



NATO UNCLASSIFIED

**Acquisition**

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NCIA/DACQ/Mons/2023/06880

02 JUNE 2023

To: Distribution List

From: The General Manager, NCI Agency

Subject: **Invitation for Bidding IFB-CO-115750-CAB Cabling Installation and Maintenance (SHAPE).**

Dear Sir/Madam,

1. Your firm is hereby invited to participate in an IFB.

Partial bidding is not authorized.

The award will be based on the proposal evaluated as the Best Value for Money, in accordance with the selection criteria set forth in the Bidding Instructions.

2. **THE CLOSING TIME FOR SUBMISSION OF BIDS IN RESPONSE TO THIS INVITATION FOR BIDDING IS 17:30 HOURS (BRUSSELS TIME) on 01st of October 2023.**
3. This Invitation for Bidding consists of the Bidding Instructions (Book I) and the Prospective Contract (Book II). The Prospective Contract contains the Schedule of Supplies and Services (Part I), Contract Special Provisions (Part II), Contract General Provisions (Part III), and the Statement of Work (Part IV). The Statement of Work and the Annexes thereto set forth detailed specifications governing the performance requirements of the contract.
4. The overall security classification of this bid is "NATO UNCLASSIFIED". This Invitation for Bidding remains the property of the NCI Agency and shall be protected in accordance with the applicable national security regulations.
5. The Bidders have the right to request IFB clarifications as outlined in section 2.6 of the Bidding Instructions (Book I) until the 01 September 2023 COB.
6. You are requested to complete and return the enclosed acknowledgement of receipt within 3 days of receipt of this IFB, informing NCI Agency of your intention to bid/not to bid. Your firm is not bound by its initial decision, and if you decide to reverse your stated intention at a later date, you are requested to advise us by a separate letter.
7. Prospective Bidders are advised that the NCI Agency reserves the right to cancel this IFB at any time in its entirety and bears no liability for bid preparation costs incurred by firms or any other collateral costs if bid cancellation occurs.
8. All Bids shall be in the possession of the Purchaser at the address given in Book I - section 2 - paragraph 2.3.2 **before 1730 hours (Brussels Time) on 01th of October 2023** at which time and date bidding will be closed.

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**N A T O U N C L A S S I F I E D**

9. The Purchaser point of contact for all information concerning this IFB is:

NCI AGENCY  
Building 302 Annex Room 111  
7010 SHAPE  
Belgium  
Attn.: Esteban Diaz (ACQ/Mons)  
Tel : +32 (0)2 65 44 7186  
E-mail : [IFBCO115750CAB@ncia.nato.int](mailto:IFBCO115750CAB@ncia.nato.int)

FOR THE GENERAL MANAGER:

Alain COURTOIS  
Principal Contracting Officer

Attachment A

Acknowledgement of Receipt of Invitation for Bidding

IFB-CO-115750-CAB

Please complete and return within 3 days by: e-mail: [IFBCO115750CAB@ncia.nato.int](mailto:IFBCO115750CAB@ncia.nato.int)  
for the attention of Esteban DIAZ.

We hereby advise that we have received Invitation for Bidding **IFB-CO-115750-CAB**  
on ....., together with all enclosures listed in the Table of Contents.

CHECK ONE

- { } As of this date and without commitment on our part, we do intend to submit a bid.
- { } We do not intend to submit a bid.
- { } We are reviewing the requirements of the IFB and will notify you of our decision as soon as possible.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

**Invitation for Bidding**

**IFB-CO-115750-CAB**

**Cabling Installation and Maintenance**



**BIDDING INSTRUCTIONS**

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NCI AGENCY Signature Sheet

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**IFB-CO-115750-CAB**

Bidding Instructions

**IFB-CO-115750-CAB**  
**BOOK I - BIDDING INSTRUCTIONS**

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## SECTION 1 - INTRODUCTION

### 1.1. GENERAL

1.1.1 The purpose of this Invitation for Bidding (IFB) is

- for the Cabling Installation and Maintenance in SHAPE (Belgium).

1.1.2 This solicitation is an Invitation for Bidding (IFB). Partial bidding is not authorized. The successful bid will be that bid which is the best value for money in accordance with the evaluation criteria.

(a) This IFB will not be the subject of a public bid opening.

(b) An award of the contract will be made on a Firm Fixed Price Basis to Bid that offers the Best Value for Money. *Based on the on-going requirement of NCI Agency and its customers, there is no minimal amount guaranteed.*

(c) The Bidder shall refer to the Purchaser all queries for a resolution of possible conflicts found in information contained in this document in accordance with the procedures set forth in 2.6 "Requests for IFB Clarifications".

(d) The target for contract award is 01 January 2024.

### 1.2. SECURITY

1.2.1 The security classification of this IFB is "**NATO UNCLASSIFIED**".

1.2.2 The Bidders providing proposals in response to this IFB must be in the possession of the appropriate personnel and facility clearances allowing for the processing of classified materials.

1.2.3 Should the Contractor or their personnel be unable to perform the contract because the facility or individual clearances have not been extended by their respective national security agency, this lack of clearance shall not be the basis for a claim of adjustment or an extension of schedule. The lack of clearance shall not be considered a mitigating circumstance in the case of an assessment of Liquidated Damages and/or a determination of Termination For Default by the Purchaser.

1.2.4 Contractor personnel that will work at NATO sites are required to possess a security clearance of "NATO SECRET". Contractor personnel without such a clearance, confirmed by the appropriate national security authority and transmitted to the appropriate NATO security officer will be denied access to the site. Denial of such access by the Purchaser may not be used by the Contractor as the basis for a claim of adjustment or an extension of schedule, nor can the denial of access be considered a mitigating circumstance in the case of an assessment of Liquidated Damages or a determination of Termination for Default by the Purchaser.

Bidding Instructions

- 1.2.5 All NATO CLASSIFIED material entrusted to the Contractor shall be handled and safeguarded in accordance with applicable security regulations. The Contractor shall be required to possess a Facility clearance of "NATO SECRET" for those sites in which he intends to handle and store NATO classified material in the conduct of work under this Contract.
- 1.2.6 Bidders are advised that contract signature will not be delayed in order to allow for the processing of security clearances for personnel or facilities and, should the otherwise successful Bidder not be in a position to accept the offered Contract within a period of 15 days, because the firm's personnel or facilities do not possess the appropriate security clearance(s), the Purchaser may determine the Bidder's Offer to be non-compliant and offer the Contract to the next ranking Bidder.

**SECTION 2 - GENERAL BIDDING INFORMATION****2.1. DEFINITIONS**

- 2.1.1 The term "Bidder" as used herein refers to a firm, consortium, or joint venture which submits an offer in response to this solicitation.
- 2.1.2 The term "Compliance" as used herein means strict conformity to the requirements and standards specified in this IFB.
- 2.1.3 The term "Participating Country" as used herein means one of the contributory NATO nations in the project, namely, (in alphabetical order): ALBANIA, BELGIUM, BULGARIA, CANADA, CROATIA, THE CZECH REPUBLIC, DENMARK, ESTONIA, FINLAND, FRANCE, GERMANY, GREECE, HUNGARY, ICELAND, ITALY, LATVIA, LITHUANIA, LUXEMBOURG, MONTENEGRO, THE NETHERLANDS, NORTH MACEDONIA, NORWAY, POLAND, PORTUGAL, ROMANIA, SLOVAKIA, SLOVENIA, SPAIN, TURKEY, THE UNITED KINGDOM and THE UNITED STATES.

**2.2. ELIGIBILITY**

- 2.2.1 Only firms licensed to do business in one of the above NATO member countries, which participate in the funding of this requirement, will initially be taken into consideration for evaluation.
- 2.2.2 In addition, all contractors, sub-contractors and manufacturers, at any tier, must be from participating countries.
- 2.2.3 None of the work, including project design, labour and services shall be performed other than by firms from and within Participating countries.
- 2.2.4 No materials 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.
- 2.2.5 The intellectual property rights to all design documentation and related system operating software shall reside in NATO member countries, and no license fees or royalty charges shall be paid by the Contractor to firms, individuals or governments other than within the NATO member countries.

**2.3. BID DELIVERY AND BID CLOSING**

- 2.3.1 All Bids should be received on email given below in paragraph 2.3.2 **before 1730 hours (Brussels Time) on 01 October of 2023** at which time and date bidding shall be closed.

**2.3.2 SUBMISSION OF BIDS BY ELECTRONIC MAIL**

All electronic bids, including modifications or withdrawals thereto, shall be sent exclusively to the following electronic mail address [IFBCO115750CAB@ncia.nato.int](mailto:IFBCO115750CAB@ncia.nato.int). The electronic mail message shall include in the subject line:

"Electronic Bid in Response to IFB-CO-115750-CAB".

Submission of the bid to anyone other than the email address stated on

## Bidding Instructions

paragraph above may result in a determination of non-compliance.

NCI AGENCY will only accept electronic bids that are compatible with the following programs: Microsoft Word, Adobe Acrobat Reader, Microsoft Excel. Files shall be saved in a format that protects it from alteration and shall adhere to the following naming convention:

Price [Insert Company Name]\_ IFB-CO-115750-CAB  
Technical [Insert Company Name]\_ IFB-CO-115750-CAB  
Administration [Insert Company Name]\_ IFB-CO-115750-CAB

NCI AGENCY will not be responsible for any failure attributable to the transmission or receipt of the bid including, but not limited to: receipt of unclear or incomplete bid; software or other compatibility issues related to opening and reading the bid; delay in transmission or receipt of bid; failure of the bidder to properly identify the bid; unreadability of the bid; or security of bid data.

Electronic bids that fail to furnish the required representations or information and/or that reject any of the terms, conditions, and provisions of the solicitation may be excluded from consideration. Electronic bids must contain any required signatures. NCI AGENCY reserves the right to make award solely on the electronic bid. However, the apparently successful bidder agrees to promptly submit the complete original signed bid if requested by the Contracting Officer.

Bids which are delivered to the Purchaser after the specified time and date set forth above for Bid Closing are "late bids" and shall not be considered for award. Such Bids deemed late will not be taken in consideration for award and will be deleted from NCI Agency's files unless the Purchaser can determine that the bid in question meets the criteria for consideration as specified in (2.3.3) below.

2.3.3 Consideration of Late Bid – The Purchaser considers that it is the responsibility of the Bidder to ensure that the bid submission arrives by the specified Bid Closing time. Electronic bids, including modifications or withdrawals thereto, that reach the Contracting Officer after the exact time specified for receipt of bids is late and will not be considered unless cumulatively:

- i. it is received before contract award is made;
- ii. the Contracting Officer determines that accepting the late bid would not unduly delay the acquisition;
- iii. there is acceptable evidence to establish the bid was received at the initial point of entry to the NCI AGENCY infrastructure prior to the exact time specified for receipt of bids.

## 2.4. PURCHASER POINT OF CONTACT

The Purchaser point of contact for all information concerning this IFB is:

Esteban Diaz, Senior Contracting Assistant

Tel: +32 65 44 7186

E-mail: [IFBCO115750CAB@ncia.nato.int](mailto:IFBCO115750CAB@ncia.nato.int)

## REQUEST FOR IFB CLARIFICATIONS

- 2.4.1 Bidders, during the solicitation period, are encouraged to query and seek clarification of any matters of a contractual, administrative and technical nature pertaining to this IFB **and observing the classification level of the document(s) in respect to which the clarification is sought.**
- 2.4.2 All questions and requests for clarification must be submitted in writing by E-mail. All questions and requests must reference the section(s) in the IFB subject for clarifications. The questions and/or requests shall be forwarded to the point of contact specified in paragraph 2.4 above and shall arrive not later than **01 September 2023 COB**. The Purchaser is under no obligation to answer questions submitted after this time.
- 2.4.3 Additional requests for clarification after the date in paragraph 2.5.2 above are limited only to the information provided as answers by the Purchaser to Bidder's requests for clarification. Such additional requests shall arrive no later than fourteen (14) calendar days before the established Bid Closing Date.
- 2.4.4 It is the responsibility of the Bidders to ensure that all clarification requests submitted bear no mark, logo or any other form or sign that may lead to reveal the Bidders' identity in the language constituting the clarification itself. This prescription is not applicable to the mode used for the transmission of the clarification (i.e. email or form by which the clarification is forwarded).
- 2.4.5 Except as provided above, all questions will be answered by the Purchaser and the questions and answers (but not the identity of the questioner) will be issued in by email to all prospective bidders.
- 2.4.6 The published answers issued by the Purchaser shall be regarded as the authoritative interpretation of the IFB. Amendment to the language of the IFB included in the answers shall be incorporated by the Bidder in his offer.

## 2.5. REQUEST FOR WAIVERS AND DEVIATIONS

- 2.5.1 Bidders are informed that requests for alteration to, waivers of, or deviations from the Special Contract Provisions, the terms and conditions in the NCI Agency's General Provisions, the Schedule of Services and Supplies, the Statement of Work and any other Terms and Conditions of the Prospective Contract will not be considered after the Request for Clarification process.
- 2.5.2 Requests for alterations to the other requirements, terms or conditions of the Invitation for Bidding or the Prospective Contract may only be considered as part of the clarification process set forth in paragraph 2.5

above. Requests for alterations to the specifications, terms and conditions of the Contract which are included in a Bid as submitted may be regarded by the Purchaser as a qualification or condition of the Bid and may be grounds for a determination of non-compliance.

## 2.6. AMENDMENT OF THE IFB

2.6.1 The Purchaser may revise, amend or correct the terms, conditions and/or specifications and provisions of the IFB documents at any time prior to the date set for the Bid Closing. Any and all modifications will be transmitted to all prospective bidders by an official amendment designated as such. Such amendment shall be recorded in the Annex 6: Acknowledgement of Receipt of IFB Amendments, which the bidder shall complete and enclose as part of his bid. This process may be part of the clarification procedures set forth in paragraph 2.5 above or may be an independent action on the part of the Purchaser.

2.6.2 The Purchaser will consider the potential impact of amendments on the ability of prospective Bidders' to prepare a proper bid within the allotted time. The Purchaser may extend the "Bid Closing Date" at his discretion and such extension will be set forth in the amendment document.

## 2.7. MODIFICATIONS AND WITHDRAWAL OF BIDS

2.7.1 Bids, once submitted, may be modified by Bidders, but only to the extent that the modifications are in writing, conform to the requirements of the IFB, and are received by the Purchaser prior to the exact time and date established for Bid Closing. Such modifications shall be considered as an integral part of the submitted bid.

2.7.2 Modifications to bids which arrive after the Bid Closing Date will be considered as "Late Modifications" and will be processed in accordance with the procedure set forth above concerning "Late Bids", except that unlike a "Late Bid", the Purchaser will retain the modification until a selection is made. A modification to a bid which is determined to be late will not be considered in the evaluation and selection process. If the Bidder submitting the modification is determined to be the successful Bidder on the basis of the unmodified bid, the modification may then be opened. If the modification makes the terms of the bid more favourable to the Purchaser, the modified bid may be used as the basis of contract award. The Purchaser, however, reserves the right to award a contract to the apparent successful Bidder on the basis of the bid submitted and disregard the late modification.

2.7.3 A Bidder may withdraw his bid at any time prior to Bid Opening without penalty. In order to do so, an authorised agent or employee of the Bidder must provide an statement of the firm's decision to withdraw the bid.

2.7.4 Except as provided in paragraph 2.9.4(b) below, a Bidder may withdraw his bid after Bid Opening only by forfeiture of the Bid Guarantee.

## 2.8. BID VALIDITY

2.8.1 Bidders shall be bound by the term of their bids for a period of 6 months starting from the Bid Closing Date specified in paragraph 2.3.1 above.

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2.8.2 In order to comply with this requirement, the Bidder shall complete the Certificate of Bid Validity set forth in Annex A.3. Bids offering less than the period of time referred to above for acceptance by the Purchaser may be determined to be non-compliant.

2.8.3 The Purchaser will endeavour to complete the evaluation and make an award within the period referred to above. However, should that period of time prove insufficient to render an award, the Purchaser reserves the right to request an extension of the period of validity of all bids which remain under consideration for award.

2.8.4 Upon notification by the Purchaser of such a request for a time extension, the Bidders shall have the right to:

(a) accept this extension of time in which case Bidders shall be bound by the terms of their offer for the extended period of time and Certificate of Bid Validity extended accordingly; or

(b) refuse this extension of time and withdraw the bid.

2.8.5 Bidders shall not have the right to modify their bids due to a Purchaser request for extension of the bid validity unless expressly stated in such request.

## 2.9. CANCELLATION OF INVITATIONS FOR BID

2.9.1 The Purchaser may cancel, suspend or withdraw for re-issue at a later date this IFB at any time prior to contract award. No legal liability on the part of the Purchaser for payment of any sort shall arise and in no event will any Bidder have cause for action against the Purchaser for the recovery of costs incurred in connection with preparation and submission of a bid in response to this IFB.

## 2.10. ELECTRONIC TRANSMISSION OF INFORMATION AND DATA

2.10.1 The Purchaser will endeavour to communicate answers to requests for clarification and amendments to this IFB to the prospective bidders by the fastest means possible.

**SECTION 3 - BID PREPARATION INSTRUCTIONS****3.1. GENERAL**

- 3.1.1 Bids shall be prepared in accordance with the instructions set forth herein.
- 3.1.2 Bidders shall prepare a complete bid which comprehensively addresses all requirements stated herein. The Bid shall demonstrate the Bidder's understanding of the IFB and his ability to provide all the deliverables and services listed in the Statement of Work. Partial bids are not authorized.
- 3.1.3 The Bidder shall not restate the IFB requirements in confirmatory terms only. The Bidder must clearly describe what is being offered and how the Bidder will meet all IFB requirements. Statements in confirmatory terms only will be sufficient grounds for determining the bid to be non-compliant.
- 3.1.4 Bidders shall prepare their bid in 3 parts in the following sequence:
- Price Quotation (Part I):
  - Bid Administration (Part II):
  - Technical Proposal (Part III):
- 3.1.5 Documents submitted in accordance with section 3.1.4 above shall be "NATOUNCLASSIFIED". " material.
- 3.1.6 Bidders are advised that the Purchaser reserves the right to incorporate the Bidders technical Proposal in whole or in part in the resulting contract.

**3.2. BID ADMINISTRATION (Part II)****3.2.1 The bidder shall provide :**

1. The organisational structure and capacity of the company including back-up capacity;
2. The availability of the necessary infrastructure to meet the requirements set out in this tender;
3. The average annual manpower and managerial staff over the last three years;
4. Certificate from social security authorities to the effect that the bidder is up to date with the payment of social security contributions;
5. Certificate from national authorities to the effect that the bidder has met all tax obligations in accordance with the legal provisions of the country in which the company is registered;
6. Certificate from the insurance company that the bidder maintains workmen's compensation, employees' liability or other type of insurance required by Belgian Law;

## Bidding Instructions

7. Certificate from the insurer that the bidder maintains a suitable civil liability insurance to cover, on the one hand, damage which could be caused to SHAPE's premises, e.g. by fire, and on the other hand, injury to persons;

3.2.2 The following certifications shall be provided by completing the certificates set forth in Annex A hereto, specifically:

- (a)A-1 Certificate of Legal Name of Bidder.
- (b)A-2 Certificate of Independent Determination.
- (c)A-3 Certificate of Bid Validity.
- (d)A-4 Certificate of Understanding
- (e)A-5 Certificate of Exclusion of Taxes, Duties and Charges.
- (f) A-6 Acknowledgement of Receipt of IFB Amendments and Responses to Clarification Requests
- (g)A-7 Disclosure of Requirements for NCI Agency Execution of Supplemental Agreements.
- (h)A-8 Certification of NATO Member Country of Origin of Delivered Equipment, Services, Material and Intellectual Property Rights.
- (i) A-9 Certificate of Compliance
- (j) A-10 List of Prospective Sub-Contractors and Major Vendors
- (k)A-11 Certificate of Qualified and Accredited personnel
- (l) A-12 List of Key Personnel with Security Clearance Information
- (m) A-13 The indication of at least three contracts the bidder has performed for other customers within the last five years, substantially similar in scope and magnitude to the requirements described in this solicitation.
- (n)A-14 For each of the three contracts, Bidders are requested to complete, sign the "Contractor's references questionnaire". The bidder need to add the Contractor's reference to his bid.

3.2.3 A proven track record of the organisation capability to provide and support services which are the subject of this contract including:

- Outline of a Quality Control Plan for the service to be provided under the contract;
- ISO 9001 accreditation for quality management;
- Health and safety management model/certification such as OHSAS 18001;

3.2.4 A list of prospective sub-contractors/consortium members (Annex A-10) shall be completed and included. If there are no sub-contractors/consortium members involved, the Bidder shall state this separately.

### 3.3. PRICE QUOTATION

3.3.1 Bidders shall provide a quote in EURO. Consequently, the Contract will be expressed in EURO. Bidders are also advised that all payments will be made in EURO.

3.3.2 The Purchaser, by virtue of its status under the terms of Article IX and X of the Ottawa Agreement, is exempt from all direct and indirect taxes (incl. VAT) and all customs duties on merchandise imported or exported. This provision reads as follows:

*"Each participating nation undertakes to grant to NCIA under the terms of Articles 9 and 10 of the Ottawa Agreement, exemption from all direct taxes (except rates, taxes and dues which are no more than charges for public utility services) from the taxes on the sale of movable and immovable properties, and from customs and excise duties in respect of equipment imported or exported by NCIA or its appointed agents."*

3.3.3 Bidders shall acknowledge such exemption through execution of the Certificate at Annex A-5.

3.3.4 All prices quoted in the proposal shall be DDP (Delivery Duty Paid) to specified destination, in accordance with the International Chamber of Commerce INCOTERMS 2000 and shall also cover all packaging, packing, preservation, insurance and transportation charges. Prices quoted shall include all costs for items supplied and delivered to final destination. Including unloading and handling.

3.3.5 Except as required in the Bidding Instructions, no other documentation besides the Bidding Sheet (SSS Labour Cost Sheet ) shall be included in the Price Quotation. Any other document of a contractual or technical nature will not be considered during evaluation and may be cause for a determination of non-compliance by the Purchaser.

3.3.6 When completing the Bidding Sheet, the Bidder shall insert information in all cells. The accuracy of the inputs of the SSS Labour Cost Sheet is the responsibility of the Bidder. The Purchaser in its favour may resolve ambiguous computation of prices.

3.3.7 The Bidder shall furnish firm fixed price quotations, for all proposed items for the base year. . Partial bidding is not authorized.

3.4. TECHNICAL PROPOSAL (Part III)

- 3.4.1 Bidders shall prepare and submit a Technical Proposal for Provision of Cable Installation and Maintenance (Book II Part IV) by the completion of the Bidders Evaluation Questionnaire (SSS Annex 1), the Contractor Staff Matrix (SSS Annex 2), the Costing Scenario (SSS Annex 3) and the Costing Scenario Building Diagram (SSS Annex 4, separate Visio document).
- 3.4.2 The technical Proposal shall include all information as requested in the 4 documents mentioned on the paragraph above.

**SECTION 4 - BID EVALUATION**

4.1. General

4.1.1 The evaluation of bids will be made by the Purchaser solely on the basis of the requirements in this IFB. The evaluation methodology is Best Value for Money where the price proposal represents 45% and technical proposal represents 55% of the total score.

| 1 <sup>st</sup> Level Criterion | Weight | 2 <sup>nd</sup> Level Criterion |                         | Weight  | 3 <sup>rd</sup> Level Criterion   |
|---------------------------------|--------|---------------------------------|-------------------------|---------|---|
| Technical                       | 55%    | Corporate experience            | Management              | 25.45%  | Bidder Qualifications and Experience (SSS Annex B, Contractor Staff Matrix).  |
|                                 |        |                                 | Contractor's references | 16.36%  | Assessment criteria: clarity and relevancy.<br>Contractor's references questionnaire (Bidding instructions, Annex 14) |
|                                 |        | Engineering                     |                         | 58.19 % | Clarity of answers provided to Bidders Evaluation Questionnaire (SSS Annex A) and Costing Scenario (SSS Annex C)      |

4.1.2 The evaluation of bids and the determination as to the compliance or technical adequacy of the supplies and services offered will be based only on that information furnished by the Bidder and contained in his bid. The Purchaser shall not be responsible for locating or securing any information which is not included in the bid or included only by reference.

4.1.3 To ensure that sufficient information is available, the Bidder shall furnish with his bid all information appropriate to provide a complete description of the work which will be performed and/or the supplies to be delivered. The information provided shall be to a level of detail necessary for the Purchaser to determine exactly what the Bidder proposes to furnish and whether the offer meets the technical, administrative and contractual requirements of this IFB.

## Bidding Instructions

- 4.1.4 During the evaluation, the Purchaser may request clarification of the bid from the Bidder and the Bidder shall provide sufficient detailed information in connection with such requests as to permit the Purchaser to make a final determination based upon the facts. The purpose of such clarifications will be to resolve ambiguities in the bid and to permit the Bidder to state his intentions regarding certain statements contained therein. The Bidder is not permitted any cardinal alteration of the bid regarding technical matters and shall not make any change to its price quotation at any time.
- 4.1.5 The Purchaser reserves the right, during the evaluation and selection process, to verify any statements made concerning experience and facilities, by making a physical inspection of the Bidder's facilities and capital assets and by interviewing proposed Key Personnel. Physical inspections and interviews shall also apply to assertions in the proposal made on behalf of proposed subcontractors. The Bidder shall be responsible for providing access to his own or subcontractors' facilities and personnel.
- 4.1.6 The Contract resulting from this IFB will be awarded to the Bidder whose offer, as evaluated by the Purchaser, is the Best Value for Money in compliance with the requirements of this IFB. Evaluation of this IFB will be conducted in accordance with the "Sealed bid " procedure in which the administrative proposal of each Bidder is evaluated first. Then the price proposal of each Bidder is evaluated. Then the technical proposal of all the Bidders is technically evaluated for compliance with the requirements of the Statement of Work. Bidders that are determined to have submitted non-compliant bids will be so notified and will have an opportunity to challenge such a determination.

## 4.2. ADMINISTRATIVE CRITERIA

- 4.2.1 After the evaluation of the Price, and prior to the commencement of the Technical evaluation, Bids will be reviewed for compliance with the Bid Submission Requirements of this IFB. These are as follows:
- (a) The Bid was received by the Bid Closing Date and Time;
  - (b) The Administrative Package contained all the information required in the originally signed copies and of the required Certificates in Annex A hereto;
  - (c) Submission of the list of prospective sub-contractors/consortium members completed or statement that no sub-contractors/consortium members are involved;
- 4.2.2 A Bid that fails to conform to the above requirements may be declared non-compliant and may not be evaluated further by the Purchaser.
- 4.2.3 If it is discovered, during either the Price or Technical evaluation, that the Bidder has taken exception to the Terms and Conditions of the Prospective Contract, or has qualified and/or otherwise conditioned his offer on a modification or alteration of the Terms and Conditions or the language of the Statement of Work, the Bidder may be determined to have submitted a non-compliant bid.

4.2.8 An un-priced version of the Book II, Part I, Schedule of Supplies and Services should be provided to show the offered delivery schedule meets delivery requirements of the Prospective Purchase Order. The un-priced Schedule of Supplies and Services shall be identical to the Priced Schedule of Supplies and Services, but without the respective figures filled in;

#### 4.3. PRICE EVALUATION

##### 4.3.1 PRICE EVALUATION CRITERIA:

The Bid will be evaluated against the following criteria:

- i. Compliance with the requirements for preparation and submission of the Price.
- ii. All pricing data, i.e., quantities, unit prices, should be provided as reflected in the Schedule of Supplies and Services.
- iii. All prices should be accurately entered into appropriate columns, and accurately totalled.
- iv. Bidders shall indicate that in accordance with the treaties governing the terms of business with NATO, they have proceeded to exclude from their prices all taxes, duties and customs charges from which the Purchaser has been exempted.
- v. Price quotes for each individual item(s), and totalled prices are accurate and realistic, (based on historic data, and/or market and competitive trends in the specified industrial sectors).

##### 4.3.2 PRICE PROPOSAL

Bidders are required to quote:

- a. labour rates per hour that they intend to apply during the duration of the base year of the contract for each category of workers. The yearly revision formula to be applied for the optional years can be found below:

**Belgian Health Index reference:**

**New Hourly rate option year = Base year hourly rate + (new JAN option year index – JAN base year index, in %).**

Hourly rate quoted shall include all direct and indirect costs related to it (i.e.: salary, social security, social advantages, travel allowance...).

- b. percentages applicable on the above labour rates if works are executed outside the normal working hours, in height or in objectionable conditions;
- c. a percentage to cover overheads to be applied on the total cost of contractor's labour;

All the above percentages shall remain fixed for the initial year of the contract and will be updated in accordance with the revision formula stated on paragraph 4.3.2 a.

When calculating the overheads percentage, the contractor must keep in mind that in addition to its company's general overheads, all costs related to the permanent staff on site, and to the on-site facility, as well as eventual costs related to access and security aspects must be taken into consideration.

- i. Bidders shall indicate that in accordance with the treaties governing the terms of business with NATO, exclude from their prices all taxes, duties and customs charges from which the Purchaser has been exempted.
- ii. Price quotes for each individual item(s), and totalled prices are accurate and realistic, (based on historic data, and/or market and competitive trends in the specified industrial sectors).

#### 4.3.3 Determination of Best Value for Money Price:

- (a) Price Comparison: The Total Price Offered for the Contract will be compared on the basis of the prices offered. This total price shall include all lines specified in the Bidding Sheet, including Optional years.
- (b) Best Value for Money Bid will be determined using the evaluation criterias included in the SOW as Annex E (Evaluation Rules).

#### 4.3.4 Price Realism

- (a) Otherwise successful Bidders that submit a price quotation so low or so high that it is not a realistic reflection of the objective cost of performance of the associated technical proposal may be considered by the Purchaser to have submitted an unrealistic offer.
- (b) Indicators of an unrealistically low bid may be the following, amongst others:
  - i. Labour Costs that, when amortised over the expected or proposed direct labour hours, indicate average labour rates far below those prevailing in the bidder's locality for the types of labour proposed.

## Bidding Instructions

- ii. Direct Material costs that are considered to be too low for the amounts and types of material proposed, based on prevailing market prices for such material.
  - iii. Numerous Line Item prices for supplies and services that are provided at no cost or at nominal prices.
- (c) If the Purchaser has reason to suspect that a Bidder has artificially debased its prices in order to secure contract award, the Purchaser will request clarification of the bid in this regard and the Bidder shall provide explanation on one of the following bases:
- i. An error was made in the preparation of the price quotation. In such a case, the Bidder must document the nature of the error and show background documentation regarding the preparation of the price quotation that convincingly demonstrates that an error was made by the Bidder. In such a case, the Bidder may request to remain in the competition and accept the Contract at the bid price, or to withdraw from the competition.
  - ii. The Bidder has a competitive advantage due to prior experience or internal business/technological processes that demonstrably reduce the costs of Bidder resulting in an offered price that is realistic. The Bidder's explanation must support the technical proposal offered and convincingly and objectively describe the competitive advantage and the savings achieved by this advantage over standard market costs, practices and technology.
  - iii. The Bidder understands that the submitted price quotation is unrealistically low in comparison with the level of effort required. In this case, the Bidder is required to estimate the potential loss and show that the financial resources of the Bidder are adequate to withstand such reduction in revenue.
- (d) If a Bidder fails to submit a comprehensive and convincing explanation for one of the bases above, the Purchaser shall declare the Bid non-compliant and the Bidder will be so notified.
- (e) If the Bidder determines that it is unable or unwilling to provide a comprehensive and convincing explanation for one of the bases above, it can request to withdraw from the competition. The Purchaser will allow the Bidder to withdraw from the competition following receipt of the request.

- (f) If the Purchaser accepts the Bidder’s explanation of mistake and allows the Bidder to accept the Contract at the bid price or the explanation regarding competitive advantage is convincing, the Bidder shall agree that the supporting pricing data submitted with its Bid will be the basis of determining fair and reasonable pricing for all subsequent negotiations for modifications or additions to the Contract and that no revisions of proposed prices will be made.

4.4. TECHNICAL CRITERIA

4.4.1 In order for a Bid to be determined to be compliant, the Bidder shall have submitted a Proposal which has met, after evaluation by the Purchaser, all the criteria which are set forth in the Statement of Work attached.

4.4.2 The different items of the 3<sup>rd</sup> Level Criteria level will be evaluated and scored from Excellent to Unacceptable, in accordance with the table below. The bid will be considered non-compliant if any of the evaluated items receive a score of Marginal, Deficient or Unacceptable.

|            |     |              |   |
|------------|-----|--------------|---|
| <b>NO</b>  | 0   | Unacceptable | Reports or product descriptions are incomplete, inaccurate or unreadable. CVs have no applicable expertise in the area.   |
|            | 20  | Deficient    | Reports or product descriptions contain multiple minor inaccuracies or errors; no analysis or references to support recommendations. CVs have limited applicable expertise in the area.   |
|            | 40  | Marginal     | Reports or product descriptions contain multiple minor inaccuracies or errors. CVs have limited applicable expertise in the area.   |
| <b>YES</b> | 60  | Average      | Reports or product descriptions give the expected level of detail, analysis and references. CVs have many years of applicable expertise in the area, including practical experience working in the area.  |
|            | 80  | Superior     | Reports or product descriptions give an insightful overview of the topic, with a clear and well-justified analysis. CVs have many years of applicable expertise in the area, including practical experience at senior levels in the area.   |
|            | 100 | Excellent    | Reports or product descriptions give great insightful which extend the readers' understanding of a topic, with a clear and well-justified analysis. CVs have many years of applicable expertise in the area, including practical experience at senior levels in the area and in providing strategic advice. |

4.4.3 The certificates and statements ensure the bidder’s good understanding and compliance with the Statement of work.

4.4.4 Besides, the bidder shall provide access to any service required for testing. The service is evaluated using the list of criteria set in the bidding instructions’ annexes. Likewise, the bidder’s Contractor’s references shall be evaluated using the formats set in bidding instructions’ annexes.



**ANNEX A – CERTIFICATES**

**A-1: CERTIFICATE OF LEGAL NAME OF BIDDER**

This Bid is prepared and submitted on behalf of the legal corporate entity specified below:

FULL NAME OF CORPORATION: \_\_\_\_\_

DIVISION (IF APPLICABLE): \_\_\_\_\_

SUB DIVISION (IF APPLICABLE): \_\_\_\_\_

OFFICIAL MAILING ADDRESS \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

E-MAIL ADDRESS \_\_\_\_\_

\_\_\_\_\_

BOA NO: \_\_\_\_\_

\_\_\_\_\_

POINT OF CONTACT:  
REGARDING THIS BID: NAME: \_\_\_\_\_

POSITION: \_\_\_\_\_

TELEPHONE \_\_\_\_\_

E-MAIL ADDRESS \_\_\_\_\_

\_\_\_\_\_

ALTERNATIVE POINT OF CONTACT: \_\_\_\_\_

NAME: \_\_\_\_\_

POSITION: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_

E-MAIL ADDRESS \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Authorised Representative

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

**A-2: CERTIFICATE OF INDEPENDENT DETERMINATION**

1. Each Bidder shall certify that in connection with this procurement:
  - a. This Bid has been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition, with any other Bidder or with any competitor;
  - b. The contents of this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to award, directly or indirectly to any other Bidder or to any competitor, and
  - c. No attempt has been made, or will be made by the Bidder to induce any other person or firm to submit, or not to submit, a Bid for the purpose of restricting competition.
  
2. Each person signing this Bid shall also certify that:
  - a. He is the person in the Bidder's organisation responsible within that organisation for the decision as to the bid and that he has not participated and will not participate in any action contrary to 1(a) through 1(c) above, or
    - (i) He is not the person in the Bidder's organisation responsible within that organisation for the bid but that he has been authorised in writing to act as agent for the persons responsible for such a decision in certifying that such persons have not participated, and will not participate in any action contrary to 1(a) through 1(c) above, and as their agent does hereby so certify, and
    - (ii) He has not participated and will not participate in any action contrary to 1(a) through 1(c) above.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Authorised Representative

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company

**A-3: CERTIFICATE OF BID VALIDITY**

I, the undersigned, as an authorised representative of the firm submitting this bid, do hereby certify that the pricing and all other aspects of our Bid will remain valid for a period of Six (6) months from the Bid Closing Date of this Request for bid.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Authorised Representative

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company

**A-4: CERTIFICATE OF UNDERSTANDING**

I certify that

---

---

Company has read and fully understands the requirements of this Invitation for Bidding (IFB) and that the bid recognises these requirements in total.

I also certify to the best of my expert knowledge that this bid is within the "state of art" boundaries as they exist at the time of bidding for this project.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Authorised Representative

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company

**A-5: CERTIFICATE OF EXCLUSION OF TAXES, DUTIES AND CHARGES**

I, the undersigned, as an authorized representative of the Bidder, hereby acknowledge that the NCI Agency ("the Purchaser") is excluded from all taxes, duties and customs charges from which the Purchaser is exempt by the terms of Article IX and X of the Ottawa Agreement .

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Authorised Representative

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company

**A-6: ACKNOWLEDGEMENT OF RECEIPT OF IFB AMENDMENTS AND RESPONSES TO CLARIFICATION REQUESTS**

I confirm that the following amendments/ responses to Clarification requests to IFB No IFB-CO-115750-CAB have been received and the Bid as submitted reflects the content of such amendments:

| Amendment Number | Date of Issue | Date of Receipt |
|------------------|---------------|-----------------|
|                  |               |                 |

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Authorised Representative

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company

**A-7: DISCLOSURE OF REQUIREMENTS FOR NCI AGENCY EXECUTION OF SUPPLEMENTAL AGREEMENTS**

I, the undersigned, as an authorised representative of \_\_\_\_\_, certify the following statement:

1. All supplemental agreements, defined as agreements, documents and/or permissions outside the body of the Contract but required by my Government, and the governments of my subcontractors, to be executed by the NCI AGENCY as a condition of my firm's performance of the Contract, have been identified, as part of the Bid.

Bidding Instructions

2. These supplemental agreements are listed as follows:
3. Examples of the terms and conditions of these agreements are attached hereto. The anticipated restrictions to be imposed on NATO, if any, have been identified in our offer along with any potential conflicts with the terms, conditions and specifications of the Prospective Contract. These anticipated restrictions and potential conflicts are based on our knowledge of and prior experience with such agreements and their implementing regulations. We do not certify that the language or the terms of these agreements will be exactly as we have anticipated.
4. The processing time for these agreements has been calculated into our delivery and performance plans and contingency plans made in the case that there is delay in processing on the part of the issuing government(s),
5. We recognise that additional supplemental agreements, documents and permissions presented as a condition of Contract performance or MOU signature after our firm would be selected as the successful bidder may be cause for the NCI AGENCY to determine the submitted bid to be non-compliant with the requirements of the IFB.
6. We accept that should the resultant supplemental agreements issued in final form by the government(s) result in an impossibility to perform the Contract in accordance with its schedule, terms or specifications, the contract may be terminated by the Purchaser at no cost to either Party.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Authorised Representative

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company

**A – 8: CERTIFICATION OF NATO MEMBER COUNTRY ORIGIN OF DELIVERED EQUIPMENT, SERVICES, MATERIALS AND INTELLECTUAL PROPERTY RIGHTS**

The Bidder hereby certifies that, if awarded the Contract pursuant to this solicitation, he will perform the contract subject to the following conditions:

- (a) none of the work, including project design, labour and services shall be performed other than by firms from and within participating NATO member countries;
- (b) 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 NATO member country. (A sub-assembly is defined as a portion of an assembly consisting of two or more parts that can be provided and replaced as an entity)\*; and
- (c) The intellectual property rights to all design documentation and related system operating software shall reside in NATO member countries, and no license fees or royalty charges shall be paid by the Contractor to firms, individuals or governments other than within the NATO member countries.

|      |  |
|------|--|
| Date | Signature of Authorised Representative |
|      | Printed Name                           |
|      | Title                                  |
|      | Company                                |

\*This definition purposely excludes components and/or parts (as defined in AcodP-1), which are not subject to this certification.

**A-9: CERTIFICATE OF COMPLIANCE**

I hereby certify that the Bid submitted by \_\_\_\_\_ Company is fully compliant with the IFB-CO-115750-CAB contractual Special and General Provisions and the requirements of both the Statement of Work and the Invitation for Bidding (**IFB-CO-115750-CAB**) as stated therein.

This company foresees no difficulty in obtaining acceptance of any Prime Contract terms and conditions which are required to be passed on to subcontractors by this IFB.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Authorised  
Representative

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company



**A-11: CERTIFICATE OF QUALIFIED AND ACCREDITED PERSONNEL**

I hereby certify that \_\_\_\_\_ Company will provide qualified and properly accredited personnel as requested in IFB-CO-115750-CAB contractual Special and General Provisions and the requirements of both the Statement of Work and the Invitation for Bidding (**IFB-CO-115750-CAB**) as stated therein.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Authorised  
Representative

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company



**A-13: REFERENCES OF CURRENT OR RECENT CONTRACTS SUBSTANTIALLY SIMILAR IN SCOPE AND MAGNITUDE TO THE REQUIREMENTS**

For each contract/agreement, please indicate :

1.

|   |  |
|---|--|
| Contract reference (if applicable)  |  |
| Starting date of contract   |  |
| End date of contract  |  |
| Value of contract   |  |
| Customer's name   |  |
| Customer's Point of Contact capable of providing information giving name, telephone and fax numbers, email. |  |

2.

|                                    |  |
|------------------------------------|--|
| Contract reference (if applicable) |  |
| Starting date of contract          |  |
| End date of contract               |  |
| Value of contract                  |  |
| Customer's name                    |  |

Bidding Instructions

|  |  |
|--|--|
| <p>Customer's Point of Contact capable of providing information giving name, telephone and fax numbers, email.</p> |  |
|--|--|

3.

|  |  |
|--|--|
| <p>Contract reference (if applicable)</p>  |  |
| <p>Starting date of contract</p>   |  |
| <p>End date of contract</p>  |  |
| <p>Value of contract</p>   |  |
| <p>Customer's name</p>   |  |
| <p>Customer's Point of Contact capable of providing information giving name, telephone and fax numbers, email.</p> |  |

**A-14: CONTRACTOR'S REFERENCES QUESTIONNAIRE**

For each of the contracts or subcontracts listed in A13, bidders shall complete and return directly to NCI Agency the "Contractor's references Questionnaire" hereafter no later than the bid closing date:

Copy of the questionnaire is to be attached in the bid.

**CONTRACTOR'S REFERENCES QUESTIONNAIRE**

|   |
|---|
| <p><b>1. Contractor's Details</b> <i>(the name, address, etc of the company that has <u>provided</u> the goods/services)</i></p>  |
| <p><b>2. Customer's Details</b> <i>(the name, address, etc of the company which has <u>received</u> the goods/services)</i></p>   |
| <p><b>3. Customer's POC:</b></p> <p>Name: _____ Tel: _____</p> <p>Email: _____ Fax: _____</p>   |
| <p><b>4. Contract reference/Title:</b></p>  |
| <p><b>5. Contract type:</b></p> <p>( ) Firm Fixed Price*                      ( ) Cost Reimbursement*</p> <p>( ) Best Value*                                ( ) Other* (Please specify)</p> <p><i>(*) Mark with a cross</i></p> |
| <p><b>6. Period of Performance:</b></p> <p>From _____ to _____</p> <p>_____</p>   |
| <p><b>7. Contract amount:</b></p> <p>- at the time of award: _____</p> <p>- after modifications: _____</p>  |
| <p><b>8. Description of Contract Service:</b></p>   |
| <p><b>9. Complexity of Work:</b> ( ) Difficult*      ( ) Routine*      <i>(*) Mark with a cross</i></p>   |

#### 4.1. CONTRACTOR'S REFERENCES RATING GUIDELINES

based on the Contractor's references information provided:

Depth of experience as a Prime/Subcontractor in relevant work: significant experience as a Prime Contractor and/or for similar efforts will receive higher scores, while experience as a Subcontractor and/or for similar efforts will receive lower scores. Additionally, high quality experience (resulting in cost/schedule reductions or high performance) will receive higher scores, while low quality experience (resulting in cost/schedule overruns or low performance) will receive lower scores.

### **ANNEX B – INSTRUCTIONS FOR BIDDING SHEET**

1. Bidders are required, in preparing their Price Quotation to utilise the Bidding Sheet attached at Book II Part I "Schedule of Supplies and Services" hereto following the instructions detailed on the next page.
2. The prices entered on the Bidding Sheet shall reflect the total items required to meet the contractual requirements.
3. The total price shall be indicated in the appropriate columns.
4. Prices shall not include any provision for taxes or duties for which the Purchaser is exempt

**ANNEX C - BIDDERS CLARIFICATION REQUEST FORM**

See separate document

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IFB-CO-115750-CAB - Book I-Annex C

INSERT COMPANY NAME HERE

INSERT SUBMISSION DATE HERE

**INVITATION FOR BID**

**IFB-CO-115750-CAB**

**Cabling Installation and Maintenance (SHAPE)**

**Clarification Requests Form**

**NATO UNCLASSIFIED**

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IFB-CO-115750-CAB - Book I-Annex C

INSERT COMPANY NAME HERE

INSERT SUBMISSION DATE HERE

| <b>ADMINISTRATION or CONTRACTING</b> |                    |                 |               |               |
|--------------------------------------|--------------------|-----------------|---------------|---------------|
| <b>Serial<br/>NR</b>                 | <b>IFB<br/>REF</b> | <b>QUESTION</b> | <b>ANSWER</b> | <b>Status</b> |
| <b>A.1</b>                           |                    |                 |               |               |
| <b>A.2</b>                           |                    |                 |               |               |
| <b>A.3</b>                           |                    |                 |               |               |

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IFB-CO-115750-CAB - Book I-Annex C

INSERT COMPANY NAME HERE

INSERT SUBMISSION DATE HERE

| <b>PRICE</b>         |                    |                 |               |               |
|----------------------|--------------------|-----------------|---------------|---------------|
| <b>Serial<br/>NR</b> | <b>IFB<br/>REF</b> | <b>QUESTION</b> | <b>ANSWER</b> | <b>Status</b> |
| <b>P.1</b>           |                    |                 |               |               |
| <b>P.2</b>           |                    |                 |               |               |
| <b>P.3</b>           |                    |                 |               |               |

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IFB-CO-115750-CAB - Book I-Annex C

INSERT COMPANY NAME HERE

INSERT SUBMISSION DATE HERE

| <b>TECHNICAL</b>     |                    |                 |               |               |
|----------------------|--------------------|-----------------|---------------|---------------|
| <b>Serial<br/>NR</b> | <b>IFB<br/>REF</b> | <b>QUESTION</b> | <b>ANSWER</b> | <b>Status</b> |
| <b>T.1</b>           |                    |                 |               |               |
| <b>T.2</b>           |                    |                 |               |               |
| <b>T.3</b>           |                    |                 |               |               |

**IFB-CO-115750-CAB**  
**Cabling Installation and Maintenance (SHAPE)**



**Prospective CONTRACT**

IFB-CO-115750-CAB

**Contract Value: 2.500.000 Euros**

**Requisition number: TBD**

**P.O. number: TBD**

**Effective date of Contract: 01 JAN 2024**

**N A T O U N C L A S S I F I E D**

**IFB-CO-115750-CAB**

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**N A T O U N C L A S S I F I E D**

GENERAL INDEX

Title Sheet

Signature Sheet

Part I Schedule of Services and Prices

Part II & III Terms and Conditions

Section A Special Contract Provisions

Section B NCIA General Provisions

Part IV Statement of Work

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**SIGNATURE SHEET**

Witnessed that:  
WHEREAS the Contractor

(Hereinafter referred to as “The Contractor”)

Agrees to perform the services and deliver the supplies herein in accordance with the mutual covenants and agreements herein set forth and,

WHEREAS the Purchaser  
**NCI Agency - NATO Communications and Information Agency**  
Represented by

**The General Manager, NATO Communications and Information Agency, Building 302 Annex room 111 7010 SHAPE, Belgium**

(Hereinafter referred to as “The Purchaser”)

in consideration for said performance and delivery, agrees to pay the Contractor in accordance with the terms and conditions herein.

Now THEREFORE, the rights and obligations of the parties hereto shall be subject to and governed by:

- a. this Contract;
- b. such clauses, provisions, representations, certifications and specifications as are attached or incorporated by reference herein.

**Signature CONTRACTOR:** \_\_\_\_\_

Name:  
Title:  
Date:

**Signature NCI Agency:** \_\_\_\_\_

Name :  
Title :  
Date:

IFB-CO-115750-CAB

## **Cabling Installation and Maintenance (SHAPE)**



### **BOOK II, PART I**

### **SCHEDULE OF SUPPLIES/SERVICES**

Price proposal:  
SSS Labour Costs Sheet

Technical proposal:  
SSS ANNEX 1: Bidders Evaluation Questionnaire  
SSS ANNEX 2: Contractor Staff Matrix  
SSS ANNEX 3: Costing Scenario  
SSS ANNEX 4: Costing Scenario building diagram (Visio file)

**NATO UNCLASSIFIED**

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The undersigned company \_\_\_\_\_  
Address \_\_\_\_\_  
P.I./C.F. \_\_\_\_\_  
Tel. \_\_\_\_\_  
Fax \_\_\_\_\_  
Email \_\_\_\_\_

Through his legal representative that signs present offer, having thoroughly examined the bid IFB-CO-115750-CAB in all its parts:

- Book I – bidding instructions,
- Book II – part II special provisions,
- Book II – part III general provisions,
- Book II – part III SOW.

For the execution of the service as indicated in the documents above given.

**Proposal**

Mr. \_\_\_\_\_ on behalf of the  
firm \_\_\_\_\_ proposes to apply the  
following:

**SSS Labour Costs Sheet:**

|  | Unskilled | Semi-skilled | Skilled | Engineer | Designer |
|--|-----------|--------------|---------|----------|----------|
| Works performed during normal working hours  |           |              |         |          |          |
| Works performed outside normal working hours   |           |              |         |          |          |
| Works performed in environmentally objectionable conditions during normal working hours  |           |              |         |          |          |
| Works performed in environmentally objectionable conditions outside normal working hours |           |              |         |          |          |
| Overheads (%)  |           |              |         |          |          |

|   |   |
|---|---|
| Revision formula to apply on the labour rates at the beginning of each option year (if granted) | <b>Belgian Health Index reference:</b><br><b>New Hourly rate option year = Base year hourly rate + (new JAN option year index – JAN base year index, in %).</b> |
|---|---|

**SSS ANNEX 1: Bidder Evaluation Questionnaire**

Provide a high-level description of how, from where and by whom the execution of this contract will be managed and executed? This description should include, but is not limited to, plans for site surveys, cost quotations, remediation work, warranty issues, travel to site, and storage of installation materials.

Provide evidence of knowledge and compliance with Belgian regulations concerning the following:

Digging/installation around/of gas pipes

Digging/installation around/of electricity cables

Digging/installation around/of data communication cables

Working underground in communication tunnels and chambers

Working at height

Provide a description of how sub-contractors will be managed to include:

Ensuring that the chosen sub-contractor is correctly certified to execute the particular work.

Ensuring that the chosen sub-contractor has the necessary licenses and permits to execute the particular work.

Ensuring the quantity and quality of the chosen sub-contractors work on site.

Provide evidence of experience producing engineering drawings using Bentley Microstation and Patch Manager.

If no previous experience can be produced, please explain your roadmap to bringing these two products on board.



**Note 1:** Contractor person who have no regular and direct involvement with NCIA during the execution of this contract, do not need to prove English language proficiency.

### SSS ANNEX 3: Costing Scenario

Please provide a full and detailed quotation and work plan for this fictitious work scenario. The scenario result should include As Built Files (minus Asset tag information) and fictitious but realistic cable test results. Please take the Background Information and attached PDF diagram of the building where the installation will take place, as your site survey.

*Cost estimate – Breakdown of costs, installation, materials, labour, as-built file, testing and any adaptations/change to infrastructure etc.*

*Timeframe – Please provide an approximation for cost offer, project start and project completion dates.*

*Procurement of materials – In the event that not all materials for a project are in stock, please provide an approximate timeframe for acquisition of materials.*

*Project offer acceptance – Providing project delivery plan (i.e 5 days).*

*Project start – Please provide an approximate timeframe of the project start time, after acceptance of the project offer.*

*Project completion –Timeframe on providing as-built files and test results (i.e 10 days) after project completion.*

*Project acceptance – Timeframe on rectifying of any faults found in quality and assurance check (i.e 5-10 days).*

*Warranty – The warranty time of any installation of data cabling conducted by your company.*

**Please note:** All of the above are only examples of how this scenario evaluation could be answered. The scenario should be completed using detailed project processes, approximate timeframes and accurate costing.

## Cost estimate request

Work order number **CRQ372350**

Customer / Division **SHAPE**

Description **Installation of 9EA CL & UN + 18EA phone drops**

Date of request **01.07.2023**

Due date **15.07.2023**

### Details of work requested

**Please provide a cost estimate for the installation of:**

- The installation of 1EA CL & UN Wallbox in bldg.236
- The installation of 1EA OM1 multimode 12pair multi-fibre ST-ST from the TR 236/116 UN rack to the new installed Wallbox
- The installation of 1EA OM1 multimode 12pair multi-fibre ST-ST from the TR 236/116 CL rack to the new installed Wallbox
- The installation of 1EA CL and UN FO, and 1EA double socket RJ45 drops inside room 108, 107, 106, 105
- The installation of 2EA CL and UN FO, and 2EA double socket RJ45 drops inside room 112
- The installation of 3EA CL and UN FO, and 3 double socket RJ45 inside room 115

Please note Due date.

Thank you.

*Please sign and return to sender*

Acknowledge receipt

Signature

Date / /

## Background information:

- Building dimension:
  - o Roof space height (middle) 150cm
  - o Room height 350cm
  - o Office layout provided
- Every office has one containment (Legrand FLEXIBLE COVER DLP TRUNKING - 50 X 105 - WITH COVER 65 MM - 2 M – WHITE) for power (top) and one containment for data (bottom) installed on the left and right wall
- Containment position height: 80cm from the floor to the first containment
- Access to these containments via ceiling (holes in roof and access to power and data containment provided)
- Installation of cables by using existing data trays inside roof space, access to roof space is in the middle of hallway in front of office 106
- Technical Room:
  - o 236/116
  - o 2EA 23RU racks for CL & UN network installed
  - o Raising cable tray installed from each rack to ceiling
  - o CAT3 RJ45 patch panel with 50 pair telephone cable installed in the bottom of the UN rack
- Labelling
  - o Label colour:
    - Red – CLASSIFIED (CL)
    - Yellow – UNCLASSIFIED (UN)
    - White - telephone
  - o FO drop:
    - 1<sup>st</sup> line            CL (CL or UN)
    - 2<sup>nd</sup> line            room number / pair information (Wallbox)
    - 3<sup>rd</sup> line            WB UN 236/1
    - Example:            UN  
                          108/1  
                          WB UN 236/1
  - o Telephone drop
    - Room number / TR room number
    - Patch panel number – patch panel port
    - Example:            108 / 116  
                          1-15/16
- Connector type
  - o FO connector
    - ST connector for OM1 installations similar to the Corning UniCam between office drop and Wallbox
    - ST connector pigtail between Wallbox and ATDU

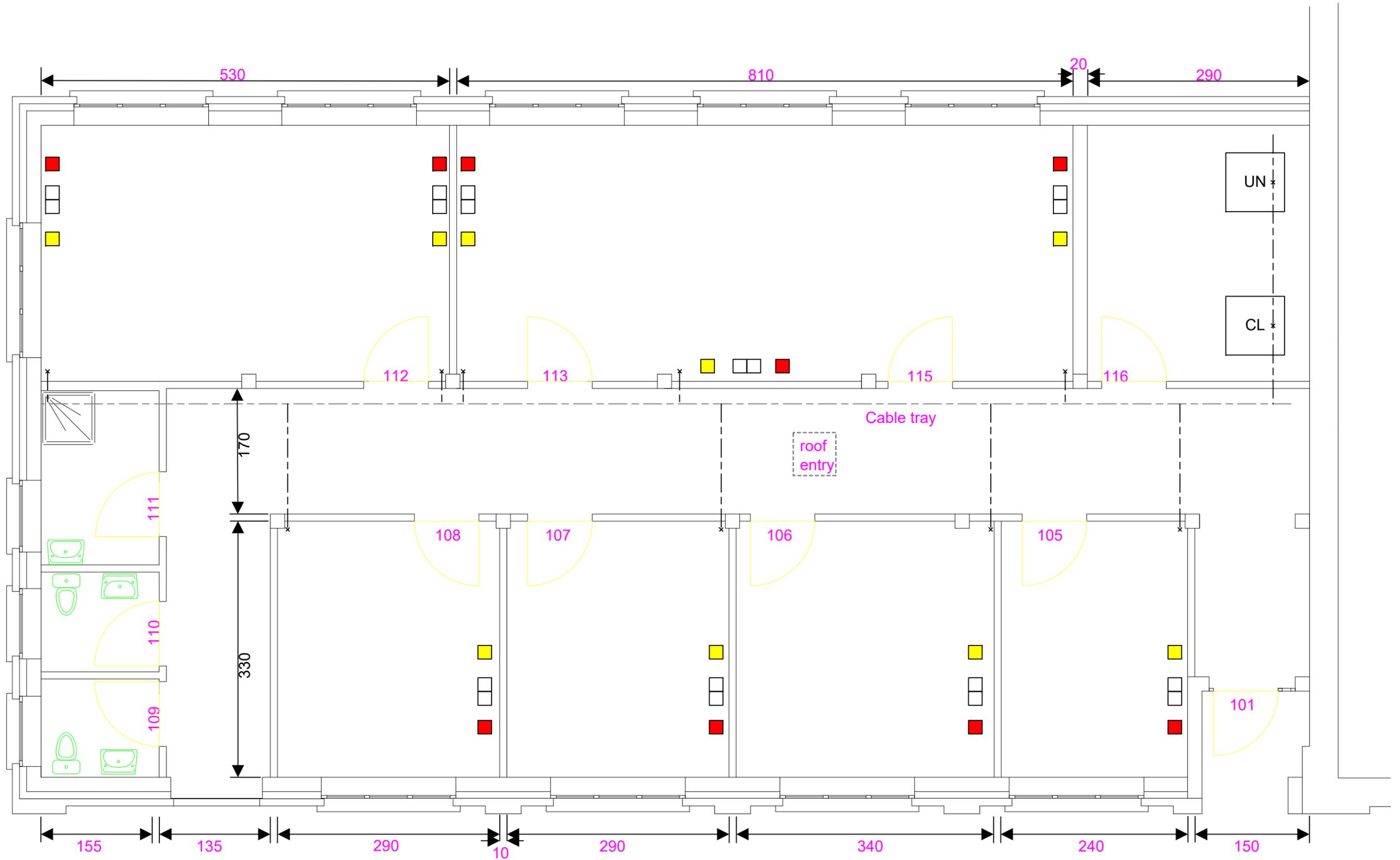
Legend:

|             |   |
|-------------|---|
| Wall box    | Wall mounted fibre enclosure similar to Panduit FWME4                           |
| ATDU        | 19" rack mounted fibre enclosure similar to Panduit FCE4U including accessories |
| Drop box    | connection box inside office  |
| RU          | Rack Unit   |
| Bldg.       | Building  |
| UN          | unclassified (network system)   |
| CL          | classified (network system)   |
| EA          | Each  |
| ST          | fibre optic ST-connector  |
| TR          | technical room  |
| FO          | fibre optic   |
| Due date    | 10 days after the receiving of the cost estimate request                        |
| Containment | A designated trunking/conduit to house data or power cabling                    |

## **SSS ANNEX 4: Costing Scenario building diagram**

Pdf document below is only for reference.

Please complete Microsoft Visio file attached.



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Contract Special Provisions



**IFB-CO-115750-CAB**

**Cabling Installation and Maintenance (SHAPE)**

**CONTRACT SPECIAL PROVISIONS**

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**IFB-CO-115750-CAB**

Contract Special Provisions

## Contract Special Provisions

**PART II**  
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## Contract Special Provisions

**1. ORDER OF PRECEDENCE**

- 1.1. In the event of any inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:
  - (a) The Signature Page
  - (b) The Schedule of Supplies and Services, Part I
  - (c) The Contract Special Provisions, Part II
  - (d) The Contract General Provisions, Part III
  - (e) The Statement of Work, Part IV, of the Contract and Annexes thereto
  - (f) The Contractor's Proposal and responses to the Clarification Requests.

**2. ALTERATIONS, MODIFICATIONS AND DELETIONS OF THE NCI AGENCY GENERAL PRIVISIONS**

- 2.1. CLAUSE 1, "ORDER OF PRECEDENCE" of the General Contract Provisions is hereby modified and supplemented by Special Provision Clause 1 to reflect the order of precedence.
- 2.2. CLAUSE 7, "FIRM FIXED PRICE" of the General Contract Provisions is hereby supplemented by Special Provisions Clause 6.
- 2.3. CLAUSE 9, "PARTICIPATING COUNTRIES" of the General Contract Provisions is hereby supplemented by Special Provision Clause 5 to reflect that there are thirty one (31) Member Nations of the North Atlantic Treaty Organisation.
- 2.4. CLAUSE 11 "SECURITY" of the General Contract Provisions is hereby supplemented by Special Provisions Clause 22.
- 2.5. CLAUSE 19 "PRICING OF CHANGES, AMENDMENTS AND CLAIMS" of the General Contract Provisions is hereby supplemented by Special Provisions Clause 16.
- 2.6. CLAUSE 25 "INVOICES AND PAYMENT" of the General Contract Provisions is hereby supplemented by Special Provisions Clause 17.

**3. TYPE OF CONTRACT**

- 3.1. This is a Firm Fixed Price Contract with economic price adjustment.

**4. SCOPE OF WORK**

- 4.1. The Contractor shall perform the provision of Cabling Installation and Maintenance as per Part IV - Statement of Work (and its annex) and in accordance with Part I - Schedule of Supplies and Services for the firm fixed prices stated in this Contract.

## Contract Special Provisions

**5. PARTICIPATING COUNTRIES**

- 5.1. The following NATO member nations have agreed to fund this acquisition effort: (in alphabetical order):

ALBANIA, BELGIUM, BULGARIA, CANADA, CROATIA, THE CZECH REPUBLIC, DENMARK, ESTONIA, FINLAND, FRANCE, GERMANY, GREECE, HUNGARY, ICELAND, ITALY, LATVIA, LITHUANIA, LUXEMBOURG, MONTENEGRO, THE NETHERLANDS, NORTH MACEDONIA, NORWAY, POLAND, PORTUGAL, ROMANIA, SLOVAKIA, SLOVENIA, SPAIN, TURKEY, THE UNITED KINGDOM and THE UNITED STATES.

- 5.2. The Contractor may issue sub-contracts to firms and purchase from qualified vendors in any NATO member country. None of the work, including project design, labour and services, shall be performed other than by firms from and within participating countries.
- 5.3. 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.
- 5.4. The intellectual property rights to all designed documentation and system operating software shall reside in NATO member countries, and no license fees, or royalty charges shall be paid by the Contractor to firms, individuals or governments other than within the NATO member community.

**6. PRICE**

- 6.1. Firm Fixed Price

Firm Fixed Prices are established for the items defined in Part I - Schedule of Supplies and Services. The Firm Fixed Prices include all expenses. The Purchaser assumes no liability for cost incurred by the Contractor in excess

Contract Special Provisions  
of the stated Firm Fixed Prices except as provided under other provisions  
of this Contract.

#### 6.2. Option Price

The rates given in the Part I – Schedule of Supplies and Services, Options,  
are fixed for the base year of the contract.

The revision formula to apply on the labour rates at the beginning of each  
option year is:

**Belgian Health Index reference:**

**New Hourly rate option year = Base year hourly rate + (new JAN  
option year index – JAN base year index, in %).**

### 7. MINIMUM AND MAXIMUM OBLIGATIONS

- NCI Agency anticipates recurring requirements, but cannot predetermine the precise quantities of supplies or services that Information Technology (IT) services will need during the contract period.
- Consequently there are no minimum or maximum obligations determined for the Base contract and Options.
- As long as the requirements are fulfilled in accordance with purchase orders issued the selected Contractors will keep the exclusive rights for the provision of the services specified in the contract.

Base contracts and options:

The contract will last as a maximum as follows:

Base period: 1 January -31 December 2024.

Option 1: 1 year option up to 31 December 2025

Option 2: 1 year option up to 31 December 2026

Option 3: 1 year option up to 31 December 2027

Option 4: 1 year option up to 31 December 2028

## Contract Special Provisions

For each Purchase Order the Purchaser reserves the right, but has no obligation, to exercise Options at any time if and as operations demand, in all or in parts.

Options could be exercised at once or by staged orders and the Purchaser shall not be held liable for any costs or claims that may result to the Contractor if the options or one or more phases of the options are not exercised.

Subject to budget availability:

Notice of the decision to exercise a yearly Option will be provided to the Contractor not later than 10 days before the start date of the first Consultant services required.

- 7.1. Purchase orders to the Contractor for Consultant services will be issued in writing via Purchase orders and/or Purchase order modifications signed by the NCIA Contracting Officer. Purchase orders and Purchase order modifications are binding contract instruments to initiate Contractor activities and obligate funding to the contract.

The Purchase orders or Purchase orders modification will provide a detailed description of the services to be delivered and the execution period.

Purchase Orders will cover one type task orders, i.e. "Level of effort orders" that will specify the type of labour to be provided over a specified period of time and the general duties to be performed by the personnel provided by the Contractor.

## Contract Special Provisions

**8. EXECUTION PERIOD**

8.1. The execution period for this contract is 01 JAN 2024-31 DEC 2028, in case all options are exercised.

8.2. From the Contract Effective Date (CED) of the Purchase Orders or Purchase Order modifications issued, the Contractor will have a maximum of fourteen (14) calendar days to provide the required services, i.e. to have the Consultants reporting at the in-processing place (NCI Agency HQ SHAPE Mons Belgium or possibly directly to the deployed location).

If the Contractor is not available within thirty (30) calendar days from the Contract Effective Date (CED), the Contractor's proposal should be disqualified upon NCI Agency sole decision and TERMINATION FOR DEFAULT and/or LIQUIDATED DAMAGES could apply.

The services of the Contractor shall be available to NATO from that date until any termination date specified in the contract or until such later date as may be agreed between the Contractor and the Purchaser pursuant to the clause CONTRACT CHANGES AND MODIFICATIONS of the NCI Agency Contract General Provisions.

**9. PERFORMANCE BOND**

9.1. Within thirty (30) days of award of the contract, the Contractor must deliver to the contracting officer a bank guarantee in an amount of ten percent (10%) of the initial estimated contractual amount.

9.2. A renewal of the aforementioned bank guarantee will be required for each year the contract is extended.

9.3. The bank guarantee must be worded such that payment will be pursuant to certification, to the bank and the Contractor, by the Contracting Officer that the Contractor has defaulted, in whole or in part, on any provision of the contract or a purchase order. The certification is not subject to the agreement of the Contractor.

**10. NON-EXCLUSIVE RIGHTS**

10.1. Subject to the availability of funds, projects will normally be assigned to the Contractor.

10.2. NCI AGENCY reserves at its sole discretion the right to negotiate other contracts for specific or specialized, mechanical and maintenance works with other parties.

**11. WORKING HOURS**

11.1. Works shall be performed on weekdays in accordance with the official working hours of Engineer Branch: 08:30H till 17:30H (Fridays: 15:30H).

## Contract Special Provisions

- 11.2. For specific reasons, some buildings may have restricted opening hours. In case of such foreseen time constraints, the Contractor shall adapt his workforce schedule accordingly at no extra cost to NCI AGENCY. Time lost due to lack of precaution will not be charged.
- 11.3. Works will not normally be performed on Saturdays, Sundays or official holidays, except for special projects or emergencies and only on the authority or instruction of the COTR or his representative.

**12. PROCESSING OF PROJECTS**

- 12.1. Once a requirement is identified, the Contractor shall provide, at no cost to NCI Agency, a rough indication of cost.
- 12.2. Once the requirement is approved, NCI Agency will request the Contractor to prepare preliminary design with associated working drawings and detailed cost estimate.

When preparing estimates the Contractor must apply the following sequence:

- 1<sup>st</sup> : Use his own workforce for execution of works,
- 2<sup>nd</sup> : Exceptionally, resort to sub-contract for works/items.

The Contractor shall produce these documents within ten (10) working days of request or, exceptionally, within a shorter delay, as stipulated by the COTR.

The costs related to this phase have to be considered as Contractor overheads.

- a. For works/projects that are sub-contracted, whenever the total amount of the project is above level B (in 2023, level B equals 20 000 €), the Contractor shall solicit a minimum of three (3) firms. The Contractor shall submit results of the market research, along with the price offers of each supplier, and an explanation of the selection criteria used to select a supplier. NCI Agency will validate selection criteria and supplier selection prior to issuing the actual order to the Contractor, in a maximum period of 5 working days

For supplies/equipment needed for the execution of the contract, whenever the unit price of a supply/equipment is above level B (in 2023 level B equals 20 000 €), the Contractor shall solicit a minimum of three (3) firms. The Contractor shall submit results of the market research, along with the price offers of each supplier, and an explanation of the selection criteria used to select a supplier. NCI Agency will validate selection criteria and supplier selection prior to issuing the actual order to the Contractor, in a maximum period of 5 working days

The costs related to this phase have to be considered as Contractor overheads.

## Contract Special Provisions

- b. NCI Agency will review the preliminary design, the estimate and the schedule, in a maximum period of 5 working days :
1. Should these documents contain errors and/or omissions, the Contractor shall adapt until an acceptable design, fair and reasonable cost estimates and schedule are provided.  
The costs related to this phase have to be considered as Contractor overheads.
  2. For changes specifically requested by NCI Agency:
    - No compensation is due to the Contractor for the first request after submission of the Contractor's first design/estimate schedule. The costs related to this phase have to be considered as Contractor overheads.
    - As from the second request for modification, the Contractor is entitled to claim compensation for the additional number of hours spent on the project. Labour rates shall be charged in accordance with the Contractor's personnel labour rate (engineer, designer). In this case, full justification is to be provided to the contracting officer, through the COTR, who will assess the fairness and reasonableness of the request prior to agreeing an equitable adjustment, in a maximum period of 5 working days.
- c. Upon NCI AGENCY's approval of the design/estimate/schedule, the Contractor shall prepare final design, cost estimate and construction schedule within five (5) working days. The cost estimate shall be submitted on the template provided by NCI AGENCY upon award of the contract. The costs related to this phase have to be considered as Contractor overheads.
- In the event NCI AGENCY requires final design, cost estimate and construction schedule within a shorter timeframe, the Contractor is entitled to claim compensation for the additional number of hours spent to speed-up the project. Labour rates shall be charged in accordance with the Contractor's personnel labour rate (engineer, designer). In this case, full justification is to be provided to the contracting officer in a maximum period of 5 working days, through the COTR, who will assess the fairness and reasonableness of the request prior to agreeing an equitable adjustment.
- d. Upon NCI AGENCY's approval of final design, cost estimate and construction schedule, the cost estimate shall be considered as a firm fixed price offer from the Contractor for the execution of the given project and a purchase order will be issued accordingly. In case of emergencies, pending the issuance of a purchase order, a written Site Works Instruction document can be produced by the Contracting Officer to allow the Contractor to commence the works. Costs produced by the issuance of the Site Works Instruction are considered as Contractor overheads unless full justification

Contract Special Provisions is provided to the contracting officer, through the COTR, that expenses incurred justify substantial additional expenses.

- e. Once the work is finalized, NCI AGENCY is entitled to request the Contractor to provide a final breakdown of actual costs incurred. Contractor should provide this breakdown in a maximum period of 10 working days.

## Contract Special Provisions

**13. CHANGES IN PROJECT SCHEDULE**

- 13.1. Contractor has to take into consideration that changes in project schedule can occur due to operational priorities, health and safety obligations, unforeseen maintenance, and budget increase/decrease.
- 13.2. This can result in having to speed up works, urgent start-up of project or stoppage of works.
- 13.3. Only the contracting officer or the COTR is authorised to hold up work for the exigencies of NCI Agency. Any other NCI Agency staff member requesting a stoppage will be directed to the contracting officer or the COTR for a decision on the actual need to stop the progress of the work.
- 13.4. Following a stop-work order, the time "lost" shall be noted down by the Contractor at the beginning and the end of stoppage period and countersigned by the COTR or any other person designated by him, on a form to be provided by the COTR.
- 13.5. If the performance of all or any part of the project is modified, delayed or interrupted by an act of NCI Agency, Contractor will be entitled to obtain compensation for the incurred costs. Compensation will be agreed between the Contracting Officer/COTR and the Contractor based on full justification.

**14. ACCEPTANCE**

- 14.1. Any new installation or modification of electrical or mechanical work must be inspected and accepted by a certified Belgian inspection agency prior to provisional acceptance.
- 14.2. NCI Agency will give provisional acceptance when:  
the work is satisfactorily completed,  
and where applicable, the as-built drawings, documentation package including certified inspection agency report, technical manual, list of spare parts as applicable, etc are delivered to NCI Agency.
- 14.3. NCI Agency will give final acceptance after the one year warranty period has ended and after the Contractor has corrected, at its expense, all deficiencies noted on the provisional acceptance and corrected all deficiencies found during the warranty period.

**15. TRANSPORTATION OF EQUIPMENT**

- 15.1. All supplies covered under this Contract and items shipped under warranty for repair or otherwise, shall be transported to and from all destinations at the responsibility of the Contractor. The Purchaser shall not be liable for any storage, damage, accessorial or any other charges involved in such transporting of supplies.

## Contract Special Provisions

**16. PRICING OF CHANGES, MODIFICATIONS, FOLLOW-ON CONTRACTS AND CLAIMS**

- 16.1. 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, in accordance with Clause 16 – “Changes” of the Contract General Provisions.
- 16.2. Changes, modifications, follow-on Contracts of any nature, and claims shall be priced in accordance with Clause 19 – “Pricing of Changes, Amendments and Claims” of the Contract General Provisions, and with the "Purchaser's Pricing Principles" as set out in the Annex to the Contract General Provisions.
- 16.3. Except otherwise provided for in this Contract, prices quoted for the above-mentioned changes, modifications, etc. shall have a minimum validity period of six (6) months from submission.

**17. INVOICES AND PAYMENT**

- 17.1. Following Purchaser acceptance, in writing, payment for supplies and services furnished shall be made in EUROS.
- 17.2. 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.
- 17.3. No payment shall be made with respect to undelivered supplies; works not performed, services not rendered and/or incorrectly submitted invoices.
- 17.4. No payment will be made for additional items delivered that are not specified in the contractual document.
- 17.5. The invoice amount is exclusive of VAT and exclusive of all Taxes and Duties in accordance with Clause 26 - “Taxes and Duties” of the Contract General Provisions.
- 17.6. The Purchaser shall not bear any liability related to financial guarantees, which the Contractor is required to provide under this Contract.
- 17.7. The Purchaser is released from paying any interest resulting from any reason whatsoever.
- 17.8. 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: Contract number, Purchase Order number, Contract Amendment number (if any) and the Contract Line Item(s) (CLIN) as they are defined in the priced Schedule of Supplies and Services.
- 17.9. The invoice shall contain the following certificate:

## Contract Special Provisions

“I certify that the above invoice is true and correct, that the delivery of the above described items has been duly realised 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.

17.10. Invoices shall be submitted to:

NCI Agency HQ Brussels, Avenue du Bourget, B-1110  
Brussels-Belgium

No paper invoices will be accepted. Please e-mail invoices to the following e-mail address:

\* \* \* [accountspayable@ncia.nato.int](mailto:accountspayable@ncia.nato.int)

17.11. NCI AGENCY will make payment within 45 days of receipt by NCI AGENCY of a properly prepared and documented invoice. The conditions of payment are detailed in the Statement of Work.

17.12. Upon completion of projects, inspection and acceptance by NCI Agency, invoice will be submitted to NCI Agency.

As a minimum, each invoice shall contain the minimum following information:

- Invoice reference number and issue date;
- The name, address of NCI Agency;
- The Contract number;
- Purchase Order number (if applicable);
- The description of the project;
- The total amount to be paid;
- The bank account details where the Contractor will receive the payment.

Invoices under the contract will be established in Euro.

For projects above 25 000 €, partial invoicing/payment may be authorized, subject to provisional acceptance. Total amount of partial payments will never exceed ninety percent (90%) of the purchase order amount.

Final invoicing/payment of a project may only take place when the final acceptance has been signed by the COTR.

## Contract Special Provisions

**18. FINAL BREAKDOWN OF COSTS**

- 18.1. Once the project is fully executed, NCI Agency reserves the right to request the Contractor to provide NCI Agency with a final breakdown of actual costs incurred. Final breakdown will be provided in a maximum of 10 working days.
- 18.2. Template for the final breakdown of costs shall be identical to the one used for the cost estimate but shall mention the actual costs for supplies/equipment and sub-Contractor, as well as the actual labour hours per category of Contractor personnel.
- 18.3. By actual number of hours, NCI Agency means the number of hours effectively worked by Contractor personnel. This number of hours shall not include time for travel from home to Contractor area, time for lunch, hours lost due to lack of precaution/failure on the part of the Contractor.
- 18.4. All supporting documents shall be attached to the final breakdown of costs: invoice(s) for supplies/equipment/sub-Contractor and the recap of hours worked, signed by the Contractor and the COTR for each Contractor personnel, etc.

NCI Agency will periodically audit Contractor's accounting pieces to verify accuracy of the provided elements.

**19. SUPPLEMENTAL AGREEMENT(S), DOCUMENTS AND PERMISSIONS**

- 19.1. 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 38 – "Termination for Default" of the Contract General Provisions.
- 19.2. 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 finalised and issued by the appropriate governmental authority, are subject to review by the Purchaser. If such supplemental agreement(s), documents and permissions are contrary to cardinal conditions of the signed Contract between the Parties, and the Parties 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

Contract Special Provisions  
and costs of any kind, and any payments received by the Contractor  
from the Purchaser will be refunded to the Purchaser by the  
Contractor.

## 20. APPLICABLE REGULATIONS

- 20.1. The Contractor shall be responsible for obtaining permits or licences to comply with national codes, laws and regulations or local rules and practices of the country of installation with the respect of any works carried out at the designated installation sites stated under this Contract.
- 20.2. 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 installation's safety provisions.
- 20.3. 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.
- 20.4. The Contractor shall:
  - maintain in its site office, daily, a list of workers present on site, including those who are employed by its sub-Contractor(s). For those workers who are affiliated to the social security system of a country of the EU, other than Belgium, a copy of the certificate E101 must be provided to each such person;
  - Provide a certificate from his insurer stating that he is covered for third party liability and work accidents for all personnel assigned to the contract;
  - Be aware that, in accordance with Belgian laws, compliance with the above requirements is an essential condition for NCIA to proceed with the payment of the Contractor's bills. Compliance can be verified at any time by either the NCIA Contracting Officer or the COTR;
  - Guarantee that all labour and materials comply with the current Belgian norms and are in accordance with the best modern practices. In addition to the specifications of "Cahier des Charges", unless otherwise specified, works shall be carried out according to :
    - Règlement Général sur les Installations Electriques (R.G.I.E.) ;
    - Bureau de normalisation (N.B.N.) and Euronorm (E.N.) ;
    - Spécifications Techniques Unifiées (S.T.S.) ;
    - Règlement Général pour la Protection du Travail (R.G.P.T.) and the « Code du Bien-Etre au Travail »;

## Contract Special Provisions

- Published Belgian Decrees relating to public works, supplies and services.

It is the firm's responsibility to obtain all documents not published by NCIA. Often, these documents are only available in French and/or Dutch

**21. RIGHTS IN TECHNICAL DATA**

- 21.1. The Contractor hereby grants the Purchaser the unrestricted rights without further payment to use duplicate or disclose, in whole or in part, any technical data, resulting directly from the performance of this Contract. For the purpose of this Clause, "technical data" is defined to mean all recorded information of a technical nature to support, maintain or operate the services being purchased under this Contract. It is to include, but is not limited to, technical literature such as text in manuals, drawings, design documents, equipment instructions, illustrations, schematics or wiring diagrams, test procedures, parts lists, computer software etc.
- 21.2. For computer software, subject to the application of a site license, the Purchaser shall have the unlimited rights to use the computer software for NATO, NATO Nations and NATO Operations or all other similar operational requirements to permit the system equipment recovery in case of fire, flood or any other major system breakdown.
- 21.3. As used in the above paragraph, "computer software" means a series of instructions or statements in a form acceptable to the computer designed to cause the computer to execute an operation or instructions. Computer software includes operating systems, assemblers, compilers, interpreters, data management systems, utility programmes and ADP equipment maintenance and diagnostic programmes, as well as applications programmes. Computer programmes may either be machine-dependent and may be general purpose in nature or designed to satisfy the requirements of a particular user.

**22. SECURITY**

- 22.1. The security classification of this Contract is NATO UNCLASSIFIED.
- 22.2. In the performance of all works under this Contract it shall be the Contractor's responsibility to ascertain and comply with all applicable NATO security regulations as implemented by the Purchaser and by the local sites.

## Contract Special Provisions

- 22.3. Contractor and /or Subcontractor personnel employed under this Contract that will require access to locations, such as sites and headquarters, where classified material and information up to and including “NATO SECRET” are handled shall be required to have NATO security clearance up to this level. It shall be the Contractor’s responsibility to obtain the necessary clearances and to have such clearances confirmed to the Purchaser by the relevant national security authority for the duration of the Contract in its entirety.
- 22.4. Failure to obtain or maintain the required level of security for Contractor personnel for the period of performance of this Contract shall not be grounds for any delay in the scheduled performance of this Contract and may be grounds for termination under Clause 38 – “Termination for Default” of the Contract General Provisions.
- 22.5. All NATO CLASSIFIED material entrusted to the Contractor shall be handled and safeguarded in accordance with the applicable security regulations.
- 22.6. The Contractor shall note that there are restrictions regarding the carriage and use of electronic device (e.g. laptops) in Purchaser secured locations. The Contractor shall be responsible for satisfying and obtaining from the appropriate site authorities the necessary clearance to bring any such equipment into the facility.

**23. INDEPENDENT CONTRACTOR**

- 23.1. The Personnel provided by the Contractor are at all times employees of the Contractor and not the Purchaser. In no case shall Contractor personnel act on behalf of or as an agent for NATO or any of its bodies. In no way shall the Contractor personnel claim directly or indirectly to represent NATO in an official capacity or claim themselves to be NATO employees.
- 23.2. The Purchaser shall not be responsible for securing work permits, lodging, leases nor tax declarations, driving permits, etc., with national or local authorities. Contractor’s personnel employed under this Contract are not eligible for any diplomatic privileges or for NATO employee benefits.

**24. NON-DISCLOSURE AGREEMENT**

- 24.1. All Contractor and sub-Contractor’s personnel working at any NATO Organisation / Commands premises or having access to NATO classified / commercial-in-confidence information must certify and sign the Declaration attached hereto at Annex A and provide it to the NCI AGENCY Contracting Officer prior to the commencement of any performance under this Contract.

## Contract Special Provisions

**25. INSURANCES**

25.1. The Contractor is responsible for providing the necessary insurances for his personnel and the equipment as needed in the area of operations and for performing the Contract.

**26. CARE AND DILIGENCE OF PROPERTY**

26.1. The Contractor shall use reasonable care to avoid damaging buildings, walls, equipment, and vegetation (such as trees, shrub and grass) on the work site.

26.2. If the Contractor damages any such buildings, walls, equipment or vegetation on the work site, he shall fix or replace the damage as directed by the Purchaser and at no expense to the Purchaser. If he fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost thereof, which may be deducted from the Contract price.

26.3. The Purchaser will exercise due care and diligence for the Contractor's furnished equipment and materials on site. The Purchaser will, however, not assume any liability except for gross negligence and wilful misconduct on the part of the Purchaser's personnel or agents.

26.4. The Contractor shall, at all times, keep the site area, including storage areas used by the Contractor, free from accumulations of waste. On completion of all work the Contractor is to leave the site area and its surroundings in a clean and neat condition.

**27. RESPONSIBILITY OF THE CONTRACTOR TO INFORM EMPLOYEES OF WORK ENVIRONMENT**

27.1. The Contractor shall inform his employees under this Contract of the terms of the Contract and the conditions of the working environment.

27.2. Specifically, personnel shall be made aware of all risks associated with the performance under this Contract, the conditions of site in which the performance is to take place and living conditions while performing within the boundaries of the Contract. The selection of adequate personnel shall remain sole responsibility of the Contractor.

**28. COMPREHENSION OF CONTRACT AND SPECIFICATIONS**

28.1. The Contractor warrants that he has read, understood and agreed to each and all terms, clauses, specifications (including drawings) 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.

## Contract Special Provisions

- 28.2. 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.
- 28.3. 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.
- 28.4. Notwithstanding the "Changes" Clause 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 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.

**29. OPTIONS**

- 29.1. The Purchaser shall have the right to unilaterally place on Contract the provision of "Options" in Part I - Schedule of Supplies and Services for the duration 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.
- 29.2. Prices for all optional line items shall have a validity period that corresponds to the option exercise periods cited above.
- 29.3. The Contractor understands that there is no obligation under this Contract for NCI AGENCY to exercise any of the optional line items and that NCI AGENCY bears no liability should it decide not to exercise the options (totally or partially). Further, NCI AGENCY 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.

## Contract Special Provisions

- 29.4. Purchaser may increase the quantity of supplies and 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.
- 29.5. The options shall be exercised by written amendment to the Contract, or by incorporation at the time of the Contract award.

**30. CONTRACT ADMINISTRATION**

- 30.1. The Purchaser is the NCI Agency. The NCI AGENCY is the Point of Contact for all Contractual and Technical issues. The Contractor shall accept Contract modifications only in writing from the NCI AGENCY Contracting Authority.
- 30.2. All notices and communications between the Contractor and the Purchaser shall be written and conducted in English. Contract modifications only become valid when received in writing from the General Manager, NCI AGENCY, and his authorised representative.
- 30.3. Formal letters and communications shall be sent to the contracting officer's email address.
- 30.4. Informal notices and informal communications may be exchanged by any other communications means including telephone and e-mail.
- 30.5. All notices and communications shall be effective upon receipt.
- 30.6. Official points of contact are:

**PURCHASER**

NCI Agency  
ACQ MONS  
Building 302 Annex Rm 111  
B-7010 SHAPE  
Belgium

POC: Esteban Diaz  
Tel: +32 65 44 7186  
E-mail: [esteban.diaz@ncia.nato.int](mailto:esteban.diaz@ncia.nato.int)

**CONTRACTOR**

Copy To:

## Contract Special Provisions

*Company Name*  
*Address*

*Company Name*  
*Address*

POC:  
Tel:  
GSM:  
Fax:  
E-mail:

POC:  
Tel:  
GSM:  
Fax:  
E-mail:

**31. TECHNICAL DIRECTION**

- 31.1. The Contract will be administered by the Purchaser in accordance with the Clause 24 of these Contract Special Provisions entitled "Contract Administration".
- 31.2. The individuals working on this Contract shall perform the effort within the general scope of work identified in the Contract Book II Part IV - Statement of Work (SOW). This effort will be directed on a more detailed level by the Purchaser's Project Manager who will provide detailed tasking and instruction on how to proceed.
- 31.3. The Purchaser reserves his right to assign a Technical Representative who will provide the Contractor personnel with instruction and guidance, within the general scope of work, in performance of their duties and working schedule.
- 31.4. Neither the Purchaser's Project Manager as identified in Clause 24 of these Contract Special Provisions, nor any Technical Representative has the authority to change the terms and conditions of the Contract. If the Contractor has reason to believe that the Project Manager/Technical Representative is requesting effort on terms inconsistent with that in the scope of the Contract, the Contractor shall immediately inform the Purchaser's Contracting Authority for confirmation of the actions. Failure to obtain confirmation that the action of the Project Manager is under the authority of the Contract shall render any subsequent claim null and void.
- 31.5. Upon receipt of such notification above, the Purchaser's Contracting Authority will
  - (a) confirm the effort requested is within scope, or
  - (b) confirm that the instructions received constitute a change and request a quotation for a modification of scope and/or price, or
  - (c) rescind the instructions.

**ANNEX A: DECLARATION**

We, the undersigned.....(Company) duly represented by ..... (Hereinafter “Contractor”) do hereby certify that we shall ensure that the following conditions be accepted and observed by all (Contractor) employees working under **IFB-CO-115750-CAB**

|      |                               |           |
|------|-------------------------------|-----------|
|      |                               |           |
| Date | Full name (in block capitals) | Signature |

=====

**To be signed by the Contractor’s Employees working in the NATO's premises upon commencement of their WORK.**

I UNDERSTAND:

That I must preserve the security of all classified /commercial-in-confidence information which comes to my knowledge as a result of this Contract with NATO and that I undertake to comply with all relevant security regulations.

That I must not divulge to any unauthorised person, any classified/commercial-in confidence information gained by me as a result of my Contract with NATO, unless prior permission for such disclosure has been granted by the General Manager of the NCI AGENCY or by his designated representative.

That I must not, without the approval of the General Manager of the NCI AGENCY, publish (in any document, article, book, CD, video, film, play, or other form) any classified /commercial-in-confidence information which I have acquired in the course of my work under IFB-CO-115750-CAB.

That, at the end of Contract and after performance of all required tasks, I must surrender any official document or material made or acquired by me in the course of my work under IFB-CO-115750-CAB, save such as I have been duly authorised to retain.

That the provisions of the above Declaration apply not only during the period of work under IFB-CO-115750-CAB, but also after my Contract has ceased and that I am liable to prosecution if either by intent or negligence I allow classified/commercial-in-confidence information to pass into unauthorised hands.

NATO UNCLASSIFIED

**NATO COMMUNICATIONS AND INFORMATION  
AGENCY**



**CONTRACT GENERAL PROVISIONS**

V 1.0 dated 16 Oct 2014

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**1. ORDER OF PRECEDENCE**

In the event of any inconsistency in language, terms or conditions of the various parts of this Contract, precedence will be given in the following order:

- 1.1. The Signature Page;
- 1.2. The Contract Schedules, Part I;
- 1.3. The Contract Contract Special Provisions, Part II;
- 1.4. The Contract General Provisions, Part III;
- 1.5. The Statement of Work, Part IV of the Contract;
- 1.6. The Annexes to the Statement of Work.

**2. DEFINITIONS OF TERMS AND ACRONYMS**

- 2.1 **Assembly-** An item forming a portion of equipment that can be provisioned and replaced as an entity and which normally incorporates replaceable parts or groups of parts.
- 2.2 **Acceptance-** Acceptance is the act by which the Contracting Authority recognises in writing that the delivered Work meets the Contract requirements..
- 2.3 **Claims-** A written demand or written assertion by one of the Parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of Contract terms, or other relief arising under or in relation to this Contract.
- 2.4 **Clause-** A provision of the Special or General Provisions of this Contract.
- 2.5 **Codification Authority-** The National Codification Bureau (NCB) or authorised agency of the country in which the Work is produced.
- 2.6 **Commercial Off-the-Shelf Items (COTS)-** The term “Commercially Off-the-Shelf Item (COTS)” means any item that:is a commercial item, customarily used by the general public, that has been sold, leased, or licensed to the general public or has been offered for sale, lease or license to the general public;
  - a) is sold in substantial quantities in the commercial marketplace; and
  - b) is offered to the Purchaser, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace.
- 2.7 **Component-** A part or combination of parts, having a specific function, which can be installed or replaced only as an entity.

## The Contract General Provisions

- 2.8 **Contractor Background IPR-** Any IPR owned by the Contractor and/or any Sub-contractor or licensed by a third party to the Contractor which is not created in relation to or as the result of work undertaken for any purpose contemplated by the Contract and which is needed for the performance of the Contract or for the exploitation of Foreground IPR.
- 2.9 **Correction-** Elimination of a Defect.
- 2.10 **Contract-** The agreement concluded between the Purchaser and Contractor, duly signed by both contracting parties. The Contract includes the documents referred to in Clause 1 (Order of Preference).
- 2.11 **Contracting Authority-** The General Manager of the NCI Agency, the Director of Acquisition, the Chief of Contracts of the NCI Agency or the authorised representatives of the Chief of Contracts of the NCI Agency.
- 2.12 **Contractor-** The person or legal entity from a Participating Country which has signed this Contract and is a Party thereto.
- 2.13 **Day-** A calendar day
- 2.14 **Defect-** Any condition or characteristic in any Work furnished by the Contractor under the Contract that is not in compliance with the requirements of the Contract.
- 2.15 **Deliverable-** Any and all goods (including movable and immovable goods) to be delivered pursuant to the terms of this Contract including, without limitation, building, raw materials, components, intermediate Assemblies, Parts, end products, equipment, documentation, data, software.
- 2.16 **Design Defect-** Defect attributable to incompatibility, unsuitability or erroneous application of theory, drawings or formula.
- 2.17 **Effective Date of Contract (or "EDC")-** The date upon which this Contract is deemed to start. Unless otherwise specified, a Contract enters into force on the date of the last signature of the Contract by the Parties.
- 2.18 **Failed Component-** A part or combination of parts, having a specific function, which can be installed or replaced only as an entity which ceases to perform in a manner consistent with its intended use and specifications of the Contract.
- 2.19 **Foreground IPR -** Any IPR created by the Contractor or any subcontractor of the Contractor in the course of or as the result of work undertaken for any purpose contemplated by the Contract.
- 2.20 **IPR-** Any intellectual property rights of any qualification irrespective of their stage of development or finalisation, including but not limited to patents, trademarks (registered or not), designs and models (registered or not) and applications for the same, copyright (including on computer software), rights in databases, know-how, confidential information and rights in records (whether or not stored on computer) which includes technical and other data and documents.

## The Contract General Provisions

- 2.21 **Manufacturing Defect-** Defect attributable to improper manufacturing processes, testing or quality control procedures.
- 2.22 **NATO-** The North Atlantic Treaty Organisation. For the purpose of this contract, the term NATO includes NATO bodies, the NATO military command structure, agencies and NATO nations.
- 2.23 **NCI AGENCY-** The NATO Communications and Information Agency. The NCI Agency is part of the NCIO. The General Manager of the Agency is authorised to enter into contracts on behalf of the NATO CI Organisation.
- 2.24 **NATO COMMUNICATIONS AND INFORMATION ORGANISATION (NCIO)-** The NATO Communications and Information Organisation. The NCI Organisation constitutes an integral part of the North Atlantic Treaty Organisation (NATO) The NCI Organisation is the legal personality from whence flows the authority of its agent, the NCI Agency, to enter into contracts.
- 2.25 **NATO Purposes-** Activities conducted by or on behalf of NATO to promote the common defence and common interests of NATO, such as, among others, NATO operations, NATO procurement, NATO training and NATO maintenance.
- 2.26 **Part-** An item of an assembly or sub-assembly, which is not normally further broken down.
- 2.27 **Participating Country-** A NATO member country that participates in financing the effort.
- 2.28 **Parties-** The Contracting Parties to this Contract, i.e., the Purchaser and the Contractor.
- 2.29 **Purchaser-** The NCI Organisation, as represented by the General Manager, NCI Agency. The Purchaser is the legal entity who awards and administers the Contract on behalf of NATO and stands as one of the Contracting Parties.
- 2.30 **Purchaser Background IPR-** Any IPR owned by the Purchaser as of the Effective Date of Contract and which has been developed by, assigned to or licensed to the Purchaser prior to the Effective Date of Contract.
- 2.31 **Purchaser Furnished Property-** Any item of equipment, material, document, technical data, information and Software or any other item of property furnished by the Purchaser to the Contractor required or useful for the performance of the Contract. The Purchaser Furnished Property, if any, shall be detailed in the Contract.
- 2.32 **Software (Computer Software)-** A computer program comprising a series of instructions, rules, routines regardless of the media in which it is recorded, that allows or cause a computer to perform a specific operation or a series of operations.
- 2.33 **Software Defect-** Any condition or characteristic of Software that does not conform with the requirements of the Contract.

## The Contract General Provisions

- 2.34 **Sub-Assembly-** A portion of an Assembly consisting of two or more parts that can be provisioned and replaced as an entity. The definition purposely excludes Components and/or Parts.
- 2.35 **Sub-contract-** Any agreement made by the Contractor with any third party in order to fulfil any part of the obligations under this Contract. Sub-contracts may be in any legal binding form, e.g., contract, purchase order, etc.
- 2.36 **Sub-contractor-** Any person or legal entity directly or indirectly under Sub-contract to the Contractor in performance of this Contract.
- 2.37 **Third Party IPR-** Any IPR owned by a third party not being the Purchaser or the Contractor or its Subcontractor, which is needed for the performance of the Contract or for the exploitation of Foreground IPR. This includes, for example, third party software, including open source software.
- 2.38 **Work-** Any deliverable, project design, labour or any service or any other activity to be performed by the Contractor under the terms of this Contract.

### 3. **AUTHORITY**

- 3.1. All binding contractual instruments and changes, including amendments, additions or deletions, as well as interpretation of and instructions issued pursuant to this Contract shall be valid only when issued in writing by the Purchaser and signed by the Contracting Authority only.
- 3.2. No direction which may be received from any person employed by the Purchaser or a third party shall be considered as grounds for deviation from any of the terms, conditions, specifications or requirements of this Contract except as such direction may be contained in an authorised amendment to this Contract or instruction duly issued and executed by the Contracting Authority. Constructive change may not be invoked by the Contractor as a basis for Claims under this Contract.
- 3.3. The entire agreement between the Parties is contained in this Contract and is not affected by any oral understanding or representation, whether made previously to or subsequently to this Contract.
- 3.4. Personal notes, signed minutes of meetings, comments to delivered documentation and letters, e-mails and informal messages from project or other Purchaser staff which may indicate the intent and willingness to make changes to the Contract, do not implement the change to the Contract and shall not be used as a basis for claiming change to the Contract by the Contractor.

**4. APPROVAL AND ACCEPTANCE OF CONTRACT TERMS**

- 4.1. By his signature of the Contract, the Contractor certifies that he has read and unreservedly accepts and approves of all terms and conditions, specifications, plans, drawings and other documents which form part of and/or are relevant to the Contract. The Contractor further agrees that the terms of the Contract take precedence over any proposals or prior commitments made by the Contractor in order to secure the Contract. Contractor also hereby waives any and all rights to invoke any of the Contractor's general and special terms and conditions of sales and/or supply.

**5. LANGUAGE**

- 5.1. All written correspondence, reports, documentation and text of drawings delivered to the Purchaser by the Contractor shall be in the English language.

**6. AUTHORISATION TO PERFORM/CONFORMANCE TO NATIONAL LAWS AND REGULATIONS**

- 6.1. The Contractor warrants that he and his Sub-contractors are duly authorised to operate and do business in the country or countries in which this Contract is to be performed and that he and his Sub-contractors have obtained or will obtain all necessary licences and permits required in connection with the Contract. No claim for additional monies with respect to any costs or delay to obtain the authorisations to perform shall be made by the Contractor.
- 6.2. The Contractor acknowledges that he and his Sub-contractors are responsible during the performance of this Contract for ascertaining and complying with all applicable laws and regulations, including without limitation: labour standards, environmental laws, health and safety regulations and export controls laws and regulations in effect at the time of Contract signature or scheduled to go into effect during Contract performance. Failure to fully ascertain and comply with such laws, regulations or standards shall not be the basis for claims for change to the specifications, terms, conditions or monetary value of this Contract.

**7. FIRM FIXED PRICE CONTRACT**

- 7.1 This is a Firm Fixed Price Contract. The Firm Fixed Price of this Contract is as stated on the signature page of the Contract or any amendments thereto. The Purchaser assumes no liability for costs incurred by the Contractor in excess of the stated Firm Fixed Price except as may be authorised under certain provisions of this Contract.

**8. PERFORMANCE GUARANTEE**

- 8.1. As a guarantee of performance under the Contract, the Contractor shall deposit with the Purchaser within thirty (30) calendar days from the Effective Date of Contract a bank guarantee (the "Performance Guarantee") denominated in the currency of the Contract, to the value of ten per cent (10%) of the total Contract price.
- 8.2. The Performance Guarantee, the negotiability of which shall not elapse before the expiration of the warranty period, or such other period as may be specified in the Contract, shall be made payable to the Purchaser and shall be in the form of certified cheques or a Standby Letter of Credit subject to the agreement of the Purchaser. In the case of a Standby Letter of Credit, payment shall be made to the Purchaser without question and upon first demand by the Purchaser against a certificate from the Purchaser's Contracting Authority that the Contractor has not fulfilled its obligations under the Contract. The Contractor shall have no right to enjoin or delay such payment.
- 8.3. Certified Cheques issued to fulfil the requirements of the Performance Guarantee will be cashed by the Purchaser upon receipt and held in the Purchaser's account until the term of the Performance Guarantee has expired.
- 8.4. The standby letter of credit shall be subject to Belgian Law and shall be issued by (i) a Belgian bank, (ii) the Belgian subsidiary of a foreign bank licensed to provide financial services in Belgium; or (iii) an insurance company licensed to do business in Belgium and belonging to a Belgian banking institution provided the banking institution guarantees explicitly the demand for payment, unless otherwise specified by the Purchaser.
- 8.5. The Contractor shall request in writing relief from the Performance Guarantee upon expiration of the warranty period or such other period as may be specified in the Contract and such relief may be granted by the Purchaser.
- 8.6. The Contractor shall be responsible, as a result of duly authorised adjustments in the total contract price and/or period of performance by the Purchaser, for obtaining a commensurate extension and increase in the Performance Guarantee, the value of which shall not be less than ten per cent (10%) of the total contract price (including all amendments), and for depositing such guarantee with the Purchaser, within thirty (30) calendar days from the effective date of aforesaid duly authorised adjustment.
- 8.7. The failure of the Contractor to deposit and maintain such Performance Guarantee with the Purchaser within the specified time frame, or any extension thereto granted by the Purchaser's Contracting Authority, is a material breach of the Contract terms and conditions subject to the

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provisions of the Contract regarding Termination for Default.

- 8.8. The rights and remedies provided to the Purchaser under the present Clause are in addition to any other rights and remedies provided by law or under this Contract. The certificate described in Clause 8.2 above shall not be regarded as a Termination for Default and this Clause is in addition to and separate from the Clause of the Contract detailing termination for default.
- 8.9. If the Contractor elects to post the Performance Guarantee by Standby Letter of Credit, the form of the document shall be substantially as follows:

**PERFORMANCE GUARANTEE STANDBY LETTER OF CREDIT**

Standby Letter of Credit Number: \_\_\_\_\_

Issue Date: \_\_\_\_\_

Initial Expiry Date: \_\_\_\_\_

Final Expiry Date: \_\_\_\_\_

Beneficiary: NCI Agency, Finance, Accounting & Operations  
Boulevard Leopold III, B-1110, Brussels  
Belgium

- 1. We hereby establish in your favour our irrevocable standby letter of credit number {number} by order and for the account of (NAME AND ADDRESS OF CONTRACTOR) in the amount of \_\_\_\_\_ . We are advised this undertaking represents fulfilment by (NAME OF CONTRACTOR) of certain performance requirements under Contract No. \_\_\_\_\_ dated \_\_\_\_\_ between the NCI Agency ("NCIA and (NAME OF CONTRACTOR)).
- 2. We hereby engage with you that drafts drawn under and in compliance with the terms of this letter of credit will be duly honoured upon presentation of documents to us on or before the expiration date of this letter of credit.
- 3. Funds under this letter of credit are available to you without question or delay against presentation of a certificate signed by the NCI Agency Contracting Officer which states:

“(NAME OF CONTRACTOR) has not fulfilled its obligations under Contract No. \_\_\_\_\_ dated \_\_\_\_\_ between NCI Agency and (NAME OF CONTRACTOR) (herein called the “Contract”), and the NCI Agency, as beneficiary, hereby draws on the standby letter of credit number \_\_\_\_\_ in the amount denominated in the currency of the Contract, Amount up to the maximum available under the LOC), such funds to be transferred to the account of the Beneficiary

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number \_\_\_\_\_(to be identified when certificate is presented).”

Such certificate shall be accompanied by the original of this letter of credit.

4. This Letter of Credit is effective the date hereof and shall expire at our office located at \_\_\_\_\_(Bank Address)\_\_\_\_\_ on \_\_\_\_\_. All demands for payment must be made prior to the expiry date.
5. It is a condition of this letter of credit that the expiry date will be automatically extended without amendment for a period of one (1) year from the current or any successive expiry date unless at least 90 (ninety) calendar days prior to the then current expiry date we notify you by registered mail and notify (NAME OF CONTRACTOR) that we elect not to extend this letter of credit for such additional period. However, under no circumstances will the expiry date extend beyond \_\_\_\_\_ (“Final Expiry Date”) without amendment.
6. We may terminate this letter of credit at any time upon 90 (ninety) calendar days notice furnished to both (NAME OF CONTRACTOR) and the NCI Agency by registered mail.
7. In the event we (the issuing bank) notify you that we elect not to extend the expiry date in accordance with paragraph 6 above, or, at any time, to terminate the letter of credit, funds under this credit will be available to you without question or delay against presentation of a certificate signed by the NCI Agency Contracting Officer which states:

“The NCI Agency has been notified by {issuing bank} of its election not to automatically extend the expiry date of letter of credit number {number} dated {date} pursuant to the automatic renewal clause (or to terminate the letter of credit). As of the date of this certificate, no suitable replacement letter of credit, or equivalent financial guarantee has been received by the NCI Agency from, or on behalf of (NAME OF CONTRACTOR). (NAME OF CONTRACTOR) has, therefore, not fulfilled its obligations under Contract No. \_\_\_\_\_ dated \_\_\_\_\_ between NCI Agency and (NAME OF CONTRACTOR), and the NCI Agency, as beneficiary, hereby draws on the standby letter of credit number \_\_\_\_\_ in the amount of (Amount up to the maximum available under the LOC), such funds to be transferred to the account of the Beneficiary number \_\_\_\_\_ (to be identified when certificate is presented).”

Such certificate shall be accompanied by the original of this letter of credit and a copy of the letter from the issuing bank that it elects not to automatically extend the standby letter of credit, or terminating the letter of credit.

8. The Beneficiary may not present the certificate described in paragraph 7 above

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until 20 (twenty) calendar days prior to a) the date of expiration of the letter of credit should {issuing bank} elect not to automatically extend the expiration date of the letter of credit, b) the date of termination of the letter of credit if {issuing bank} notifies the Beneficiary that the letter of credit is to be terminated in accordance with paragraph 6 above.

9. Multiple partial drawings are allowed to the maximum value of the standby letter of credit.
10. This letter of credit sets forth in full the terms of our undertaking, and this undertaking shall not in any way be modified, amended, or amplified by reference to any document, instrument, or agreement referred to herein (except the International Standby Practices (ISP 98) hereinafter defined) or in which this letter of credit is referred to or to which this letter of credit relates, and any such reference shall not be deemed to incorporate herein by reference any document, instrument, or agreement.
11. This Letter of Credit is subject to The International Standby Practices-ISP98 (1998 Publication) International Chamber of Commerce Publication No.590.

**9. PARTICIPATING COUNTRIES**

- 9.1 Unless prior written authorisation of the Purchaser has been obtained, none of the Work, shall be performed other than by firms from and within NATO Participating Countries. Unless otherwise specified in the Contract Special Provisions, the Participating Countries are the twenty-eight (28) Member Nations of the North Atlantic Treaty Organisation.
- 9.2 Unless prior written authorisation of the Purchaser has been obtained, 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 NATO Participating Country.
- 9.3 The Contractor shall not place any Sub-contracts outside the NATO Participating Countries without the prior written authorisation of the Purchaser.
- 9.4 Unless prior written authorisation of the Purchaser has been obtained, the intellectual property rights for all software and documentation incorporated by the Contractor and/or its Sub-contractors into the Work shall vest with persons or legal entities from and within NATO participating nations and no royalties or licence fees for such software and documentation shall be paid by the Contractor to any source that does not reside within a NATO participating nation.
- 9.5 Any modification in the nationality, ownership and/or change of control of the Contractor and/or its Sub-contractor(s) shall be immediately notified in writing to the Purchaser with all necessary details to allow the Purchaser to determine whether or not the Contractor and/or its Sub-contractors continue

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to comply with the Clauses above. Non-compliance with the Clauses above, by the Contractor and/or its Subcontractor may constitute ground for termination of this Contract under Clause 39 (Termination for Default).

**10. SUB-CONTRACTS**

- 10.1 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.
- 10.2 Prior to the Sub-contractors being given access to any classified information, the Contractor shall ensure that any Sub-contractor that has a need to access classified information for the performance of any part of this Contract has been granted the appropriate facility and personnel security clearances by the Sub-contractor's national authorities and that such clearances are still in effect at the time the information is disclosed and remains in effect throughout the performance of the work to be carried out under the Sub-contract concerned.
- 10.3 The Contractor shall seek the approval in writing of the Purchaser prior to the placing of any Sub-contract if:
  - 10.3.1 the Sub-contract was not part of the Contractor's original proposal;
  - and
  - 10.3.2 the value of the Sub-contract is known or estimated to exceed 15 per cent of the total Contract value; or
  - 10.3.3 the Sub-contract is one of a number of Sub-contracts with a single Sub-contractor for the same or related Work under this Contract that in the aggregate are known or expected to exceed 15 per cent of the total Contract value.
- 10.4 The Contractor shall inform the Purchaser of any change in Sub-contractors for Sub-contracts of a value known or estimated to exceed 15 per cent of the total Contract value.
- 10.5 The Contractor shall submit a copy of any such proposed Sub-contract including prices when seeking approval to the Contracting Authority but such approval by the Contracting Authority shall in no way relieve the Contractor of his responsibilities to fully achieve the contractual and technical requirements of this Contract.
- 10.6 The Contractor shall, as far as practicable, select Sub-contractors on a competitive basis consistent with the objectives and requirements of the Contract.

**11. SECURITY**

- 11.1 The Contractor shall comply with all security measures as are prescribed by the Purchaser and the national security authority or designated security agency of each of the NATO countries in which the Contract is being performed. The Contractor shall be responsible for the safeguarding of classified information, documentation, material and equipment entrusted to him or generated by him in connection with the performance of the Contract.
- 11.2 In particular the Contractor undertakes to:
- 11.2.1 appoint an official responsible for supervising and directing security measures in relation to the Contract and communicating details of such measures to the Purchaser on request;
  - 11.2.2 maintain, preferably through the official responsible for security measures, a continuing relationship with the national security authority or designated security agency charged with ensuring that all NATO classified information involved in the Contract is properly safeguarded;
  - 11.2.3 abstain from copying by any means, without the authorisation of the Purchaser, the national security authority or designated security agency, any classified documents, plans, photographs or other classified material entrusted to him;
  - 11.2.4 furnish, on request, information to the national security authority or designated security agency pertaining to all persons who will be required to have access to NATO classified information;
  - 11.2.5 maintain at the work site a current record of his employees at the site who have been cleared for access to NATO classified information. The record should show the date of issue, the date of expiration and the level of clearance;
  - 11.2.6 deny access to NATO classified information to any person other than those persons authorised to have such access by the national security authority or designated security agency;
  - 11.2.7 limit the dissemination of NATO classified information to the smallest number of persons ("need to know basis") as is consistent with the proper execution of the Contract;
  - 11.2.8 comply with any request from the national security authority or designated security agency that persons entrusted with NATO classified information sign a statement undertaking to safeguard that information and signifying their understanding both of their obligations under national legislation affecting the safeguarding of classified information, and of their comparable obligations

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under the laws of the other NATO nations in which they may have access to classified information;

- 11.2.9 report to the national security authority or designated security agency any breaches, suspected breaches of security, suspected sabotage, or other matters of security significance which would include any changes that may occur in the ownership, control or management of the facility or any changes that affect the security arrangements and security status of the facility and to make such other reports as may be required by the national security authority or designated security agency, e.g. reports on the holdings of NATO classified material;
- 11.2.10 apply to the Purchaser for approval before Sub-contracting any part of the work, if the Sub-contract would involve that the Sub-contractor would have access to NATO classified information, and to place the Sub-contractor under appropriate security obligations no less stringent than those applied to his own contract;
- 11.2.11 undertake not to utilise, other than for the specific purpose of the Contract, without the prior written permission of the Purchaser or his authorised representative, any NATO classified information furnished to him, including all reproductions thereof in connection with the Contract, and to return all NATO classified information referred to above as well as that developed in connection with the Contract, unless such information has been destroyed, or its retention has been duly authorised with the approval of the Purchaser. Such NATO classified information will be returned at such time as the Purchaser or his authorised representative may direct;
- 11.2.12 classify any produced document with the highest classification of the NATO classified information disclosed in that document.

**12. RELEASE OF INFORMATION**

- 12.1 Except as otherwise specified elsewhere in the Contract and to the extent that it is demonstratively unavoidable and without prejudice to the Clause 11 (Security), the Contractor and/or his employees shall not, without prior authorisation from the Purchaser, release to third parties any information pertaining to this Contract, its subject matter, performance there under or any other aspect thereof.
- 12.2 The Contractor shall seek the prior written approval of the Purchaser before publishing any press release or disclosing any other information, orally or in writing, in relation to the Contract. The approval of the Purchaser shall be required for both the opportunity and the content of the information.

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12.3 This provision shall remain in effect after the termination of the Contract and shall cease to apply to any particular piece of information once that information becomes public knowledge other than through an act, default or omission of the Contractor or its Sub-contractors.

13. **PURCHASER FURNISHED PROPERTY**

13.1 The Purchaser shall deliver to the Contractor, for use only in connection with this Contract, the Purchaser Furnished Property at the times and locations stated in the Contract. In the event that Purchaser Furnished Property is not delivered by such time or times stated in the Schedule, or if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates the Purchaser shall, upon timely written request made by the Contractor, and if the facts warrant such action, equitably adjust any affected provision of this Contract pursuant to Clause 16 (Changes).

13.2 In the event that Purchaser Furnished Property is received by the Contractor in a condition not suitable for its intended use, the Contractor shall immediately notify the Purchaser. The Purchaser shall within a reasonable time of receipt of such notice replace, re-issue, authorise repair or otherwise issue instructions for the disposal of Purchaser Furnished Property agreed to be unsuitable. The Purchaser shall, upon timely written request of the Contractor, equitably adjust any affected provision of this Contract pursuant to Clause 16 (Changes).

13.3 Title to Purchaser Furnished Property will remain in the Purchaser. The Contractor shall maintain adequate property control records of Purchaser Furnished Property in accordance with sound industrial practice and security regulations.

13.4 Unless otherwise provided in this Contract, the Contractor, upon delivery to him of any Purchaser Furnished Property, assumes the risk of, and shall be responsible for, any loss thereof or damage thereof except for reasonable wear and tear, and except to the extent that Purchaser Furnished Property is consumed in the performance of this Contract.

13.5 Upon completion of this Contract, or at such earlier dates as may be specified by the Purchaser, the Contractor shall submit, in a form acceptable to the Purchaser, inventory schedules covering all items of Purchaser Furnished Property.

13.6 The inventory shall note whether:

13.6.1 The property was consumed or incorporated in fabrication of final deliverable(s);

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- 13.6.2 The property was otherwise destroyed;
- 13.6.3 The property remains in possession of the Contractor;
- 13.6.4 The property was previously returned
- 13.7 The Contractor shall prepare for shipment, deliver DDP at a destination agreed with the Purchaser, or otherwise dispose of Purchaser Furnished Property as may be directed or authorised by the Purchaser. The net proceeds of any such disposal shall be credited to the Contract price or paid to the Purchaser in such other manner as the Purchaser may direct.
- 13.8 The Contractor shall not modify any Purchaser Furnished Property unless specifically authorised by the Purchaser or directed by the terms of the Contract.
- 13.9 The Contractor shall indemnify and hold the Purchaser harmless against claims for injury to persons or damages to property of the Contractor or others arising from the Contractor's possession or use of the Purchaser Furnished Property. The Contractor shall indemnify the Purchaser for damages caused by the Contractor to the Purchaser, its property and staff and arising out of the Contractor's use of the Purchaser Furnished Property.

14. **CONTRACTOR'S PERSONNEL WORKING AT PURCHASER'S FACILITIES**

- 14.1 The term "Purchaser Facilities" as used in this Clause shall be deemed to include sites, property, utilities, ships or vessels and the term "Facility Representative" shall be deemed to refer to the authority designated by the Purchaser responsible for the site, property, utility, ship or vessel.
- 14.2 The Facility Representative shall provide such available administrative and technical facilities for Contractor's personnel working at Purchaser's Facilities for the purpose of the Contract as in the opinion of the Facility Representative may be necessary for the effective and economical discharge of Work. The Facility Representative shall also determine whether these facilities will be provided free of charge to the Contractor or determine what charges are payable. The Contractor shall have no claim against the Purchaser for any such additional cost or delay or any additional cost or delay occasioned by the closure for holidays of said facilities, or other reasons, where this is generally published or made known to the Contractor by the Purchaser or his authorised representatives.
- 14.3 The Contractor shall, except as otherwise provided for in the Contract, make good or, at the option of the Purchaser, pay compensation for all damage occurring to any Purchaser's Facilities occasioned by the Contractor, his servants, agents or Sub-contractors, arising from his or their presence and activities in, and use of, the Purchaser's Facilities; provided that this

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Condition shall not apply to the extent that the Contractor is able to show that any such damage was not caused or contributed to, by his neglect, or default or the neglect or default of his servants, agents or Sub-contractors, or by any circumstances within his or their control.

- 14.4 All property of the Contractor while at a Purchaser Facility shall be at the risk of the Contractor, and the Purchaser shall accept no liability for any loss or damage, except to the extent that any loss or damage is the result of a wilful act or gross negligence on the part of the Purchaser's employees or agents.

**15. HEALTH, SAFETY AND ACCIDENT PREVENTION**

- 15.1 If the Purchaser notifies the Contractor in writing of any non-compliance in the performance of this Contract with safety and health rules and requirements prescribed on the date of this Contract by applicable national or local laws, ordinances and codes, and the Contractor fails to take immediate corrective action, the Purchaser may order the Contractor to stop all or part of the Work until satisfactory corrective action has been taken. Such an order shall not entitle the Contractor to an adjustment of the Contract price or other reimbursement for resulting increased costs, or to an adjustment of the delivery or performance schedule.

**16. CHANGES**

- 16.1 The Purchaser may at any time, by written order of the Contracting Authority designated or indicated to be a change order ("Change Order") make changes within the general scope of this Contract, including, without limitation, in any one or more of the following:

- 16.1.1 Specifications (including drawings and designs);
- 16.1.2 Method and manner of performance of the work, including engineering standards, quality assurance and configuration management procedures;
- 16.1.3 Marking and method of shipment and packing;
- 16.1.4 Place of delivery;
- 16.1.5 Amount, availability and condition of Purchaser Furnished Property.

- 16.2 The Purchaser shall submit a proposal for Contract amendment describing the change to the Contract.

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- 16.3 If any such Change Order causes an increase in the Contractor's cost of, or the time required for, the performance of any part of the Work under this Contract, whether or not changed by any such order, the Contractor shall submit a written proposal for adjustment to the Purchaser describing the general nature and amount of the proposal for adjustment. The Contractor shall submit this proposal for adjustment within thirty (30) days after receipt of a written Change Order under (a) above unless this period is extended by the Purchaser.
- 16.4 If any such Change Order causes a decrease in the Contractor's cost of, or the time required for, the performance of any part of the Work under this Contract, whether or not changed by any such order, the Purchaser shall submit a proposal for adjustment within thirty (30) days from the issuance of the Change Order by submitting to the Contractor a written statement describing the general nature and amount of the proposal for adjustment.
- 16.5 Where the cost of property made obsolete or in excess as a result of a change is included in the Contractor's claim for adjustment, the Purchaser shall have the right to prescribe the manner of disposition of such property.
- 16.6 The Purchaser reserves the right to reject the introduction of the change, after the evaluation of the change proposal, even if the Purchaser initiated such change.
- 16.7 Failure to agree to any requested adjustment shall be a dispute within the meaning of the Clause 41 (Disputes). However, nothing in this Clause shall excuse the Contractor from proceeding with the Contract as changed.
- 16.8 No proposal for adjustment by the Contractor for an equitable adjustment shall be allowed if asserted after final payment and acceptance under this Contract.
- 16.9 Any other written or oral order (which, as used in this paragraph includes direction, instruction, interpretation, or determination) from the Purchaser that causes a change shall be treated as a Change Order under this Clause, provided, that the Contractor gives the Purchaser a written notice within thirty (30) Days after receipt of such order stating (i) the date, circumstances, and source of the order; (ii) that the Contractor regards the order as a Change Order; and (iii) a detailed cost and time analysis of the impact of the change, and that the Order is accepted in writing by the Purchaser as a Change Order. The timely written notice requirement, as detailed above, remains in force in all cases, even where, for example, the Purchaser has positive knowledge of the relevant facts.
- 16.10 All tasks and activities carried out by the Contractor in relation to the processing of the Change Order or in relation to this Clause shall form part of the Contractor's routine work and cannot be charged as additional work.

**17. STOP WORK ORDER**

- 17.1 The Purchaser may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the Work called for by this Contract for a period of ninety (90) days after the order is delivered to the Contractor, and for any further period to which the Parties may agree.
- 17.2 Any such stop work order shall be specifically identified as a stop work order issued pursuant to this Clause (the "Stop Work Order"). The Stop Work Order may include a description of the Work to be suspended, instructions concerning the Contractor's issuance of further orders for material or services, guidance to the Contractor on actions to be taken on any Sub-contracts and any suggestion to the Contractor for minimizing costs.
- 17.3 Upon receipt of such a Stop Work Order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimise costs incurred allocable to the Work covered by the Stop Work Order during the period of work stoppage. Within a period of ninety (90) days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the Parties shall have agreed, the Purchaser shall either:
- 17.3.1 cancel the Stop Work Order; or
- 17.3.2 terminate the Work covered by such Stop Work Order as provided in Clause 40 (Termination for Convenience of the Purchaser).
- 17.4 If a Stop Work Order issued under this Clause is cancelled or the period of the Stop Work Order or any extension thereof expires, the Contractor shall resume work.
- 17.5 An equitable adjustment shall be made in the delivery schedule or Contract price, or both, and the Contract shall be modified in writing accordingly, if:
- 17.5.1 the Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Contract, and;
- 17.5.2 the Contractor asserts a Claim for such adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if the Purchaser decides the facts justify such action, he may receive and act upon any such claim asserted at a later date but prior to final payment under this Contract.
- 17.6 If a Stop Work Order is not cancelled and the Work covered by such Stop Work Order is terminated for the convenience of the Purchaser the reasonable costs resulting from the Stop Work Order shall be allowed in

arriving at the termination settlement.

**18. CLAIMS**

18.1 The Contractor shall specifically identify the Contract Clause(s) under which the Claim(s) is/are based.

18.2 Claims shall be specifically identified as such and submitted:

18.2.1 within the time specified in the Clause under which the Contractor alleges to have a Claim. If no time is specified in the Clause under which the Contractor intends to base his Claim, the time limit shall be sixty (60) days from the date the Contractor has knowledge or should have had knowledge of the facts on which he bases his Claim; and

18.2.2 before final payment, pursuant to and with the exceptions specified in Clause 33 entitled "Release of Claims".

18.2.3 Section 18.2.2 above shall only apply to those Claims for which the Contractor could not have had earlier knowledge and were not foreseeable.

18.3 The Contractor shall be foreclosed from his Claim unless he presents complete documentary evidence, justification and costs for each of his Claims within ninety (90) calendar days from the assertion date of such Claims. Claims shall be supported by specifically identified evidence (including applicable historical and planned cost and production data from the Contractor's books and records). Opinions, conclusions or judgmental assertions not supported by such evidence will be rejected by the Purchaser.

18.4 An individual breakdown of cost is required for each element of Contractor's Claims at the time of claim submission or for any material revision of the Claim.

18.5 The Contractor shall present, at the time of submission of a Claim, an attestation as follows:

I .....the responsible senior company official authorised to commit the ..... with respect to its claims dated ..... being duly sworn, do hereby depose and say that: (i) the facts described in the claim are current, complete and accurate; and (ii) the conclusions in the claim accurately reflect the material damages or contract adjustments for which the Purchaser is allegedly liable.

.....

.....  
SIGNATURE

Date

- 18.6 Failure to comply with any of the above requirements shall result in automatic foreclosure of the Claim. This foreclosure takes effect in all cases and also where, for example, the Claim is based on additional orders, where the facts are known to the Purchaser, where the Claim is based on defective specifications of the Purchaser or an alleged negligence in the pre-contractual stage.
- 18.7 Claims submitted by the Contractor will be reviewed by the Contracting Authority. The Contracting Authority will respond within sixty (60) days with a preliminary decision, based on an assessment and evaluation of the facts presented by the Parties, as to whether the Contracting Authority considers the Claim to have merit for consideration. If the preliminary decision of the Contracting Authority is that the Claim, as submitted is without merit, the Contractor shall have fourteen (14) days to present a rebuttal to the Contracting Authority and request reconsideration of the Contracting Authority's decision. Within thirty (30) days receipt of the Contractor's request for reconsideration, the Contracting Authority will issue a decision. The time requirements stated herein may be extended by the Contracting Authority in order to accommodate additional preparation efforts and fact finding discussions but the Contracting Authority may not unreasonable extend such a period. A decision that the submitted claim is without merit will be identified as such, will be issued in writing by the Contracting Authority and will be conclusive. A decision may only be challenged by the Contractor through the Disputes provisions described herein.
- 18.8 A decision by the Purchaser that the claim has merit will result in a Contracting Authority request to enter into negotiations with the Contractor to arrive at a mutually agreed fair and equitable settlement. The Contracting Authority's decision will contain a target date for the commencement and conclusion of such operations. If the Parties are unable to arrive at an agreement on a fair and reasonable settlement by the target date for conclusion, or any extension thereto made by the Contracting Authority, the latter may declare that negotiations are at an impasse and issue a preliminary decision as to the fair and reasonable settlement and the reasons supporting this decision. The Contractor shall have a period of thirty (30) days to present a rebuttal to the Contracting Authority and request reconsideration of the Contracting Authority's decision. Within sixty (60) days of receipt of the Contractor's request for reconsideration, the Contracting Authority will issue its decision on the request for reconsideration. This timeframe will be respected unless an authorisation is needed from a NATO or other authority , the schedule for which is beyond the Contracting Authority's control. A

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decision of the Contracting Authority on the reconsideration of the matter will be identified as such, will be issued in writing by the Contracting Authority and will be conclusive. A decision on the reconsideration may only be challenged by the Contractor through the Disputes provisions described herein.

- 18.9 No Claim arising under this Contract may be assigned by the Contractor without prior approval of the Purchaser.
- 18.10 The Contractor shall proceed diligently with performance of this Contract, pending final resolution of any request for relief, claim appeal, or action arising under the Contract, and comply with any decision of the Contracting Authority.

**19. PRICING OF CHANGES, AMENDMENTS AND CLAIMS**

- 19.1 Contractor's pricing proposals for Changes, amendments and Claims shall be priced in accordance with the Purchaser's Pricing Principles (Annex 1 hereto and the sample spreadsheet and its " Instructions to Complete" at Appendix 1) or the national government pricing rules and regulations for the Contractor's own country, where in force. The Contractor shall provide cost information accompanied by appropriate substantiation as required by the Purchaser in accordance with Purchaser's Pricing Principles, or such other format as may be agreed between the Contractor and the Purchaser.
- 19.2 With respect to Clause 19.1 above, when the price or price adjustment is based on adequate price competition, established catalogue or market price of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the Contractor shall be responsible for substantiation of such cases to the satisfaction of the Purchaser.
- 19.3 For the purposes of verifying that the cost or pricing data submitted in conjunction with Clause 19.1 above are accurate, complete and current, the Purchaser or any Purchaser authorised representative shall have the right of access to the Contractor's facilities to examine, until the expiration of three (3) years from the date of final payment of all sums due under the Contract:
- 19.3.1 those books, records, documents and other supporting data which will permit adequate evaluation and verification of the cost or pricing data submitted; and/or
- 19.3.2 the computations and projections which were available to the Contractor as of the date of the Contractor price proposal.
- 19.4 The Contractor, subject to the provisions of this Clause, shall require Sub-contractors to provide to the Purchaser, either directly or indirectly:
- 19.4.1 cost or pricing data;
- 19.4.2 access to Sub-contractor's facilities and records for the purposes of verification of such cost or pricing data; and
- 19.4.3 a Certificate of Current Cost or Pricing Data, when required.

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- 19.5 If any price, including profit, negotiated in connection with this Contract was proposed, taking any of the following into account:
- 19.5.1 the Contractor furnished cost or pricing data which was not complete, accurate and current as certified in the Contractor's Certificate of Current Cost or Pricing Data provided in accordance with Clause 19.6 below;
  - 19.5.2 a Sub-contractor, pursuant to Clause 19.4 above or any Sub-contract clause therein required, furnished cost or pricing data which was not complete, accurate and current as certified in the Sub-contractor's Certificate of Current Cost or Pricing Data;
  - 19.5.3 a Sub-contractor or prospective Sub-contractor furnished cost or pricing data which was required to be complete, accurate and current and to be submitted to support a Sub-contract cost estimate furnished by the Contractor but which was not complete, accurate and current as of the date certified in the Contractor's Certificate of Current Cost or Pricing Data; or
  - 19.5.4 the Contractor or a Sub-contractor or prospective Sub-contractor furnished any data, not within 19.5.1 through 19.5.3 above, which, as submitted, was not complete, accurate and current;
  - 19.5.5 then the price and/or cost shall be adjusted accordingly and the Contract shall be modified in writing as may be necessary to reflect such.
- 19.6 At the time of negotiating any price, including profit, which is based upon the submission of cost or pricing data by the Contractor, the Contractor shall be required to submit a certificate of current cost or pricing data ("Certificate").
- 19.6.1 Such Certificates will certify that, to the best of the Contractor's knowledge and belief, cost or pricing data submitted to the Purchaser in support of any proposal for a price, price adjustment or claim, are accurate, complete and current, as per the completion of the negotiations or, in the case of a claim, as per the submission date of the claim.
  - 19.6.2 All such Certificates shall be in the format shown below and shall be dated and signed by a responsible officer of the company:

CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that cost or pricing data as submitted, either actually or by specific identification in writing to the Purchaser or his representative in support of..... (*Claim, Amendment, ECP#, etc.*) are accurate, complete and current as of ..... (*Date*).

By submitting the price proposal, the Contractor/sub-Contractor or prospective sub-Contractor grant the Purchaser or his authorized representative(s) the right to examine those records, data and supporting information, used as a basis for the pricing submitted.

\_\_\_\_\_  
*Name of Company*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Printed Name of Signatory*

\_\_\_\_\_  
*Title of Signatory*

\_\_\_\_\_  
*Date of Signature*

19.6.3 The Contractor shall insert the substance of this Clause 19.7 in each Sub-contract.

19.7 For all additional or follow-up agreements which are made for Work which are furnished to the Purchaser without competition, the Contractor shall offer prices on a "Preferred Customer" basis, that is offer prices which are as favourable as those extended to any Government, Agency, Company, Organisation or individual purchasing or handling like quantities of

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equipment and/or Parts covered by the Contract under similar conditions. In the event that prior to completing delivery under this Contract the Contractor offers any of such items in substantially similar quantities to any customer at prices lower than those set forth herein, the Contractor shall so notify the Purchaser and the prices of such items shall be correspondingly reduced by a supplement to this Contract. Price in this sense means "Base Price" prior to applying any bonus, export tax reduction, turn-over tax exemptions and other reductions based on National Policies.

**20. NOTICE OF SHIPMENT AND DELIVERY**

- 20.1 Except as may be specified in the Contract Special Provisions, delivery of all items under this Contract shall be made by the Contractor on the basis of "Delivery Duty Paid" (DDP) as defined by the INCOTERMS 2000 (International Chamber of Commerce Publication No. 560). It shall be noted, however, that because the Purchaser is exempted from direct taxes and duty as set forth in Clause 26 (Taxes and Duties), there is no duty to be paid by the Contractor.
- 20.2 "Delivery" of required Work by the Contractor does not constitute "Acceptance" by the Purchaser for purposes of meeting the requirements of the Contract Schedule where Purchaser acceptance is the stated payment or schedule milestone.
- 20.3 Thirty (30) Days, or such other period as specified in the Contract, prior to the delivery of any shipment of Work, the Contractor shall give prepaid notice of shipment to the Purchaser. The Notice of Shipment shall contain, as appropriate, the request for customs form 302, or equivalent document, which shall enable any carrier to conduct duty free import/export clearance through customs for the Purchaser on behalf of NATO.
- 20.4 The customs form 302 is an official customs clearance declaration issued in advance of shipment by the Purchaser to provide certified information as to the duty free import, export, or transit of NATO consignments between NATO countries.
- 20.5 The Notice of Shipment and request for Form 302 or equivalent document shall contain the following information:
- 20.5.1 Purchaser's Contract number;
  - 20.5.2 Contract item number, designation and quantities;
  - 20.5.3 destination;
  - 20.5.4 number and description of the packages (gross and net weight);
  - 20.5.5 description of the goods and their value (for custom purpose only, not commercial value)

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- 20.5.6 consignor's name and address;
  - 20.5.7 consignee's name and address;
  - 20.5.8 method of shipment (i.e. road, rail, sea, air, etc.);
  - 20.5.9 name and address of freight forwarder.
- 20.6 Forwarding Agents, Carriers or other responsible organisations shall be informed by the Contractor of the availability of Form 302 or equivalent document and how the form shall be utilised to avoid the payment of custom duties. Form 302 or equivalent document shall be incorporated in all shipping documents provided to the carrier.
- 20.7 Upon receipt of the Notice of Shipment from the Contractor, the Purchaser may require the Contractor to send copies of the Notice of Shipment to the receiving parties and the Contractor shall comply with this requirement.

**21. INSPECTION AND ACCEPTANCE OF WORK**

- 21.1 For the purposes of this Clause, Work does not include documentation which is addressed in Clause 22 (Inspection and Acceptance of Documentation) hereafter.
- 21.2 Unless otherwise specifically provided for in the Contract, all Work and all Parts and equipment incorporated in the Work are to be new and of the most suitable grade of their respective kinds for the purpose, notwithstanding the requirements for testing, inspection and performance as required under this Contract. All workmanship shall be as specified under the Contract or, if no workmanship standards are specified, best commercial or "state of the art" complying with relevant (National and International) standards.
- 21.3 All Work may be subject to inspection and test by the Purchaser or his authorised representative(s) to the extent practicable at all times and places prior to Acceptance, including the period of manufacture, or after delivery or as otherwise specified in the Contract. For the purposes of inspection and testing the Purchaser may delegate as his representative the authorised National Quality Assurance Representative (NQAR) in accordance with STANAG 4107.
- 21.4 No representative or NQAR appointed by the Purchaser for the purpose of determining the Contractor's compliance with the technical requirements of the Contract shall have the authority to change any of the specifications. Such changes may only be made by the Contracting Authority in writing in accordance with Clause 16 (Changes).
- 21.5 The presence or absence of an NQAR or other Purchaser representative shall not relieve the Contractor from conforming to the requirements of this Contract.
- 21.6 Acceptance or rejection of the Work shall be made as promptly as practicable after delivery, except as otherwise provided in the Contract. Failure to timely

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accept or reject the Work shall neither relieve the Contractor from responsibility for such Work nor impose liability on the Purchaser.

- 21.7 In the event that any Work, or lots thereof, or services are defective in design, material, workmanship or manufacturing quality, or as a result of undue wear and tear or otherwise not in conformity with the requirements of this Contract, including any characteristic or condition which is or becomes at variance to the performance specifications, to the intended function of the Work or the function to which it could reasonably be expected that the Work would perform, the Purchaser shall have the right either to reject them (with or without instructions as to their disposition) or to require their correction or replacement. Work which has been rejected or required to be corrected or replaced shall, at the expense of the Contractor, be removed, or, if permitted or required by the Contracting Authority, corrected in place by the Contractor promptly after notice, and shall not thereafter be tendered for acceptance by the Contractor unless the former rejection or requirement of correction or replacement is withdrawn. If the Contractor fails promptly to remove, replace or correct such Work the Purchaser may either:
- 21.7.1 by contract or otherwise return, replace or correct such Work or services and charge to the Contractor the cost incurred by the Purchaser; and/or
  - 21.7.2 terminate this Contract for default as provided in Clause 39 (Termination for Default).
- 21.8 When NQAR is not applicable based on the scale of the project, the Purchaser reserves the right to perform inspections through his own staff in accordance with the latest ISO standard at the time of inspection.
- 21.9 Unless the Contractor corrects or replaces such Work within the delivery schedule, the Purchaser may require the delivery of such Work at a reduction in price which is equitable under the circumstances. Failure to agree to such reduction of price shall be a dispute within the meaning of Clause 41 (Disputes).
- 21.10 If any inspection or test is made by the Purchaser's representatives on the premises of the Contractor or Sub-contractor, the Contractor, without additional charge, shall provide all reasonable facilities and assistance for the safety and convenience of the Purchaser's representatives in the performance of their duties. The NQAR or other Purchaser representatives shall have the right of access to any area of the Contractor's or his Sub-contractor's premises where any part of the contractual work is being performed.
- 21.11 If Purchaser inspection or test is made at a point other than the premises of the Contractor or Sub-contractor, it shall be at the expense of the Purchaser except as otherwise provided in this Contract; provided, that in case of rejection the Purchaser shall not be liable for any reduction in value of samples used in connection with such inspection or test.
- 21.12 All inspections and tests by the Purchaser shall be performed in such a

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manner as not to unduly delay the Work.

- 21.13 The Purchaser reserves the right to charge to the Contractor any additional cost of Purchaser 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.
- 21.14 Acceptance or rejection of the Work shall be made as promptly as practicable after delivery, except as otherwise provided in this Contract, but failure to inspect and accept or reject Work shall neither relieve the Contractor from responsibility for such Work as are not in accordance with the Contract requirements nor impose liability on the Purchaser thereof.
- 21.15 The inspection and test by the Purchaser of any Work or lots thereof, or services, does not relieve the Contractor from any responsibility regarding defects or other failures to meet the Contract requirements which may be discovered prior to acceptance.
- 21.16 Acceptance of Work shall take place when the Contracting Authority confirms acceptance in writing of the Work in accordance with the procedure specified in the Contract, or if none is so specified then the Contracting Authority shall be deemed to have accepted the Work without prejudice to any other remedies, when and as soon as any of the following events have occurred:
- 21.16.1 the Purchaser has taken the Work into use, except as specifically provided by Clause 23 (Use and Possession Prior to Acceptance);
  - 21.16.2 the Purchaser has not exercised its right of rejection of the Work within any period specified for that purpose in the Contract;
  - 21.16.3 there being no period for exercising the right of rejection specified in the Contract, a reasonable time, all the circumstances having been taken into account, has elapsed since inspection of the Work was effected in accordance with the Contract.
- 21.17 Except as otherwise provided in this Contract, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.
- 21.18 Unless otherwise specified in this Contract, the Contractor shall have or establish, implement and maintain an effective and economical quality control system necessary to satisfy the Contract requirement. The system shall provide for the early and prompt detection of deficiencies, trends and conditions which could result in unsatisfactory quality and for timely and effective corrective action. Objective evidence that the system is effective shall be readily available to the Purchaser and its authorised representatives. Records of all inspection and testing work by the Contractor shall be kept complete and available to the Purchaser's representatives during the performance of this Contract and for such longer periods as may be specified elsewhere in this Contract.

22. **INSPECTION AND ACCEPTANCE OF DOCUMENTATION**

- 22.1 The Contractor shall provide to the Purchaser a draft version of the required documentation as provided by the Contract Schedule and the Statement of Work. Review of draft documentation under this Contract will be made by the Purchaser upon the delivery of these items by the Contractor. The review will be conducted by the Purchaser through duly authorised representatives.
- 22.2 Upon delivery of the draft documentation, the Purchaser will have a period of review as provided by the Statement of Work. At the end of the review period or before if deemed practical by the Purchaser, the Purchaser's comments will be presented to the Contractor in writing. The substance of such comments will pertain to items of error, non-conformity, omission and guidance in relation to the requirements of the Statement of Work.
- 22.3 Purchaser Review of the delivered items will emphasise the conformity with the requirements of the Statement of Work, thoroughness of analysis, logical bases of conclusions and models and coherence and completeness of presentation. The review process will also examine editorial and grammatical correctness and the suitability and accuracy of graphics supporting the text.
- 22.4 The Contractor shall, after receipt of Purchaser comments, incorporate changes, revisions and corrections required by the Purchaser and present the revised documentation in final form to the Purchaser for inspection in accordance with the delivery date specified in the Schedule.
- 22.5 During the review process the Contractor is not required to halt efforts on further tasks as identified in the Statement of Work. The Purchaser, however, shall not be held liable for any work carried out by the Contractor which is based on draft documentation yet to be reviewed.
- 22.6 Upon receipt of the items in final form, the Purchaser will inspect the items for a period not exceeding two weeks (or as otherwise stated in the Statement of Work). At the end of the inspection, the Purchaser will notify the Contractor that:
- 22.6.1 the items have been accepted;
  - 22.6.2 the acceptance of the items is deferred pending further revision;
- or
- 22.6.3 The items are rejected and significantly fail to meet Contract requirements.
- 22.7 In the case of Clause 22.6.2 above, the Contractor shall only be responsible for those revisions and corrections requested by the Purchaser and the

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Purchaser may not request additional revisions during inspection after required revisions have been made. However, if the Purchaser determines that a directed revision has not been made or if such directed revision was cause for revision of other portions of content which were not made by the Contractor, the Purchaser may withhold acceptance until such revisions are made by the Contractor.

- 22.8 The Contractor shall provide to the Purchaser on request supporting technical data, computer software, databases and background analyses in order to validate findings contained in the delivered items.
- 22.9 Purchaser acceptance shall be made in writing by the Contracting Authority.

**23. USE AND POSSESSION PRIOR TO ACCEPTANCE**

- 23.1 Except as otherwise provided in the Contract Special Provisions, the Purchaser shall have the right to take possession of, or use, any completed or partially completed Work under the Contract at any time, when notified by the Contracting Authority, however such possession or use shall not constitute Acceptance by the Purchaser, as defined in the Contract.
- 23.2 While the Purchaser has such use or is in such possession, the Contractor shall be relieved of the responsibility for loss or damage to the Work concerned other than that resulting from the Contractor's fault, negligence or defect to the Work.
- 23.3 If such prior possession or use by the Purchaser delays the progress of the Work or causes additional expense to the Contractor, an equitable adjustment in the Contract price or the time of delivery will be made, in accordance with the Clause 16 (Changes), and the Contract shall be modified in writing accordingly.

**24. OWNERSHIP AND TITLE**

- 24.1 Except as may be otherwise stated in the Contract Special Provisions and Clause 23 (Use and Possession prior to Acceptance), ownership and title to all Work will pass to the Purchaser only upon Acceptance by the Contracting Authority in writing. Where the Contract provides for Provisional Acceptance and Final Acceptance, ownership and title will pass to the Purchaser upon written notification of Final Acceptance.

**25. INVOICES AND PAYMENT**

- 25.1 Unless otherwise specified in the Contract Special Provisions, invoices shall only be submitted after delivery and Acceptance of the Work and for the total prices and currency(ies) as set out under the Schedule of Work.
- 25.2 Invoices in respect of any Work or services shall be prepared and submitted

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to the Purchaser and shall contain all of the elements listed below:

- 25.2.1 Contract number;
  - 25.2.2 Purchaser's Purchase Order number ;
  - 25.2.3 accounting codes (as specified in this Contract);
  - 25.2.4 item number (as defined in the Contract);
  - 25.2.5 Contract description of Work or services, sizes, quantities, unit prices, and extended totals (exclusive of taxes and duties for which relief is available); and
  - 25.2.6 extended totals. Details of Bills of Lading or Freight Warrant numbers and weight of shipment shall be identified on each invoice as appropriate.
- 25.3 In addition, documentary evidence of Acceptance including copies of certificates of conformity shall be submitted together with each invoice. Invoices shall not be submitted to the Purchaser without Acceptance having been previously made by the Purchaser.
- 25.4 Each copy of the invoice shall contain the following certificate which shall be signed by a duly authorised company official on the designated original invoice:

*"I certify that the above invoice is true and correct, that the delivery of the above described items has been duly carried out and the payment thereof has not been received.*

*Order placed for official use. Exemption from VAT Article 42, §3&3\*of VAT Code for Belgium or Article 151, §1b of the Council Directive 2006/112/EC dd. 28 November 2006 on intra-community purchases and/or services."*

- 25.5 All invoices shall be addressed to the NCI Agency - Financial Management

Either at the following addresses:

NCI Agency \* If used for NCI Agency Brussels

NATO Communications and Information Agency  
Finance, Accounting & Operations  
Batiment Z  
Av du Bourget 140  
B-1140 Belgium

**OR**

shall be addressed to Financial Management at the following electronic address:

["NCIA-CAPDEV-FMU-BEL\\_E-INVOICES@NCIA.NATO.INT"](mailto:NCIA-CAPDEV-FMU-BEL_E-INVOICES@NCIA.NATO.INT) (note there is an underscore between BEL and E-INVOICES)

Note: When used for NCI Agency The Hague or Mons the addresses shall be dictated in the Contract Special Provisions

Once the manner of forwarding the invoice is chosen, the contractor shall keep this manner throughout the contract.

- 25.6 All invoices submitted shall include the address of the bank to which payment shall be made, together with **either** pertinent information concerning the International Bank Account Number (IBAN) and BIC/SWIFT address **or** pertinent information concerning transit number/sort code, account number and SWIFT address. The Purchaser makes payment only by wire transfer and therefore wire transfer particulars shall be included on the invoice.
- 25.7 Invoices will be settled by the Purchaser within sixty (60) days of receipt of a properly prepared and submitted invoice.
- 25.8 The Contractor shall mention on the invoice the payment conditions in line with the Contract.

26. **TAXES AND DUTIES**

- 26.1 The Purchaser, by virtue of his status under the terms of Article IX and X of the Ottawa Agreement, is exempt from all direct taxes (incl. VAT) and all customs duties on merchandise imported or exported. The Contractor, therefore, certifies that the prices stipulated in this Contract do not include amounts to cover such direct taxes or customs duties.
- 26.2 The Contractor shall be responsible for ensuring that his respective Sub-contractors are aware that the Purchaser is exempt from taxes and customs duties. The Contractor (and his respective Sub-contractors) shall be responsible for complying with all applicable national and local legal and administrative procedures to ensure that authorities do not attempt to assess taxes and customs duties on goods and property imported or exported through NATO member nation frontiers under this Contract nor assess direct taxation (VAT) on goods sold to the NCI Agency under this Contract.
- 26.3 The Purchaser shall give reasonable assistance in providing evidence/documents which might be required by the Contractor to ensure that NCI Agency receives tax exemption by virtue of its status under the Ottawa Agreement.
- 26.4 If, after complying with all national and local legal and administrative

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procedures, the authorities persist in attempting to impose taxes or duties on goods provided under this Contract, the Contractor shall inform the Contracting Authority providing the particulars of the situation, the procedures which have been followed and the point of contact at the national authority which is attempting to impose taxation or duty. The Contracting Authority will examine the situation and attempt to clarify the legal and administrative basis of the difficulty. If the Contracting Authority so directs, the Contractor shall pay the required taxes and duties and file for reimbursement or rebate from the national authorities in accordance with national legislative and administrative procedures.

- 26.5 In the event that the petition for reimbursement or rebate is denied by the national authorities concerned and providing that the Contractor and/or his Sub-contractor have complied with the national legislative and administrative procedures, the Purchaser shall reimburse the full amount of the payment(s) upon receipt of the Contractor's invoice indicating such tax or duty as a separate item of cost and fully identified by reference to any governmental law, regulation and/or instruction pursuant to which such tax or duty is enforced. The Contractor shall offer assistance and execute any such document that may be useful or required to ensure that Purchaser obtains the reimbursement of any tax or duty retained by a national authority.
- 26.6 In the event of the Contractor and/or Sub-contractor not complying with national legislative or administrative procedures, taxes and duties paid by the Contractor and/or Sub-contractors shall not be reimbursed by the Purchaser.
- 26.7 Following payment by the Purchaser of the taxes and/or duties pursuant to Clause 26.4 above, should the Contractor subsequently receive a rebate of any amount paid by the Purchaser, the Contractor shall immediately notify the Purchaser and the amount of such rebate shall be credited or reimbursed to the Purchaser, as directed. The Contractor shall be responsible for taking any and all action that could reasonably be required in order to obtain such rebate.
- 26.8 The Contractor shall be liable for all other taxes, assessments, fees, licences, administrative charges or other Government assessments or charges which are applicable to the performance of this Contract. It is the Contractor's responsibility to inform himself of his liability in each country where such liability may arise.

**27. WARRANTY OF WORK (Exclusive of Software)**

27.1 For the purpose of this Clause:

- 27.1.1 "Acceptance" shall mean the act of an authorised representative of the Purchaser by which the Purchaser

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assumes title and ownership of delivered Work rendered as partial or complete performance of the Contract. "Acceptance" in this regard, unless specifically provided otherwise in the Contract Contract Special Provisions, means final Acceptance where the Contract provides for Provisional or Partial Acceptance;

- 27.1.2 "Correction" shall mean the elimination of a defect;
- 27.1.3 "Work" shall not include software.
- 27.2 The Contractor shall not be responsible under this Clause for the Correction of Defects in Purchaser Furnished Property, except for Defects in Contractor performed installation, unless the Contractor performs, or is obligated to perform, any modifications or other work on Purchaser Furnished Property. In that event, the Contractor shall be responsible for Correction of Defects that result from the modifications or other Work.
- 27.3 Unless another period of time is indicated in the Contract Contract Special Provisions, the duration of the warranty provided by the Contractor and its Subcontractors shall be twelve (12) months from the date of Acceptance under this Contract as notified in writing by the Contracting Authority.
- 27.4 Any Work or parts thereof corrected or furnished in replacement and any services re-performed shall also be subject to the conditions of this Clause 27 to the same extent as Work initially accepted. The warranty, with respect to these Work, or parts thereof shall be equal in duration to that set forth in Clause 27.3, and shall run from the date of delivery of the corrected or replaced Work.
- 27.5 If the Contractor becomes aware at any time before Acceptance by the Purchaser (whether before or after tender to the Purchaser) or at a later time, that a Defect exists in any Work, the Contractor shall either promptly correct the Defect or promptly notify the Purchaser, in writing, of the Defect, using the same procedures prescribed in Clause 27.8.
- 27.6 The Purchaser will notify in writing the Contractor of the existence of a Failed Component and return to the Contractor the Failed Component within thirty (30) Days of the discovery of such failure. The transport of the Failed Component shall be at the expense of the Purchaser. The notification of the failure will include as much information as practicable about the circumstances and operating environment at the time of the failure. Upon receipt of such notification by the Purchaser (which may precede receipt of the Failed Component), the Contractor shall ship to the location of the Failed Component an identical component for installation by Purchaser personnel. The Contractor shall ship such replacement component(s) Delivery Duty Paid. Such transportation and replenishment charges are included in the cost of line item of the Contract identified as the warranty.
- 27.7 In such rare cases where the Failed Component is either too large to be

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easily transported or the Failed Component cannot be readily identified and isolated within the larger entity, the Contractor shall be notified by the Purchaser of the failure immediately by telephone, fax or e-mail. The Contractor shall provide technical support to the Purchaser personnel in identifying the Failed Component so as to afford the Purchaser the opportunity to return the Failed Component. In such a case where the Failed Component cannot be identified or is not cost effective or practical to ship to the Contractor's facility, the Contractor may elect to send field service personnel to the site of the failure and repair such equipment on location. In this event, such field service personnel shall be dispatched to the site of the failure within forty-eight (48) hours of initial notification. The expense of the technical support and field service shall be borne by the Contractor.

- 27.8 The Contractor shall conduct analysis of all Failed Components which are returned to him by the Purchaser or repaired in the field by Contractor field service personnel to determine the cause of the failure. The Contractor shall issue a report to the Purchaser within thirty (30) days of receipt of a returned item or field repair which contains the results of the analysis. The report shall contain the conclusion of the Contractor as to whether the cause of the failure was due to a Manufacturing Defect or a Design Defect and declare what course of remedial action the Contractor shall implement to prevent further failures of a similar nature. Repetitive failures of the same component may be grounds for a de facto determination by the Purchaser that a Design Defect exists.
- 27.9 If the Purchaser determines that a Design Defect exists in any of the Work accepted by the Purchaser under this Contract, the Purchaser shall promptly notify the Contractor of the Defect, in writing, within ninety (90) days after discovery of the Defect. Upon timely notification of the existence of a Defect, or if the Contractor independently discovers a Design Defect or Manufacturing Defect in accepted Work, the Contractor shall submit to the Purchaser, in writing within thirty (30) days, a recommendation for corrective actions, together with supporting information in sufficient detail for the Purchaser to determine what corrective action, if any, shall be undertaken.
- 27.10 The Contractor shall also prepare and furnish to the Purchaser data and reports applicable to any Correction required under this Clause (including revision and updating of all other affected data and already accepted documentation called for under this Contract) at no increase in the Contract price.
- 27.11 In the event of timely notice of a decision not to correct or only to partially correct, the Contractor shall submit a technical and cost proposal within forty-five (45) days to amend the Contract to permit Acceptance of the affected Work in accordance with the revised requirement, and an equitable reduction in the Contract price shall promptly be negotiated by the Parties and be reflected in a supplemental agreement to this Contract.
- 27.12 Within thirty (30) days after receipt of the Contractor's recommendations for corrective action and adequate supporting information in accordance with

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Clause 27.9, the Purchaser using sole discretion, shall give the Contractor written notice not to correct any Defect, or to correct or partially correct any Defect within a reasonable time.

- 27.13 The Contractor shall promptly comply with any timely written direction from the Purchaser to correct or partially correct a manufacturing or Design Defect, at no increase in the Contract price.
- 27.14 The Purchaser shall give the Contractor a written notice specifying any failure or refusal of the Contractor to:
- 27.14.1 conduct analyses of Failed components and implement a course of remedial action as required by Clauses 27.7 and 27.8;
  - 27.14.2 provide replacement components, technical support or on-location field repair service in accordance with Clauses 27.6 and 27.7; or
  - 27.14.3 prepare and furnish data and reports as required by Clause 27.10.
- 27.15 The notice referred to in Clause 27.14 shall specify a period of time following receipt of the notice by the Contractor in which the Contractor must remedy the failure or refusal specified in the notice.
- 27.16 If the Contractor does not comply with the Purchaser's written notice in Clause 27.14, the Purchaser may by Contract or otherwise:
- 27.16.1 Obtain detailed recommendations for corrective action from its own resources or third parties and either:
    - 27.16.2 correct the Work;
    - 27.16.3 replace the Work, and if the Contractor fails to furnish timely disposition instructions, the Purchaser may dispose of the non-confirming Work for the Purchaser's account in a reasonable manner, in which case the Purchaser is entitled to reimbursement from the Contractor, or from the proceeds, for the reasonable expenses of care and disposition, as well as for excess costs incurred or to be incurred;
      - 27.16.3.1 obtain applicable data and reports; and/or
      - 27.16.3.2 charge the Contractor for the costs incurred by the Purchaser.
- 27.17 In no event shall the Purchaser be responsible for any extension or delays in the scheduled deliveries or periods of performance under this Contract as a result of the Contractor's obligations to correct Defects, nor shall there be any adjustment of the delivery schedule or period of performance as a result of the Correction of Defects unless provided by a supplemental agreement with adequate consideration.

27.18 The rights and remedies of the Purchaser provided in this Clause shall not be affected in any way by any terms or conditions of this Contract concerning the conclusiveness of inspection and Acceptance and are in addition to, and do not limit, any rights afforded to the Purchaser by any other Clause of this Contract or applicable law.

28. **RIGHT OF ACCESS, EXAMINATION OF RECORDS**

28.1 The Contractor shall give to the Purchaser and/or his representative(s) full and free access to his premises as and when required for the purpose of this Contract and shall ensure the same right of access to the premises of his Sub-contractors, by the inclusion in any such Sub-contracts of a provision substantially as set forth in this Clause.

28.2 The Purchaser and/or his representative(s) shall continue to have such right of access and examination of records as set forth in Clause 28.1 above until final payment under the Contract or the end of the warranty provisions under the Contract, whichever occurs later.

28.3 The expiration of the Purchaser's rights as set forth in Clause 28.2 is further subject to the provisions of Clause 19 (Pricing of Changes, Amendments and Claims), where a three (3) year right is established following the agreement of contractual amendments or the settlement of claims based upon the submission of cost and pricing data.

28.4 The period of access and examination described in Clause 28.1 above for records not related to cost aspects of a dispute or claim but which relate to issues of fact arising under either proceedings under Clause 41 (Disputes) or Clause 42 (Arbitration), or the settlement of claims made by either Party pursuant to the performance of this Contract, shall continue until such appeals, litigation or claims have been disposed of.

29. **PATENT AND COPYRIGHT INDEMNITY**

29.1 The Contractor shall assume all liability against any and all third party claims that the services, Work and/or parts thereof, in whole or in part, infringe(s) an IPR in force in any countries, arising out of the manufacture, import, export, performance of the services or delivery of Work and/or out of the use or disposal by, or for the account of, the Purchaser of such Services and/or Work. The Contractor shall reimburse and/or indemnify the Purchaser, its officers, agents, employees and/or consultants: (i) for all costs, fees, damages, awards, settlement amounts and any other expenses awarded to the third party right holder against Purchaser and/or the final beneficiaries of the Work in relation to said third party claim; and (ii) for the costs and expenses incurred by the Purchaser in relation to said third party claims, including attorney fees. The Contractor shall be responsible for obtaining any licences necessary for the performance of this Contract and for making all other arrangements required to indemnify

the Purchaser from any liability for IPR infringement in said countries.

29.2 Each Party shall immediately notify the other of any intellectual property infringement claims of which he has knowledge and which pertain to the Work under this Contract.

29.3 This indemnity shall not apply under the following circumstances:

29.3.1 Patents or copyright which may be withheld from issue by order of the applicable government whether due to security regulations or otherwise;

29.3.2 An infringement resulting from specific written instructions from the Purchaser under this Contract;

29.3.3 An infringement resulting from changes made to the Work by the Purchaser without the Contractor prior written consent;

29.3.4 An infringement resulting from changes or additions to the Work subsequent to final delivery and Acceptance under this Contract.

## **30. INTELLECTUAL PROPERTY**

### **30.1 *Purchaser Background IPR***

30.1.1 The Contractor is licensed to use, non-exclusively and royalty-free any Purchaser Background IPR that is or will be made available for the sole purpose of carrying out the Work.

30.1.2 The Contractor shall not use any Purchaser Background IPR other than for the purpose of carrying out the Work without the prior written agreement of the Purchaser. Any such agreement shall include the terms relating to such use.

30.1.3 The Purchaser gives no warranty as to the validity of any Purchaser Background IPR. The Contractor shall not do anything or act in any way which is inconsistent with or prejudicial to the ownership by the Purchaser of any Purchaser Background IPR.

### **30.2 *Contractor Background IPR***

30.2.1 Any use of Contractor Background IPR for the purpose of carrying out the Work pursuant to the Contract shall be free of any charge to Purchaser. The Contractor hereby grants to NATO a non-exclusive, royalty-free and irrevocable licence to use and authorise others to use any Contractor Background IPR for the purpose of exploiting or otherwise using the Foreground IPR.

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30.2.2 Any use of Contractor Background IPR is not limited to the number of users or the number of licenses required by the Contract for the use of system. The Purchaser reserves the right to use the Contractor Background IPR for any number of users and number of licenses as required, at no additional cost to the Purchaser.

30.3 ***Foreground IPR***

30.3.1 All Foreground IPR is the property of the Purchaser on behalf of NATO. Consequently, no statement shall be made restricting the rights of the Purchaser in the Foreground IPR.

30.3.2 The Contractor shall ensure that suitable arrangements are in place between its employees, agents, consultants and itself regarding Foreground IPR generated by said employees, agents, Subcontractors and consultants to allow the Contractor to fulfil its obligations under Clause 30.3.1 above.

30.3.3 The Contractor shall be entitled to use Foreground IPR on a non-exclusive, royalty free basis solely for the purpose of carrying out the Work.

30.3.4 The Contractor shall not use any Foreground IPR other than for the purpose of carrying out the Work without the Purchaser's prior written agreement. Any such agreement shall include terms relating to such use.

30.3.5 The Contractor shall provide the Purchaser, at the latest upon delivery of the Work and thereafter for the duration of the warranty and any purchased CLS agreement period, with full documented records of information in relation to the Work, including but not limited to, all drawings, specifications and other data that is necessary or useful to further develop, maintain and operate the Work.

30.3.6 The Contractor shall:

30.3.6.1 do all things necessary and sign all necessary or useful documents to enable the Purchaser to obtain the registration of the Foreground IPR as the Purchaser may require and select; and

30.3.6.2 to execute any formal assignment or other documents as may be necessary or useful to vest title to any Foreground IPR in the Purchaser.

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- 30.3.7 The Contractor undertakes:
- 30.3.7.1 to notify the Purchaser promptly of any invention or improvement to an invention or any design conceived or made by the Contractor; and
  - 30.3.7.2 to provide the Purchaser with such information as the Purchaser may reasonably request in order to:
    - (i) determine the patentability of such invention or improvement; (ii) assess the need for registering such invention or improvement; and (iii) evaluate the potential value to the Purchaser of such a patent or registration if issued.
- 30.3.8 If the Purchaser determines that it wishes to apply for one or more patents for the disclosed invention or improvement or for a registration for the disclosed design, it will prosecute such application(s) at its own expense. The Contractor undertakes to provide the Purchaser, at the Purchaser's expense, with such information and assistance as the Purchaser shall reasonably require to prosecute such application(s).

30.4 ***Third Party IPR***

- 30.4.1 Any use of Third Party IPR for the purpose of carrying out the Work pursuant to the Contract shall be free of any charge to the Purchaser. The Contractor hereby grants to NATO a non-exclusive, royalty-free and irrevocable licence to use and authorise others to use any Third Party IPR for the purpose of exploiting or otherwise using the Foreground IPR.
- 30.4.2 With the exception of COTS items, any use of Third Party IPR is not limited to the number of users or the number of licenses required by the Contract for the use of system. With the exception of COTS items, the Purchaser reserves the right to use the Third Party IPR for any number of users and number of licenses as required, at no additional cost to the Purchaser.
- 30.4.3 For COTS items, the Contractor shall be responsible for obtaining licences from the Third Party in line with the requirements of the Statement of Work (including numbers and locations of licences).
- 30.4.4 Where Third Party IPR is the subject of a licence or other agreement between the third party and the Purchaser or the Contractor, the Contractor shall not use any Third Party IPR for the purposes of carrying out work pursuant to the Contract

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without the prior written approval of the Purchaser. Contractor shall inform Purchaser in advance of any restrictions on the Purchaser's use.

30.4.5 If, after the award of the Contract, the Contractor becomes aware of the existence of any Third Party IPR which the Contractor is using or believes is needed for the performance of the Contract, the Contractor shall immediately give the Purchaser a written report identifying such IPR and if they are compliant with the other provisions in the contract. Any Third Party IPR under this clause is subject to the prior written approval by the Purchaser.

30.4.6 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. Contractor shall disclose in advance the open source license 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).

**30.5 Subcontractor IPR**

30.5.1 When placing a Sub-contract which is concerned with or involves the creation of IPR, the Contractor shall ensure that the Sub-contractor enters into the same agreement for the use of the IPR as stipulated in this Contract in such a way that the Purchaser will be entitled to use the IPR as agreed between the Purchaser and the Contractor. The Contractor shall include in the Sub-contract the content of the provisions of this Clause.

**31. SOFTWARE WARRANTY**

**31.1 Statement of the Warranties**

31.1.1 The Contractor warrants that each Software delivered under this Contract will conform to all requirements specified in the Contract. This will also include Software design specifications, including software configuration.

31.1.2 Regardless of the Purchaser initiation of or participation in developing Software design or specifications, each Software delivered under this Contract will conform to the essential Performance requirements set forth in this Contract, as those essential Performance requirements measured,

tested, and verified by tests and procedures set forth in this Contract.

**31.2 Notification Requirement**

31.2.1 The Contractor agrees to notify the Purchaser in writing immediately after he first discovers that a defect(s) may exist in Software delivered under this Contract, unless the Purchaser has first notified the Contractor, in writing, of the same defect(s).

31.2.2 The Purchaser shall notify the Contractor upon discovery that a defect(s) may exist in any Software accepted by the Purchaser under this Contract, unless the Contractor has first notified the Purchaser, in writing of the same defect(s).

**31.3 Duration of the Warranty**

31.3.1 For each Software delivered under this Contract, the Contractor Warranties stated in paragraph 31.1 above shall extend to all defects discovered within 12 months from the date of acceptance of the Software by the Purchaser.

**31.4 Purchaser Remedies for Breach**

31.4.1 The rights and remedies of the Purchaser under this Software Warranty:

31.4.2 Are in addition to any rights and remedies of the Purchaser under any other provision of this Contract, including, but not limited to, the Purchaser's rights in relation to latent defects, fraud, or gross mistakes that amount to fraud; and

31.4.3 Shall apply notwithstanding inspection, acceptance, or any other clauses or terms of this Contract;

31.4.4 In the event of any defect as defined herein with respect to a Software delivered under this Contract, the Purchaser, in its sole discretion may:

31.4.4.1 Require the Contractor to take such action as may be necessary to eliminate the defect, at no additional cost to the Purchaser for materials, labour, transportation, or otherwise;

31.4.4.2 Require the Contractor to supply, at no additional cost to the Purchaser, all materials and instructions necessary for the Purchaser to eliminate the defect and to pay costs reasonably incurred by the Purchaser in taking such action as

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may be necessary to eliminate the defect, or;

31.4.4.3 Equitably reduce the contract price

31.4.5 The Purchaser may elect the remedies provided in paragraph 31.4.4.1 or 31.4.4.2 above notwithstanding any dispute respecting the existence of or responsibility for any alleged defect as defined herein with respect to any Software delivered under this contract, provided that the Contractor will not be required to pay costs incurred by the Purchaser under paragraph 31.4.4.2 until final determination of the defect. In the event that the alleged defect is subsequently determined not to be a defect subject to this warranty but the Contractor has incurred costs under paragraph 31.4.4.1 and 31.4.4.2 as required by the Contract by virtue of this paragraph 31.4.3, the contract price under this contract shall be equitably adjusted.

31.4.6 Election by the Purchaser of the remedy provided under paragraph 31.4.4.1 and 31.4.4.2 above shall not preclude subsequent election of a different remedy under paragraph 31.4.4 if the defect is not successfully eliminated under the prior election with one month of the notification under paragraph 31.4.2 above.

**31.5 Limitations and Exclusions from Warranty Coverage**

31.5.1 This Software Warranty shall not apply to alleged defects that the Contractor demonstrates to be in or otherwise attributable to the Purchaser furnished property as determined, tested, and verified by the tests and procedures set forth in this Contract. Notwithstanding this paragraph , a defect is not attributable to Purchaser furnished property if it is the result of installation or modification of Purchaser furnished property by the Contractor or of the integration of Purchaser furnished property into any Software delivered under this Contract.

31.5.2 Any Purchaser Furnished Property needs to be checked and approved by the Contractor. Approval is implied once the Contractor starts using the Purchaser Furnished Property.

**31.6 Markings**

31.6.1 All Deliverables under this Contract will identify the owner of the Deliverable 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

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the operating and/or maintenance manuals or instructions accompanying such Software.

- 31.6.2 All Deliverables regardless of the media they are delivered onto and which are subject to export control restrictions shall be clearly marked indicating the type and nature of restriction as well as the national law imposing such restrictions. Nothing in this provision is intended to invalidate, void, or otherwise limit the rights of the Purchaser under this Contract.

**32. NATO CODIFICATION**

- 32.1 For the purposes of this Clause "Technical Data" means the drawings, specifications and technical documentation of those items designated by the Purchaser to support the equipment covered by the Contract, and required to fully identify the items and, if applicable, draft item identifications to the extent and in the form to be agreed between the Codification Authority and the Contractor.
- 32.2 In order to ensure the orderly identification of equipment, the Contractor shall furnish at the request of the Codification Authority the Technical Data required for the identification of the items of supply to the NATO codification system in the time scale stated in this Contract.
- 32.3 A recommended spare parts list or a similar data carrier prepared in accordance with instructions provided by the Purchaser as the basis for codification shall be supplied by the Contractor by the date established in this Contract.
- 32.4 The Contractor shall supply or require his Sub-contractor(s)/supplier(s) to supply on request for the period of time specified in the Contract the relevant Technical Data for all items and sub-contracted items to the Codification Authority and the Purchaser. The Contractor shall require that each Sub-contractor/supplier shall include identical conditions in any subsequent order which he may place.
- 32.5 The drawings, specifications, related documentation and, if applicable, draft item identifications, prepared when possible by the true manufacturer of the item, shall be supplied by the Contractor or his Sub-contractor(s)/supplier(s) direct to the Codification Authority and, if required, to the Purchaser as and when they become available or, at the latest within the time limits specified in the Contract. The Contractor shall inform the Codification Authority and Purchaser within 21 Days of receipt of the request if the required Technical Data are not immediately available, and shall impose a similar obligation upon his Sub-contractor(s)/supplier(s).

- 32.6 Except as hereinafter provided, the Contractor shall require the Sub-contractor(s)/supplier(s) to furnish on request the information direct to the Codification Authority in the Sub-contractor(s)/supplier(s)' country, but the Contractor shall remain responsible for ensuring that the information is so furnished. In the event of a Sub-contract order being placed with a manufacturer in a non-NATO country, the Contractor shall be responsible for obtaining Technical Data from the Sub-contractor/supplier and furnishing it to the Purchaser.
- 32.7 Technical Data relating to any Sub-contractor's/supplier's items shall include but not be limited to the name and address of the true manufacturer(s), his/their true reference number(s), drawing or item Part number(s) and applicable data in addition to any Part or reference number(s) allocated by the Contractor, plus draft item identification(s) if required by the Codification Authority.
- 32.8 The Contractor shall provide the Technical Data required for codification of those items ordered with this Contract and also for the pertaining support items ordered with future contracts, including updating information regarding all agreed modifications, design or drawing changes made to the equipment or detailed Parts.
- 32.9 If the Contractor has previously supplied Technical Data (for the purpose stated in Clause 31.2), the Contractor is to state this fact and indicate to whom they were supplied and the Contractor shall not under normal circumstances be required to make a further supply of the Technical Data already provided. The Technical Data furnished by the Contractor and Sub-contractor(s)/supplier(s) are to be presented in accordance with the requirements for the preparation of item identification(s) as outlined in the Guide for Industry provided by the Codification Authority.
- 32.10 The Contractor should contact the Codification Authority for any information concerning the NATO codification system. This information is to be found at: "[http://www.nato.int/structur/ac/135/ncs\\_guide/e\\_guide.htm](http://www.nato.int/structur/ac/135/ncs_guide/e_guide.htm)"

### **32.11 Markings**

- 32.11.1 All Deliverables under this Contract will identify the owner of the Deliverable 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.
- 32.11.2 All Deliverables regardless of the media they are delivered onto

and which are subject to export control restrictions shall be clearly marked indicating the type and nature of restriction as well as the national law imposing such restrictions. Nothing in this provision is intended to invalidate, void, or otherwise limit the rights of the Purchaser under this Contract.

**33. RELEASE FROM CLAIMS**

33.1 Prior to final payment under this Contract, the Contractor and each assignee under this Contract shall execute and deliver a release discharging the Purchaser, its officers, agents and employees from all liabilities, obligations and claims arising out of or under this Contract subject only to the following exceptions:

33.1.1 specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by the Contractor;

33.1.2 claims for reimbursement of costs (other than expenses of the Contractor by reason of his indemnification of the Purchaser against patent liability) including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this Contract relating to patents.

33.1.3 a patent infringement resulting from specific written instructions from the Purchaser under this Contract.

33.1.4 a patent infringement resulting from changes or additions to the goods and services subsequent to final delivery and acceptance under this Contract.

**34. ASSIGNMENT OF CONTRACT**

34.1 The Purchaser reserves the right to assign this Contract, in whole or in part, to another NATO body, agency or representative within NATO or NATO Nations. In such a case, the Purchaser shall notify the Contractor accordingly in writing.

34.2 NATO shall remain responsible for its obligations under the Contract and for the actions of the body, agency or representative to which this Contract may be assigned.

**35. TRANSFER AND SUB-LETTING**

35.1 The Contractor shall not give, bargain, sell, assign, sub-let or otherwise dispose of the Contract or any part thereof or the benefit or advantage of the

Contract or any part thereof without the prior written consent of the Purchaser.

**36. PURCHASER DELAY OF WORK**

36.1 If the performance of all or any part of the Work is delayed or interrupted by an act of the Purchaser in the administration of this Contract, which act is not expressly or implicitly authorised by this Contract, or by the Purchaser's failure to act within the time specified in this Contract (or within a reasonable time if no time is specified), an adjustment shall be made for any increase in the cost of performance of this Contract caused by such delay or interruption and the Contract modified in writing accordingly.

36.2 Adjustment shall be made also in the delivery or performance dates and any other contractual provision affected by such delay or interruption. However, no adjustment shall be made under this Clause for any delay or interruption:

36.2.1 to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the Contractor; or

36.2.2 for which an adjustment is provided or excluded under any other provision of this Contract.

36.3 No claim under this Clause shall be allowed:

36.3.1 if the Contractor has failed to notify the Purchaser in writing of the act or failure to act, indicating that this act or failure to act will result in a delay or increased costs;

36.3.2 for any costs incurred more than twenty (20) Days before the Contractor shall have notified the Purchaser in writing of the act or failure to act involved; and

36.3.3 unless the monetary claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such delay or interruption, but not later than the date of final payment under the Contract.

**37. CONTRACTOR NOTICE OF DELAY**

37.1 In the event that the Contractor encounters difficulty in complying with the Contract schedule date(s) for whatever reason, including actual or potential labour disputes, the Contractor shall immediately notify the Contracting Authority in writing, giving pertinent details. This data shall be deemed to be informational in character and shall not be construed as a waiver by the Purchaser of any schedule or date, or of any rights or remedies provided by law or under this Contract.

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37.2 Notwithstanding the above the Contractor shall be deemed to be in delay without notice from the Purchaser and only by simple expiry of the due date.

**38. LIQUIDATED DAMAGES**

38.1 If the Contractor:

38.1.1 fails to meet the delivery schedule of the Work or any performance milestones specified in the Schedule of Work to this Contract, or any extension thereof, or

38.1.2 fails to obtain acceptance of the delivered Work as specified in the Contract, or, if no time for acceptance is specified in the contract within a reasonable time after work is delivered.

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 deadline or milestone, fixed and agreed liquidated damages of .1% (one tenth of per cent) per day of the associated payment set forth in the Schedule of Payments provided in the Contract Special Provisions. If no Schedule of Payments is specifically set forth in the Contract Special Provisions, the liquidated damages will be assessed against the price of the applicable contract line item (CLIN) of the Schedule of Supplies, Services and Prices.

38.2 In addition to the liquidated damages referred to above, the Purchaser shall have the possibility of terminating this Contract in whole or in part, as provided in Clause 39 (Termination for Default). In the event of such termination, the Contractor shall be liable to pay the excess costs provided in Clause 38.5.

38.3 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 39.6 (Termination for Default). In such event, subject to the provisions of Clause 41 (Disputes), the Purchaser shall ascertain the facts and extent of the delay and shall extend the time for performance of the Contract when in his judgement the findings of the fact justify an extension.

38.4 Liquidated damages shall be payable to the Purchaser from the first day of delinquency and shall accrue at the rate specified in Clause 38.1 to 20% of the value of each line item individually not to exceed 15% of the value of the total Contract. These liquidated damages shall accrue automatically and without any further notice being required.

38.5 The rights and remedies of the Purchaser under this clause are in addition to any other rights and remedies provided by law or under this Contract.

**39. TERMINATION FOR DEFAULT**

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- 39.1 The Purchaser may, subject to Clause 39.6 below, by written notice of default to the Contractor, terminate the whole or any part of this Contract if the Contractor, inclusive but not limited to:
- 39.1.1 fails to make delivery of all or part of the Work within the time specified in the contract or any agreed extension thereof;
  - 39.1.2 fails to make progress as to endanger performance of this Contract in accordance with its terms;
  - 39.1.3 fails to meet the technical requirements or the Specifications of the Contract;
  - 39.1.4 fails to comply with Clause 11 (Security);
  - 39.1.5 transfer this Contract without the Purchaser's prior written consent;
  - 39.1.6 breaches any provision of this Contract; or
- 39.2 In the case of any of the circumstances set forth in Clause 39.1 above, the Purchaser shall issue a letter to the Contractor stating that an actual or potential default exists and requiring a response from the Contractor within ten (10) Days that identifies:
- 39.2.1 in the case of late delivery of Work, when the Contractor shall deliver the Work and what circumstances exist which may be considered excusable delays under Clause 39.6.
  - 39.2.2 in the case of the other circumstances identified in Clause 39.1 above, what steps the Contractor is taking to cure such failure(s) within a period of ten Days (or such longer period as the Purchaser may authorise in writing) after receipt of notice in writing from the Purchaser specifying such failure and identifying any circumstances which exist which may be considered excusable under Clause 39.6.
- 39.3 The Purchaser shall evaluate the response provided by the Contractor or, in the absence of a reply within the time period mentioned in Clause 39.2, all relevant elements of the case, and make a written determination within a reasonable period of time that:
- 39.3.1 sufficient grounds exist to terminate the Contract in whole or in part in accordance with this Clause and that the Contract is so terminated;

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- 39.3.2 there are mitigating circumstances and the Contract should be amended accordingly; or
  - 39.3.3 the Purchaser will enter a period of forbearance in which the Contractor must show progress, make deliveries, or comply with the Contract provisions as specified by the Purchaser. The Purchaser may apply other remedial actions as provided by this Contract during such period of forbearance. This period of forbearance shall in no event constitute a waiver of Purchaser's rights to terminate the Contract for default.
- 39.4 At the end of the period of forbearance, which may be extended at the Purchaser's discretion, the Purchaser may terminate this Contract in whole or in part as provided in Clause 39.1 if the Contractor has not made adequate progress, deliveries or compliance with the Contract provisions which were the terms of the period of forbearance.
- 39.5 In the event the Purchaser terminates this Contract in whole or in part, as provided in Clause 39.1, the Purchaser may procure, upon such terms and in such manner as the Purchaser may deem appropriate, Work similar to those so terminated, and the Contractor shall be liable to the Purchaser for any excess costs for such similar Work; however, the Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this clause.
- 39.6 Except with respect to the default of Sub-contractors, the Contractor shall not be held liable for a termination of the Contract for default if the failure to perform the Contract arises out of causes beyond the control and without the fault or negligence of the Contractor.
- 39.6.1 Such causes may include, but are not restricted to, acts of God, acts of the public enemy, acts of the Purchaser in its contractual capacity, acts of sovereign governments which the Contractor could not reasonably have anticipated, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor.
  - 39.6.2 If the failure to perform is caused by the default of a Sub-contractor, and if such default arises out of causes beyond the control of both the Contractor and Sub-contractor, without the fault or negligence of either of them, the Contractor shall not be held liable for a termination for default for failure to perform unless the Work to be furnished by the Sub-contractor were obtainable from other sources in sufficient time to permit

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the Contractor to meet the required delivery schedule.

39.7 If this Contract is terminated as provided in Clause 39.1, the Purchaser, in addition to any other rights provided in this Clause and the Contract, may require the Contractor to transfer title and deliver to the Purchaser, in the manner and to the extent directed by the Purchaser:

39.7.1 any completed Work with associated rights ;

39.7.2 such partially completed Work, materials, Parts, tools, dies, jigs, fixtures, plans, drawings, information, and Contract rights (hereinafter called "Manufacturing materials") with associated rights as the Contractor has specifically produced or specifically acquired for the performance of such part of this Contract as has been terminated;

39.8 In addition to Clause 39.7, the Contractor shall, upon direction of the Purchaser, protect and preserve property in the possession of the Contractor in which the Purchaser has an interest.

39.9 Payment for completed Work delivered to and accepted by the Purchaser shall be at the Contract price.

39.10 Payment for manufacturing materials delivered to and accepted by the Purchaser and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and Purchaser, failure to agree to such amount shall be a dispute within the meaning of Clause 41 (Disputes).

39.11 The Purchaser may withhold from amounts otherwise due to the Contractor for such completed Work or manufacturing materials such sum as the Purchaser determines to be necessary to protect the Purchaser against loss because of outstanding liens or claims of former lien holders.

39.12 If, after notice of termination of this Contract under the provisions of this Clause, it is determined for any reason that the Contractor was not in default under the provisions of this Clause, or that the default was excusable under the provisions of this Clause, the rights and obligations of the Parties shall be the same as if the notice of termination had been issued pursuant to Clause 40 (Termination for the Convenience of the Purchaser).

39.13 If after such notice of termination of this Contract under the provisions of this Clause, it is determined for any reason that the Contractor was not in default under the provisions of this Clause and that the Parties agree that the Contract should be continued, the Contract shall be equitably adjusted to compensate for such termination and the Contract modified accordingly. Failure to agree to any such adjustment shall be a dispute within the meaning of Clause 41 (Disputes).

39.14 The rights and remedies of the Purchaser provided in this Clause shall not be

exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

**40. TERMINATION FOR THE CONVENIENCE OF THE PURCHASER**

- 40.1 The performance of Work under this Contract may be terminated by the Purchaser in accordance with this Clause in whole, or from time to time in part, whenever the Purchaser shall determine that such termination is in the best interest of the Purchaser.
- 40.2 Any such termination shall be effected by delivery to the Contractor of a written notice of termination, signed by the Contracting Authority, specifying the extent to which performance of Work under the Contract is terminated, and the date upon which such termination becomes effective.
- 40.3 After receipt of a Notice of Termination and except as otherwise directed by the Contracting Authority, the Contractor shall:
  - 40.3.1 stop the Work on the date and to the extent specified in the notice of termination;
  - 40.3.2 place no further orders or Sub-contracts for Work, Parts, materials, services or facilities, except as may be necessary for completion of such portion of the Work under the Contract as is not terminated;
  - 40.3.3 terminate all orders and Sub-contracts to the extent that they relate to the performance of Work terminated by the Notice of Termination;
  - 40.3.4 assign to the Purchaser, in the manner, at the times and to the extent directed by the Purchaser, all of the right, title and interest of the Contractor under the orders and Sub-contracts so terminated, in which case the Purchaser shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and Sub-contracts;
  - 40.3.5 settle all outstanding liabilities and all claims arising out of such termination of orders and Sub-contracts, with the approval or ratification of the Purchaser to the extent he may require, which approval or ratification shall be final for all the purposes of this Clause;
  - 40.3.6 transfer title and deliver to the Purchaser in the manner, at the times, and to the extent, if any, directed by the Contracting Authority of:

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- 40.3.6.1 the fabricated parts, work in process, completed work, Work, and other material produced as a part of, or acquired in connection with the performance of the Work terminated by the notice of termination, and
- 40.3.6.2 the completed or partially completed plans, drawings, information, and other property which, if the Contract had been completed, would have been required to be furnished to the Purchaser;
- 40.3.7 use his best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorised by the Contracting Authority, any property of the types referred to in Clause 40.3.6 above. However, the Contractor:
  - 40.3.7.1 shall not be required to extend credit to any Buyer; and
  - 40.3.7.2 may acquire any such property under the conditions prescribed by and at a price or prices approved by the Purchaser; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Purchaser to the Contractor under this Contract or shall otherwise be credited to the price or cost of the Work or paid in such manner as the Contracting Authority may direct;
- 40.3.8 complete performance of such part of the Work as shall not have been terminated by the Notice of Termination; and
- 40.3.9 take such action as may be necessary, or as the Purchaser may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which the Purchaser has or may acquire an interest.
- 40.4 The Contractor may submit to the Purchaser a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorised by the Purchaser, and may request the Purchaser to remove such items or enter into a storage agreement covering the same; provided that the list submitted

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shall be subject to verification by the Purchaser upon removal of the items, or if the items are stored, within forty-five (45) Days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

- 40.5 After receipt of a notice of termination, the Contractor shall submit to the Purchaser his termination Claim for the Work covered by the notice of termination, in the form and with certification prescribed by the Purchaser. Such claim shall be submitted promptly but in no event later than six (6) months from the effective date of termination, unless one or more extensions are granted in writing by the Purchaser, upon request of the Contractor made in writing within such six-month period or authorised extension thereof. However, if the Purchaser determines that the facts justify such action, the Purchaser may receive and act upon any such termination claim at any time after such six-month period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Purchaser may determine on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.
- 40.6 Subject to the provisions of Clause 40.5, the Contractor and the Purchaser may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of Work pursuant to this Clause, which amount or amounts may include a reasonable allowance for profit on work done; provided that such agreed amount or amounts exclusive of settlement costs shall not exceed total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of the Work not terminated. The Contract shall be amended accordingly and the Contractor shall be paid the amount agreed.
- 40.7 In the event of the failure of the Contractor and the Purchaser to agree as provided in Clause 40.6 upon the whole amount to be paid to the Contractor by reason of the termination of Work pursuant to Clause 40, the Purchaser shall pay to the Contractor the amounts determined by the Purchaser as follows, but without duplication of any amounts agreed upon in accordance with Clause 40.6 the total of:
- 40.7.1 for completed Work accepted by the Purchaser (or sold or acquired as provided in Clause 40.3 above) and not therefore paid for, a sum equivalent to the aggregate price for such Work computed in accordance with the price or prices specified in the Contract, appropriately adjusted for any saving of freight or other charges;
  - 40.7.2 the costs incurred in the performance of the Work terminated including initial costs and preparatory expense allocable thereto, but exclusive of any costs attributable

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to Work paid or to be paid for under Clause 40.7.1;

- 40.7.3 the cost of settling and paying claims arising out of the termination of work under Sub-contracts or orders, as provided in Clause 40.3.5, which are properly chargeable to the terminated portion of the Contract, exclusive of amounts paid or payable on account of Work or materials delivered or services furnished by Sub-contractors or vendors prior to the effective date of the notice of termination, which amounts shall be included in the costs payable under Clause 40.7.2; and
  - 40.7.4 a sum, as profit on Clause 40.7.1 above, determined by the Purchaser to be fair and reasonable; provided, however, that if it appears that the Contractor would have sustained a loss on the entire Contract, had it been completed, no profit shall be included or allowed and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and
  - 40.7.5 the reasonable costs of settlement, including accounting, legal, clerical and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination and settlement of Sub-contracts there under, together with reasonable storage, transportation, and other costs incurred in connection with the protection, or disposition of property allocable to this Contract.
- 40.8 The total sum to be paid to the Contractor under Clause 40.7 shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of Work not terminated.
- 40.9 Except for normal spoilage, and except to the extent that the Purchaser shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor, as provided in Clause 40.7 above, the fair value, as determined by the Purchaser, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Purchaser, or to a buyer pursuant to Clause 40.3.7 above.
- 40.10 The Contractor shall have the right to dispute, under the Clause 41 (Disputes), any determination made by the Purchaser under Clauses 40.5 and 40.7, except that if the Contractor has failed to submit his claim within the time provided in Clause 40.5 and has failed to request extension of such time, the Contractor shall be foreclosed from his right to dispute said determination. In

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any case where the Purchaser has made a determination of the amount due under Clauses 40.5 and 40.7, the Purchaser shall pay the Contractor the following:

40.10.1 if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Purchaser, or

40.10.2 if an appeal has been taken, the amount finally determined on such appeal.

40.11 In arriving at the amount due to the Contractor under this Clause there shall be deducted:

40.11.1 all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this Contract;

40.11.2 any claim which the Purchaser may have against the Contractor in connection with this Contract; and

40.11.3 the agreed price for, or the proceeds of the sale of, any materials, Work, or other things acquired by the Contractor or sold, pursuant to the provisions of this Clause, and not otherwise recovered by or credited to the Purchaser.

40.12 If the termination hereunder is partial, prior to the settlement of the terminated portion of this Contract, the Contractor may file with the Purchaser, in accordance with Clause 16 (Changes), a request in writing for an equitable adjustment of the price or prices relating to the continued portion of the Contract (the portion not terminated by the notice of termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices.

40.13 The Purchaser may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this Contract whenever in the opinion of the Purchaser the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payment is in excess of the amount finally agreed or determined to be due under this Clause, such excess shall be payable by the Contractor to the Purchaser upon demand, together with interest calculated using the average of the official base rate(s) per annum of the deposit facility rate as notified by the European Central Bank or such other official source as may be determined by the Purchaser, for the period from the date the excess is received by the Contractor to the date such excess is repaid to the Purchaser, provided, however, that no interest shall be charged with respect to any such excess payment attributed to a reduction in the

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Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition or such later date as determined by the Purchaser by reason of the circumstances.

- 40.14 Unless otherwise provided for in this Contract, the Contractor, from the effective date of termination and for a period of three years after final settlement under this Contract, shall preserve and make available to the Purchaser at all reasonable times at the office of the Contractor, but without direct charge to the Purchaser, all his books, records, documents, computer files and other evidence bearing on the costs and expenses of the Contractor under this Contract and relating to the work terminated hereunder, or, to the extent approved by the Purchaser, photographs, micro-photographs, or other authentic reproductions thereof.

**41. DISPUTES**

- 41.1 Except to the extent to which special provision is made elsewhere in the Contract, all disputes, differences or questions which are not disposed of by agreement between the Parties to the Contract with respect to any matter arising out of or relating to the Contract, other than a matter as to which the decision of the Contracting Authority under the Contract is said to be final and conclusive, shall be decided by the Contracting Authority. The Contracting Authority shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor.

- 41.2 The Contracting Authority shall not proceed with the evaluation and decision in respect of any claim until and unless the Contractor has submitted the attestation as foreseen in Clause 18 (Claims), as well as the complete proof and evidence of the claim (either by submission or by identification of the relevant documentation).

- 41.3 The Contracting Authority's decision shall be final and conclusive unless, within 30 Days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Authority his decision to open arbitration proceedings in accordance with the Clause 42 (Arbitration). The burden of proof for both receipt and delivery of such documentation shall be by signed and dated registered mail receipt or by hand receipt as acknowledged and signed by the Contracting Authority.

- 41.4 Pending final decision of a dispute, the Contractor shall proceed diligently with the performance of the Contract, unless otherwise instructed by the Contracting Authority.

**42. ARBITRATION**

- 42.1 Within a period of thirty days from the date of receipt of the notification referred to in Clause 41.3 above, the Parties shall jointly appoint an arbitrator. In the event of failure to appoint an arbitrator, the dispute or disputes shall be

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submitted to an Arbitration Tribunal consisting of three arbitrators, one being appointed by the Purchaser, another by the other contracting party and the third, who shall act as President of the Tribunal, by these two arbitrators. Should one of the Parties fail to appoint an arbitrator during the fifteen days following the expiration of the first period of thirty days, or should the two arbitrators be unable to agree on the choice of the third member of the Arbitration Tribunal within thirty days following the expiration of the said first period, the appointment shall be made, within twenty-one days, at the request of the Party instituting the proceedings, by the Secretary General of the Permanent Court of Arbitration at The Hague.

- 42.2 Regardless of the procedure concerning the appointment of this Arbitration Tribunal, the third arbitrator will have to be of a nationality different from the nationality of the other two members of the Tribunal.
- 42.3 Any arbitrator must be of the nationality of any one of the member states of NATO and shall be bound by the rules of security in force within NATO.
- 42.4 Any person appearing before the Arbitration Tribunal in the capacity of an expert witness shall, if he is of the nationality of one of the member states of NATO, be bound by the rules of security in force within NATO. If he is of another nationality, no NATO classified documents or information shall be communicated to him.
- 42.5 An arbitrator, who, for any reason whatsoever, ceases to act as an arbitrator, shall be replaced under the procedure laid down in Clause 42.1 above.
- 42.6 The Contractor agrees to submit to the Arbitration Tribunal only such issues, facts, evidence and proof which the Contractor had beforehand identified and submitted to the Contracting Authority for decision in accordance with Clause 41 (Disputes). The jurisdictional authority of the Arbitration Tribunal shall be restricted to consider only those identical issues, facts, evidence and proof so identified and submitted to the Contracting Authority.
- 42.7 The Purchaser likewise agrees to restrict its submissions only to the information on which the Contracting Authority based its decision and not to introduce new information and arguments which cannot reasonably be deduced or inferred from the written decision of the Contracting Authority in response to the original dispute.
- 42.8 The Arbitration Tribunal will take its decisions by a majority vote. It shall decide where it will meet and, unless it decides otherwise, shall follow the arbitration procedures of the International Chamber of Commerce in force at the date of signature of the present Contract.
- 42.9 The awards of the arbitrator or of the Arbitration Tribunal shall be final and there shall be no right of appeal or recourse of any kind. These awards shall

determine the apportionment of the arbitration expenses.

- 42.10 Pending final decision of a dispute, the Contractor shall proceed diligently with the performance of the Contract, unless otherwise instructed by the Contracting Authority.

**43. SEVERABILITY**

- 43.1 If one or more of the provisions of this Contract is declared to be invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions shall not be affected. Each of the Parties shall use its best efforts to immediately and in good faith negotiate a legally valid replacement provision.

**44. APPLICABLE LAW**

- 44.1 This Contract shall be governed, interpreted and construed in accordance with the private contract law of the Kingdom of Belgium.

\* \*

**ANNEX 1 TO GENERAL PROVISIONS: PURCHASER'S PRICING PRINCIPLES**A. General

1. With regard to all actions included in Clause 19," Pricing of Changes, Amendments and Claims", the Parties agree that the Purchaser's Pricing Principles contained herein shall govern.
2. As may be requested by the Purchaser, the Contractor shall provide documentation. that the standards or principles employed in the submission of cost or pricing data are in conformance with governing national policies and regulation. The Contractor, when submitting a price proposal based upon national standards and regulations, shall provide a point of contact within the national body governing such standards and regulations in order to allow Purchaser verification and audit.
3. Where such conformance cannot be demonstrated to the satisfaction of the Purchaser, the Purchaser's Pricing Principles will govern.
4. The Contractor shall clearly state whether national standards and rules or the Purchaser's Pricing Principles and formats are the basis for the price proposal.
5. Whether national standards or Purchaser pricing principles are applied, all cost and pricing data shall be verifiable, factual and include information reasonably required to explain the estimating process.
6. The Contractor shall also incorporate provisions corresponding to those mentioned herein in all sub-contracts, and shall require price and cost analysis provisions be included therein.

## B. Purchaser's Pricing Principles

1. Allowable cost

A cost is allowable for consideration by the Purchaser if the following conditions are fulfilled:

- (a) it is incurred specifically for the Contract or benefits both the Contract and other work or is necessary to the overall operation of the business although a direct relationship to any particular product or service cannot be established and is allocated to them in respective proportion according to the benefit received;

## i. Direct Costs

A direct cost is any cost which can be identified specifically with a particular cost objective as generally accepted. Direct costs are not limited to items which are incorporated in the end product as material or labour.

## ii. Indirect Costs

An indirect cost is one which is not readily subject to treatment as a direct cost. When presented these costs shall be accumulated in logical cost groupings in accordance with sound accounting principles and the Contractor's established practices. An indirect cost may be allocated to more than one final cost objective. An indirect cost shall not be allocated to a final cost objective if other costs incurred for the same purpose, in like circumstances, have been included as a direct cost of that or any other final cost objective. Such costs shall be presented as overhead rates and be applied to each related direct cost grouping.

- (b) The Contractor shall specify the allocation of costs to either of the cost groupings. The method by which costs are accumulated and distributed as part of direct or indirect costs cannot be modified during the duration of the Contract.
- (c) it is reasonable and expedient in its nature and amount and does not exceed that which would be incurred by an ordinary prudent person in the conduct of competitive business;
- (d) it is not liable to any limitations or exclusion as to types or amounts of cost items as set forth herein.
- (e) The Purchaser will review other costs presented against the contract and will determine if they would be allowable.

## 2. Unallowable Costs

In general all costs which cannot be shown by the contractor to be directly or indirectly of benefit to the Contract are totally unallowable. =Examples of such costs are, among others:

- (a) Advertising costs
- (b) Costs of remuneration, having the nature of profit sharing.
- (c) Costs of maintaining, repairing and housing idle and excess facilities.
- (d) Fines and penalties as well as legal and administrative expenses resulting from a violation of laws and regulations.
- (e) Losses on other contracts or on expected follow-on contracts
- (f) Costs incurred for the creation of reserves for general contingencies or other reserves (e.g. for bad debts, including losses).
- (g) Losses on bad debts, including legal expenses and collection costs in connection with bad debts.

- (h) Costs incurred to raise capital.
- (i) Gains and losses of any nature arising from the sale or exchange of capital assets other than depreciable property.
- (j) Taxes on profits.
- (k) Contractual penalties incurred.
- (l) Commissions and gratuities.
- (m) Interest on borrowings.

3. Rates and Factors

- (a) The Contractor shall inform the Purchaser of his rates and factors the basis upon which they were computed.
- (b) If the Contractor's rates and factors for similar contracts placed with national or international public services have not been established or approved by a government agency or an agency accepted by his government, the Contractor shall provide the necessary data to support the proposed rates.
- (c) The term "provisional " used in the title of a rate or factor means a tentative rate established for interim billing purposes pending negotiation and agreement to the final rate or factor.
- (d) A rate or factor is pre-determined if it is fixed before or during a certain period and based on (estimated) costs to be incurred during this period. An rate or factor is post-determined if it is fixed after a certain period and based on costs actually incurred during this period. Pre-determined rates or factors shall be agreed upon as final rates whenever possible; otherwise the provisions of paragraph 3c above shall apply pending agreement to post-determined rates or factors.
- (e) Such rates or factors shall be determined on the basis of Contractor's properly supported actual cost experience.
- (f) If the rates or factors of the Contractor for similar contracts placed by national or international public services have been established or approved by a government agency or an agency accepted by his government and the Contractor proposes the application of these rates, he shall state the name and address of the agency which has accepted or approved the rates and the period for which they were established. If he proposes rates which vary from the rates mentioned above, he shall furthermore provide a justification for the difference.

4. Profit/Benefit

- (a) Over the entire life cycle of a given acquisition, Profit and/or Benefit may be subject to negotiation.
- (b) Subcontracting profit/benefit amounts are dependent upon the size, nature and oversight needs of the subcontract(s) the prime contractor will use for work performance period.
- (c) Profit/benefit is considered by the Purchaser to be directly related to the anticipated risk of the Contractor during the performance of the Contract.

N A T O U N C L A S S I F I E D

**IFB-CO115750-CAB**

**Cabling, Installation and Maintenance  
(SHAPE)**



**Statement of Work**

N A T O U N C L A S S I F I E D

## Statement of Work

Installation, maintenance and troubleshooting of the CIS infrastructure for Inside Plant and Outside Plant cabling

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## Definitions

- a) BSG: Base Support Group (Organization responsible for overall Maintenance)
- b) CO: Contracting Officer
- c) COTR: Contracting Officer's Technical Representative
- d) CRF: Customer Request From (method of requesting services outside SLA)
- e) CRQ: Change Request
- f) CSU: Customer Support Unit
- g) ITSM: IT Service Management (ticketing system)
- h) LAN: Local Area Network
- i) LSOH: Low Smoke Zero Halogen
- j) NCI Agency:
- k) NMR: National Military Representative
- l) OTDR: Optical Time Domain Reflectometer
- m) PO: Purchase Order
- n) POC: Point of Contact
- o) QA/QC: Quality Assurance/Quality Control
- p) SHAPE: Supreme Headquarters Allied Powers Europe
- q) SLA: Service Level Agreement
- r) TSK: ITSM Task (work order)

## Background

NCI Agency CSU Mons, located in Mons (BEL) installs, operates, maintains and supports the full range of CIS capabilities during peacetime, crisis and war throughout its allocated Area of Responsibility (AOR) and as otherwise directed.

There are cases where the work requested cannot be performed by usual means, for example, but not limited to:

- a. Outside plant cabling installation using existing and new ducts and pipes and or new diggings.
- b. Working in objectionable conditions (high ground, underground).
- c. Working in areas where CSU does not have the necessary equipment.
- d. Projects directed by Project Teams where Contractor work is required due to high amount of equipment and material being installed.
- e. Time constraints.

This document has been created to support the request for a single contractor and contractually binding 5-year option support.

The selected Contractor is expected to undertake a large share of routine eligible copper and fibre infrastructure installation and maintenance on SHAPE premises and buildings. .

## Scope of Work

The Contractor shall provide qualified personnel able to accomplish the following tasks:

- a. Supply, install, terminate, connect, design and test fibre optic and copper cable infrastructure using various cable types, materials, connectors and test equipment applicable to installation requested.
- b. Provide *As Built Files* and drawings after installation to both CSU Mons and BSG, using **Bentley Microstation only**. This is due to the fact that the BSG Drawing Office uses this tool. *As Built Files* shall be provided via e-mail to COTR and BSG Drawing Office, in the following formats at minimum .dgn, .pdf.
- c. Provide *As Built Files* and drawings in Patch Manager exported file format (<https://patchmanager.com/product/>). This is because NCI Agency and CSU Mons use this tool. A Patch Manager mandatory cable information and format template will be provided to the contractor on award of contract.
- d. Provide cable continuity and loss measurements on completion of the physical work, in Microsoft Excel .xls format.
- e. Provide, Ad Hoc, files in MS Office Suite formats, PowerPoint, Excel, Visio.
- f. Provide assistance, maintenance, troubleshooting and repair in case of later damage.
- g. Provide warranty of the installation for 2 years on labour quality and material/equipment installed.
- h. Period of performance shall be set at 1 Base year + 4 yearly options (financial year is 1 January-31 December)

Base: 1 Jan 2024 – 31 Dec 2024

Options 1: 1 Jan 2025 – 31 Dec 2025

Option 2: 1 Jan 2026 – 31 Dec 2026

Option 3: 1 Jan 2027 – 31 Dec 2027

Option 4: 1 Jan 2028 – 31 Dec 2028

## Applicable Documents

- a. Labour Rates Form (ANNEX A) - shall be used to provide the labour rates depicted per technicians based on skills and working hours and conditions;
- b. CSU Mons Internal Ticketing System – ITSM. This will form the document reference for customer requests escalated to the Contractor via CSU Mons.
- c. Cost Estimate Model Breakdown and cover sheet (ANNEX B).
- d. Cost Estimate Request (ANNEX C) – the form to be used by COTR to request an offer from the Contractor.
- e. Project Completion Form (ANNEX D) – the form to be used to hand over the installation performed by the Contractor after QA has been performed by CSU Mons through COTR

- f. Purchase Order (PO) – the form used by Contracting Office/Acquisition to formally task the Contractor to start the work requested. The signed PO is the formal commitment to execute the work by the Contractor and for NCI Agency to pay subsequent invoices.

#### **Location of Work, Security and Constraints**

Contractor is required to perform the work within the below constraints.

- a. The place where work is to be performed is within the SHAPE site, located at the Belgian town SHAPE in CASTEAU – Mons, but may be requested to undertake work in other NATO location within Belgium borders.
- b. The Contractor is required that the personnel fulfilling the work must have a NATO approved security clearance - see “General Contractor’s personnel qualifications and guidelines” chapter.
- c. The Contractor shall be required to obtain an approved Digging Permit from SHAPE/BSG Drawing Office at no additional cost to the requester, should the nature of the work requested require digging/road crossing activities.
- d. The Contractor shall be required to have a knowledge of Belgian rules and regulations in order to avoid delays on the delivery of the work in regards with, but not limited to:
  - i. Desirable:
    - 1. SHAPE pipes and conduits;
    - 2. SHAPE layout and SHAPE premises
  - ii. Essential:
    - 1. Belgian rules and regulations with regards to digging depth for gas, electricity and communication cables.
- e. The work is to be performed outside, and it may involve digging between locations on the campus, working under ground and inside specially designed tunnels and communication chambers.
- f. Contractor personnel will be briefed on the approved site physical security, safety regulations and emergency services upon arrival.

#### **Contractor’s personnel qualifications and guidelines;**

Personnel fulfilling the works against this Statement of Work shall have:

- a. Security Clearance – a valid, NATO recognized, NATO SECRET security clearance is required throughout the execution of this Statement of Work and it is the responsibility of Contractor to provide this proof and to obtain the clearance through their national authorities.
- b. Experience in using fibre optic and copper cabling, including:
  - i. Installation, termination and testing

- c. Knowledge about various types of fibre optic cabling systems and connectors:
  - i. Connectors mostly used throughout the SHAPE environment are: ST UNICAM and Hotmelt, LC UNICAM and Hotmelt, SC UNICAM and Hotmelt
  - ii. Cables mostly used throughout the SHAPE environment are: multimode OM1 62.5/125 $\mu$ , multimode OM3/OM4 50/125 $\mu$  and single mode OS1/OS2 9/125 $\mu$
  - iii. Copper cables mostly used throughout SHAPE are: CAT5e, CAT6, CAT6A, CAT7, CAT7A, LS0H and multi-pair copper cables ranging from 25 pairs to 1000 pairs.
- d. Experience in using test equipment such as but not limited to:
  - i. Light source and power meter
  - ii. OTDRs
  - iii. TDRs
  - iv. ISDN testers
- e. Knowledge of standards on cabling installations for customer premises:
  - i. Cabling for Customer premises;
  - ii. Pathways and spaces for customer premises cabling.
  - iii. T568A and T568B terminations.
- f. Experience using Bentley Microstation CAD system to be able to provide As Built files to both COTR and BSG Drawing Office.
- g. Experience using Patch Manager Cable Management Software to export As Built Files in this toolset.
- h. Experience using various labelling systems for communication cables documents and records.
- i. Language skills: The work, both oral and written, is to be conducted in English.
- j. Availability: Contractor's personnel assigned to perform the tasks within this Statement of Work shall be available throughout the delivery. Furthermore, the same assigned personnel will provide assistance/maintenance after work is completed in case of damage or mis-installation for a minimum of 24 months after completion.
  - i. The Contractor must provide personnel on-site to commence activities on agreed work packages within 5 working day on receipt of PO.
  - ii. Even during contractor "block" holiday period, in emergency circumstances the contractor must be able to have maintenance teams available for on-site work with 3 working days notice.

#### **Contractor's responsibility**

- a. The Contractor shall furnish all labour, supervision, tools, materials, equipment, incidental engineering, transportation, quality control, and management necessary for the execution of the contract.

- b. The Contractor shall manage the total work effort associated with the operations, maintenance, repair, and all other services required herein to ensure fully adequate and timely completion of the projects.
- c. The Contractor shall execute the projects from “cradle to grave” by assuming the following tasks:
  - i. Technical visit on site with the COTR and client, and formulation of technical solutions.
  - ii. Technical calculation to include written calculations which must be produced on request.
  - iii. Rough indication of cost for budgetary purposes and to allow NCI Agency’s reimbursable customers to allocate funds.
  - iv. Detailed estimation broken down by item to allow analysis. Estimations, correspondence and all official documents must be written in English.
  - v. Technical documentation.
  - vi. Drawings.
  - vii. Planning and tracking of project status.
  - viii. Attendance at periodical progress meetings at the request of the COTR/CO and the provision of detailed planning for each ongoing project prior to such meetings.
  - ix. Execution, including site works supervision and liaison, where required with the **SHAPE entities outlined below**.
  - x. On site meetings with the client, project controller and other stakeholders when requested by CSU Mons, Contractor presence at such meetings is mandatory and the meeting will be conducted in English.
  - xi. As-built drawings and handover documentation including literature, operating manuals and parts lists.
  - xii. Final breakdown of costs upon CSU Mons request.

All these tasks shall be supervised and monitored by the Contractor’s personnel and shall be coordinated with all **SHAPE entities** (Engineering Branch, other possible Contractors, military agencies, SHAPE Police, SHAPE Fire Department and SHAPE Health, Environment & Safety Officer, etc...).

Upon CO’s request, the Contractor is required to attend meetings with the CO or his/her designated representative to assess contractor’s performance and address any contractual, financial, administrative issues.

#### **Contractor permanent staff**

- a. The Contractor shall provide the necessary levels, quantity and quality of management and administration staff to effectively accomplish their duties. To this effect, the Contractor must ensure that an administrative person is available at all times during SHAPE business hours.

- b. To ensure the good coordination/execution/supervision of the contract and of each project, the Contractor shall provide the following key personnel to manage/coordinate/control the projects:
  - i. A **Site Manager** with full authority for all Contractor actions/performance, required under this contract, including the ability to make financial decisions on behalf of the company, including the provision of necessary resources to perform the work and to negotiate all Contract modifications and delivery orders. He/She shall be responsible for all site management/administration aspects (including access, escort, security, first aid, etc).
  - ii. A **Project Controller** and/or a **Construction Site Monitor (Foreman)**.
- c. Contractor must consider the cost of this permanent staff as part of the company's overheads.
- d. The minimum experience of the staff in their profession/trade must be five (5) years for the Site Manager and three (3) years for Project Controller and/or Construction Site Monitor. Lack of experience can be compensated by having formal training (at least 2 years) in an accredited school with at least 2 years' experience for the Site Manager and 1 year experience for the Construction Site Monitor and Project Controller.
- e. These personnel must be fluent in English (e.g. TOEFL score over 80). NCI Agency reserves the right to request a proof of the language level of the proposed personnel.
- f. From the initial day of the contract, Contractor permanent staff shall possess a NATO Secret security clearance to access restricted areas. Site personnel shall be dedicated to NCI Agency projects only and shall be available at all times, during SHAPE normal working hours, for the duration of the contracted work.
- g. Contractor shall provide NCI Agency with a list of proposed Contractor permanent staff along with their Curriculum Vitae (CV) and a copy of their NATO security clearance.

The Site Manager shall be able to communicate in writing and orally in English and, possibly, French. The other Contractor's agents working on SHAPE should have a good working knowledge of both languages.

Depending on the number and magnitude of the projects, in order to keep the level of service/performance at the required satisfactory standard, NCI Agency expects the Contractor to accordingly increase the number of Contractor permanent staff available.

#### **Contractor's temporary personnel**

- a. The Contractor shall provide qualified personnel to execute the required works. This type of personnel will be invoiced at the quoted hourly rate.
- b. Contractor personnel for executing projects shall be classified in accordance with one of the following categories:

N A T O U N C L A S S I F I E D

- i. **Unskilled** - This individual is generally inexperienced and will have received basic instruction and task specific training on the job. Expected tasks would be general labouring, manual handling of equipment and materials, repetitive tasks and assisting skilled tradesmen as required.
    - 1. Fibre optic and copper cabling training obtained by following any commercial available training or accredited school for at least 2 months;
  - ii. **Semi-skilled** – This individual is generally trained in a specific trade and will be expected to conduct that trade under the supervision of a skilled operative until he/she becomes experienced (usually time related). Given responsibility for non-critical tasks and gradually allowed more responsibility dependent on performance.
    - 1. Formal training on fibre optic and copper cabling systems or Telecommunication Technician in an accredited school or Training Centre.
  - iii. **Skilled** – A time-served, trained and experienced tradesmen who has proved himself/herself capable of producing a high standard of work as a member and mentor of the team. This individual shall have the capability to produce basic calculations and designs and adapt those plans to fit conditions on site.
    - 1. Formal training on fibre optic and copper cabling systems or Telecommunication Technician in an accredited school or Training Centre, leading to a minimum of 1 year experience in regards to installation, maintenance, testing and troubleshooting of such systems for both outside and inside plant installations.
    - 2. Certified PANDUIT installer and/or TERA systems installer will be a bonus.
- c. Contractor personnel for execution of complex and specific works shall be classified in accordance with one of the following categories:
- i. **Engineer** – An engineer is suitably qualified and experienced in his/her field, he/she shall be chartered or be otherwise professionally qualified after undergoing a period of instruction leading towards a degree or diploma. He/she shall be responsible for suggesting courses of action to achieve a stated aim and producing calculations and scopes of work to allow works to proceed on site. He/she shall visit site regularly establishing a relationship with the site staff and will undertake checks to ensure that the works are proceeding in accordance with the specifications he/she has set out.
  - ii. **Designer** – This individual shall be responsible for undertaking all aspects of the design of complex works including diagrams, schematics, drawings, calculations, lists of materials and health and safety considerations of the

N A T O U N C L A S S I F I E D

design work. He/she shall be suitably experienced and qualified in his/her field.

1. Formal training on a Computer Aided Design System (i.e. Bentley Microstation) leading to a minimum of 3 years experience.
- d. Within fifteen (15) days from award of contract, Contractor shall provide NCI Agency with a list of proposed workers, for each category, along with their Curriculum Vitae (CV) and their Security Clearance. NCI Agency reserve the right at any point to request further information regarding the qualifications or experience of any personnel engaged on the Contract and to conduct further independent investigations if deemed appropriate.
- e. During the course of the Contract, for each new Contractor personnel involved in projects, the Contractor shall provide to the COTR a Curriculum Vitae stating the category of the worker.
- f. The Contractor accepts to terminate immediately the duties at SHAPE/NCI Agency of any employee whose presence is deemed undesirable by NCI Agency on the same day that such notification is given by the Contracting Officer. Under no circumstances, will NCI Agency be held responsible for the consequences if such a decision is made.
- g. To perform assigned tasks in the restricted area, Contractor personnel must possess a suitable security clearance up to NATO Secret.
- h. At no additional cost to NCI Agency, the Contractor is also required to escort sub-contractors (or any other people, as deemed necessary), who do not possess suitable security clearance and need to access restricted areas to perform assigned works. If no contractor personnel is available, the contractor will have to acquire security escort services at his own expense. Under current SHAPE security regulations, the maximum Escort to Escorted ratio is 1:3
- i. Contractor's personnel shall be required to sign the daily attendance sheet, detailing arrival and departure hours and performed works.
- j. Time to travel to and from home, and to access the SHAPE campus work area shall not be charged but is considered as a part in the computation of the labour rates.
- k. For travelling inside the compound, the Contractor shall provide its personnel with sufficient travel means (bicycle, car, van, etc.).

## Design

- a. All basic technical design works and expertise, for all projects and works requested through COTR, shall be accomplished at the Contractor's expense and be considered as overheads.
- b. All special technical design works and expertise specially requested by NCI Agency in addition to the basic requirements, shall be considered as design and

- can be charged at the designer labour rate or, if approved by the contracting officer, as sub-contracting.
- c. Sub-contracted design work may not be additionally charged if the works are part of the core business of the firm.
  - d. Irrespective of whether or not an order is placed, all the design documents shall become the property of NCI Agency.

### **Sub-contract**

NCI Agency expects the Contractor to perform this contract with his own work force. However, in order to meet the full requirements of the contract, Contractor may appeal to sub-contracting for non-core functions (i.e. digging, fibre blowing, specialized equipment). Designation of a sub-contractor must be approved by the NCI Agency Contracting Officer, who may, for reasons of his/her own, refuse such designation. The Contractor shall be required to produce evidence of the prices actually paid to his sub-contractors.

- a. As an exception and based on full justification, the Contracting Officer may authorize sub-contracting for core functions. NCI Agency Contracting Officer may, for reasons of his/her own, refuse such designation. Contractor will be required to produce evidence of the number of hours actually sub-contracted. These sub-contracted hours will be invoiced at the same rate as the contractor's own workforce.
- b. The Contractor shall be responsible for the administration and performance of all sub-contracts.
- c. The Contractor warrants that :
  - i. Approved sub-contractors are duly certified to provide the required services.
  - ii. Approved sub-contractors have obtained or shall obtain all necessary licenses and permits required in connection with the execution of a given project.
  - iii. Approved sub-contractors fully comply with all the laws, decrees, labour standards and regulations of Belgium during the execution of the project.
- d. If the Contractor elects to sub-contract parts of an agreed work package, then no additional payment claim can be made against NCI Agency for unforeseen sub-contracting costs.

### **Supplies and equipment**

- a. NCI Agency will approve the brand and type of equipment and supplies to be used in the execution of the projects. In any case, the type of equipment/technology proposed must be compatible with the existing installation.
- b. Examples of the brands of equipment currently used at SHAPE are listed below:

| FIBRE OPTIC | COPPER  | INSTALLATION MATERIAL | TEST EQUIPMENT |
|-------------|---------|-----------------------|----------------|
| Panduit     | Panduit | Legrand               | Fluke          |
| Corning     | Siemon  | Panduit               | JDSU           |
| 3M          | Krone   | 3M                    |                |
| AMP         | Alcatel | Rittal                |                |
| Siemon      |         |                       |                |

- c. All materials and equipment provided by the Contractor will be guaranteed for a minimum of two (2) years, spare parts and labour included. The two-year warranty period will start from the date of Project Acceptance (Annex D).
- d. All materials and equipment provided by the Contractor, and categorized by mutual agreement as Safety Systems/Equipment, will be guaranteed for a minimum of four (4) years. The four-year warranty period will start from the date of Project Acceptance (Annex D).

**Deliverables and Delivery Schedule**

- a. Contractor shall perform the task as per this Statement of Work including annexes, during normal working hours (normal working hours at SHAPE are between 08:30 and 17:30 Monday to Thursday and between 08:30 and 15:30 Friday).
  - i. *Note: There might be cases where a task cannot be accomplished during working hours; in these cases work will be actioned outside working hours. The Contractor will be informed and proper cost estimates shall be provided including the work performed outside agreed working hours.*
- b. After the receipt of the PO, Contractor shall present a detailed plan including schedule, testing plan, implementation and transition plan to COTR for validation and approval.
- c. Upon the validation of the plan, the work shall commence in no later than five (5) working days. If the work contracted requires more planning time (i.e. material ordered requires more time to be delivered), the Contractor shall notify the COTR and Contracting Officer and provide the new proposed start date as soon as possible.
- d. The work shall be completed on time, according to the Cost Estimate provided by Contractor and based on the prior plan drafted by Contractor or COTR and agreed. Any delays that are outside the control of the Contractor shall be brought forward in writing to COTR and a proper delay shall be agreed. If cost is affected, Contractor shall provide a cost estimate reflecting the change. There may be cases where due to the nature of the operation underway, work must be stopped and restarted later. In these cases there shall be no extra cost involved.

- e. When the physical work is completed, the contractor must inform the COTR within 5 working days, so NCIA quality control activities can commence.
- f. Within the same 5 working days, the contractor shall provide cable continuity and loss results in Microsoft Excel format. The cable continuity and test results should include these mandatory measurements:
  - i. Fibre Connector A loss (dBm)
  - ii. Fibre Connector B loss (dBm)
  - iii. Fibre end to end loss (dBm) and light wavelength used during test, fibre core colour.
  - iv. Copper cable end to end loss (dBm). This measurement applies equally to telephone pairs or fully wired Ethernet cables. Where multicore copper telephone cables are installed, the end-to-end pair measurement must also include the cable colour code.
  - v. Fibre/copper drop asset tag.
- g. Time delivery for the work (which includes QA/QC, As Built Files and any remedy of issues found, if any) shall not be more than 60 calendar days, except in unforeseen cases. In these situations, the Contractor shall inform COTR in writing.
- h. Any extension of time delivery of the work as per this Statement of Work and Annexes, due to Contractor's fault or misinterpretation of requirements, shall incur no additional cost to NCI Agency nor Customer, except cases stated above for Time Delivery and work hours (line 8.a.i).
- i. Contractor will provide a "Cost Estimate" (ANNEX B) to COTR within 10 working days after receipt of the Cost Estimate request (ANNEX C). If Contractor fails or cannot meet this timeline, the Contractor shall notify COTR and propose a new Cost Estimate delivery date and time; COTR reserves the right to agree or not with the new proposed timeline, in which case the request can be sent to another company for estimation and possible execution.
- j. Once the "Cost Estimate" is agreed and verified by COTR, it cannot be changed nor amended by Contractor.
- k. Customer has the right to amend or change the work as long as it is under the same amount agreed as per "Cost Estimate".
- l. If the change in requirements affects the cost, Contractor shall inform, in writing, COTR and Contracting Officer. The following actions will happen: work will stop, new "Cost Estimate" will be provided and shall be agreed upon by Contracting Officer. Once agreement is in place, a new PO shall be sent to contractor to amend the work.

#### **Period of Performance**

- a. The warranty of the installation shall be set at 24 months from the time that work has been accepted and "Project Completion form" (ANNEX D) signed for workmanship and materials provided and/or installed.

### Acceptance Criteria

- a. The work is considered accepted by COTR when the following conditions are met:
  - i. Contractor has performed the task according to Customer requirements found in ANNEX C and on the Schedule Plan proposed and agreed.
  - ii. Contractor informs COTR about completion of work and performs QA/QC;
  - iii. Contractor provides As Built Files to COTR including:
    1. Drawing of the installation in pdf and dgn format;
    2. pdf version of the test results (provided already in excel format at end of physical work).
  - iv. Contractor has fixed discrepancies, if any, found during the QA/QC;
  - v. Contractor, COTR and Customer/Project Manager have signed the "Project Completion form" – ANNEX D, which will be completed at the time of work completion, and after QA/QC is fulfilled.

### Monitoring Progress and Compliance

- a. COTR and Contractor shall establish a minimum once per month meeting to verify and discuss any emerged issues, and to review work performed to-date;
- b. COTR/CO shall perform the performance measurement of the contract at the end of each calendar year (November – December).
- c. Contractor shall bear the sole responsibility to contact BSG Drawing Office in order to obtain a "Digging Permit" to perform digging on SHAPE premises; the cost of this shall be part of the company's overheads.
- d. All computers and computer/network related equipment and/or furniture equipment, necessary to the Contractor to accomplish their tasks and that are to be not considered as deliverables, shall be provided and maintain by Contractor.
- e. Materials and equipment needed to accomplish the tasks (i.e. cables, connectors, conduits, test equipment and other related materials) shall be provided and delivered to place of work by the Contractor.
- f. Desirable compliances:
  - i. ISO9001 – Quality Management

### Special Requirements

- a. Contractor shall have minimum one Designer, with a minimum of 3 years' experience in using Bentley Microstation CAD system.
- b. Contractor shall have minimum one Designer, wo within 6 months
- c. The Contractor shall have computers ready with the licensed software installed and be able to provide cable diagram/maps (based on template maps that will be provided), and As Built Files to BSG Drawing Office and Tech CC/COTR.
- d. NCI Agency ***will not*** provide computers nor licenses for Bentley Microstation system, nor any other form of assistance with or for the system.

- e. NCI Agency ***will not*** provide computer or licenses for Patch Manager, nor any other form of assistance with or for the system. Note: NCI Agency will provide the Patch Manager cable information and format template on award of contract.
- f. Where the value of an agreed work is more than €100K, the Contractor is authorized to request % part payments at various project stages, in line with the % completion of the overall work.

#### Miscellaneous

- a. Communication between the Contractor and the COTR and/or Contracting Officer shall be made using mainly e-mail, scheduled meetings are also required
- b. By default, acknowledgement of any documents sent to Contractor will be made if one of the following conditions are met:
  - vi. Contractor replies, or does not reply in maximum 1 working day (8 hours), to e-mail in which the documents have been attached, sent by COTR/Acquisition Team/Contracting Officer
  - vii. Contractor signs on the delivery notice provided by COTR/Acquisition Team/Contracting Officer
- c. In case of access problems, CSU Mons COTR shall provide assistance with regard to access to place of the works, where necessary.

#### Technical evaluation criteria used to determine the best value contractor for this SoW

- a. Description of how the contractor will execute the contract requirements (see SSS Annex 1)
- b. Contractor's personnel (Permanent staff and temporary staff) qualifications as described in Chapter "Contractor's Personnel Qualifications and Guidelines" (see SSS Annex 2)
- c. Contractor's references, based on previous works/contracts performed (Bidding Instructions Annex A-14)
- d. A costed/priced scenario based on a required package of cabling work (see SSS Annex 3 and SSS Annex 4)

#### Price Evaluation criteria used to determine the best value contractor for this SOW:

- a. Labour Costs as depicted in Annex A and SSS Labour Cost Sheet.

**Annex A: Labour Costs Sheet**

|  | Unskilled | Semi-skilled | Skilled | Engineer | Designer |
|--|-----------|--------------|---------|----------|----------|
| Works performed during normal working hours  |           |              |         |          |          |
| Works performed outside normal working hours   |           |              |         |          |          |
| Works performed in environmentally objectionable conditions during normal working hours  |           |              |         |          |          |
| Works performed in environmentally objectionable conditions outside normal working hours |           |              |         |          |          |
| Overheads (%)  |           |              |         |          |          |

|  |  |
|--|--|
| Proposed revision formula to apply on the labour rates at the beginning of each option year (if granted) |  |
|--|--|

*Contractor's Company name address, telephone number, e-mail and logo*

*From*

*To*

*Location, date*

**Project Title:**  
**Contract Number:**  
**NCI Agency Reference:**  
**Contractor file reference:**  
**Contractor's estimate reference number:**  
**NCI Agency Project Controller:**  
**Contractor's Project Manager:**

Dear Sir/Madame,

Please find herewith our best quotation concerning the above mentioned works.

**Works could be completed for the amount of:**  
**as per attached details**

**Terms and conditions:**

**Time delivery (calendar days):**  
**Duration of work (working days):**  
**Validity of the offer (calendar days):**

|   |
|---|
| <b>Items over 20000€</b>  |
| <u>Subcontractors</u>   |
| Is the work performed by subcontractors SM's core business? ==> <b>Yes/No</b> |
| If Yes Why? ==>   |
| Are there three (3) offers from subcontractors required? ==> <b>Yes/No</b>    |
| If NOT, why? ==> <b>No subcontractors</b>                                     |
| Is (Are) subcontractor(s) offer(s) attached? ==> <b>Yes/No</b>                |
| <u>Suppliers</u>  |
| Are there three (3) offers required for supplies? ==> <b>Yes/No</b>           |
| If NO, why? ==> <b>under 20000€</b>   |
| Is (Are)the offer(s) attached? ==> <b>Yes/No</b>                              |

|  |
|--|
| <b>Maintenance</b>                                       |
| Is an offer for maintenance requested? ==> <b>Yes/No</b> |
| Is the offer for maintenance attached? ==> <b>Yes/No</b> |
| If NO, why? ==> <b>not requested</b>                     |

**Remarks:**

*Contractor's SiteManager name and signature*

| Date   | Project name/title                                 | contr ref #           | file no | cost no          | Contractor's project manager name | COTR name |                               |         |          |            | Amount            |                       |
|--|--|-----------------------|---------|------------------|-----------------------------------|-----------|-------------------------------|---------|----------|------------|-------------------|-----------------------|
| From   | Contractor's name and division                     | Supplies - Equipments |         |                  | Manpower (year) - hours per item  |           |                               |         |          | Total cost | Sub-contractors   |                       |
| To   | NCI Agency section/COTR/Project management section | rate €                | rate €  | rate €           | rate €                            | rate €    | rate €                        | rate €  | rate €   |            |                   |                       |
| Item   | Works - description                                | Qty                   | Unit    | Buying cost/unit | Total buying cost                 | Unskilled | Semi-skilled                  | Skilled | Engineer | Designer   | Total buying cost |                       |
| <b>Works performed during normal working hours</b>   |  |                       |         |                  |                                   |           |                               |         |          |            |                   |                       |
| <b>Type of task (i.e. fibre, copper, testing etc)</b>  |  |                       |         |                  |                                   |           |                               |         |          |            |                   |                       |
| 1  | tasks performed material, equipment used           |                       |         |                  |                                   |           |                               |         |          |            |                   |                       |
| 2  | tasks performed material, equipment used           |                       |         |                  |                                   |           |                               |         |          |            |                   |                       |
| 3  | tasks performed material, equipment used           |                       |         |                  |                                   |           |                               |         |          |            |                   |                       |
| 4  | tasks performed material, equipment used           |                       |         |                  |                                   |           |                               |         |          |            |                   |                       |
| 5  | tasks performed material, equipment used           |                       |         |                  |                                   |           |                               |         |          |            |                   |                       |
| 6  | tasks performed material, equipment used           |                       |         |                  |                                   |           |                               |         |          |            |                   |                       |
|  | tasks performed material, equipment used           |                       |         |                  |                                   |           |                               |         |          |            |                   |                       |
| 99   | tasks performed material, equipment used           |                       |         |                  |                                   |           |                               |         |          |            |                   |                       |
| 100  | tasks performed material, equipment used           |                       |         |                  |                                   |           |                               |         |          |            |                   |                       |
| <b>Supporting work performed (i.e. digging, etc)</b>   |  |                       |         |                  |                                   |           |                               |         |          |            |                   |                       |
| 1  | tasks performed                                    |                       |         |                  |                                   |           |                               |         |          |            |                   |                       |
| 2  | tasks performed                                    |                       |         |                  |                                   |           |                               |         |          |            |                   |                       |
| 3  | tasks performed                                    |                       |         |                  |                                   |           |                               |         |          |            |                   |                       |
| 4  | tasks performed                                    |                       |         |                  |                                   |           |                               |         |          |            |                   |                       |
| 5  | tasks performed                                    |                       |         |                  |                                   |           |                               |         |          |            |                   |                       |
| 6  | tasks performed                                    |                       |         |                  |                                   |           |                               |         |          |            |                   |                       |
|  | tasks performed                                    |                       |         |                  |                                   |           |                               |         |          |            |                   |                       |
| 99   | tasks performed                                    |                       |         |                  |                                   |           |                               |         |          |            |                   |                       |
| 100  | tasks performed                                    |                       |         |                  |                                   |           |                               |         |          |            |                   |                       |
| <b>SUB-TOTAL 1</b>   |  |                       |         |                  |                                   |           |                               |         |          |            |                   |                       |
| <b>Hourly rates for works performed outside normal working hours (rate includes the xx % supplement)</b> |  |                       |         |                  |                                   | rate €    | rate €                        | rate €  | rate €   | rate €     |                   |                       |
| OUT 1  |  |                       |         |                  |                                   |           |                               |         |          |            |                   |                       |
| OUT 2  |  |                       |         |                  |                                   |           |                               |         |          |            |                   |                       |
| OUT 3  |  |                       |         |                  |                                   |           |                               |         |          |            |                   |                       |
| OUT 4  |  |                       |         |                  |                                   |           |                               |         |          |            |                   |                       |
| OUT 99   |  |                       |         |                  |                                   |           |                               |         |          |            |                   |                       |
| <b>SUB-TOTAL 2</b>   |  |                       |         |                  |                                   |           |                               |         |          |            |                   |                       |
| <b>Hourly rates for works performed in objectionable conditions (rate includes xx % supplement)</b>      |  |                       |         |                  |                                   | rate €    | rate €                        | rate €  | rate €   | rate €     |                   |                       |
| OBJ 1  |  |                       |         |                  |                                   |           |                               |         |          |            |                   |                       |
| OBJ 2  |  |                       |         |                  |                                   |           |                               |         |          |            |                   |                       |
| OBJ 99   |  |                       |         |                  |                                   |           |                               |         |          |            |                   |                       |
| <b>SUB-TOTAL 3</b>   |  |                       |         |                  |                                   |           |                               |         |          |            |                   |                       |
|  |  |                       |         |                  | <b>Supplies</b>                   |           | <b>Manpower</b>               |         |          |            |                   | <b>Sub-contractor</b> |
|  |  |                       |         |                  |                                   |           |                               |         |          |            |                   |                       |
|  |  |                       |         |                  | Overheads %                       |           |                               |         |          |            |                   |                       |
|  |  |                       |         |                  | Profits %                         |           |                               |         |          |            |                   |                       |
|  |  |                       |         |                  |                                   |           |                               |         |          |            |                   |                       |
| <b>TOTAL</b>   |  |                       |         |                  |                                   |           | <b>.....total amount.....</b> |         |          |            |                   |                       |

## Cost estimate request

Work order number

Customer / Division

Description

Date of request

Due date

Details of work requested

*Please sign and return to sender*

Acknowledge receipt

Signature \_\_\_\_\_ Date     /     /

**S.A PUTMAN**  
**Putman Site Manager**

**Project title:**

**Project Description:**

**Contractor's reference:**

**NCI Agency reference (CRQ/TSK):**

To NCI Agency CSU Mons

This notice is to inform NCI Agency that the above mentioned Project has been completed\* on:

A joint site visit was performed by NCI Agency Contracting Officer's Technical Representative (COTR), the requestor and Contractor's Foreman and/or Technical Advisor, upon reception of work.

Responsibilities of NCI Agency and/or the Customer requesting work, will begin\* on the date mentioned above. The project is covered by one-year warranty on workmanship and 2 years warranty on materials.

The following material and equipment should be entered on NCI Agency maintenance schedule:

|   |   |
|---|---|
| 1 | 3 |
| 2 | 4 |
| 5 | 6 |

Where applicable, the Contractor has provided the following documents:

|                          |            |           |
|--------------------------|------------|-----------|
| <b>Technical manuals</b> | <b>YES</b> | <b>NO</b> |
| <b>As Built Drawings</b> | <b>YES</b> | <b>NO</b> |

*\*The acceptance of the project/work will only be agreed; when and if applicable all documents have been received and/or all discrepancies corrected.*

Remarks:

*For Acceptance.*

Contractor's Representative:

Name:

Phone:

Date:

Signature

Contracting Officer's Representative

Name:

Phone:

Date:

Signature

NCMO Project Manger/Customer

Name:

Phone:

Date:

Signature