



NATO Communications and Information Agency
Agence OTAN d'information et de communication

PROSPECTIVE CONTRACT

RFQ-CO-115062 –BITR

Provision of Client Devices for Balkans IT Refresh

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¹ As per BOA number xxx

NCI Agency PURCHASE ORDER	
1. Original Number ___ of	2. PO Number :
3. Contract Number: CO-115062-BITR	4. Effective date: <i>Same as block 17</i>
5. Contractor:	6. Purchaser: The General Manager NATO Communications and Information Agency Boulevard Leopold III B-1110 Bruxelles Tel: +32(0)2 707 8282 Fax: +32(0)2 707 87.70
7. CONTRACT SCOPE: This is a contract for the provision and delivery of client devices for the refresh of the Balkans IT	
8. TOTAL AMOUNT OF CONTRACT : _____ Currency – Excluding VAT Firm Fixed Price	
9. PERIOD OF PERFORMANCE As stated in Schedule of Supplies and Services and Special Provisions	10. DELIVERY SITE As stated in Schedule of Supplies and Services, Statement of Work and Special Provisions
11. CONTRACT This Contract consists of the following parts and named documents: <ul style="list-style-type: none"> a) Part I. Schedule of Supplies and Services b) Part II. Special Contract Provisions and Annexes c) Part III. NCI Agency Basic Ordering Agreement General Provisions and Appendix 1, of the Basic Ordering Agreement NCIA/BOA/[insert reference]dated [insert date], incorporated herein by reference. d) Part IV. Statement of Work and Annexes e) Contractor's proposal dated [insert date] and subsequent clarifications. f) In the event of any conflict or inconsistencies between or among any of the documents comprising this Contract, the order of priority specified in Clause 2 of Part II shall apply. 	
12. Signature of Contractor	13. Signature of Purchaser
14. Name and Title of Signer	15. Name and Title of Signer
16. Date signed by the Contractor	17. Date signed by the Purchaser

PROSPECTIVE CONTRACT

PART I - SCHEDULE OF SUPPLIES AND SERVICES (SSS)

(The bidding sheets submitted by the Contractor will be incorporated as the Schedule of Supplies and Services set in Part I)

SCHEDULE OF SUPPLIES AND SERVICES (TO BE COMPLETED AT CONTRACT AWARD)



NATO Communications and Information Agency
Agence OTAN d'information et de communication

RFQ-CO-115062-BITR

Provision of Client devices for Balkans IT Refresh

BOOK II

PART II - CONTRACT SPECIAL PROVISIONS

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PART II – CONTRACT SPECIAL PROVISIONS

1. DEFINITIONS

- 1.1 For the purpose of this contract and unless otherwise explicitly indicated, the following definitions shall apply:
- 1.2 Acceptance: The act of an authorized representative of the Purchaser by which the Purchaser assumes title and ownership of delivered Works rendered as partial or complete performance of the Contract. "Acceptance" in this regard, unless specifically provided otherwise in the Contract Special Provisions, means final Acceptance where the Contract provides for Provisional or Partial Acceptance.
- 1.3 Basic Ordering Agreement (BOA): Means the separate agreement the Contractor holds with the NCI Agency under the auspices of the NCI Agency BOA Program.
- 1.4 Contracting Authority: The General Manager of the NCI Agency, the Director of Acquisition of the NCI Agency, the Chief of Contracts of the NCI Agency or the authorised representatives of the Chief of Contracts of the NCI Agency.
- 1.5 Contractor: The person or legal entity from a Participating Country which has signed this Contract and is a Party thereto.
- 1.6 General Provisions: Means the General Provisions contained in the Contractor's BOA.
- 1.7 Purchaser: NCI Agency, as represented by the General Manager, NCI Agency. The Purchaser is the legal entity who awards and administers the Contract and stands as one of the Contracting Parties.

2. ORDER OF PRECEDENCE

- 2.1. In the event of any inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:
 - a. Part I - The Schedule of Supplies and Services (SSS)
 - b. Part II - The Contract Special Provisions
 - c. Part III – The Terms of the governing Basic Ordering Agreement
 - d. Part IV – The Statement of Work (SOW)

3. SCOPE OF WORK

- 3.1. This Contract covers the provision and delivery of all items detailed in the Statement of Work and the SSS in accordance with the terms and conditions of the Contract.

4. FIRM FIXED PRICE

- 4.1. This is a Firm Fixed Price Contract. Firm Fixed Prices are established for the supplies and services defined in Part I - Schedule of Supplies and Services.
- 4.2. The Purchaser assumes no liability for costs incurred by the Contractor in excess of the stated Firm Fixed Price except as provided under other provisions of this Contract.
- 4.3. The Total Contract price is inclusive of all expenses related to the performance of the present contract.
- 4.4. The Total Contract price in this Contract is Delivered Duty Paid (INCOTERMS 2010).

5. COMPREHENSION OF CONTRACT AND SPECIFICATIONS

- 5.1. The Contractor warrants that he has read, understood and agreed to each and all terms, clauses, specifications and conditions specified in the Contract and that this signature of the Contract is an acceptance, without reservations, of the said Contract terms within their normal and common meaning.
- 5.2. The specifications set forth the performance requirements for the Contractor's proposed work as called for under this Contract. Accordingly, notwithstanding any conflict or inconsistency which hereafter may be found between achievement of the aforesaid performance requirements and adherence to the Contractor's proposed design for the work, the Contractor hereby warrants that the work to be delivered will meet or exceed the performance requirements of the said specifications.
- 5.3. The Contractor hereby acknowledges that he has no right to assert against the Purchaser, its officers, agents or employees, any claims or demands with respect to the aforesaid specifications as are in effect on the date of award of this Contract.
 - a. Based upon impossibility of performance, defective, inaccurate, impracticable, insufficient or invalid specifications, implied warranties of suitability of such specifications, or
 - b. Otherwise derived from the aforesaid specifications, and hereby waives any claims or demands so based or derived as might otherwise arise.
- 5.4. Notwithstanding Clause 12 ("Changes") of the BOA General Provisions or any other clause of the Contract, the Contractor hereby agrees that no changes to the aforesaid specifications which may be necessary to permit achievement of the performance requirements specified herein for the Contractor's proposed work shall entitle the Contractor either to any increase in the firm fixed price as set forth in this Contract or to any extension of the delivery times for the work beyond the period of performance in the Schedule of Supplies and Services.

6. PLACE AND TERMS OF DELIVERY

- 6.1. Deliverables under this Contract shall be delivered at such times as set forth in the Schedule of Supplies and Services and Statement of Work. The Purchaser shall not be liable for any storage, damage, accessorial or any other charges involved in such transporting of supplies.

7. OPTIONS

- 7.1. The Purchaser shall have the right to unilaterally place on Contract the provision of “Options” in Part I - Schedule of Supplies and Services during 2 years after the effective Date of the Contract. If the Purchaser exercises such options, the Contractor shall deliver such specified quantities of additional or alternative supplies and services at such times and to such destinations as specified in the Contract.
- 7.2. Prices for all optional line items shall have a validity period of 2 years after the effective date of the Contract.
- 7.3. The Contractor understands that there is no obligation under this Contract for the Purchaser to exercise any of the optional line items and that the Purchaser bears no liability should he decide not to exercise the options (totally or partially). Further, the Purchaser reserves the right to order another Contractor (or the same), to perform the tasks described in the optional line items of the current Contract through a new Contract with other conditions.
- 7.4. Purchaser may increase the quantity of supplies and services as set forth in any line item of Part I - Schedule of Supplies and Services. The Contractor will use all reasonable endeavours to maintain the prices specified therein. Changes to these prices shall be accompanied with documentation and explanation of the change. If this Option is exercised, delivery of the added items shall be to the same destination as specified in the basic Contract; unless otherwise specified on the written notice. If the Contract provides for multiple destinations, the Purchaser will specify to which destination(s) the additional quantities are to be shipped. If the Purchaser specifies a destination that is not part of the basic Contract requirements, the Parties will agree to an equitable adjustment as may be required to reflect any additional costs incurred by the Contractor in making such delivery.
- 7.5. The options shall be exercised by written amendment to the Contract.

8. PARTICIPATING COUNTRIES

- 8.1. The Contractor may issue subcontracts to firms and purchase from qualified vendors in any contributory NATO nations in the project, namely, (in alphabetical order):

ALBANIA, BELGIUM, BULGARIA, CANADA, CROATIA, CZECH REPUBLIC,
DENMARK, ESTONIA, FRANCE, GERMANY, GREECE, HUNGARY,

ICELAND, ITALY, LATVIA, LITHUANIA, LUXEMBOURG, MONTENEGRO, NETHERLANDS, NORWAY, POLAND, PORTUGAL, ROMANIA, SLOVAKIA, SLOVENIA, SPAIN, TURKEY, UNITED KINGDOM, UNITED STATES OF AMERICA.

- 8.2. None of the work, including project design, labour and services, shall be performed other than by firms from and within Participating Countries.
- 8.3. No material or items of equipment down to and including identifiable sub-assemblies shall be manufactured or assembled by a firm other than from and within a Participating Country.
- 8.4. The Intellectual Property Rights for all software and documentation used by the Contractor in the performance of the Contract shall vest with firms from and within Participating Countries and no royalties or license fees for such software and documentation shall be paid by the Contractor to any source that does not reside within a Participating Country.

9. INSPECTION AND ACCEPTANCE

- 9.1. Acceptance is the action by which the Purchaser formally acknowledges that the Contractor has fully demonstrated that Contract Deliverables are complete or have been performed according to the requirements set in the Contract.
- 9.2. The supplies and services to be provided by the Contractor's personnel under this Contract shall conform to the highest professional and industry standards and practices. Inspection of the services provided will be made by the Purchaser's Technical representatives or another authorised designee in accordance with the specifications in Part IV - Statement of Work. Services performed by the Contractor which do not conform to the highest professional and industry standards may result in the Purchaser requesting that such work be performed again at no increase in the price of the contract. Repeated instances of work performed which fails to meet the standards and practices may result in termination of the Contract for Default.
- 9.3. The Purchaser reserves the right to charge to the Contractor any additional cost incurred by the Purchaser for inspection and test when Work is not ready at the time such inspection and test is requested by the Contractor or when re-inspection or retest is necessitated by prior rejection.
- 9.4. In accordance with the implementation procedures stated in Section 3 of the SOW, any hardware, software, documentation, or any other Deliverables provided as part of a site installation shall not be subject to Acceptance until Site Activation is satisfactorily completed.
- 9.5. Testing and Acceptance procedures are described in Clause 7 ("Inspection, Acceptance and Rejection") of the BOA General Provisions.

10. COTS PRODUCTS REPLACEMENT

- 10.1. If any COTS products specified in the Contract are upgraded or discontinued by their original providers for commercial or technological reasons, the Contractor shall propose their substitution by the new versions that are intended as market replacement of the original products. The proposed items shall provide at equivalent or enhanced performance without a price or life-cycle support cost increase.
- 10.2. The Contractor shall provide price and performance data to support an improvement in performance and/or a reduction in price and/or life-cycle support costs. If necessary for evaluation by the Purchaser, the Contractor shall provide a demonstration of the proposed items. Should the Purchaser decide that the proposed item(s) should be included in the contract, an equitable price adjustment will be negotiated and the proposed item(s) shall be added to the Contract by bilateral modification under the authority of this Clause.

11. LIQUIDATED DAMAGES

- 11.1. If the Contractor fails to:
- a) successfully meet the required performance dates as defined in the Schedule of Supplies and Services, or any extension thereof, or
 - b) deliver and obtain acceptance of the Deliverables or to acceptably perform the services as specified in the Schedule of Supplies and Services to this Contract,
- the actual damage to the Purchaser for the delay will be difficult or impossible to determine. Therefore, in lieu of actual damages the Contractor shall pay to the Purchaser, for each day of delinquency in achieving the requirements of Clauses 12.1.a and 12.1.b, fixed and agreed liquidated damages of 0.1% (one tenth of one per cent) per day of the total payment amount for each Payment Event as scheduled in Clause 15 ("Invoices and Payment") of the Contract Special Provisions.
- 11.2. Liquidated damages shall be payable to the Purchaser from the first day of delinquency in delivery and shall accrue at the rate specified in the paragraph above to an aggregate sum of all delinquent items not to exceed Fifteen Percent (15%) of the total value of the Contract. These liquidated damages shall accrue automatically and without any further notice being required.
- 11.3. The Contractor shall not be charged with liquidated damages when the delay arises out of causes beyond the control and without the fault or negligence of the Contractor as defined in Clause 19 ("Termination for Default") of the BOA General Provisions. In such event, subject to the provisions of Clause 17 ("Disputes and Arbitration") of the BOA General Provisions, the Purchaser shall ascertain the facts and extent of the delay and shall extend the time for performance of the Contract when in its judgment the findings of fact justify an extension.

- 11.4. In addition, the Purchaser may terminate this Contract in whole or in part as provided in Clause 19 (“Termination for Default”) of the BOA General Provisions. In the event of such a termination, the Contractor shall be liable for Liquidated Damages accruing to the date of termination, as well as the excess costs stated in the referred clause.
- 11.5. The amount of Liquidated Damages due by the Contractor shall be recovered by the Purchaser in the following order of priority:
- a. By deducting such damages from the amounts due to the Contractor against the Contractor's invoices.
 - b. By proceeding against any surety or deducting from the Performance Guarantee if any
 - c. By reclaiming such damages through appropriate legal remedies.

12. BACKGROUND IPR

- 12.1. This Clause hereby supplements Clause 31 (“Rights in Technical Data”) of the BOA General Provisions.
- 12.2. Any use of Background IPR as stated in Annex A of the Contract Special Provisions for the purpose of carrying out the work pursuant to the Contract shall, subject to any obligation on the part of the Contractor to make payments to any third party in respect of IPR which is licensed from such third party, be free of any charge to Purchaser. The Contractor hereby grants to NATO a non-exclusive, royalty-free and irrevocable license to use and authorise others to use any Background IPR for the purpose of exploiting or otherwise using the Foreground IPR.
- 12.3. Any use of Background IPR as stated in Annex A of the Contract Special Provisions and unless specifically applicable to COTS items, is not limited to the number of users or the number of licenses required by the Contract for the use of the system. With the exception of COTS items, the Purchaser reserves the right to use the Background IPR as stated in Annex A for any number of users and number of licenses as required, at no additional cost to the Purchaser.
- 12.4. The Purchaser may consider open source solutions alongside proprietary ones in developments provided that such solutions are fully compliant with the requirements of this Contract and, particularly Clause 9 (“Participating Countries”) of the Contract Special Provisions. Contractor shall disclose in advance the open source licence associated with the contemplated open source solution. The Purchaser reserves the right to refuse the incorporation of open source solutions that are deemed inadequate for incorporation in a NATO application (e.g., post-back obligations).

13. CHANGES

- 13.1. The Purchaser may at any time, by written order designated or indicated to be a change order, and without notice to the sureties, if any, make changes within the scope of any Contract or Task Order, as described in Clause 12 (“Changes”) of the BOA General Provisions.
- 13.2. Except as otherwise provided for in this Contract, prices quoted for the changes, modifications, etc. shall have a minimum validity period of 6 months from submission.

14. INVOICES AND PAYMENT

- 14.1. Following Purchaser final acceptance, in writing, payment for supplies and services furnished shall be made in the currency specified for the relevant portion of the Contract.
- 14.2. The term of the Contract may not be exceeded without prior approval of the Purchaser. In no case will the Purchaser make payment above the total of the corresponding CLINs.
- 14.3. No payment shall be made with respect to undelivered supplies; works not performed, services not rendered and/or incorrectly submitted invoices.
- 14.4. No payment shall be made for additional items delivered that are not specified in the contractual document.
- 14.5. The Contractor shall be entitled to submit invoices as shown in Annex D of the Contract Special Provisions.
- 14.6. Evidence of the acceptance by the Purchaser shall be attached to all invoices.
- 14.7. The invoice amount shall be exclusive of VAT and exclusive of all Taxes and Duties as per Clause 10 (“Taxes and Duties”) of the BOA General Provisions.
- 14.8. The Purchaser is released from paying any interest resulting from any reason whatsoever.
- 14.9. The Contractor shall render all invoices in a manner, which shall provide a clear reference to the Contract. Invoices in respect of any service and/or deliverable shall be prepared and submitted as specified hereafter and shall contain:
- 14.9.1. Contract number CO-115062–BITR;
 - 14.9.2. Purchase Order number (TBD at Contract Award);
 - 14.9.3. Contract Amendment number (if any);

14.9.4. Contract Line Item(s) (CLIN) as they are defined in the priced Schedule of Supplies and Services;

14.9.5. Bank Account details for International wire transfers.

14.10. The invoice shall contain the following certificate: *"I certify that the above invoice is true and correct, that the delivery of the above described items has been duly effected and/or that the above mentioned services have been rendered and the payment therefore has not been received."* The certificate shall be signed by a duly authorised company official on the designated original.

14.11. Invoices referencing "**RFQ-CO-115062-BITR**/ PO (TBD at Contract Award)" shall be submitted in electronic format to:

accountspayable@ncia.nato.int

An Electronic copy shall be sent to the Contracting Officer, at the email address specified in Clause 17.6 of the Special Contract Provisions.

14.12. NCI Agency will make payment within 60 days of receipt by NCI Agency of a properly prepared and documented invoice.

15. WARRANTY

15.1. The Contractor shall provide its standard warranty on all material and installed works provided under this Contract. The warranty period shall be as a minimum of **1 Year**, starting from Final System Acceptance.

15.2. For this purpose the Contractor shall provide exact warranty conditions and detailed handling instructions, including information of Points of Contact to be contacted in case of a warranty claim.

15.3. For each Software developed under this Contract, the Contractor Warranties shall extend to all defects discovered within 1 year from NCIA Final System Acceptance (FSA) declared in writing by the Purchaser's Contracting Authority.

15.4. All Software delivered under this Contract will identify the owner of the Software and, if applicable, will prominently include notice of the existence of its warranty, its substance, its duration, and instructions to notify the Purchaser promptly if the Software is found to be defective. The markings should also be included in the operating and/or maintenance manuals or instructions accompanying such Software.

16. SUPPLEMENTAL AGREEMENTS, DOCUMENTS AND PERMISSIONS

- 16.1. The Contractor has submitted all relevant draft supplemental agreement(s), documents and permissions prior to Contract award, the execution of which by the Purchaser is/are required by national law or regulation. If any supplemental agreements, documents and permissions are introduced after Contract award, and it is determined that the Contractor failed to disclose the requirement for the execution of such agreement from the Purchaser prior to Contract signature, the Purchaser may terminate this Contract for Default, in accordance with Clause 19 ("Termination for Default") of the BOA General Provisions hereafter.
- 16.2. Supplemental agreement(s), documents and permissions, the execution of which by the Purchaser is/are required by national law or regulation and that have been identified by the Contractor prior to the signature of this Contract, but have not yet been finalized and issued by the appropriate governmental authority, are subject to review by the Purchaser.
- 16.3. If such supplemental agreement(s), documents and permissions are contrary to cardinal conditions of the signed Contract between the Parties, and the Purchaser and the appropriate governmental authority cannot reach a mutual satisfactory resolution of the contradictions, the Purchaser reserves the right to terminate this Contract and the Parties agree that in such case the Parties mutually release each other from claim for damages and costs of any kind, and any payments received by the Contractor from the Purchaser will be refunded to the Purchaser by the Contractor.
- 16.4. For the purpose of this Contract the following National mandatory Supplemental Agreements are identified:

Type of Agreement	National Authority of Reference	Subject

17. CONTRACT ADMINISTRATION

- 17.1. The Purchaser reserves the right to re-assign this Contract to a representative(s) for administrative purposes, in whole or in part, provided that the Purchaser shall always be responsible for its obligations under the Contract and for actions or lack of actions of its assigned administrator. The Purchaser undertakes to advise the Contractor in writing whenever this right is to be exercised.
- 17.2. All notices and communications between the Contractor and the Purchaser shall be written and conducted in the English language. Contract modifications

shall only be valid when received in writing from the General Manager, NCI Agency, and/or the NCI Agency Contracting Authority.

17.3. Formal letters and communications shall subsequently be personally delivered or sent by mail, registered mail, courier or other delivery service, to the official points of contact quoted in this Contract. Facsimile and e-mail may be used to provide an advance copy of a formal letter or notice which shall subsequently be delivered through the formal communication means.

17.4. Informal notices and informal communications may be exchanged by all communication means, including telephone and e-mail. All informal communication must be confirmed by a formal letter or other formal communication to be contractually binding.

17.5. All notices and communications shall be effective on receipt.

17.6. Official Points of Contact:

Purchaser	Contractor
NCI Agency	Company
For contractual matters: Attn: Mrs Lise Vieux-Rochat Contracting Officer Tel: +32 2 707 8282 E-mail: Lise.Vieuxrochat@ncia.nato.int	For contractual matters: Attn: Tel: E-mail:
For technical/project management matters: Attn. TBD Tel: TBD E-mail: TBD	For technical/project management matters: Attn: Tel: E-mail:

or to such address as the Purchaser may from time to time designate in writing.

18. SUB-CONTRACTORS

18.1. The Contractor shall place and be responsible for the administration and performance of all sub-contracts including terms and conditions which he deems necessary to meet the requirements of this Contract in full.

18.2. The Contractor shall not place sub-contracts outside the NATO member Nations unless the prior authorisation of the Purchaser has been obtained. Such authorisation will not be granted when the sub-contract involves the carrying out of classified work.

19. OWNERSHIP AND TITLE

- 19.1. Ownership and title to all deliverables will pass to the Purchaser upon written notification of final acceptance by the Purchaser.

20. SECURITY

- 20.1. This Article supplements Clause 27 (“Security”) of the BOA General Provisions.
- 20.2. The Contractor is responsible, in accordance with NATO and National Security regulations, for the proper handling, storage and control of any classified documents and information as may be furnished to the Contractor in relation to the performance of the present Contract.
- 20.3. The security classification of this Contract is “NATO UNCLASSIFIED”.
- 20.4. The Contractor is advised that the personnel security process may be lengthy. The Purchaser bears no responsibility for the failure of the Contractor to secure the required clearances for its personnel within the necessary time.
- 20.5. The Contractor bears full responsibility and liability under the Contract for delays arising from the failure of the Contractor to adhere to the security requirements.
- 20.6. If during the performance of the Contract, Contractor's personnel need to be escorted because of non-availability of the security clearance required by the Site, the Contractor shall pay to the Purchaser a compensatory fee of 500 Euro per day of escort that may be deducted by the Purchaser univocally and at its sole discretion from any invoice submitted and relevant to the performance under this Contract.
- 20.7. All NATO CLASSIFIED material entrusted to the Contractor shall be handled and safeguarded in accordance applicable security regulations.
- 20.8. In the absence of valid security clearances for the Contractor's personnel during the performance of the Contract, the Purchaser reserves the right to terminate the Contract for Default as per Clause 19 (“Termination for Default”) of the BOA General Provisions.

21. APPLICABLE REGULATIONS

- 21.1. The Contractor shall be responsible for obtaining permits or licenses to comply with national codes, laws and regulations or local rules and practices in the country of performance under this Contract.
- 21.2. The Contractor shall take any necessary measure to protect the life and health of persons working or visiting the work area occupied by him. These measures include compliance with the country of performance's safety provisions.
- 21.3. In the performance of all work under this Contract, it shall be the Contractor's responsibility to ascertain and comply with all applicable NATO security regulations as implemented by the local Headquarters' Security Officer.

22. CODE OF CONDUCT

- 22.1. NCI Agency Personnel are required to maintain unquestionable integrity and impartiality in relation to procurements initiated by the NCI Agency.
- 22.2. NCI Agency Personnel shall not disclose any proprietary or contract related information regarding procurement directly or indirectly to any person other than a person authorized by the NCI Agency to receive such information. NCI Agency Personnel shall not disclose any documentation related to a procurement action to any third party without a need to know (e.g., draft statement of work, statement of requirements) unless this is expressly provided under NATO Procurement Regulations or authorized in writing by the Director of Acquisition. During an ongoing selection, NCI Agency Personnel shall not disclose any information on the selection procedure unless authorized by the Chairman of the award committee/board. The NCI Agency Personnel concerned will ensure that proper access controls are put in place to prevent disclosure of procurement information that has not yet been authorized for release for outside distribution, including draft statements of work and requirement documentations.
- 22.3. NCI Agency Personnel will not participate in a source selection if an offer has been provided by a friend, family member, a relative, or by a business concern owned, substantially owned, or controlled by him/her or by a friend, family member or a relative. NCI Agency Personnel appointed as part of an evaluation shall report such links to the Director of Acquisition immediately upon becoming aware of it.
- 22.4. Contractors will be given specific and coherent statements of work, providing precise explanation of how she/he is going to be employed. Tasks to be performed and minimum qualifications are to be well defined from the start. In addition, supervisors will ensure that contractors do not occupy managerial positions within the Agency.

- 22.5. NCI Agency Personnel shall not enter into authorized commitments in the name of NCI Agency or NATO unless specifically authorized. NCI Agency Personnel must abstain from making promises or commitment to award or amend a contract or otherwise create the appearance of a commitment from the NCI Agency unless properly authorized by the NCI Agency.
- 22.6. NCI Agency Personnel shall not endorse directly or indirectly products from industry. Therefore, NCI Agency Personnel shall not name or make statements endorsing or appearing to endorse products of specific companies.
- 22.7. Industry partners will need to abide with the post-employment measures under this Directive upon submission of their bids / proposals to the NCI Agency. As part of the selection process, industry will be requested to agree with an ethical statement.
- 22.8. Industry initiatives may include loans, displays, tests or evaluation of equipment and software, requesting NCI Agency speakers at industry gatherings and conferences, inviting speakers from industry to NCI Agency events, consultancy or studies of technical or organizational issues, etc. These initiatives are usually at no cost to the NCI Agency and take place at a pre-contractual phase or before the development of requirements and specifications. While there are benefits associated with the early involvement of industry in the definition of requirements and specifications, this also raises the potential for unfair treatment of potential competitors.
- 22.9. Industry initiatives which go beyond routine interaction in connection with on-going contracts must be reported to and coordinated by the NCI Agency Acquisition Directorate for approval. Industry initiatives shall be properly documented and governed by written agreements between the NCI Agency and the company concerned where relevant. Such agreements may contain provisions describing the nature of the initiative, the non-disclosure of NCI Agency/NATO information, NCI Agency ownership of any resulting work, the NCI Agency's right to release such work product to future competitors for any follow-on competition or contract, the requirement that any studies must provide non-proprietary solutions and/or an acknowledgement that the participating companies will not receive any preferential treatment in the contracting process.
- 22.10. Any authorized industry initiatives must be conducted in such a way that it does not confer an unfair advantage to the industry concerned or create competitive hurdles for potential competitors.
- 22.11. The NCI Agency will not offer employment contracts to former NCI Agency Personnel who departed less than 2 years earlier, unless prior approval by the General Manager has been received.
- 22.12. Former NCI Agency Personnel will not be accepted as consultants or commercial counterpart for two (2) years after finalization of their employment at NCI Agency, unless the General Manager decides otherwise in the interest of the Agency and as long as NATO rules on double remuneration are observed. Such

decision shall be recorded in writing. Commercial counterparts include owners or majority shareholders, key account managers, or staff member, agent or consultant of a company and/or subcontractors seeking business at any tier with the NCI Agency in relation to a procurement action in which the departing NCI Agency staff member was involved when he/she was under the employment of the NCI Agency. As per the Prince 2 Project methodology, a Project is defined as a “temporary organization that is created for the purpose of delivering one or more business products according to an agreed business case”. For the purpose of this provision, involvement requires (i) drafting, review or coordination of internal procurement activities and documentation, such as statement of work and statement of requirement; and/or (ii) access to procurement information that has not yet been authorized for release for outside distribution, including draft statements of work and requirement documentations; and/or (iii) being appointed as a representative to the Project governance (e.g., Project Board) with access to procurement information as per (ii) above; and/or (iv) having provided strategic guidance to the project, with access to procurement information as per (ii) above.

- 22.13. In addition to Clause 27.12, former NCI Agency Personnel at grades A5 and above or ranks OF-5 and above are prohibited during twelve months following the end of their employment with the NCI Agency to engaging in negotiations, representational communications and/or advisory activities with the NCI Agency on behalf of a private entity, unless this has been agreed in advance by the NCI Agency General Manager and notified to the Agency Supervisory Board (ASB).
- 22.14. NCI Agency Personnel leaving the Agency shall not contact their former colleagues in view of obtaining any information or documentation about procurement activities not yet authorized release. NCI Agency Personnel shall immediately report such contacts to the Director of Acquisition.
- 22.15. The ASB Chairman will be the approving authority upon recommendation by the Legal Adviser when the NCI Agency Personnel concerned by the above is the NCI Agency General Manager and will notify the ASB.
- 22.16. NCI Agency Personnel leaving the Agency shall sign a statement that they are aware of the post-employment measures set out in this Directive.
- 22.17. The post-employment measures set out in this Directive shall be reflected in the NCI Agency procurement documents, such as IFBs, and contract provisions.

**ANNEX A. CONTRACTOR AND SUBCONTRACTOR BACKGROUND
IPR**

- a. The Contractor Background IPR specified in Table 1 will be used for the purpose of carrying out work pursuant to the prospective Contract.

IPR DESCRIPTION	IPR OWNER	REMARKS/RESTRICTIONS ²

Table 1 – Contractor Background IPR

- b. The Contractor represents that it has and will continue to have, for the duration of this Contract, all necessary rights in and to the IPR specified above necessary to meet the Contractor's obligations under the Contract.
- c. The Contractor Background IPR stated above complies with the terms specified in Clause 13 of the Special Contract Provisions and shall be licensed to the Purchaser according to the terms and conditions specified in the Contract.

² Indicate whether the IPR is applicable to a COTS product