

# The Code of Best Practice in the Supply Chain

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Approved by ASD on 27 April and agreed by the EU Member States participating in the European Defence Agency.

## Introduction

1. This is a voluntary Code of Best Practice in the Supply Chain (hereinafter referred to as the "CoBPSC") for use where Article 296 of the TEC is invoked and the voluntary regime applies (other than for excepted goods and services); it is to be read and implemented coherently with the Code of Conduct, of which the CoBPSC is an integral part. The CoBPSC is to be complementary to national procedures with such procedures taking precedence where they exist. No legal commitment is involved or implied nor is there a transfer of risk involved or implied by the CoBPSC.
2. The CoBPSC is established to promote the principles of the Code of Conduct on Defence Procurement in the supply chain thereby encouraging increased competition and fair opportunities for all suppliers, including for small and medium-sized enterprises (SMEs). The CoBPSC should encourage value to flow up the supply chain to the benefit of the sMS by adopting good practice down the supply chain.
3. Over time the scope of the CoBPSC may be broadened to encompass all public defence procurements undertaken by sMS.

## Definitions

4. In the CoBPSC, the phrase "relevant administrations of the sMS" in the field of defence embraces the acquisition community throughout these administrations. The word "Suppliers" means suppliers and buyers having a technological and/or industrial basis in a sMS constituting the supply base of these administrations, which includes all existing or potential suppliers and contracting parties at all levels of the supply chain. The word "Buyers" includes the contracting authorities of the relevant administrations of the sMS and commercial purchasers, including prime contractors.

## Objectives

5. The CoBPSC is about influencing behaviour in the supply chain to encourage fair competition at the national level and across the sMS. The CoBPSC does not seek to deal directly with the performance of goods and services nor to specify contractual terms for their supply; rather, the CoBPSC will promote transparency and fair competition at the contract and sub-contract level. Relevant administrations of the sMS, and Prime Contractors and other Buyers in the supply chain are expected to adopt practices that will, wherever efficient and practical, encourage an increase in the level of competition.
6. The CoBPSC will also encourage the evaluation and selection of suppliers on a fair and equitable basis. The objectives are to deliver improvements in quality, efficiency, timeliness and consistency in supply chain relationships in defence acquisition business.
7. The CoBPSC should also encourage a positive and co-operative approach by all stakeholders involved in setting the terms for the supply of goods and services to the relevant administrations; advocating a team approach in all cases, to use best practice to achieve shared goals, while recognising and respecting each other's interests, by the avoidance of confrontation and the adoption of reciprocal behaviours.

## Principles

8. The relevant administrations of the sMS and their Suppliers share the core values of fairness, honesty and openness, efficiency and effectiveness, and professionalism; maintaining the highest levels of integrity, impartiality and objectivity. They will strive to perform their obligations efficiently and to the highest professional standards, treating each other fairly, and with courtesy. The Prime Contractor remains responsible ultimately for the selection and management of its supply chain.
9. The commercial "freedom to contract" in the supply chain is to be maintained except where mandated by law or customer requirement. It is recognised that Buyers must be free to specify terms and performance requirements that meet their acquisition needs; however, those terms are to be clearly state at the outset, drafted unambiguously and implemented in a balanced manner. Eventual direction from the contracting authorities of the relevant administrations of sMS for a specific source of supply may result in a reassessment of risk sharing.
10. The CoBPSC is to take account of the following within the supply chain:
  - a. the relationship between Buyers and their Suppliers;

- b. the behaviours expected from all Buyers and Suppliers, large and small;
  - c. transparent and fair conduct of competition and Suppliers selection by Buyers.
- 11. The CoBPSC is to promote opportunities, where competition is efficient, practical and economically or technologically appropriate on a level playing-field basis for qualified and competent suppliers (both in-house and external), including SMEs, to participate in competitions. In the interests of both buyers and Suppliers numbers invited to tender could be limited to ensure optimum economy, whilst honouring (and testing, where appropriate) preferred supplier status and strategic alliances where these exist. This will include the identification of contract and subcontract opportunities as soon as practicable by publication in the Contracts Bulletin of the relevant administrations of the SMS, the Agency's Electronic Bulletin Board or the Suppliers websites as applicable.
- 12. Buyers will make available the criteria for the evaluation of bids; to evaluate the bids objectively and to notify the outcome promptly to all bidders on the same day, and within the bounds of commercial confidentiality, to debrief winners and losers, upon request, on the outcome of the bidding process and the reasons for not being so selected so as to facilitate better performance on future occasions.
- 13. In assessing what is economically advantageous in the selection of Suppliers, it shall be taken into consideration that both Buyers and Suppliers need to take strategic sourcing decisions that are wider than individual contract or programme requirements.
- 14. In evaluating tenders of Suppliers, buyers will consider, amongst other things, the approach undertaken or proposed for the selection of sources of supply (including, where appropriate, make or buy plans), having regard to the principles of the CoBPSC.
- 15. It is incumbent on Buyers at each tier to resolve any difficulties or concerns of their supply chain in relation to the CoBPSC; where these matters remain they may be notified for transparency purposes to a Point of Contact of the relevant administration of the SMS.
- 16. All methods of acquisition implementation should be carried out in the same spirit of good practice. Whatever procurement method is chosen there is a need for transparency, clarity and certainty.

## Monitoring

- 17. Monitoring arrangements will be introduced to assess the extent to which the CoBPSC is being applied. It will be based on Prime Contractors providing information on sub-contract opportunities advertised.