

First Amendment to the All NEMO Intraday Operational Agreement (ANIDOA) – Annex 3: adapted Annex 5
(Procurement procedure)
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ANNEX 3

Adapted Annex 5 (Procurement procedure)

All NEMO Intraday Operational Agreement (ANIDOA)

ANNEX 5

Procurement procedure

1. INTERPRETATION

- 1.1. For the purpose of this Annex 5, all capitalized terms not expressly defined herein shall have the meaning attributed to them in Annex 1 (Definition list).
- 1.2. For the purpose of this Annex 5, the capitalized terms and expressions used herein and that are not set forth in Annex 1 (Definition list), shall have the following meaning:

Contractor:	means the candidate that has been selected to become the Third Party Service Provider and therefore has entered into an agreement with one or more of the Parties;
DB:	means database;
Decision:	means the decision whereby the NEMO ID SC indicates which type of procurement procedure has been selected;
Legal TF:	means the legal working group composed of representatives of the Parties;
IT:	means information technology;
PoA:	means power of attorney, the agreement entered into between the Procuring Party and the other Parties for the management of a procurement within the ID NEMO Cooperation;
Procurement Manager:	means the person or entity that has been designated by the Parties to coordinate and follow up the procurement processes as well as to execute the tasks attributed to it as set out in this Annex 5;
Procuring Party:	means the Party that will conduct the procurement process in its name and on the account of the other Parties and shall stipulate the awarded contract with the provider;
PRWG:	means the procurement workgroup composed of representatives of the Parties;
Public Procurement:	means the purchasing by public sector bodies and certain utility sector bodies of contracts for goods, works or services;
Request for Proposal/RFP:	means the document drafted by the Procurement Manager that describes the project, the requirements and specifications and the contractual terms with regard to procurement process as further described in this Annex 5;
SPOC:	means the special point of contact of each Party for all matters related to procurement. The SPOCs shall ordinarily coincide with the members of the PRWG;

“Third Party Service Provider”: a Third Party who could potentially provide the service the Parties are procuring.

2. INTRODUCTION

- 2.1.** Within the ID NEMO Cooperation, several services might be subject to procurement by the Parties.
- 2.2.** The object of this Annex 5 is first to describe the general principles and procedure of the ID NEMO Cooperation’s procurements.

3. GENERAL PRINCIPLES FOR PROCUREMENT WITHIN THE FRAMEWORK OF ANIDOA

3.1. General

- 3.1.1.** The following general principles shall be followed in the common ANIDOA procurements and by each Party individually:
 - Any procurement procedure that may be required for the development of the ID NEMO Cooperation shall always ensure the compliance with the founding principles of the EU Directives in respect of public procurement in the energy sector (i.e. Directives 2004/17/EC and 2004/18/EC) such as equal treatment, non-discrimination and transparency, while assuring, at the same time, economic efficiency, efficacy, timeliness and correctness;
 - Strict following of the planning of the procurement;
 - Selection based on objective criteria;
 - Approval of procurement deliverables by the relevant ANIDOA governance bodies;
 - Recommendation of selection to the relevant ANIDOA governance bodies;
 - Equal terms of participation are provided to all candidates, in the same manner; and
 - Documentation of the conducted process must be recorded for auditing purposes.

3.2. ANIDOA internal rules and procedure for procurement

- 3.2.1.** If external services are required, each ANIDOA workgroup, by way of its workgroup leader, is entitled to propose to the NEMO ID SC the assignment of a certain activity through a selection carried out by means of a procurement procedure.
- 3.2.2.** In the event a workgroup requests for a procurement, a request for procurement shall have to be provided containing at least the following elements:
 - The object of the procurement;
 - The contents of the expected deliverables;
 - The quality objectives (deliverable form, respect of scope, finishing level, detail level, level of support to seek, ...);
 - The assumed value (= an assumed budget, considering standard rates of economic operators in the relevant market); and
 - The target date for completion.

The request for procurement must be sent to the NEMO ID SC for approval.

For the procurement itself, following deliverables are requested from the workgroup subsequently to NEMO ID SC’s approval of the request for procurement:

- The technical specifications; and
 - List of possible candidates (if known).
- 3.2.3.** In conformity with the Applicable Law, the NEMO ID SC shall then:
 - Ask for the candidatures of the Parties for the Procuring Party role;

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- Decide on the appointment of a Party candidate for the Procuring Party role. In the event that no Party candidates may apply, the NEMO ID SC shall appoint as Procuring Party the Party acting as workgroup leader;
- Assign the Procurement Manager with the task to suggest the right procurement approach (direct assignment, negotiated procedure, open procurement) taking into account the various models that are applicable according to the legal nature (private or public) of the Party becoming Procuring Party and the Applicable Law applicable to the Procuring Party. The Procurement Manager might request the workgroup for additional documentation if necessary; and
- Provide the necessary instructions to the Procurement Manager for the organization of the procurement

When the NEMO ID SC has approved the suggested procurement approach, the procurement shall take place in accordance with the suggested procurement approach subject to compliance with the Applicable Law, in particular as regards public procurements applicable to the Procuring Party. The Procurement Manager shall be entrusted with the follow up of the process, in cooperation with the Party being the Procuring Party.

3.2.4. Although individually in charge of the procurement procedure from a formal point of view, the Party being the Procuring Party undertakes, if applicable and to the extent permitted by the Applicable Law, to:

- Prepare in close cooperation with the Procurement Manager the procurement documentation based on the information provided by the requesting workgroup and in particular use as specifications for the procurement the document produced by the requesting workgroup as endorsed by the NEMO ID SC;
- In the event that a negotiated procurement procedure may be adopted, invite candidates mentioned on the list of candidates formerly provided by the requesting workgroup, as endorsed by the NEMO ID SC;
- Ensure an adequate advertising of the forthcoming contract award when requested by the procurement procedure model adopted by the NEMO ID SC. Such advertisement¹ must be published, as a minimum, on the website of the Procuring Party and/or any different website indicated in the relevant PoA. Candidates which apply for the award within the given term² and the candidates provided by the requesting workgroup (if such event may occur) shall then be selected according to the applicable procurement procedure;
- Work together with the Procurement Manager as the Procuring Party's internal superintendent of the procurement procedure;
- Formally appoint the Procurement Manager as the Procuring Party's internal superintendent of the procurement procedure;
- Comply with the selection and the tendering process managed by the Procurement Manager;
- Stipulate the contract with the awarded candidate in its own name and for its own account and for the account of all other Parties; and
- Comply with the other instructions agreed upon between the Parties in the PoA.

3.3. Principles of procurement for open procedures within the framework of ANIDOA

3.3.1. In the case that the NEMO ID SC, in accordance with the principles described in sections 3.1 and 3.2, has approved a procedure based on the open procurement procedure as defined in the relevant EU Directives, the following principles of procurement shall be followed, at least³:

- Adequate advertising of the procurement open to all potential Third Party Service Providers as indicated in the relevant PoA;

¹ Regardless the means of publication, the advertisement's content must be presented in a way that potential bidders can easily become aware of the information.

² The term shall be provided by NEMO ID SC in the Decision.

³ NEMO ID SC may approve detailed *ad hoc* procedures, provided by the Procurement Manager, which shall necessarily comprehend the principles described above.

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- A non-negotiable confidentiality declaration to be signed by the potential Third Party Service Providers participating in the selection procedure;
- Equal terms of participation for all potential Third Party Service Providers;
- Proposal submitted must be a binding offer with a six (6) month validity; and
- Selection based on pre-defined objective criteria established as part of the RFP have been received.

3.3.2. The procurement procedure shall be fully documented for audit purposes.

3.4. Principles of procurement for negotiated procedures within the framework of ANIDOA

3.4.1. In the case that the NEMO ID SC, in accordance with the principles described in sections 3.1 and 3.2, has approved a procedure based on the negotiated procedure without prior call for competition, as defined in the relevant EU Directives, the following principles of procurement shall be followed, at least⁴:

- Restricted list of selected potential Third Party Service Providers that shall be invited:
 - Each Party has the right to add potential Third Party Service Providers to this list. There is no restriction on the number of potential Third Party Service Providers per Party. However, if the list gets too long (e.g. more than ten (10) potential Third Party Service Providers), the Parties may consider to introduce a pre-selection of potential Third Party Service Providers (i.e. making a short list of the long list).
 - Pre-selection in case of a need to shorten the initial list of potential Third Party Service Providers shall be done on the basis of the criteria to be agreed upon by the Parties;
- A non-negotiable confidentiality declaration to be signed by the potential Third Party Service Providers participating in the selection procedure;
- Equal terms of participation for all potential Third Party Service Providers;
- Proposal submitted must be a binding offer with a six (6) month validity;
- Selection based on pre-defined objective criteria established beforehand and indicated in the RFP have been received; and
- Negotiated procedure (with Third Party Service Provider of first choice):
 - Negotiations regarding certain contract clauses might still be possible. However, the RFP shall already be clear on contract clauses which shall not be negotiable.

3.4.2. The procurement procedure shall be fully documented for audit purposes.

⁴ See above under note 3.