

Appendix G

Procedure regarding discontinued items and substitution thereof

TABLE OF CONTENTS

1.	DISCONTINUED AND SUBSTITUTED ITEMS	3
2.	CHANGES TO THE DELIVERABLES	3
2.1	Conditions for changes to the Deliverables	3
2.2	Approval of changes to the Deliverables	45
2.3	Consequences of changes to the Deliverables	5
2.4	DALO's requirements with respect to inclusion of new items in the Deliverables	6
3.	CONTRACTUAL TERMS	67

1. DISCONTINUED AND SUBSTITUTED ITEMS

The Supplier shall not be entitled to discontinue the items set out in DALO's requirements specification in Appendix A and offered in Appendix C from the Deliverables unless they are substituted by new items in accordance with clause 2.

All items are minimum requirements, and an item may only be substituted in special circumstances. Accordingly, substitution can only be made if – based on a specific assessment of the item in question – there is a qualified reason for substituting the item, e.g. if development in technology has caused the item in question to be discontinued and the item is replaced with a new or updated item. Furthermore, the substitution of an item must be in accordance with the public procurement rules in force at the time of substitution.

With a prior written notice of at least 3 (three) months, the Supplier shall notify DALO of items which the Supplier ceases to deliver and to distribute in Denmark and which the Supplier therefore intends to discontinue from the Deliverables.

Such discontinued items shall be substituted, and the discontinued items shall be removed from Appendix C and C.1 when the Supplier ceases the delivery and distribution thereof however no sooner than at the expiry of the notice.

The Parties shall ensure that Appendix C and C.1 are updated accordingly.

The Agreement shall remain unchanged with respect to the items which are not discontinued.

2. CHANGES TO THE DELIVERABLES

2.1 Conditions for changes to the Deliverables

In connection with the Supplier's marketing of new items to substitute, in whole or in part, or to supplement items included in the Deliverables (for instance, if the item is supplied in an updated version), the Supplier may request, no later than at the time of advertising the new items to the Supplier's other customers, that DALO allow the new items to be included in the Deliverables (in the following referred to as "the substituting item"). Such updating shall include related services and customisation (such as servicing of equipment, training, adaptation to customer-specific conditions, etc.) to the same extent as for other items in the product category in question.

The substituting item shall comply with the following conditions:

- a. The substituting item shall at least have the same functional, technical abilities, same quality and belong under the same CPV code as the discontinued item or the item to be supplemented.
- b. The substituting item shall as a minimum comply with the requirements set out in Appendices A and C which apply to the discontinued item or the item to be supplemented.
- c. If the Supplier has the option of choosing between several items to substitute the discontinued item, the Supplier shall choose the item with the lowest list price. This, however, shall only apply if the list price is lower than the price of the item to be substituted.
- d. The substituting item shall not already be included in the Agreement.
- e. The substitution shall be subject to DALO's approval, cf. clause 2.2.

The Supplier's obligation to supplement an item or substitute a discontinued item in accordance with the conditions set out in items a-e above shall apply regardless of whether the substituting item may entail compliance in excess of the requirements set out in Appendices A.

At DALO's request, the Supplier shall document that the substituting item complies with the conditions set out in items a-d above.

An item shall not be discontinued from the Deliverables until the Supplier has substituted the item in accordance with this Special Appendix. In the notice, cf. clause 1, the Supplier shall indicate the item with which the discontinued item is substituted and whether the substituted item complies with the conditions in items a-d.

2.2 Approval of changes to the Deliverables

Changes to the Deliverables shall be subject to DALO's approval, cf. clause 2.1.

DALO shall be entitled to make its consent conditional upon adequate documentation from the Supplier that the conditions set out in items a-d in clause 2.1 are complied with.

DALO shall not without an objective reason withhold its consent to a change in the Deliverables, cf. clause 2.1, if the item is substituted because it is discontinued from the Supplier's product range in Denmark. Rejection shall be notified no later than 20 Working Days after DALO's receipt of the Supplier's notification of the change. If the Supplier fails to provide documentation without undue delay after DALO's request regarding compliance with the conditions set out in clause 2.1, the time-limit shall be extended accordingly.

Any other consent to the Supplier's updating of the Deliverables with respect to supplementation of items in the Deliverables shall be at DALO's sole discretion. Any rejections shall be notified no later than 3 months after DALO's receipt of the intended updating.

2.3 Consequences of changes to the Deliverables

After DALO's approval of changes to the Deliverables, the substituting item shall be included in Appendix A , C and C.1.

If substituting items are included in the Deliverables pursuant to clause 2, the price thereof shall be fixed as the lower of the following prices:

- a) The price of the item in the Deliverables which the substituting item replaces or supplements.
In case of Spare Parts sold in packs of several units, the unit price shall apply, cf. below, or
- b) The Supplier's official list price for the substituting item at the time of inclusion.

The Agreement shall otherwise remain unchanged.

The substituting item may be included in orders for Delivery Items already placed.

If, subsequently, it turns out that the substituting item does not comply with the conditions set out in clause 2.1, the Supplier shall offer within a time-limit of 30 (thirty) Working Days another substituting item which complies with the conditions set out in clause 2.1.

If the Supplier changes the number of units per normal sales unit, e.g. from a pack of 250 pcs. to a pack of 100 pcs., DALO shall not be placed at a disadvantage in terms of price per unit.

For the substituting items, the Supplier shall submit NATO codification information and documentation in accordance with the relevant provisions in the Agreement, within the deadline specified.

The Supplier shall once a year submit an update of Appendix A and Appendix C.

2.4 DALO's requirements with respect to inclusion of new items in the Deliverables

In addition to the incidents stated in clauses 2.1-2.3, DALO shall be entitled to require that new items be included in the Deliverables provided that the following terms are complied with:

- a) The item shall be of the same nature as the items included in the Deliverables and belong under the same CPV code as the items included in the Deliverables.
- b) The total expected purchase during the term of the Agreement of new items included in the Deliverables (including the value of already included new items, cf. clause 2.3) shall not exceed the thresholds applicable at any time for EU tenders or thresholds for submission to competition according to national rules.

If new items are included in the Deliverables, the price shall be fixed as the lower of the following prices:

- a) The price of a similar item in the Deliverables, or
- b) The Supplier's official list price for the item at the time of inclusion.

The Agreement shall otherwise remain unchanged.

The new item may be included in Purchase Orders already placed.

3. CONTRACTUAL TERMS

It shall constitute material breach of the Agreement if the Supplier discontinues items from the Deliverables or substitutes items in the Deliverables for any other reason than allowed pursuant to this Appendix.