

2018

# Procurement by the Ministry of Foreign Affairs

1. Instructions
2. Routines

Services Department, Ministry of Foreign Affairs,  
14/6098-92  
10 April 2018

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# 1 Instructions for procurement by the Ministry of Foreign Affairs

These instructions apply to all employees and contracted personnel in the Norwegian Ministry of Foreign Affairs. In this document, 'Ministry of Foreign Affairs' or 'Ministry' is used to mean both the Ministry and the Foreign Service as a whole (the Ministry and the diplomatic and consular missions). The instructions also apply to third parties who are authorised to assist the Ministry with procurement (planning, sourcing and contract implementation). They apply to all use of funding from the Ministry's budget. The instructions apply to contracts with a value exceeding NOK 100 000 excluding VAT.

- 1) Procurement must be carried out in accordance with Norway's Public Procurement Act and Public Procurement Regulation, the regulations on financial management in central government, and instructions on procurement and financial management issued by the Ministry.
- 2) The Ministry's procurement and contract templates must be used whenever appropriate. The budget holder<sup>1</sup> must discuss any deviation from this with the Procurement Section.
- 3) The Procurement Section must be contacted for quality assurance for all contracts with a total value exceeding NOK 1.3 million.
- 4) As a general rule, the budget holder must contact the Procurement Section about all contracts with a total value exceeding NOK 1.3 million for assistance with planning and sourcing.
- 5) The budget holder is responsible for ensuring that any proposed grant agreement is assessed to check whether it may be necessary to deal with it as a contract under the procurement legislation.<sup>2</sup>

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1 Head of section/department/mission who has budget authority.

2 Until further notice, the provisional instructions issued by the Secretary General on 21 October 2016 are to be followed. This means whenever a grant agreement is planned, the decision documents or other relevant documents must be sent to the Section for Grant Management for a mandatory assessment of whether the agreement falls under the rules for grants or the rules for procurement. This does not apply to agreements to be concluded under UN framework agreements or to core contributions to multilateral organisations.

## **2 Routines for procurement in the Ministry**

### **2.1 Introduction**

This document describes the phases of a procurement process and the roles and responsibilities involved. These routines apply to contracts with a total value exceeding NOK 100 000 excluding VAT.

#### **2.1.1 Purchasing consultancy services**

Purchases of consultancy services must be restricted to specific assignments of limited duration requiring special expertise that is not available within the Ministry.

A consultant must not be used to carry out ordinary day-to-day tasks. These must be carried out by Ministry employees.

If there is any doubt about whether it is permissible to purchase consultancy services or whether tasks must be carried out by Ministry employees, contact the Unit for Personnel and Legal Matters, Human and Financial Resources Department.

If a consultant needs to travel to a high-risk area, special conditions must be included in the contract. These conditions must be drawn up during the planning phase.

#### **2.1.2 Purchasing research and development services**

The procurement legislation only applies to research and development contracts in cases where the services are wholly paid for by the contracting authority (in this case the Ministry or a mission) and the results become the property of the contracting authority (commissioned research).

#### **2.1.3 Classified procurement**

There are special procedures for classified procurement, which are described in a separate document, 14/9185-1 (in Norwegian only).

### **2.2 Types of expertise required for procurement**

Procurement requires two types of knowledge:

- commercial and legal knowledge relating to procurement;
- knowledge about the services or products required in the specific case.

The Procurement Section has the necessary commercial and legal expertise, while the department/section or mission involved in a specific procurement process needs to have sufficient knowledge about the services or products required. Good coordination between all those involved is vital for the success of a procurement process.

## **2.3 Authority and responsibilities**

You should refer to the *Main Instructions for Financial Management in the Foreign Service*, particularly Chapters 2.1 and 3.1 on responsibilities, budget authority and delegation of budget authority, and Chapter 5.2 and 5.3 on rules for handling expenditure and income.

### **2.3.1 Budget holder**

In the Ministry, budget authority has been delegated to director general and director level in the Ministry, and to heads of mission abroad. Delegated budget authority may be further delegated. In this document, ‘budget holder’ is the term used to refer to heads of section/department to whom budget authority has been delegated. Budget holders may purchase goods and services within the budget allocated to them, and are responsible for ensuring that procurement processes are carried out in accordance with these instructions and routines.

Budget holders may delegate the implementation, but not the approval, of procurement processes to other members of the staff of their own unit.

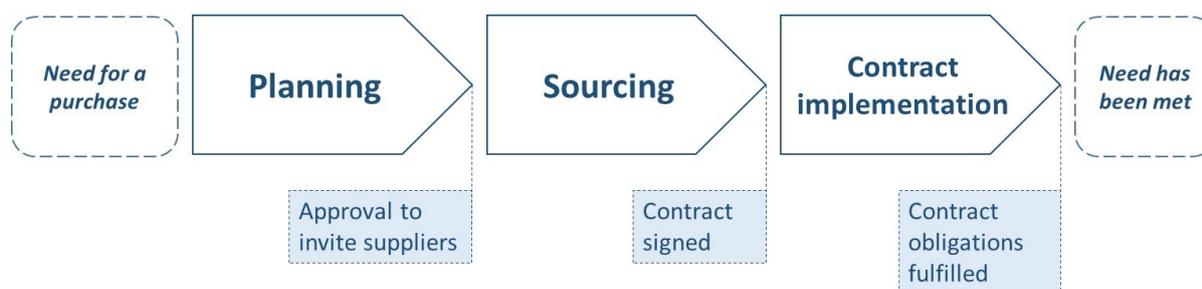
### **2.3.2 Responsibilities of the Procurement Section**

The Procurement Section is responsible for providing a framework for sound, legal procurement by the Ministry. This includes:

- drawing up procurement instructions for the Ministry, to be approved by the Secretary General;
- drawing up procurement routines;
- drawing up templates for invitations to tender and contracts;
- providing support for departments and sections of the Ministry and the missions abroad during planning, sourcing and contract implementation;
- carrying out quality assurance of procurement processes in accordance with the procurement instructions;
- assessing and providing advice and guidance on commercial and legal aspects of procurement;
- drawing up and implementing strategies and action plans for improving the standard of procurement in the Ministry;
- provide assistance in building up expertise on procurement.

## **2.4 Phases of a procurement process**

The Ministry divides procurement processes into three phases. The procurement legislation applies mainly to the second of these, sourcing. The sourcing phase starts when the contracting authority invites suppliers to submit tenders and ends with the signing of a contract.



### 2.4.1 Roles, responsibilities and tasks during a procurement process

The table below shows roles, responsibilities and tasks during a procurement process. The distribution of tasks applies to contracts with a value of more than NOK 1.3 million excluding VAT. The relevant section or mission will be responsible for all tasks if the value of the contract is less than NOK 1.3 million excluding VAT.

Name	Responsibilities	Tasks
Mr/Ms AA (Budget holder)	Contract owner	<ul style="list-style-type: none"> <li>Strategic assessments and decisions</li> <li>Sign the contract(s)</li> </ul>
Mr/Ms BB Mr/Ms CC (relevant section/mission)	Knowledge about what is required in the specific case	<ul style="list-style-type: none"> <li>Define and verify the need for procurement.</li> <li>Carry out market research if appropriate.</li> <li>Formulate the content of the tender documents relating to the specific case.</li> <li>Assist in drawing up the tender documents.</li> <li>Assist in assessing whether tenderers satisfy the conditions for participation.</li> <li>Assist in evaluation of tenders.</li> </ul>
Mr/Ms Management (Procurement Section)	Approval of procurement documents	<ul style="list-style-type: none"> <li>Approve documents before they are sent to the contract owner for final approval, see the document management routines.</li> </ul>
Mr/Ms DD (Procurement Section)	Legal quality assurance of procurement documents	<ul style="list-style-type: none"> <li>Quality assurance of documents before they are sent to the management of the Procurement Section, see the document management routines</li> <li>Quality assurance of classified procurement processes.</li> </ul>
Mr/Ms EE (Procurement Section)	Carry out the planning and sourcing phases	<ul style="list-style-type: none"> <li>Develop a contract strategy, including a timetable.</li> <li>Act as the contact point during the procurement process.</li> <li>Draw up the tender documents.</li> <li>Draw up a price schedule.</li> <li>Draw up a draft contract.</li> <li>Draw up method for assessing tenders</li> <li>Publish the contract notice.</li> <li>Receive tenders.</li> </ul>

		<ul style="list-style-type: none"> <li>• Plan and carry out negotiations.</li> <li>• Prepare notices to tenderers .</li> <li>• Deal with requests for access to documents.</li> <li>• Deal with appeals.</li> <li>• Complete the procurement record.</li> </ul>
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## 2.5 Planning

As a general rule, a contract strategy must be drawn up for all contracts with a value exceeding NOK 1.3 million excluding VAT. The Ministry has drawn up a contract strategy template for this purpose as a tool for planning and approval during a procurement process. A contract strategy takes into account the requirements of the procurement legislation relating to sourcing, and to some extent the requirements for contract implementation. It also describes and gives grounds for the assessments and choices made during the planning phase, and provides a basis for carrying out the rest of the procurement process. Key elements of a contract strategy are:

- Description of the need that has been identified
- Description of the purpose of the contract; which results/effects are to be attained
- Risk analysis and identification of critical factors for success
- Market assessment
- Sourcing
- Contract implementation

## 2.6 Sourcing

The Norwegian procurement legislation regulates the sourcing phase of procurement. The Regulation consist of several parts, and the provisions become increasingly detailed from Part I to Part III. The part(s) of the Regulation that apply to a specific contract depend on the value of the contract and the type of goods or services to be procured. The rules also depend on whether the contracting authority is located in Norway, in another country within the European Economic Area (EEA) or outside the EEA. The table below shows the geographical scope of different parts of the Regulation.

<b>Location of the contracting authority</b>	<b>Does the Public Procurement Act apply?</b>	<b>Which parts of the Regulation may apply?</b>
In Norway (the Ministry)	Yes	Part I; Part II or III may also apply depending on the value and type of contract.
A mission within the EEA	Yes	Part I; Part III may also apply depending on the value and type of contract.
A mission outside the EEA	Yes	Part I only irrespective of the value and type of contract.

The table below show which parts of the Regulation apply depending on the value and type of contract, in cases where the budget holder is located in Norway or within the EEA.

<b>Type of contract/part of Regulation</b>	<b>Part I</b>	<b>Part II</b>	<b>Part III</b>
Contracts for goods and services generally	NOK 100 000 – 1.3 million	Does not apply	NOK 1.3 million or more
Contracts for social and other specific services (see below)	NOK 100 000 – 1.3 million	NOK 1.3 million or more	Does not apply
Construction contracts	NOK 100 000 – 1.3 million	NOK 1.3 – 51 million	NOK 51 million or more

### 2.6.1 Value of the contract

The value of the contract is one of the factors that determines which part(s) of the Regulation is applicable.

The value of a contract means the total estimated amount payable, excluding VAT. All options must be included in the estimate. If there are plans to acquire public works, services or similar goods in separate lots, the estimated value of all such lots must be

added up. In such cases, the contract may only be divided up if there are objective grounds for doing so.

In the case of framework agreements, the value must be estimated on the basis of the maximum estimated value of all contracts envisaged for the whole term of the agreement.

In the case of contracts for goods or services that are regular in nature or will be renewed within a given period, the estimated contract value must be based on the actual value of the contracts of the same type awarded during the preceding calendar or financial year. Alternatively, the calculations may be based on the total estimated value of the contracts expected to be awarded during the first calendar/financial year of the contract. If one method of calculation results in an estimated value of the contract that exceeds the threshold amounts and the other does not, the method that gives the higher estimate must be chosen.

In the case of fixed-term service contracts with a term less than or equal to 48 months and that do not specify a total price, the value must be calculated on the basis of the aggregate value for the entire term of the contract. In the case of service contracts without a fixed term or with a term greater than 48 months, the value must be calculated on the basis of the monthly value multiplied by 48.

Specific rules for calculating the value of contracts concerning leasing, hire or hire purchase, design contests and innovation partnerships are set out in section 5-4 of the Public Procurement Regulation (in Norwegian only).

### 2.6.2 Tender protocol

A tender protocol must be kept for all contracts with a value of more than NOK 100 000 excluding VAT. The protocol must include a description of all the most important elements of the procurement process. These include the value of the contract, the procurement procedure followed, which tenders participated in the competition and the grounds for selecting the tender chosen. The Ministry's template for a tender protocol must be used. A completed tender protocol must accompany the contract when the budget owner signs the contract.

A tender protocol must also be kept when a contracting authority follows call-off procedures when parallel framework agreements have been concluded by re-opening competition, i.e. by carrying out a mini-competition.

### 2.6.3 Contracts under Part I of the Public Procurement Regulation

There are no statutory rules of procedure for contracts that are only governed by part I of the Public Procurement Regulation. However, the procurement process must promote efficient use of society's resources, in accordance with principles of competition, equal treatment, predictability, verifiability and proportionality. The

process must be carried out in a way that is appropriate given the type, scope and complexity of the contract.

The requirement for competition can be met by contacting several suppliers directly or by publishing a voluntary notice on the Doffin website. Direct contact is a suitable method if the names of potential suppliers are known and/or they are based abroad. At least three suppliers should be invited to submit tenders. Publication of a notice is appropriate if potential suppliers are based in Norway and not enough is known about the supplier market. Missions outside the EEA that wish to reach suppliers on the Norwegian or European market should consider publishing a notice for contracts with a value exceeding the threshold amount of NOK 1.3 million.

To meet the requirement for predictability, the invitation to tender must specify what is to be purchased and the scope and length of the contract. The information must be given in such a way that suppliers understand what they are tendering for and how the tender is to be submitted.

The contracting authority is bound by the information it provided in the tender documents at later stages of the procurement process. If it becomes necessary to make any substantial changes to the tender documents, the procurement procedure must be cancelled and started again.

The Ministry has drawn up procurement and contract templates for procurement processes under part I of the Public Procurement Regulation. The templates are available on UDintra. They include guidance on drawing up an invitation to tender, evaluation of tenders, rejection of tenders, requests for supplementary information, etc. The Procurement Section can provide further guidance if necessary. For contracts with a value exceeding NOK 1.3 million but that can be carried out under part I of the Regulation, the minimum requirement is that the procurement process must be quality assured by the Procurement Section, as specified in the instructions (Part 1 of this document).

#### 2.6.4 Contracts under Part II of the Public Procurement Regulation

The legislation sets out specific rules for procurement procedures carried out under part II of the Regulation. An open or a restricted Norwegian tender procedure may be chosen. In an open Norwegian tender procedure, any interested supplier may submit a tender. In a restricted Norwegian tender procedure, any interested supplier may submit a request to participate. Only suppliers that are invited by the contracting authority may submit tenders. All suppliers must be treated equally during the selection process.

The contracting authority may conduct a dialogue with suppliers after the deadline for the receipt of tenders. This applies to both open and restricted procedures. A dialogue includes all communication, including clarification of tenders, correction of deviations, and negotiations. The tender documents must make it clear whether the contracting authority intends to conduct a dialogue, and if so what it will include.

Appendix 2 of the Public Procurement Regulation lists the types of services that are classified as 'social and other specific services'. A number of these can be relevant in contracts for the Ministry, including foreign-affairs services, general public services, services provided by extra-territorial organisations and bodies, seminar organisation services, event services, exhibition organisation services, archiving services, hotel services, catering services, canteen services and legal services.

#### 2.6.5 Contracts under Part III of the Public Procurement Regulation

The legislation sets out specific rules for procurement procedures carried out under part III of the Regulation. As a general rule, an open or a restricted procedure should be chosen, but in certain cases, the following types of procedure may also be used:

- negotiated procedure with prior publication, or competitive dialogue;
- innovation partnership procedure, concerning the development and purchase of an innovative product, service or works;
- negotiated procedure without prior publication.

Further information on the rules for public procurement (in Norwegian only) is available on [regjeringen.no](http://regjeringen.no), and guidance is available on [difi.no](http://difi.no).

### 2.7 Contract implementation

The parties must meet the obligations they have undertaken in the contract. This means that the Ministry must ensure monitoring and control throughout the term of the contract. Failure to meet obligations that have been agreed may be a breach of contract. The Ministry must always act in response to a breach of contract, and must consider the kind of sanction it is appropriate to use. All contracts to which the Ministry is a party must include provisions specifying the types of sanctions that can be used in the event of a breach of contract.

Follow-up includes checking that deliveries are of the agreed quality, that agreed deadlines are met, and that the Ministry is paying the agreed price. It is usually easiest to ensure that shortcomings that are the supplier's responsibility are rectified if there are financial conditions attached to breaches of contract, often in the form of price reductions or liquidated damages. If a breach of contract continues, the possibility of terminating or cancelling the contract should be considered, if appropriate together with a claim for compensation.

## 3 Document management routines during procurement processes

These routines apply to all types of contracts with a value exceeding NOK 1.3 million, and provide guidelines for contracts with a value of less than NOK 1.3 million. They are intended to promote compliance with statutory requirements, harmonisation and the exchange of knowledge. They describe the tasks of the Procurement Section (PS in the table below) and the budget holder's unit (BHU in the table below) in cases where the Procurement Section carries out the procurement process for the budget holder's unit.

If the budget holder's unit carries out the procurement process, this unit takes over the Procurement Section's tasks.

As a general rule, procurement documents are open for public access, or they may be eligible for deferred access under section 5, first and third paragraphs, and section 23, third paragraph, of the Freedom of Information Act. The table below shows the provisions of the Act that may be used to exempt information from public access. This is not an exhaustive list. Provisions that are rarely used have not been included (for example section 21 relating to national defence and security interests; applicable to classified procurement). During a classified procurement process, the need to exempt information from public access must be evaluated in line with the routines for classified procurement (in Norwegian only). It may be appropriate to make exemptions from public access for certain information under section 13.1 of the Freedom of Information Act with reference to the Public Administration Act, section 13, first paragraph, 1) (an individual's personal affairs) or section 13, first paragraph, 2) (trade secrets) after the supplier has been chosen/the procurement process has been completed.

Case title:		
Title of the contract ( <i>from the invitation to tender</i> )		
Document title to be used in UDSak:	Legal basis for exempting information from public access (drop-down list in UDSak)	Routines to be followed
Contract strategy	'§ 14 1. ledd' (internal documents) or '§ 23 1. ledd' (negotiating position/financial management)	Must as a general rule be drawn up for all contracts with a value exceeding NOK 1.3 million excluding VAT. Document type 'INTERNAL for information'. Recipient is the case officer in PS, copy to PS. Approval by PS, then BHU, then 'Distribute'.
Tender protocol	'§ 23 1. ledd' (tenders and tender protocol until the supplier has been chosen)	Document type 'INTERNAL for information'. File to be sent separately via PS to BHU before the contract is sent to BHU separately.
Qualification documents		Document type 'INTERNAL for information'. Recipient is the case officer in PS, copy to PS. Approval by PS, then BHU, then 'Distribute'.
Contract notice		Notice from Doffin, and if applicable, from TED. Store as 'INTERNAL for information', recipient is case officer in PS.
Questions and answers relating to the qualification documents		Document type 'FROM external'. Questions and answers are published on Doffin/KGV Light or sent by A-mail to all suppliers that have been invited to submit tenders.
Request to participate	'§ 5 3. ledd' Screen sender's name and document title.	Case officer in PS to be recorded as the recipient. Document type 'FROM external'.
Request for additional documentation/clarification etc.	'§ 5 3. ledd' Screen recipient's name	Document type 'TO external'. A-mail.

Additional documentation/ supplementary information received	‘§ 5 3. ledd’ Screen sender’s name.	Document type ‘FROM external’.
Rejection of request to participate	‘§ 5 3. ledd’ Screen recipient’s name	Document type ‘TO external’. Approval by PS, then BHU, then ‘Distribute’.
Recommendation – qualification	‘§ 14 1. Ledd’	Document type ‘INTERNAL for information’. Recipient is the case officer in PS, copy to PS. Approval by PS, then BHU, then ‘Distribute’.
Qualification notice	‘§ 5 3. ledd’ Screen recipient’s name and document title.	Document type ‘TO external’. Approval by PS, then BHU, then ‘Distribute’.
		1) Applies to open procedures. 2) Applies to restricted procedures and negotiated procedures.
Tender documents	2) Applies when sending to external recipients (see 2) in right-hand column) ‘§ 23 1. ledd’ Screen recipient’s name and document title	Document type ‘INTERNAL for information’. Recipient is the case officer in PS, copy to PS. Approval by PS, then BHU, then ‘Distribute’. 1) To be uploaded to the notice on Doffin. 2) Document type ‘TO external’. A-mail.
Questions and answers relating to the tender documents	2) Applies when sending to external recipients (see 2) in right-hand column) ‘§ 23 1. ledd’ Screen recipient’s name and document title	1) Document type ‘FROM external’. Publish on Doffin. 2) Document type ‘FROM external’. Send by A-mail to all suppliers that have been invited to submit tenders.
Tender	1) ‘§ 23 3. ledd’ 2) ‘§ 23 3. ledd’ Screen sender’s name and document title.	Document type ‘FROM external’. Case officer in PS to be recorded as the recipient of the tenders.
Request for additional documentation/ clarification etc.	‘§ 5 3. ledd’ Screen recipient’s name	Document type ‘TO external’. A-mail.
Additional documentation/ supplementary information received	‘§ 5 3. ledd’ Screen sender’s name.	Document type ‘FROM external’.
Call for negotiating meeting	2) ‘§ 5 1. ledd’ Screen recipient’s name and document title.	A-mail. Document type ‘TO external’.
Minutes of negotiations	2) ‘§ 5 3. ledd’ Screen recipient’s name and document title.	A-mail. Document type ‘TO external’.
Approved minutes of negotiations	2) ‘§ 5 3. ledd’ Screen sender’s name and document title.	Document type ‘FROM external’.

Revised tender	1) '§ 23 3. ledd' 2) '§ 23 3. ledd' Screen sender's name and document title.	Document type 'FROM external'. Case officer in PS to be recorded as the recipient of the tenders.
Rejection of tender	2) '§ 5 3. ledd' Screen recipient's name and document title	Document type 'TO external'. Approval by PS, then BHU, then 'Distribute'.
Recommendation – choice of tender	'§ 14 1. ledd'	Document type 'INTERNAL for information'. Recipient is the case officer in PS, copy to PS. Approval by PS, then BHU, then 'Distribute'.
Award notice		Document type 'TO external'. Approval by PS, then BHU, then 'Distribute'. Award notices must be sent to all tenderers, including those who were rejected in the qualification phase.
Request for more detailed grounds for award of contract <i>or</i> appeal against award of contract	2) '§ 5 3. ledd' Screen sender's/ recipient's name.	Document type 'FROM external'.
More detailed grounds for award <i>or</i> Answer to challenge to award of contract	2) '§ 5 3. ledd' Screen sender's/ recipient's name	Document type 'TO external'. Approval by PS, then BHU, then 'Distribute'.
Contract award notice		Save the notice published on Doffin/TED as document type 'INTERNAL for information'. Recipient is the case officer.
<b>Contract</b>		
Contract for signature	'§ 13 1. ledd nr. 2'	Document type 'TO external'. Approval by PS, then BHU, then 'Distribute'.
Contract signed by both parties	'§ 13 1. ledd nr. 2'	PS sends the contract to BHU as document type 'INTERNAL for information'. PS sends the paper copy of the contract documents to the Archive Section.
Contract implementation. Amendment of/ supplement to contract. Extension of contract. Liquidated damages	'§ 13 1. ledd nr. 2'	Document type 'FROM external'. Paper original is held by Archives Section. Give the documents relevant titles, for example: <ul style="list-style-type: none"> <li>• Extension 1 of contract signed by both parties</li> <li>• Amendment 1 to contract [<i>add description</i>] signed by both parties</li> <li>• Claim for liquidated damages</li> </ul>
<b>Mini-competitions and orders</b>		
Tender documents. Mini-competition no. x		A-mail. Document type 'TO external'. Number mini-competitions consecutively under each contract.
Tender, mini-competition no. x	'§ 23 3. ledd' Screen sender's name	Tenders should be sent to and received by the case officer in PS or by BHU, as specified in the tender documents
Award notice, mini-competition no. x		As for 'Award notice' above, but the recommendation only needs to be approved by BHU.
		If a mini-competition generates other documentation, follow the rules above.

## 4 Revisions and amendments to the document

Date	Version	Written by	Approved by	Description
22 May 2017	1.0.	Services Department, Procurement Section	Procurement Section	Translation of Norwegian version
10.04.2018	2.0	Services Department, Procurement Section	Procurement Section	New thresholds values.

**CLASSIFICATION:** For internal use.

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If you find errors or omissions in the document, please inform the person or unit responsible for it in writing, describing the problem and specifying where in the document it occurs.

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