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### BI-STRATEGIC COMMAND DIRECTIVE 060-070

### BI-STRATEGIC COMMAND PROCUREMENT DIRECTIVE

REFERENCES: See Annex J.

1. **Status.** This directive supersedes Bi-SCD 060-070 dated 22 December 2004.
2. **Purpose.** The purpose of this directive is to promulgate policy, state roles and responsibilities, and outline procedures for the procurement of goods, services, and construction funded through the NATO Military Budget or from any other international or national funding sources (e.g., NATO Security Investment Programme, third party national source, etc.) for which the procedures outlined in the subject directive will be approved and applied. The directive aims to harmonise procurement approaches, encourage consistency and thus increase efficiency between the two Strategic Commands and subordinate HQs in performing procurement activities. Equally, the governing principles of this directive are applicable to all Morale & Welfare Activities (MWA) and associated Community Service Funds acquisition and concessionaire programmes. However, the execution of such procedures is detailed in other strategic or local documents (reference E).
3. **Applicability.** This directive is applicable to all internationally funded Military Headquarters (HQs) and organizations of Allied Command Operations (ACO); Allied Command Transformation (ACT) and internationally funded activities of the NATO Airborne Early Warning Force (NAEW-F).
4. **Publication Updates.** Updates are authorised when approved by the Chief of Staff (COS) SHAPE and COS SACT.

Bi-SCD 060-070

5. **Proponent.** The proponents for this directive are SHAPE J8 and SACT SAG.

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Bi-SCD 060-070

## TABLE OF CONTENTS

<b>SUBJECT</b>	<b>PAGE</b>	<b>PARA</b>
<b>CHAPTER 1 - GOVERNING PRINCIPLES, ROLES AND RESPONSIBILITIES</b>		
Governing Principles	1	1
Integrity	1	1.a
Competition	1	1.b
Transparency	1	1.c
“Value For Money”/“Best Value”	1	1.d
“Non-discrimination principle”	1	1.e
Professional Proficiency	2	1.f
Accountability	2	1.g
Uniformity	2	1.h
Responsiveness	2	1.i
Roles and Responsibilities	2	2
Commanders	2	2.a
Budget Holders	2	2.b
Financial Controllers (FC)	2	2.c
Deputy Chiefs of Staff / Director Level Commanders	2	2.d
Chiefs of Divisions	2	2.e
Legal Advisors	2	2.f
Head of Contracts in ACO and ACT (ACO/ACT)	3	2.g
Chief of Purchasing & Contracting (P&C) Branch	3	2.h
Contracting Officer	3	2.i
Contracting Specialist/Buyer	6	2.j
Ordering Officer (formerly called Calling Officer)	7	2.k
Originators	7	2.l
Authorised Requestors (ARs)	7	2.m
Budget Officers	8	2.n
Fund Managers	8	2.o
Fiscal Officers	8	2.p
Supply Officer/Property Accounting Officer (PAO)/Receiving Officer	8	2.q
Contracting Officer’s Technical Representative	9	2.r
Quality Assurance Evaluator (QAE)	9	2.s
<b>CHAPTER 2 - PROCUREMENT POLICIES</b>		
Authority	11	1
Improper Business Practices and Conflicts of Interest	11	2
Competition Requirements	12	3
Deviations from Normal Procurement Procedures	14	4
Market Research	15	5
Determination of Contractor Eligibility	15	6
Determination of Contractor Responsibility	16	7

Bi-SCD 060-070

Exchanges with Industry	17	8
Pre-solicitation Conferences	17	9
Contracting Risk Management	17	10
Price Conditions and Contract Types	18	11
Period of Contract Award	18	12
Patent, Data, Copy Rights	19	13
Language	19	14
Publicizing NATO Requirements	20	15
Payments	20	16
Pre-award disputes and pre-award Protests	21	17
Unauthorised Commitments and Ratification	21	18
Exemption from VAT, Customs and Excises' Taxes and Duties	22	19
NATO Agencies (NSPA, NCIA)	23	20
Commercial Sourcing/Outsourcing	23	21
Reimbursable Procurement	24	22
Personal Services and Independent Contractors	25	23
Collaborative Acquisition	26	24
E-Commerce	26	25

### **CHAPTER 3 - PRE-AWARD PROCEDURES**

Acquisition Planning	28	1
Objective	28	1.a
Acquisition Plan (AP)	29	1.b
Contract Strategy	30	2
Objective	30	2.a
Requirement Specification	30	2.b
Identifying NATO's pricing Objectives	31	2.c
Identifying Price-Related Evaluation Factors	32	2.d
Non-Price Evaluation Factors	32	2.e
Types of Contracts	33	2.f
Security Assistance and Cross-Servicing Arrangements	40	2.g
Factors in Selecting Contract Types	41	2.h
Simplified Acquisition Procedures	42	2.i
Source Selection Processes and Techniques	43	2.j

### **CHAPTER 4 - CONTRACT EXECUTION AND FORMATION**

Objective	47	1
The Legal Effects of Contract Formation	47	2
Uniform Contract Format	47	3
Purchase Orders (POs)	49	4
Blanket Purchase Agreements (BPAs)	50	5
Sealed Bidding (Invitation For Bids - IFB)	51	6
Competitive Proposals (Requests For Proposals - RFPs)	53	7
Contracting Processing and Approval	58	8

Bi-SCD 060-070

## **CHAPTER 5 - CONTRACT MANAGEMENT**

Objective	60	1
The Effect of Contract Provisions and Applicable Law on Contract Management	60	2
Contract Distribution	60	3
Contract Reporting	61	4
Quality Assurance (QA)	61	5
Inspection/Acceptance	62	6
Warranties	63	7
Bonds and Insurance	63	8
Invoices	65	9
Payment for Goods and Services	65	10
Property Administration	67	11
Contract Modifications	67	12
Options and Multi-Year Contracting	68	13
Novation Agreement	69	14
Suspension of Work	71	15
Stop-Work Orders	71	16
Liquidated Damages	72	17
Contractual Disputes	72	18
Default	72	19
Termination for Default	74	20
Termination For Convenience	76	21
Past Performance/Performance Reporting	80	22
Contractor Suspension/Debarment	80	23
Contract File Maintenance	80	24
Contract Closeout	80	25
File Documentation Retention	81	26

## **CHAPTER 6 - ACQUISITION SUPPORT OF ALLIED OPERATIONS AND MISSIONS**

Context	82	1
Governing principles	83	2
Governing assumptions	83	3
Scope of support activities	84	4
Funding categories	85	5
Requirement definition process	87	6
Acquisition planning and policy	90	7
Contracting officer certification	90	8
In-theatre contracting structure	90	9
Theatre head of contracts	90	10
Theatre Allied Contracting Office (TACO) organisation and responsibilities	91	11
Regional Allied Contracting Office (RACO)	92	12
Mobile Allied Contracting Offices (MACOs)	92	13
Joint Logistic Support Group (JLSG)	92	14

Bi-SCD 060-070

Rear Area Support/Reach Back	93	15
International Agreements	93	16
Contract Categories	94	17
Use of NATO Agencies	95	18
Code of Conduct Purchasing and Contracting Officials	98	19

ANNEXES:

- A. Definitions and Abbreviations.
- B. Requests for Deviations from Normal Methods of Procurement.
- C. Procedures for Invitation for International Bidding/Proposals.
- D. Composition of a Contract Award Committee (CAC).
- E. Terms of Reference of Solicitation Review Board (SRB).
- F. Creating a Statement of Work (SoW).
- G. Contract File Maintenance.
- H. Contracting Officer – Professional Certification Programme.
- I. Comparison of Major Types of “Commercial” Contracts.
- J. References.

## CHAPTER 1 - GOVERNING PRINCIPLES, ROLES AND RESPONSIBILITIES

1-1. **Governing Principles.** In order to properly support the NATO mission, and in view of the significant changes in the commercial contracting methods, more contemporary procurement practices must be adopted. Therefore, selected contracting principles are underscored so as to develop a professional procurement framework, better serve our customers and safeguard ACO/ACT HQs interests. The following pillars of procurement should not be viewed as “all-inclusive” but rather as a good starting point:

a. **Integrity.** Throughout all phases of the procurement process, the highest standards of integrity will be maintained. As contracting 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-contractor relationships. Procurement must be conducted with the utmost professionalism and be in complete accord with current regulations.

b. **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 a Contracting Officer's responsibility to ensure statements of work or specifications are not biased toward a specific product, manufacturer, or service provider. The Contracting Officer 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 contracting processes that put a premium on seeking/achieving value for money, and avoid awarding exclusive rights to contractors, unless clearly justified.

c. **Transparency.** 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.

d. **“Value For Money”/“Best Value”.** Contracting Officers shall ensure that they obtain “value for money” by procuring goods and services from the most economical governmental or commercial sources that are eligible and compliant. When applicable and authorised by the appropriate authority (see Chapter 2), “best value” contracting practices may be adopted to establish a more balanced award decision i.e. one that accounts for risks and recognises trade-offs between costs, past performance, experience, and other non-cost factors.

e. **Non-discrimination principle.** Bidders and contractors should be treated objectively and without discrimination, including protection of commercial confidentiality where required. Also, Contracting Officers shall ensure that all bidders are given the same opportunities and that the bids of all eligible competitors are treated in the same way. It is also incumbent upon Contracting Officers to cultivate fair business dealings during all phases of contracting.

Bi-SCD 060-070

f. **Professional Proficiency.** Purchasing & Contracting (P&C) Branch Staff must be qualified to perform their assigned functions and remain abreast of ever-evolving commercial practices. Contracting Officers shall use their professional judgment and common sense in executing contracting activities. Further, Organisational Management through Financial Controllers shall ensure that P&C Branch Staff initially possess requisite contracting education/experience, and then provide opportunities for continued professional development.

g. **Accountability.** Contracting Officers/Specialists 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.

h. **Uniformity.** The ACO/ACT Head of Contracts shall ensure that the acquisition approaches across their respective functional areas are standardized to the maximum extent possible. Where applicable, the ACO/ACT Head of Contracts shall provide additional procurement guidance through the issue of policy letters. Conceptually, this will promote greater efficiency by standardizing procurements policies and procedures across the NATO Military Command Structure. Through consistency, P&C Branches will enable suppliers to better understand NATO contracting and encourage them to respond more efficiently to NATO demands.

i. **Responsiveness.** Contracting Officers/Specialists shall serve as business advisors and must be as proactive as possible in satisfying the needs of the mission. The employment of appropriate 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 and maximize value for money. In order to achieve these goals, P&C Branches should be provided with proper tools and resources to perform their function.

1-2. **Roles and Responsibilities.** Dependent upon the complexity of the issue, procurement activities frequently involve a myriad of functional experts. In order to ensure efficient coordination, it is important to clearly understand the division of roles and responsibilities. The following list is not all-inclusive but aims to be a strong representative sampling:

a. **Commanders.** The ACO/ACT HQs Commander, or the delegated authorities (e.g., Chief of Staff or Financial Controller), will appoint and warrant Contracting Officers. A thorough review of education and professional records shall be performed by the Chief P&C Branch and Financial Controller prior to issuing any recommendation regarding Contracting Officer appointment. Contracting Officers shall only be recommended for appointment when they meet all the relevant criteria, to include past contracting experience and education. Prior to the appointment of the Chief P&C Branch and associated contracting warrant, it shall be coordinated with the respective SC Head of Contracts.

Bi-SCD 060-070

- b. **Budget Holders.** The NATO entity with the authority to plan and execute a budget approved by the Council.
- c. **Financial Controllers (FC).** The NATO Financial Regulations (NFR) and their Financial Rules and Procedures (FRP) thoroughly outline FC authorities and responsibilities as applicable to the contracting activities. In terms of procurement activities, FCs ultimately exercise financial control of contracts funded through the NATO Common Funding Programmes and Budgets. Notwithstanding, the FC shall refrain from participation in the technical or contractual aspects of contract selection or post-award administration to ensure his/her ability to exercise the independent fiduciary responsibility of the office of FC.
- d. **Deputy Chiefs of Staff / Director Level Commanders.** In organizations where an intermediate level of command exists between Chiefs of Divisions and the Command Group, they remain ultimately accountable to ensure their subordinates assume the responsibilities of an informed customer. When a requirement is provided by a contractor directly or through an agency, the responsibility to ensure the inspection and acceptance of appropriate goods and/or services are received in accordance with the terms and conditions of the contract, remains with the requirement holder/customer. Moreover, Commanders must ensure that their staff does not commit the organization legally or financially without the appropriate support of contracting staff.
- e. **Chiefs of Divisions.** The Chiefs of Divisions or other organisational elements (e.g., Principal Budget Holders) will nominate Fund Managers, Ordering Officers, and Authorised Requesters, within their assigned areas of resource responsibility. Chiefs of Divisions are responsible for forecasting the supplies or services required for the fulfilment of their mission, and the submission of these estimates via the Fund Manager for inclusion in the ACO/ACT HQs budgets. They are responsible for the validation of requisitions originating from their Divisions.
- f. **Legal Advisors.** Legal Advisors provide assistance to Contracting Officers. Since each contract is unique and legally stands on its own, Contracting Officers need to separately assess individual procurement activities, and weigh associated risks. Often, it will be necessary for Contracting Officers to seek the advice of qualified Legal Advisors before acting on a wide range of specific contracting activities (e.g., contract award, settlement of contract disputes/claims, warranties, liability insurance, local laws, etc.). In general, neither ACO/ACT has established mandatory monetary thresholds above which legal review shall be sought. However when unusual, complex and sensitive matters are at hand, Legal Advisor participation in the Solicitation Review Board (SRB) and Contract Award Committee (CAC) will be by default, unless the Legal Advisor determines otherwise. Notwithstanding, the Contracting Officer shall seek legal counsel, via the ACO/ACT Head of Contracts and/or the Financial Controller at any time they deem a legal opinion is justified.
- g. **Head of Contracts in ACO and ACT (ACO/ACT).** There is a single Head of Contracts for ACO (ACO HoC) and a Head of Contracts for ACT (ACT HoC). The Head of Contracts in ACO and ACT is responsible for developing, coordinating and promulgating procurement policy, procedures and best practice for all aforementioned

Bi-SCD 060-070

areas to which this directive applies. In cases where added clarity is required, a Head of Contracts may individually or jointly issue policy letters (Bi-SC) that expand on topics covered in this directive. The Head of Contracts is also responsible for the introduction of standards (e.g., in personnel hiring and training, including attendance on selection boards), and promoting “best practice” contract solutions to meet the needs of a dynamic operational environment. Therefore, it is a prerequisite that subordinate commands/HQs promptly coordinate such issues with ACO/ACT. Additionally, ACO/ACT Head of Contracts promote economies of scale, whenever practicable and feasible, through centralized procurement sourcing. Respective Heads of Contract are responsible for the functional oversight and each Command may establish Staff Assistance Programmes to ensure functional compliance and exercise effective fiduciary oversight. Further, these two individuals serve as key advisor to the two SC FCs and higher authorities on matters of contracts and general acquisition. In order to preserve the functional segregation of the controller and acquisition responsibilities, the Heads of Contracts will Chair the Solicitation Review Boards as it is the first stage to ensure full and fair competition is respected during the initiation of a competitive acquisition.

h. **Chief of Purchasing & Contracting (P&C) Branch.** Chiefs P&C Branch/Section execute and manage the daily contracting activities within their respective HQs. For HQ SHAPE and HQ ACT, the respective ACO HoC and ACT HoC serve as the Chief P&C (dual hatted). The ACO/ACT subordinate commands also appoint a Chief P&C at the Branch or Section level. As such, they are responsible for all procurement actions taken by their HQs, monitor related staff and system performance, and ensure that the highest quality of service is provided to their customers. Also, they follow-up on audit reports to ensure the correction of deficiencies; provide contracting support for operations and exercises; and may, in coordination with the FC, assist in the preparation of contracting appendices to the Financial Annexes of specific OPLANs. Chief P&C Officers shall provide an annual procurement integrity briefing to their staff and customers.

i. **Contracting Officer.** This individual is a skilled contracting professional duly appointed Contracting Officer who has in accordance with FRP XVIII.b.(1) (4) for ACO/ACT HQs an “exclusive responsibility for the procurement of goods and services on behalf of the NATO body”. In this context, it is important that selection criteria, appointment, authority/responsibilities, and termination provisions are well understood.

(1) **Selection Criteria.** In selecting a Contracting Officer and assigning specific warrant levels, the appointing officials, e.g., Chief P&C Branch and HQs FC, shall consider the following minimum criteria:

- (a) Relevant experience and training in NATO or national contracting, finance, purchasing or procurement.
- (b) Education or special training in business administration, law, finance or related fields.

(c) Business acumen, judgment, character and integrity. Assessment of the amount of appropriate education and experience will determine the warrant levels recommended by the appointing officials.

(2) **Appointment.** Within peacetime ACO/ACT HQs, Chief P&C Branch shall nominate Contracting Officers, gain FC endorsement, and seek a formal Certificate of Appointment by the NATO Commander or the Chief of Staff/Financial Controller where so delegated. This written appointment serves as a Contracting Officer's warrant and explicit authority to enter into contractual obligations and commercial legal liabilities on behalf of the HQs. Chief P&C Branch shall, on behalf of the appointing official, maintain files containing copies of all appointments that have not been terminated. Copies of warrants will be posted on the ACO Contract Information Hub.

(3) **Authority.** The Contracting Officer has the authority to enter into, administer, or terminate contracts and make related determinations and findings. The Contracting Officer may bind the legal entity of ACO/ACT HQs to the extent of the authority delegated by his/her warrant. A Contracting Officer's warrant contains clear and written instructions regarding the limits of the authority. Information on the limits of the Contracting Officers' authority shall be readily available upon request to the public and other NATO personnel. No contract shall be entered into unless the Contracting Officer ensures that all requirements of law, regulations, and all other applicable procedures, including clearances and approvals, have been met. When it is in the best interest of ACO/ACT HQs as declared by the responsible FC, the Contracting Officer, within the limits of the appointment, may contract in the name of the ACO/ACT HQs for other authorised third parties (i.e., Morale and Welfare Activities (MWA), National Support Units, NATO Nations, etc.). In such cases, the Contracting Officer and assigned Contracting Specialist shall normally administer such contracts to their final completion.

(4) **Responsibilities.** The Contracting Officer is responsible for ensuring effective contracting, compliance with procurement terms and conditions, and safeguarding the interests of ACO/ACT HQs in all its contractual relationships. This "cradle to grave" philosophy begins with procurement planning and runs throughout the contract management phase and ends with contract closeout. In order to perform these responsibilities, the Contracting Officer must be allowed wide latitude to exercise business judgment. Additionally, a Contracting Officer shall:

(a) Ensure that the requirements under the Authority paragraph above have been met, and the Fiscal Officer and/or FC have approved that commitment.

(b) Ensure that contractors receive impartial, fair, and equitable treatment including the proper commercial-in-confidence handling of commercial bids.

Bi-SCD 060-070

(c) Request and consider the advice of specialists in audit, law, engineering, transportation, and any other appropriate field.

(d) Review requirements/technical specifications as outlined in a Statement of Work (SOW), Performance Work Statement (PWS), Statement Of Objectives (SOO), etc. to ensure clarity, consistency, competitive fairness, etc. before approving as part of a solicitation package.

(e) Draft and negotiate contract terms & conditions; ensure equity in the solicitation and award process; properly manage contracts once awarded.

(5) **Termination.** Termination of a Contracting Officer's appointment will be by letter, unless the Certificate of Appointment contains other provisions for automatic termination. Terminations may be for reasons such as reassignment, termination of employment, or unsatisfactory performance or other appropriate reason as determined by the warranting authority. Unsatisfactory performance for NATO Civilian Contracting Officers is dealt with under the relevant NATO Civilian Personnel Regulations (NCPR) whereas for military personnel, discipline is a national function and will be handled by the national authorities. The respective Heads of Contracts will be informed of any termination for inappropriate conduct or unsatisfactory performance. HQs will ensure that once terminated, the ACO Contract Information Hub is maintained current.

j. **Contracting Specialist/Buyer.** A Contracting Specialist/Buyer is a skilled contracting professional who (without explicit warrant authority) is charged with executing a wide range of critical "cradle to grave" procurement activities under the supervision of an assigned Contracting Officer. Within specific limits set by Contracting Officer, work of Contracting Specialists/Buyers may include but are not limited to:

(1) Verifying the eligibility of third parties for NATO procurement support, reviewing requisitions and determining best means for satisfying requirements.

(2) Conducting market surveys, reviewing/editing the wording of technical specifications to be used in solicitations, establishing evaluation criteria for source selections, evaluating proposals, and drafting and negotiating contract terms.

(3) Placing orders under existing contracts and, if warranted, executing contracts within the warrant authority.

(4) Monitoring contractor performance, keeping track of past performance records, coordinating the invoice certification process, and entering all contracting related information into the financial information system.

Also, just as with the appointed Contracting Officer, the Contracting Specialist shall have broad-based:

- (5) Relevant experience and training in NATO or national contracting, financial, purchasing, or related fields.
  - (6) Education or special training in business administration, law, finance or related fields.
  - (7) Business acumen, judgment, character and integrity.
- k. **Ordering Officer (formerly called Calling Officer).** An Ordering Officer, by name or position, is appointed in writing by a Contracting Officer. The appointment will specify both the Ordering Officer financial and contractual limits with regard to previously awarded agreements or contractual instruments. In order to avoid unauthorised commitments, suppliers must be officially notified of the identity and contact details of the Ordering Officer responsible for placing orders. The Contracting Officer shall annually review the continuing validity of the Ordering Officer responsibility.
- l. **Originators.** Originators are those individuals who identify a requirement that must be satisfied through warehouse issue or contractual action. Originators will generally be responsible for developing technical specifications, and justifying the requirement funding. This information, in turn, will typically be provided to the Authorised Requestor.
- m. **Authorised Requestors (ARs).** Authorised Requestors will, on behalf of their Division/Organisational Chief, validate and endorse the originator request and submit the requests to the Funds Manager. ARs are responsible for tracking the status of their requirement through the procurement cycle. Although a segregation of duties should be secured, an AR's duty can be combined with other functions such as: Originator, Fund Manager, Memorandum Receipt Account Holder (MRAH), Project Officer, etc. ARs are responsible for developing technical specifications that will be clear and complete to enable the Contracting Officer to conduct solicitations and maximise competition. ARs are equally requested to develop adequate justification of the operational necessity for the requirements, and often certify receipt and acceptance of services ordered on their behalf. The ARs hold the final technical responsibility on certifying the Minimum Military Requirement (MMR).
- n. **Budget Officers.** Budget officers are responsible to the Financial Controller for the annual budget cycle including the allocation of Budget Committee approved budgets to the requirement holders. Fund managers can be appointed as a budget representative to whom the funding is assigned for the execution of the requirements. Accordingly, Budget Officers are responsible for the training of fund managers with regard to the authorized use the funds allocated based on the Committee's overall approval and approved by the BC. Ultimately, the budget officer must ensure that sufficient funds are available for agreed tasks against which contracts will be required and executed through purchasing and contracting.
- o. **Fund Managers.** Fund Managers are responsible to their respective Division Chiefs for the management of specific allocations of funds from within the HQs' Budget.

Bi-SCD 060-070

They advise their Chief of Division on funding and related requisitions. Ultimately, they validate requirements submitted by authorised requestors/originators and prioritise/de-conflict requirements. For official accounting purposes, Fund Managers shall manage their funds through the approved financial information system. The Contracting Officer will treat all incoming requisitions from a Fund Manager as a formal, valid and approved requisition for which the process of acquisition can immediately start.

p. **Fiscal Officers.** Fiscal Officers are responsible to the FC for the administration of the fiscal accounts in accordance with NATO financial rules and procedures. The Fiscal Officer is responsible to the FC for ensuring that contractual commitments are within the credits and contractual authority available for the purposes concerned in the approved budget. The Fiscal Officer is also responsible to the FC for approving commitments of credits up to his/her delegated authority and authorising all payments to be made in execution of each approved commitment.

q. **Supply Officer/Property Accounting Officer (PAO)/Receiving Officer.** Each position has distinct functions, but from the Contracting Officer's perspective they ultimately receive, inspect/test, accept (or reject), and account for international accountable property. This acceptance of supplies and/or services on behalf of ACO/ACT HQs, shall be properly and efficiently communicated to the responsible Contracting Officer, e.g., via a Material Inspection and Receiving Report, before related payment may be made to the Supplier. Non-accountable or consumable supplies purchased by means of a purchase card may be subject to the local property accounting requirements but have no inventory/asset value with regard to financial reporting.

r. **Contracting Officer's Technical Representative (COTR).** COTRs are qualified individuals, generally appointed by the technical/receiving organisation and, authorised in writing by the Contracting Officer to serve as their authorised representative, and to perform specific technical or administrative functions until their appointment is terminated by the Contracting Officer. A COTR:

- (1) Must be qualified by training and experience commensurate with the responsibility to be delegated.
- (2) While authorised to make direct 'without commitment' engagement with the vendor, will not have delegated authority to make any commitments or changes that affect price, quality, quantity, delivery, scope or other terms and conditions of the contract. (In this context, a 'without commitment' engagement is one in which the COTR does not commit the organization to a change in the contract. It is strongly recommended that the term 'without commitment' is inserted in the subject line of any correspondence with a vendor, and is specifically mentioned at the outset of any discussions with a vendor).
- (3) Will not interpret the contract and should promptly refer any potential claim or inquiry to the Contracting Officer.

Bi-SCD 060-070

(4) Must be designated in writing by the Contracting Officer, with notice of the appointment communicated to the contractor. This designation will specify the extent of the COR's authority to act on behalf of the Contracting Officer, identifying the limitations on the COTR's authority, highlighting the period covered by the designation, explicitly indicating whether or not the authority can be further delegated and stating the extent to which the COTR may be personally liable for unauthorised acts.

(5) Must maintain a file for each contract assigned. As a minimum, this file shall contain a copy of the Contracting Officer's letter of appointment and other documentation describing the COTR's duties and responsibilities; and documentation of actions taken in accordance with the delegation of authority.

s. **Quality Assurance Evaluator (QAE).** The QAE must be involved early in the procurement process and the development of a quality assurance plan. Upon the award of a contract, the QAE must be charged with monitoring the daily performance of contractors. QAEs are generally appointed by the technical/receiving organisation and assigned to the contract by the Contracting Officer. For consistency in surveying contractor activities, the QAE should have an established quality assurance surveillance plan recognizing the responsibility of the contractor to carry out quality control obligations and which contains measurable inspection and acceptance criteria corresponding to the performance standards contained in the Statement Of Work (SOW) or Performance Work Statement (PWS). QAEs must ensure quality assurance surveillance plans focus on the level of performance required by the SOW, rather than the methodology used by the contractor to achieve that level of performance. QAE plays an important role in validating that the quality of service provided is acceptable and received within the SOW and PWS timeline and standards. This accounting serves as a prerequisite for paying for distinct services rendered by contractors. Depending on the complexity of contracts, COTR may also perform QAE-equivalent duties.

Bi-SCD 060-070

## CHAPTER 2 - PROCUREMENT POLICIES

2-1. **Authority.** The authority and responsibility to contract for authorised supplies and services are vested with Commanders of ACO/ACT, financed wholly or partly, from NATO common funded budgets. As such, Commanders, in consultation and agreement with ACO/ACT Financial Controllers (FC) appoint Contracting Officers and delegate to them clear authority to manage contracting functions for the NATO Body. As this authority is exclusive to Contracting Officers, they are fully responsible for contracts issued under their signature. Only duly appointed (i.e., warranted) Contracting Officers, or those individuals specifically authorised by them in writing, may execute contracting activities legally obligating ACO/ACT.

2-2. **Improper Business Practices and Conflicts of Interest.** Contracting Officers and Contracting Specialists are 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 should be impartial and objective when executing activities and resolving contracting matters. Additionally, personnel acting as "NATO procurement officials", at all levels of the acquisition process (e.g., Ordering Officers, COTRs, QAEs, etc.) are expected to know, and strictly abide by, limitations explicitly set in the applicable NATO regulations and standards of conduct (References F and M). As a minimum, the following rules shall be observed by ACO/ACT contracting officials:

- a. Procurement officials involved in the procurement of NATO funded goods and services shall exclude themselves from specific contract actions if there is a real or perceived incompatibility between their private interests and their duties. In cases where this is not possible due to the lack of back-up personnel, the real or apparent conflict of interest shall be reported to the FC who shall make a decision regarding the individual's role and responsibility.
- b. Procurement officials shall not divulge business confidential or proprietary information, or take any actions that would result in compromise of the integrity of the procurement process.
- c. In order to guarantee the fairness principle, Contractors will not be permitted to participate in the development of contract requirements if they intend to compete for that contract award. To this effect the bidding procedure shall incorporate an appropriate exclusion clause.
- d. Staff cannot use or permit the use of a NATO title of authority in a manner to coerce or induce anybody, including a contractor, to provide a benefit to themselves or other persons with whom they are affiliated.
- e. Although past performance should be documented, public endorsement of a supplier for commercial purpose (see definition in Annex A) by ACO/ACT Staff is not permitted.
- f. ACO/ACT should organise annual standard of conduct training sessions for the P&C Branch and NATO procurement officials. It is also incumbent upon the

Bi-SCD 060-070

Commander and FC to conduct refresher training for their staff when deemed necessary.

## 2-3. **Competition Requirements**

a. For executing procurement activities within the NATO Body, the overarching goal is to maximize competition to the greatest extent practicable amongst eligible sources. There may be circumstances which limit the competition and eligible sources which result in:

- (1) Contracts awarded using sole source or limited competitive bidding procedures.
- (2) Contract modifications, including the exercise of priced options that were evaluated as part of the initial competition, that are within the scope and under the terms of an existing contract.
- (3) Orders placed under indefinite-quantity contracts that were entered into pursuant to this part when the contract was previously awarded under a competitive process, or a deviation from normal procurement practices was authorised.
- (4) Orders placed against task order and delivery order contracts, or similar open-ended contractual arrangements.

b. The competitive procedures available for use in fulfilling the requirement are as follows:

- (1) Simplified procedures such as open bids or quotations for acquisitions lower than level 2xB of the NATO Established Financial Limit (EFL).
- (2) Sealed bids i.e., Invitation For Bid (IFB).
- (3) Competitive proposals i.e., Request For Proposals (RFP), in cases where sealed bids are not appropriate and/or the use of this method of procurement has been authorised by the relevant authority as indicated in paragraph 2.4.

c. The normal procurement methods within NATO for all routine and basic acquisitions of commercial goods and services shall be either simplified procedures or sealed bidding. However, the Contracting Officer should be made aware that the award of a contract to a supplier based on the lowest evaluated price alone can be a false economy if there is subsequent default, late deliveries, or other unsatisfactory performance resulting in additional contractual or administrative costs. In cases where the use of a lowest compliant bid approach i.e., sealed bidding, does not fully guarantee that the selected bid will provide value for money, Contracting Officers shall request prior authorisation to deviate from sealed bidding procedures and conduct competitive negotiations. Deviation procedures are described in paragraph 2.4 and supplemented by Annex B to this Directive.

Bi-SCD 060-070

d. 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 normal competitive sourcing practices, Contracting Officers shall adhere to the following minimum sourcing criteria:

<b>Established Financial Limits (EFL)</b>	<b>Minimum Competition Requirements</b>
<b>510% of LEVEL A OF THE EFL</b>	Petty Cash/Advance Accounts, or Purchase Card Programme may be used as a payment mechanism.
<b>Up to LEVEL B OF THE EFL</b>	Solicitation of offers from an eligible <b>Single</b> Qualified Commercial or NATO-member Governmental Source.
<b>Up to LEVEL 2xB OF THE EFL</b>	Solicitation of offers from at least <b>Three</b> Qualified eligible Commercial <i>and/or</i> NATO-member Governmental Sources.
<b>Up to LEVEL D OF THE EFL</b>	Solicitation of offers from at least <b>Five</b> Qualified eligible Commercial <i>and/or</i> NATO-member Governmental Sources.
<b>In excess of LEVEL D OF THE EFL</b>	Contracting Officers will follow international competitive bidding procedures outlined in Annex C of this Directive.

e. Up to level 2xB of the EFL, a Contracting Officer may employ “open solicitation” approaches, whereby contractor pricing information such as published vendor catalogue prices may be considered a priced offer and may be readily obtained e.g., over the phone, via catalogue, fax or electronically.

f. All contracts valued in excess of level 2xB of the EFL will be awarded by the Contract Awards Committee (CAC) in accordance with the NFR Article 20 and FRP XX a through XX c and in accordance with the Terms of Reference laid out in Annex D.

g. All contracts valued in excess to 2 x EFL E shall be subject to a local Solicitation Review Board (SRB) and all contracts valued in excess of 5 x EFL E shall be subject to a SRB at the SC HQ level. Values will be determined on the overall value i.e. base year plus options. Detailed Terms of Reference governing the SRBs are outlined in Annex E.

Bi-SCD 060-070

h. Contracting Officers may elect to invite more than the minimum required number of bidders or may elect to utilise competition for contracts for amounts less than the minimum bid criteria detailed above.

#### 2-4. **Deviations from Normal Procurement Procedures**

a. Cases may occur in which the interests of the NATO Body are not best served by routine application of procedural regulations as detailed per this directive. In such well-justified cases, Contracting Officers may request FC's authorisation to deviate from minimum competition requirements or other established procedures upon the requestor's justification.

b. All requests for exceptions/departures must be fully justified, and contract files must retain documentation of such justification. All such requests must be decided on a case-by-case basis by the approving authority. Deviations may be granted in the interest of security, operational urgency, standardization, and other practical considerations. Deviation requests should be based on the inability for the ACO/ACT HQs to reasonably comply with competitive requirements. Also, urgency caused through lack of timely action is not a valid basis for deviating from minimum sourcing requirements, and not maximizing competition amongst eligible sources.

c. The level to which deviation authority must be sought is based on the estimated accumulated value of a contract. Unless precluded by applicable regulations, HQs' FCs may, within the limits of their appointment (i.e., up to level D of the EFL and up to level E of the EFL for ACO/ACT FCs), authorise deviations from procurement rules and procedures when necessary to meet the specific needs and requirements of each ACO/ACT HQ or programme.

d. Approval of requests for departures exceeding FC's delegated authority shall be submitted to the ACO/ACT FC for approval. All departures from standard procedures for procurements in excess of level E of the EFL will be submitted, via the ACO/ACT FC, to the NATO Budget Committee (BC) for decision. Wherever such departures are known to be necessary, the requirement for departure should be detailed in the budget document for that year, and advance approval should be sought in the context of the budget screening/approval process. When the NATO Procurement Authority is an Agency, a request for deviation from agreed procedures shall only be submitted to the BC upon the Budget Holders concurrence in accordance with BC-DS(2012)0061 dated 19 December 2012, Military Budget procurement guidance, paragraph 8.

e. Wherever possible, limited bidding/competition should be pursued before resorting to sole source procurements.

2-5. **Market Research.** Contracting Officers should maximize the use of standard commercial products as well as the application of standard commercial terms and conditions. In order to be successful here, it is important for P&C Branch Staff to perform market surveys to determine the extent of competition. In determining the feasibility of using commercial items/sources, Contracting Officers should, for example:

Bi-SCD 060-070

- a. Employ market survey techniques to identify alternative sources.
- b. Base market research decisions on fairness, competition, and ethics.
- c. Liaise with interested vendors to determine the "best" that industry can offer.
- d. Identify all commercial options up-front and not leave the choice up to end-users or contractors.
- e. Identify suitable performance standards.
- f. Identify standards or industry normal terms and conditions for the specific type requirement.

**2-6. Determination of Contractor Eligibility**

a. In reviewing eligibility, Contracting Officers should initially restrict their pool of eligible sources to governmental or commercial entities that originate or are chartered/incorporated within NATO-member nations that provide the funding for the ACO/ACT HQs and/or specific requirement. As a general rule, Contracting Officers will allow all eligible, interested, and responsible companies to compete for NATO business.

b. When compliant supplies or services are not available from supporting NATO-member governments and companies, Contracting Officers must request authorisation of departure from the normal method of procurement in accordance with paragraph 2.4. With proper authorisation, the following sources should be considered in order of precedence:

- (1) Commercial or governmental sources from non-funding NATO nations.
- (2) Commercial sources from nations participating in the Partnership for Peace (PfP) programme.
- (3) Commercial sources from non-NATO, non-Partner nations upon whose territory NATO HQs or forces are deployed.
- (4) Commercial sources from other non-NATO, non-Partner nations.

**2-7. Determination of Contractor Responsibility**

a. Pre-award surveys should be conducted in order to assess whether eligible sources of supplies or services have historically been responsible and responsive. Governmental or commercially available financial reports serve as a good starting point. The purpose for conducting such surveys is to ensure that:

- (1) Purchases are made from, and contracts are only awarded to, responsible prospective contractors.

Bi-SCD 060-070

- (2) No purchase or award shall be made unless the Contracting Officer makes an affirmative determination of responsibility.
- b. To be determined responsible, a prospective contractor must, at least:
- (1) Have adequate financial resources to perform the contract, or the ability to obtain them.
  - (2) Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and business commitments.
  - (3) Have a satisfactory performance record.
  - (4) Have a satisfactory record of integrity and business ethics including satisfactory compliance with applicable laws including tax laws, labour and employment laws, environmental laws, antitrust laws, and consumer protection laws.
- c. Generally, prospective prime contractors are responsible for determining the responsibility of their prospective subcontractors. In such instances, the contractual relationship will be established with the prospective prime contractor exclusively. With that said, determinations of prospective subcontractor responsibility may also affect NATO's cost, performance and timeline. A prospective contractor may be required to provide written evidence of a proposed subcontractor's responsibility.
- d. If NATO security clearances (facilities and/or personnel) are required for performance under a contract, eligibility of firms and/or personnel must be positively confirmed at least to the minimum level specified by Contracting Officers. This process typically involves confirmation by NATO Security Officers, national security authorities and/or NATO national delegations. Vendors may provisionally participate in a bidding process pending final receipt of the national clearances. However, all clearances required to execute the contract should be in-place prior to contract award or as instructed by the Contracting Officer in the bidding documentation.
- e. Contracting Officers should maintain a list of qualified potential bidders for the various supplies and services, which may be required by the ACO/ACT HQs. Alternatively, they may arrange access to vendor lists of other NATO organizations/agencies.

## 2-8. Exchanges with Industry

- a. Exchanges of information among all interested parties, from the earliest identification of a requirement through receipt of proposals, are encouraged to better establish an appropriate contract type. Interested parties include potential bidders, end-users, NATO contracting and supporting personnel, and others involved in the conduct or outcome of the acquisition. Such exchanges can improve understanding of the ACO/ACT HQs requirements, as well as affirming the capability of industry before

Bi-SCD 060-070

the solicitation of offers is finalised. In turn, potential bidders can also judge whether or how they can satisfy the ACO/ACT HQs requirements, thereby promoting NATO's ability to obtain quality supplies and services at reasonable prices, and increase efficiency in proposal preparation, proposal evaluation, negotiation, and contract award. However, Contracting Officers must proceed with caution in pre-contract exchanges and discussions to avoid inadvertently entering into a contract with a supplier. It is strongly recommended that a potential supplier is advised, from the outset, that any pre-contract exchanges or discussions are on a 'without commitment' basis only.

b. Exchanges of information may take the form of industry or small business conferences, Requests For Information (RFI), etc. pre-solicitation or pre-proposal conferences; and site visits. Regardless of which approach is used to exchange information with industry, Contracting Officers shall protect the integrity and ensure the equity of the procurement process by ensuring that no single source receives an unfair competitive advantage. Standards of conduct must be rigorously observed during such events.

2-9. **Pre-solicitation Conferences.** If the nature of an acquisition is quite complex and clarification might be needed, it may be beneficial for NATO to convene an industry conference either in response to a Draft Invitation for International Bids (DIFIB)/Draft Invitation for International Proposals (DIFIP). Notice of such conference shall be made to all potential bidders on the source list. This notice may be accomplished via a statement tied to a Draft or Formal IFIB/IFIP cover letter or notice on an electronic bulletin board. Minutes of the conference shall be maintained which include a written response to all comments received. Copies of these minutes shall be furnished to all known potential bidders. Regardless of which response method or combination of methods is used, it is mandatory that all bidders be treated fairly and given identical information.

## 2-10. **Contracting Risk Management**

a. Early in the acquisition process, Contracting Officers shall assess the attributes of proposed procurements, and formulate a contracting strategy that minimizes risk. For example, these efforts shall include a variety of measures and provisions to mitigate risk e.g., in terms of contract types, period of performance, warranties, bonds and insurance, remedies and any other effective protection clauses.

b. The benefits intended with the inclusion of special provisions in the contract (e.g., liquidated damages, extended warranties, etc.) shall be commensurate with their additional implicit costs.

## 2-11. **Price Conditions and Contract Types**

a. The default contract type is a firm fixed-price contract. However, Contracting Officers may develop cost-type contracts or any other type contract commensurate with the level of risk and ability to identify costs. Cost-Plus Contracts should be avoided as well as Cost Reimbursement Contracts and other contracts requiring audit of costs based upon the governmental cost principles of the country in which the contractor is located, and the national audit agency of that country should normally be requested to perform the necessary audit of costs. Cost reimbursement contracts may be used only

Bi-SCD 060-070

when uncertainties involved in contract performance do not permit costs to be established with sufficient accuracy to use any other type of fixed-price contract.

b. Contracting Officers shall establish the compensation arrangement that best suits each specific requirement through the selection of an appropriate contract type as described in Chapter 3 of this directive.

c. Basic and routine Purchase Orders and contracts resulting from sealed bidding shall be awarded on a firm-fixed-price basis, or fixed-price with economic price adjustment.

d. Contracting Officers' primary pricing objective for all contract actions is to acquire supplies and services from responsible sources at fair and reasonable prices. A Contracting Officer's determination regarding price reasonableness shall be clearly documented for all contracts valued in excess of level 2xB of the EFL.

## 2-12. **Period of Contract Award**

a. Contract actions should be normally tied to a specific schedule of performance or delivery date.

b. Contracts should normally be awarded for a period not exceeding a fiscal year. When included in the terms of the solicitation of offers, contracts may include provisions for up to four one-year extension options, contingent upon a formal and explicit decision based on continuing need, price reasonableness, contractor's satisfactory performance and contingent upon funding approval.

c. Notwithstanding, during the contract planning phase, contracting officers must consider factors such as the stability of the market price, required contractor investment, mobilization time and other areas which may require extending the base period to more than one year. Accordingly, if a two or three base year plus options (no greater than a total duration of five years for common-funded contracts), multi-year contract authority must be obtained from the BC.

d. Requests for Contract Authority should normally be identified as part of the budget planning cycle and approved as part of the annual budget. It effectively authorizes the SC to enter into bidding multi-year financial obligations not fully supported by current year budget credits. However, if outside the normal budget cycle, separate stand-alone requests will be staffed through the SC HQ to the Budget Committee for approval.

2-13. **Patent, Data, Copy Rights.** Contracting Officers are to ensure that appropriate provisions are incorporated into contracts so as to protect both NATO rights and those entitled to a prospective contractor. NATO should be indemnified against infringement of patents resulting from performing "standard or off-the-shelf contracts". As a further subject for consideration:

Bi-SCD 060-070

- a. NATO is to honour rights in patents, data, and copyrights, resulting from private developments, and limits its demands for such rights to those essential for NATO purposes only.
- b. Generally, NATO requires that contractors obtain permission from copyright owners before including privately-owned copyrighted works in data required to be delivered under ACO/ACT contracts. As such, a contractor or subcontractor shall bear the costs tied to any infringement. Therefore, both a patent indemnity clause and an authorisation and consent clause may be included in the same contract.
- c. Contractual provisions should require contractors to notify Contracting Officers of all claims of infringement that come to the contractor's attention in connection with performing a NATO contract.
- d. A patent indemnity clause should be used when the contract is for supplies or services (or such items with relatively minor modifications) that clearly are not or have not been sold or offered for sale by any supplier to the public in the commercial open market.

As a general rule, if NATO pays for development, it should retain intellectual property rights to include patent, data, and copy. General terms and conditions should address intellectual property rights accordingly.

2-14. **Language.** In facilitating a wide range of contracting activities, P&C Branches shall use one of the official NATO languages (i.e., English or French). The predominant language, in terms of international commerce, is English. However, certain simplified acquisitions (e.g., Purchase Order) may be written or translated in the language of the Host Nation. Ultimately, it will be at the Contracting Officer's discretion as to the language to be adopted for specific contracting actions. Consistency and precedence are all-important. Therefore, once a language is decided on for a specific procurement effort, all follow-on and related correspondence between Contracting Officers/Contracting Specialists and contractors should be in the same language.

## 2-15. **Publicizing NATO Requirements**

- a. It is in the best interest of ACO/ACT HQs to publicize anticipated contract actions to meet NATO requirements. The purpose is two-fold to increase competition (i.e., gain better pricing) and broaden the participation of industry in meeting ACO/ACT HQs requirements. The following are some recommended advertising approaches:
  - (1) An ACO/ACT HQs P&C Branch's Internet Web Site.
  - (2) Electronic bulletin board or portal, or any other appropriate electronic means available to the Contracting Officer responsible for obtaining bids.
  - (3) Local Chamber of Commerce.

Bi-SCD 060-070

b. Contract action announcements, at a minimum, should include a solicitation reference number, details of what is being commercially sought, contact information (e.g., Contracting Officer's name, phone number, and email address), and applicable closing dates.

c. This effort might not always be feasible (e.g., due to time constraints) or reasonable (e.g., low value threshold or perishable subsistence supplies). However, Contracting Officers should still remain committed to the intent of publicising contract actions to potential sources.

## 2-16. **Payments**

a. The standard principle to be applied by ACO/ACT HQs is that payment will only be made upon full compliance with all contract terms by the contractor, and receipt of an accurate original invoice or certified true copy.

b. In the interests of achieving more advantageous conditions to ACO/ACT HQs (i.e., price or delivery), contracts may be negotiated to provide for partial or progress payments. Partial payments may not be made unless they are specifically authorised in the terms of the contract.

c. In exceptional circumstances and with FC approval, contracts may provide for advance payments to contractors. This may only be done in cases where ACO/ACT HQs interests are adequately safeguarded by measures such as a performance bond. Subscriptions may be paid for within contractual authority limitations at the time the subscription is ordered.

d. HQs should ensure that they comply with the payment terms of contracts in such a way that they are able to take advantage of prompt payment discounts wherever available. Invoices featuring such discounts should be processed expeditiously.

## 2-17. **Pre-award disputes and Pre-award Protests**

a. Solicitation of offers may be deemed as implied contracts by certain legal systems. Contracting Officers shall develop suitable solicitation provisions so as to properly safeguard ACO/ACT HQs interests by avoiding potential protests. Also, sourcing decisions must comply with the provisions of the solicitation. Contractors, with a vested interest may (regardless the EFL involved) submit a written objection to the responsible Contracting Officer. In such instances, Contracting Officers should carefully review written objection(s) and immediately seek legal counsel and make recommendations to the Chairman of the Contract Award Committee as to whether or not the contract award should be held in abeyance. Results of any review shall be shared with the Budget Committee and may also be shared with the party that initiated the written objection. The intent here is to promote transparency of contracting activities and good business relations with likely contractors.

Bi-SCD 060-070

b. NATO delegations can in some well defined instances also lodge complaints with the Procurement Authority for contracts exceeding EFL Level D. More specifically where:

- (1) A firm was not admitted to the bidding;
- (2) The invitation for bid is worded in such a way so as to restrict competition unduly;
- (3) A declaration of non-compliance with the Invitation for Bid has been received by the firm initiating the complaint.

The details of the pre-award dispute procedure are outlined in the BC-D(2014)0126 dated 04 July 2014.

## 2-18. **Unauthorised Commitments and Ratification**

a. Under no circumstances shall ACO/ACT personnel (other than duly appointed Contracting Officers and other individuals specifically authorised by them and in strict accordance with applicable NFR/FRP's) enter into formal negotiations, place orders or execute contracts or modifications for the provision of supplies or services to ACO/ACT HQs, or in any way obligate NATO.

b. P&C Branch 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 unauthorised commitment is necessary, these procedures may not be used in a manner that encourages such commitments being made by unauthorised personnel.

c. NATO accepts no responsibility for unauthorised contractual obligations entered into by individuals other than Contracting Officers or their authorised agents. Individuals entering into such arrangements do so at their own personal financial liability, and are further subject to disciplinary action.

d. Subject to deviation authority provided to them, FCs serve as ratifying officials, and in that capacity may authorise the ratification of an unauthorised commitment. Prior to ratifying an unauthorised act, the HQs FC will appoint an individual (e.g., Contracting Officer, Internal Review Officer) to review the matter. The first action will be to formally notify both the individual and his/her Division Chief of the breach of procedure and resolving inquiry. In the course of the investigation certain arguments might be considered:

- (1) 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 unauthorised commitment.
- (2) The resulting contract would otherwise have been proper if made by an appropriate Contracting Officer and the price is to be fair and reasonable.

Bi-SCD 060-070

- (3) The individual reviewing the unauthorised commitment recommends payment and legal counsel concurs in the recommendation, unless local procedures expressly do not require such concurrence.
  - (4) Funds are available and were available at the time the unauthorised commitment was made.
- e. In cases where ratification is not recommended, the responsible individual who committed the unauthorised commitment will be fully responsible. In other words, ACO/ACT will consider itself a non-involved party.
- f. Whether an unauthorised commitment can be ratified or not, corrective action should be immediately taken under the FC guidance to prevent further occurrences. Associated efforts should include proper counselling of involved individual(s), and (if necessary) appropriate disciplinary measures.

2-19. **Exemption from VAT, Customs and Excises' Taxes and Duties.** International agreements approved by NATO Nations and most partner Nations ensure that NATO HQs are exempt from paying taxes and duties on commercially procured goods and services. These include the Paris Protocol (Article VIII) "Protocol on the Status of International Military HQs Set Up Pursuant to the North Atlantic Treaty" (Reference B), and relevant Host Nation agreements drawn up in application of Article XVI of the referred Protocol. Other protocols may apply as well. Generally speaking, P&C Branches should procure goods and services without paying taxes (e.g., Value Added Tax) or duties or establish a procedure, under the FC guidance, to recuperate paid taxes or similar fees.

2-20. **NATO Agencies (NSPA, NCIA).** The NATO Support Agency (NSPA) and NATO Communications and Information Agency (NCIA) are available to support projects, operations and provide contracting support. These organizations are customer-funded and therefore any task shall have the necessary eligibility and funding approvals. Under the customer funded regime, specific financial and project arrangements must be set in place prior to each procurement initiative. Although arrangements vary in name, all arrangement follow the same fundamental structures:

- a. Memorandum of Agreements (MOA) which set out the general terms and conditions for both parties to engage. The MOA also describes the process for tasking the agency for individual or group of tasks/functions. These are established and managed at the SC level only.
- b. Service Level Agreements (NCIA) and Logistics Support Agreements (NSPA) set out the detailed and specific terms and conditions including acceptance of risk and liability by the entity or entities participating in the services. More importantly, it lays out the detailed deliverables expected from the agency and the key performance indicators for the support provided by the agency. These are generally established at the Strategic Command level but in the case of NCIA may also be established by subordinate commands but with close coordination with the SC. Day-to-day administration of the agreements may be delegated to a subordinate command. This

Bi-SCD 060-070

level of agreement effectively represents the contractual-like agreement with the agency and will serve as the record against which both parties will be held accountable.

c. On occasion there may be ad-hoc projects or programmes of work which fall outside specific SLA or LSA; however, these are exceptional and temporary in nature and should not replace the establishment of proper agreements as described above.

d. The annual execution of the agreements will be covered by purchase orders consisting of the approved funding allocated against the deliverables articulated in the agreements.

## 2-21. **Commercial Sourcing/Outsourcing**

a. With military budgets and available resources stretched, NATO may well turn to commercial sources to perform functions that traditionally have been performed by NATO civilians and/or military personnel. P&C Branch should contribute to “outsourcing” studies due to the nature of their relationships with the commercial world, as many services are readily obtainable from the private sector. Examples of typical commercial activities include custodial services, grounds maintenance, base supply, vehicle operations and maintenance, etc.

b. Outsourcing is the contracting-out of non-core activities. Characterisation as “non-core” should not be equated with being unimportant. For example, NATO has outsourced much of the CIS support of various HQs and agencies. Outsourcing is strategic in nature and relates to the external provision of functional support. The availability of such support from external sources can have an impact upon the nature and scope of the organisation. Such decisions are not taken at the operational level, but involve senior leadership, and the consideration of a great variety of variables such as risk, efficiency, costs, management considerations, and potential providers. Even when external sources of support are available, NATO must ensure that it retains sufficient in-house expertise to define its requirements, evaluate contractor performance and retain status as an “intelligent customer”.

c. Contracting Officers should become familiar with the basics of commercial sourcing as to whether services in question are inherently military or represent NATO core functions. For example, those functions so intimately related to military operations will often continue to be performed by “in-house or organic” resources: command & control, intelligence operations, directing NATO employees, and Accountable Officers with discretionary authority to disburse funds may all be deemed inherently NATO “only” and not to be competed amongst companies from the private sector. During acquisition planning, Contracting Officers need to be comfortable with the concept of “core functions” and (if warranted) be ready to advocate competitive sourcing when opportunities to take advantage of industry best practices prevail over the risks (e.g., in terms of control and costs).

Bi-SCD 060-070

## 2-22. Reimbursable Procurement

a. It is important to distinguish between reimbursable contracts and contracts put in place under Nation Borne Costs. Reimbursable contracts are entered into solely for the interest of the other party in which NATO has no stake. Nation borne cost contracts are contracts which NATO is the primary requirement holder and extends its use to participants which are requiring support e.g. food services in a deployed theatre HQ location where NATO is responsible for the camp services. Therefore the following text in the paragraphs b. to e. applies to reimbursable contracts.

b. Within means and capabilities and considering that the execution of NATO common funding programme and budgets have top priority, P&C Branches may execute procurement actions on behalf of other ACO/ACT HQs or other authorised customers (i.e., national support units, etc.). Contracting Officers, in coordination with the HQs FC, are responsible for affirming the eligibility of authorised customers to receive such support (particularly as regards VAT exemptions granted by a Host Nation and the use for official business only).

c. External customers requesting contracting support may determine the items/services to be purchased and the sources to be utilised for nationally-funded procurements. As such, purchases are not Military Budget-funded, and there is no requirement to seek deviations from normal competitive sourcing requirements. However, in the absence of specific direction from the funding authority, for the purpose of consistency and transparency, Contracting Officers should apply procurement procedures as outlined in this directive.

d. ACO/ACT HQs may assess administrative fees for reimbursable work in accordance with procedures established by the HQs FC. Such fees will be treated as miscellaneous income to be accounted for in accordance with Strategic Commands' financial policies.

e. Contracting Officers will assume full responsibility for third party (i.e., reimbursable) contracts let under their signature.

## 2-23. Personal Services and Independent Contractors

a. Services contracts are distinguished as personal and non-personal service contracts. A personal services contract is characterized by a special "employer-employee" relationship it creates between the NATO Body ACO/ACT HQs and the contractor's personnel. In personal services contracts, the ACO/ACT HQs retain the function, but 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 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 (NCPRs). Personal services contracts shall be issued and administered by the HQs Civilian Personnel Office.

Bi-SCD 060-070

b. ACO/ACT HQs may acquire personal services through specialized manpower companies. However these are commercial contracts that are subject to the normal competitive procedures detailed in the NFRs and will be let and managed by P&C Branch. However, unlike temporary staff, the requirement shall be expressed in clear deliverables and projected man-days/man-year effort and shall not include a relationship-based job description. Moreover, the contractor staff shall not be in anyway responsible for tasks normally performed by HQ staff such as make decisions, represent the organization at meetings or speak for the organization outside providing the advice included specifically in the terms of the contract.

c. Conversely, a non-personal services contract means a contract under which the personnel rendering the services are not subject, either by the contract's terms or by its administration, to the supervision and control usually prevailing in a relationship between the ACO/ACT HQs and its employees. Therefore, in a non-personal services contract, the ACO/ACT HQs delegates a function to a contractor. Non-personal service contracts are awarded competitively under the NFRs and the provisions of this directive, by P&C Branch; as such, contracts awarded to independent contractors should meet the following requirements:

- (1) Include proper contract provisions establishing the independent status of the contractor, its personnel at work and in travel and, where applicable, valid NATO security clearance.
- (2) Obtain documentary evidence that the contractor is legally licensed, registered as an independent contractor and has authorisation to perform the tasks.
- (3) Obtain certification that the contractor complies with its obligations regarding workmen's compensation and payments to the health and social security system.
- (4) State specific contract deliverables and tasks to be performed by the contractor, instead of simply establishing in general terms to direct the supervision of its work by NATO personnel.
- (5) Under such contracts, changes to tasks and deliverables require corresponding contract modifications.

d. The Contracting Officer and the Civilian Human Resources Officer shall work together to ensure that the correct contractual vehicle is utilised, and that staffing restrictions are not circumvented by the use of contractors in personal service arrangements.

2-24. **Collaborative Acquisition.** The common objective of both Strategic Commands is, where it is considered cost-effective and within scope, to maximise the use of centralised acquisitions. This must be a top-down and bottom-up approach across all ACO/ACT HQs, as all budget credits are generally decentralised and are executed in the respective Commands. However, certain commodities or services, despite the local arrangements or conditions,

Bi-SCD 060-070

should be seen as candidates for optimized acquisition planning. The optimized concept consists of consolidating like requirements across the command through close coordination with all contracting representatives, central development of a draft statement of work which then is endorsed by subordinate commands. The competition is run centrally but the day-to-day contract administration is at the local participating HQ. Leading best practice shows that this combined approach retains the benefits and efficiencies of centralization and local day-to-day administration. Moreover, Chiefs P&C Branch are encouraged to consolidate their requirements and sourcing and, when opportunities arise, to take the lead to conduct a solicitation on behalf of a greater number of Commands. This is an opportunity to maximise commercial leverage with limited additional effort in contract management.

2-25. **E-Commerce.** The emergence of e-commerce and acquisition through the Internet have had, and will continue to have, a profound impact on the P&C Branch Staff in terms of education, qualifications, contracting techniques, and procedures. Such techniques offer opportunities to expand competition while compressing timelines. The P&C Branch Staff should take action to ensure they remain informed of the latest trends, and gradually implement e-commerce practices whenever possible.

## CHAPTER 3 - PRE-AWARD PROCEDURES

### 3.1. Acquisition Planning

a. **Objective.** As soon as a requirement is identified and validated, and once it is likely that it will be funded, acquisition planning should commence. This initial 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 acquisition planning. For very basic, routine and simplified purchases, detailed planning is not necessary. Acquisition 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 goods and services required. The following are some initial steps that fall either just before or during acquisition planning:

(1) **Origination/Validation of Requirements.** Organisations may originate requirements for supplies or services needed to support mission requirements. Only essential, affordable and military operational requirements or capabilities defined as Minimum Military Requirements (MMRs) will be considered for solicitation. Although the Fund Manager and the Fiscal Officer have ruled on eligibility and affordability of requirements, the Contracting Officer may seek HQs FC guidance on requirements that are potentially questionable. The HQs FC has the ultimate responsibility for approving funding for acquisitions for which the Contracting Officer has expressed concerns.

(2) **Requests** for supplies or services should be written in a manner that includes a comprehensive description and/or technical specification.

(3) **The Authorised Requestor (AR)** on behalf of the originating organization will certify the operational essentiality of the requirements, and will be responsible for arranging funding from Fund Managers and for timely communication with Contracting Officers. The AR will equally track status requirements throughout the procurement process.

(a) Requests for items carried in the HQs warehouse will be submitted to the HQs Supply Officer, who shall be responsible for satisfying the requirement from warehouse stocks. If that item is temporarily out of stock, the Supply Officer will notify the Authorised Requestor of the backordered status of the request, and advise the customer of the estimated fill date. In cases of urgency, the Supply Officer will request the P&C Branch to expedite delivery of the outstanding order, or prepare an additional expedited re-order.

(b) Requests for services, or items not normally internally stocked, will be submitted to the appropriate Fund Manager for allocation of funding.

This submission should be initiated through the automated financial information systems or via paper copy. The Fund Manager will validate the requirements and screen requests to ensure that the item/service is both affordable and eligible for international funding from within approved budgets. The Fund Manager should review the requirement from a technical standpoint, and advise the Originator/Authorised Requestor regarding the adequacy of the requirement specification.

(c) Whenever practicable, it should also be verified that material cannot be satisfied through redistribution of assets known to be available within ACO/ACT HQs.

**(4) Short-term planning, Long-Term planning and Annual Planning**

(a) Short-term planning (up to one year). In order to ensure that the NATO Command Structure (NCS) obtains the right products and services at the right price within the time frame required, the requiring activity shall ensure the optimal use of funds throughout the budget period. Therefore last minutes requisitions, especially at the end of the budget period, should be avoided.

(b) Long-Term planning (minimum one year up to 5 years). Requiring activities shall perform long term-planning covering at least the remainder of the budgetary period and the forthcoming budgetary period in order to optimize the purchasing terms for the NCS.

(c) Annual Planning. Requirement activities and Budget holders shall communicate and coordinate their spending forecast and procurement plan for the forthcoming budget period. The consolidated annual procurement plan is provided to the Budget Committee for information purposes only and is released to industry through the National Delegations at NATO HQ to inform industry about upcoming business opportunities.

**b. Acquisition Plan (AP)**

(1) An AP is a document prepared through the team effort of requirements, logistics, technical, budget, legal, and P&C Branch Staff. The purpose of the plan is to ensure the procurement strategy addresses acquisition background, objectives and a plan of action that establishes a logical and systematic approach for meeting an organization's needs. The AP normally applies to higher value procurements, which are more complex in nature, and serves as a descriptive outline of how ACO/ACT HQs will acquire specific goods or services. The decision as to whether written plans ought to be developed is left to the discretion of the Contracting Officer.

(2) The planner, or designated person tasked to develop the AP, begins the preparation as soon as the need for a plan is recognized. The content of plans

Bi-SCD 060-070

can vary. However, the following areas should be considered and if applicable recorded: objectives; decision milestones; business management and technical factors; acquisition background; use of Commercial Off-The-Shelf (COTS) items; trade-offs and risks; life-cycle-costs; lease versus buy; market survey results; feasibility of strong competition, follow-on logistic support considerations, and any other relevant contracting questions. The AP should also account for management of contractor performance risk.

(3) An AP should address the need to allow the implementation of a best value approach versus the lowest price/technically compliant. A detailed source selection plan should be developed in these cases establishing evaluation factors, their relative importance and adequate rating scales. This information should be treated as sensitive and properly safeguarded by the responsible Contracting Officer upon CAC approval. The provisions of the solicitation shall be drafted based on the input provided by the AP and source selection plan.

### 3-2. Contract Strategy

a. **Objective.** At the conclusion of the Acquisition Planning Phase, the Contracting Officer needs to devise contracting strategy that weighs risks and adequately protects the ACO/ACT HQs. 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.

b. **Requirement Specification.** A prerequisite to effective contracting strategy is to fully understand the scope of a requirement, as defined in specific requirement documents. At the end of the planning phase, the type of requirement specification to be used must be determined (e.g., Requirement Specifications, Statement of Work, Performance Work Statements, Statement of Objectives). The different types of specification require different formats and associated areas of detail, flexibility and concentration such as:

(1) **Performance Work Statement (PWS).** A PWS describes the requirements the Contractor must meet in terms of outcome, objective or results. The "how" is left to the Contractor. The PWS establishes performance standards that will be used to measure whether the contractor has complied with the objective.

(2) **Technical Specification/Statement of Work (SOW).** A SOW is a description of the technical requirements for a material, product, or service through either a design-based approach or a "brand name". The use of performance specifications is preferred to encourage suppliers to propose innovative solutions. "Brand name or equal" purchase descriptions must include, in addition to the brand name, a general description of those salient physical, functional, or performance characteristics of the brand name item that an equal

Bi-SCD 060-070

item must meet to be acceptable for award. Use "brand name or equal" descriptions when the salient characteristics are firm requirements and when there is a properly demonstrated need.

(3) **Statement of Objectives (SOO).** A SOO should provide the basic, top-level objectives of the acquisition, their relative importance and key risk areas that the bidders need to address in their proposal. The successful bidder's approach will become the PWS of the contract.

c. **Identifying NATO's pricing Objectives.** The P&C Branch Staff primary pricing objective for all contract actions is to acquire supplies and services from responsible sources at fair and reasonable prices. The Contracting 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 ACO/ACT HQs and the contractor. When awarding contracts, P&C Branch Staff must also:

(1) Price each contract separately and independently for example:

(a) Not use proposed price reductions under other contracts as an evaluation factor, or

(b) Not consider losses or profits realized or anticipated under other contracts.

(2) 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.

Bear in mind that the determination of whether an offer is fair and reasonable will be eventually a matter of judgment. There is no simple 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, Contracting Officers shall use either price analysis techniques, for competitive non-negotiated procurement, or cost analysis techniques for negotiated procurement.

d. **Identifying Price-Related Evaluation Factors.** A prudent Contract Officer will consider differences in the cost of acquiring a deliverable that are not covered by the contract price. To consider these price-related factors in a competitive acquisition, the solicitation must provide for such consideration. For example:

(1) **Direct Costs Not Included in the Contract Price.** The solicitation document shall indicate the applicable INCOTERM for the relevant procurement action in order to be considered by the bidders when submitting offers. Evaluation criteria must provide for consideration of the shipping costs from point of origin to destination.

(2) **Costs of Ownership Not Included in the Contract Price.** Market research may indicate that several products could satisfy ACO/ACT HQs' requirement. However, the products differ substantially in maintenance and repair costs. Offer evaluation criteria should provide for consideration of the related costs to NATO.

(3) In a competitive procurement situation, Contracting Officers may solicit line item prices and an aggregate price for all solicitation line items. The Contracting Officer could award the line items among 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, offer evaluation criteria must provide for consideration of cost to NATO for awarding and administering multiple contracts.

(4) **Hidden Costs.** In a non-competitive acquisition, Contracting 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 firm (per the RFP) to NATO (per the proposal). Likewise, a contractor'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.

e. **Non-Price Evaluation Factors.** In some acquisitions, 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 firms. In best value acquisitions, Contracting Officers 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 should be based on the input provided by the source selection plan.

f. **Types of Contracts.** Contract type selection is the principal method of allocating and mitigating risk between NATO and the contractor. The default type of contract is a FFP contract. However 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 organisation for monitoring contractor's performance and costs. Contracting Officers' 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. Contracting Officers may select among the following main contract types:

(1) **Fixed Price (FP) Type Contracts** come in a variety of forms. Reflected below is not an exhaustive but a representative sampling of FP-type contracts:

(a) **Firm Fixed-Price (FFP).** An FFP 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. By the same token, 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 acquiring other supplies or services for which the requirement is very well defined and understood e.g., based on strong past experience. As mentioned in Chapter 2, Purchase Orders and contracts resulting from sealed bidding shall be awarded on a firm-fixed-price basis, or fixed-price with economic price adjustment.

(b) **Firm Fixed Price with Economic Price Adjustment. (EPA).** A fixed-price contract, with an economic price adjustment feature, may only be used when the Contracting Officer determines that it is necessary to protect ACO/ACT HQs 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, EPA 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 an EPA may be warranted is for the purchase of specific commodities such as oil or gas.

(c) **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 & Development (R&D), 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.

(d) **Fixed-Price Contract with Award Fees (FP-AF).** A FP-AF 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). The AFP 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. ACO/ACT HQs judgmentally determine and measure a contractor's performance within specifically designated performance categories, evaluation criteria, and evaluation periods. The AFP 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, the AFP 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.

(e) **Fixed Price (FP) Contracts with prospective price re-determination.** This contract type provides for:

- 1/ A firm fixed-price for an initial period of contract deliveries or performance, and
- 2/ 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 acquisitions 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.

(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 Contracting Officer. The biggest difference between FP contracts and CR 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 the ACO/ACT HQs 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. CR 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 CR contracts are employed, namely that the contractor's accounting system is adequate for determining costs applicable to the contracts shall include a robust audit clause; appropriate ACO/ACT HQs surveillance during performance will provide reasonable assurance that efficient methods and effective cost controls are employed; CR contracts are not to be used for acquiring 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 (see definitions at Annex A).

**(3) Delivery Order Contracts or Task Order Contracts**

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

1/ 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.

2/ 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: ACO/ACT HQs 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 ACO/ACT HQs obligation to the minimum quantity specified in the contract, and may permit faster deliveries as the contractor may be willing to maintain stocks when ACO/ACT HQs will obtain all of its actual purchase requirements from this contractor.

(b) **Ordering via Delivery Order Contracts or Task Order Contracts.** 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:

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

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

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.

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. ACO/ACT HQs place orders for individual requirements. Quantity limits may be stated as the number of units or in monetary terms. Also, the contract must require ACO/ACT HQs 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 Contracting 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 Contracting Officer shall ensure that:

- a/ The minimum quantity must be more than a nominal quantity, but it should not exceed the amount that ACO/ACT HQs is certain to order.

b/ The contract may specify maximum or minimum quantities that ACO/ACT HQs may order under each Task or Delivery Order and the maximum that it may order during a specific period of time.

c/ 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 ACO/ACT HQs may extend the contract under each option.
- Specify the total minimum and maximum quantity of supplies or services ACO/ACT HQs will acquire 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 ACO/ACT HQs will acquire under the contract in a manner that will enable a prospective contractor to decide whether to submit an offer.
- State the procedures that ACO/ACT HQs will use in issuing orders, including the ordering media.
- Include a description of those Contracting Officers authorised to issue orders, and related procedures for committing funds before delivery orders are issued.

d/ 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.

3/ **Requirements Contracts.** Although commercial Requirements Contracts maybe a convenient contractual instrument, ACO/ACT HQs 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. Contracting Officers 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 ACO/ACT HQs anticipate recurring requirements, but cannot predetermine the precise quantities of supplies or services that designated activities will need during a definite period.

(4) **Time and Material (T&M) Contracts.** A T&M 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, T&M contracts are used to acquire 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. As T&M 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, a T&M contract should only be used after the Contracting Officer determines that no other contract type is suitable and a ceiling price is firmly established.

(5) **Labour-Hour (LH) Contracts.** A labour-hour contract is a variation of the T&M contract, differing only in that the contractor does not supply materials.

(6) **Letter Contracts.** A Letter Contract is a written preliminary contractual instrument that authorises the contractor to begin immediately supplying goods or performing services. A Letter Contract may be used when there are compelling reasons and/or ACO/ACT HQs 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. Contracting Officers must be cautious in dealing with a Letter Contract, as this will be binding the ACO/ACT HQs. 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:

(a) Dates for submission of the contractor's cost/price proposal.

(b) A date for the start of negotiations, and a target date for contract finalisation, which shall be the earliest practicable date.

(7) **Basic Ordering Agreement (BOA).** BOAs 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 BOA is a written agreement, negotiated between a Contracting 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 BOAs 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 BOA, the following should also be considered:

- (a) Using the established competition thresholds and procedures, Contracting Officers may establish agreements on prices and conditions for placement of orders for supplies and services.
- (b) BOAs may be competed on the basis of a "commercial sector or basket" of anticipated commodities characteristic of ACO/ACT HQs 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.
- (c) These agreements do not actually bind the ACO/ACT HQs to order material, and simply exist to expedite the process of awarding future individual transactions.
- (d) Orders under such agreements require a separate contractual document to be prepared for each order placed.
- (e) Contracting Officers may utilise BOAs executed by other ACO/ACT HQs and NATO Agencies on the condition that competitive requirements outlined earlier in this directive were satisfied during execution of the original agreement.

g. **Security Assistance and Cross-Servicing Arrangements.** As a complement to commercial sources, Contracting 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. Transactions made through the US Foreign Military Sales (FMS) system belong to the first type of arrangement, while the support received through the application of the Standardisation Agreement (STANAG) 2034 on Mutual Logistic Assistance or the US Acquisition and Cross-Servicing Arrangement (ACSA) belong to the second. Contracting Officers must determine the appropriate vehicle to execute customer requirements.

h. **Factors in Selecting Contract Types**

(1) **List of factors.** There are many factors that the Contracting Officer should consider in selecting and negotiating the contract type. They include, at least, the following:

(a) **Price competition.** Normally, effective price competition results in realistic pricing, and a fixed-price contract is ordinarily in NATO's interest.

(b) **Cost/Price analysis.** Cost/Price analysis (see definitions at Annex A), 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.

(c) **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.

(d) **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.

(e) **Period of performance.** In times of economic uncertainty, contracts extending over a relatively long period may require economic price adjustment terms.

(f) **Contractor's technical capability, financial responsibility/accountability.** For example, before agreeing on a contract type other than a firm fixed-price, the Contracting 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 has been on a fixed-price basis.

(g) **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.

(h) **Acquisition history.** Contractor risk usually decreases as the requirement is repetitively acquired. Also, product descriptions or descriptions of services to be performed can be defined more clearly.

(2) **Contract Type Matrix.** The table at Annex I presents a comparison of major contract types to help Contracting Officers to select the contract type that best suits a specific requirement. The table summarises the distinctive features of each contract type.

(3) **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) 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.

(b) Each contract file shall include documentation to show why the particular contract type was selected. Exceptions to this requirement are Fixed-price acquisitions made under simplified acquisition procedures.

i. **Simplified Acquisition Procedures.** Simplified Acquisition Procedures apply to the procurement of basic, non-complex supplies and services at a Firm Fixed Price (FFP). The advantage of Simplified Acquisition Procedures is that they offer streamlined approaches, with little risk, to reduce administrative costs, promote efficiency, and avoid unnecessary burdens for both ACO/ACT HQs and contractors. In other words, Simplified Acquisition Procedures vest Contracting Officers with additional procedural discretion and flexibility, so that commercial item acquisitions may be solicited, offered, evaluated, and awarded in a simplified manner. ACO/ACT P&C Branch shall use Simplified Acquisition Procedures to the maximum extent practicable for all purchases of supplies or services as identified below but never exceeding level 2xB of the EFL. Further, specific Simplified Acquisition Procedures activities, to include details and results of the solicitation process undertaken, shall be meticulously recorded in applicable procurement files.

(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, from an ACO/ACT HQ and for disbursement as needed from time to time in making payment in cash for relatively small amounts. When authorised by the HQs FC, and in accordance with criteria to be approved by the Contracting Officer, small procurements, 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 Added Tax (VAT) or other taxes for which the ACO/ACT HQ 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 authority of the Contracting Officer or his/her designated representative, and are limited to items that are available for immediate delivery. Detailed instructions concerning the administration of advance accounts are included in Reference K. Petty Cash transactions shall only be executed when it is impossible to use the Purchase Card.

(2) **Purchase Cards.** The main objective of this programme is to streamline the procurement process of low volume goods and services through the delegation of procurement authority to end-users. Therefore the Purchase Card Program contains effective internal control mechanisms to prevent fraud and abuse. Reference N establishes that purchase cards are the preferred procurement approach for transactions within the micro-purchase threshold. A purchase card, similar in nature to a commercial credit card, is issued to authorised personnel to acquire and to pay for supplies and services. As with advance accounts, this is a payment method rather than a contract vehicle. Purchase cards are designed to help ACO/ACT HQs in maintaining control, while reducing the administrative cost associated with authorising, tracking, paying, and reconciling small purchases. Essentially, the cardholder is delegated the authority, by the HQ’s Credit Card Coordinator, to purchase certain goods and services. Transactions are reviewed by the cardholder and by a designated Billing Official and reconciled against a monthly Billing Statement from the purchase card company. The HQs FC is ultimately responsible for the local implementation of the Strategic HQs Purchase Card Programme (PCP) and this under the functional authority of the ACO FC. Effective 2015, the PCP is in ACO the mandatory instrument to fulfil requirements under 10% EFL A.

(3) **Credit Cards.** A commercial credit card can be used exclusively by Contracting Officers as a means of a payment method when required to secure advantages on payment terms or to place orders on the Internet. This type of credit card account must provide for withholding of payment to credit card companies for non-receipt, non-conformity, or other disputes. Standing payment orders should not be used with credit card companies. The use of credit cards in no way relieves the Contracting Officer of responsibility for preparation and execution of the necessary contract and commitment procedures. Similarly, payment by credit card should not disqualify the ACO/ACT HQs from receiving prompt payment discounts, which might otherwise be available. Contracting Officers are responsible for reconciliation of credit card invoices and matching of invoice line items to individual commitment numbers. Credit cards may not be provided to other ACO/ACT HQs personnel, and are specifically prohibited for use for individual transportation, lodging and subsistence requirements associated with Temporary Duty Travel (TDY).

(4) **Purchase Orders (POs).** POs are generally issued on a fixed-price basis for acquisition of basic, routine and well-defined commercial items. POs are seen as a unilateral contract instrument that is executable by the contractor by generally delivering goods or services based on the Contracting Officer's signature or executing an offer resulting from a Request For Quotation. The POs require a set of General Provisions that are simple, complete and are advertised to the contractor.

(5) **Blanket Purchase Agreements (BPAs).** A "Commercial" BPA is a simplified method of filling anticipated repetitive needs for basic supplies or services by establishing "charge accounts" with qualified sources of supply. BPAs shall only be awarded to commercial sources that also accept conducting business under the Purchase Card Programme. Essentially, this acquisition approach replaces the need to execute multiple POs. BPAs should address the frequency of ordering and invoicing, discounts, and delivery locations and times. For example, when the P&C Branch finds a schedule supply or service elsewhere at a lower price or when a BPA 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 ordering office the opportunity to secure greater discounts. Although the use of BPAs provides added purchasing flexibility, both assigned Ordering Officers and Contracting Officers still need to carefully ensure that using organizations keep obligations and expenditures within established funding limits. Transactions under BPAs shall not exceed level B of EFL. The following are circumstances under which Contracting Officers may establish BPAs:

- (a) 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.
- (b) 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.
- (c) The use of this procedure would avoid the writing of numerous POs for which administrative costs can be excessive.

j. **Source Selection Processes and Techniques.** Up through level 2xB of the EFL, Contracting Officers may employ "open solicitation" approaches, whereby contractor costing/pricing information may be readily obtained e.g., over the phone, via fax or electronically. This stance is based on the strong likelihood that the majority of contracting actions under this threshold will be executed using Simplified Acquisition Procedures, and whereby the most common contractual instrument will be a PO. Between levels 2xB and D of the EFL, Simplified Acquisition Procedures will still be in use but this does not preclude the opportunity to pursue, in the judgment of the responsible Contracting Officer, more formalised and competitive contracting

Bi-SCD 060-070

mechanisms e.g., involving either Sealed Bidding or Requests For Proposals. Contracting Officers should select the source selection process or combination of processes most appropriate to the unique circumstances of the acquisition and expected to result in the best value acquisition. The two main competitive sourcing approaches are the following:

(1) **Sealed Bidding.** The NATO Financial Regulations state that sealed bidding is the prescribed method of solicitation for acquisitions above level 2xB of the EFL. Deviations from this bidding procedure require an approval from the HQs FC or ACO/ACT FC or the BC as illustrated in Chapter 2. Sealed bidding is a method of contracting driven by a contractor's technical and financial offer and that employs competitive bids and awards. Contracting Officers shall solicit sealed bids if all the following apply:

(a) Generally Fixed Price contract award (i.e., Firm Fixed Price, Firm Fixed Price with economic adjustment, etc.) or other contract instrument when applicable will be made on the basis of price and other price-related factors (e.g., award on the lowest compliant bid).

(b) It is not necessary to conduct discussions with the responding bidders about their bids. Should it become apparent that clarifications or discussions are necessary, all bidders must be offered equal opportunity to provide clarifications.

(c) There is a reasonable expectation of receiving more than one sealed bid.

(2) **Competitive Proposals.** Contracting Officers shall solicit competitive proposals if sealed bids are not appropriate due to the complexity of the requirement (e.g., past performance), the evaluation of factors other than price, or the need for discussions with bidders are anticipated. In fact, any contract awarded without using sealed bidding procedures is to a large extent a negotiated contract because discussions are typically employed in the process of receiving either competitive or sole source proposals. Negotiation is a procedure that includes the receipt of proposals from companies, permits bargaining on terms and conditions and often affords bidders an opportunity to revise their offers before award of a contract. Much of the bargaining will likely revolve around alteration of initial assumptions and positions, price, schedule, technical requirements, type of contract, or other terms of a proposed contract. Contracting Officers will facilitate the competitive proposal process by issuing Requests for Proposals (RFPs) and formally communicating ACO/ACT HQs requirements to prospective contractors. Unless otherwise permitted, all solicitations shall be in writing. The use of competitive proposals as solicitation approach shall be authorised in accordance with Chapter 2 of this Directive. The Bi-SC will provide the BC for information with a proposed source selection process table during the submission of the annual International Competition Programme.

Bi-SCD 060-070

## CHAPTER 4 - CONTRACT EXECUTION AND FORMATION

4-1. **Objective.** Once both procurement planning and contracting strategy phases are concluded, and an appropriate contract type and contracting award approach selected, the next step requires the Contracting Officer to press ahead with Contract Formation and Execution. Contracting Officers may proceed further with the procurement as long as funding availability remains confirmed. If funding is inadequate, the request should be returned to the Fund Manager for supplemental funding, or reconsideration of the original allocation or requirement. Otherwise, the Contracting Officer shall initiate a solicitation package, receive and evaluate proposals, seek firm funding commitment from the Fiscal Officer, and make an award. Further, the Fund Manager's initial allocation of funds shall serve as a Contracting Officer's "not to exceed" allocation of funds.

4-2. **The Legal Effects of Contract Formation.** Contract formation begins with the issuance of the solicitation of offers and ends at the moment of contract award. Contracting Officers should bear in mind that their actions and the actions of prospective bidders during the contract formation phase may be used to interpret the provisions of the eventual contract. Also, some legal systems recognise the existence of an implied contract that, by issuing an invitation to bid, the P&C Branch Staff would treat prospective bidders fairly and equitably. Therefore, Contracting Officers should assure coherence between the provisions of the solicitation and the final award decision. The principles of integrity, fair treatment, and visibility must guide P&C Branch Staff actions during the whole procurement process but especially during the contract formation phase.

4-3. **Uniform Contract Format.** The use of a uniform contract format will facilitate preparation of the solicitation and contract as well as reference to, and use of, those documents by bidders, contractors, Contracting Officers and/or Contract Specialists. The uniform contract format shall be used for formal contracts, and not for Simplified Acquisition Procedures. The format facilitates preparation of the solicitation and contract, as well as reference to and use of those documents by bidders and contractors. The uniform contract format should consist of the following elements:

- a. **Cover/Transmittal Letter** will identify the request for bid or proposal and provide a general overview of the requirement and bid/proposal closing date/hour.
- b. **Part I, Bidding/Proposal Instructions** shall include the following:
  - (1) Insert in this part all solicitation information and instructions not required elsewhere to guide bidders in preparing proposals or responses to requests for information. Prospective bidders may be instructed to submit proposals or information in a specific format to facilitate evaluation. The instructions may specify further organisation of proposal or response parts, for example:
    - (a) Solicitation/Contract Form.
    - (b) Compliance Sheets (i.e., contractor's representation and certification).

- (c) Schedule of Supplies/Services and Price/Cost (i.e., Pricing Format). Include a brief description of the supplies or services; e.g., line item number, nomenclature, quantities, unit and total price.
  - (d) Cost or pricing data or relevant information.
  - (e) Specify the requirements for time, place, and method of delivery or performance.
  - (f) For Request for Proposals, identify evaluation factors for award and their relative importance.
  - (g) It is noted that Part I should be, at the contract signature, replaced by a cover page (contract summary sheet with signature and contract amount) and any relevant documents (contractual provisions, annexes, etc.), which will constitute the formal contract along with Parts II and III described below.
- c. **Part II** (sections A and B) shall include the General Provisions (section A) and General Provisions per the nature of the contract (section B) e.g., goods, services, construction, concessionaires, etc.
- d. **Part III** (sections A and B), shall include the Special Provisions (section A) for the subject contract and the technical information (section B):
- (1) Section A: Contract Management Data, for example: Points of Contact and Payment Instructions.
  - (2) Section B: Technical specifications, Performance Work Statement, Statement of Work, or Statement of Objectives including:
    - (a) List of Documents, Exhibits, and Other Attachments.
    - (b) Table of contents including a list with the title, date, and number of pages for each attached document, exhibit, and other attachment.
    - (c) Cross-references to material in other sections may be inserted, as appropriate.
    - (d) Provide packaging, packing, preservation, and marking requirements, if any.
    - (e) Inspection and acceptance, quality assurance, and reliability requirements (if applicable).

Bi-SCD 060-070

#### 4-4. Purchase Orders (POs)

- a. In establishing or forming POs, the following shall be accounted for:
- (1) POs are an offer by an ACO/ACT HQ to buy supplies or services, including construction and Research & Development, upon specified terms and conditions. Therefore, a PO does not constitute a binding contract unless expressly (e.g., PO signature) or implicitly (e.g., delivery of goods or execution of services) accepted by the supplier.
  - (2) POs must specify the quantity of supplies or scope of services ordered.
  - (3) POs must contain a determinable date by which delivery of the supplies or performance of the services is required.
  - (4) POs must provide for inspection and acceptance of goods or services at destination. When inspection and acceptance will be performed at destination, advance copies of the PO or equivalent notice shall be furnished to the consignee(s) for material receipt purposes. Receiving reports shall be accomplished immediately upon receipt and acceptance of supplies.
  - (5) POs must specify the delivery terms & conditions as defined by international code such as INCOTERM.
  - (6) POs must include any trade and prompt payment discounts that are offered.
- b. Requests For Quotation (RFQ). A quotation (see definitions at Annex A) received in response to a RFQ is not an offer and cannot be accepted by an ACO/ACT HQ to create a binding contract. It is informational in nature. A RFQ may be used when an ACO/ACT HQ does not intend to award a contract on the basis of the solicitation but wishes to obtain price, delivery, or other market information for the preparation of a Purchase Order or for planning purposes.
- c. Awarding Purchase Orders. While a variety of selection standards can be employed, most POs award decisions will be based on technical compliancy and lowest price. Contracting Officers shall, within their warrant authority, use their procurement expertise to ensure equity and transparency in a process that yields goods and services at fair and reasonable prices.
- d. Obtaining Contractor Acceptance and Modifying Purchase Orders.
- (1) When it is desired to enter into a binding contract between the parties before the contractor undertakes performance, the Contracting Officer may require written acceptance of the PO by the contractor.
  - (2) Each PO modification shall identify the order it modifies and shall contain an appropriate modification number.

(3) A contractor's written acceptance of a PO modification may be required only if it is determined by the Contracting Officer to be necessary to ensure the contractor's compliance with the purchase order as revised.

#### 4-5. **Blanket Purchase Agreements (BPAs)**

- a. After determining a BPA would be advantageous, Contracting Officers shall:
- (1) Establish the parameters to limit purchases to individual items or commodity groups or classes, or permit the supplier to furnish unlimited supplies or services.
  - (2) Consider suppliers whose past performance has shown them to be dependable, who offer quality supplies or services at consistently lower prices, and who have provided numerous purchases at or below the simplified acquisition threshold.
- b. BPAs may be established with more than one supplier for supplies or services of the same type to provide maximum competition. It is not necessary to wait for a requirement to be submitted prior to the establishment of BPAs.
- c. BPAs should be prepared without a purchase requisition and only after contacting suppliers to make the necessary arrangements for securing maximum discounts; documenting individual purchase transactions; periodic billings; and incorporating other necessary details. In the preparation of BPAs, the following terms and conditions are mandatory:
- (1) **Description of Agreement.** A statement that the supplier shall furnish supplies or services, described in general terms, if and when requested by the Contracting Officer (or the authorised Ordering Officer) during a specified period and within a stipulated aggregate amount, if any.
  - (2) **Extent of Obligation.** A statement that an ACO/ACT HQ is obligated only to the extent of authorised purchases actually made under the BPA.
  - (3) **Purchase Limitation.** A statement that specifies the face value limitation for each purchase under the BPA.
  - (4) **BPA Management.** A statement listing individuals authorised to purchase under the BPA, identified either by title of position or by name of individual, organisational component, and the value limitation per purchase for each position title or individual, shall be furnished to the supplier by the Contracting Officer.

#### 4-6. **Sealed Bidding (Invitation For Bids - IFB)**

- a. **Overview of Sealed Bidding Process.** The following should apply when executing sealed bidding procedures:

- (1) **Preparation of Invitations for Bids.** Invitations must describe the requirements of an ACO/ACT HQ clearly, accurately, and completely. Unnecessarily restrictive specifications or requirements that might unduly limit the number of bidders are prohibited. The invitation is to include all documents, whether attached or incorporated by reference, furnished to the prospective bidders for the purpose of bidding.
  - (2) **Publicizing the Invitation for Bids.** Invitations must be largely publicized through distribution to prospective bidders, posting in public places, and such other means as may be appropriate. Publicizing time must be sufficient to enable prospective bidders to prepare and submit quality bids.
  - (3) **Evaluation of Bids.** Bids shall be evaluated without discussions.
- b. **Bid Submission.** Bids shall be submitted so that they will be received in the P&C Branch in the invitation for bids not later than the exact time set for closing of bid. No information contained in the envelope shall be disclosed before the time set for bid opening.
- c. **Modification or Withdrawal of Bids.** Bids may be modified (e.g., apparent clerical error) or withdrawn by any method authorized by the solicitation, if written notice is received in the P&C Branch not later than the exact time set for opening of bids. The method by which bids may be either modified or withdrawn should be explicitly described in applicable bidding instructions.
- d. **Late Bids.** Any bid, modification, or withdrawal of a bid received at the P&C Branch designated in the IFB after the exact time specified for receipt of bids is "late" and will not be considered unless it is received before the award is made and the bid complies with the IFB provisions regarding the acceptance of late bids. Late bids and modifications that are not considered must be held unopened (unless opened for identification) until after award and then retained with other unsuccessful bids. However, if applicable, any bid bond or guarantee must be returned.
- e. **Contract File Documents.** If available, the following must be included in the contract files for each late bid, modification, or withdrawal:
- (1) The date and hour of receipt.
  - (2) A statement, with supporting rationale, regarding whether the bid was considered for award.
  - (3) The envelope or other evidence of the date of receipt.
- f. **Contract award.** After bids are opened, declared technically compliant and funding available, an award will be made with reasonable promptness to that responsible bidder whose bid, conforming to the invitation for bids, will be most

Bi-SCD 060-070

advantageous to ACO/ACT HQs, considering only price and the price-related factors included in the invitation.

- (1) To be considered for award, a bid must comply in all material respects with the invitation for bids. Such compliance enables bidders to stand on an equal footing and maintain the integrity of the sealed bidding system.
- (2) Bids should be filled out, executed, and submitted in accordance with the instructions in the invitation. If a bidder uses its own bid form or a letter to submit a bid, the bid may be considered only if the bidder accepts all the terms and conditions of the invitation in signing compliance sheets.
- (3) Award on the bid would result in a binding contract with terms and conditions that do not vary from the terms and conditions of the invitation. Contracting Officers may only proceed with the procurement as long as the successful bidder's offer does not exceed the funding that has been allocated by the Fund Manager. If insufficient funds have been provided, the request should be returned to the Fund Manager for supplemental funding, or reconsideration of the original allocation.
- (4) All contracts in excess of level 2xB of the EFL will be awarded by a Contract Award Committee (CAC) in accordance with the NFR Article 20 and FRP Article XX a through XX c.

g. **Award Announcements.** Once an award decision has been reached, it is only fair to communicate that decision to companies that invested their time in participating in the sealed bidding process. Therefore, within a reasonable amount of time, both the unsuccessful bidder(s) and successful bidder will be notified orally or in writing at the Contracting Officer discretion. However, Contracting Officers should not divulge specifics of the winning bid, as this data may be proprietary or commercially sensitive.

#### 4-7. **Competitive Proposals (Requests For Proposals - RFPs)**

a. **Overview of Competitive Proposals Process.** The whole RFP process is a compilation of numerous RFP activities and documents that, when combined, result in ACO/ACT HQs requirements being communicated to industry. As such, solicitations shall contain the information necessary to enable prospective contractors to prepare proposals properly. Anticipated solicitation provisions and contract clauses should be a part of solicitations, and later formally incorporated into a binding contract. Other key characteristics of the RFP:

- (1) Contracting Officers shall furnish identical information concerning a proposed acquisition to all prospective contractors. ACO/ACT HQs personnel shall not provide the advantage of advance knowledge concerning a future solicitation to any prospective contractor.

Bi-SCD 060-070

(2) Except for solicitations for budget, information or planning purposes, Contracting Officers shall solicit proposals or quotations only when there is a definite intention to award a contract.

(3) A proposal received in response to a RFP is an offer that can be accepted by ACO/ACT HQs to create a binding contract, either following negotiations or without discussion.

b. **Best Value Concepts in Negotiated Acquisitions.** ACO/ACT HQs can obtain best value in negotiated acquisitions by using any one or a combination of source selection approaches. In different types of acquisitions, the relative importance of cost or price may vary. For example, in acquisitions where the requirement is clearly defined and the risk of unsuccessful contract performance is minimal, cost or price may play a dominant role in source selection. The less definitive the requirement, the more development work required, or the greater the performance risk, the more technical or past performance considerations may play a dominant role in source selection. The overarching goal of every acquisition is "Best Value". Unless the lowest compliant bid approach is the overriding consideration, the process will involve some form of trade-off. These are some guiding attributes of the trade-off process:

(1) Use the trade-off process when it is essential to evaluate and compare factors in addition to cost or price in order to identify and select the most advantageous proposal.

(2) Foster a pre-solicitation dialogue with industry to ensure a mutual understanding of ACO/ACT HQs needs and industry's capabilities, minimize inclusion of non-value added requirements, and promote a more effective source selection. Release information on a fair and equitable basis.

(3) Include the bidders' relevant past performance as an evaluation factor.

(4) Structure evaluation factors and their relative order of importance to clearly reflect ACO/ACT HQs needs and facilitate preparation of proposals that best satisfy those needs. For example, the solicitation shall state whether all evaluation factors other than cost or price, when combined, are significantly more important than, approximately equal to, or significantly less important than cost or price. Cost or price will always serve as an important evaluation factor. Further, request only the information needed to evaluate proposals against the evaluation factors.

(5) Limit evaluation factors to those areas that will reveal substantive differences or risk levels among competing proposals.

(6) Ensure consistency among the objectives of the acquisition plan, the contracting strategy, plus the solicitation and associated evaluation and selection criteria.

Bi-SCD 060-070

(7) Ensure discussions are meaningful by identifying to the bidder all deficiencies, significant weaknesses, and other proposal aspects that could be altered or explained to enhance materially a bidder's award potential.

(8) Ensure the selection decision is based on a comparative analysis of the proposals, is consistent with stated evaluation factors and considers whether or not perceived benefits are worth any price premium. Make the decision on a rational basis and set it forth in an independent, stand-alone defensible document.

(9) Debrief bidders promptly, at their request, as to the basis for the selection decision. Candidly explain the results of ACO/ACT HQs evaluation of their proposal without making any point-by-point comparisons with other competitors.

c. **Synopses of Proposed Contract Actions.** A Request For Proposal (RFP) should be as clear and concise as possible; exclude any unnecessary verbiage or notices; and, as a minimum, contain the following:

(1) RFP number and date.

(2) Name and address of the Contracting Officer.

(3) Quantity, description, and required delivery for the item.

(4) Applicable certifications and representations.

(5) Contract terms and conditions (e.g., general and special contract provisions).

(6) Offer due date.

(7) The solicitation may authorize bidders to propose alternative terms and conditions, including the Contract Line Item Number (CLIN) structure. When alternative CLIN structures are permitted, the evaluation approach should consider the potential impact on terms and conditions and/or the requirement.

(8) Information required from the bidder's proposal.

(9) Factors that will be used to evaluate the proposal and their relative importance. Also, it should be firmly established whether or not ACO/ACT HQs intend to award a contract without discussions.

(10) Other relevant information; e.g., incentives, variations in delivery schedule, variations in quantity, any peculiar or different requirements, different data requirements, and alternative proposals.

Bi-SCD 060-070

d. **Receipt of Proposals**

(1) **Facsimile Proposals.** Contracting Officers may authorise facsimile proposals. If facsimile proposals are authorised, Contracting Officers may, after the date set for receipt of proposal, request bidders to provide the complete, original and signed proposal.

(2) **Electronic Commerce.** Contracting Officers may authorise the use of electronic commerce for submission of offers. If electronic offers are authorised, the solicitation shall specify the electronic commerce method that bidders may use.

e. **Modification, Withdrawal, and Submission of Proposals.** Bidders are responsible for submitting proposals, and any revisions, and modifications, so as to reach the P&C Branch designated in the solicitation by the time specified in the solicitation. Late proposals and modifications that are not considered must be held unopened, unless opened for identification, until after award and then retained with other unsuccessful proposals.

(1) **Modification.** Any proposal, modification, or revision, that is received at the designated P&C Branch after the exact time specified for the receipt of proposals is "late" and will not be considered unless it is received before the award is made, and the Contracting Officer determines that accepting the late proposal would not unduly delay the acquisition. If the Contracting Officer accepts one late proposal, all proposals submitted prior to that date must be considered. If a late modification of an otherwise successful proposal makes terms more favourable to ACO/ACT HQs, Contracting Officers may consider accepting the modified proposal. However, all other late proposals and modifications must be considered.

(2) **Withdrawals.** Proposals may be withdrawn by written notice at any time before award. The Contracting Officer must document the contract file when withdrawals are made. In turn, extra copies of the withdrawn proposals will either be destroyed or returned to the bidder at the bidders request and expense. The Contracting Officer must promptly notify any bidder if its proposal, modification, or revision was received late, and must inform the bidder whether its proposal will be considered.

(3) **Submission.** Bidders may use any transmission method authorised by the solicitation (i.e., regular mail, electronic commerce, or facsimile).

f. **Handling Proposals and Information.** Upon receipt at the location specified in the solicitation, proposals and information received in response to a Request For Proposal (RFP) shall be marked with the date and time of receipt and shall be forwarded to the responsible Contracting Officer/Contracting Specialist. Proposals shall be treated as source selection sensitive and safeguarded from unauthorised disclosure throughout the source selection process.

Bi-SCD 060-070

g. **Evaluation of Proposals/Offers.** The Contracting Officer shall always evaluate offers in an impartial manner; and consistent with evaluation procedures outlined in the solicitation documents.

(1) **Evaluation procedures.** Contracting Officers exercise broad discretion in fashioning suitable evaluation procedures. Note: if the anticipated value of the contract exceeds level 2xB of the EFL, then the Contract Awards Committee shall also play a key role in establishing and safeguarding appropriate evaluation criteria.

(2) **Award Documentation.** Before making an award, or making a recommendation to the Contract Award Committee, the Contracting Officer must determine that the proposed price is fair and reasonable and the proposal will fulfil the requestor's needs. This determination is most often based on the fact that competitive proposals were received and thoroughly evaluated consistent with established evaluation criteria. If only one response is received, Contracting Officers should include a statement regarding price/cost reasonableness based on:

(a) Market research or a comparison with similar items/services in a related industry.

(b) Comparison of the proposed price with prices found reasonable on previous purchases.

(c) The Contracting Officer's personal knowledge of the item/service being purchased.

(3) **Award.** Contracting Officers may only award a contract as long as the price/cost of the successful proposal does not exceed funding that has been allocated by the Fund Manager. If insufficient funds have been provided, the request should be returned to the Fund Manager for supplemental funding, or reconsideration of the original allocation.

(4) **Award Announcements.** Once an award decision has been reached, it is only fair to communicate that decision to companies that invested their time in participating in the RFP process. Therefore, within a reasonable amount of time, both the unsuccessful bidder(s) and successful bidder will be notified orally and/or in writing at Contracting Officer discretion.

h. **Bidders' Conference**

(1) A bidders' conference may be held to clarify requirements whenever the Contracting Officer feels this is necessary or useful. This should be as soon as possible after the official release date of the IFB or RFP but allowing firms sufficient time to have studied the requirements.

Bi-SCD 060-070

(2) A bidders' conference should only be held when considered indispensable for the good conduct of the bidding process, as it imposes a burden on potential bidders from distant nations.

(3) The Contracting Officer in charge of the procurement will chair the conference and will be assisted as required by the Legal Office and relevant experts. The Contracting Officer shall publish minutes of the conference and these shall be attached to the solicitation documents. These minutes shall be mailed or transmitted in the most expeditious way to all potential bidders.

(4) When imposed by the specific nature of the requirement, and when attendance at a conference or at a site survey is considered indispensable for bidders to have a full understanding of the requirement, the bidding may exceptionally be restricted to those firms that attended or were represented at these events. If so, mandatory attendance shall be stated in the solicitation documents.

i. **Clarification**

(1) Whether there is a bidders' conference or not, bidders should seek any needed clarification as soon as possible. Such requests for clarification must be submitted directly to the Contracting Officer in the form and time established in the solicitation.

(2) Where a bidder requests clarification, the Contracting Officer must send the clarification, or related change, to all eligible bidders by the most expeditious means possible.

j. **Amending the Solicitation.** Either before contract award in the case of competitive negotiations or before bid opening in the case of sealed bidding, if the ACO/ACT HQ decides to change its requirements or terms & conditions, the Contracting Officer shall amend the solicitation.

(1) Amendments issued before the established time and date for receipt of offers shall be issued to all parties receiving the solicitation.

(2) Amendments issued after the established time and date for receipt of offers shall be issued to all bidders that have not been eliminated from the competition, provided that the reasons for the elimination are not material in the changes.

(3) If, in the judgment of the Contracting Officer, an amendment proposed for issuance after offers have been received is so substantial as to exceed what prospective bidders reasonably could have anticipated, so that additional sources would more than likely have submitted offers had the substance of the amendment been known to them, the Contracting Officer shall cancel the original solicitation and issue a new one, regardless of the stage of the acquisition.

Bi-SCD 060-070

(4) Oral notices may be used when time is of the essence. The Contracting Officer shall document the contract file and formalize the notice with an amendment. At a minimum, the following information should be included in each amendment:

- (a) Name and address of ACO/ACT HQ.
- (b) Solicitation number and date.
- (c) Amendment number and date with the number of pages.
- (d) Description of the change being made.
- (e) Contracting Officer's/Specialist's name and phone number (and electronic or facsimile address, if appropriate).
- (f) Revision to solicitation closing date, if applicable.

#### 4-8. Contracting Processing and Approval

a. **Approval by Financial Controller/Fiscal Officer.** Once a contractor has been selected (e.g., either through sealed bidding or RFP), the responsible Contracting Officer will need to formally request a commitment through the Fiscal Officer preferably using an automated financial information system. If the expected procurement, to include contract modifications, is within the initial "not to exceed" value allocated by the Fund Manager, this request is then forwarded for approval to either the Fiscal Officer or the Financial Controller, depending on the level of delegated authority of the Fiscal Officer. Where the expected price is more than that originally allocated, the Contracting Officer shall request supplemental funding through the responsible Fund Manager before seeking a firm commitment and execute a PO, contract or contract modification only when sufficient funding is available.

b. **Approval/Execution of Binding Contract by Contracting Officer.** Only with an approved commitment of funds, may a Contracting Officer execute a PO, contract or contract modification.

(1) **Purchase Orders.** As reflected earlier in this directive, POs do not necessarily have to be signed by the contractor, unless it is imperative to have written acceptance i.e., binding contract before the performance start. Therefore, for most POs, the Contracting Officer's signature will suffice.

(2) **Contracts and Contract Modifications.** All contracts, e.g., resulting from either a sealed bidding or RFP process, and contract modification require dual signatures, i.e., from both the vendor and Contracting Officer.

(3) **Sequence of Signatures.** When a supplier's signature is required in order to execute a bilateral and binding contract, the Contracting Officer will be the last person to sign; this approach serves as a protective measure for

Bi-SCD 060-070

ACO/ACT HQs. Also, the date upon which a contract is concluded, i.e., following the Contracting Officer's signature, marks the Contract Effective Date (CED). This date may, or may not correspond with the actual start of performance under the contract.

- c. In accordance with reference A, the HQs FC or his duly appointed representative will countersign all commercial contractual instruments (PO, contract, etc.) above level 2xB of the EFL.

## CHAPTER 5 - CONTRACT MANAGEMENT

5-1. **Objective.** Once a contract is awarded, contract management begins. Contract management incorporates all relationships between the P&C Branch Staff, the Receiving Division and the vendor. Fund Managers, in turn, are expected to track funds that they have allocated, and to reconcile these amounts with commitment reports produced by the Fiscal Office. This will last as long as the contract has not been fully executed according to the contract clauses to include final payment. Many contract management actions will underline the different steps including quality control plan, inspection, acceptance/rejection, modification, disputes, until contract closeout. Ultimately, Contracting Officers are responsible for all aspects of managing contracts issued under their signature. As such, they are to implement systems to monitor execution of outstanding contracts, and provide status information to customers either through the provision of specific information/reports, or providing on-line access to contracting data. They will regularly, at least monthly, follow-up on overdue contracts, and expedite orders as required. Unless otherwise specifically authorised, only Contracting Officers/Specialists may contact suppliers to facilitate contract management activities. P&C Branch Staff retains this sole responsibility in order to maintain the overall integrity of the procurement process.

5-2. **The Effect of Contract Provisions and Applicable Law on Contract Management.** Contract management actions such as the enforcement of warranties, the implementation of contractual remedies, or the termination of contracts, are affected by the specific provisions agreed to in the contract, as well as other provisions the parties may not be aware of, but implied by law. Most countries have their own civil codes, own contract acts or domestic sale goods acts. These regulations contain provisions related to the quality of the supplied goods and provide implied warranties of some form (or liability for nonconformity). Where they apply, these provisions become part of the contractual arrangement, unless the parties disclaim or limit them in the contract. Also, it may happen that the provisions of certain International Conventions (e.g., the Convention for the International Sale of Goods or Vienna Convention) become applicable to an international transaction, if the parties have not explicitly disclaimed them, since ratifying nations normally accept the provisions of the convention will take precedence over domestic law. Therefore, Contracting Officers should pay due regard to the contract terms and conditions and the provisions of the applicable law when managing a contract. They must note that the guidance provided herein shall be adjusted to the specific circumstances of a given situation and cannot override the aforementioned legal framework. Contracting Officers shall coordinate any change to standard terms and conditions with their local LEGAD prior elevating this to their respective higher HQ.

5-3. **Contract Distribution.** The extent to which contracts and modifications, including Purchase Orders, are distributed will certainly vary depending on magnitude and "need to know". However, timing is all-important. Therefore, Contracting Officers shall distribute copies of contracts or modifications as soon as practicable after execution by all parties. As a minimum, the Contracting Officer shall distribute simultaneously one signed copy or reproduction of the signed contract to the contractor. Further, when a contract is assigned to another Office for contract management/monitoring, that Office too will receive one copy or reproduction of the signed contract and of each modification. Additional distribution shall be kept to the minimum required to promote proper performance of essential functions without

Bi-SCD 060-070

compromising contracting processes. The contractual amount shall not be divulged to the public nor ACO/ACT HQs Staff, and extreme caution should be given to information “commercially-in-confidence”.

5-4. **Contract Reporting.** ACO/ACT HQs automated financial information system serves as a mean to convey important contractual information to others. It will be important for Contracting Officers to retain additional information in electronic format. This information should support inquiries from the NATO implementing committees and auditors, and include as a minimum:

- a. The identity of the organization or activity that conducted the procurement, with the date of contract award and total cost.
- b. Information identifying the source to which the contract was awarded.
- c. The property or services obtained by ACO/ACT HQs under the procurement.

5-5. **Quality Assurance (QA).** Quality Assurance refers to all efforts undertaken by the ACO/ACT HQ to evaluate certain attributes of the products and services it procures, based on the application of pre-specified standards or pre-identified performance indicators, to record such evaluations, and to recommend or effect remedial contract action. Naturally, the degree to which QAEs or COTRs and the Quality Assurance Surveillance Programme (QASP) are employed will, in large measure, depend on the value, complexity, and importance of specific contracting activities. In essence, QA efforts are to:

- a. Ensure that an ACO/ACT HQ receives the quality of supplies called for under the contract, and pays only for the acceptable level of services received.
- b. Define what ACO/ACT HQs must do to ensure that the contractor has performed in accordance with performance standards e.g., as articulated in SOW, PWS, or SOO. This can range from a one-time inspection of a product or service to periodic in-process inspections of ongoing product, or fairly routine monitoring of service delivery. A QASP arguably bears a larger impact on services, by ensuring ACO/ACT HQs receive the quality of services called for under the contract, and that each ACO/ACT HQ only pays for the acceptable level of services received.
- c. **Monitoring.** The Contracting Officer cannot be expected to personally monitor the performance of every contract awarded. Property Accountable Officers (PAOs) or Memorandum Receipt Account Holders (MRAHs) will often sign on behalf of the ACO/ACT HQ for receipt of material delivered to the designated place. CORs/COTRs and/or QAEs will sign for delivery of services provided to them by contractors. To monitor service contracts, it is very important to appoint and train COTRs and QAEs. Most COTRs/QAEs should be very knowledgeable regarding the item or service being contracted. It is the responsibility of the Contracting Officer to train COTRs. When training COTRs, ensure COTRs understand that they do not have authority to change terms of the contract. The two most important responsibilities of COTRs/QAEs are:

- (1) Ensuring contractor compliance with the terms of the contract.

Bi-SCD 060-070

(2) Documenting the conformance or non-conformance of the contractor. There are two different monitoring methods: direct observation and indirect observation.

(a) Direct observation means personal, physical observation mainly conducted by a COTR, COTR or QAE. These field representatives are 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. Direct observation is of limited use 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 replaced or supplemented by indirect observation.

(b) Indirect observation refers to testing, technical reviews, performance indicators and audits. Indirect observation is appropriate whenever direct observation would provide insufficient or ambiguous information.

d. **Training.** Training of COTRs and QAEs will be conducted in two distinct phases, one tied to understanding the do's and don'ts of contractor performance monitoring, and second to review and understand all pertinent aspects/requirements of a specific contract.

5-6. **Inspection/Acceptance.** A crucial part of the acquisition process is inspecting and accepting that supplies or services conform to their applicable contract. Acceptance may take place before delivery, at the time of delivery, or after delivery, depending on the provisions of the terms and conditions of the contract.

a. Unless contract terms call for other delivery and receipt arrangements, PAOs will typically sign on behalf of the ACO/ACT HQ for receipt of material delivered to the designated place. COTRs and Authorised Requestors (or where more appropriate, Originators and QAEs) will sign for delivery of services provided to them by contractors. They will either prepare a Material Inspection and Receiving Report (MIRR) or signify acceptance on an applicable invoice. Whether tied to either supplies or services, acknowledgements will be forwarded to the responsible P&C Branch within 3 days of receipt. These certifications may be provided by electronic means (e.g., in the case of supplies ordered using the NATO Depot Supply System (NDSS) or other NATO systems).

b. Receiving authorities are responsible for determining the quantitative and qualitative compliance with the original PO or contract. Both material and services should be inspected for quality conformance, and be consistent with contractual terms and conditions. Where it is not possible to test operation of equipment prior to receipt signature, acceptance should be based on quantity only, with discovered discrepancies handled via applicable warranty clauses. Non-conforming supplies or services shall be immediately rejected. Unless otherwise provided in the schedule, acceptance shall be

Bi-SCD 060-070

conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

5-7. **Warranties.** Warranties must be spelled out in the specific terms and conditions of the contract or in ACO/ACT standard contract terms and conditions. The principal purpose of a warranty in a contract is to delineate the rights and obligations of the contractor and ACO/ACT HQ for defective items and services and to foster quality performance. Generally, a warranty should provide a contractual right for the correction of defects notwithstanding any other requirement of the contract pertaining to acceptance of the supplies or services. An imperative for including "extended or special" warranty provisions with a purchase, beyond the legal commercial enforceable warranty, must ensure that the benefits to be derived from this warranty are commensurate with the cost of the warranty to the ACO/ACT HQ. Thus the Contracting Officer retains the ability to effectively identify, report, and enforce all warranty provisions.

a. As a matter of normal trade practice, an item might be traditionally warranted, and, as a result of that practice, the cost of an item to NATO will be the same whether or not a warranty is included. In those instances, the ACO/ACT HQ would naturally retain "standard" warranty provisions at no additional cost.

b. To facilitate the pricing and enforcement of warranties, the Contracting Officer shall ensure that warranties clearly state the:

(1) Scope and duration of the warranty in the context of the estimated useful life of an item or extent of services, and the contractor's obligations in terms of remedies.

(2) Requirements for timely notice to the contractor of defects. Obtain the contractor's position and its reason for taking that position. Reach agreement on how and when the warranty will be applied.

(3) If no agreement can be reached refer to contract clauses relating to the settlement of disputes.

5-8. **Bonds and Insurance.** For special complex and/or time sensitive acquisitions such as construction contracts, consultant services, or instances involving advance payments, Contracting Officers need to ensure that ACO/ACT HQs interests are well protected. A variety of instruments (bond, letter of credit, certificate of deposit, insurance, etc.) can be used to protect ACO/ACT HQs. Given an incredibly wide array of bond/insurance-type applications, discussion below is limited to some key aspects. As each procurement activity is unique, Contracting Officers will need to explore, in much greater details, specific approaches and when deemed necessary seek legal counsel and fiscal advice.

a. Sample type of bonds and related documents are as follows:

(1) An "advance payment bond" secures fulfillment of the contractor's obligations under an advance payment provision.

Bi-SCD 060-070

(2) A “payment bond” assures payments as required by law to all persons supplying labour or material in the prosecution of the work provided for in the contract.

(3) A “performance bond” secures performance and fulfilment of the contractor's obligations under the contract if such requirement is included in the solicitation/bidding documents. Generally such bonds are not necessary when ACO/ACT retains payment(s) until after milestones of performance. 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 ACO/ACT. 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.

(4) A “bid bond” such as a certified check assures that bidders are committed to meet bidding instructions and likely contract requirements. The solicitation document shall specify any requirements with respect to the issuer, 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 been put in place prior to the expiration of the bond. The validity of bid bonds should be for the same period as the validity for the proposal. The bid bond shall be promptly returned to unsuccessful bidders and upon the expiry of the bid bond, the termination of the tender process, the entry into force of a contract and the provision of a performance bond (unless determined that the bid bond will function as performance bond), the withdrawal of the bidder's proposal prior to the deadline for the submission of bidder's proposals.

(5) “Certificates of deposit”. The contractor deposits certificates of deposit from an insured financial institution with the Contracting Officer, in an acceptable form, executable by the Contracting Officer.

b. The contractor shall furnish all bonds or alternative payment protection, including any necessary re-insurance agreements, before receiving a notice to proceed with the work or being allowed to start work. Unless the Contracting Officer determines that a lesser amount is adequate for the protection of ACO/ACT HQs, the amount of risk mitigating instruments should be equal to the original contract price, and further aligned with any subsequent price increases.

5-9. **Invoices.** All invoices are received by Finance and Accounting and must be time stamped with receipt date and paid according to payment terms established in a contract. The requiring activity/customer shall ensure that services and supplies are inspected, accepted or rejected if non-conforming and notify Finance and Accounting accordingly. Each invoice must be validated with the contract to ensure that the invoice is billed with the correct amount according to the line item, the remit address is the same as the invoice and that the contract covers the product and services being charged. The contract balance must cover the amount of payment requested by the supplier. Invoice payments should not be made on a contractor's

Bi-SCD 060-070

invoice that contains errors. In such cases, a corrected invoice should be sought from the contractor. Invoices should quote the contract/Purchase Order reference number, description of supplies or services, unit price, quantity, total line item price, discounts offered, taxes due or exempted, total payment due, and accurate payment instructions. Typically, accurate, certified and validated invoices should be paid within 30 days of receipt at ACO/ACT HQs.

a. **BPA Invoices.** A summary invoice shall be submitted at least monthly or upon expiration of a BPA, whichever occurs first, for all deliveries made during a billing period, identifying the delivery notices covered therein, stating their total value, and supported by receipt copies of the delivery notices. When billing procedures provide for an individual invoice for each delivery or release, these invoices shall be accumulated, provided that a consolidated payment will be made for each specified period.

b. **Subscription Services.** An invoice for subscriptions or other charges for newspapers, magazines, or other periodicals shall show the starting and ending dates, and shall state either that ordered subscriptions have been placed in effect or will be placed in effect upon receipt of payment.

c. **Defective Pricing.** Defective pricing occurs when, after an award, cost or pricing data submitted by the contractor (e.g., in conjunction with a contract awarded on a sole source basis) are found to be inaccurate, incomplete or non-current and result in a higher contract price. If ACO/ACT HQs relied on this defective data, Contracting Officers are entitled to a downward price adjustment. Such adjustments will be pursued before any invoices are paid.

5-10. **Payment for Goods and Services.** As stated in Chapter 2, the standard principle to be applied by ACO/ACT HQs is that payments will only be rendered based on full compliance with all contract terms by the contractor and receipt of an accurate invoice. As highlighted earlier in this directive, partial or progress payments may be included in contracts if they serve the interests of ACO/ACT HQs. Partial payments may not be made unless they are specifically authorised in the terms of the contract.

a. **Progress Payments.** A progress payment also referred to as instalment payment is a form of contract financing made before final work or deliverables are accepted. When progress payments based on incurred costs under cost-type contracts or upon specified milestones are to be made, the arrangements should ensure that a sufficient sum remains to be paid on final settlement that will encourage the contractor to deliver goods or services. Contracting Officers will need to reserve the explicit right to reduce or suspend progress payments, or to increase the liquidation rate, should a contractor's financial condition, work progress, etc. warrant such a move.

b. **Advance Payments.** An advance payment is a sum of money paid to the supplier upon signature of the contract, in anticipation of identified early expenses. Usually ACO/ACT does not undertake advance payments. It is the responsibility of the contractor to provide all resources needed for the performance of the contract tied to commercial acquisitions by ACO/ACT HQs. However, in some markets the provision of financing by the buyer (i.e., ACO/ACT HQs) is a commercial practice. In these special circumstances, the Contracting Officer, after the FC approval, may include appropriate

Bi-SCD 060-070

financing terms in contracts for commercial purchases, when doing so makes good business sense. The Contracting Officer is uniquely positioned to make such an assessment. Normally, the total of such advance payments should be limited to one-third of the contract price, and advance payments should be liquidated as soon as possible. When advance payments are authorised and made, Contracting Officers shall ensure ACO/ACT HQs interests are adequately protected in case of contract failure to fully comply with all terms and conditions of a contract. Typically, this will require Contracting Officers to insist on a guarantee deposit or performance/payment bonds beforehand. A standard exception may be the purpose of subscriptions to, for instance, periodicals, publications, educational courses or software licences, where advance payment is a normal commercial practice.

c. **Invoice Payment.** The Contracting Officer/Specialist will match and reconcile the contractor's invoice, the PO/contract, and the MIRR or other supporting information. When the invoice is correct and proper for payment, the Contracting Officer/Specialist will certify it as such in writing or electronically, and forward the document to the Fiscal and Disbursing Office for approval and payment.

d. **Holdback payments.** 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 ACO/ACT until the supplier has provided proof it has discharged itself or all its obligations under the contract. This contract provision allows ACO/ACT to withhold a portion of payment, usually 5 to 10% of each invoice by the supplier.

e. **Payment Terms.** ACO/ACT HQs should ensure that they comply with the payment terms of contracts in such a way that they are able to take advantage of prompt payment discounts wherever available. Invoices featuring such discounts should be processed expeditiously, and may be moved to the head of processing queues.

5-11. **Property Administration.** Reference O describes the policies and procedures required for providing ACO/ACT HQs property to contractors. It is imperative that Contracting Officers refer to this directive whenever ACO/ACT HQs property is included in contracts.

5-12. **Contract Modifications.** A contract modification refers to any written change in the original terms and conditions of a contract. It is executed to reflect changes to the original requirement, to reflect the solution of performance problems or to comply with formal administrative considerations. Only Contracting Officers, acting within the scope of their authority, are empowered to execute contract modifications on behalf of ACO/ACT HQs. However they should consult with the client to 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 action. A contract modification 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. Other ACO/ACT HQs personnel shall not execute contract modifications, act in such a manner as to cause the contractor to believe that they have authority to bind ACO/ACT

Bi-SCD 060-070

HQs, or direct or encourage the contractor to perform work that should be the subject of a contract modification. All contract modifications exceeding 2 X EFL B are to be countersigned by the Financial Controller or his representative. Contract modifications fall into two distinct categories:

a. **Bilateral.** A bilateral modification or supplemental agreement is a modification that is clearly within the scope of the contract and is signed by the contractor and the Contracting Officer. Such modifications are used to execute equitable price adjustments, economic price adjustments, finalise Letter Contracts or other previously un-priced actions, and/or reflect other agreements of the parties modifying the terms and conditions of a contract.

b. **Unilateral.** Generally, ACO/ACT contracts contain various clauses that permit the Contracting Officer to make unilateral changes, in designated areas, within the general scope of the contract. A unilateral modification is a contract modification that is signed only by the Contracting Officer. Unilateral modifications are used, for example, to make administrative changes, e.g., address changes, change in contracting points of contact, etc., make changes authorised by clauses, e.g., options clause, or suspension of work clause, task orders on service contracts, delivery orders on ID/IQ contracts, and issue termination notices. However, there may be times when unilateral modifications are executed which have a price impact e.g., exercise of options. If a unilateral modification that affects price is executed because of urgency, and time does not permit negotiation of a price beforehand, at least a maximum price or not to exceed price shall be negotiated.

c. **Administration.** Proper documentation in writing to support contract modifications is always required. When changes are unilaterally executed without having a previously agreed to forward pricing arrangement, two separate actions will be required. First, the Contracting Officer will forward a change order followed by a supplemental agreement reflecting the resulting equitable adjustment in contract terms. If an equitable adjustment in the contract price or delivery terms or both can be agreed upon in advance, only a supplemental agreement need be issued. Similarly, if administrative changes and changes issued pursuant to a clause giving ACO/ACT HQs a unilateral right to make a change e.g., an option clause, only the initial unilateral modification is required.

d. **Contract Award Committee.** The procedures for signing a contract modification are the same as that of an original contract. If the change is within the general scope of the contract, the modification may be approved by the contracting officer. Otherwise the modification shall be submitted to the CAC (for contracts subject to Formal procurement procedures) to obtain the required approval.

e. **Equitable Adjustment.** Contracting Officers may negotiate equitable adjustments resulting from ordered changes in the shortest practicable time. If need be, the Contracting Officer/Contracting Specialist shall conduct a price/cost analysis to confirm the reasonableness of any adjustment. If additional funds are required as a result of the change, the Contracting Officer shall also secure the funds before making any adjustment to the contract. To avoid any future controversies that might result from

Bi-SCD 060-070

settlement of any equitable price adjustment, the Contracting Officer should ensure that all related elements are clearly presented and resolved, and that the associated modification (i.e., supplemental agreement) includes a Contractor's statement of release from any liability under the contract and further equitable adjustments.

**5-13. 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 BC. This provision would allow Contracting Officers to enter into multi-year financial obligations not fully supported by current year budget credits. This approach will enable the acquisition 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 acquired. However, there are restrictions to multi-year contracting:

a. 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. Multiyear contracts supported by a business case might include option years e.g. a three year multi-year contract followed by two one year options.

b. 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:

(1) Operation, maintenance, and support of facilities, equipment and installations.

(2) Maintenance or modification of vehicles and other highly complex military equipment.

(3) Magazine subscription, bus transportation, and refuse collection and disposal.

c. 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, the ACO/ACT HQ 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 Contracting Officer not the preferred approach when:

(1) Delivery requirements far enough into the future permit competitive acquisition, production, and delivery.

(2) The market price for the supplies or services involved is likely to drop substantially.

d. Solicitations shall include appropriate provisions and clauses when resulting contracts will provide for the exercise of options. When exercising an option, the

Bi-SCD 060-070

Contracting Officer shall provide written notice to the contractor within the time period specified in the contract. The Contracting Officer may exercise options only after determining that: funds are available; the requirement covered by the option fulfils an existing ACO/ACT HQs need; the contractor is providing satisfactory performance, the exercise of the option is the most advantageous method of fulfilling ACO/ACT HQs 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 Contracting Officer is to record the basis of the decision in the contract file. Within ACO/ACT contract management, there will be no automatic contract renewal or tacit option to exercise.

5-14. **Novation Agreement.** A novation agreement serves as a legal instrument executed by the contractor (transferor), the successor in interest (transferee), and the ACO/ACT HQ wherein the transferor essentially guarantees performance of the contract, the transferee assumes all obligations under the contract, and the ACO/ACT HQ formally acknowledges transfer of the contract and related assets/interests. Here are some guidelines for novation agreements:

a. 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.

b. When it is in an ACO/ACT HQ interest not to concur with the planned transfer of a contract from one company to another, the original contractor remains under contractual obligation to the ACO/ACT HQ, and the contract may be terminated for reasons of default, should the original contractor not perform.

c. When considering whether to recognize a third party as a successor in interest to the ACO/ACT HQs contracts, the Contracting Officer shall identify and evaluate any significant organisational conflicts of interest. If the Contracting Officer determines that a conflict of interest cannot be resolved, but that it is in the best interest of the ACO/ACT HQ to approve the novation request, a waiver will be sought from the HQ's FC.

d. When a contractor asks ACO/ACT HQs to recognize a successor in interest, the contractor shall submit to the Contracting Officer two signed copies of the proposed novation agreement and one copy each, of the following:

(1) The document describing the proposed transaction, e.g., purchase/sale agreement or memorandum of understanding.

(2) A list of all affected contracts between the transferor and ACO/ACT HQs, 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 Contracting Officer.

Bi-SCD 060-070

e. When recognizing a successor is in interest to an ACO/ACT HQs contract, the Contracting 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 ACO/ACT HQs, 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 Contracting Officer.

f. If only a change of the contractor's name is involved and the ACO/ACT HQ 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 Contracting 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 the ACO/ACT HQ, showing for each the contract number, type, name and address of the responsible P&C Branch. The Contracting Officer may request the total value as amended and the remaining unpaid balance for each contract.

5-15. **Suspension of Work.** Contracts may contain specific procedures and provisions for suspension of work. However, situations may occur during performance under a contract that ACO/ACT HQs order a suspension of work. A Contracting Officer may call for work, e.g., under a construction or architect-engineer contract, to be suspended. If the suspension is unreasonable, the contractor may submit a written claim for increases in the cost of performance, excluding profit.

5-16. **Stop-Work Orders.** Situations may arise during contract performance that causes ACO/ACT HQs to order a "work stoppage" (e.g., more common in construction or architect-engineer contract). If the suspension is unreasonable, the contractor may submit a written claim for increases in the cost of performance, excluding profit. Therefore, these decisions need to be carefully considered.

a. Stop-Work Orders may be used, when appropriate, in any negotiated fixed-price or cost-reimbursement supply, research, or service contract if work stoppage may be required for reasons such as advancement in the state-of-the-art, production or engineering breakthroughs, or realignment of programmes.

b. Generally, a Stop-Work Order will be issued only if it is advisable to suspend work pending a decision by ACO/ACT HQs and a supplemental agreement providing for the suspension is not feasible. Issuance of a stop-work order shall be approved at a level higher than the Contracting Officer, namely by the HQs FC and Requestors in full coordination. As a minimum, Stop-Work Orders shall not be used in place of a termination notice after a decision to terminate has been made. Stop-Work Orders should include a description of the work to be stopped; instructions concerning the contractor's issuance of further orders for materials or services; guidance to the contractor on actions to be taken on any subcontracts; and other suggestions to the contractor for minimizing costs.

Bi-SCD 060-070

c. Promptly after issuing the Stop-Work Order, the Contracting Officer should discuss with the contractor and modify the order, if necessary, in light of the discussion.

d. As soon as feasible after a Stop-Work Order is issued, but before its expiration, the Contracting Officer shall take appropriate action to either terminate the contract, cancel the Stop-Work Order (any cancellation of a Stop-Work Order shall be subject to the same approvals as were required for its issuance), or extend the period of the Stop-Work Order if necessary and if the contractor agrees (any extension of the Stop-Work Order shall be by a modification).

5-17. **Liquidated Damages.** When authorized by contract terms, the Contracting Officer may protect the interests of the ACO/ACT HQ through exercise of contractual right to recover liquidated damages. The Contracting Officer shall provide the contractor written notification of this intention, and invite the contractor to provide justifications for his actions, or lack thereof, by registered mail within the timeframe specified in the contract after the receipt of the "Show Cause Notice". This declaration will be considered final if the contractor fails to remedy the situation or adequately defend his actions in response to the Contracting Officer's letter.

5-18. **Contractual Disputes.** All disputes arising out of the performance of the contract should ideally be amicably resolved through mutual settlement between the Contracting Officer and contractor. Contracts should normally include clauses describing how to settle disputes. With that said, it is the Contracting Officer's responsibility to safeguard the interests of the ACO/ACT HQ, and to serve as the authority for the settlement of disputes with contractors. If, after trying various different approaches, as identified earlier in this directive, the parties still fail to come to an agreement, the Contracting Officer should render a final decision supported by LEGAD and the CAC; one which may or may not involve contract termination. Further, this decision shall be communicated in writing and include:

a. A description of the claim or dispute.

b. Reference to the pertinent contract terms.

c. Statement regarding factual areas of agreement and disagreement, statement of the Contracting Officer's decision, with supporting rationale.

d. It is also highly recommended that the following verbiage be included in the text of a Contracting Officer's final decision: *"This is the final decision of the Contracting Officer. You may appeal this decision to the Chief, P&C Branch (or HQs FC). If you decide to appeal, you must do so within 30 days from the date you receive this decision."*

5-19. **Default.** When the Contracting Officer determines that the supplier has not fulfilled the terms of a contract, he 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 Contracting

Bi-SCD 060-070

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 Contracting Officer as soon as possible. Excusable delays are delays beyond the control of the supplier and without any fault or negligence on the supplier's part. Examples of excusable delays include the following: acts of the public enemy, acts of ACO/ACT HQs operations, fire, flood, epidemic, quarantine restriction, strike, freight embargoes, or unusually severe weather. In most situations, this requirement should eliminate the need for a show cause notice prior to terminating a contract.

a. **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 Contracting 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 Contracting Officer may issue a notice of termination for default, unless it is determined that the failure to perform has been cured.

b. **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 Contracting 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 Contracting 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.

c. **Default Termination.** When a default termination is being considered, the Contracting 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 the ACO/ACT HQ has taken any action that might be interpreted as a waiver of the contract delivery or performance date, the Contracting Officer shall send a notice to the contractor setting a new date for the contractor to make delivery or complete performance. The Contracting Officer shall terminate contracts, whether for default or

Bi-SCD 060-070

convenience, only when it is in the ACO/ACT HQs interest. The Contracting Officer shall effect a no-cost settlement instead of issuing a termination notice when:

- (1) It is known that the contractor will accept one.
- (2) NATO's property was not furnished.
- (3) There are no outstanding payments, or other contractor obligations.

#### 5-20. Termination for Default

a. An ACO/ACT HQ has the right and a duty to refuse acceptance of nonconforming supplies and services. In asserting its rights under default, the ACO/ACT HQ 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 Contracting Officer shall consider the following factors:

- (1) The terms of the contract and applicable Host Nation laws and regulations.
- (2) The specific failure of the contractor and the excuses for the failure.
- (3) The availability of the supplies or services from other sources.
- (4) The urgency of the need for 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.
- (5) Any other pertinent facts and circumstances.

b. Contract clauses must provide for specific measures of redress in case of default. At a minimum, they must specify that ACO/ACT HQs rights, after a termination for cause, shall include all the remedies available to any buyer in the marketplace. ACO/ACT HQs preferred remedy would be to acquire 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 ACO/ACT HQ 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, the ACO/ACT HQ may also elect to require the contractor to transfer title and deliver to ACO/ACT HQ completed supplies and manufacturing materials, as directed by the Contracting Officer. Under such circumstances, the ACO/ACT HQ shall pay the contractor the contract price for any completed supplies, and the amount agreed upon by the Contracting Officer and the contractor for any manufacturing materials. To protect ACO/ACT HQ's interests, the Contracting Officer may determine the need to withhold an amount due for the supplies or materials.

Bi-SCD 060-070

c. When the Contracting 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 Contracting Officer shall prepare a memorandum for the contract file explaining the reasons for the action taken. If the Contracting Officer determines that a termination for default is proper, the Contracting Officer shall issue a notice of termination stating:

- (1) The contract number and date.
- (2) The acts or omissions constituting the default.
- (3) That the contractor's right to proceed further under the contract or a specified portion of the contract is terminated.
- (4) 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.
- (5) If the Contracting 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.
- (6) NATO reserves all rights and remedies provided by Host Nation law or under the contract, in addition to charging excess costs.
- (7) That the notice constitutes a decision that the contractor is in default as specified.

d. The Contracting 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 Contracting Officer shall notify the Fiscal Officer to withhold further payments under the terminated contract, pending further advice, which should be furnished at the earliest practicable time.

e. In the case of a construction contract, promptly after issuance of the termination notice, the Contracting 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.

f. If the Contracting 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 ACO/ACT HQs interest, the Contracting Officer may terminate the contract for the convenience of ACO/ACT HQs.

Bi-SCD 060-070

g. If the Contracting Officer has not been able to determine, before issuance of the notice of termination, whether the contractor's failure to perform is excusable, the Contracting 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.

h. When the supplies or services are still required after termination, the Contracting Officer shall repurchase the same or similar supplies or services against the contractor's account as soon as practicable. The Contracting Officer shall repurchase at a reasonable price as practicable, considering the quality and delivery requirements. The Contracting 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.

i. 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 ACO/ACT HQs, and the rights and obligations of the parties governed accordingly. Also, the Contracting 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 ACO/ACT HQs.

**5-21. Termination For Convenience.** Contracts should normally address the procedures to be followed in case of Termination For Convenience. Termination For Convenience means that the Contracting Officer can terminate a contractor for any reason when it is in an ACO/ACT HQ'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, Contracting Officers need to carefully weigh the longer-term benefits of such a move before acting. Like 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, Contracting Officers should pay close attention to the specific terms of the contract and applicable Host Nation laws and regulations.

a. The Contracting Officer shall terminate contracts for convenience only when it is in ACO/ACT HQs interest. The Contracting Officer shall effect a no-cost settlement instead of issuing a termination notice when:

- (1) It is known that the contractor will accept one.
- (2) ACO/ACT property was not furnished.

- (3) There are no outstanding payments, or other contractor obligations.
- b. **Issuance of Termination Notice.** The Contracting Officer's Termination Notice will reflect that the contract is being terminated for the convenience of ACO/ACT HQs under the contract clause authorising the termination. Further, the notice will stipulate:
- (1) The effective date of termination.
  - (2) The extent of termination.
  - (3) Any special instructions.
  - (4) 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.
- c. **Following issuance of a notice of termination,** the Contracting Officer is responsible for negotiating any settlement with the contractor. The Contracting 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.
- d. **Reinstatement of Terminated Contracts.** Upon written consent of the contractor, the Contracting 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 ACO/ACT HQs.
- e. **Methods of Settlement.** Settlement of contracts terminated for convenience may be effected by negotiated agreement.
- f. **Duties of Prime Contractor after Receipt of Notice of Termination.** After receipt of the notice of termination, the contractor shall comply with the notice. Further, the contractor shall:
- (1) Stop work immediately on the terminated portion of the contract and stop placing further subcontracts.
  - (2) Terminate all subcontracts related to the terminated portion of the prime contract.
  - (3) Immediately advise the Contracting Officer of any special circumstances precluding the stoppage of work.
  - (4) Perform the continued portion of the contract and submit promptly any request for an equitable adjustment of price for the continued portion, supported by evidence of any increase in the cost, if the termination is partial.

- (5) Take or direct necessary actions to protect and preserve property in the contractor's possession in which ACO/ACT HQs has or may acquire an interest and, as directed by the Contracting Officer, deliver the property to ACO/ACT HQs.
  - (6) Promptly notify the Contracting Officer in writing of any legal proceedings growing out of any subcontract or other commitment related to the terminated portion of the contract.
  - (7) Settle outstanding liabilities and proposals arising out of the termination of subcontracts, obtaining any approvals or ratifications required by the Contracting Officer.
  - (8) Promptly submit the contractor's own settlement proposal, supported by appropriate schedules, and dispose of termination inventory, as directed or authorized by the Contracting Officer.
- g. **Additional Duties of the Contracting Officer.** After issuance of Notice of Termination, the Contracting Officer shall:
- (1) Direct the action required of the prime contractor.
  - (2) Request Contractor's settlement.
  - (3) Examine the settlement proposal of the prime contractor and, when appropriate, the settlement proposals of subcontractors.
  - (4) Promptly negotiate settlement with the contractor and enter into a settlement agreement.
  - (5) Promptly settle the contractor's settlement proposal by determination for the elements that cannot be agreed on, if unable to negotiate a complete settlement.
- h. To expedite settlement, the Contracting Officer may request specially qualified personnel to assist in dealings with the contractor; advise on legal and contractual matters; conduct accounting reviews and advise and assist on accounting matters; and perform the following functions regarding e.g., termination inventory.
- i. The Contracting Officer is responsible for the release of excess funds resulting from the termination. The Contracting Officer shall estimate the funds required to settle the termination, and within 30 days after the receipt of the termination notice, process release of excess funds.
- j. **Termination Case File.** The Contracting 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

Bi-SCD 060-070

audit report is advisory only, and is for the Contracting Officer to use in negotiating a settlement or issuing a unilateral determination. ACO/ACT personnel handling the audit reports must be careful not to reveal privileged information that will jeopardize the negotiation position of ACO/ACT HQs, the prime contractor, or a higher tier subcontractor. Consistent with this, and when in ACO/ACT HQs interest, the Contracting Officer may furnish audit reports to prime and higher tier subcontractors for their use in settling subcontract settlement proposals.

k. **NATO Property.** Before execution of a settlement agreement, the Contracting 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 Contracting 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.

l. **No-Cost Settlement.** The Contracting 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 the ACO/ACT HQs under the contract.

m. **Settlement Disagreement.** If the contractor and Contracting Officer cannot agree on a termination settlement, or if a settlement proposal is not submitted within the period required by the termination clause, the Contracting Officer shall issue a final determination of the amount due. However, before issuing a determination of the amount due to the contractor, the Contracting 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 Contracting Officer on or before a stated date, substantiating the amount previously proposed. The contractor has the burden of establishing, by proof satisfactory to the Contracting Officer, the amount proposed, and may submit vouchers, verified transcripts of books of account, audit reports, and other official documents as desired.

n. **Settlement Negotiation Memorandum.** The Contracting 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 Contracting Officer should include any other matters that will assist reviewing authorities in understanding the basis for the settlement.

o. **Final Payment.** 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 Contracting 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.

Bi-SCD 060-070

5-22. **Past Performance/Performance Reporting.** 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, P&C Branch Staff is expected to maintain a viable database for these aforementioned purposes. ACO/ACT HQs Staff participating to the procurement process should contribute to populate a past performance database. In addition, the P&C Branch will monitor current performance of contractors based upon customer feedback. Performance shall be monitored by automated reporting, or by statistical sampling techniques for contracts over EFL D.

5-23. **Contractor Suspension/Debarment.** The Contracting Officer is responsible for safeguarding the interests of ACO/ACT HQs, and is the principal authority for the settlement of disputes with contractors. Therefore, the Contracting Officer in coordination with the CAC may declare the contractor unqualified as a source of supply, until such time as the contractor demonstrates that the identified deficiency has been corrected. Such decisions shall be reflected on a "Contractor Suspension/Debarment" roster maintained by every P&C Branch and properly documented by past performance reports/records.

5-24. **Contract File Maintenance.** Purchase Orders and contracts shall not be destroyed until all contractual obligations have been satisfied. Purchase Order and contract documents must be on file, in either hardcopy or electronic form, for at least three years following International Board of Auditors for ACO/ACT HQs certification of the financial statement for the fiscal year of the transaction. This period might be extended when required by Host Nation laws, or if actions are pending, e.g., dispute or court cases, this retention period may be extended.

5-25. **Contract Closeout.** A contract is not complete and ready for closeout until the contractor complies with all the terms of the contract. Closeout is completed when all contract management actions have been ended, all disputes settled, and final payment has been made. Contracting Officers/Specialists are responsible for initiating, via an automated or manual system, the closeout of the contract after receiving evidence of its physical completion. At the outset of this process, the Contracting Officer must review the contract funds status and notify the Fund Manager and Fiscal Officer of any excess funds before de-obligating funds. For a contract to be physically complete and archived the following must be true:

- a. ACO/ACT HQs must have inspected and accepted all deliverables (supplies or services).
- b. All options, if any, have expired.
- c. Notice of complete contract termination has been issued to the contractor.

5-26. **File Documentation Retention.** Files documentation is to be retained in accordance with Annex G.

## CHAPTER 6 - ACQUISITION SUPPORT OF ALLIED OPERATIONS AND MISSIONS (AOM)

6-1. **Context.** The Alliance has recently been involved in multiple and simultaneous operations and missions at significant distances outside the geographical boundary of its Nations. This has presented substantial logistics support and sustainment challenges to participating nations. Consequently, Nations have been increasingly dependent on outsourced solutions in support of Allied Operations and Missions (AOM). The increase in contracted support has presented a new complexity of management and oversight which was not as significant in past operations. The following are some of the complexities associated to increased contractor involvement:

- a. **Effect Based Contracting.** In a comprehensive approach to warfare, contracting like another activity which impacts the local environment must be considered in order to create the desired effect. Commanders increasingly consider the impact of contracts on their operations. This has led to initiatives such as the Afghan First Policy to fight counter insurgent incentives.
- b. **Corruption and Fraud.** A robust contract administration and oversight capability is essential to mitigate some of this risk.
- c. **Competition for Scarce Resources in Theatre.** With the increased dependence on outsourced solutions comes the potential of competition between nations in trying to obtain similar goods and services. This may have a detrimental impact on operations by price increases, poaching of existing workforce from one contractor to a higher paying contractor, and at worst case limit a nation / organization from obtaining services.
- d. **Need for Economies of Effort.** Nations are increasingly seeking opportunities to collectively enter into outsourced contracted solutions vice deploying national combat support elements. The multinational approach to contracting may provide economies however establishing a common set of requirements remains a challenge.
- e. **Requirement Definition.** One of the challenges of the increased level of outsourcing in operations is defining the requirement in a sufficiently detailed manner to allow industry to bid whilst remaining vague enough to cope with the ever-changing nature of operations. If written too vague, the contractor once awarded the contract may refuse to deliver on a service based on lack of detail conversely if too detailed, the contractor may refuse to do anything that appears different without additional compensation. No contract will ever be able to meet 100% of the expectation as it is impossible to capture all variables especially in an active theatre of operation. Requirements at times change from rotation to rotation based on the Commander's assessment of the battlefield and vision as to how the force is to be used and supported. Most contracts to make them cost effective are competed on the basis of an initial three year performance period with two optional years. This, at times, makes it either difficult to change or expensive to amend during the first three year period.
- f. **Assured Access to Commercial Capabilities.** Assured access contracts, albeit potentially more expedient are applicable to a few larger service areas. However

Bi-SCD 060-070

they are based on generic requirements when competing the initial contact which will have to be amended during the mobilization phase to reflect the unique requirements of the theatre and the specific circumstances. Getting it right in an affordable manner is the greatest challenge in achieving this ambition.

g. **Reliable Lines of Communication.** Depending on the theatre of operations, the lack of reliable lines of communication for goods and services to enter and depart the theatre may impact the operation significantly. It often results in having to carry larger quantities in theatre reserves or use more expensive means of transportation such as airlift vice sea or rail.

6-2. **Governing Principles.** The fundamental principles outlined in the NATO Financial Regulations and the procurement direction applicable to static headquarters remain valid for operations. However, given the extremely dynamic and ever-changing environment in a theatre of operations, a chapter providing additional acquisition information, direction and guidance is required.

6-3. **Governing Assumptions.** The following are done to subordinate organisations and provide management oversight of ACO contract related issues.

a. "Costs lie where they fall" will continue to apply to NATO led operations and all operations will be funded on a case by case basis using the applicable Private Office of the Secretary General document (PO)<sup>1</sup> as generic principles providing the framework within which guidelines for a specific operation funding arrangements can be developed;

b. Future operations, command and control structure will be based on a Joint Headquarters from the NATO Command Structure (NCS) consistent with the NATO Response Force (NRF) concept;

c. The Military Budget (MB) and the NATO Security Investment Programme (NSIP) will remain separate and that the associated procurement / contracting regulations will remain different for each (approved by the respective implementing committee) and subject to eligibility rules;

d. NSIP funding will continue to be provided to the Host Nation on a project cost basis approved by the Investment Committee (IC). The Host Nation may be a NATO Nation, a Major NATO Command (MNC) or a NATO agency;

e. AOM MB funding will continue to be provided to ACO and approved by the BC based on an annual budget submission to cover reoccurring operations and maintenance costs for a specific operation and include contract authority for these goods and services. When necessary, stand-alone requests for funding and / or contract authority may be processed out of cycle for urgent requirements which exceed the ACO Financial Controller's delegated authority;

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<sup>1</sup> PO(2013)0056 currently the approved Revised Funding Arrangements for Non-Article 5 Operations.

Bi-SCD 060-070

- f. Trust Funds may be generated for a specific or multiple tasks within an operation for which no mechanism exists under NATO funding principles to support the activities. General principles of financial accountability and transparency apply however specific eligibility criteria are developed for each. No project undertaken which is funded through a trust fund can result in a liability to NATO nations as a whole unless specifically authorized;
- g. Any agreement, tasking or arrangement which infers financial liability indirectly or directly for NATO must be approved by the ACO Financial Controller or the applicable resource committee.
- h. No contract can be entered into, modified or cancelled without prior agreement from the appropriate Financial Controller under advisement of the Chief of Contracts. Should the cost exceed the authority of the ACO Financial Controller, approval from the applicable implementing committees will be sought.

6-4. **Scope of Support Activities.** It is important to understand that contracting is not limited to the large outsourced capabilities such as APOD services, some aspects of Real Life Support; there are a large number of routine day-to-day requirements which must be contracted for. The following provides the main categories where contracting support may be required:

- a. **Logistics.** Logistics includes support activities including but not limited real life support, material supply, transportation, engineering and medical. This applies to the delivery of both goods and services required to support these activities;
- b. **Communications and Information Systems (CIS).** CIS include all aspects of providing communications through various systems. This may also include providing the CIS material, related maintenance, and communication services such as internet network access;
- c. **Non-Logistics Operational Specific Requirements.** A number of support activities fall outside the scope of traditional logistics support but none the less are essential to the execution of a mission. These may include but are not limited to consultancy, training/education, psychological operations products, public affairs activities, financial support, hired personnel, intelligence/surveillance costs, and knowledge management activities. These are largely in direct support of the commander and may vary significantly depending on the scope of the operation.

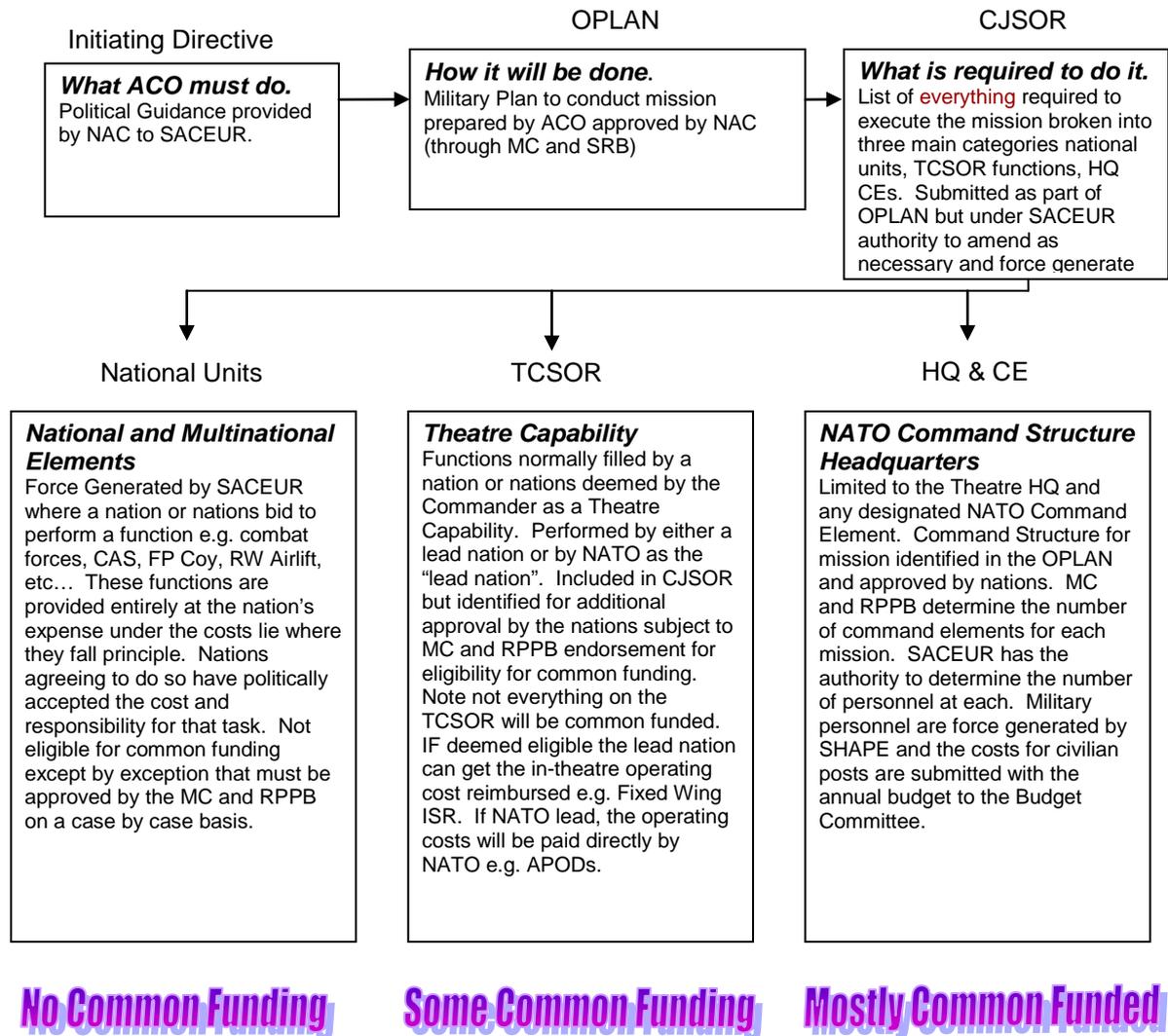
6-5. **Funding categories.** In addition to understanding the scope of contracting, it is important to understand the associated funding categories typically applicable to NATO-led AOMs. These categories will point towards which organization will normally be involved in defining the requirement and potentially the contracting process. The following diagram depicts the general principles that should be considered for potential common funding eligibility.

- a. **In-theatre Operational Requirements.** These are specific requirements which have been agreed as eligible for common funding by the NATO Nations for which

Bi-SCD 060-070

specific funding directives have been published (typically costs directly associated to the operation of the NATO HQ in theatre).

These may be part of a greater requirement which is not entirely eligible in which case applicable cost share mechanisms will apply which holds NATO responsible for its share (e.g. some real life support costs).



b. **Nation Borne Costs Requirements.** These requirements largely reflect requirements in support of the individual and as such remain a national responsibility. NATO is responsible to ensure support is provided for members of the approved NATO Crisis Establishment and normally extend these services on a cost recovery basis to other organizations collocated at each location. The Budget Committee has agreed the terms and conditions by which NATO can recover costs applicable to entities making use of these provisions<sup>2</sup>.

<sup>2</sup> Referred to in footnote 2 of PO(2013)0056 that stipulates that "Costs related to the individual (e.g., salaries, special allowances, per diem, accommodation, food) remain the responsibility of the sending authority."

Bi-SCD 060-070

c. **Theatre Capability Statement of Requirements (TCSOR)** are the activities which are included in the Combined Joint Statement of Requirements (CJSOR) which have been identified as theatre level enablers critical to the success of the OPLAN. Nations may decide on a case-by-case basis for each operation to make these functions eligible for common funding. Functions eligible for common funding by preference will be provided through a force generated lead nation (e.g. APODs), and only if force generation is unsuccessful, authority will be sought from to find a commercial solution.

d. **National Requirements (Non-common Funded).** A number of support requirements may exist where the NATO Command Structure in theatre is not a consumer but individual troop contributing nations each or collectively share a requirement. Each nation has the responsibility to provide its own support however under the concept of shared responsibility and efficiency, it may be useful to aggregate those requirements and find collaborative contracted solutions. This enables individual nations to reduce their support footprints, burdens and achieve economies of scale and effort. These can be done under a number of options:

(1) **TCN use of NATO Contracts.** ACO may direct/authorise centralised contracting for support. For national requirements, nations are strongly encouraged to use NATO centralised contracts in close coordination with NATO procurement support, subject to national reimbursement in accordance with MC 0319, NATO Standardization Agreements (STANAGS) and other NATO regulations. The JLSG will survey theatre wide commodity requirements and develop specifications for open-end contracts or basic ordering agreements that may be used by both NATO and troop contributing nations. A clear governance structure will be identified on a case by case basis.

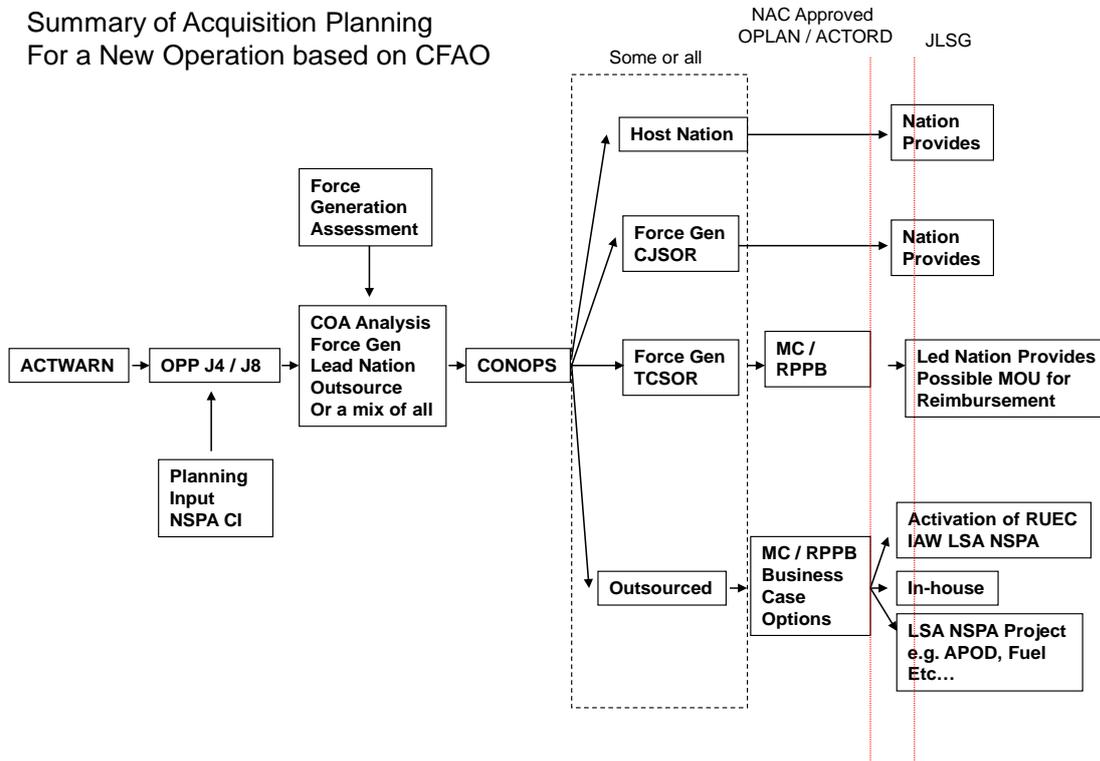
(2) **Bi-lateral and Multi-lateral Contracts.** Nations may also choose to partner with one or more nations and achieve savings from volume procurement.

## 6-6. Requirement Definition Process

a. **Planning Phase.** In anticipation of an operation, SHAPE is the principle organization responsible for articulating NATO common funded requirements. Subject to specific general eligibility criteria, SHAPE is responsible for the identification of all the requirements in support of a proposed operation. It may solicit the expertise of the subordinate command tentatively selected for a future operation to assist in the development of the requirements during the operational planning phase. In the effort of providing better coordination and to encourage economies and efficiencies; Nations will be encouraged to provide representatives during the initial planning process to identify requirements which would benefit from common contracted solutions. ACO Head of Contracts is represented in all Joint Operational Planning Groups established for the planning phase of potential operations and provides acquisition specific input / advice to the development of support options.

Bi-SCD 060-070

b. **Identification of the Acquisition Strategy for a new operation.** The following diagram indicates the general considerations applied when planning a new mission. It is essential that general acquisition considerations be included in the proposed concept of operations initially sent to the Nations for approval. This will lay the foundation for follow-on force generation, outsourcing and agency tasking in the development of the associated OPLAN.



c. **Assistance of a Contract Integrator for Logistics Support.** The Logistics Contract Integrator (CI) is an agency team permanently represented at SHAPE and in the Joint Force Headquarters tasked to provide advice during the planning process on the most current commercial solution options available and the related planning assumptions. The NATO Support Agency (NSPA) has been designated as the default CI for logistics operational planning support to SHAPE. The use of a CI is complimentary to the requirement definition task performed by the logistics planners and is considered a tool available and not a substitute for it<sup>3</sup>. There is a clear distinction between the standing task assigned to the NSPA to provide the CI planning capability and the decision to appoint the NSPA as the contracting agent responsible for the execution of contract on behalf of ACO. The decision to make use of the CI or any other agency part of the agency e.g. Logistics Operations, for the execution of contracts, a separate Logistics Support Agreement (LSA) will be submitted to the BC for approval covering the detailed deliverables, performance measures and liability considerations specific to that mission, functions or task.

<sup>3</sup> SG(2010)0376 Annex 2 "...the extent to which NATO agencies contribute to the definition of the military requirements while at the same time take responsibility for the for the acquisition and implementation processes remains a matter of concern. This is especially the case as the NATO Commands have largely lost the ability to define and cost requirements with the risk that they become overly dependent on agency support".

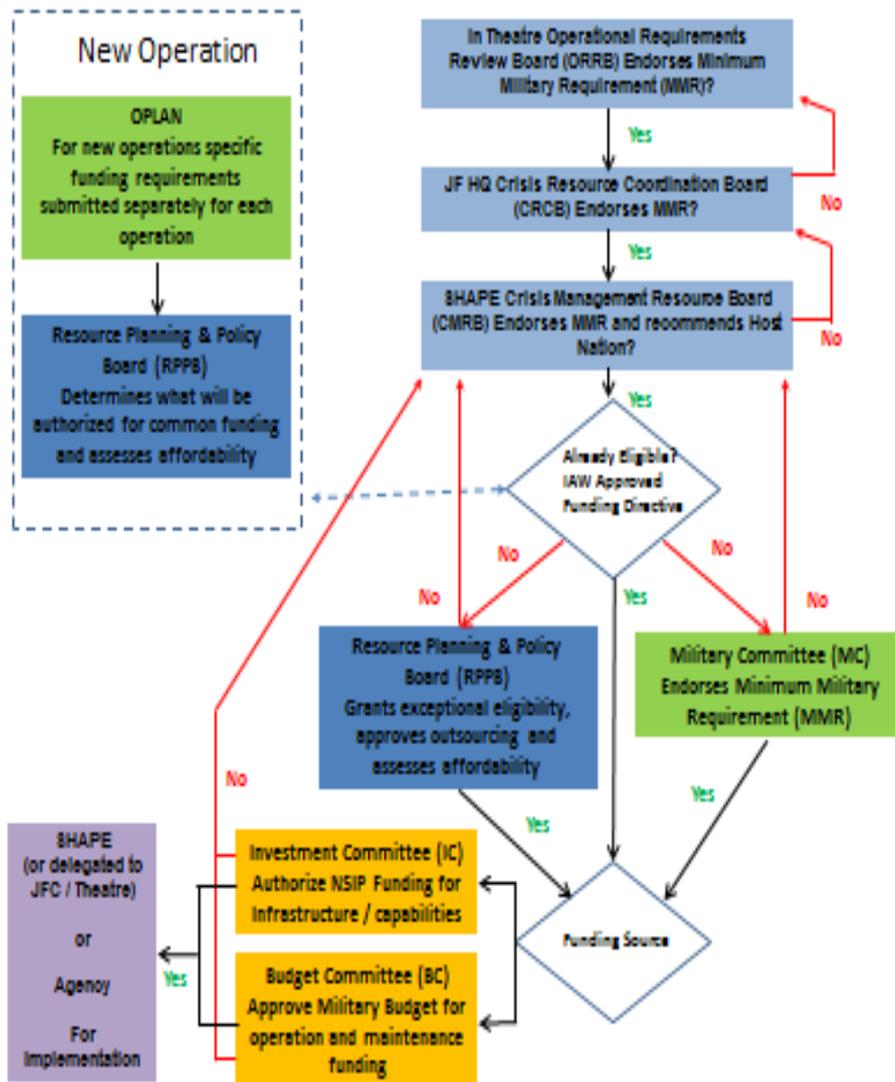
d. **Decision to Outsource.** Outsourcing remains the sole purview of the 28 Nations and therefore any dormant/assured access contracts pre-established can only be executed with the specific approval of the Nations in line with the funding arrangements agreed for a defined operation. During the development of the Concept of Operations/OPLAN, a business case will be required for any proposed outsourced solution. The business case must demonstrate an anticipated failure in force generation and there is no likelihood that a nation is willing to be reimbursed as a roles specialist lead nation, and that the outsourced solution meets minimum military requirements at an affordable proposed cost. The business case is required whether the outsourcing is done through an agency or in-house capabilities. Once the decision is made to use the CI for the execution of contracts, a separate contractual agreement will be submitted to the BC for approval covering the detailed deliverables, performance measures and liability considerations specific to that mission, functions or task.

e. **Post Activation AOM Requirements.** SHAPE has a requirements planning process which is well established and is used to validate the minimum military requirement through a Crisis Management Resource Requirement structure. This mechanism ensures NATO requirements are properly coordinated and staffed for the appropriate approval at NATO HQ. A significant share of the requirements will be identified and generated in theatre and staffed according to their funding source.

(1) **Operations and Maintenance Requirements.** Procurement of goods and services in direct support of the NATO elements in theatre make up part of the budget submission and are established and executed in-theatre. These requirements include the goods and services associated to the operations and day-to-day maintenance of the NATO common funded entities.

(2) **NATO Security Investment Programme Requirements.** Investment will always have to be staffed through the chain of command to the Investment Committee as there is no delegated authority for infrastructure (includes CIS, infrastructure and major capabilities). The Crisis Response Operations Urgent Requirement (CUR) process is the principle mechanism for staffing these requirements. It is during this process that a Host Nation is determined and will be recommended to the Investment Committee to do the contracting of the project. The chart below shows the approval process for CURs.

Bi-SCD 060-070



6-7. **Acquisition Planning and Policy.** The ACO Financial Controller has the ultimate responsibility to ensure contracting of NATO requirements is conducted in accordance with the ACO procurement policy and the policies approved by the Nations. As such, the ACO Head of Contracts is the functional expert entrusted to oversee acquisition planning and execution within ACO including AOMs. Unless otherwise specified Chapter 3. outlines the specific responsibilities and thresholds which delineate what contracting effort can be done at each level for contracts expending O&M common funds.

6-8. **Contracting Officer Certification.** In order to achieve “certification” (warrant), potential theatre Contracting Officers should have completed a period of NATO contracting training. If successful, ACO Head of Contracts will issue a recommendation to the Theatre FC who will staff the warrant for HQ Chief of Staff’s signature. The responsibility for training and authority for certification may be delegated to the Joint Force Command (JFC) or alternate authority.

Bi-SCD 060-070

6-9. **In-theatre Contracting Structure.** Contracting organisations may be centralised, dispersed, static, mobile, embedded in separate organisations such as within the Joint Logistic Support Group (JLSG) or may operate in the peacetime HQs (via reach-back). Irrespective of location, the Theatre FC will retain full responsibility for financial operations including NATO contracts on behalf of the Theatre Commander. As such the senior contracting representative in a theatre of operations shall be the Theatre Head of Contracts (THOC).

6-10. **Theatre Head of Contracts.** The Theatre Head of Contracts (THOC) and staff will provide procurement/contracted support for supplies, services, and support in accordance with NATO regulations and ACO procedures (subject to specific waivers requested and approved). The Theatre FINCON will establish a mission tailored procurement support organisation under the supervision of the theatre head of contracts. Depending on the scope and duration of the operation; this may include a reach-back capacity at the JFHQ. This organization shall be a responsive to the Theatre Requirements Review Board is responsible to manage and validate all Theatre level requirements.

The THOC will receive technical direction, support, and assistance from the JFHQ and SHAPE as applicable. The THOC shall be responsible for coordination and oversight of NATO and national contracting activities in theatre, and will provide direct procurement support to the operational HQ and associated elements.

Additionally, the THOC may request staff augmentation from NATO agencies subject to approval by the Resource Committees at NATO HQ. In such cases, such staff will be collocated in the contracting support element (staffed by the agency, national staff, or combinations thereof) within the Joint Logistic Support Group (JLSG). Nations must give prior authorisation (and confirm availability of funding) for NATO contract on their behalf (NATO will not pre-finance national requirements without the specific, prior consent of the ACO FINCON). Provision of centralised support to external bodies is limited to that which can be sustained from existing manpower/system resources and is subject to manpower regulations and the approval of ACO Head of Contracts, JFHQ FINCON and the Theatre FINCON.

6-11. **Theatre Allied Contracting Office (TACO) Organisation and Responsibilities.** The Theatre Allied Contracting Office (TACO) is subordinate to the THOC and will be physically located with or adjacent to the Theatre FC. Both the Theatre FC and the THOC should be ideally located with the Operational Commander. The TACO will function as the central coordinating and tasking authority for the Theatre contracting support effort, and should be suitably staffed and equipped to perform the following functions:

- a. **Advise the Operational Commander.** Provide advice to operational Commanders on procurement support issues.
- b. **Assessments.** Assess business opportunities permitting the use of third party vendors or local operators or companies from NATO and non NATO countries.
- c. **Theatre Contracting Policy.** Establish and promulgate Theatre contracting policy.

Bi-SCD 060-070

- d. **De-conflict Contract Requirements.** Coordinate and deconflict the efforts of other NATO, National and other governmental or non-governmental contracting agencies in Theatre. Compete and establish Basic Ordering Agreements (BOAs) for use by all NATO HQs and Allied forces in Theatre. This will be conducted in close cooperation with CJ4. If a Joint Logistics Support Group (JLSG) is activated, this function may be performed by the JLSG-Regional Allied Contracting Office (RACO), however remains accountable to the Theatre Financial Controller.
- e. **Continuity.** Achieve continuity and expertise capability by balancing a mix of military and civilians (either national or international).
- f. **Statistics.** Collect and coordinate contracting statistics and provide reports via CJ8 to higher HQs as required.
- g. **Liaison.** Interface and provide liaison between contractors, customers and CJ8 personnel.
- h. **Coordination with Legal Advisor.** Coordinate Host Nation Support (HNS) issues with the Theatre Legal Advisor. Liaise with the Legal Office on all judicial matters related to contracts.
- i. **Quality Assurance Programme.** Implement a quality assurance programme for the monitoring and acceptance of contractors' / vendors' activities and performance.
- j. **Customs and Excise.** Provide customs' services to NATO operations and, within means and capabilities, to National forces when operating under a NATO mission.
- k. **Co-ordinate Rear Area/Reach-Back Support Requirements.** Should the OPLAN establish a Rear Area or a Reach Back concept, the TACO shall coordinate all rear area/reach back support requirements and operations.
- l. At certain stages, contracting operations may be conducted by a single office (i.e., TACO). In such cases, the TACO will also perform the functions detailed below as RACO functions.

6-12. **Regional Allied Contracting Office (RACO).** Regional detachments of the TACO may be established to provide local support to subordinate NATO HQs or forces operating remotely within the Theatre. These units remain part of the Theatre-wide contracting organisation. These detachments will normally be oriented to support either a geographical region, or a particular agency or capability within the organisation (i.e., Theatre Engineers, JLSG). RACOs should be appropriately staffed and equipped to perform at least the following functions:

- a. **Compete and Award Procurement Actions.** Compete and award procurement actions in accordance with regulations and procedures developed for the Theatre for a specific region, customer, or function.

Bi-SCD 060-070

- b. **Process Invoices for Payment.** Obtain and process certification of contractor/vendor invoices for payment and transmit this information to the appropriate fiscal/disbursing personnel. A collocated J8-Forward Accounting Support Team (FAST) may perform an alternative to this operation.
- c. **Maintain Records and Provide Statistical Information.** Maintain all required documentation, files and archives and provide statistical information to the THOC for analysis and for reporting to higher authorities.

6-13. **Mobile Allied Contracting Offices (MACOs).** The operational situation may require the deployment of Mobile Allied Contracting Offices (MACOs) who will perform the same function as static RACOs. MACOs should be suitably equipped with dedicated vehicles, mobile voice and data communications capability, ground navigation equipment, secure storage, consumable supplies, etc. The Commander is responsible for ensuring appropriate security arrangements are in place prior to embarking on mobile missions. In order that the team can award contracts, certify invoices, process/disburse payments, and account for expenditures anywhere in the Theatre, a mobile team may include a Fiscal Officer and/or a Disbursing Officer, or other persons authorised to perform these functions. AJP-4-6(B) Section V lays out the roles and responsibilities of each part of the JLSC and how J8 interfaces with the JLSC.

6-14. **Joint Logistic Support Group (JLSC).** When specified in OPLANS, a RACO and a Forward Accounting Support Team (FAST) can be integrated into a JLSC. Their main responsibility is to execute contractual and fiscal actions generated by other JLSC cells in accordance with priorities established by the JLSC Director. The JLSC routinely co-ordinates logistic activities and reporting of surpluses and/or shortfalls among the component commands and other organisations. The JLSC RACO may execute centralised and/or theatre-wide contracts and agreements for common logistic shortfalls that require a contracting solution. Such contracts could allow the theatre to achieve economies of scale and thus reduce TCNs and NATO overall contracting costs. As these contracts must be customer funded unless otherwise directed by the NATO Finance Committees, any contract including those assigned to NATO agencies must be approved by the Financial Controller (through the THOC). The JLSC RACO is also in the best position to enhance business information sharing between NATO HQs, TCNs, and GO/NGOs. The JLSC RACO cell will be mission-tailored in size and composition, and could include representatives from TCNs. The JLSC RACO is subordinate to the JLSC Director, while subject to functional and technical (contracting and fiscal) guidance/direction from the THOC and Theatre FC. The FAST Team acts under the exclusive guidance of the Theatre FC, and remains part of the overall Theatre-wide J8 structure. Under the authority of the Theatre FC, agency personnel can be requested to augment the JLSC however, agencies are not authorized to commit NATO or nations to any financial liabilities unless specifically authorized to do so.

6-15. **Rear Area Support/Reach Back.** A rear area/reach-back NATO HQ may be appointed to provide support to other HQs in Theatre. The NATO HQ will be responsible for:

- a. **Special Procurement.** Procurement of complex or sensitive goods and services to support the operation in response to requests from the THOC.

Bi-SCD 060-070

- b. **Movement of Material/Personnel.** Establishing a contractual framework for strategic airlift and moving material to the Theatre preferably on the basis of regularly scheduled transport, i.e., weekly commercially/military channel flights.
- c. **Material Tracking.** Establishing a contractual framework for the progress of material under procurement or "en route" to the Theatre and providing status information to the TACO.
- d. **Supplement Expertise for Specific Contracts.** Supplement current expertise for specific contracts such as Foreign Military Sales (FMS), Acquisition Cross Service Agreement (ACSA), commercially sourced complex requirements, etc.

6-16. **International Agreements.** Memoranda of understanding/agreement (MOU/MOAs) with binding categorical implications to NATO budgets must be forwarded via SHAPE for approval by the funding committees prior to signature. MOU/MOAs providing for specific procurement of supplies or services from nations are considered a form of contractual instrument. All such agreements shall be submitted to SHAPE for approval as it remains the only legally recognized body within the command authorized by NATO to enter in agreements. SHAPE may delegate the signature of agreements once all applicable parties have reached consensus and approvals have been given. Day-to-day administration of these agreements may be delegated to the theatre and the THOC shall be the point of contact for the Financial Controller.

6-17. **Contract Categories.** A number of contract categories exist depending on the type of contract and source of funding. The following provides an overview of the different categories:

- a. **Host Nation.** Primarily applicable to NSIP projects, a NATO Nation, SHAPE or a NATO Agency can be designated as host nation for a project. ACO will remain responsible for defining the requirement and recommend the designation of the host nation. The designation of the host nation is subject to agreement by the IC and will be responsible for the conduct of the contracting process in accordance with the rules and regulations prescribed by the IC.
- b. **Direct to Industry (In-house) Solution.** The military budget covers the operation and maintenance costs for good and services in support of established activities and may include the procurement of replacement minor assets. This predominately applies to common funded goods and services however contracts are normally extended to nations in order to maximized shared services and take advantage of volume discounts. The theatre HQ will normally conduct the contracting process for these activities for goods and services approved in their budget. For contracting activities which exceed their capacity or authority in theatre; the contracting effort will be done by a higher headquarter or an agency may be tasked to do so. All contracting done in support of AOMs for goods and services which are common funded will be conducted in accordance with applicable funding arrangements for that operation and limited to the eligibility criteria established by the 28 Nations.

Bi-SCD 060-070

c. **Agency Solution.** In addition to the provisions described above for NSIP projects, agencies can also be tasked to provide contracting support for goods and services in support of an operation under three principle mechanisms:

(1) **Bi-lateral or Multi-lateral Contracts with TCNs.** NATO nations and specific approved partner nations can request support from NATO agencies directly for contracting support. In these cases, the NCS will not participate in the requirement definition but will ask that oversight information will be provided to the THOC in order for the Theatre Commander to have visibility of the overall contracting activity in theatre and will have a role in the customs procedures and practices. ISAF has demonstrated the need for contracting visibility as contracting can be a significant enabler in operations. This does not exclude NATO of being a participant in these contracts but it would do so as a participant and only pay for its share of the goods and services consumed without accepting liability for the entire activity.

(2) **Theatre-wide NATO Contracts.** In order to facilitate common contracted solutions for support whether logistics or CIS, nations may agree to have an agency provide contracted support which would be under NATO direction thus the ultimate liability for the activity would be underwritten by NATO Nations e.g. ISAF APOD Activities or the Afghan Mission Network. Theatre-wide contracts can also be pre-facilitated by an agency in support of a stand-by activity such as the NRF (if requested by ACO and approved by the NATO Nations). These contracts may also include goods and services relating to Real Life Support and other common user elements in theatre. This type of arrangement assumes that NATO Nations agree to underwrite the project as TCNs although committed financially through a sales agreement; they are only committed to pay for costs as long as they participate.

(3) **Pre-established Agency Programs.** Mechanisms exist for NATO and Nations to establish programs for specific capabilities which are not limited to but can be used in support of operations. Strategic airlift and other weapons systems partnerships can be used to support operations but are managed under a specific programme.

6-18. **Use of NATO Agencies.** NATO Agencies are customer funded and as such are operating on a no profit / no loss concept. Accordingly, anything tasked to an agency will come with an administrative cost and additional potential liability for their personnel. For this reason, it is essential to understand the following process when determining whether an agency can be used in support of a mission:

a. **Decision to Task Agency.** The decision to use an agency resides with the NATO nations on the advice of ACO. Based on the information provided above, ACO must carefully consider whether the use of an agency is the most effective, efficient and economical means of obtaining the capability required.

Bi-SCD 060-070

b. **Making the Case.** Nations have directed that ACO as their representative develop capability requirements from the perspective of an intelligent customer<sup>4</sup>. In doing so, the recommendation to use an agency must not only meet the minimum military requirement but also be able to demonstrate that it could not be achieved through the NCS, force generation through the NFS or by its own core capability.

c. **Committee Involvement.** Any decision to outsource services covered by common funding is subject to approval by the MC and the RPPB. Nations have requested that the request be supported by a business case<sup>5</sup> which substantiates the recommendation to outsource and why the agency approach would be the most effective over all other options. It is for this reason that typically the decision to engage with agencies is reserved for SHAPE as the rotational nature of staff in a theatre of operations does not provide the continuity required to obtain the appropriate approvals and see the process to fruition.

d. **Contractual Agreement with Agencies.** The IBAN has observed on the inadequacy of the current mechanisms used to task agencies. MOAs, SLAs, LSAs and other agreements form the basis for major tasks assigned to the various agencies supporting operations. Accordingly, the agreements are devised to better reflect the contracting procedures outlined in Chapter 3 of this directive. However, the following differences must be noted:

(1) ACO will not be able to take legal actions against performance issues under these agreements as would be the case when dealing with commercial entities however the intent is to formalize in more detail the agreement between the agency and the command.

(2) Agreements will include descriptions of what is required from the agency as well as the Statement of Requirement (SoR) for the functions / services they are tasked to contract for on ACO's behalf.

(3) The agreements will cover issues such as clearly define deliverables supported by relevant and useable performance indicators. Moreover, specific deliverables will also define the theatre commanders responsibilities and limitations regarding the provision of services in support of the agency such as force protection, intra-theatre movement etc.

(4) Instructions to Contractors Deployed on NATO Operations (CONDOs) are developed and provided to contractors whether contracted by ACO or agencies. Therefore the new agreements will also include a CONDO-like annex for agency personnel being asked to deploy into theatre for NATO purposes.

e. **ACO Involvement in Agency Contracting Process.** The decision to use an agency by no means diminishes ACO's responsibility as the requirement and resource owner. The following describes ACO's involvement and responsibility in various aspects of the contracting process:

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<sup>4</sup> MCM-0144-2007 MC Intelligent Customer Initiative dated 26 Nov 07

<sup>5</sup> AC/335-N(2010)0037

(1) **Statement of Requirement (SoR) for Contractors.** The SoR remains the responsibility of the requirement holder. This document must be developed as a coordinate product within the command structure to ensure tactical, operational and strategic considerations are reflected. Although the agency or a contract integrator can provide advice in terms of commercial solutions expertise, they should not be the initiator of the requirement. The Command Structure through its audit capacity and financial oversight mechanisms must ensure that sufficient arm's length exists when making use of agencies at this stage. ACO Financial Controller's acquisition representatives will participate in the development of the SoR to ensure independence and completeness.

(2) **Statement of Work (SoW) for Contractors.** The requirement holder and the agency interact to ensure the SoR is translated into a commercially understandable SoW. It is here that the expertise and experience of the agency is essential to ensure the eventual contract will reflect and deliver the goods and services which will enable the capability. All final products will have to be approved by ACO prior to releasing them to industry to ensure that any clauses which commit the commander or NATO to provide services. The ACO Financial Controller's acquisition representatives may choose to participate in some or all of the agency competitive processes (these may be from SHAPE or the JFHQ responsible for the operation).

(3) **Statement of Work (SoW) for the Agency.** The responsible JFHQ and SHAPE will develop a SoW for the agency is the applicable tasking agreement which will clearly outline the responsibility of all parties involved in managing outsourced functions and provide clear deliverables and associated key performance indicators that the agency will be expected to report against.

(4) **Competitive Process.** Normally the Requirement Holder HQ will provide subject matter experts to assist the agency during the competitive process. In addition, SHAPE and/or the applicable JFHQ may elect to have a contracting representative participate as an observer in the competitive process since the Nations have repeatedly indicated that responsibility ultimately remains with SACEUR.

(5) **Contract Award Decision.** As the default contract will be a three year performance period with two optional years, most contracts will require Contract Authority (CA) from the Budget Committee. This can be done through the CA Table in the annual budget submission for reoccurring contracts and/or as a separate submission to the Committee. JFHQs will prepare the detailed submission providing the necessary information to obtain the Nations' agreement. SHAPE will continue to coordinate all submissions to the Committee.

(6) **Contract Execution and Administration.** The ultimate responsibility will remain at SHAPE for all agreements with agencies; however the JFHQ responsible for the operation may be delegated the responsibility for the day-to-

day interface and management with the agency. This relationship will be clearly articulated in the agreement with the agency to avoid any confusion or misunderstanding. However, this will not preclude the participation of SHAPE representatives at key meetings/discussions involving matters that may have strategic implications or require interaction at the Committee level.

(7) **Agency Management Cost.** Nations have required increased information on the composition of the agency administrative fees added to the goods and services provided. Steps are being taken to increase transparency and better defined financial reporting requirements will be included in all future contractual agreements with agencies.

f. **Contract Modification, Extension or Re-competition.** For all contracts for which ACO as the owner of the program/project (underwritten through LSA by the BC) has tasked an agency, NATO retains the ultimate liability. Whether these contracts are used by nations or solely for NATO use, the following process is to be observed:

(1) **Contract Modifications.** Any modification needs to be properly supported with an agency proposal outlining the current contract provision, the problem and the proposed costed options to rectify the problem. This may also include splitting the contract if there are indications that the current contractor is abusing the potential sole source modification. Contracts modifications which have financial implications must be approved by the HQ holding the designated budget as long as the cost can be accommodated within the existing budget allocation. Any modification resulting in costs that cannot be accommodated will be staff through SHAPE to the Budget Committee for prior approval.

(2) **Extensions.** Contracts are normally competed on a 3-year initial performance period plus 2 option years. If the exercising of the options remains at the same cost, the responsible HQ can approve the exercising of the options. However, should modification accompany the request for extension which will result in cost increases (de facto sole source increases); a business case will be submitted to the Budget Committee outlining the options of extension versus re-competition. Financial as well as operational risks, benefits and implications must be covered in the business case.

(3) **Re-competition.** All contracts will be re-competed at the end of the initial five year period unless a strong case can be made due to severe impact on operations. They can also be re-competed should the contractor be found in default or initiates termination.

g. **Contract Termination.** Contract termination may be exercised at any time with the understanding that there may be residual costs associated such as cost of amortized investments by the contractor, minimum notice period guarantees, amortized mobilization and demobilization costs to name a few. Therefore, every effort must be made to ensure all contracts are awarded in such a manner to limit the amortization period to the initial performance period of three years or shorter if financially possible.

Bi-SCD 060-070

This will ensure maximum flexibility for the Alliance should the situation change as short notice.

6-19. **Code of Conduct Purchasing and Contracting Officials.** Operations by nature are high risk environments. The tactical imperative often drives the tempo which encourages and often demands immediate responses. Concerns of financial due diligence and strict adherence to contracting regulations often are strained to the point of non-compliance. More recently, NATO has participated in theatres of operations where it may be the cultural norm to provide or offer gifts, bribes or other forms gratuities. Accordingly, any challenges presented by the wording of the Code of Conduct outlined in Chapter 1 shall be addressed to the Theatre Head of Contracts and Theatre Financial Controller for consideration. They will evaluate the materiality of the situation in consultation with the ACO Head of Contracts to consider what actions must be taken within the spirit of the code of conduct in relation to the operational imperative.

## DEFINITIONS AND ABBREVIATIONS

Definitions included herein are to assist and understand only the key words used in the main body of the Bi-SC Procurement Directive.

**ACO.** Allied Command Operations

**Acceptance.** It means the act of an authorized representative of ACO/ACT Headquarters (HQs) by which the ACO/ACT HQ, for itself or as agent of another, assumes ownership of existing identified supplies tendered or approves specific services rendered as partial or complete performance of the contract.

**ACT.** Allied Command Transformation

**Advance Payment Bond.** A bond that secures fulfilment of the contractor's obligations under an advance payment provision.

**Automated Financial Systems.** Accounting/contracting/logistic information systems based on the use of Automated Data Processing (ADP) tools (e.g., FinS, NDSS or PILS).

**Best Value.** The forecast outcome of an acquisition that, in NATO's estimation, provides the greatest overall benefit in response to the requirement when balanced against costs.

**Bid.** An offer to sell supplies or services in response to an invitation for bids, submitted via the means specified in the solicitation instructions (i.e., FAX, email, letter or under formal sealed bid procedure).

**Bidding Period.** Calendar days between the date the solicitation is distributed and the bid closing date.

**Bi-SC.** Bi-Strategic Command consisting of ACO & ACT

**BOA.** Basic Ordering Agreement

**Chief P&C Branch.** Head of a Purchasing & Contracting (P&C) Branch / function within an ACO/ACT HQ.

**Claims.** A written demand or assertion by one of the contracting parties seeking, as a matter of right, the payment of money, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract.

**Classified Information.** Information deemed to require exceptional safeguarding measures in accordance with ACO Directive 070-001.

Bi-SCD 060-070

**Competitive Range.** Based on the ratings of each proposal against all evaluation criteria we obtain all of the most highly rated proposals. The range may be further reduced for purposes of efficiency.

**Compliance.** Conformity with technical specifications and/or contract conditions.

**Conditional acceptance.** Acceptance of supplies or services that do not conform to contract quality requirements, or are otherwise incomplete, that the contractor is required to correct or otherwise complete by a specified date.

**Construction.** A term used to describe the operation of building, alteration, or repair (including excavating and painting) of facilities, structures, or other real property. For the purpose of this definition, the terms facilities, structures, or other real property include, but are not limited to, improvements of all types, such as bridges, plants, parkways, sewers, mains, power lines, airport facilities, etc.

**Contract.** A mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them following delivery and acceptance. It includes all types of commitments that obligate the HQs to an expenditure of budget credits. Except as otherwise authorized, contracts are to be in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under Basic Ordering Agreements; Letter Contracts; orders such as Purchase Orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications.

**Contract action.** An action resulting in a contract, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to funding sources or administrative changes.

**Contract Authority.** Contract Authority must be obtained from the Budget Committee (BC) in order to enter into multi-year financial obligations not fully supported by current year budget credits. The Budget Officer under the approval of the HQ's FC must request Contract Authority.

**Contract Closeout.** Actions taken to close the contract and dispose/archive the contract file after receipt of evidence of physical contract completion.

**Contract Elements.** To be legally enforceable, a contract must include the following: an offer, an acceptance, consideration (or exchange of value), execution/conclusion by competent parties, legality of purpose, and clear terms and conditions.

**Contract Modification.** A written change in the terms of a contract. Also referred to as a "modification".

**Contract Price.** The total amount of a contract for the term of the contract (excluding options, if any) or, for Requirements Contracts: the price payable for the estimated quantity; or for Indefinite-Delivery type contracts: the price payable for the specified minimum quantity.

Bi-SCD 060-070

**Contract Quality Assurance (QA).** The various functions, including inspection, performed by ACO/ACT HQs Staff together with Purchasing & Contracting (P&C) Branch staff to determine whether a contractor has fulfilled the contract obligations pertaining to quality and quantity.

**Contract Quality Requirements.** The technical requirements in the contract relating to the quality of the product or service and those contract clauses prescribing inspection, and other quality controls incumbent on the contractor, to assure that the product or service conforms to the contractual requirements.

**Contract Type.** Also referred to as “type of contract”. Categories of contracts that are differentiated according to:

- a. The degree and timing of the responsibility assumed by the contractor for the costs of performance; and
- b. The amount and nature of the profit incentive offered to the contractor for achieving or exceeding specified standards or goals.

**Contract Specialist/Buyer.** Members of the P&C Branch (including Accounting Clerk, Customs Officer etc.) authorised to perform specific procurement tasks on behalf of the Contracting Officer.

**Contracting.** The act of purchasing, renting, leasing, or otherwise obtaining supplies or services from commercial or governmental sources (non “in-House/HQs” sources). Contracting includes description of supplies and services required, selection and solicitation of sources, preparation and award of contracts, and all phases of contract management.

**Contractor.** A person (Independent Contractor) or commercial/governmental company with whom an agreement is made on the delivery of goods or services on conditions and against prices stipulated in a contract.

**Commercial Item.** Includes:

- a. Any item, other than real property, that is of a type customarily used for ACO/ACT HQs purposes and that: (1) Has been sold, leased, or licensed to the general public; or, (2) Has been offered for sale, lease, or license to the general public.
- b. Any item that evolved from an item described in Paragraph a. of this definition through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under an HQ’s solicitation.
- c. Any combination of items meeting the requirements of Paragraphs a or b of this definition that are of a type customarily combined and sold in combination to the general public.
- d. Installation services, maintenance services, repair services, training services, and other services, if such services are procured for support of an item referred to in Paragraphs a, b, c, of this definition, and if the source of such services satisfies: (1)

Bi-SCD 060-070

Offers such services to the general public and ACO/ACT HQs under similar terms and conditions; and (2) Offers to use the same work force/efforts for providing ACO/ACT HQs with such services as the source uses for providing such services to the general public.

e. Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalogue or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalogue or market price for a specific service performed.

**Cost Analysis.** The review and evaluation of the separate cost elements and profit in a bidder's or contractor's proposal, including cost or pricing data or information other than cost or pricing data, and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.

**Cost or Pricing Data.** Cost or pricing data are data requiring certification. Cost or pricing data are factual, not judgmental; and are verifiable. While they do not indicate the accuracy of the prospective contractor's judgment about estimated future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred. They also include such factors as: vendor quotations; non-recurring costs; methods and in-production or purchasing volume; data supporting projections of business prospects and objectives and related operations costs; unit-cost trends such as those associated with labour efficiency; estimated resources to attain business goals.

**Cost-Plus-Award-Fee (CPAF) Contract.** A cost-plus-award-fee contract is a cost-reimbursement contract that provides for a fee consisting of a base amount (which may be zero) fixed at inception of the contract and an award amount, based upon a judgmental evaluation by NATO, sufficient to provide motivation for excellence in contract performance.

**Cost-Plus-Fixed-Fee (CPFF) Contract.** A CPFF contract is a Cost Reimbursement (CR) contract that provides for payment to the contractor of a negotiated fee that is fixed at the inception of the contract. The fixed fee does not vary with actual cost, but may be adjusted as a result of changes in the work to be performed under the contract. This contract type permits contracting for efforts that might otherwise present too great a risk to contractors, but it provides the contractor only a minimum incentive to control costs. A CPFF contract is suitable for use when required work involves research or preliminary exploration or study, and the level of effort required is unknown, or the contract is for development and test, and using a cost-plus-incentive-fee contract is not practical.

**Cost-Plus-Incentive-Fee (CPIF) Contracts.** A CPIF contract is a CR contract that provides for an initially negotiated fee to be adjusted later by a formula based on the relationship of total allowable costs to total target costs.

**Cost Realism Analysis.** The process of independently reviewing and evaluating specific elements of each bidder's proposed cost to determine whether the proposed cost elements are

Bi-SCD 060-070

realistic for the work to be performed; reflect a clear understanding of the requirements; and are consistent with the unique methods of performance and materials described in the bidder's technical proposal.

**Cost Reimbursement (CR) Contract.** A cost contract wherein the contractor receives no fee, but is simply reimbursed for recognizable and allowable costs. A cost contract may be appropriate for Research & Development (R&D) work, particularly with non-profit educational institutions or other non-profit organizations, and for facilities contracts.

**Cost-Sharing Contract.** A cost-sharing contract is a cost-reimbursement contract in which the contractor receives no fee and is reimbursed only for an agreed-upon portion of its allowable costs. Typically, cost-sharing contracts are used when the contractor agrees to absorb a portion of the costs, in the expectation of substantial compensating benefits.

**Country of Origin.** Nation of a contractor or sub-contractor/supplier, where the contracted goods are manufactured or assembled.

**Critical non-conformance.** Non-conformance that is likely to result in hazardous or unsafe conditions for individuals using, maintaining, or depending upon the supplies or services provided by a contractor.

**Cure Notice.** Written notice sent by the Contracting Officer to the contractor, which gives the opportunity to "cure" deficiencies in the performance of a contract. The cure notice should never direct the contractor's manner of performance. Rather, it must specify the exact deficiency or failure that the ACO/ACT HQ feels is present; if not specific, the cure notice is invalid and a subsequent termination for default will be overturned (i.e., converted into a termination for the convenience of the ACO/ACT HQ).

**Days.** For the purposes of bidding procedures, "days" shall mean calendar days.

**Default.** A situation in which the supplier has not or not completely fulfilled the conditions stipulated in a contract and proof of contractor's negligence or unwillingness can be documented.

**Delegations.** Official delegations appointed to represent NATO nations at NATO HQs.

**Dispute.** A dispute is initiated when the Contracting Officer denies the claim and the contractor notifies the Contracting Officer of his appeal of the denial, under the Dispute Clause of the contract.

**EFL.** Established Financial Limits (EFL) as established yearly by the Budget Committee and approved by the North Atlantic Council.

**Eligible Firms.** A firm considered eligible to participate in NATO bidding procedures. In the case of international bidding procedures, firms become eligible either through nomination by the delegation to NATO of its country of origin, or identification by the P&C Branch, as a potential bidder.

Bi-SCD 060-070

**Endorsement.** The express support or approval of a company, publicly and definitely. Explicit or implicit endorsement should be clearly prohibited.

**Equitable Adjustment.** A fair and reasonable adjustment made by the Contracting Officer in the event the contractor is entitled to increased cost, time extension or both.

**Firm Fixed-Price (FFP) Contract.** The FFP contract provides for a price that cannot be adjusted because of the cost experience of the contractor in performing the contract. FFP contracts are suitable for acquiring commercial items or for acquiring other supplies or services on the basis of reasonably definite functional or detailed specifications and when the Contracting Officer can establish fair and reasonable prices at the outset.

**Firm of a Participating/Funding Nation.** A firm or entity legally constituted or chartered under the laws of, and geographically located in, or falling under the jurisdiction of, a nation participating in the funding of a particular procurement.

**Fixed Price (FP) Contract.** A FP contract with an Economic Price Adjustment (FPEPA) provides for a contract with an adjustable price, which should include a formula, for adjusting the price up or down, established by indices, inflation, etc.

**INCOTERM.** A set of international and agreed definitions for the transportation of goods via road, ship, rail, etc. INCOTERM defines the responsibility of the buyer and seller for each term such as FOB, Ex factory, etc.

**Inspection.** The examination and testing of supplies or services (including, when appropriate, raw materials, components, and intermediate assemblies) to determine whether they conform to contract requirements.

**International Competitive Bidding (ICB).** Procurement of goods or services after formal solicitation of international bids (IFIB) or proposals (IFIP) from sources in NATO countries, including those specified by National delegations. This method is applicable to procurements exceeding level D of the EFL.

**Invitation For Bid (IFB).** A written invitation to potential suppliers to bid for providing goods or services in accordance with sealed bidding procedures.

**Invitation For International Bids (IFIB).** A written invitation to potential suppliers to bid for providing goods or in accordance with International Competitive Bidding (ICB) procedures.

**IFIP.** Invitation For International Proposal

**Invoice.** Document detailing payment information due to a supplier, identifying ACO/ACT HQs references with data on goods provided, unit prices, total price, and any additional charges, discounts, or conditions, which may be applicable. When requested, suppliers must be able to document proof of delivery in order to substantiate invoices submitted.

**Latent defect.** A defect that exists at the time of acceptance but could not be discovered by a reasonable inspection.

Bi-SCD 060-070

**Liquidated damages clause.** A contractual provision that determines in advance the measure of damages if a party breaches the agreement. Contrary to a penalty clause, the payable sum established by a liquidated damages clause must: (1) not exceed the probable damages on breach; (2) be tailored to the different type of possible breaches (i.e., some major, some minor); and (3) relate to aspects of performance that have been declared as of the essence.

**Major non-conformance.** Non-conformance that is likely to result in failure of the supplies or services, or to materially reduce the usability of the supplies or services for their intended purpose.

**Material Inspection Receiving Report (MIRR).** Supporting documentation made by a receiving organization certifying that compliant materials have been received from the supplier, in good condition and in the correct quantities. The supporting documentation enables the Purchasing & Contracting Staff to proceed with the payment procedures, and contractor performance can be used as a basis for supplier evaluation.

**Budget Committee (BC).** A Committee of representatives of the NATO nations, authorized by those nations to take decisions associated with screening, approval, and execution of the NATO Military Budget (MB).

**Minor non-conformance.** A non-conformance that is not likely to materially reduce the usability of the supplies or services for their intended purpose, or is a departure from established standards having little bearing on the effective use or operation of the supplies or services.

**NAFS.** NATO Automated Financial System. The current version of this system is currently available at most locations/Headquarters with the name FinS which is the abbreviation for Bi-SC Automated Information System (AIS) Financial Services.

**NAFS Blanket Purchase Agreement (BPA).** A NAFS document that holds the descriptions and prices for the goods/item that have been pre-negotiated with a supplier. BPAs cover a specific period, but do not identify quantities required or delivery schedules. BPAs are not valid to represent a commitment to spend.

**NAFS Contract Purchase Agreement (CPA).** A NAFS document that does not create any commitment. CPAs hold information relating to agreed general terms and conditions with a particular supplier, without indicating the services that you will be purchasing, or any specific pricing. It is recommended to link NAFS Purchase Orders to CPAs belonging to one contractor for audit trails.

**NAFS Purchase Order (PO).** A NAFS document to store contract data for a one-time purchase of various goods and/or services. NAFS Purchase Orders are created when the details of the required goods or services, estimated costs, quantities, delivery schedules, and accounting distributions are known. The total value of a purchase order will be committed as soon as it is entered.

**NAFS Release.** A NAFS document representing an actual order placed against a NAFS Blanket Purchase Agreement. Each release represents a commitment to spend the total value

Bi-SCD 060-070

of the release. The release process is fully automatic when items are codified/inventoried and associated with sourcing rules.

**NDSS.** NATO Depot Supply System operated by NAMSA.

**Non-conformance.** Situation in which the supplier has not partially or completely fulfilled the conditions stipulated in a contract.

**Notification of Intent (NOI).** A formal communication to national delegations to NATO of a P&C Branch's intent to conduct International Competitive Bidding (ICB) procedures in execution of a particular procurement. This method is applicable to procurement with estimated costs greater than level D of the EFL.

**Off-the-shelf item.** An item produced and placed in stock by a contractor, or stocked by a distributor, before receiving orders or contracts for its sale.

**Offer.** A response to a solicitation that, if accepted, would bind the bidder to perform the resultant contract. A response to an invitation for bids or a request for proposals is an offer. A response to a Request For Quotations is a quote not an offer.

**Option.** A unilateral right in a contract by which, for a specified time, ACO/ACT HQs may elect to purchase additional supplies or services called for by the contract, or may elect to extend the term of the contract.

**Partial Bidding.** The solicitation accepts only a portion of the total requirements specified in a technical specification.

**Patent defect.** A defect that exists at the time of acceptance and is not a latent defect.

**Penalty clause.** A contractual provision that assesses a monetary charge against a defaulting party. Depending on the applicable Law, penalty clauses may be unenforceable if they are not designed to quantify the amount of probable loss, but are designed to terrorize, or frighten, the party into performance (e.g., Common Law system vs. Civil Law system).

**Personal Services Contract.** A Personal Services Contract is defined as an arrangement for a service involving either the intellectual or manual personal effort of an individual, as opposed to the payable product of the person's skill (i.e., Independent Contractor). Any contract that, by its explicit terms or as administered, makes the contractor's personnel appear, in effect, to be NATO employees.

**PILS.** Programme Integrated Logistic System operated by E-3A Component. Therefore certain procurement actions, roles & responsibility or business workflow are slightly different to ACO/ACT HQs methods of operating under J8 and with NAFS-NDSS.

**Pre-award Survey.** An evaluation of a prospective contractor's capability to perform a proposed contract.

**Price Analysis.** The process of examining and evaluating a proposed price to verify that the overall price offered is fair and reasonable. (Different from Cost Analysis).

Bi-SCD 060-070

**Procurement Official.** One who holds or is invested with a NATO office; or that is authorized to act on behalf of NATO in a subordinate capacity; and is involved in the procurement of goods and services.

**Proposal.** An offer in response to a Request For Proposal. Any offer or other submission used as a basis for pricing a contract, contract modification, or termination settlement.

**Procurement.** Two approaches (organisational and business workflow):

- a. Organisational functions that include specifications development, value analysis, supplier market research, negotiation, buying activities, contract management, inventory control, receiving and stores.
- b. All stages involved in the process of acquiring supplies or services, beginning with the determination of a need for supplies/services and ending with contract completion or closeout.

**Property Accountable Officer (PAO).** Individual responsible for the ordering, inspection, acceptance, control and disposal of material of an organisation.

**Protest.** A written demand or written assertion by one potential bidder against the cancellation of a solicitation or award of a contract, or terms of solicitations, etc.

**Purchase Order (PO).** An offer by the HQ to buy supplies and/or services, including construction and R&D, upon specified terms and conditions, using simplified acquisition procedures.

**Purchasing & Contracting (P&C).** The function of providing operational support, through acquisition (by purchase or otherwise), of goods or services. The P&C Branch Staff is responsible for the planning, execution, and control of activities associated with this function. These responsibilities include development and maintenance of relations with suppliers in order to meet the short and long-term procurement needs of an ACO/ACT HQ.

**Quotation.** See quote.

**Quote.** Also referred to as a quotation. It is a statement of current prices as a response to a Request For Quotations. A quote is not considered as an offer that could bind the supplier to a contract if accepted.

**Ratification.** It is the act of formalizing an unauthorized commitment after the fact, thereby accepting a liability as an obligation of an ACO/ACT HQ.

**Request for Information (RFI).** A document used to obtain price, delivery, availability, other market information, or capabilities for budget, information or planning purposes when the HQ does not presently intend to issue a solicitation.

**Request for Proposals (RFP).** A solicitation for offers under negotiated procedures.

Bi-SCD 060-070

**Request for Quotations (RFQ).** A solicitation for quotes. Commonly used under simplified acquisition procedures.

**Single Tender (ST).** Procurement of services and goods after solicitation of at least one written or verbal bid to known sources from within NATO countries. This method is applicable to procurements with estimated costs not exceeding level B of the EFL.

**Show Cause Notice.** The Show Cause Notice in effect directs the contractor to show why the contract should not be terminated for default. The Show Cause Notice is intended to ensure that the contractor understands its situation, and its answer can be used in evaluating whether circumstances justify termination for default. The Show Cause Notice is not mandatory. It is often advisable to use such a notice as a means of discovering any excusable cause of the contractor's failure to perform, since the existence of an excusable cause could render a default termination improper.

**Sole source acquisition.** A contract for the purchase of supplies or services that is entered into or proposed to be entered into by a Contracting Officer after soliciting and negotiating with only one source.

**Surety.** A person who is primarily liable for the payment of another's debt or the performance of another's obligation. Although a surety is similar to an insurer, one important difference is that a surety often receives no compensation for assuming liability.

**Suspension of work.** A contract clause that permits the Contracting Officer to order the contractor to suspend work for a reasonable period of time. If the suspension is unreasonable, the contractor may submit a written claim for increases in the cost of performance, excluding profit.

**Stop-Work Order.** A contract clause that permits the Contracting Officer to order the contractor to stop work, if the work stoppage is required for the reasons specified in the contract.

**Testing.** That element of inspection that determines the properties or elements, including functional operation of supplies or their components, by the application of established scientific principles and procedures.

**Unauthorized Commitment.** An agreement that is not binding because the individual who made it lacked the authority to enter into that agreement on behalf of the HQ. Corrective action is ratification.

**Unique and innovative concept.** When used relative to an unsolicited research proposal, this term means that, in the opinion and to the knowledge of the ACO/ACT evaluator, the meritorious proposal is the product of original thinking submitted in confidence by one source; contains new concepts, approaches, or methods; was not submitted previously by another; and, is not otherwise available within ACO/ACT. In this context, the term does not mean that the source has the sole capability of performing the research.

## REQUESTS FOR DEVIATIONS FROM NORMAL METHODS OF PROCUREMENT

1. **Purpose.** To provide supplementary policy guidance on requests for deviation from NATO approved contracting procedures and the steps necessary to obtain approval for such deviation.

2. **Overview.** Contracting procedures are governed by NATO Financial Regulations (NFRs) as supplemented by the Bi-SC Procurement Directive 060-070 (Bi-SC 060-070). These may be supplemented by local policy guidance and SOP's. Furthermore, NATO Agencies may have additional policy guidance.

3. Generally, the contracting process includes the development of a Statement of Work (SOW) and a technical evaluation matrix.

a. The normal basis of source selection is competition in which the vendor who submits the lowest priced, technically compliant bid (i.e., by 'sealed bid') is awarded the contract. Compliancy is determined by comparing the bid proposal(s) with the requirements and qualifications found in the SOW in accordance with the technical evaluation matrix.

b. The sealed bid contracting method is prescribed by Bi-SC 060-070 as it comports with NATO's general procurement policy to procure goods and services from the most economical sources available within the funding member nations. The sealed bid contracting method is considered by the nations as the default means by which to achieve 'value for money'. The key, of course, to truly receiving value for money is to write a sound SOW that clearly articulates the needs and requirements of the requesting branch.

c. Bi-SC 060-070 does, however, permit two methods of deviations from the normal basis of source selection (i.e., not using the default method of awarding the contract to the lowest priced, technically compliant bidder). Those deviations, which permit a source selection based on Sole Source criteria or based on Best Value factors, are tightly controlled and are authorised only as outlined below. Upon examination of the SOW, the Contracting Officer will advise the requester on the most effective source selection process and the required information for the establishment of the evaluation matrix.

4. **Sole Source.** A Sole Source selection process is not only a deviation from the prescribed contracting method, but it also circumvents the safeguards and protections of international competitive bidding. For that reason, authorisation is strictly controlled and must be required because of at least one of the four criteria:

a. Security: Classified or Access to NATO or proprietary information.

b. Operational Urgency: Compressed timeline, emergent requirement (poor planning is not valid justification).

Bi-SCD 060-070

- c. Standardisation: Integrates, Communicates with other NATO systems.
- d. Imperative Practical Considerations: Includes cost, feasibility, prior experience.

5. **Best Value.** “Best Value” applies weighted value to the various criteria identified in the SOW. Contract awards are based on an evaluation of the total technically compliant bid, the higher weighted value criteria and the bid proposal. The ‘best value’ contracting practice must still follow the bedrock principles of *fair and open competition* and *transparency of contracting decisions*. For that reason, all of the required qualifications, as well as their weighted value, must be precisely specified in advance of the competitive bidding. This contracting practice is applicable for non-standard deliverables, where the outcome of the project is uncertain and/or a high degree of innovation is required or associated with a high degree of risk.

6. The contract award in the Best Value process is done on the basis of a matrix developed by the Contracting Officer from information provided by the requester. This includes assigning weights to requirements based on the requester’s importance of each requirement. Best Value contracting practices may be adopted to establish a more balanced award decision, i.e., one that accounts for risks and recognises trade-offs between costs, past performance, experience, and other non-cost factors. By allowing the consideration of these factors in making a contract award decision, best value contracting practices can allow a dynamic within the international competitive bidding system whereby predetermined qualifications can outweigh a possible higher price.

7. **Prior Approval Required.** Approval for deviation from the prescribed contracting process of sealed bid, whether for a Sole Source award or for a Best Value award, must be sought prior to bid / contract solicitation. The approval level to be sought in the requesting memorandum is determined by adding the sum of the total contract (all years to include option years).

**Summary of Authority Levels for Approving Deviation from Normal Procurement Method**

EFL LEVEL	APPROVAL AUTHORITY*
Up to Level B	Appointed Contracting Officer
In excess of Level B - Up to Level E	NMA FC
In excess of Level E	NATO Budget Committee (BC) through NMA FC

*\*The level to which deviation authority must be sought is based on the estimated accumulated value of a contract.*

8. A sample request for approval for deviation from normal standard contracting practice and a flowchart providing the various steps of the deviation process are included. It is initiated by the requestor to/through the contracting office to the appropriate level as described above.

Bi-SCD 060-070

The burden is on the requester or the contracting officer to present a robust business case for consideration of the Approving Authorities listed above. The business case, would as a minimum, take into consideration the criteria or factors described above. All such requests are decided on a case-by-case basis by the Approving authority.

Bi-SCD 060-070

**Sample Deviation Request**

**DEV-[year]-[number]**

FROM: Contract Management Section

TO: ACO FINANCIAL CONTROLLER

DATE:

SUBJECT: REQUEST FOR AUTHORISATION TO DEPART FROM NORMAL METHOD OF PROCUREMENT

REFERENCE: Bi-SC Directive 060-070

1. For the requirement described below, authorisation is requested for: (see below)

- Sole Source procurement
- Restricted Bidding (3 open bids)
- Formal Bidding (5 sealed bids, with CAC)
- Procurement from non-NATO nation source
- Procurement by negotiation

Requester:	
Supplier:	
Requirement:	
Contract duration:	
Estimated Contract value:	
Funding:	

2. **Normal method of procurement.** *Express what should have been the normal procurement method for this requirement.*

3. **Justification.** *Express the justification including market research if applicable. The justification must be robust enough and detailed enough to withstand external scrutiny.*

Bi-SCD 060-070

<b>Justification for Departure from Normal Procurement Method</b> <i>(Please complete all that are applicable. Detailed justification is required – do not be constrained by the size of the table. )</i>	
Security	
Operational urgency	
Standardization	
Other practical considerations	
Impact statement  (i.e. impact if departure from normal procurement method is not approved)	
Signed:	
Name:	
Position / Title:	
Division / Branch:	
Date:	

4. **Recommendation.** *Include the recommendation by the appropriate level.*

The requested deviation is **authorised** / **not authorised**. (strike out as applicable)

(Signature) .....

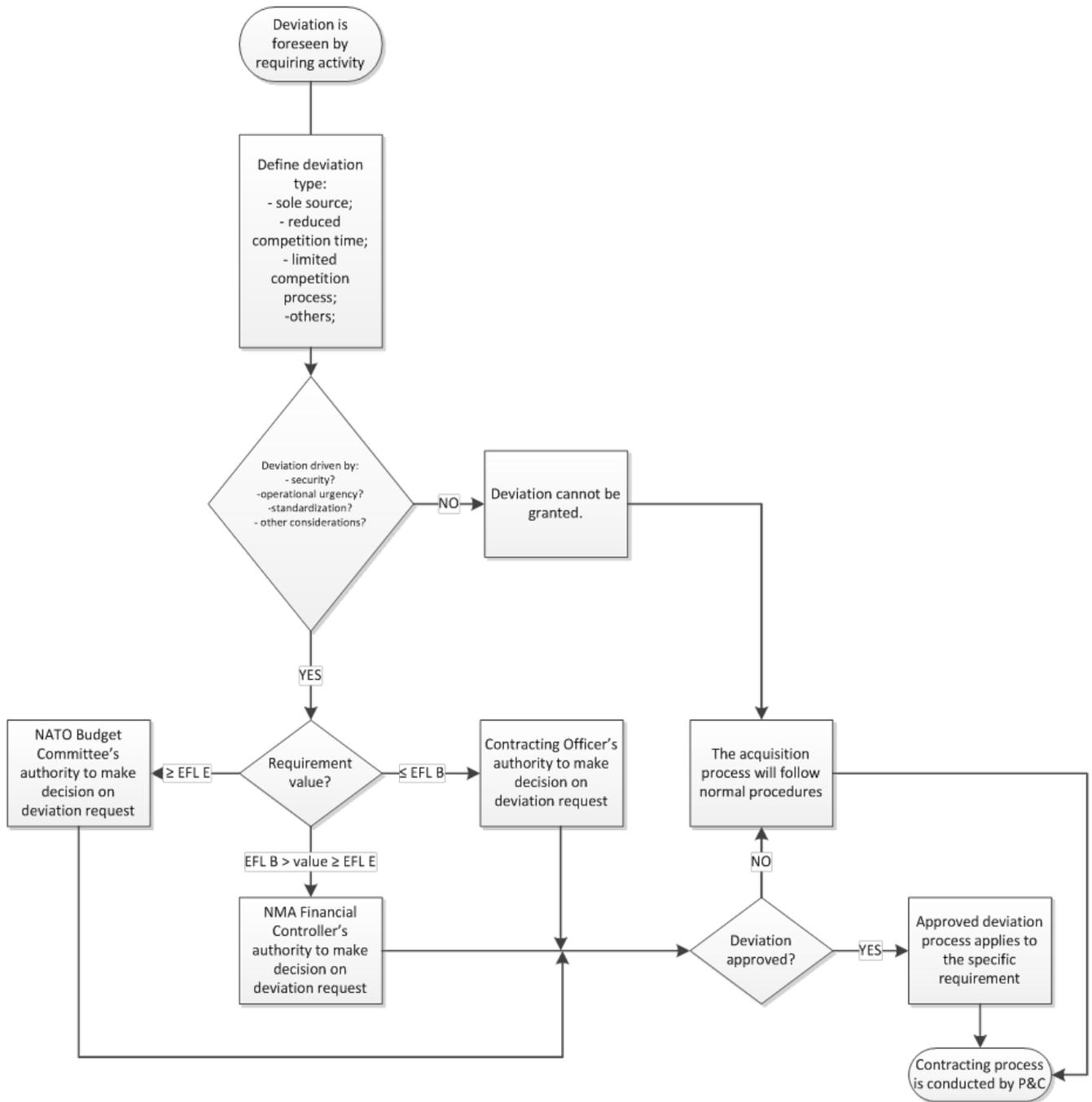
(Name & Rank) .....

(Position) .....

Justification for denying the authorisation:

Bi-SCD 060-070

### Flowchart Deviation Process



## PROCEDURES FOR INVITATION FOR INTERNATIONAL BIDDING/PROPOSALS

### 1. Introduction

a. **Objective.** This annex sets forth procedures for conducting International Competitive Bidding (ICB) for ACO/ACT requirements, whether they involve Invitation for International Bids (IFIB) (e.g., sealed bidding) or Invitation for International Proposals (IFIP), for which the estimated award value is to be above level D of the Established Financial Limit (EFL). These procedures establish the responsibilities of ACO/ACT Purchasing & Contracting (P&C) Branch, firms, using/receiving organizations, and Fund Managers. A flowchart providing the main steps of the ICB process is included.

b. Two distinct solicitation methods exist for ICB:

(1) An IFIB implies international competitive bidding employing the sealed bidding method to acquire well-defined, "off-the-shelf" and basic supplies and services from commercial or governmental sources as already addressed in Chapters 1, 2 and 3 of this directive.

(2) An IFIP implies international competitive bidding employing the use of Request For Proposals (RFP) as the method to acquire more complex requirements (e.g., supplies, construction and services), wherein price is not the single factor in making the contract award decision as already addressed in Chapters 1, 2 and 3 of this directive.

c. The key guiding principles for both (1) and (2) are:

(1) ICB procedures use set timelines established by the NATO Finance Committees. It is critical that ICB planning commences as early as possible, in order that NATO's operational needs are efficiently and timely met, and available resources are used in the most cost effective way.

(2) ICB calls for high value acquisition thus all efforts must be accomplished to foster an environment that maximizes the participation of qualified firms through a rigorous sourcing procedure conducted by P&C Branch and the NATO delegations.

(3) Acquisition planning and a detailed implementation plan should minimise financial, operational, and technical risks.

(4) Clear, unbiased and concise technical statements addressing detailed specification, performance objective or capability shortfall will reduce the likelihood of amendments, delays and disputes.

(5) The security classification of IFIB/IFIP documents shall be kept

Bi-SCD 060-070

at the lowest possible level to be published on Internet sites and consistent with the operational requirements. If the IFIB/IFIP process involves the furnishing of NATO classified information to firms, or requires firms to have access to restricted areas of military installations for site survey, nominations from the national delegations to NATO must include confirmation that the firm possesses a facilities and/or personnel clearance at a level equal to or higher than that specified by the solicitation documents.

(6) For efficiencies, English will be the governing language for ICB.

## 2. **Notification of Intent (NOI) to Submit Sealed Bids or Proposals**

a. At the earliest possible moment that may be prior to final budget approval of the NATO Finance Committees, the Contracting Officer must issue a "Notification of Intent" (NOI) to the respective NATO delegations of the participating countries and/or any other organisations they have designated, seeking new potential bidders not identified by the Contracting Officer. This notification must be received at the NATO Delegations at least 28 calendar days, and in cases where security clearances are required at least 35 calendar days, before the intended issue date of the IFIB/IFIP. The intent here is to give national delegations the opportunity to submit additional names of eligible, interested, and capable companies. The NOIs will be sent electronically to the MBC or IC Secretariat and Delegations, with a copy to the responsible ACO/ACT Head of Contracts who shall monitor progress of the planned IFIB/IFIP. In order to minimise transmission time, all replies from the Delegations and/or their designated representative organisations should be transmitted by either electronic mail or facsimile.

b. The NOI will contain the following information:

(1) The IFIB or IFIP reference number.

(2) A summary description of the requirement, including performance schedule (or period of performance), sufficiently detailed for easy identification of potential suppliers. If the ICB process is for securing e.g., uninterrupted services that will cross fiscal years, this fact should also be clearly stated.

(3) A statement whether "partial bidding" will be authorised. In addition, the Contracting Officer may detail in this paragraph the contract award approach such as lowest compliant bid, one or two envelopes, "best value" oriented procedure, etc.

(4) The funding source (e.g., MBC or IC), with all relevant information: committee decision sheet reference, budget code identification, Economic CiSi number, Integrated Resource Management (IRM) code, etc.

(5) The probable date on which the Contracting Officer plans to issue the IFIB/IFIP. The probable IFIB/IFIP closing date and time.

(6) The type of classified information if any, which must be provided to firms to enable them to submit a bid/proposal and the relevant required security

Bi-SCD 060-070

clearance required of personnel and/or facilities, for the purpose of participating in the ICB process and performing work under the resulting contract.

(7) A list of firms that according to the information obtained by the Contracting Officer might be eligible and capable for potential participation in ICB.

(8) Request for nomination to the Contracting Officer of any other interested firms that are both eligible and capable of meeting requirements identified in the ICB. Also, in cases where firms are required to have facilities or personnel clearances, the NOI should request confirmation by delegates that firms they identify also possess the necessary clearances.

(9) The final date by which all nominations must be received by the Contracting Officer.

(10) The full name, address, telephone number, email address, and facsimile number, of the Contracting Officer responsible for handling the ICB.

3. **IFIB/IFIP Numbering and Feedback.** At the end of each fiscal year, the SC FCs shall request from each HQ, a list of anticipated procurements to be executed during the following fiscal year using ICB procedure. The assigned IFIB/IFIP numbers will be communicated to the MBC and used as a planning tool for the forthcoming NOIs and to the ACO/ACT HQs as a source for potential centralised acquisitions. At the beginning of each fiscal year, the SC FCs shall request from each HQ a report on the IFIB/IFIP contract award, which will be sent to the MBC for information on ICB outcome. Further instructions about communications and interface with NATO Finance committees are provided annually by guidance issued by the SC FCs.

4. **Execution of IFIB/IFIP – Time Allowed for Submitting Bids/Proposals**

a. Bidding/proposal periods are largely left to the professional judgement of the Contracting Officer. However, periods must extend for at least 42 calendar days following issuance of solicitations; for more large-scale or complex requirements, likely response times will extend beyond 84 calendar days.

b. Contracting Officers are encouraged to use the most expeditious means of distributing IFIBs and IFIPs (e.g., by using web sites and email).

5. **Late Nominations from NATO Delegations.** A Contracting Officer may, at his/her own discretion, allow late nominations from NATO delegations or representatives. Should the late nomination of any firm be accepted, any other late nominations received up until the receipt of the accepted late nomination must also be accepted. However, late nominations should not justify an extension of ICB period.

6. **Further correspondence with potential bidders.** Instructions tied to IFIBs/IFIPs may require prospective contractors to acknowledge by facsimile, within 72 hours of receipt of the IFIB/IFIP, the receipt of sealed bidding or RFP documents, and inform the Contracting Officer of their preliminary and non-binding intention whether or not they will respond. Although this measure is not intended to restrict competition, the P&C Branch may then limit further

Bi-SCD 060-070

communications to those firms that returned the acknowledgement of receipt, and indicated a desire to continue with the ICB process.

7. **Contract Award/Contract Award Committee Procedures.** All contracts in excess of level 2xB of the EFL will be awarded by a Contract Award Committee (CAC) in accordance with the NFR Article 20 and FRP Article XX. a. through XX. c.

8. **CAC Composition.** The CAC will be convened in accordance with Annex D of this directive

9. **CAC Approach for IFIBs.** Sealed Bidding procedures outlined in Chapter 3 of this directive will apply to IFIBs. Additionally, the Contracting Officer will be responsible for presenting the bids to the CAC, and reporting/certifying the administrative and commercial compliance of the bids received. The CAC shall open the sealed bids, first giving the technical representative an opportunity to confirm the technical compliance of bids received; if need be, additional expert advice may be sought. Following technical evaluation, the CAC's Secretary will establish a written record of all bids received, noting administrative and technical compliance. The CAC shall then select the technically compliant bid offered at the lowest price. The unsuccessful bidders will be notified that their bid was not the lowest priced technically compliant offer. Depending on the complexity of the solicitation, the sealed bids may include technical and financial information together or be presented in two separate envelopes. In addition, the financial evaluation may require the Contracting Officer to conduct a detailed price analysis and submit to the CAC a comprehensive report to enable the CAC to make the contract award. In the two envelopes procedure, the Contracting Officer must return the unopened price envelope to the disqualified/non-compliant bidders.

10. **CAC Approach for IFIPs.** Request For Proposal (RFP) procedures outlined in Chapter 3 of this directive will apply to IFIPs. Following receipt of proposals, under the auspices of the Contracting Officer, assigned Contracting Specialist(s) shall record receipt of timely proposals. Then, the Contracting Officer shall provide guidance to the source selection evaluation team. Ideally, to ensure fairness and consistency, the Contracting Officer should have written a Source Selection Evaluation Plan, in coordination with the requesting activity responsible for technical evaluation, that captures evaluation criteria and approaches (e.g., "competitive range determination") established in IFIP instructions, and lays out a thorough approach for reviewing proposals. Once separate evaluations are conducted, the two teams can combine to establish overall proposal risk assessments as required. Ultimately, it is the Contracting Officer's overall responsibility for ensuring the contract award is based on evaluation factors listed in the solicitation, which must include price and may or may not include technical evaluation factors. To facilitate the process, a formal briefing to the CAC is strongly recommended, i.e., one that outlines evaluation criteria identified in the IFIP and detailed evaluation results. Following this presentation, CAC members shall render a vote. The award decision shall be reflected in minutes and serve as the impetus for the Contracting Officer to execute a formal contract.

11. **Contract Award Decision.** The CAC proceedings are not public. Therefore, the Contracting Officer 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 to ensure transparency in the decision process and enable them to improve offer quality. The CAC has the full authority in awarding contracts for the benefit of the HQs. Therefore, the FC

Bi-SCD 060-070

may develop further instructions to supplement the terms of reference of the CAC as described in the NFR.

12. **Clarifications.** A Contracting Officer is encouraged to ensure there is a clear understanding of requirements and/or what is being offered. The objective of this process should be to achieve the maximum number of technically and contractually compliant bids/proposals, and to facilitate follow-on evaluations and selection. Clarifications should not cause prices to change or technical offering to materially change. Following receipt of bids/proposals, clarification requests should be limited to resolving likely administrative errors (e.g., clerical mistakes, as in the obvious misplacement of a decimal point).

a. Whether there is a bidders' conference or not, prospective contractors must seek any clarification as soon as possible. Such requests for clarification must be submitted directly to the Contracting Officer in writing (facsimile is acceptable) and must be received no later than 28 calendar days before the bid/proposal closing date. Where a contractor requests clarification, the Contracting Officer must send the clarification (or related change) to all eligible ICB process participants by the most expeditious means possible. Alternatively, the Contracting Officer may respond to such requests at bidders' conferences, after which all questions and answers are formally incorporated into the IFIP and eventual contract.

b. Clarification or changes to the IFIB/IFIP, if required, must be issued by the Contracting Officer to the bidders not later than 28 calendar days before the closing date for bids/proposals. The Contracting Officer may deem it necessary to extend the bid/proposal closing date to enable this 28 calendar day period to be met, or simply to promote the efficacy of the proposal process by ensuring that specific requirements are commonly understood by all ICB participants.

13. **Discussions (IFIP only).** IFIP award decisions may be awarded without discussions if so specified in the bidding instructions. However, for most larger or complex acquisitions, some form of discussion will likely be required following receipt of proposals, and could well influence final proposals (e.g., from the price or technical perspective). The intent of discussions is to address technical matters to ensure common understanding. During any exchanges, it is particularly important that the Contracting Officer preserves fairness by avoiding any "technical levelling" suggesting how prices compare amongst various offerors (e.g., auctioning).

14. **Communications.** Any and all communications related to an IFIB/IFIP, between a prospective (or actual) offer and the HQ shall be directed through the Contracting Officer or his/her designated representative. The Contracting Officer is the only individual who may, during the solicitation and evaluation period, respond in writing to inquiries regarding the IFIB/IFIP. There shall be no contacts with other personnel of the HQ. This is to maintain all bidders on an equal and competitive footing. Oral explanations or instructions will not be binding unless confirmed in writing by the Contracting Officer.

15. **Extension of the Bid/Proposal Closing Date.** Written requests for extensions of the bid/proposal closing date shall be submitted directly to the Contracting Officer, and may be granted at his/her discretion. Such requests must reach the Contracting Officer not later than 14 calendar days prior to the originally stipulated bid/proposal closing date. When extensions

Bi-SCD 060-070

of the bid/proposal closing date are granted, the Contracting Officer must immediately advise all the potential offerors by the most expeditious means of transmission.

16. **Alternative proposals (only applicable to IFIPs).** Prospective contractors may be invited, if they so desire, to propose alternatives in their proposal. In submitting such alternatives, contractors shall include adequate data and written descriptions to clearly demonstrate compliance with performance criteria and/or specifications.

17. **Currencies.** Generally, the vendor proposal dictates the contract currency. Normally, bids/proposals are restricted to either the currency of the nation in which the HQ or the prospective contractor is established. The Contracting Officer may allow price quotations to be expressed in any currency, for instance currency of the country wherein the majority of work is to be performed. The currency expressed in the bid/proposal will be maintained for the duration of the contract for consistency. For evaluation of offers expressed in more than one currency, all currencies will be converted to one via exchange rates applicable at the bid closing day/time and from a national or international financial/banking Institution.

18. **IFIB/IFIP Document Structure.** It is critical that P&C Branch Staff adhere to a uniform contract format as described in Chapter 3 of this directive. Uniformity of the ICB package and contract clauses will enable the P&C Branch Staff to gain experience, prevent omissions and mistakes and present a unified front to commercial companies across the two commands.

19. **Order of precedence.** In the contract formation, the Contracting Officer will organise contractual documents in order of precedence:

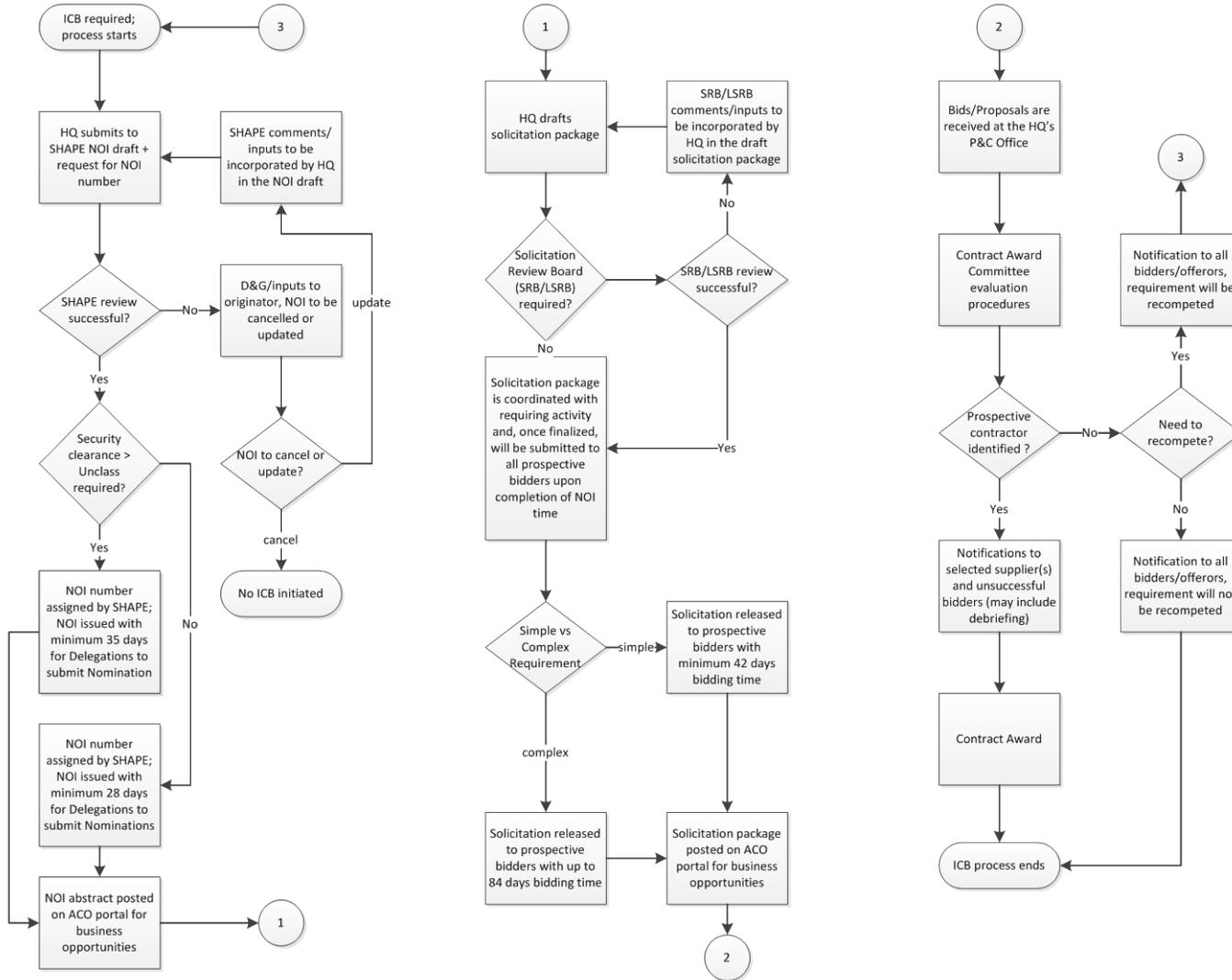
- a. Contract cover pages including price, schedule of supplies or services.
- b. Contractual provisions including Special and General Provisions.
- c. Technical exhibit or similar technical documents.
- d. Contractor's offer.

This order must be reflected in the General Provisions.

20. **Procedure in case of renewed Invitation for International Bids/Proposals.** If the CAC chooses not to award a contract on the basis of the bids/proposals received or operational change in the requirement, etc. the IFIB/IFIP may be cancelled or the CAC may opt to reissue the IFIB/IFIP using revised documents and all-new reference number. In either case, all firms and delegations to NATO and their representative organisations will immediately be notified. It should be noted that NATO credibility is at stake with the large value solicitations and extreme caution should be given before a Contracting Officer embarks upon an IFIB/IFIP as he/she will assume the full ICB responsibility.

Bi-SCD 060-070

**International Competitive Bidding (ICB) Process**



C-7

### **COMPOSITION OF A CONTRACT AWARD COMMITTEE (CAC)**

1. CACs will be composed as a minimum of three members and a secretary as follows:
  - a. Chairman: The HQ's Financial Controller or his designated representative.
  - b. Receiving Organisation/Technical Representative/Originator: A representative or representatives from the receiving organisation that has originated the requirement.
  - c. An Independent Member: An Officer or Civilian A grade to be designated for a period of at least two (renewable) years by the NATO Commander or representative. This appointment shall be done in writing and retained on file by the Contracting Officer.
  - d. Secretary: To be designated by the Chairman. The P&C Officer may serve as the CAC Secretary. (non-voting member)
  - e. Other experts as required by the Chairman CAC or the Contracting Officer. (non-voting members)
2. The Legal representative is not a mandatory member of the CAC however for ACO contracts, in order to ensure legal compliance, it is mandatory to invite LEGAD representation for all contracts exceeding 2 x EFL E. Furthermore, LEGAD is encouraged to participate in contracts below this threshold for non-recurring contracts.
3. In instances where the requirement exceeds the in-house technical ability to evaluate bids/proposals, the Chairman may wish to consult external SMEs however the contracting officer must take the appropriate measures to ensure the commercially sensitive aspects of the bids / proposals are fully respected.
4. A Headquarter's Financial Controller may develop the above provisions to further define roles & responsibilities of CAC members. Local procedures should be developed in order to ensure fairness and impartiality of the CAC deliberations.
5. CAC members are required to sign non-disclosure agreements in order to ensure the commercially sensitive information discussed is afforded the necessary protection. Copies of the non-disclosure agreements will be held in the contract file documentation.

Bi-SCD 060-070

**SAMPLE NON-DISCLOSURE AGREEMENT**



SUPREME HEADQUARTERS ALLIED POWERS  
EUROPE  
GRAND QUARTIER GÉNÉRAL DES PUISSANCES ALLIÉES  
EN EUROPE  
B-7010 SHAPE, BELGIUM



**NON-DISCLOSURE AGREEMENT**  
**for Members of the Contract Award Committee**

It is understood that as part of my official duties as member of the Contract Award Committee I, the undersigned, may come in contact with NATO procurement sensitive information or proprietary business information from contractors. I, as an official NATO member, certify that I will not disclose, publish, divulge, release, or make known, in any manner or to any extent, to any individual other than appropriate or authorized NATO employees, the content of any procurement sensitive information provided during the course of my employment.

I understand that for the purpose of this agreement, procurement sensitive information is to include procurement data, contract information, plans, strategies and any other information that may be deemed sensitive and that is designated as procurement sensitive information at the time of its disclosure (e.g.: any information related to the bidding evaluation process, such as: number of bids received and name of the bidders, cost and price data, price proposals ranking).

I will immediately report any unauthorized disclosure of such information to the cognizant NATO Contracting Officer.

I hereby certify that I have read this non-disclosure agreement and will fully and completely observe these directives.

\_\_\_\_\_  
NAME (Please Print)

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

## TERMS OF REFERENCE - SOLICITATION REVIEW BOARD

1. **Purpose.** In order to improve transparency and ensure maximum compliance to Bi-SC Procurement Directive 060-070 competitive requirements, the Solicitation Review Board (SRB) structure is being implemented across ACO. The SRB acts as the focal point for contract solicitation review prior to authorizing the release of an IFIB (Invitation for International Bidding) or IFIP (Invitation for International Proposals) to industry. This is an additional step in the acquisition process to enhance checks and balances.
2. **Scope.** This policy applies to all purchasing and contracting activities within ACO including theatre headquarters for NATO recognized operations and missions for actions estimated to exceed 5 x EFL E (Established Financial Limit).
3. **Role**
  - a. The principal role of the SRB is to review and to approve solicitations for supplies and services exceeding 5 x EFL E in support of internationally funded Military Headquarters and organizations of Allied Command Operations.
  - b. The SRB provides guidance to subordinate headquarters' Local Solicitation Review Boards (LSRB). LSRBs shall approve solicitations between 2 x EFL E up to 5 x EFL E.
  - c. The SRB reserves the right to request subordinate HQs to submit selected solicitation packages below 5 x EFL E for solicitation review based on the criteria outlined in J8 policy letter 07.04.05/04/SHBCX/FC-326-08 dated 06 January 2009.
  - d. Additionally, the SRB is established to:
    - (1) Ensure Contracting Officers across ACO are implementing policy and regulations in a consistent and appropriate manner;
    - (2) Continue to improve the quality of the contracting process across ACO;
    - (3) Facilitate sharing of best practices and lessons learned across ACO.
  - e. All departures from standard procedures for procurements in excess of EFL E of the EFL will continue to be submitted via the ACO Financial Controller to the Budget Committee for decision.

Bi-SCD 060-070

**4. Documentation and Timelines**

- a. The Contracting Officer responsible for the solicitation shall request the SRB (LSRB) to review the solicitation.
- b. The SRB (LSRB) shall routinely convene twice a month. In the event of an urgent solicitation review request, the SRB shall convene within 3 working days.
- c. Acquisition documents required by the SRB (LSRB):
  - (1) The requirements document and funding approval;
  - (2) Acquisition strategy and acquisition plan (to include type of contract);
  - (3) Source selection plan;
  - (4) The proposed IFIB or IFIP (the solicitation).
- d. After each SRB (LSRB) meeting, a SRB (LSRB) Decision Sheet is to be produced, approved and distributed. Approved Decision Sheets will be distributed electronically to the SRB members and the requiring activity.

**5. Chairman and Membership of SHAPE SRB**

- a. The composition of the SHAPE SRB is made up of nominated representatives as follows:

ACO Head of Contracts (Chairman) The Chairman cannot be the responsible contracting officer for the contract	Independent Member (same independent CAC member)
Legal Advisor (ex-officio)	J-CAP (ex-officio) as required - for AOM solicitations where CMRB approved the requirement)
J-8 Budget representative	Other experts as required by the Chairman or by the majority of the Board Members.
J1- J9 (As required – Requirement holder – Technical Rep)	J-8 Contracting Officer (ex-officio secretary)

- b. In accordance with the NFR, the Chairman of the Contracts Award Committee (CAC) is the Financial Controller or his designated Representative. In order to ensure segregation of duties and to avoid that the chairman is a Requirement Holder, it is determined that the Chairman of the SHAPE SRB is the ACO Head of Contracts. The SRB Chairman has final authority for all decisions of the Board.

Bi-SCD 060-070

- c. Should the Chairman be unable to chair the SRB, an acting Chairman, who should be nominated at the OF-4/A-4 level will be appointed by the Chairman. The Chairman cannot be the responsible contracting officer.
- d. In order to ensure continuity, J Divisions and Members should appoint a standing representative to the SRB (with alternate representatives prepared as appropriate).
- e. Whenever possible the same SRB members shall participate in both the SRB (or LSRB) and the CAC.

**6. Chairman and Membership of LOCAL SRB**

a. The composition of the LOCAL SRB is made up of nominated representatives as follows:

P&C Office Chief (Chairman) –The Chairman cannot be the responsible contracting officer for the contract	Independent Member (same independent CAC member)
Legal Advisor (ex-officio)	Other experts as required by the Chairman or by the majority of the Board Members.
J-8 Budget representative	J-8 Contracting Officer (ex-officio secretary)
J1- J9 (As required – Requirement holder – Technical Rep)	

- b. In accordance with the NFR the Chairman of the Contracts Award Committee (CAC) is the Financial Controller or his designated Representative. In order to ensure segregation of duties and to avoid that the chairman is a Requirement Holder it is determined that the Chairman of the Local SRB is the P&C Office Chief. The LSRB Chairman has final authority for all decisions of the Board.
- c. Should the Chairman be unable to chair the LSRB, an acting Chairman, who should be nominated at the OF4/A4 (for the JFC's) and at the OF-3/A-3 level for Component Commands will be appointed by the Chairman. The acting Chairman cannot be the responsible contracting officer.
- d. In order to ensure continuity, J Divisions and Members should appoint a standing representative to the LSRB (with alternate representatives prepared as appropriate).
- e. Records of decisions shall be submitted to the Secretary SRB at SHAPE.

Bi-SCD 060-070

## 7. Responsibilities

### a. **The Chairman.** The Chairman is to:

- (1) Draft the SRB's TOR.
- (2) Call and chair meetings.
- (3) Call representatives and/or experts to attend meetings where required.
- (4) Review the SRB's work plan and revise the Board's TOR where necessary.
- (5) In exceptional circumstances and for AOM solicitations only, approve waiver of formal solicitation review board requirement based on unusual compelling urgency. Approval can only be granted after having obtained CMRB endorsement.

### b. **The Secretariat, SRB / LSRB.**

- (1) Will be provided by J8 Purchasing and Contracting Branch and is an ex-officio i.e. non-voting member.
- (2) Is responsible for convening meetings, coordinating agendas, the coordination of urgent solicitation reviews, distribution of documents and preparing and circulating meeting minutes and decision sheets.
- (3) Will maintain the solicitation review decision sheet in Share point.
- (4) Will maintain and publish the following products:
  - (a) **Solicitation Status List.** A complete list of all solicitations under review, showing all forecast timelines and recording actual timelines.
  - (b) **Action Matrix.** Actions directed by the SRB (or LSRB) will be maintained in a single reference document for issues affecting delivery of capability. These actions include, but are not restricted to:
    - 1/ Solicitations under staffing in SHAPE and in the subordinate commands;
    - 2/ Solicitations sent back by SHAPE to subordinate commands with comments from SHAPE subject to local compliance prior release of the solicitation;
    - 3/ Solicitations which are determined to be insufficient by the SRB and necessitate resubmission to SHAPE upon local compliance.

## CREATING A STATEMENT OF WORK (SoW)

- 1. Purpose.** To provide guidance on developing and writing technical statements of work (SOW) and the associated evaluation matrices to solicit contractor support for functions, duties, tasks, and/or deliverables in a division or branch, or for an event/activity such as an exercise. It further provides the contractual relevance of the SOW and its context in the overall contract development process.
- 2. Contractual Context.** For the establishment of a contract the technical SOW is the core document providing the exact and detailed requirements for the support sought from commercial sources. As the SOW is the technical basis for the subsequent contract with a commercial source, the quality of the selection of the commercial source as well as the quality of the performance by the commercial source depends almost entirely on the quality of the information and description of requirements in the SOW. The associated evaluation matrix is a derivative product of the SOW which will be used for the scoring and selection of the commercial source for the contract. Both of the documents need to include sufficient information so that interested individuals or firms can propose qualified people, demonstrate their knowledge of and response to technical requirements, and provide realistic costing.
- 3.** In addition, the SOW should be sufficiently detailed to allow the Contracting Officer to advise on the proper process and contract type, as well as to provide the designated Contracting Officer's Technical Representative (COTR), (NATO representative monitoring the work and schedule) with needed information to ensure the contractor(s) is meeting contract requirements.
- 4. SOW Function.** The standard process of selecting a commercial source for its requirements is fair and open competition between all available commercial sources. When properly conducted, this process provides NATO with the desired value for money. Accordingly, all SOWs and the associated evaluation matrices are to be written to enable open and fair competition on the basis of valid NATO requirements. No SOW is to favour any one competitor, be it the incumbent of an existing contract or any other possible known source to the COTR or requestor. After the source selection, the SOW becomes part of the contract with the commercial source. It is the single document in the contract providing the exact requirements the selected commercial source will legally be obligated to satisfy. The drafter, accordingly, needs to give special attention to the precision of the requirements in the SOW. The final contract with the commercial source will consist of the cover page (usually a Purchase Order), the SOW with all of its attachments, any required special Terms and Conditions and the General Terms and Conditions.
- 5. Contents of the SOW.** The SOW establishes amongst others the functions, tasks, and duties to perform, deliverables to provide, required qualifications for proposed contractor personnel, period of performance, and support information such as required/supplied materials and security requirements.

Bi-SCD 060-070

6. **Creating a Technical SOW.** The generic, sample SOW template below shows the major sections and provides recommendations on how to create the content. The actual content and order of sections will be determined by the requirements of the division, branch, or activity. The following subsections summarize how to prepare a SOW.

a. Identify individuals within the division or branch who can define the functions, tasks, deliverables, and/or activities that require contractor support.

b. Provide responses to the following questions. These are example questions to help examine possible areas of information required for the SOW. Not all questions will be applicable in all instances.

(1) What must be done within the division or branch or for the event/activity that is mission essential and/or precludes other mission-essential tasks from being done by staff personnel?

(2) What knowledge, experience, and/or expertise is lacking in the division or branch or for the exercise that can be provided by a contractor?

(3) What tasks, functions, or duties will be asked of a contractor? Each task must be listed by name, complete description, frequency or duration of performance, measurable criteria for assessing performance, and approval authority.

(4) What deliverables will be asked of a contractor? Each deliverable must be listed by name, complete description, interim and final delivery dates, measurable criteria for assessing content, and approval authority. Descriptions for documentation deliverables should ideally include the main topics, expected audience, and format to be used.

(5) What types of contractor(s) are needed? List by position and quantity needed for each position.

(6) What is the minimum desired professional background (e.g., professional expertise, education, experience) for each required contractor position?

c. Estimate the length of time needed to perform the functions and duties, complete the deliverables, and/or participate in the exercises, as required. This estimate will be used to help determine the contract's period of performance. The length of performance can be affected by the available money, and the schedule up to an including the event or activity.

***For example, a SOW with extensive tasking, duties, and deliverables may warrant a schedule (i.e., period of performance) of one or more years. (NOTE: If a contract period is anticipated to exceed one year, BC approval for contract authority must be obtained in advance). A SOW covering only a specified number of deliverables or for a predefined period of time (e.g., exercise) may warrant a period of performance for a specified number of hours or specified start/stop dates.***

Bi-SCD 060-070

**NOTE:** The SOW focuses on the technical aspects of the contract, including defining the requirements, and necessary qualifications and special considerations of the personnel tasked. It does not cover finances nor contract administration, which will be handled separately by the Purchasing and Contracts Branch.

Bi-SCD 060-070

## **SOW Template**

### **Title of Solicitation or Statement of Work (SOW)**

#### **1. Introduction**

Provide a brief overview/summary of the group/command requesting the work and the category of work to be done and/or product to be delivered (Event organization; Software Development; Personnel Services; Software Procurement; Data Base Access etc.).

#### **2. Background and Scope of Work**

a. **Background.** Provide more detailed information about the group/command and/or the type of work to be done, including: tasking, contract start/stop times, deliverables, and/or special requirements.

b. **Contractor Support.** (Optional). This paragraph summarizes what is expected of the Contractor as it fits within the previous paragraph. This is especially important if the Contractor is addressing only a portion of the work stated in the above paragraph.

#### **3. Type of Contract and Period of Performance**

a. **Type of Contract.** Provided by Purchasing and Contracts Branch.

b. **Period of Performance.** Determine after identifying SOW requirements. May be preset start/stop dates such as for an exercise.

#### **4. Tasking and Deliverables**

This section should be as detailed as possible with Contractor activities, goals, objectives, milestones, deliverables, and schedules. If the contract extends over multiple months or years, establish a schedule with interim goals, objectives, milestones, and/or deliverables. Contractors need as much detail as possible to determine if they have the experience and resources to perform the tasks. In turn, these details will help the HQ Contracting Officer Technical Representative (COTR) determine if the Contractor(s) is meeting all work requirements. The following are examples of possible information:

a. Tasks and/or actions for Contractor. These tasks and/or actions can be subdivided into interim and final milestones. Examples include: attend meetings (cite type and frequency), perform research (describe goals), analyze and provide briefings on specified topics, and develop software or database to do specified tasks. In turn, the tasks can be further divided to include: scope of research; format, content, and number of reports; frequency, type, and format of briefings, etc.

b. Expected (or possible) information to be gathered from aforementioned actions.

c. Schedule and/or priority of aforementioned actions and tasks.

Bi-SCD 060-070

- d. Deliverables to be produced (include information on content, format, schedule, etc.).
- e. Human and physical resources available.
- f. Qualitative/quantitative metrics by which Contractor performance will be measured. This is especially helpful for validating invoices.

**5. Schedule of Delivery**

Identify as precisely as possible the schedule the commercial source is expected to follow with regard to the deliverables and milestones to be achieved. Indicate that this timeline will be followed analogously if the date of the start of performance is delayed (which frequently occurs during contracting processes).

**6. Acceptance Criteria**

With close reference to the Schedule of Delivery, outline the exact criteria which will be assessed in order to determine whether NATO accepts delivery of a service and/or product.

**7. Contractor Performance Requirements and Reporting**

Specify by position (include name(s) if known) and contact information the HQ SACT representative(s) who will administer the technical, administrative, and/or financial aspects of the solicitation or SOW. Describe as fully as possible their areas of responsibility.

The Contractor(s) should provide regular reports on the work being done. Specify the content and frequency of the report, and to whom it is sent. This is especially important if the solicitation or SOW covers multiple months or years, and/or the work to be done encompasses routine tasks. This section also can specify how identified problems/ deficiencies and their corrective actions shall be reported.

**8. Personnel Required for Statement of Work**

This section describes the number of Contractor personnel required by position title. Each position should include: required/desired experience and education, skill sets, and special requirements, as applicable. In addition, specify any tasks delineated to specified positions. This is the place to note that resumes are to be included with the response to the SOW or solicitation.

**9. Time Requirements for Contractor Personnel**

Only for personnel services support contracts: Identify the amount of man hours and days of work expected from the contracted personnel.

Bi-SCD 060-070

#### 10. **Proof of Past Performance (Optional)**

This is helpful if the Contractor is a company rather than an individual. The Company can show that it successfully performed work similar to or directly related to the work specified in the SOW or solicitation. This is a company version of a resume and can include:

- a. Summary of work performed that directly relates to this SOW
- b. Outcome of abovementioned work performed
- c. Summary of staff used (by number and position
- d. Name of client(s)
- e. Date(s) of work performance
- f. Contact information
- g. Permission to contact client(s) for reference(s)
- h. Potential Contractor companies may be asked to provide two or more of the aforementioned references

#### 11. **Place of Performance**

Note what work (by type or number/percentage of hours) will be done on-site and off-site. List locations by facility name, city, state, and country.

#### 12. **Required Travel for Personnel Services Contracts**

Describe travel by percentage of work hours or type of work, frequency and duration, destination(s), and all restrictions for type of carrier and associated costs. Note any approvals required.

#### 13. **Furnished Materials and Services (If Applicable)**

- a. **NATO Supplied:** This is often standard – workspace, office equipment, computer hardware/software, communications, etc. Note any special security requirements/ restrictions.
- b. **Contractor Supplied:** This covers what a Contractor is expected to or, more often, requests to use. For example, a Contractor may request to use special computer hardware and software. Note any special security requirements/restrictions.

#### 14. **Physical Security**

Note required clearances, who are expected to have them, and who is responsible for securing them. Include contact information to help the Contractor secure needed items. Note required

Bi-SCD 060-070

vehicle and/or building passes, who is expected to have them, and who is responsible for securing them. Include contact information to help the Contractor secure needed items.

**15. Security Considerations for the Deliverables**

Identify the possible security classification of the deliverables under this contract, since they will limit the contractor's ability to use it further.

## **CONTRACT FILE MAINTENANCE**

1. The following provides what the contract file should contain as a minimum versus e-documents available in the automated financial system.
2. A written record of procurement actions is required to maintain records detailing the history of the procurement. As a minimum, these records must include the following, regardless of the NATO Established Financial Limits (EFL):
  - a. If applicable, copies of Solicitation Documentation, including the Statement of Work (SOW);
  - b. The basis and justification for the acquisition, the evaluation and contract award;
  - c. Requests for deviations to the normal procurement procedures and responses;
  - d. A signed copy of the complete contract;
  - e. All correspondence with the contractor;
  - f. Documentation regarding claims, settlement of claims and dispute, and
  - g. Contract closeout documentation
3. Procurement actions above EFL D necessitate more documentation than the minimum required; the attached contract file checklist should be included in the contract file and duly completed, as applicable.
  - a. Files must be maintained at all times to ensure:
    - (1) Effective documentation of contract actions
    - (2) Ready accessibility to principal users
    - (3) Minimal establishment of duplicate documents
    - (4) The safeguarding of classified documents
    - (5) Review by Internal Reviewers and/or IBAN
  - b. If under a Centralised Acquisition Programme, file segments are to be decentralized to allow contract execution, responsibility for their maintenance must be assigned.

Bi-SCD 060-070

c. Contents of contract files or file segments that are contractor bid or proposal information or source selection information must be protected from disclosure to unauthorized persons.

**Check list**

Contract File Index Mandatory For Actions Above EFL D		IFIB/IFIP Number
		Item/Service /Location
Contractor		Performance Period
		Contract Amount:
Tab No	Section A - Pre-Solicitation Data	"X" If Incl
A1	Approved Request For Deviation From Normal Method Of Procurement (If Applicable)	
A2	Acquisition Plan/Milestone Schedule	
A3	Source List	
A4	Review Comments (FC; Legal; Audit; Etc.)	
A5	Solicitation/IFIB/Sow	
A6	Site Visit Record/Pre-Bid Conference (If Applicable)	
A7	Amendment(S) Of Solicitation And Supporting Information	
A8	Copies Of Published Questions And Answers Related To The Solicitation	
Tab No	Section B – Pre-Award Data	"X" If Incl
B1	CAC Report (Bid Opening –Evaluation)	
B2	Unsuccessful Offers/Notification	
B3	Successful Proposal	
B4	Protest(S) Prior To Award (If Applicable)	
B5	Correspondence	
Tab No	Section C - Contract	"X" If Incl
C1	Notice Of Award/Contract	
C2	Protest(S) After Award (If Applicable)	
Tab No	Section D – Contract Administration	"X" If Incl
D1	Appointment Of COTR/Ordering Officer	
D2	Contract Pre-Performance Conference/Kick-Off Meeting	
D3	Reports/Correspondence	
D4	Quality Assurance Data	
D5	Request For Modification/Options	
D6	Technical Review/Acceptance/Approval	
D7	Modifications	
D8	Final Acceptance /Contract Close Out	

## **CONTRACTING OFFICER – PROFESSIONAL CERTIFICATION PROGRAMME**

1. Applicability: This Annex provides policy instructions on the NATO Professional Procurement & Contracting (P&C) Certification Programme. The P&C Certification Programme applies to all ACO, ACT P&C civilian and military personnel that are assigned to a Crisis Establishment (CE) or Permanent Establishment (PE) post on a permanent or temporary basis and is open to other NATO Agencies and organizations given FINCON approval. The purpose of the P&C Certification Programme is to enable P&C personnel to excel, enhance P&C customer service and, ultimately, develop multi-skilled professionals who acquire and support NATO "mission capabilities" through responsive and innovative strategic solutions.

2. The P&C Certification Programme is based upon four fundamental programme elements: Experience, Education, Courses, and Examination – and are described below:

### ELEMENTS OF THE PROGRAMME

a. Experience requirements.

Level I: 12 months' experience in a position directly responsible for performing P&C workload. Experience gained and documented in a national position can be used to fulfil this requirement. NOTE: Minimum of 3 months of the 12 months must be performed in NATO on either a PE or CE position in P&C.

Level II: 24 months in a position directly responsible for performing P&C workload. NOTE: Minimum of 12 months of the 24 months must be performed in NATO on either a PE or CE position in P&C.

b. Educational requirements.

Level I: None.

Level II: 2 years of higher education in a business/management related field or 6 years' experience directly related to contracting.

c. On-Line Courses and End of Course Examinations.

Level I:

- NPC 110, Basic Contracting Course
- NPC 120, Intermediate Contracting Course

Level II:

- NPC 230, Pre-Award Contract Administration Course
- NPC 240, Post-Award Contract Administration Course

Bi-SCD 060-070

d. Certification Examination.

Level I: 50 questions focused on NPC 110; NPC 120; Bi-SC Directive 060-070, Procurement; Standards of Conduct, Relationships with Contractors, and Disclosure of Information; Acceptance of Gratuities; and Purchase Card Programme.

Level II: 75 questions focused on NPC 230, NPC 240 and the NATO Financial Regulations.

**COMPARISON OF MAJOR TYPES OF “COMMERCIAL” CONTRACTS**

	<b>FIRM FIXED PRICE (FFP)</b>	<b>FIXED PRICE ECONOMIC PRICE ADJUSTMENT (FPEPA)</b>	<b>FIXED PRICE AWARD FEE (FPAF)</b>	<b>FIXED PRICE PROSPECTIVE RE-DETERMINATION (FPRP)</b>	<b>INDEFINITE DELIVERY (ID)</b>	<b>COST REIMBURSEMENT OR COST SHARING</b>	<b>TIME AND MATERIALS (T &amp; M)</b>
<b>Principal risk to be mitigated:</b>	Costs of performance can be estimated with a high degree of confidence. Thus, the contractor assumes the risk	Market prices for required labour and/or materials are likely to be highly unstable over the life of the contract	Acceptance criteria are inherently judgemental with the corresponding risk that the end user will not be fully satisfied	Cost of performance can be estimated with confidence only for the first year of performance	At the time of award, delivery requirements are not certain	Labour hours, labour mix, and/or material requirements (among other things) necessary to perform are highly uncertain and speculative. Hence, the Headquarters assumes the risk inherent in the contract; benefiting if the actual cost is lower than the expected cost; and losing if the work cannot be completed within the expected cost of performance	
<b>Use when:</b>	<ul style="list-style-type: none"> <li>- The requirement is well defined</li> <li>- Commercial item</li> <li>- Contractors are experienced in meeting requirements</li> <li>- Market conditions are stable</li> <li>- Financial risks are otherwise insignificant</li> </ul>	<ul style="list-style-type: none"> <li>- Commercial item</li> <li>- The market prices are at risk (inflation)</li> <li>- The risk stems from industry-wide contingencies beyond the contractors control</li> <li>-The money at risk outweighs the administrative burdens on an FPEPA</li> </ul>	<ul style="list-style-type: none"> <li>Judgemental standards can be fairly applied. The potential fee is large enough to both:               <ul style="list-style-type: none"> <li>- Provide a meaningful incentive</li> <li>- Justify the administrative burdens of an FPAF</li> </ul> </li> </ul>	The Headquarters needs a firm commitment from the contractor to deliver the supplies or services during the subsequent years. The contract amount at risk outweighs the administrative burdens of an FPRP	<ul style="list-style-type: none"> <li>- Definite Quantity (DQ): <b>The required quantity is known and funded at the time of the award.</b></li> <li>- Indefinite Quantity (IQ): The minimum quantity required is known and funded at award.</li> </ul> <b>Requirements Contract:</b> No commitment on quantity is possible at award.	Either the contractor expects substantial compensating benefits for absorbing part of the costs and/or foregoing fee <b>or</b> the vendor is a non-profit entity	Hourly labour rates can be firmly defined at contract award but hours required to complete the required task cannot

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	<b>FIRM FIXED PRICE (FFP)</b>	<b>FIXED PRICE ECONOMIC PRICE ADJUSTMENT (FPEPA)</b>	<b>FIXED PRICE AWARD FEE (FPAF)</b>	<b>FIXED PRICE PROSPECTIVE RE-DETERMINATION (FPRP)</b>	<b>INDEFINITE DELIVERY (ID)</b>	<b>COST REIMBURSEMENT OR COST SHARING</b>	<b>TIME AND MATERIALS (T &amp; M)</b>
<b>Elements:</b>	Firm Fixed Price for each line item or one or more groupings of line items	A fixed price ceiling on upward adjustment and a formula for adjusting the price up or down based on: - Established prices - Actual costs of the labour or materials - Labour or material indices	- A firm fixed Price - Fee pool - Standard for evaluating performance - Criteria for determining a "fee" based on performance against the standards	- Fixed price for the first period - <b>Proposed subsequent periods (at least 12 months apart)</b> - Timetable for pricing the next period(s)	- Performance period - Ordering activities and delivery points - <b>Maximum or minimum limit (if any) on each order</b> - Extent of each party's obligation on quantity	- Estimated cost - If cost sharing, agreement on the Headquarters share of the cost - No fee	- Ceiling price - Per hour labour rate that also covers overhead and profit - Provisions for reimbursing direct material costs plus material handling costs
<b>Contractor is obliged to:</b>	Provide an acceptable deliverable at the time, place and price specified in the contract	Provide an acceptable deliverable at the time and place specified in the contract at the adjusted price	Perform at the time, place, and the price fixed in the contract	Provide acceptable deliverable at the time and place specified in the contract at the price established for each period	Provide acceptable deliverables at the time and place specified in each order at the per-unit price, within any ordering limits established by the contract	Make a good-faith effort to meet the Headquarters needs within the estimated cost in the schedule	Make a good-faith effort to meet the Headquarters needs within the ceiling price (Not To Exceed)
<b>Contractor incentive (other than maximising goodwill):</b>	Generally realises an additional unit of profit for every unit of reduced cost	Generally realises an additional unit of profit for every unit of reduced cost	Generally realises an additional unit of profit for every unit of reduced cost Also, earns an additional fee for satisfying the performance standards	For the period of performance, realises an additional unit of profit for every unit of reduced cost	Incentive will depend on the contract pricing arrangement	Cost sharing contract shares the cost of providing a deliverable of mutual benefit	Fixed rate and flexible hours to perform a task with unknown elements
<b>A typical application:</b>	Commercial supplies and services	Long-term contracts for commercial supplies during a period of high inflation			Long term contracts for commercial supplies or support services	Joint research with educational institutions	Emergency repairs to heating plants and aircraft engines

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	<b>FIRM FIXED PRICE (FFP)</b>	<b>FIXED PRICE ECONOMIC PRICE ADJUSTMENT (FPEPA)</b>	<b>FIXED PRICE AWARD FEE (FPAF)</b>	<b>FIXED PRICE PROSPECTIVE RE-DETERMINATION (FPRP)</b>	<b>INDEFINITE DELIVERY (ID)</b>	<b>COST REIMBURSEMENT OR COST SHARING</b>	<b>TIME AND MATERIALS (T &amp; M)</b>
<b>Principal limitations:</b>	Generally not appropriate for R & D. Firm Fixed Price combined with level of effort contract may be used for R & D.	Must be justified	Must be negotiated	Must be negotiated. Contractor must have an adequate accounting system that supports the pricing periods. Prompt re-determinations	May use any appropriate cost or pricing arrangement that complies with regulations. Multiple awards preferred for most indefinite quantity contract items. Single award required for requirements contract items	<ul style="list-style-type: none"> <li>- The contractor must have an adequate accounting system</li> <li>- The Headquarters must exercise surveillance during the performance to ensure use of efficient methods and cost controls</li> <li>- Must be negotiated</li> <li>- Must be justified</li> <li>- Must include a limitation of cost clause</li> </ul>	Contracting Officer must determine in writing that no other contract type is suitable. Labour rate must be negotiated and justified. The Headquarters must exercise appropriate surveillance to ensure efficient performance. Contract must include a ceiling price.
<b>Variants:</b>	Firm Fixed Price level of effort			Retroactive re-determination	Definite quantity, indefinite quantity requirements	<ul style="list-style-type: none"> <li>Cost plus fixed fee</li> <li>Cost plus incentive fee</li> <li>Cost plus award fee</li> </ul>	Labour hour

## REFERENCES

- A. NATO Financial Regulations (NFR) and Financial Rules and Procedures (FRP).
- B. Protocol on the Status of International Military HQs set up pursuant to the North Atlantic Treaty, signed in Paris on 28 August 1952.
- C. NATO Civilian Personnel Regulations (NCPR).
- D. AC/4-D/2261 (1996 Edition) NATO Security Investment Programme – Procedures for International Competitive Bidding.
- E. ACO Directive 005-001, Morale and Welfare Programmes, dated 10 March 2014.
- F. ACO Directive 040-007, Standards of Conduct, Relationships with Contractors, and Disclosure of Information, dated 05 February 2007.
- G. ACO Directive 050-013, Management and Administration of Civilians Employed under the Provisions of the NATO Civ. Personnel Regulations, dated 07 May 2015.
- H. ACO Directive 060-001, Control of Funds, dated 15 January 2002.
- I. ACO Directive 060-030, Regulations for Execution of the Fiscal Function, dated 31 December 1975.
- J. ACO Directive 060-040, Regulations for Execution of the Disbursing Function, dated 07 September 1988.
- K. ACO Directive 060-045, Financial Administration of Advance Accounts, dated 18 July 1988.
- L. ACO Directive 060-053, Tax Exemption and Customs Clearance, dated 17 December 2007.
- M. ACO Directive 060-054, Acceptance of Gratuities, dated 31 August 2007.
- N. ACO Directive 060-071, Purchase Card Programme, dated 27 January 2012.
- O. ACO Directive 060-080, Property Accounting and Control, dated 17 December 2007.
- P. AC/94 Guidance to NATO Procurement Authorities (Working Group on Industrial Property).