of proposals is being made, and when a cost/technical trade-off is conducted. The narrative provides a reasonable and rational basis for the selection decision.

9.1.8.4. PRICE/COST ANALYSIS

The evaluation methods described above show techniques for attaining competitive and Best Value procurement. When there is no competition, the Procurement Service must still ensure that the price the Organization is paying is fair and reasonable. This can be done by performing a price/cost analysis. There are a few methods that can be used to determine that the price being paid and the conditions of offer are fair and reasonable:

- Market price, e.g. via consulting market publications.
- Catalogue or list price.
- Discounts.
- Historical price, i.e. obtain information on how the current price compares to a price paid in the past for the same or similar goods or services by the Organization or other NATO body.
- Is the offer the same as for another comparable customer.
- Obtain breakdown of cost information from the supplier.

If, after analysis, the Procurement Service does not feel the price to be paid is fair and reasonable, competition or negotiation may be sought with the supplier to lower the price.

9.1.9. LANGUAGE

Solicitation Documents will be prepared in English or French, at the discretion of the Procurement Service. In the case of International Call for Bids, it is general practice to issue the Solicitation Documents in both languages. Offers may be submitted either in English or in French.

9.2. PERIOD OF VALIDITY OF BIDS

Bids shall remain valid for the period specified in the Solicitation Documents. Usually, depending on the circumstances of the case, the validity of the bid should range from 60 to 180 days. A bid with a shorter validity period than requested in the Solicitation Documents shall be rejected as non-responsible.

9.3. DELIVERY TIME AND PLACE

The Solicitation Documents shall state the delivery date and of the required goods or services. If the Solicitation Documents state a specific date for the delivery of the goods or services at the final destination, vendors may be invited to quote the best alternative delivery offer, including schedules for partial shipments.

Where there is an urgent requirement for the goods and services, the Solicitation Documents shall state that an offer of early delivery of the deliverables is an important factor in the evaluation of bids.

9.4. BID BOND

The Procurement Service shall exercise professional judgment to ensure that the potential vendors have sufficient financial strength to complete the project on time at the agreed cost.

Where it is in the best interest of the Organization, the Procurement Service should include a requirement for a "Bid Bond" or similar security, such as certified check, in the requirements. The size of the security shall be a fixed amount based on the circumstances of the case. The solicitation document shall specify any requirements with respect to the issuer and the nature, form, amount and other principal terms and conditions of the Bid Bond.

The Solicitation Documents shall include requirements for the validity of the Bid Bond, normally 90 days after the validity date of the submission, with the right to extend if the contractual instrument has not yet been placed prior to the expiration of the bond. The validity of the Bid Bond should be for the same period as the validity for the proposal, which usually ranges from 60 to 180 days.

The Bid Bond shall be promptly returned to unsuccessful bidders and upon:

- The expiry of the Bid Bond.
- The entry into force of a contract and the provision of a Performance Bond (unless it has been agreed that the Bid Bond will function as a Performance Bond as well).
- The termination of the tender process.
- The withdrawal of the bidder's proposal prior to the deadline for the submission of bidder's proposal.

9.5. PERFORMANCE BOND

The Procurement Service shall exercise professional judgment to ensure that adequate safeguards are in place to protect the interest of the Organization throughout the term of the contractual obligation. NATO can require vendors to provide security or Performance Bonds to guarantee satisfactory performance in accordance with the terms of the contract, if such requirement is included in the Solicitation Documents. Generally such bonds are not necessary when NATO retains payment(s) until after milestones of performance.

If applicable, the Solicitation Documents shall include the request for a Performance Bond to ensure adherence to timely conclusion of contract obligations for the deliverables. The value of the Performance Bond shall be determined by the nature of the industry and the deliverables required, and the extent of financial risk to NATO. The bond shall represent a percentage of the contract price, normally in the range of ten to thirty percent, in the currency of the contract, and can be requested in the form of a bank guarantee.

9.6. LIQUIDATED DAMAGES

The Solicitation Documents may include a clause for stipulation of liquidated damages to ensure timely contract performance; the level thereof shall be included in the Solicitation Documents. The level shall be tailored to the specific type of deliverables and to the operational sensitivity of the project's schedule and duration, where applicable. Generally, if liquidated damages are required, the Procurement Service shall require a fixed percentage of the contract value per week or day that the deliverables are late, up to a reasonable maximum percentage of the contract value, normally 10 %.

Use of liquidated damages is normally used for high risk situations, and may result in increased costs. Any clause of liquidated damages shall also be included in the contract.

9.7. QUESTIONS AND ANSWERS EXERCISE

During the consultation period the International Staff may allow potential bidders to ask questions (request clarifications) on the bidding documentation/package within set

deadlines and through defined channels.

- The deadline for submitting questions, as well as the method for doing so (mail, e-mail, fax) must be clearly established in the bidding documentation (Part I, Special Administrative Clauses).
- The questions are to be submitted to the Procurement Service. This service will compile them, remove any reference permitting identification of the company asking the question, and submit them to the requesting service for answers. Questions of a contractual or procedural nature will be answered by the Procurement Service.
- Once all the questions have been answered, the whole Q&A document will be sent to all known potential bidders, irrespective of which of them asked the questions. (in case of ICBs, it may be distributed in the two official languages of the Organization at the discretion of the Procurement Service).
- A copy of the document may also be sent to National Delegations to NATO for information.
- For planning purposes, the requesting service and the Procurement Service will agree on reasonable timelines allowing enough time for the questions to be properly answered, for the translation to be made and for potential bidders to take the answers provided by the Organization into consideration when preparing their proposals.

9.8. MANDATORY VISIT

- This is usually included in consultations related to works and sometimes to services, to make sure that the potential bidders are aware of and have completely understood the physical conditions in which they will have to carry out the required works and/or services.
- The dates of the mandatory visits, established by agreement between the requesting service and the Procurement Service, as well as the method for confirming that the bidder's representative will participate in one of the scheduled visits (mail, e-mail, fax) will be clearly established in the bidding documentation.
- Those attending the mandatory visits will receive a document certifying their participation in one of the two visits. This document must be included in the envelopes containing the bid/proposal sent by the potential bidder for the bid to be considered eligible.

9.9. BID CLOSURE

The Procurement Service shall establish a timeline for the fulfilment of the requirement and shall determine the length of time required to initiate and complete the Procurement Process for requirements, starting from the receipt of the Procurement Request to contract signature. This must, to the extent possible, be determined in cooperation with the requisitioner. In making such determination, consideration should be given to the complexity of the Specifications, time required for delivery documents through mail systems, genuine exigency and the geographical location of the bidders.

The Procurement Service shall, to the extent possible, ensure that bidders are given sufficient time to understand the Solicitation Documents and formulate the appropriate reply to said solicitation and shall state the deadline for receipt of bids in the Solicitation Documents. Any extension of the Bid Closure shall be communicated to all invitees.

10. VENDOR DATABASE

The Procurement Service shall maintain a database of prospective companies for the supply of NATO IS requests for products and services. This database is linked to the PCIS.

The Procurement Service determines the list of companies to be consulted for a given procurement. Requisitioners may recommend vendors. However, in order to respect the principles of segregation of responsibilities between requisitioning and procurement entities, the final decision to consult a company rests with the Procurement Service. Requisitioners may advise potential vendors to seek registration information from the Procurement Service.

In all cases, Calls for Bids will be published on the NATO IS Procurement Webpage, except if some security reasons are concerned.

A consultant, engaged to prepare or review the technical specifications, and/or to assist in the evaluation of bids or proposals concerning a particular requirement, may be allowed to recommend potential suppliers, but they will not be allowed to submit a bid or an offer themselves for the specific procurement.

If vendors approach the requisitioners for inclusion in the competition for a specific procurement, the requisitioner shall direct the vendor to the Procurement Service who will take further action.

11. TREATMENT OF SUBMISSIONS

11.1. INTRODUCTION

After the solicitation process, offers are received, registered, handled, opened and stored by authorized staff members. The purpose of this formal process is to ensure that offers are received, handled and opened according to the instructions provided in the Solicitation Documents and that transparency and confidentiality is maintained as specified in the relevant regulations, rules and procedures of the Organization.

This process is handled by Administrative Unit within the Procurement Service, as an independent entity not directly involved in the procurement function.

11.2. RECEIPT OF BIDS

Receipt of offers is performed by the point of contact designated in the Solicitation Documents. For quotations (i.e., Simplified Procurement Procedures), it is usually the Procurement staff member in charge who receives them directly. As specified in the Solicitation Documents, offers should be received:

- At the correct place, date and time.
- In writing.
- Via mail, courier service, hand delivery, fax or e-mail.

The offers should be sealed, except in the case of quotations. In the case of quotations, offers can be received by fax or e-mail. For offers received by fax or e-mail, this must be on a “secure” fax machine or e-mail address dedicated for the purpose of receipt of offers. Both fax machine and e-mail address must be safely secured.

11.3. REGISTRATION AND SAFEGUARDING OF BIDS

Upon receipt, the responsible person should properly record the date and time of delivery. All bids shall be treated as commercially sensitive and details thereof shall only be communicated to persons with a need to know.

Offers will be kept in a secured place that will be accessible only by personnel duly authorized by the relevant authority until the date and time specified for the bid opening.

A bid that is inadvertently opened before the due date shall be brought to the attention of the CAC and be noted in the procurement file. If the CAC decides to accept said bid, it shall immediately be placed in a sealed envelope.

11.4. WITHDRAWAL OF BIDS

11.4.1. PRIOR TO BID CLOSURE

The bidder may withdraw its Submission prior to the announced Bid Closure. Such withdrawal request shall be made in the form of a written notice to the Procurement Service.

11.4.2. AFTER BID CLOSURE

Requests to withdraw a submission after the announced Bid Closure shall be examined on a case by case basis by the Procurement Service in coordination with the CAC.

In cases of complex procurements the withdraw shall not be honoured. The bidder shall be informed accordingly in writing. The bid shall duly be registered and evaluated alongside all other submissions. If the bidder has furnished a Bid Bond, the Procurement Service shall withhold such bond until the issue has been resolved. As necessary the Office of the Legal Adviser shall be consulted in dealing with the matter and collecting on the Bid Bond, or initiating any legal claim, if applicable.

The method by which bids may be either modified or withdrawn should be explicitly described in the Solicitation Documents.

11.5. MODIFICATION OF BIDS

11.5.1 PRIOR TO BID CLOSURE

The bidder may modify its submission prior to the Bid Closure. Any such modification shall be submitted in writing and in a sealed envelope, with reference to the original submission. Upon receipt by the Procurement Service, the modification shall be placed together with the original submission.

11.5.2. AFTER BID CLOSURE

Any alteration of the submission after the opening shall not be accepted, unless such modification is in accordance with section 11.5.3. below. If NATO IS does not accept the request for modification, the bidder shall be informed accordingly in writing.

11.5.3. ALTERATIONS DUE TO ERRORS AND OMISSIONS

The most frequent errors and omissions encountered in submissions and the results of such errors are:

11.5.3.1. ERRORS IN TOTALLING PRICES

The unit prices quoted shall govern, when errors in totalling the cost of a group of items, or the entire total cost of the offer have been made.

11.5.3.2. APPARENT ERRORS IN PRICE

NATO is not responsible for errors in price made by a bidder. However, if the Procurement Service has reasons to believe that the submission received contains an error in price (e.g., unusually low prices), shall (prior to complete the evaluation), request the bidder in writing to verify the prices as accurate, or inaccurate, as the case may be.

The bidder shall be informed that revision of the original prices is prohibited and that non-compliance shall result in rejection of the submission.

If the bidder replies that the prices are correct as quoted, the evaluation shall be completed without further question. However, if the bidder acknowledges that the prices are incorrect, the matter shall be submitted to the CAC for review and a decision with respect to the submission.

The Procurement Service's written query, together with the bidder's reply, shall be placed in the case file.

11.5.3.3. FAILURE OF BIDDER TO FURNISH DATA/INFORMATION

Failure of the bidder to furnish requested information with the bid or proposal, which does not affect the price or the specifications in the Solicitation Documents, shall not require immediate rejection of the submission, unless so stated in the Solicitation Documents.

It is the responsibility of the Procurement Service to request from the bidder the missing information. If said bidder does not furnish the information within a specified period of time after the information has been requested, normally five business days, the submission shall be rejected. The bidder shall be notified accordingly in writing.

11.5.3.4. ERRORS IN AFFIXING SIGNATURE

All submissions shall be signed in ink or pen, accompanied by the typed or printed name of the authorized representative. If a submission lacks the

signature of an authorized representative, but the signature of such an authorized representative appears on a letter of transmittal or on another document attached thereto, or a bid bond is attached to the submission, the Procurement Service can assume that the omission was unintentional, and accept it for consideration. The Procurement Service shall inform the bidder of the omission.

The authorized representative of the bidder shall be required to complete the submission by signing the appropriate areas of said document. An unsigned submission, submitted without accompanying evidence that the submission was authentic and made by the bidder concerned, shall be rejected. The bidder shall be notified accordingly in writing.

The Solicitation Documents shall state that the individual authorized representative who signs the submission shall initial corrections or alterations made by the bidder during the preparation of said submission. If the requirement is not complied with, the bidder shall confirm each change in writing. The Procurement Service shall ensure that the representative does not make any other changes. Upon receipt of the confirmation, it shall constitute a part of the submission.

11.6. LATE BIDS

It is the responsibility of bidders to ensure timely receipt by the Procurement Service. Late submissions are those received after the Bid Closure.

When submissions are received after the designated Bid Closure indicated in the Solicitation Documents, the date and time of receipt shall be indicated on the envelope.

If received after the closing date but prior to the Bid Opening, the Procurement Service may, at its own discretion, accept the late submission and decide that it shall be opened with the other submissions, provided the issuer provides evidence that the submission was sent prior to the Bid Closure. The Procurement Service shall document in writing the decision to accept a late submission.

If received after the Bid Opening, the Procurement Service in accordance with the CAC, may exceptionally, in the interest of the Organization and at their own discretion, accept the late delivery, provided the issuer proves that submission was sent prior to the Bid Closure and the delay in delivery could not be reasonably foreseen or was due to force majeure. The Procurement Service shall document in writing the decision to accept a late submission.

If the Procurement Service decides not to accept a late submission, it shall remain unopened and the vendor shall be advised in writing and said submission shall be destroyed/safeguarded unopened or returned to the bidder, at its own cost, if so requested.

The deadline for submissions may be extended at the discretion of the Procurement Service and/or the CAC in cases of force majeure by amending the Solicitation Documents. Bidders shall be notified in writing.

If the only proposal received is a late proposal from a qualified source and the Procurement Service, in accordance with the CAC, 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.

11.7. BID OPENING

After the bid closing date the receipt of bids, the Procurement Service shall set the date and time for the Bid Opening in coordination with the Secretary of the CAC. Bid Opening is a formal process of opening, reading, marking with an embossing machine and recording in writing all offers received in response to the solicitation. It is recommended that the Bid Opening takes place immediately after the deadline for receipt of bids. It will be conducted by the Secretary of the CAC who will act as opening official.

Bid envelopes are opened one by one, and the opening official should check that the bids meet the procedural requirements of the Solicitation Documents, for example, that there is one original offer, the right number of copies, that the offer is properly signed by the vendor and that the offer is submitted with an offer security when requested. With a two envelope system, technical proposals should be checked to ensure that no price information is included.

All information related to the opening, record of attendees, records of all offers, including withdrawals of submissions, should be recorded in an opening record/report. The opening official and members of the CAC should certify the opening process by signing the opening record/ report. This report shall be kept on the file.

11.8. HANDOVER TO PROCUREMENT FUNCTION

Once offers have been formally opened, they shall be handed to the Procurement staff member in charge for the concrete procurement.

11.9. REJECTION OF BIDS

After the opening of bids, if material variables in the submissions can be attributed to discrepancies or ambiguities in the Specifications in the Solicitation Documents, the requirement shall be re-advertised provided the discrepancy or ambiguity would impact the fairness of the selection process. If it is deemed in the interest of the Organization, submissions may also be rejected. In either case, vendors invited to participate in the Procurement Process shall be informed in writing.

The Procurement Service may reject the submission of a bidder who has previously failed to perform satisfactorily or complete similar contracts on time, or if said bidder, based on additional information, is judged to be unable to perform the contract. Such action shall be documented in writing and shall be subject to approval of the CAC.

No procurement action shall be transacted with vendors in receivership liquidation or bankruptcy. Submissions received from such bidder shall be rejected.

12. EVALUATION – SOURCE SELECTION

12.1. INTRODUCTION

The evaluation process consists of the preliminary examination and evaluation of the offers received, and considered to be valid, to assess their responsiveness to specifications and requirements as defined in the Solicitation Documents, analyse their cost and benefit, and determine their price and value. Evaluation, together with the requirement definition and the evaluation criteria and method specified in the Solicitation Documents, is the basis for the subsequent selection of the offer that meets best the interest of the Organization.

Best Value for Money in the context of evaluation of offers, means that price alone is not always the only criterion factored into an evaluation method. Other criteria such as quality, availability, time, compliance, are part of the equation to determine the best return on investment on the procurement of goods, services or works.

12.2. EVALUATION PANEL (OR PROPOSAL EVALUATION TEAM)

Evaluation is conducted by a designated Evaluation Panel or Proposal Evaluation Team (PET) and in accordance with the relevant regulations, rules and procedures, using the evaluation criteria and method pre-determined in the Source Selection Plan and Solicitation Documents in order to conduct a fair and unbiased evaluation. The evaluation process also needs to be transparent, and therefore each step of the process documented in an evaluation report which subsequently will be the basis for the recommendation of award.

For the evaluation of bids with an estimated value of goods or services equivalent to level 2XB of the Financial Limits of Discretionary Powers (EFL) or above, the Evaluation Panel shall consist of at least three members, where at least two are from the requisitioning office and the third member is a Procurement staff member. Additional members can be other qualified members of NATO IS or an external consultant.

The Evaluation Panel is responsible for assessing the ability of the potential suppliers to meet NATO's stated minimum requirements and provides a basis for determining the relative merits of competing bids and proposals based on pre-determined evaluation criteria.

The Evaluation Panel is normally divided into a Technical Evaluation Team responsible for the technical evaluation and a Commercial Evaluation Team, responsible for the commercial evaluation.

The Technical Evaluation Team shall prepare a detailed list of technical evaluation factors, indicating the relative importance of weight of the factors, and reasonable minimum criteria

as they were established in the Solicitation Documents. The Technical Evaluation Team will be composed by at least two members of the requisitioner office. It is recommended that requisitioners are only involved in the technical and not the commercial evaluation process. If a SSP exists the rating system, the evaluation templates, and the composition of the Proposal Evaluation Team should have already been established in the stated plan.

Everybody involved in the evaluation process shall sign a declaration of confidentiality, impartiality and no conflict of interest regarding each particular evaluation.

The Procurement Service (or Commercial Evaluation Team) is responsible for developing and evaluating all of the commercial or non-technical evaluation criteria, to be included in the Solicitation Documents.

The Procurement Service ensures the confidentiality of the process. All staff members involved in evaluating offers should be careful to observe confidentiality of the offers and ascertain that information about the content of the submissions or the evaluation process is not revealed outside the group involved in the Procurement Process.

The members of the Evaluation Panel will be briefed by the Procurement Service about their role during the evaluation process. They shall:

- Indicate immediately if they are in a potential conflict of interest situation with one of the suppliers and ask to be replaced.
- Study the requirements definition, the evaluation criteria and method.
- Understand that the deliberations of the Evaluation Panel are strictly confidential and that they cannot discuss the content of the evaluation with colleagues and/or outsiders.
- Clarify or direct questions for potential suppliers in writing to the Procurement Service who in turn will communicate with the concerned supplier.

12.3. EVALUATION CRITERIA

Upon the receipt and opening of offers, evaluation must be conducted according to the set of evaluation criteria and method, which have been established during the preparation of the Solicitation Documents. Once established in, and issued with the Solicitation Documents, the evaluation criteria and methods must not be altered unless by amendment of the Solicitation Documents before the closing of the solicitation. This provides the basis for an objective and transparent evaluation approach.

Evaluation criteria are factors or specific areas of consideration that are inherently part of the requirement specification. These criteria are measurable and verifiable components of the goods, services or works required and provide a basis for assessing each vendor's

ability to provide the required goods, services or works. Evaluation criteria should take the following into account:

- Method of evaluation.
- Subject matter being evaluated.
- Relative significance of the factor in relation to performance risk.

The primary reason for using evaluation criteria is to identify the vendor for award in a fair and objective manner and minimise the technical and commercial risk that the vendor selected for award will not be able to perform satisfactorily. The criteria should focus on elements that will establish the relative merit of the submissions, taking special care to identify submissions that might represent a substantial technical or commercial risk to the Organization.

The specific numbers and types of evaluation criteria, as well as their relative importance, shall depend on the nature of the requirement. The criteria and a justification of their basis and of any weighting shall be determinant, not merely important. They shall be documented in writing prior to the release of the Solicitation Documents, preferably, through the Source Selection Plan described in section 9.1.7. of this Manual. According to the stated section, the SSP is mandatory for all actions subject to Formal Procurement Procedures that use a best-value award approach.

To ensure the integrity of the process and to provide a proper audit trail, all stages in the evaluation process should be documented in writing to verify that the process has been conducted in accordance with the regulatory procurement framework and principles of the Organization. All evaluations must be done without favouritism for or bias against any supplier to ensure a fair and transparent process for all participants.

Depending on the complexity of the procurement, the evaluation criteria may be summarized in a few lines, or consist of long and precise descriptions of the steps of the evaluation necessary to ensure the best interest for the Organization.

Evaluation criteria can be categorized on the following basis:

- Pass/fail (exclusion) criteria; they are used when an attribute is not conducive to varying degrees of superiority or inferiority and merely requires acceptance or rejection.
- Minimum requirements; they establish minimum acceptable levels of quality or performance that are necessary to meet the requirement.

- Variable criteria; they evaluate the degree to which submissions meet the requirement. They are often used to measure quality and therefore provide a good basis for making Best Value for Money assessments.

All evaluation criteria must be:

- Reliable; clear and measurable criteria that can be evaluated consistently across multiple submissions.
- Valid; criteria that relate directly to requirement specifications where the vendors are likely to vary in their ability to provide the goods, services or works.
- Practical; criteria that are verifiable and designed to measure facts rather than assumptions and promises from the vendor. Practical criteria are tangible, with little likelihood of being construed differently by different vendors.
- Fair; criteria that are relevant to the procurement and do not unduly exclude vendors from the procurement.
- Balanced, objective and reasonable.

12.3.1. FORMAL CRITERIA

Offers are checked for their compliance with any formal criteria stated in the Solicitation Documents. Offers not meeting the formal criteria are rejected. Examples of formal criteria are:

- Offers have been properly signed.
- Offers are accompanied by the required securities, if applicable.
- Supplier is eligible.
- Offers are accompanied by the required documentation.
- Offers are complete, etc. (Solicitation Documents must clearly state whether partial bids for a given component or lot are accepted).

12.3.2. TECHNICAL CRITERIA

Technical evaluation criteria are derived from the Specifications or SOW. Depending on the nature and complexity of the procurement to be undertaken, technical evaluation criteria may be summarized in a few lines or consist of a long and precise description.

Depending on how clearly the requirements are defined, evaluation criteria are developed for evaluation according to compliance/non-compliance or a weighted scoring.

The technical criteria evaluate the goods, services or works offered and the approach to providing them. Inherent in these criteria is an assessment of how well the vendor has demonstrated an understanding of NATO's requirements as well as the vendor's past performance. The technical evaluation criteria should reflect the requirements of the Specifications or SOW, and a successful technical proposal must satisfy these criteria.

Technical criteria can also include requirements to the supplier, such as:

- Previous experience in similar field and with same type of requirements.
- Available capacity and equipment to undertake the assignment.
- Qualification and experience of proposed personnel.

12.3.3. MANAGEMENT CRITERIA

Management criteria refer to evaluate all business and management related aspects of the submissions, including:

- Management experience.
- Management methods and systems.
- Commitment to quality.
- Personnel qualifications and experience.
- Labour and equipment resources.
- Facilities.
- Financial situation of the company.

Depending on the specific situation, the management criteria can either be included in the commercial criteria (and evaluation) or in the technical criteria (and evaluation). The latter will be the case when specific technical expertise is required to evaluate the management related aspects of the submission, used in particular for the case of services or consultancy. The Solicitation Documents shall clearly specify whether the management proposal shall be included in the technical proposal or the financial proposal.

12.3.4. FINANCIAL CRITERIA

It is important to clearly state in the Solicitation Documents which price factors will be included in the price used for evaluation. Various factors such as freight cost, operational cost, incidental or start-up costs, as well as life cycle costs should be taken into consideration. For services and works a template for breakdown of cost should be provided. In all cases, required breakdown as well as evaluation criteria must be clearly stated in the Solicitation Documents.

12.4. EVALUATION OF BIDS

12.4.1. PRELIMINARY EXAMINATION OF BIDS

The preliminary examination of offers excludes from further consideration offers that do not meet the mandatory criteria specified in the Solicitation Documents. Some examples of mandatory requirements are:

- Offers have been properly signed.
- Are accompanied by the required offer securities.
- Are accompanied by the required documentations.
- Are complete.
- Validity period conform to requirements.
- Terms and conditions of the Organization are accepted, etc.

This is a pass/fail exercise. Submissions that do not meet the mandatory requirements are not acceptable and are rejected and therefore will not be considered further in the evaluation process. The rejection of offers should be documented in writing.

Offers which have passed the preliminary examination are evaluated based on the evaluation criteria and method stipulated in the solicitation document.

12.4.2. TECHNICAL/QUALITY EVALUATION

Technical evaluation is the process of comparing the offers with the technical and quality requirements as specified in the Specifications or SOW of the Solicitation Documents.

In addition, quality may be evaluated by obtaining samples of the product or by conducting and inspection at the manufacturing facility. The sample evaluation or inspection is undertaken against the specifications as stated in the Solicitation Documents.

The results of the technical/quality evaluation shall be summarized in a technical/quality evaluation report. The Technical Evaluation Team shall sign the report and forward it to the Procurement staff member responsible for the financial/commercial evaluation.

12.4.3. FINANCIAL/COMMERCIAL EVALUATION

Financial evaluation of the proposals involves comparing the offers with the financial and commercial company requirements stipulated in the Solicitation Documents. Also during this step prices should be reviewed against prevailing market conditions, and whether they are reasonable in view of the requirements. It is also important to identify whether they are within the available budget for the project.

The results of the financial/commercial evaluations shall be summarized in a financial/commercial evaluation report. The Commercial Evaluation Team shall sign the report.

12.5. CLARIFICATION OF BIDS

Taking into account the principle of equality and fair treatment of potential suppliers, discussions with bidders may take place in complex cases, where clarifications from bidders may be required in order to finalize the evaluation. The key condition when seeking clarifications of offers from bidders is that neither the substance nor the price of the offers should be allowed to be changed. All clarifications should be in writing and properly documented in the respective file. No information obtained from one bidder should be shared with the other competitors.

For clarifications with bidders over the phone or in person it is good practice to have a witness present from the Evaluation Panel. During the clarification phase, bidders can be asked to make a presentation about their offer and, in order to ensure fairness, the same questions should be asked to all bidders. All contacts for clarification with bidders during this phase should be recorded in writing and properly documented.

12.6. COMPETITIVE NEGOTIATIONS (DISCUSSIONS)

Before issuing the solicitation, NATO must decide whether or not the contract shall be awarded without competitive negotiations and communicate this intent in the solicitation. In making this decision, Procurement Officers shall consider whether or not NATO is likely to obtain Best Value without such discussions. An award without discussions is most likely to result in Best Value when requirements are clear, commodities are known or stable, and the marketplace is extremely competitive.

If, after proposal evaluation, it is clear that the cost of conducting discussions would more than offset the potentially lower prices or increased functionality resulting from discussions, then it may be appropriate to award on initial proposals.

Solicitation provisions shall be carefully drafted in order to allow NATO some flexibility to decide whether to hold or not discussions.

Since negotiations are costly in terms of time and resources, discussions shall be restricted to those bidders that have real chances to be awarded the contract based on a preliminary evaluation of bids. This is called the competitive range (see section 12.6.2. below for further details).

The Procurement Officer remains the focal point for all information exchanges with prospective contractors from release of a solicitation through contract award. Once proposals are received, the Procurement Officer also controls all exchanges with bidders.

Before exchanging any information with bidders, the Procurement Officer should ensure that team members who may participate in such exchanges receive instructions not to:

- Favour one bidder over another (i.e., provide the bidder with suggested ways to correct its proposal relative to other bidders);
- Reveal a bidder's solution, technology, or intellectual property to another bidder;
- Reveal a bidder's price without that bidder's permission;
- Reveal the name of individuals providing past performance information; or
- Knowingly furnish source selection information.

12.6.1. PRE-NEGOTIATION EXCHANGES

Before making a competitive range recommendation, the Proposal Evaluation Team may need to hold communications with some bidders to determine whether or not to include a proposal in the competitive range. The objective of these pre-competitive range exchanges is to help evaluators understand and evaluate the proposal. Communications must be held with any bidder who will be excluded from the competitive range because of their adverse past performance information. Otherwise, communications shall be held only with those bidders who are neither clearly in nor clearly out of the competitive range. If it is evident that a bidder will be included in the competitive range, the Proposal Evaluation Team must wait until the discussions start to address any concerns.

Bidders should ensure that initial proposals are as clear and complete as possible. When holding communications, only those questions necessary to understand the proposal and make the competitive range determination shall be asked. Like in the case of clarifications, the information obtained during these pre-negotiation communications may not be used to revise a proposal, correct any deficiencies or material omissions, or change any technical or cost elements of a proposal, except for correction of mistakes.

Once enough information has been gathered in order to decide how the proposal should be rated, (e.g., decided whether a potential deficiency is, indeed, a deficiency), then clarification process must stop and the competitive negotiations must start. Proposal revisions shall not be accepted before opening negotiations.

12.6.2. DETERMINATION OF THE COMPETITIVE RANGE

The competitive range consists of all the most highly rated proposals, unless it is further reduced for efficiency. Establishing the competitive range results in greater efficiency by limiting the number of bidders with whom NATO must hold discussions to the finalists or leading contenders for contract award. However, failure to properly establish a competitive range can result in higher costs because of protests or eliminating potentially competitive bidders.

When establishing the competitive range, the following points shall be considered:

- The Source Selection Authority determines the competitive range. Therefore, in the case of Formal Procurement Procedures, the determination is made by the CAC based on the recommendation from the Proposal Evaluation Team.
- The competitive range shall be determined only after an initial evaluation of each proposal in accordance with all cost and non-cost factors in the solicitation.
- The competitive range shall be limited to all of the most highly rated proposals, considering the initial evaluation of both cost and non-cost factors. Predetermined "cut-off" ratings should not be used to exclude a proposal from the competitive range.
- If there are very few highly rated proposals, it may be in the best interest of NATO to include all of them in the competitive range to foster competition.
- If there are too many highly rated proposals to evaluate efficiently, the competitive range may be further restricted, provided that bidders were notified of the intent to do so in the solicitation.
- It may not always be necessary or even advisable to further narrow the competitive range for efficiency. The Source Selection Authority must determine what constitutes an efficient competitive range for each procurement. When faced with the need to restrict the size of the competitive range, the following factors may be considered: the expected euro value of the award; the complexity of the procurement and solutions proposed; or the extent of available resources and other relevant matters consistent with the need to obtain the Best Value.

- When further reducing the competitive range for efficiency, the Source Selection Authority shall select the largest number of bidders from among the most highly rated proposals that will still permit an efficient competition.
- The competitive range determination and the supporting rationale shall be documented in the contract file.
- In its decision the Source Selection Authority shall try to establish an efficient competitive range that doesn't waste resources for either side. The competitive range should be continually reassessed as discussions and evaluations continue. The Source Selection Authority should remove from the competitive range any proposal that, during or after discussions, is no longer considered to be a leading contender for award. This allows bidders who are not likely to be selected for award to shift their bid and proposal costs to competitions where they have a better chance for success. The objective is an efficient competitive range that doesn't string bidders along wasting their time and money and NATO's resources.

For proposals excluded from the competitive range, the Procurement Officer shall promptly notify unsuccessful bidders, in writing, of their exclusion. Upon request, NATO will also have to provide a debriefing that explains the basis for the decision.

12.6.3. CONDUCTING NEGOTIATIONS

The most detailed and extensive exchanges are negotiations that are held after establishment of the competitive range. These exchanges are known as discussions. Unless the solicitation informs bidders that award may be made without discussions, NATO must hold meaningful discussions with each bidder in the competitive range.

The primary purpose of discussions is to maximize NATO's ability to get the Best Value.

During discussions, NATO's objective should be to reach complete agreement between and understanding by NATO and the bidder regarding all the basic requirements in the solicitation. In essence, obtaining a contract that demonstrates the greatest promise of meeting the solicitation's requirements and no surprises after award is the goal of both NATO and the bidder. While the content of discussions is a matter primarily within the discretion of the Source Selection Authority, discussions must meet fundamental requirements to be meaningful and fair.

The team responsible for the negotiation shall ensure that discussions are meaningful by identifying to the bidder all evaluated deficiencies, significant weaknesses, and other proposal aspects that could be altered or explained to enhance materially a bidder's award potential.

Discussions shall be confined and tailored exclusively to each bidder's proposal relative to the solicitation requirements and evaluation factors and sub-factors. Those aspects in the proposal that could clearly limit a bidder's award potential must be brought to the bidder's attention. During the negotiation process it may be necessary to seek the advice of legal counsel to help avoid protests.

As a minimum, discussions shall address:

- **Deficiencies.** A material failure to meet a requirement. It is a deficiency whenever the bidder specifically says a requirement cannot or will not be met, offers an approach that clearly doesn't meet a requirement, or submits a proposal that contains a combination of significant weaknesses.
- **Significant Weaknesses.** Include non-cost and cost weaknesses that appreciably increase the risk of unsuccessful contract performance. It is a weakness whenever the proposal has a flaw important enough to cause a factor to be rated marginal or poor, or the probability of meeting a requirement to be high risk or moderate to high risk. This includes even relatively minor weaknesses if their cumulative impact is significant. For example, if an approach affects several areas of the evaluation, but makes no individual factor rating marginal or poor, it should be included in discussions if the cumulative impact is significant enough to impact the overall rating.
- **Past Performance Information.** Include any concern about a bidder's past performance, including relevancy and any adverse past performance information on which the bidder has not previously had an opportunity to comment.
- **Uncertainties or apparent mistakes.** Include any suspected errors, any significant omissions, and any uncertainties necessary to understand what is being offered. However, perfect knowledge isn't necessary. Information that has no real bearing on the evaluation shall not be requested.

Deficiencies and significant weaknesses shall be identified in terms of a clear declarative statement. Advising bidders of strengths in their proposals can also give bidders insight into areas to consider in making tradeoffs to correct deficiencies or weaknesses.

All the elements to be discussed with bidders shall be documented in a proper negotiation plan which establishes the Organization of the negotiation process and the cut-off date for negotiations and contains the generic objectives of the procurement action and the specific negotiation targets established for each one of the bidders.

12.6.4. NEGOTIATION PRACTICES

Examples of good negotiation practices are:

- In case of negotiations engaged prior to contract formation, the Procurement Officer should ensure that a solicitation document has been sent to the supplier.
- Negotiations should not be conducted when they may distort competition.
- Where negotiations take place in person, via telephone, videoconference or at the site of the supplier or at NATO, a minimum of two staff members should be present, being always one of them a Procurement Officer. In unusual negotiations, or where there are high legal implications, involve the Office of the Legal Adviser in the negotiations may be requested.
- The members of the negotiation team need to be selected carefully to combine the right blend of negotiation experience and contractual, financial and/or technical skills. As the value and complexity of the contract increases, so will the need for skilled negotiators.
- During the negotiation process all Procurement Officers must ensure no conflict of interest arises and no gifts or hospitality accepted from the supplier.

12.6.5. GENERIC STRUCTURE OF A FACE-TO-FACE NEGOTIATION PROCESS

To conduct successful contract negotiations, it is suggested that the Procurement Officer follows each of the following steps:

12.6.5.1. STAGE 1: PRE-NEGOTIATE

- Assemble the internal team (including other Procurement Officers, the requisitioner, other potential stakeholders and other NATO Divisions/Services whose activities may be impacted by certain clauses such as legal, accounts payable, security, etc.).
- Identify and prioritise key issues and concessions that can be made.
- Develop a negotiation plan.
- Prepare agenda for face-to face discussions and the location.
- Identify a person to take notes and minutes.
- Invite the other party to negotiate.

12.6.5.2. STAGE 2: MEET THE OTHER PARTY

- Make appropriate introductions.
- Review the agenda.
- Confirm that the supplier's representative has authority to negotiate and commit on behalf of his/her organization.
- Ensure that all the items to be discussed are tabled.

12.6.5.3. STAGE 3: NEGOTIATION

- Develop a basis for agreement on all issues by using trade offs and concessions.
- Prepare detailed minutes of the meeting and plan of action for both parties.

12.6.5.4. STAGE 4: POST-NEGOTIATIONS

- Develop updated contractual documents and seek required internal approvals.

12.6.6. DOCUMENTATION

To ensure that the contract formation process is fully documented and that a proper audit trail is kept, and also in case of future disputes with the supplier, written negotiations with the supplier should be kept on the file. Minutes of telephone conversations or meetings must be kept on file. It is also important to keep documentation to show that the negotiation was justified and approved. The minutes should include:

- Date, time and location of the meeting.
- Names of attendees.
- Agenda items discussed.
- Items where an agreement was reached, including outlining the agreement.
- Items where agreements have not been reached.

12.6.7. OBTAINING PROPOSAL REVISIONS

The information obtained through discussions must be documented and confirmed by requesting proposal revisions from all bidders in the competitive range still eligible for selection. Proposals are rarely alike, nor are the depth and range of discussions, therefore, the number and content of revisions shall be adapted to each bidder's proposal. Bidders shall be asked to submit written changes to their proposals resulting from discussions before requesting final proposal revisions, particularly if a number of significant issues need resolution. This allows further discussions, if necessary before the final cut-off date.

At the conclusion of discussions, NATO must give all bidders remaining in the competitive range an opportunity to improve their proposal by submitting a final proposal revision (best and final offer) within a common cut-off date and time. If, after receipt of final revised proposals it becomes necessary to subsequently clarify minor irregularities, this can be done, without any additional request for final proposal revisions from all bidders. However, if further negotiation is required, a second final revision opportunity must be extended to all bidders.

After the final proposal revisions have been received, proposals must be evaluated again. Any factor impacted by the responses must be rated again in the same manner as in the initial evaluation. The outcome of this evaluation will determine the final successful bidder.

12.7. EVALUATION REPORT

One of the final steps in the evaluation process is the preparation of an evaluation report, which will later be used as the basis for the recommendation of award. An evaluation report typically contains an executive summary of the evaluation process and its individual steps. Any invalidation, rejection, non-compliance, and clarification of offers should be stated, including a list with the final ranking of the offers and the reasoning on how the best offer was selected. The evaluation report shall be signed by all the members of the Evaluation Panel. In case of discussions, the Evaluation Panel will be required an initial report before starting negotiation, a final report after the negotiations cut-off date, and as many interim reports as it may be required to assess the impact of on-going negotiations on the evaluation factors.

13. HANDLING EXCEPTIONS

13.1. WAIVERS FROM COMPETITIVE BIDDING

The procurement of goods and services funded out of NATO budgets is governed by Section VI and related annexes of the NATO Financial Regulations and Financial Rules and Procedures. These regulations aim to protect the interests of NATO, its suppliers and the members of the International Staff.

Competition between suppliers is the basic principle. The procedure that must be applied and the minimum number of potential suppliers that must be contacted vary according to the value of the goods/services to be procured. However, exceptions may be made for circumstances in which competitive bidding would not provide an adequate response for the Organization.

13.2. DEPARTURE FROM CALL FOR BIDS PROCEDURE – APPLICABLE RULE

Article 20.c. of the NFR provides that:

"Departure from the above requirements may, in the interests of security, urgency, standardization of equipment, or for other practical considerations, be authorized by the Financial Controller. When the total amount exceeds the equivalent of level E of the EFL, such cases shall be reported to the CBC for decision".

The requisitioner and/or the Procurement Officer should provide a justification for the waiver from competitive bidding in line with the NFR and procurement procedures. Such a waiver must remain an extraordinary procedure. The normal method of procuring goods and services is by competition between potential suppliers.

The waiver procedure is always subject to the sole decision, as a final resort, of the Financial Controller, or the Civil Budget Committee, who have discretion in the matter. In practice, rejections tend to be explained and justified.

13.3. JUSTIFICATION FOR WAIVERS

A waiver of competitive bidding must be approved for one of a limited number of formally established reasons, as listed in article 20.c. of the NFR: security, urgency, standardization or other practical considerations. In all cases the allowable justifications must be supported in writing and approved at the appropriate level.

In principle, a waiver may concern any aspect of the procedure, for example: restriction of the number of companies to be contacted, reduction of the periods specified, reply by fax and not in a closed envelope, no translation of documents

(among other points). Thus, the term "waiver" is not synonymous with contacting a single supplier only.

13.4. SECURITY

Although NATO operates in an environment where security is fundamental, this reason cannot be invoked automatically. Basically, reasons of security would mean restriction of circulation of the specifications for the project.

In principle, if such a reason is to be considered, the waiver request/justification should contain a document from the NOS explaining why the procurement requires limited circulation.

Allowing a waiver for reasons of security does not necessarily mean contacting a single supplier only, but rather that the Call for Bids may be limited to potential suppliers possessing the level of security clearance required by the NOS for the project in question.

13.5. URGENCY

Urgency, exigency, emergency imply the need to act quickly. Urgency means a genuine exigency for the requirement, in which serious adverse impacts would result from delivery timelines normally associated with competitive solicitation.

In an environment as NATO IS, where there must be budgetary forecasting of the projects to be implemented, urgency is necessarily limited to the resolution of unforeseen or exceptional situations.

In principle, urgency cannot be considered:

- For projects provided for in the budget (except in unforeseen circumstances aggravating the situation seriously and requiring rapid action);
- In cases where the project has become urgent because of the inaction of the service responsible or;
- At the end of the year, in order to carry over unused credits.

A waiver for reasons of urgency generally implies that a sole supplier will be consulted. Depending on the degree of urgency, however, a Call for Bids with reduced consultation periods or with fewer formalities for the reply (for example, by fax or email instead of in a sealed envelope) may be envisaged.

13.6. STANDARDIZATION

Standardization usually implies that the end-user has standardized on a certain kind of products, or even a brand. In principle, if such a reason is to be considered, the waiver request/justification must contain a precise explanation of the requirement for standardization, and a statement by the signatory of the document regarding the advantages of and reasons for standardization and, if need be, also regarding the incompatibility of the equipment in place with other possible solutions available on the market.

If there is a decision by an official NATO body stipulating the standardization of the equipment in question, a copy of the decision should be attached to the waiver request.

Allowing a waiver for reasons of standardization does not necessarily mean contacting a single supplier only, but rather that the Call for Bids may be limited to suppliers of the standardized equipment (and/or of equipment which is compatible with it). It may still be possible to select competitively among alternate suppliers of that brand.

13.7. OTHER PRACTICAL CONSIDERATIONS

This is a broad and rather vague category, and in principle the Financial Controller would tend not to grant waivers on these grounds alone, but would accept them as supplementary to one of the other reasons described above.

The expression "other practical considerations" should always be interpreted within the framework of the NATO Financial Regulations and Civilian Personnel Regulations, i.e.: in the interests of the Organization, respecting the regulations, and applying the diligence and ethical and professional standards which must characterize staff members of the Organization in the performance of their duties.

A structured and logical explanation of the situation and of the solution proposed and its advantages and disadvantages would be useful if a waiver is to be obtained for these reasons.

The range of these "other practical considerations" may include the following:

13.7.1. NO COMPETITIVE MARKET PLACE

This may be due to supply by an officially recognised monopoly; prices fixed by government legislation/regulation; requirement involves a proprietary service or product; underlying project documents identify a sole provider to be contracted.

13.7.2. "PIGGY BACKING" ON RECENT COMPETITION

Offers for identical requirement were recently obtained competitively (e.g., within a certain number of months), prices and conditions are unchanged and remain competitive.

13.7.3. RECENT COMPETITION FAILED

Effort to obtain identical requirements through competition failed to provide satisfactory results.

13.7.4. PURCHASE OR LEASE OF REAL PROPERTY

Real estate property is recognised as discrete and unique and thus not suitable for competitive bidding.

13.7.5. PROFESSIONAL SERVICES THAT CANNOT BE OBJECTIVELY EVALUATED

Relates to research, development and other strategic professional services.

13.7.6. FOLLOW-ON TO EXISTING SERVICES

When single responsibility for the output is required and any change in supplier would be detrimental.

13.7.7. FORMAL SOLICITATION WILL NOT GIVE SATISFACTORY RESULTS

The Procurement Service determines that formal solicitation will not give satisfactory results. This should normally be for one of the preceding reasons, but there could be others.

13.8. PROCEDURAL ASPECTS BY REQUESTING A WAIVER

The usual nature and amount of contracts signed by NATO means that requesting a waiver from the Civil Budget Committee is an exceptional procedure. In practice, therefore, waivers are allowed or disallowed at the discretion of the Financial Controller.

The authorization for a deviation from the Call for Bids procedure must be requested and obtained before any purchase or contract action can be initiated by the Procurement Service. Waivers are, by their nature, a preliminary step, and should thus be requested before any action has been initiated in respect of the procurement concerned.

It is good practice to consult the Procurement Service before requesting a waiver. The Procurement's Officers' knowledge of procurement procedures, of Contract Awards Committee precedent on previous waivers could be useful in determining whether it may be possible to avoid the waiver procedure and to proceed with the procurement according to the normal rules. If such consultations nevertheless demonstrate that the waiver procedure is the only way forward or the best solution in the precise circumstances, the Procurement Officer can advise the requesting service as to how best to prepare the request so that it is clear and accurate, giving the competent authorities (in this case, the Financial Controller) all of the information needed to make the decision and, if need be, to justify it before the auditors or the nations.

When a service intends to request a waiver, adequate supporting documentation must be submitted to the Financial Controller through the Procurement Service, which will register it, keep a copy for the contract file and send it on to the Financial Controller with its recommendation or not to grant the waiver.

As indicated above, the granting of a waiver does not necessarily mean contacting a single supplier only, and other possibilities for limited, streamlined or abbreviated procedures should be envisaged (partial waiver).

In situations where the EFL threshold has been inadvertently exceeded, a waiver (which is a 'before the facts' procedure) cannot be invoked. In such a case, the Financial Controller has ruled that the question must be dealt with in a CAC meeting, and the members of the CAC will decide if the 'de facto' situation is to be regularized or not.

A waiver may be requested in any form; normally a memorandum. The recommended structure of the memorandum is as follows:

- A brief introduction, principally for information on the Division/Subdivision/Service requesting the waiver (which should be the entity with budgetary responsibility according to the principles of objective-based budgeting).
- An explanation of the project concerned. It should be noted here that the drafter of the memorandum (who shall have an in-depth knowledge of the subject) must take great care to present the case so that persons not familiar with the field, and particularly not with its technical aspects, will gain a clear, full, precise and brief understanding of the question.
- A statement of the facts or situations which make it difficult, inefficient or impossible to respect the normal bidding principles. A statement of the consequences if a waiver were to be disallowed.

- The memorandum shall indicate any effects of the waiver on future procurements, in particular if it is liable to lead to future requests for waivers, or to place the Organization in a situation which would limit competition between suppliers (for example, a waiver for reasons of urgency leading to consultation of a single supplier of a given piece of equipment, which in turn would oblige the Organization when making future purchases to procure other equipment from the same supplier for reasons of standardization – or other consequences for maintenance, etc.).
- A conclusion indicating precisely and exactly the nature of the waiver of the bidding requirements requested (total or partial – as considered below) and citing one or more of the four reasons laid down in the Financial Regulations.
- Annexes containing any supporting documentation for the facts and arguments advanced in the main memorandum.
- In case a decision is required from the BC, the same structure should be followed. The information will be forwarded to the BC and the Financial Controller will provide any appropriate comments and recommendations.

13.9. PROCUREMENT PROCESS FOR WAIVERS

Even if only one supplier will be invited to present an offer, a formal solicitation should be issued. Good practice is to adapt one of the standard Solicitation Documents to the required purpose, and use this to request an offer. This means that the same consideration should be made in terms of sample contract, general and special conditions, evaluation method etc. Furthermore, evaluation, negotiation and contract formulation is equally or even more important in waiver situations.

13.10. UNAUTHORIZED PROCUREMENTS AND REGULARIZATION

Under no circumstances shall NATO IS staff other than the Procurement Service or other individuals specifically authorized by them enter into formal negotiations, place orders or execute contracts or modifications for the provision of goods or services to NATO IS or in any way obligate NATO.

The Procurement Service should take positive action to preclude, to the maximum extent possible, the need for ratification actions. Although procedures are provided herein for use in those cases where the ratification of an unauthorized commitment is necessary, these procedures may not be used in a manner that encourages such commitments being made by unauthorized personnel.

NATO accepts no responsibility for unauthorized contractual obligations entered into by individuals other than the Procurement Service or their authorized agents.

Individuals entering into such arrangements do so at their own personal financial liability, and are further subject to disciplinary action.

The Financial Controller serves as ratifying official and in this capacity may authorize the ratification of an unauthorized commitment. Prior to ratifying an unauthorized act, the Procurement Officer will review the issue and submit it to the Financial Controller. The first action will be to formally notify both the individual and his/her Administrative Officer of the breach of procedure and resolving inquiry. In the course of the investigation certain arguments might be considered:

- Supplies or services have been provided to and accepted by NATO, or NATO otherwise has obtained or will obtain a benefit resulting from performance of the unauthorized commitment.
- The resulting contract would otherwise have been proper if made by the Procurement Service and the price is to be fair and reasonable.
- The Procurement Service, in reviewing the unauthorized commitment recommends payment and legal counsel concurs in the recommendation.
- Funds are available and were available at the time the unauthorized commitment was made.

In cases where ratification is not recommended, the responsible individual who committed the unauthorized commitment will be fully responsible. In other words, NATO will consider itself a non-involved party.

Whether an unauthorized commitment can be ratified or not, corrective action should be immediately taken under the Financial Controller's guidance to prevent further occurrences. Associated efforts should include proper counselling of involved individual(s), and (if necessary) appropriate disciplinary measures.

14. CONTRACT AWARD

14.1. RECOMMENDATION OF AWARD

Recommendation of award is an essential step in the contracting process. It provides for independent written advice on the acceptability of the Procurement Process undertaken, and the proposed commitment of funds by the procurement authority, through contracts or Purchase Orders.

Award is the formal decision and approval to establish a contract or a Purchase Order with the successful supplier, based on independent review of the Procurement Process within the limits of awarding authority. The award phase marks the:

- Successful conclusion of the Procurement Process.
- Starting point for contract finalization and execution.

The purpose of a recommendation of award is to:

- Provide an independent and unbiased review of recommendations for contracts or Purchase Orders.
- Ensure that the Procurement Process was fairly conducted and followed the appropriate policies and procedures.
- Confirm the necessary budget for the contractual commitment is available.
- Confirm that the recommendation for award and terms of contract best serves the interests of the Organization.
- Seek approval from the appropriate authority to contractually commit NATO IS to procure the goods, services or works.

Thorough preparation of contract recommendation and approval documents is necessary to facilitate the award process; the explanations provided should be transparent, clear and precise justifications of the process leading to the award recommendation. Transparency and due diligence are key at this stage. Deliberate omission of relevant information is as unethical as deliberately submitting wrong information. To avoid delays and omissions, standardized templates and check list should be used for quality control.

NATO IS has established different levels of delegation of authority to implement the procurement activities with regard to the responsibility of the procurement, review, recommendation and award process. Depending on these thresholds, the award of contract will take place in one of the two following ways:

14.1.1. AWARD OF CONTRACT BELOW LEVEL 2 X B OF THE EFL

The award recommendation document is submitted to the Procurement Service with the appropriate source selection and award authority for review and approval of award, who will review the submission in terms of:

- Compliance with procurement regulations, rules and procedures.
- Availability of funds.
- Compliance with proper documentation processes.

The awarding authority then rejects or accepts the award recommendations. Acceptance constitutes the approval of the award.

14.1.2. AWARD OF THE CONTRACT ABOVE LEVEL 2 X B OF THE EFL

For a process above level 2X B of the EFL, the CAC reviews the Procurement Process to ensure that regulations, rules and procedures were followed and funds are available for the subsequent approval.

The minutes of the meeting of the CAC will be taken by the Secretary of the CAC. They should record the deliberations of the CAC and the recommendations in a brief but fully explanatory manner. All members present at the meeting will accept/approve the minutes and this will serve as decision (Statement of Award) that a contract should be entered into with a given bidder (winner of the competition), or that no contract should be entered into, in case the Call for Bids is considered unfruitful.

The result of the award/minutes or Statement of Award will be forwarded to the requisitioner. The Procurement Service will inform the winner of the competition and will prepare the subsequent contract or Purchase Order.

14.2. POST-AWARD NEGOTIATIONS

Post-award negotiations are non-competitive exchanges with a successful bidder to modify the terms and conditions of the prospective contract. Post-award negotiations should be avoided because in the absence of competition NATO IS has little leverage to improve the terms and conditions of a contract and because this type of post-award exchanges may create the appearance of preferential treatment to the

successful bidder (an unsuccessful bidder may argue that it would have also been able to provide better conditions to NATO IS if asked to do so).

The Source Selection Authority may authorise the use of post-award negotiations only if the following two conditions are satisfied:

- Only one bidder responded to the Solicitation of offers;
- The possibility of conducting post-award negotiations was identified in the solicitation of offers;

As in the case of pre-award negotiations, the negotiation process shall be led by the Procurement Officer responsible for the procurement action and a negotiation plan with shall also be approved before negotiations can start.

The final result of the negotiations shall be submitted for approval to the CAC and the final decision duly recorded in the Final Statement of Award.

14.3. PROTESTS

In principle, interested parties may address protests through any of the following three protest resolution fora:

- The NATO IS Protest Resolution System which is described in section 14.4. below;
- The NATO Implementing Committee (normally the Budget Committee) that authorised the funds used in the procurement action;
- The judicial system (not a true protest resolution procedure as explained in section 14.6. below).

Interested parties are actual or prospective bidders with a direct economic interest in the procurement.

14.4. NATO IS PROTEST RESOLUTION PROCEDURES

The NATO IS Protest Resolution Procedure is applicable to all protests filed directly with the Procurement Officer or other cognizant staff member within the NATO IS. These protests are governed by the provisions of this section and any supplemental procedures that may be approved by the Head of the Procurement Service.

Procurement Officers must consider and seek legal advice regarding all protests filed with the NATO IS.

14.4.1. PROCEDURES

The NATO IS Protest Resolution system should allow for the inexpensive, informal, procedurally simple, and expeditious resolution of protests.

Prior to the submission of a protest, all parties shall use “their best efforts” to resolve issues and concerns raised by an “interested party” at the Procurement Officer level. “Best efforts” include conducting “open and frank discussions” among the parties.

The goal of an effective NATO IS protest resolution system is to:

- Resolve protests effectively;
- Help build confidence in the NATO procurement system; and
- Reduce protests through the NATO Committees and/or judicial protest fora.

Protesters are required to exhaust NATO IS administrative remedies before resorting to other protest fora.

Procedures shall be informal and flexible and comply with the following ground rules:

- Protests must be clear and concise. Failure to submit a coherent protest may be grounds for dismissal.
- “Interested parties” may request review at a “level above the Procurement Officer” of any decision by the Procurement Officer that allegedly violated applicable regulations and solicitation provisions and, thus, prejudiced the bidder.

14.4.2. TIMING

Pre-award protests, to include protests challenging the propriety of a solicitation, must be filed prior to Bid Opening or the date for receipt of proposals.

In all other cases, the bidder must file its protest to NATO IS within 10 days of when the protester knew or should have known of the bases for the protest. For “significant issues” raised by the protester, however, NATO IS has the discretion to consider the merits of a protest that is otherwise untimely.

14.4.3. SUSPENSION OF AWARD

The Source Selection Authority (CAC) shall not make an award if a protest is filed before award. However, the Source Selection Authority may override the stay if one of the following conditions applies:

- Contract award is justified in light of “urgent and compelling” reasons; or
- A prompt award is in “the best interests of NATO.”

The override decision must be made in writing and then approved by the Head of the Procurement Service (for Simplified Procurement Procedures) or by the CAC (for Formal Procurement Procedures).

If the Source Selection Authority elects to withhold award, it must inform all interested parties of that decision. If appropriate, the Procurement Officer should obtain extensions of bid/proposal acceptance times from bidders. If the Procurement Officer cannot obtain extensions, he/she should report the situation to the Source Selection Authority and consider an override of the stay and proceed with making contract award.

If NATO IS receives a protest within 10 days of contract award or 5 days of a “required” debriefing date offered by NATO, the Procurement Officer shall suspend contract performance immediately.

The Source Selection Authority may override the stay if one of the conditions specified for the override of pre-award suspension applies. As in that case, the override determination must be made in writing and approved by the Head of the Procurement Service or the CAC.

14.4.4. PROCESSING PROTESTS

Bidders generally present protests to the Procurement Officer; but they may also request an independent review of their protest at a level above the Procurement Officer, in accordance with established procedures. Solicitations should advise bidders of this option.

NATO IS procedures shall inform the protester whether this independent review is an alternative to consideration by the Procurement Officer or as an “appeal” to a Procurement Officer’s protest decision.

NATO IS shall designate the official who will conduct this independent review. The official need not be in the supervisory chain of the Procurement Officer. However, “when practicable,” the official designated to conduct the independent review “should” not have previous “personal involvement” in the procurement.

NATO IS shall make its best efforts to resolve protests within 35 days of filing.

To the extent permitted by law and regulation, NATO IS and the protester may exchange information relevant to the protest.

The decision shall be well reasoned and “provide sufficient factual detail explaining NATO’s position. NATO IS must provide the protester a written copy of the decision via a method that provides evidence of receipt.

14.4.5. REMEDIES

Depending on the basis of the protest, the following remedies would be available:

- Failure to comply with applicable regulations or solicitation provisions. If it is determined that, as a result of a protest, a solicitation, proposed award, or award is improper, NATO may:
 - Take any action that the a NATO implementing committee could have “recommended,” had the bidder filed the protest with an implementing committee; and
 - Award costs to the protester for prosecution of the protest.
- Misrepresentation by awardee. If, as a result of awardee’s intentional or negligent misstatement, misrepresentation, or miscertification, a post award protest is sustained, NATO may require the awardee to reimburse NATO’s costs associated with the protest. NATO may recover this debt by offsetting the amount against any payment due the awardee under any contract between the awardee and NATO.
- Follow-on protest. If unhappy with the decision, the protester may file its protest with the NATO implementing committee that funded the procurement action. If the vendor elects to proceed with its protest, it must file its protest within 10 days of receiving notice of the NATO IS initial adverse action.

14.5. PROTESTS THROUGH NATO IMPLEMENTING COMMITTEES

The way each NATO implementing committee resolve bid protests may vary depending on the circumstances, the funding source, and the procurement regulations relevant to the procurement action. In all cases the protest shall be initiated through a national delegation to the committee concerned.

The majority of protests concerning NATO IS procurement actions would be normally dealt with by the Budget Committee, since the Civil Budget is the main funding source of NATO IS.

This Committee has not approved any specific guidance or procedures about how protests must be handled. Historically, protests have been resolved through diplomatic means and considering the specific circumstances of each case.

Before filing protests with NATO implementing committees, protesters must be encouraged to attempt first the resolution through the NATO IS Protest Resolution Procedures described in section 14.4. above.

14.6. JUDICIAL RESOLUTION OF PROTESTS

Some private contract law systems (e.g., UK) allow bidders to seek redress in court under the interpretation that a solicitation of offers made to specified parties, which states that the contract will be awarded to the lowest bidder, would be an implied unilateral offer (e.g., *Harvela Ltd v Royal Trust Canada*, 1985). In addition to this, some legal systems also recognise the option to seek compensation under tort law when certain exceptional conditions occur (e.g., detrimental reliance, bad faith, etc.). Belgium is one of these legal systems that recognise that the contract formation phase is subject to the rules of "*responsibilite quasidelictuelle*" (see *Anvers*, 19 mars 2001, RDC, 2002, pg. 120). Therefore, from a theoretical perspective, bidders can try to file protests through the legal system in order to obtain redress or compensation.

However, the special status of NATO IS deprives this protest resolution procedure of any real value. Filing a protest against NATO IS through the judicial system will not lead to a resolution of the protest because NATO IS, including its assets and staff, enjoy immunity from every form of legal process as established in the Agreement on the Status of North Atlantic Treaty Organization, National Representatives, and International Staff (Ottawa Agreement) dated 20 Sep 1951.

Bidders shall be clearly informed about NATO IS immunity from legal procedures through the provisions of the solicitation in order to avoid the perception that they can pursue the resolution of protests through the judicial system. The solicitation shall also indicate the alternative procedures offered for the resolution of disputes as specified in section 14.4. above.

15. CONTRACT FINALIZATION AND ISSUANCE

15.1. INTRODUCTION

Contract finalization is the process followed by the Procurement Officer to form a written contract with the supplier. The purpose of contract finalization is to ensure that all proper elements are in place to conclude a written agreement that protects the interests of NATO and reflects the offer made by the supplier in response to NATO's requirements.

A contract is formed on a basis of an "offer" and an "acceptance" and in the context of procurement in NATO, is a written document, containing the agreement, and the terms and conditions, between NATO and the supplier, and which serves as proof of the obligation. Contractual instruments in NATO are Purchase Orders (POs), contracts for services and works, systems contracts, blanket Purchase Orders, lease agreements, etc.

In NATO, contracts are based on competitive solicitation processes. However, under certain circumstances (e.g. direct contract, sole source or complex contracts); in order to proceed to form a contract with the selected supplier, the Procurement Officer may need to clarify and negotiate terms and conditions.

Proper procedures should be followed to ensure that no negotiations take place with respect to issues already agreed at the solicitation stage and that the parties are clear about their respective rights and responsibilities. In certain cases, negotiations may be carried out with the selected supplier regarding payment terms, supplementary terms and conditions, delivery, etc, soon after contract award. Those changes shall be treated as contract modifications and executed in accordance with the rules established in this Manual for the amendment of contracts.

15.2. CONTRACT NEGOTIATION

In a competitive Solicitation Process it is good practice to select the appropriate contractual instrument at the time of the preparation of the Solicitation Documents and to include a copy of a contract as an annex to the Solicitation Documents. This will ensure any issues the supplier may have with the special and general terms and conditions of the contract are addressed in their response to the Solicitation Documents and are taken into account during the evaluation of proposals.

As specified in section 9.1.2. of this Manual, solicitation of offers issued under Formal Procurement Procedures shall include a standard prospective contract and this shall be signed by bidders and submitted as part of their proposals in order to ensure that a fully executed contract can be obtained upon award.

Therefore, in the majority of cases, with the exceptions stated in section 14.2., no negotiations should need to take place after the evaluation/award and prior to the signature of the contract. Where required, negotiations have the potential to improve the procurement outcome by reducing uncertainties, risks and costs. However, as a general rule, at this stage of the process negotiations with the supplier should not go over issues agreed to during the solicitation process. The Procurement Officer must also ensure that no appearance of impropriety or conflict of interest arises.

15.3. CONTRACT PREPARATION

Procurement Officers are encouraged to refer to existing templates or model contracts. If the contractual documents cannot be based on available templates (e.g., a Sole Source Procurement where the supplier insist to use a more neutral contract format), the Procurement Officer should ensure proper approvals and review by the appropriate officers before drafting new clauses.

Contractual documents should be based on the:

- Solicitation Documents and subsequent amendments and/or clarifications;
- Offer from the supplier and any subsequent amendments and/or clarifications;
- Recommendation of Award;
- Recommendation of the Contract Awards Committee, if applicable;
- Final decision taken by the awarding authority.

15.4. CONTRACT REVIEW AND SIGNATURE

The provisions of this section are relevant only to those contracts that do not follow the standard practice of having the prospective contract signed by suppliers at the time of bidding (i.e., sole source situations and other exceptional situations authorised by the Head of the Procurement Service). In these cases, a copy of the draft contract should be shared with the supplier. It is recommended that the supplier is given sufficient time to review the contract and request that any proposed changes or modifications to the text be provided in writing and are justified. If at this stage that supplier raises a legal issue, the Procurement Officer should ensure that proper consultation takes place.

The supplier may request that its contractual template and/or additional or different terms and conditions are used. As a general rule, the Procurement Officer should always use NATO IS' templates. This ensures consistency, that NATO's standard clauses are included, etc. If this is not acceptable to the supplier, especially in the

case of sole source requirements, the Procurement Service, as an exception may have to agree to use the supplier's contract template and amend it to ensure that NATO's interests are protected, especially with respect to NATO's Privileges and Immunities, arbitration clause, etc.

The Procurement Officer should review the changes proposed by the supplier to determine that they do not conflict with the original requirement and the offer and that they are acceptable to NATO. After internal consultation and discussion with the successful supplier, the Procurement Service revises the draft until the text is acceptable to both parties. Care should be taken to ensure that the final text represents the offer from the supplier, as NATO accepted it, and that it remains in compliance with the final decision.

Finally, the Procurement Officer should ensure that the contract/Purchase Order is complete, that all the elements agreed by the parties and all appropriate annexes are included, and that NATO's general and special terms and conditions are part of the contract/Purchase Order.

In particular, the Procurement Officer should ensure that:

- No contract is entered into by the Organization contrary to its general conditions of contract. For example, Procurement Officers should always ensure that the contractual documents neither include a choice of law clause, nor refer to the jurisdiction of the courts of any particular country. These types of clauses would impair NATO's privileges and immunities as an international organization. All contractual documents clarify that NATO is exempt from taxes.
- The Incoterm included in the contractual documents is the same as the one requested in the Solicitation Documents. NATO's general terms and conditions foresee Delivery Duty Paid (DDP) at NATO HQ as the applicable Incoterm (Incoterms 2000).
- A performance bond is presented by the supplier if required as per the Solicitation Documents, in a form acceptable to NATO; performance bonds should be kept in a safe and secure environment.
- All the essential elements of the contract or Purchase Order are included in the document.
- The name, title and address of the parties are clearly reflected in the document.

Once the contract has been completed to the satisfaction of NATO, the Procurement Officer should seek all required internal approvals.

The Procurement Officer shall ensure that all pages are numbered and initialled by NATO authorities. The Procurement Officer should also ensure that proper securities are in place, e.g. performance bond.

The contract should be signed first by an authorized representative of the supplier and after by NATO. In NATO the only officials authorized to sign contracts in the name of the Organization are the Head of Procurement, Procurement Officers and when required the Financial Controller or his/her representative.

Procurement Officers and requisitioners should always remember that any change or modification to an existing signed contract can only be documented by a written amendment, reviewed by the Contract Awards Committee as appropriate, and duly signed by the authorized representative of the parties.

15.5. CONTRACT FILLING

The Procurement Officer should ensure that an original copy of the contract is filed and that the file is complete before proceeding with other internal procedures, i.e. providing a copy to the requisitioning office, the freight forwarder where appropriate, etc.

15.6. NOTIFICATION OF AWARD AND DEBRIEFING TO UNSUCCESSFUL BIDDERS

Once the contract or Purchase Order has been legally established, i.e., only after proper signatures have been received from all parties concerned, a Notification of Award should be published and the unsuccessful bidders notified and de-briefed.

The Notification of Award normally includes:

- Reference number of the Solicitation;
- Type of goods/services procured;
- Name of the awarded supplier;
- Total award value.

Unsuccessful bidders should be informed, promptly after contract signature with the winner of the competition, in writing through a standard "letter of regret" that their proposal has not resulted in an award.

At their request a debriefing may take place as to the basis for the selection decision, mentioning strong and weak points of their proposals. This should be a “lessons learned” experience for the unsuccessful bidder, enabling the bidder to respond better to future solicitations. Therefore, the debriefing should focus on the bidder’s offer. The explanation should be candid without making any point-by-point comparisons with other competitors. Due care will be given not to disclose commercially sensitive or proprietary data from other proposals.

In order to avoid the risk of disclosing unauthorised information from bidders, solicitation provisions shall inform bidders that the following information may be disclosed in post-award debriefings to other bidders:

- The overall evaluated cost or price and the technical rating per top-level evaluation criteria of the successful bidder;
- The overall ranking of all bidders, when any ranking was developed by NATO IS during source selection; and
- A summary of the rationale for award.

The Procurement Service will organise and prepare such debriefings, with the support of the evaluation panel and/or CAC members. Minutes and documentation used to support such debriefs will be kept in the contract file.

Bidders shall request debriefings within 5 days after the date of notification of the source selection outcome. NATO IS shall do its best efforts to hold debriefings within 30 days after the date of receipt of the stated notification.

15.7. GENERAL ELEMENTS OF A CONTRACT

With the exception of low value purchases (depending of thresholds), a written contract is required to formalize and obligation.

Procurement Officers shall ensure that the required funds have been committed.

15.7.1. LEGAL ELEMENTS OF A CONTRACT

Essential legal elements of a contract are:

- Intent to contract, an agreement must be deliberate or seriously intended. In business, it is presumed that the parties intend to contract.
- Offer and acceptance, an offer is an indication by one person to another of their willingness to contract on certain terms without further negotiations. A contract is then formed if there is express or implied agreement; acceptance

may be by performance. A contract is said to come into existence when acceptance of an offer has been communicated to the supplier by the offeree.

- Consideration, this is the price the buyer must pay to but the promise made by the supplier, e.g. payment of money or exchange of services.
- Capacity to contract, this is the competency of a (legal) person to enter into a contract.
- Legality of purpose, a contract will be void and unenforceable if its purpose involves an act which is illegal or contrary to public policy.
- Certainty of terms, this requires a meeting of minds (consensus) regarding terms and conditions of the proposed contract. The terms must be reasonably specific or ascertainable.
- Contracts are composed of clauses collectively referred to as “terms and conditions”.
- Other documents may be incorporated as necessary, e.g. written records of Bid Conferences, email/mail correspondence, samples, etc.

15.7.2. TERMS AND CONDITIONS OF A CONTRACT

A contract is composed of “clauses” (or numbered paragraphs) collectively referred to as “terms and conditions”.

- A “term” is a statement that deals with a specific topic, i.e. price, delivery, payment, inspection, warranty, etc.
- A “condition” is a statement that activates or suspends a term if a certain situation develops or given parameters are met (e.g. revision to the unit price if the quantity varies by a certain ratio).
- General and specific terms and conditions are intended to provide legally enforceable provisions for securing satisfactory performance of the parties, the supplier and NATO.
- General terms and conditions pertain to a type of contract, such as service contracts, Purchase Orders for goods, software license agreements, rental or lease of office space, etc.
- Special terms and conditions may impose on prospective suppliers new and potentially unnecessary costs elements that they must incorporate in the pricing of goods and services they will have to deliver. For this reason, special

terms and conditions must be chosen with care since they could affect the price NATO IS pays for its goods and services.

For all the documents forming part of the contractual instrument the order of precedence is very important.

15.7.3. STANDARD CONTRACT DOCUMENTATION

A contract usually includes the following documents:

- Reference to Solicitation Documents.
- Contractor's offer.
- Specific terms and conditions.
- General terms and conditions.
- Special Provisions, including the result of any negotiations prior to Contract Award.
- Other documents may be incorporated as necessary (e.g., written records of Bid Conferences, letters, samples, bonds, etc.).

15.7.4. STANDARD CONTRACT ELEMENTS

As the wording is tailored to the deliverables, there is no fixed standard format for said contracts, as the contents will depend upon the complexity of the procurement. Therefore, the relevant Procurement Officer shall prepare each written contract in a form deemed appropriate and in accordance to the existing and approved minimum templates.

The standard contract elements shall be in line with the guidelines specified in section 9.1. of this Manual.

15.8. CONTRACT AMENDMENTS

A contract amendment or modification is a written record of changes to the original terms and conditions. It is executed to reflect changes to the original requirement, to reflect the solution of performance problems or to comply with formal administrative considerations.

When the Organization receives a request from a supplier to modify a contract, it should review the request in order to analyze its impact on the schedule of

competition, price, quantity and quality. The Organization should consult with the client on all aspects of the request and determine whether the request may best be executed through the current contractor or, if substantial changes in scope are called for, through a new procurement.

A contract amendment may cover the following matters:

- Extension of time to complete the contract.
- Change to Specifications.
- Change to price.
- Administrative changes like change of name, legal status, address, etc.

Only Procurement staff can officially change a contract. Unofficial changes, in the form of constructive changes or unauthorized commitments can be as detrimental to NATO IS' Procurement Process as purchases originally made without appropriate delegated authority.

Requisitioners are required to provide requisition amendments when changes in price, type or quantity of items to be purchased are needed. As appropriate, requisitioners also should provide additional documentation to support the need for the modification.

Documentation to support contract modification includes:

- Revised Statement of Work (SOW);
- Justification as to why the modification is necessary;
- Revised cost estimate accounting for increases and decreases in the products or services and associated costs made by the modification, providing either:
 - a statement that the modification is within the current expenditure authority, or
 - a fully approved increase in the current expenditure authority to cover any costs above the current expenditure authority.
- A new Procurement Request entered in PCIS with mention to the original Procurement Request;
- Brief description of the amendment.

While amending a contract it is good practice to:

- Use standard formats for contract amendments to introduce changes to the original contract, and earlier amendments, by reference to the clauses of the original contract and of its amendments.
- Not, under any circumstance, execute a contract amendment by corrections or deletions on the original contract document.
- Always make any amendment to a contractual instrument in writing.
- Always document amendments in the contract file.

Amendments to the contract shall be numbered serially, commencing with Amendment No. 1. Each amendment shall identify the contract to which it refers by number, subject and date. The nature of the amendment shall be clearly described and include a statement that all other terms and conditions of the contract shall remain unchanged.

The procedures for signing an amendment are the same as that of an original contract. If the change is within the general scope of the contract, the amendment may be approved by the Procurement Officer. Otherwise, the amendment shall be submitted to the Source Selection Authority (CAC for contracts subject to Formal Procurement Procedures) to obtain the required approval.

In order to determine whether a contract change falls within the scope of the original contract the following factors shall be considered:

- The extent of any changes in the type of work or the performance period, or the difference in costs between the contract as awarded and as modified;
- Neither the number nor the cost of changes alone dictates whether modifications are beyond the scope of a contract, however, the cumulative effect of a large number of changes shall be controlling;
- Substantial changes in the work may be in-scope if the parties entered into a broadly conceived contract.
- Whether NATO IS had historically procured the services under a separate contract; and
- Whether potential bidders would have anticipated the modification because it was implied in the scope of competition.

15.9. OPTIONS AND MULTI-YEAR CONTRACTING

Multi-year contracting is a form of “advance procurement,” wherein contracts awarded either cross fiscal years or extend for multiple fiscal years. For this approach to be taken, Contract Authority must first be obtained from the Budget Committee. This provision would allow Procurement Officers to enter into multi-year financial obligations not fully supported by current year budget credits. This approach will enable the procurement of long lead-time items or achieve economies of scale pricing of goods/services in a fiscal year in advance of that in which the related end item/service is to be procured. However, there are restrictions to multi-year contracting:

- Multi-year contracts should not be awarded unless analysis shows that a period of repetitive “one-year” based performance will result in a lower cost.
- A multi-year contract approach might be very appropriate for key services that cannot be economically and practically detached from the budget/fiscal year cycle. Common services for which this authorisation might be considered include:
 - Operation, maintenance, and support of facilities, equipment and installations.
 - Maintenance or modification of vehicles and other highly complex military equipment.
 - Magazine subscription, bus transportation, and refuse collection and disposal.
- An alternative to multi-year contracting is the use of options. An option is a unilateral right in a contract by which, for a specified time, NATO may elect to purchase additional supplies or services called for by the contract, or may elect to extend the term of the contract. This contracting mechanism can be used for a broad range of contract types for which firm requirements are known, but funding is not yet available. Inclusion of an option is in the judgment of the Procurement Officer not the preferred approach when:
 - Delivery requirements far enough into the future permit competitive procurement, production, and delivery.
 - The market price for the supplies or services involved is likely to drop substantially.
- Solicitations shall include appropriate provisions and clauses when resulting contracts will provide for the exercise of options. When exercising an option,

the Procurement Officer shall provide written notice to the contractor within the time period specified in the contract. The Procurement Officer may exercise options only after determining that: funds are available; the requirement covered by the option fulfils an existing NATO's need; the contractor is providing satisfactory performance, the exercise of the option is the most advantageous method of fulfilling NATO's need, and the option price remains fair and reasonable when compared to existing market conditions. Before executing a contract modification to exercise an option, the Procurement Officer is to record the basis of the decision in the contract file.

15.10. NOVATION AGREEMENTS

A novation agreement serves as a legal instrument executed by the contractor (transferor), the successor in interest (transferee), and NATO wherein the transferor essentially guarantees performance of the contract, the transferee assumes all obligations under the contract, and NATO formally acknowledges transfer of the contract and related assets/interests. Here are some guidelines for novation agreements:

- A novation agreement is not necessary when there is a change in the ownership of a contractor as a result of e.g., a stock purchase, with no legal change in the contracting party, and when that contracting party remains in control of the assets and is the party performing the contract.
- When it is in an NATO interest not to concur with the planned transfer of a contract from one company to another, the original contractor remains under contractual obligation to NATO, and the contract may be terminated for reasons of default, should the original contractor not perform.
- When considering whether to recognize a third party as a successor in interest to NATO's contracts, the Procurement Officer shall identify and evaluate any significant Organizational conflicts of interest. If the Procurement Officer determines that a conflict of interest cannot be resolved, but that it is in the best interest of NATO to approve the novation request, a waiver will be sought from the Financial Controller.
- When a contractor asks NATO's to recognize a successor in interest, the contractor shall submit to the Procurement Officer two signed copies of the proposed novation agreement and one copy each, of the following:
 - The document describing the proposed transaction, e.g., purchase/sale agreement or memorandum of understanding.
 - A list of all affected contracts between the transferor and NATO's, as of the date of sale or transfer of assets, showing for each, as of that date,

the contract number and type, total value, as amended, and reflecting any remaining unpaid balance. Further, the contractor shall provide evidence of the transferee's capability to perform, plus any other relevant information requested by the Procurement Officer.

- When recognizing a successor is in interest to an NATO's contract, the Procurement Officer shall execute a novation agreement with the transferor and the transferee. It shall ordinarily provide in part that the transferee assumes all the transferor's obligations under the contract, that the transferor waives all rights under the contract against NATO's, and the transferor guarantees performance of the contract by the transferee; if need be, a performance bond may be pursued in lieu of a written guarantee and/or evidence of legal documentation between the two parties should be requested by the Procurement Officer.
- If only a change of the contractor's name is involved and NATO and contractor's rights and obligations remain unaffected, the parties shall execute an agreement to reflect the name change. The contractor shall forward to the responsible Procurement Officer two signed copies of the Change-of-Name Agreement, and one copy each of the document effecting the name change authenticated by a proper official of the country having jurisdiction, and a list of all affected contracts and POs remaining unsettled between the contractor and NATO, showing for each the contract number, type, and description. The Procurement Officer may request the total value as amended and the remaining unpaid balance for each contract.

16. CONTRACT MANAGEMENT

16.1. INTRODUCTION

The terms “contract management” and “contract administration” are often used synonymously. However, “contract management” is commonly understood as a broader and more strategic concept that covers the whole Procurement Cycle including planning, formation, execution, administration and close out of a contract and goes beyond the day to day “administrative” activities in the Procurement Cycle.

Contract Management is the ongoing monitoring and management of the vendor’s performance and obligations regarding the promised goods, services or works as well as all other terms and conditions of the contract, such as price and discounts. It includes managing the relationship between the vendor, Procurement Service and the Control and Accounting Section, feedback to the vendor regarding its performance as well as dispute resolution, if necessary.

Contract Management is an element in the Procurement Process to ensure that Best Value for Money will be achieved throughout the Procurement Process. Contract Management includes vendor performance evaluation and rating on timely delivery, quality and assistance to the requisitioner.

Contract Management is a shared responsibility between the requisitioner and/or end-user and the Procurement Service. The Procurement Service, in cooperation with the requisitioner and/or end-user shall ensure that adequate vendor performance evaluation is conducted. If the requisitioner and/or end-user are not able to resolve a dispute, they shall inform the Procurement Service, in cooperation with the Office of the Legal Adviser, if appropriate, who shall be included in the process.

16.2. VENDOR PERFORMANCE EVALUATION

Vendor Performance Evaluation is the evaluation of the vendor’s fulfillment of the contracted requirements with regard to quality, delivery, timeliness, as well as all other performance indicators regarding the promised goods, services or works.

The Procurement Service, in cooperation with the requisitioner and/or end-user shall ensure that adequate Vendor Performance Evaluation is conducted as follows:

- The requisitioner and/or end-user shall develop the performance measurement criteria, which should already be included in the Solicitation Documents and shall appear in the contract (see section 5 of this Manual for further details about how to include performance standards into a SOW);

- The requisitioner and/or end-user shall monitor and evaluate the vendor's performance against the agreed performance measurement criteria;
- The requisitioner and/or end-user shall complete the vendor performance rating forms and notify the Procurement Officer as to whether the vendor is performing adequately;
- The Procurement Officer shall ensure that a copy of any performance rating form/report is included in the procurement case file.

Procurement Officers and requisitioners must ensure that a Vendor Performance Evaluation with a satisfactory result is on file before processing an amendment to an existing contract.

16.2.1. VENDOR PERFORMANCE RATING

The requisitioner or end-user of the goods, services or works shall evaluate the vendor's performance in accordance factors which are significant from a business standpoint. The following factors are offered as guidelines:

- Fulfillment of delivery schedule;
- Compliance with contractual terms and conditions and other unique or special requirements of the contract;
- Adherence to warranty provisions;
- Quality of goods or services provided, in accordance with contractual terms and conditions;
- Timely response to the Organization's request to rectify deficiencies and resolve claims;
- Failure to disclose information which can affect the performance of the vendor, such as multiple appearances as a defendant in litigation, receivership, declaration of bankruptcy;
- Undue delay in performance under the contract or lodging frivolous claims against NATO.

16.2.2. PRE-PERFORMANCE CONFERENCE

Before performance begins on large or complex contacts, the Procurement Officer and the requisitioner should meet with the supplier's team to discuss their understanding and joint management of the contract.

The following is considered good practice:

- The meeting should be formal;
- An agenda should be distributed in advance, minutes should be taken;
- Each party should appoint a person who will be the organization's official voice during contract performance.

The following topics should be covered by the parties:

- Review the contract terms and conditions and other key elements and explain who will do what.
- Update the project/programme plan with the involvement of both parties, to reflect the actual date of effectiveness as well as milestones/deliverables of the contract and any changes which may have occurred since it was planned.
- Review the performance assessment plan with the supplier, so that both parties know the basis upon which performance will be established. These should be understood as milestones for joint monitoring and not as contractual obligations.
- Discuss how and when to measure and report actual performance. The techniques, timing and frequency of measurement and reporting should reflect the nature and criticality of the work. A reasonable balance must be struck between no measurement/reporting of any kind and excessive reporting;
- Clarify any remaining ambiguities and discuss procedures for managing change and resolving differences.
- Clarify the communication plan.

For simple goods or equipment Purchase Orders, a telephone or mail contact is often sufficient to launch activities, supported by regular expediting and monitoring.

16.3. CONTRACT PERFORMANCE MONITORING AND CONTROL

Once the contract has been awarded, the responsible Procurement Officer, or the requisitioner, monitors performance, collects information, and measures actual contract achievement. This is essential for effective control. The resources devoted to these tasks, and the techniques used to perform them, will depend on the nature of the contract work, the size and complexity of the contract, and the resources available.

For small, simple, non-critical contracts, an occasional telephone call may be all that is needed to satisfy the responsible staff member that everything is proceeding according to plan. However, for large, complex contracts, the responsible staff member may require extensive reports, regular progress meetings, formal testing, and technical reviews and audits.

In performance based contracts, performance indicators developed in the contract are used. In some cases, the proposed supplier's quality assurance plan may be used as a basis for monitoring the supplier's performance.

Observations are made in order to collect information related to those aspects of performance that, when measured, will describe the progress of the work. The reason for observing, collecting information, and measuring progress is to have a basis for comparing actual achievement with planned achievement in order to exert control. Each party must direct its attention internally to ensure that it is fulfilling its own obligations, and externally to ensure that the other party is fulfilling its obligations.

16.3.1. CONTROL POINTS

Observing and collecting information should be directed at four general control points. These include:

- Cost control;
- Schedule control;
- Compliance with Specifications, Terms of Reference, Statement of Work (quality assurance and control);
- Compliance with terms and conditions, paperwork requirements and administrative aspects of the performance.

16.3.2. MONITORING METHODS

There are two different monitoring methods: direct observation and indirect observation.

16.3.2.1. DIRECT OBSERVATION

Direct observation means personal, physical observation. The responsible staff member, or a field representative, is physically present at the work during its performance to see how it is progressing. This approach is most practical when the work is physical in nature and performed at a limited number of sites.

Construction projects are examples of work readily subject to direct observation. The inspector goes to the site and visually inspects the work, comparing observations to the construction specifications and drawings to the schedule to determine the progress of the work.

Direct observation by the responsible staff member is of limited use, however, when the work is largely intellectual in nature, or when it is too complex for physical inspection alone to provide enough information to measure progress. In these cases, direct observation should be supplemented or replaced by indirect observation.

16.3.2.2. INDIRECT OBSERVATION

Indirect observation refers to testing, progress reports from many observers, technical reviews, performance indicators and audits. Indirect observation is appropriate whenever direct observation would provide insufficient or ambiguous information. For example, projects involving an intellectual effort like infrastructure analysis where personal observations at the offices where the work is performed are unlikely to reveal whether the work is ahead of schedule, on schedule, or behind schedule.

16.3.3. RECEIPT, INSPECTION AND ACCEPTANCE PROCEDURES

Inspection involves examining or testing a product or service to ensure that it conforms to contract requirements. Where quantities of goods are involved, inspection also means verifying that the correct number of items has been delivered. Generally, there are three types of inspection methods:

16.3.3.1. SENSORY AND DIMENSIONAL CHECKS

Sensory and dimensional checks are examinations by an inspector using his or her eyes, ears, and other senses. The inspector exercises a good amount of personal judgment.

Sensory and dimensional checks are usually used to perform inspections. When using this method, staff members should check the following:

- Make a visual examination to verify that the proper type and kind of product has been delivered, that is, that the product or service conforms to the specifications outlined in the order or contract.
- Conduct a physical count to ensure that the correct quantity of product has been delivered by comparing the quantity received with the quantity ordered. Variations in quantities authorized by the order or contract may be accepted. Quantities accepted must be documented; payment is based on quantities accepted.
- Check for signs of damage; any damage should be documented.
- Perform an operability check to ensure that the product performs or operates properly, if applicable.
- Check the preservation of the product to ensure that it has not spoiled, rusted or deteriorated, if applicable.
- If applicable, check packaging and labelling to ensure that they comply with the contract's requirements.
- Check packing to ensure that it is adequate, if applicable.
- Check marking to ensure that it properly identifies packages, if applicable.

Any items that do not conform to appropriate standards should not be accepted. A receipt and inspection report should be submitted, noting any non-conforming item.

16.3.3.2. PHYSICAL PERFORMANCE CHECKS

Physical or performance tests provide actual performance data that are compared with required performance or physical characteristics or a range of what is considered acceptable according to the contract.

16.3.3.3. DESTRUCTIVE TESTS

Destructive tests require that end products meet certain reliability standards or withstand a specific level of stress.

16.3.4. ACCEPTANCE OR REJECTION STANDARDS

Acceptance or rejection of products or services must be based on the standards identified in the contract or Purchase Order. Generally there are two types of standards to rely on:

- Strict compliance standards: requirements based on specific NATO technical descriptions.
- Subjective standards: requirements based on a broader, more judgmental, criterion as applied by the inspector.

It is not unusual to have both types of standards apply to different aspects of the same procurement. In such cases, both strict compliance standards and subjective standards must be enforced. But if both standards apply to a single aspect of the procurement, they typically are inconsistent with each other and, therefore, unenforceable. Both types of standards can be applied to different aspects of service requirements as well.

Inspection and acceptance or rejection of products and services, determine whether NATO should make payment to the supplier.

16.3.5. TYPES OF REPORTS

16.3.5.1. RECEIPT AND INSPECTION DOCUMENTATION

Inspections may be interim or final and receipt may be in full or partial. NATO usually uses standard forms/reports to acknowledge that the inspection has been performed and to record whether products/services have been accepted or rejected.

16.3.5.2. PROGRESS MEETINGS

Progress meetings can simply be oral progress reports. They provide some advantages and disadvantages over written reports. An advantage is that the listeners can ask questions about the information, analyses, and conclusions reported and can have discussions with the reporter. A disadvantage is that the listeners may not have time during the meeting to consider the information and make their own analysis before the meeting ends.

16.3.5.3. WRITTEN REPORTS

Written reports rarely provide “real time” information. They do not tell the reader how things are now; they provide the reader only a picture of some point of time in the past. How old the information is depends on the nature and frequency of the report and in the reporter’s capabilities.

Report conclusions about project status are valid only if the information on which they are based is accurate and the analyst is competent, realistic and honest.

In deciding to rely wholly or in part on reports (including meetings), the responsible staff member also needs to decide what information each report must contain. Some of the issues that should be considered according to the contract reporting guidelines of the Organization are:

- What aspect(s) of performance should the report address?
- What information should the report include: conclusions about performance, analyses, raw information, or some combination of these?
- How frequently must the report be submitted, and at what points in time?
- What is the cut-off point (“as of” date) for information to be included in the report?
- In what format should the report be submitted?
- To whom should the report be submitted, and to whom should copies be sent?

16.3.6. VARIANCE ANALYSIS

It is not enough to observe and collect information about performance; that information should be analysed to determine whether or not performance is satisfactory. The analyst compares actual performance to performance goals to determine whether there are variances. The responsible staff member who discovers a variance between actual and expected performance should determine several things: is it significant?, what was the cause?, was it a one-time failure, or is it a continuing problem?, what type of corrective action would be most effective?

Variance analysis should be timely, especially when the information is obtained through reports. That information is already old by the time it has been received. Delays in analysing its significance may allow poor performance to deteriorate further, perhaps beyond hope of effective corrective action. It is especially important to act promptly during the early phases of contract performance, when corrective action is likely to have the greatest effect. In case of negative contract performance a review of information in the contract file frequently shows that there were warning signs – reports, meeting minutes, letters, memos – that were unnoticed or ignored. When the responsibility for monitoring performance is delegated, the responsible staff member must take steps to ensure that those persons promptly analyse the information, report their findings, and take corrective action.

16.3.7. TAKING CORRECTIVE ACTION

When the requisitioner or the Procurement Officer discovers significant variance between actual and expected performance, they should take corrective action if possible. They should identify the cause of the problem and determine a solution that will not only eliminate it as a source of future difficulty, but correct the effect it has already had, if possible. If the effect cannot be corrected, then the parties may need to negotiate a change to the contract, with compensation to the injured party, if appropriate.

16.3.8. FOLLOW UP

Once corrective action has been taken or is under way, the Procurement Officer and the requisitioner should determine whether it has had or is having the desired effect. If not, then further action may be needed.

Throughout this process of corrective action and follow-up, all the parties must keep each other informed. Effective communication between the parties is essential to avoid misunderstandings and disputes when things are not proceeding according to plan. The party taking corrective action must make every effort to let the other party know that it is aware of the problem and is addressing it seriously. Sometimes this is more important than the corrective action itself.

16.4. CHANGE MANAGEMENT

Change management is the process of both avoiding unwanted changes and incorporating necessary changes into the contract.

Effectively controlling changes entails establishing formal procedures for changing the contract and limiting the number of people who are entitled to make changes.

It is natural for staff in one contract party to work directly with their counterparts in the other contract party's organization, people who speak their language and understand their policies and customs. These colleagues often bypass formal channels of communication, and such relationships can lead to informal, undocumented agreements that depart from contract terms and conditions. Such informal agreements often lead to situations of unauthorized commitment or forbearance caused by apparent authority communicated involuntarily by the requisitioner. It is important that all parties keep in mind that the written contract is the agreement, until it has been formally modified such modification is not simply a formality.

"Constructive change" used to describe a contract change, derives from the verb "to construe" and not from the verb "to construct." So, a constructive change is a situation that can be construed as having the effect of a bona fide contract change. A constructive change occurs when the Procurement Officer, or other duly

authorized official, changes the contract without applying proper legal and regulatory procedures. A constructive change can result from either a specific action or a failure to act. Constructive changes need not have a cost impact; unauthorized commitments always do.

The possibility of a constructive change places NATO in a poor negotiating position when renegotiating price or cost or other contract term or condition. Discussion with the supplier of constructive changes should be avoided as constructive changes destroy any possibility of pre-pricing and put NATO in a poor negotiating position. Unless changes are documented in a contract modification, a misunderstanding between NATO staff and supplier personnel is likely to result.

16.4.1. FINANCIAL CHANGES

Financial changes include in particular:

- Cost overruns, in which the cost of carrying out an agreed activity is greater than the agreed amount. NATO seeks to avoid this situation, and selects contract types (fixed-price), outputs, and payment methods to make it less likely to occur.
- Cost growth, when activities not included in the original contract are added, they usually bring accompanying costs. Careful planning and choice of language should reduce the frequency of this situation, but it is still likely to occur in complex construction and services contracts.

16.4.1.1. COST OVERRUNS VERSUS COST GROWTH

When accepting a contract, a supplier intends to make it profitable by ensuring it can control its costs. Failure to do so will undermine the contract's profitability. The supplier will manage its business risk in a manner that will eliminate wherever possible potential for cost overruns. NATO also seeks to structure contracts and administration to avoid responsibility for cost overruns.

16.4.1.2. COST OVERRUN

Examples of sources of potential cost overruns are:

- Currency rate fluctuation;
- Underestimation of level of effort;
- Underestimation of costs of material;

- Increase in cost of materials or labour;
- Undocumented cost growth.

16.4.1.3. COST GROWTH

Cost growth is defined as a change in the scope of work or new terms and conditions that have been requested by the buyer. The supplier may accept cost growth provided the contract change is documented and that the contract is amended accordingly.

16.4.2. DELAYS AND VARIATIONS

Handling claims of delays and variations involves dealing with circumstances where a supplier makes a claim for additional unforeseen work or costs, or where NATO has varied their requirements from the supplier. Typical delays and variations which should be handled include:

- Delays (excusable, non-excusable, shared/concurrent);
- Minor variations to scope of work or execution conditions;

The three most significant types of contract delays can be grouped as follows:

- Excusable delays;
- Non-excusable delays;
- Shared or concurrent delays.

16.4.2.1. EXCUSABLE DELAYS

Excusable delays are delays beyond the control of the supplier and without any fault or negligence on the supplier's part. These include delays caused or authorized by NATO and delays caused by acts of God or other events beyond the supplier's control, such as fire, flood, acts of war, and so on (force majeure). This is the only type of delay for which extending the period of performance without obtaining consideration from the supplier is appropriate. Some excusable delays do entitle the supplier to monetary compensation in the form of an increase to a fixed-price/lump-sum contract. This could be an increase in the ceiling price of a time-and-materials contract. In addition, a time adjustment may be appropriate if NATO caused or could have prevented the delay.

16.4.2.2. NON-EXCUSABLE DELAYS

Non-excusable delays are delays that are not authorized by NATO and are, in some way, the supplier's fault. Even delays that may be excusable are deemed non-excusable if the supplier could have controlled the effects of the delay in some way and failed to do so.

16.4.3. REMEDIES

When the contract is not being performed properly, there are certain remedies that may be applied by the Procurement Officer. These include:

- Invoking contract remedies;
- Processing/holding payments, as per contract;
- Contract termination (for default or mutually agreed).

It is also possible that the situation requires dispute resolution. Any of these actions must be approved by the appropriate authority representing each of the parties.

Good practice for choosing the appropriate remedy is to:

- Identify the non-conformance;
- Consider the cause (negligence from supplier or NATO IS, force majeure, etc.);
- Consider the contract/type of requirement (goods, services or works);
- Consider the context (e.g. sole source, competition, emergency);
- Consider the beneficiary/end-user requirements;
- Apply principle of proportionality.

When considering any contract remedy, seeking feedback from the supplier is prudent. As a practical business matter, the supplier should be given an opportunity to provide evidence against pursuing the remedy. That evidence might point to an excusable delay or impossibility of performance. Such evidence can lead to a remedy that is fair and just for both NATO and the supplier.

When performance problems are the result of supplier deficiencies, the legal terms and conditions of the contract provide remedies. Such deficiencies may be related to late delivery or to other variances from contract requirements. In case of late /

delayed delivery an example would be to accept the late / delayed delivery and to invoke a Liquidated Damages Clause.

A typical clause in service contracts would be, "payment upon completion of certain tasks". Progress payments would only be made once the task has been completed by the supplier and accepted and approved by NATO. In case of performance delays (time or quality) NATO could withhold payment until the performance failure is cured.

Termination is the most serious remedy available to NATO. It is the exercise of NATO IS' right to completely or partially discontinue contract performance.

16.5. DEFAULT

When the Procurement Officer determines that the supplier has not fulfilled the terms of a contract, he/she may declare the contractor to be in default, and unqualified as a commercial source until such time as the contractor demonstrates that the identified deficiency has been corrected. Contracts should normally address the procedures to be followed in case of default. In essence, default proceedings recognize and articulate situations wherein a contractor fails to perform. Leading up to such an important determination, the Procurement Officer shall confirm that a contractor failed to make delivery of the supplies or perform the services within the time specified in the contract, perform any other critical provision of the contract, e.g., such as not furnishing a required performance bond, or simply did not make adequate progress such that failure endangered performance under the contract. Of course, in the case of excusable delays, contractors must notify the Procurement Officer as soon as possible. In most situations, this requirement should eliminate the need for a show cause notice prior to terminating a contract.

16.5.1. CURE NOTICE

If a contract is to be terminated for default before the delivery date, a "Cure Notice" is required. Before using this notice, it must be determined that an amount of time equal to or greater than the period of "cure" remains in the contract delivery schedule or any extension to it. If the time remaining in the contract delivery schedule is insufficient to permit a realistic "cure" period as specified in the contract provisions or more, the "Cure Notice" should not be issued. The Procurement Officer's purpose in sending a cure notice by registered mail is to highlight in writing a contractor's failure and communicate the number of days set in the contract (or longer period as necessary) in which to "cure" the failure. Upon expiration of the cure period, the Procurement Officer may issue a notice of termination for default, unless it is determined that the failure to perform has been cured.

16.5.2. SHOW CAUSE NOTICE

If the time remaining in the contract delivery schedule is insufficient to permit a realistic or contractual “cure” period, and termination for default appears appropriate, the Procurement Officer should, if practicable, notify the contractor in writing, i.e., by registered mail, of the possibility of the termination. This “Show Cause Notice” may even be sent immediately upon expiration of the delivery period, and highlights the contractual liabilities if the contract is terminated for default, and requests the contractor to show cause why the contract should not be terminated for default. The notice may further state that failure of the contractor to present an explanation may be taken as an admission that no valid explanation exists. If necessary, the Procurement Officer shall provide the same written notification to the surety, and if the contractor is subsequently terminated for default, a copy of the notice of default shall be sent to the surety.

16.6. TERMINATION

16.6.1. TERMINATION FOR DEFAULT

When a default termination is being considered, the Procurement Officer shall decide which type of termination action to take, i.e., default, convenience, or no-cost cancellation, only after coordination with legal and technical personnel to ensure the propriety of the proposed action. When the contractor has defaulted by failure to make delivery of the supplies or to perform the services within the specified time, no notice of failure or of the possibility of termination for default is required to be sent to the contractor before the actual notice of termination. However, if NATO has taken any action that might be interpreted as a waiver of the contract delivery or performance date, the Procurement Officer shall send a notice to the contractor setting a new date for the contractor to make delivery or complete performance. The Procurement Officer shall terminate contracts, whether for default or convenience, only when it is in NATO’s interest. The Procurement Officer shall effect a no-cost settlement instead of issuing a termination notice when:

- It is known that the contractor will accept one.
- NATO’s property was not furnished.
- There are no outstanding payments, or other contractor obligations.

NATO has the right and a duty to refuse acceptance of nonconforming supplies and services. In asserting its rights under default, NATO may either completely or partially terminate a contract because of the contractor’s actual or anticipated failure to perform its contractual obligations. Before formally terminating a contract for default, the Procurement Officer shall consider the following factors:

- The terms of the contract and applicable laws and regulations.
- The specific failure of the contractor and the excuses for the failure.
- The availability of the supplies or services from other sources.
- The urgency of the need for the supplies or services and the period of time required to obtain them from other sources, as compared with the time of delivery to obtain from the delinquent contractor.
- Any other pertinent facts and circumstances.

Contract clauses must provide for specific measures of redress in case of default. At a minimum, they must specify that NATO's rights, after a termination for cause, shall include all the remedies available to any buyer in the marketplace. NATO's preferred remedy would be to procure similar items from another contractor and to charge the defaulted contractor with any excess re-procurement costs together, with any incidental or consequential damages, provided that the contractual clauses signed by the parties stated so, as incurred because of the termination. The NATO is not liable for the contractor's costs on undelivered work and is entitled to the repayment of advance and progress payments, if any, applicable to that work. In fact, NATO may also elect to require the contractor to transfer title and deliver to NATO completed supplies and manufacturing materials, as directed by the Procurement Officer. Under such circumstances, NATO shall pay the contractor the contract price for any completed supplies, and the amount agreed upon by the Procurement Officer and the contractor for any manufacturing materials. To protect NATO's interests, the Procurement Officer may determine the need to withhold an amount due for the supplies or materials.

When the Procurement Officer terminates a contract for cause, the termination notice must be conveyed in writing to the contractor, and delivered either by certified mail with return receipt requested, or hand delivered with a written acknowledgement from the contractor that notice was delivered. In parallel, the Procurement Officer shall prepare a memorandum for the contract file explaining the reasons for the action taken. If the Procurement Officer determines that a termination for default is proper, the Procurement Officer shall issue a notice of termination stating:

- The contract number and date.
- The acts or omissions constituting the default.
- That the contractor's right to proceed further under the contract or a specified portion of the contract is terminated.

- That the supplies or services terminated may be purchased against the contractor's account, and that the contractor will be held liable for any excess costs.
- If the Procurement Officer has determined that the failure to perform is inexcusable, that the notice of termination constitutes such a decision, and that the contractor has the right to appeal such a decision under the Dispute Clause.
- NATO reserves all rights and remedies provided by Host Nation law or under the contract, in addition to charging excess costs.
- That the notice constitutes a decision that the contractor is in default as specified.

The Procurement Officer shall make the same distribution of the termination notice as was made of the original contract. A copy shall also be furnished to the contractor's surety, if applicable, when the notice is furnished to the contractor. The surety should be requested to advise if it desires to arrange for completion of the work. In addition, the Procurement Officer shall notify the Control and Accounting Section to withhold further payments under the terminated contract, pending further advice, which should be furnished at the earliest practicable time.

In the case of a construction contract, promptly after issuance of the termination notice, the Procurement Officer shall determine the manner in which the work is to be completed and whether the materials, appliances, and plant that are on the site will be needed.

If the Procurement Officer determines before issuing the termination notice that the failure to perform is excusable, the contract shall not be terminated for default. If termination is in NATO's interest, the Procurement Officer may terminate the contract for the convenience of NATO.

If the Procurement Officer has not been able to determine, before issuance of the notice of termination whether the contractor's failure to perform is excusable, the Procurement Officer shall make a written decision on that point as soon as practicable after issuance of the notice of termination. The decision shall be delivered promptly to the contractor with a notification.

When the supplies or services are still required after termination, the Procurement Officer shall repurchase the same or similar supplies or services against the contractor's account as soon as practicable. The Procurement Officer shall repurchase at as reasonable price as practicable, considering the quality and delivery requirements. The Procurement Officer may repurchase a quantity in excess of the undelivered quantity terminated for default when the excess quantity is

needed, but excess cost may not be charged against the defaulting contractor for more than the undelivered quantity terminated for default including variations in quantity permitted by the terminated contract.

If the contractor can establish, or it is otherwise determined that the contractor was not in default or that the failure to perform is excusable; i.e., arose out of causes beyond the control and without the fault or negligence of the contractor, a termination for default will be considered to have been a termination for the convenience of NATO's, and the rights and obligations of the parties governed accordingly. Also, the Procurement Officer may, with the written consent of the contractor, reinstate the terminated contract by amending the notice of termination, after a written determination is made that the supplies or services are still required and reinstatement is advantageous to NATO.

16.6.2. TERMINATION FOR CONVENIENCE

Contracts should normally address the procedures to be followed in case of termination for convenience. Termination for convenience means that the Procurement Officer can terminate a contractor for any reason when it is in a NATO's interest. The contractor should be entitled to compensation for work done prior to termination together with earned profit. Normally, a contractor should be entitled to a percentage of the contract price based on the percentage of the work performed prior to notice of the termination, and any charges the contractor can demonstrate directly resulted from the termination. As termination for convenience costs can be very significant, Procurement Officers need to carefully weigh the longer-term benefits of such a move before acting. As in a termination for default, the termination notice must be conveyed in writing to the contractor, and delivered either by certified mail with return receipt requested, or hand delivery with a written acknowledgement from the contractor that the notice was delivered. Similarly to a termination for default, Procurement Officers should pay close attention to the specific terms of the contract and applicable Host Nation laws and regulations.

The Procurement Officer shall terminate contracts for convenience only when it is in NATO's interest. The Procurement Officer shall effect a no-cost settlement instead of issuing a termination notice when:

- It is known that the contractor will accept one.
- NATO property was not furnished.
- There are no outstanding payments, or other contractor obligations.

The Procurement Officer's termination notice will reflect that the contract is being terminated for the convenience of NATO under the contract clause authorising the termination. Further, the notice will stipulate:

- The effective date of termination.
- The extent of termination.
- Any special instructions.
- The steps the contractor should take to minimize the impact on personnel if the termination, together with all other outstanding terminations, will result in a significant reduction in the contractor's work force.

Following issuance of a notice of termination, the Procurement Officer is responsible for negotiating any settlement with the contractor. The Procurement Officer, together with auditors if necessary, shall promptly schedule and complete audit reviews and negotiations, giving particular attention to the need for timely action on all settlements.

Upon written consent of the contractor, the Procurement Officer may reinstate the terminated portion of a contract in whole or in part by amending the notice of termination if it has been determined in writing that circumstances clearly indicate a requirement for the terminated items, and reinstatement is advantageous to NATO.

Settlement of contracts terminated for convenience may be effected by negotiated agreement.

The Procurement Officer responsible for negotiating the final settlement shall establish a separate case file for each termination. This file should include an internal legal review of the proposed settlement. As with legal reviews, any audit report is advisory only, and is for the Procurement Officer to use in negotiating a settlement or issuing a unilateral determination. NATO personnel handling the audit reports must be careful not to reveal privileged information that will jeopardize the negotiation position of NATO, the prime contractor, or a higher tier subcontractor. Consistent with this, and when in NATO's interest, the Procurement Officer may furnish audit reports to prime and higher tier subcontractors for their use in settling subcontract settlement proposals.

Before execution of a settlement agreement, the Procurement Officer shall determine the accuracy of NATO property account for the terminated contract. If an audit discloses property for which the contractor cannot account, the Procurement Officer shall reserve in the settlement agreement the rights of NATO regarding that property or make an appropriate deduction from the amount otherwise due to the contractor.

The Procurement Officer shall execute a no-cost settlement agreement if the contractor has not incurred costs for the terminated portion of the contract or is willing to waive the costs incurred and no amounts are due to NATO under the contract.

If the contractor and Procurement Officer cannot agree on a termination settlement, or if a settlement proposal is not submitted within the period required by the termination clause, the Procurement Officer shall issue a final determination of the amount due. However, before issuing a determination of the amount due to the contractor, the Procurement Officer shall give the contractor at least 15 days' notice by certified mail (return receipt requested) to submit written evidence, so as to reach the Procurement Officer on or before a stated date, substantiating the amount previously proposed. The contractor has the burden of establishing, by proof satisfactory to the Procurement Officer, the amount proposed, and may submit vouchers, verified transcripts of books of account, audit reports, and other official documents as desired.

The Procurement Officer shall, at the conclusion of negotiations, prepare a settlement negotiation memorandum describing the principal elements of the settlement for inclusion in the termination case file and for use by reviewing authorities. The memorandum shall include explanations of matters involving differences and doubtful questions settled by agreement, and the factors considered. The Procurement Officer should include any other matters that will assist reviewing authorities in understanding the basis for the settlement.

The total amount payable to the contractor for a settlement, before deducting disposal or other credits and exclusive of settlement costs, must not exceed the contract price less payments otherwise made or to be made under the contract. After execution of a settlement agreement or final determination, the contractor shall submit a voucher or invoice showing the applicable settlement amount, less any portion previously paid. The Procurement Officer shall attach a copy of the settlement agreement to the voucher or invoice and forward the documents to the responsible Fiscal Officer for payment.

16.7. PAST PERFORMANCE

Documenting past performance is crucial not only as a matter of recording current contractor activities (e.g., for exercising of options, settling disputes, etc.), but also to facilitate future source selections. At a minimum, the Procurement Service is expected to maintain a viable database for these aforementioned purposes. NATO's Staff participating to the Procurement Process should contribute to populate a past performance database. In addition, the Procurement Service will monitor current performance of contractors based upon customer feedback. Performance may be monitored by automated reporting, or by statistical sampling techniques as described earlier in this section.

16.8. CONTRACTOR SUSPENSION/DEBARMENT

Procurement Officers may request the formal suspension or debarment of a supplier when the circumstances justify such a measure. The CAC is the sole authority competent to declare a supplier unqualified as a source of supply, until such time as the contractor demonstrates that identified deficiencies have been corrected. Such decisions shall be reflected on a “Contractor Suspension/Debarment” roster maintained by the Procurement Service and properly documented by past performance reports/records.

16.9. DISPUTE MANAGEMENT AND RESOLUTION

The inherent shortcomings of language as a medium of communication, the organizational nature of the contracting process, and the dynamic nature of contract relationships all contribute to the potential for disagreements between the parties. In fact, disagreements, like changes, are virtually inevitable. They are to be expected by all involved and are considered a normal aspect of contract management. The larger and more complex the project, the greater is the potential for misunderstandings and disagreement.

Contract management planning should include agreement on the procedure to follow to resolve disagreement between parties regarding responsibilities and interpretation of the contract. Differences of opinion will arise among qualified professionals in the course of execution. Claims/requests for changes are part of normal contract execution, and the procedure to review and escalate them when necessary should be established from the beginning. There should be an agreed procedure for escalating the concern to a higher level of authority. Nonetheless, the contract should indicate which party has responsibility for a given decision, and the other party should respect that possibility.

The parties must not allow disagreements and disputes to prevent the execution of the contract. They must commit themselves to the amicable resolution of the inevitable disputes that will arise between them. Contract claims and disputes cannot be avoided entirely, but they can be resolved effectively, fairly, and without rancor and litigation. Experienced parties to a contract will anticipate claims and disputes and recognize that they are not necessarily indicative of incompetence or ill-will, but merely reflect the fact that human foresight, planning, and performance are not perfect. Since it is difficult to avoid the injection of personalities into disputes, disputes should be resolved promptly, before they fester and infect the entire contractual relationship.

Many contractual disagreements stem from ambiguities in the language of contracts. For this purpose, the Procurement Officer should follow commonly accepted rules developed by judges and arbitrators to resolve ambiguities in contract language. These include:

16.9.1. BASIC RULES

Some rules for resolving ambiguous contract language are:

- Respect established order of precedence of documents.
- Apply dictionary definitions to everyday words and a law dictionary for legal terms.
- Apply standard trade or technical definitions to technical words, unless the context or usage indicates a different meaning.
- Define words in accordance with the contract definition.
- Presume that the same word used in different places means the same thing.
- Do not interpret or define contract language in such a way as to render it meaningless or to render the rights and obligations of one party unrealistic.
- Interpret the contract as a whole and, wherever possible, consistently.
- Where the public interest is affected, apply an interpretation that favours the public.
- When conflict occurs between two sections of the contract and no directions to the contrary exist, assume that:
 - Hand-written text takes precedence over typed text.
 - Typed text takes precedence over pre-printed text on a standard form.
 - Specific clauses take precedence over general clauses.

16.9.2. ADDITIONAL RULES

For purposes of resolving ambiguous language, the basic rules apply first. When the basic rules fail to provide an answer, the following additional rules apply:

- The intent of the parties. If the words themselves do not resolve the ambiguity, the Procurement Officer should find evidence as to the intent of both parties when they entered into the contract. For example, evidence might be found in the minutes of the pre-proposal conference. If resolution is not evident, circumstantial evidence should be considered.

- The circumstances. If evidence cannot be found of the intent of the parties, examine the surrounding circumstances. Arbitration proceedings may hold a contracting party to interpretations that it held, or at least did not challenge, prior to the dispute. Inconsistencies with past interpretations by either the Organization or the supplier are examined, e.g., the Organization's interpretation of language in the SOW at a kick off meeting with the supplier after award will prevail over a later, contradictory, the Organization's opinion. Similarly, when the Organization can show that the supplier originally calculated certain work as required by the contract and is now trying to claim that the work is extra, the work will be considered as part of the basic contract and not additional work. If resolution is not evident, risk allocation principles should be considered.
- Ambiguous language in a contract is interpreted against the party who drafted it. For example, an ambiguity in the solicitation's SOW, incorporated into the contract, would be interpreted against the Organization. Likewise, an ambiguity in the supplier's proposed technical approach, incorporated into the contract, would be interpreted against the supplier.
- If the ambiguity is obvious, and the non-drafting party does not request clarification before contract award, then that party would be viewed as having the last opportunity to correct the ambiguity. In which case, the interpretation is against that non-drafting party.

16.9.3. KEYS TO EFFECTIVE DISPUTE RESOLUTION

Before escalating a dispute, consider using the following keys to effective dispute resolution:

- Recognizing that contract documents are not perfect.
- Keeping larger objectives in mind.
- Focusing on the facts.
- Depersonalizing the issues.
- Being willing to make reasonable compromises.

16.9.4. MEDIATION

Mediation involves the intervention of an impartial third party to solve a contract dispute. Although this mechanism may be quicker and cheaper than formal arbitration, NATO does not usually resort to a mediator to solve its contractual disputes.

16.9.5. ESCALATION PROCESS

Contractual disagreements and disputes can be solved using the following escalation process:

- **Stage 1:** End user and/or requisitioner discuss an amicable solution and implemented it promptly. In this stage, the requisitioner and/or end-user are advised to carefully update the contract file stating exactly what was discussed and how the dispute was resolved.
- **Stage 2:** Procurement Officer reviews the situation and enforces the contractual terms.
- **Stage 3:** Arbitration.

At each stage in the escalation process, the Procurement Officer should contact the Organization's Legal Adviser for guidance and approval.

16.9.6. ARBITRATION

Arbitration is the last recourse. Arbitration, like court litigation, is time-consuming and costly. In arbitration, parties agree to submit their dispute to a panel of persons who will apply the same laws that would have been applied by regular courts. However, the arbitrators can use simplified procedures, conduct the arbitration in the language of choice of the parties, and need not be judges or even lawyers.

No one can ever be entirely sure of its result. It rarely results in a truly satisfactory resolution of a dispute, and it sours commercial relationships. For these reasons, it is to be avoided, if possible. One of the goals of the responsible staff members should be to resolve disputes without arbitration whenever possible. Efforts will be made to settle disputes through negotiation, including mediation or conciliation, which sometimes can be considered as a less formal stage before formal arbitration.

The arbitration process is more formal than ordinary negotiations between the parties (who may be represented by attorneys), but it is less formal than court proceedings.

16.9.6.1. NATO STANDARD ARBITRATION CLAUSE

Disputes arising from the performance and/or the interpretation of a contract which are not settled amicably shall be submitted to arbitration as follows:

1. The party instituting the arbitration proceedings shall advise the other party by registered letter, with official notice of delivery, of his 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 NATO, 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 Arbitration Court in The Hague.

2. 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.
3. Any arbitrator must be of the nationality of any one of the member states of NATO and shall be bound by the rules of security in force within NATO.
4. Any person appearing before the Arbitration Tribunal in the capacity of an expert witness shall, if he is of the nationality of one of the member states of NATO, be bound by the rules of security in force within NATO; if he is of another nationality, no NATO classified documents or information shall be communicated to him.
5. An arbitrator who, for any reason whatsoever, ceases to act as an arbitrator, shall be replaced under the procedure laid down in paragraph 1 above.
6. 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.
7. The award 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.

16.10. FINANCIAL MANAGEMENT/PAYMENT

Among the rights of the supplier are the right to be paid in a timely matter for efforts completed, according to the terms of the contract. Among the obligations of the Organization are to make payment to the supplier on a timely basis and not cause undue cost to the supplier by unreasonable management of that financial obligation.

While the responsibility for management of financial aspects of the contract varies among organizations, it includes:

- Process payments due according to the contract and upon certification of requisitioner if required in the contract.
- Review financial implications of contract changes, in terms of original costs/outputs and available budget.
- Liquidate financial securities release of bid bonds, performance bonds, advance payment bonds once the reason for requesting them has become moot.

A payment made to a supplier may be one of the following five types:

- Advance;
- Partial;
- Progress;
- Final;
- Holdback/retention (withholding payment).

16.10.1. ADVANCE PAYMENT

An advance payment is a sum of money paid to the supplier upon signature of the contract, in anticipation of identified early expenses. Usually NATO does not undertake advance payments. However, sometimes advance payments may be necessary for such things as rent, tuition, insurance premiums, and expenses for work performed in particular countries. An advance payment needs to be justified and requires special approval before the Procurement Officer can include it in a contract and if it is agreed to, all reasons therefore need to be documented. Above certain thresholds, suppliers receiving advance payments must provide guarantees, e.g. bank guarantees.

16.10.2. PARTIAL PAYMENT

A partial payment is based on the acceptance of a particular product or service. To process a partial payment, a document must be on file that confirms NATO's acceptance. This confirmation usually is in the form of an invoice or delivery ticket detailing the goods or services and signed by staff member authorized to accept the product or service.

16.10.3. PROGRESS PAYMENT

A progress payment, also referred to as an installment payment, is a form of contract financing made before final work or deliverables are accepted. NATO uses this form of payment for long-term service work that involves an end item, such as a report.

If progress payments are authorized, they should normally be tied to a milestone in contract performance, such as the delivery and acceptance of a draft report for NATO's approval or delivery of an outline of initial findings for review by NATO. Service work for which the service itself is the deliverable (for example, courier service, cleaning services, and so on) would not need progress payments but would use "partial payments for services rendered during the billing period.

16.10.4. FINAL PAYMENT

A final payment is a payment made in acknowledgement /approval of the completion of all contract performance. The payment office may make payment based on the supplier's invoice and its receipt of a receiving report or delivery docket. For on-site services at their own office, requisitioners may play a more active role.

16.10.5. HOLDBACK

Holdback payments are used in works and complex consulting assignments to ensure completion of the contract and in some construction contracts to ensure that the general supplier has paid its subcontractors. The holdback payments are retained by NATO until the supplier has provided proof it has discharged itself of all its obligations under the contract. This contract provision allows NATO to withhold a portion of payment, usually 5 to 10% of each invoice sent by the supplier.

16.11. CONTRACT COMPLETION AND CLOSE OUT

Contract close out activities are generally fairly straightforward, especially for small value contracts and Purchase Orders. However, in complex and high value contracts involving progress payments and/or securities, the Procurement Officer ensures that the contract file is properly closed out.

The close out process ensures that all contractual obligations have been met, and that residual obligations – such as warranties, guarantees and after-sales service and support – are clearly defined in terms of responsibility, liability, procedures and timeframes. Contract close-out occurs once all contractual obligations have been fulfilled by the supplier. It includes the following key steps:

- **Step 1:** Review and confirm appropriate action taken according to contract close-out checklists.

- **Step 2:** Prepare final contract performance report (jointly by requisitioner and Procurement Officer), including lessons learned. Depending on the organization, this report may be purely internal or may be shared with the supplier for their knowledge and comment.
- **Step 3:** Prepare supplier assessment form and forward appropriate action.
- **Step 4:** Issue final acceptance on the basis of the requisitioner's report.
- **Step 5:** Make final settlements.
- **Step 6:** Liquidate/return bonds and/or securities.
- **Step 7:** Record any residual obligations (warranties, etc.) and advise requisitioner of procedures.
- **Step 8:** Close out contract file.

Once the contract has been closed, it shall not be reopened for any cause. If the requisitioner would like additional deliveries of goods and services, a new Procurement Request shall be forwarded to the Procurement Service.

16.11.1. NATO'S FURNISHED EQUIPMENT AND MATERIAL

Prior to closing a contract, assets provided to the supplier by NATO during the contract must be returned to NATO. A report confirming receipt of this material and equipment should be prepared and placed on the contract file.

Unused furnished material provided by NATO must also be returned by the supplier. A report is prepared by the supplier detailing the amount of material consumed during contract execution and the quantity and quality of the material returned to NATO.

A copy of the report should be placed on the contract file.

16.11.2. WARRANTIES

Warranties must be spelled out in the specific terms and conditions of the contract or in NATO's standard contract terms and conditions. Warranties offer buyers remedies when defects are discovered after products and services have been accepted.

The administration of warranties is primarily the responsibility of the requisitioners or end-users. Because end-users often are the first to identify defects in products that are covered under warranty, it is essential that they are familiar with any required procedures.

Commercial warranties provided by manufacturers and services contain strict notification procedures that NATO must follow. If these procedures are not followed, the supplier is not obliged to honour the warranty terms. Consequently, NATO should put in place general steps to follow when problems with accepted items arise. Normally, the advice of NATO Legal Adviser may be required.

When problems with accepted items occur, and before the supplier is notified, the end-user or requisitioner should:

- Identify NATO's specific rights under the warranty.
- Verify that the defect is covered under the warranty and that it applies in the specific incident of failure, by answering these questions:
 - Has NATO officially accepted the product or service?
 - When does the warranty expire, and what does it cover?
 - Does NATO organization have any obligations under the warranty, and have those obligations been met?
 - Do the facts support invoking the warranty?

With the information gathered, NATO can notify the supplier and do the following:

- Obtain the supplier's position and its reasons for taking that position.
- Reach agreement on how and when the warranty will be applied.
- Document the notification.

Regardless of when the defect was discovered, there will be less room for argument if the staff members notify the supplier before the warranty period expires.

16.11.3. LIQUIDATION OF SECURITIES

Performance bonds, holdback payments and guarantees must be returned to their owners once the supplier has fulfilled its contractual obligations. Securities must be liquidated at the time and in the manner described in the contract. In the case of works and capital equipment, the securities are typically held and kept safe by the finance department until they have expired.

16.12. SUPPLIER'S PERFORMANCE REPORT

In addition to the remedies, Procurement Officers document deficiencies on a supplier performance report. Such reports are to be prepared by the requisitioner or the contract manager and then sent to the appropriate Procurement Officer. Supplier performance reports alert NATO to patterns in performance problems and identify suppliers who might present high performance risks.

The Procurement Officer may seek appropriate management review and action when the supplier performance report is particularly negative, according to the policies and procedures of the Organization. Supplier performance reports are completed by the requisitioners/end-users. They are used to document satisfactory performance of suppliers and document the poor performance of the suppliers to eventually eliminate them from the organization's supplier roster. Once completed, a copy should be kept on the contract file and on the supplier's file.

16.13. CLAIMS

A claim is a request from either party for entitlement under the contract that is not being fulfilled. Claims might result from:

- Unforeseen costs.
- Disputes over the interpretation of contract clauses.
- Disputes over what is included within the contract price.
- Breaches of contract.

Any claim (whether issued by NATO or the supplier) should include:

- Full explanation of the problem as well as the causes of the problem.
- The contract clause under which the claim is being submitted.

Claims should only be considered from suppliers that are contracted directly by NATO. Those submitted by a supplier's sub-contractor should be rejected since there is no contract between the sub-contractor and the Organization. The supplier may however wish to make a claim against NATO on the basis of a claim made against it by its subcontractor. Contracts can not be closed out until all claims are settled.

16.14. LESSONS LEARNED

The requisitioner and the Procurement Officer may be expected to complete a lessons learned report. This is good practice and allows the Organization to gather and use information to improve chances of success of future procurement actions. It covers as a minimum the following questions and topics:

- Was the requirement adequately defined?
- Were the evaluation criteria appropriate?
- Was the evaluation method appropriate?
- What kinds of suggestions were brought up by suppliers?
- What problems were encountered?
- Recommendations to avoid similar situations.

16.15. CONTRACT FILE AND DOCUMENTATION

The contract file is opened by the Procurement Officer, and the contract is carefully analysed, taking note of the rights and obligations of each party. Any issues requiring clarification or change of the contract should be fully documented in the file.

The requisitioner will normally have a separate file, with copy of the contract, as part of the project management files.

The following documents are normally part of the contract file:

- Procurement Request;
- Commitment Form;
- Solicitation of offers;
- Evaluation Reports;
- Copy of the winning offer;
- Award documents;
- Original of contract and all amendments;

- All related communication with the supplier (electronic, internal and external correspondence);
- Minutes of meetings;
- Notes of phone conversations;
- Reports;
- Proofs of receipt of goods;
- Proofs of payment;
- Supplier assessment reports;
- Acceptance reports from requisitioner/client.

16.16. STORAGE OF FILES

All procurement contractual files shall be stored by the Procurement Service for a minimum of five years after the date of the closure of the contract.

The following parts of the contractual file to be stored for this period, shall as a minimum be:

- Solicitation Documentation, including list of invitees and list of vendors that submitted a response;
- Documents related to the approval process;
- Contractual Instrument including amendments, if any; and
- Correspondence with the vendor on contractual matters.

Submissions from vendors that were not awarded a contract may be destroyed 5 years after the Contract Award.