

IMPLEMENTING ARRANGEMENT TEMPLATE (Model for Actual Joint Tender)

Note: Additional aspects to be considered when performing a Joint Procurement are also found in Article 6 of the Procurement Annex. Following these considerations, additional articles/wording may be needed in the Implementing Arrangement. This Implementing Arrangement template should be used when the model Actual Joint Tender is chosen unless considered inappropriate due to the subject matter or other circumstances.

1. INTRODUCTION

The Governments of Denmark, Finland, Norway and Sweden have concluded the Agreement between the Governments of Denmark, Finland, Norway and Sweden concerning Cooperation in the Defence Materiel Area, which was signed on 10 March 2015 (“Cooperation Agreement”). On [date] the Governments of Denmark, Finland, Norway and the Swedish Defence Materiel Administration, authorized by the Government of Sweden, signed an Annex concerning Joint Procurement to the Cooperation Agreement (hereafter referred to as the “Procurement Annex”).

Following the procedures in the Procurement Annex Section 3.2, [the competent procuring authorities taking part in the particular Joint Procurement] (hereafter referred to as “the Procuring Participants”) now wish to conduct a Joint Procurement concerning [the title of the project]. In this regard, the Procuring Participants have made the following arrangements:

2. OBJECTIVES OF JOINT PROCUREMENT PROJECT

The objective of this Arrangement is to [description of the project and the benefits to be achieved by it]. This Joint Procurement will be conducted by the use of the model Actual Joint Tender.

3. SCOPE OF WORK

Note: The relevant activities for a specific Actual Joint Tender procedure shall be listed here. For this purpose, the following suggested activities can be used if relevant.

The scope of this Arrangement is to perform the following activities:

- [Project planning including the time aspects];
- [Choice of procurement procedure];
- [Joint development of tender documents, hereunder such documents as contract notice to be published on Tenders Electronic Daily (TED), any further instructions to bidders, requirement specifications, tender conditions, evaluation model, draft contract/framework agreement etc.];
- [Testing of equipment];
- [Evaluation of incoming tenders];
- [Contract/framework agreement award];
- [Joint life-cycle logistic support];
- [Exchange of Information];
- [Contract/framework agreement administration];
- Etc.

4. SHARING OF TASKS

Note: The Procuring Participants shall make appropriate arrangements on who is going to perform the work under this Arrangement. For this purpose, the Procuring Participants can choose between three (3) different options or a combination hereof.

Option 1: The Lead Procuring Participant conducts most of the work.

Option 2: Most of the work is conducted nationally by the Procuring Participants and the work is divided among them.

Option 3: The work is performed jointly by the Procuring Participants in one or more established Working Groups (WG).

The provisions below can be used as examples for the three options.

Option 1:

[[**Procuring Participant X**] will be the Lead Procuring Participant for the work under this Arrangement. Other Procuring Participants will support the Lead Procuring Participant throughout the procurement process.]

As Lead Procuring Participant **[state the Lead Procuring Participant]** will be responsible for:

- ...
- ...
- ...

Option 2:

[The sharing of activities to be performed under this Arrangement will be as follows:

a. The **[Procuring Participant X]** will

b. The **[Procuring Participant X]** will

c. The **[Procuring Participant X]** will

d. The **[Procuring Participant X]** will

]

Option 3:

[The activities in Section 3 will be performed on behalf of the Procuring Participants by a Working Group (WG). The WG will consist of at least one permanent representative of each Procuring Participant. Any decision of the WG will be made anonymously. The WG will meet as often as required to achieve the objective of this Arrangement.

The WG will agree on practical arrangements with regard to WG's work.]

5. MANAGEMENT

Note: For major Joint Procurement Projects a steering committee for decision making and executive level oversight of the project is recommended.

The cooperative efforts under this Arrangement will be managed on behalf of the Procuring Participants by a Management Group (MG).

The MG will consist of one permanent representative from each Procuring Participant. The permanent representatives are identified in Section 13, Points of Contact. Each Procuring Participant can, on a case-by-case basis, appoint as many other representatives to the MG as it finds necessary.

The MG will meet as often as required by the Procuring Participants. Each meeting of the MG will be chaired by the representative of the Procuring Participant hosting the meeting.

Decisions of the MG will be made unanimously among the Procuring Participants' permanent representatives. It is the permanent representatives' responsibility to complete all national approval procedures timely before the decisions by the MG will be made. In the event that the MG is unable to reach a timely decision, each MG representative will refer the issue to its higher authority for resolution.

The MG will be responsible for successful accomplishment of Section 3, Scope of Work, of this Joint Procurement Arrangement. Thus, the MG responsibilities are:

- [Approval of the documents in market survey phase (such as Request for Information, etc.)]
- [Approval of time schedule for the conduction of Joint Procurement];
- [Approval of cost estimate for the Joint Procurement];
- [Approval of joint requirements specification];
- [Approval of tender documents];
- [Approval of contract/framework agreement documents];
- [Evaluation of prequalification applications];
- [Evaluation of tenders];
- [Overview of contract/framework agreement administration and resolving all issues arising hereof];
- Etc.

The MG will make unanimous decisions on all substantial matters with regard to the Joint Procurement and the execution of the contract/framework agreement(s). Thus, the jointly agreed procurement procedure, as described under Section 3, Scope of Work, may not be initiated and the contract/framework agreement may not be awarded unless the MG unanimously agreed thereto.

The MG will agree on practical arrangements with regard to the MG work.

6. TIMEFRAME

The Procuring Participants will use their best efforts to conduct the Joint Procurement within the following timeframe:

Note: Estimation for time for all the important decisions should be mentioned here, for example for time of agreement on requirement specification, approval of cost estimate, publication of contract notice, deadline for submission of bids, time of evaluation of bids,

contract/framework agreement negotiations, contract/framework agreement award, delivery, etc.

7. CONTRACTUAL ARRANGEMENTS

The Lead Procuring Participant will conduct the procurement procedure on behalf of the Procuring Participants and will be the point of contact for potential contractors, unless otherwise is mutually determined among the Procuring Participants.

It is each Procuring Participant's responsibility to ensure that its national requirements to contract/framework agreement documents are complied with.

Note: The Procuring Participants can decide to have one single joint contract/framework agreement or that each Procuring Participant has its own contract/framework agreement. The first option addresses the situation where the Procuring Participants decide to have one single joint contract/framework agreement and the second option addresses the situation where each Procuring Participant has its own contract/framework agreement.

Option 1:

[After the conduction of Joint Procurement procedure, the Procuring Participants will have one single joint contract/framework agreement. The Procuring Participants will agree on all the substantial provisions of the draft contract/framework agreement, governing law and venue. The Lead Procuring Participant will administer the contract/framework agreement on behalf of the Participants.]

Option 2:

[After the conduction of Joint Procurement procedure, the Procuring Participants will each have their own contract/framework agreement. Each Procuring Participant will decide which law and venue should be applied to the Procuring Participant's own contract/framework agreement.]

The contract/framework agreement(s) will be written in English language.

8. FINANCIAL ARRANGEMENTS

Option A (No administration fee is applied for the Lead Procuring Participant's services)

Each Procuring Participant will bear the costs it incurs for performing and administering the activities under this Arrangement.

Option B (Administration fee applies for the Lead Procuring Participant's services – can only be used in situations, where the Lead Procuring Participant faces extra costs due to contract/framework agreement administration on behalf of all the Procuring Participants)

For Lead Procuring Participant's services with regard to contract/framework agreement administration, an administration fee of [amount] will be applied. This fee will be specified in the invoices.

9. EXCHANGE OF INFORMATION AND INTELLECTUAL PROPERTY RIGHTS

Note: Relevant Intellectual Property rights provisions shall be considered in every Implementing Arrangement taking into account the subject matter of the Joint Procurement. The following provisions may be used as a basis for an arrangement in this regard among the Procuring Participants.

[9.1. The Procuring Participants recognize that successful cooperation depends on a full and prompt exchange of Information necessary for the performance of the Joint Procurement. Subject to their national laws, regulations, and policies, and the rights of the holders of Intellectual Property, the Procuring Participants will promptly exchange all Information necessary for the performance of the Joint Procurement under this Arrangement. The providing Procuring Participants or other holders of the Intellectual Property rights will retain the title and all other rights to the provided Information.

9.2. Subject to national laws and regulations, the Procuring Participants will not release Information received from other Procuring Participants to Third Parties without the prior consent of the providing Procuring Participant. Subject to Intellectual Property rights, the Procuring Participants may use the Information received or jointly developed under this Arrangement only for Defence Purposes.]

10. LIABILITY AND CLAIMS

10.1. The Procuring Participants' liability and settlement of claims arising from or in connection with cooperative activities under this Arrangement will be settled in accordance with Article 7 of the Cooperation Agreement.

10.2. Claims arising from or in connection with the performance of the procurement procedure will be processed by the Procuring Participant in whose country the claim arose. The Procuring Participant against whom the claim is brought will promptly notify the other Procuring Participants of the claim and its potential consequences for the Joint Procurement. Insofar as possible, the other Procuring Participants will provide Information available to them that may assist in defending such claims. The Procuring Participant against whom the claim is brought will consult with the other Procuring Participants during the handling and prior to any settlement of such claims. The Procuring Participants will share the costs of resolving such claims as decided by consultation, taking into account each Procuring Participant's involvement in the performance of the procurement procedure.

11. SECURITY

All Classified Information provided under this Arrangement will be stored, handled, transmitted, safeguarded and disposed in accordance with the GSA and Procuring Participants' national laws and regulations.

12. SETTLEMENT OF DISPUTES

Any disputes between the Procuring Participants arising out of or in connection with this Arrangement will be resolved through consultation among the Procuring Participants' representatives in the MG. If a dispute cannot be resolved within the MG, the Procuring

Participants will refer the dispute for settlement to their higher authorities. No dispute can be referred to any national or international tribunal or Third Party for settlement.

13. POINTS OF CONTACT

Each Procuring Participant will appoint a Point of Contact (PoC) for the performance of this Implementing Arrangement. The PoCs at the time when this Implementing Arrangement is signed are:

For Denmark:

Name:

Title:

Direct telephone number:

E-mail:

For Finland:

Name:

Title:

Direct telephone number:

E-mail:

For Norway:

Name:

Title:

Direct telephone number:

E-mail:

For Sweden:

Name:

Title:

Direct telephone number:

E-mail:

The Procuring Participants will inform each other if the PoCs are changed.

14. AMENDMENT, TERMINATION, ENTRY INTO FORCE AND DURATION

Note: The Procuring Participants should consider appropriate terms for withdrawal, taking into account that a Participant's withdrawal may imply delays, cancellation of tender procedure or an increase in costs for the other Participants.

This Arrangement can be amended by written approval of all the Procuring Participants.

The Procuring Participants may unanimously decide to terminate this Arrangement. The Procuring Participants will unanimously agree on the terms of termination.

In the event that a Procuring Participant finds it necessary to withdraw from this Arrangement, this Procuring Participant will immediately consult with the other Procuring Participants on the consequences of withdrawal. The withdrawal will come into effect upon 30 days written notice to the other Procuring Participants. The withdrawing Procuring Participant will meet in full its commitments up to the effective date of withdrawal.

Note: In case the Procuring Participants decide for a single joint contract/framework agreement, the insertion of the following provision should be considered:

[Additionally, the withdrawing Participant will pay all costs that would not otherwise have been incurred but for the decision to withdraw, such as for example contract/framework agreement modification costs. The remaining Procuring Participants, in consultation with the withdrawing Procuring Participants, will determine the most economical arrangement in this respect. However, the costs to the withdrawing Procuring Participant will not exceed its total commitment undertaken under this Arrangement.]

The Procuring Participants may use jointly developed documents under this Arrangement notwithstanding termination or expiration of this Arrangement.

This Arrangement will enter into effect upon signature of the last Procuring Participant and will remain in effect subject to the continuance of the contract/framework agreement. This Arrangement may be extended by written approval of the Procuring Participants.

In all other respects the relevant provisions of the Procurement Annex apply.

SIGNATURES

The undersigned, being duly authorized, have signed the present Implementing Arrangement.

Time and place:

Time and place:

Time and place:

Time and place:
