

IMPLEMENTING ARRANGEMENT TEMPLATE (Model for Government-to-Government Joint Procurement Procedure)

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 Government-to-Government Joint Procurement Procedure 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 Swedish Defence Materiel Administration, authorized by the Government of Sweden, signed Annex concerning Joint Procurement to the Cooperation Agreement (hereafter referred to as “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 Government-to-Government 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 Government-to-Government Joint Procurement Procedure.

3. SCOPE OF WORK

Note: The relevant activities for a specific Government-to-Government Joint Procurement 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];
- [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 performed nationally by contributing Procuring Participants and they have divided the task 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 those 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 decisions of the WG will be made unanimously. 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. I

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 14, 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 (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 prequalified candidates];
- [Approval of tender evaluation];
- [Approval of draft contract/framework agreement documents];
- [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 AND RESALE

7.1 Contractual arrangement between the Lead Procuring Participant and the contractor

The Lead Procuring Participant will conduct the procurement procedure, award and administer the contract/framework agreement on behalf of the Procuring Participants. This will be done in accordance with the Lead Procuring Participant's procurement rules, procedures and policies.

The contract/framework agreement awarded by the Lead Procuring Participant will be subject to the law of this Participant and venue within its territory, unless otherwise agreed among Procuring Participants.

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

[The Lead Procuring Participant will insert into prospective contracts/framework agreements provisions which enable the other Procuring Participants to bring any warranty claims or address any late delivery issues directly towards the contractor.]

Note: The Procuring Participants should also consider inserting any eventual industrial cooperation requirements in this section.

7.2 Arrangements for resale of Material and/or Services

Note: In this section the Procuring Participants shall insert appropriate provisions for the resale of the Material and/or Services from the Lead Procuring Participant to the other Procuring Participants. Such provisions should include but not necessarily be limited to provisions for ordering procedure, delivery schedules, terms of delivery, delivery acceptance procedures, transfer of risk, transfer of title, terms of payments, warranty and export control issues. In general, the provisions for the resale should as far as possible reflect the provisions of the contract between the Lead Procuring Participant and the contractor.

Note: In order to safeguard the Procuring Participants' contractual interests towards the contractor, the following arrangements, among others, may be considered if deemed in accordance with national laws or established practices.

[The Lead Procuring Participant will protect the interests of all Procuring Participants and will pursue contractual remedies and use the contract/framework agreement dispute process to the same extent as the Lead Procuring Participant would do in protecting its own interests. The Lead Procuring Participant will keep the affected Procuring Participants informed during this process and will take their views in full consideration.]

[In case the Lead Procuring Participant cannot pursue a contractual dispute on behalf of one of the other Procuring Participants in the court of law or by arbitration, the Lead Procuring Participant will allow the affected Procuring Participant to pursue such dispute on the Lead Procuring Participant's behalf and in its name. The affected Procuring Participant will bear all the costs of such dispute procedures.]

8. FINANCIAL ARRANGEMENTS

Note: The Procuring Participants should consider funding provisions for the Joint Procurement and insert appropriate provisions in this regard. The cost ceiling and cost share for the Procuring Participants should furthermore be considered. Any cost increase caused by national requirements of one Procuring Participant will normally be borne by that Procuring Participant.

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 Joint Procurement Arrangement.

Option B (Administration fee applies for the Lead Procuring Participant services - can only be used in situations, where the Lead Participant faces additional 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 award and 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 between the Procuring Participants in this regard.

- [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.
- 9.3. The Lead Procuring Participant will insert into its prospective contracts/framework agreements suitable provisions to secure for the other Procuring Participants non-exclusive, irrevocable, royalty-free licenses necessary to allow all the Procuring Participants the intended use of the Material and/or Services without any restrictions.]

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 Lead Procuring Participant. The Lead Procuring Participant 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 Lead Procuring Participant will consult with the other Procuring Participants during the handling and prior to any settlement of such claims. The Procuring Participants may 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 the 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 representatives in the MG. If a dispute cannot be resolved by 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. AUDIT

Note: It is important that the Lead Procuring Participant secures necessary rights regarding economical and technical insight from the contractor/subcontractor.

Note: The Participants should consider any eventual requirements for cost and price audit and insert appropriate provisions in this section.

- 13.1. The other Procuring Participants' national audit authorities may request all Information and all documents from the Lead Procuring Participant which in their opinion are relevant to the performance of their duties.
- 13.2. The other Procuring Participants' national audit authorities may at any time perform an audit and review the accounts of Lead Procuring Participant relevant for the cooperative activities under this Arrangement on the location where the records are kept or wherever necessary documents may be found. The Lead Procuring Participant will strive to get a corresponding rights for the Procuring Participants to get access to contractors' as well as possible subcontractors' books etc.

13.3. In case the Lead Procuring Participant's national audit authorities perform audit on contractors or any eventual subcontractors, the Lead Procuring Participants will make the reports of these audits available to the other Procuring Participants to the maximum extent permissible by its national laws and regulations.

14. POINTS OF CONTACT

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

15. 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 delay, 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. 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 Participant, 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 Joint Procurement 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:
