

NATO UNCLASSIFIED
(NATO RESTRICTED WHEN PART IV, ANNEX A
ATTACHED)

IFB-CO-14786-NRF
Book II – Part II – Contract Special Provisions



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

IFB-CO-14786-NRF

**PROVIDE COUNTER – IMPROVISED EXPLOSIVE
DEVICE (C-IED) CAPABILITY PACKAGE TO THE NATO
RESPONSE FORCE (NRF)**

**Electronic Countermeasure (ECM) Capability Against
Radio Controlled IED (RCIED)**

BOOK II – PART II

CONTRACT SPECIAL PROVISIONS

VERSION IFB

NATO UNCLASSIFIED (NATO RESTRICTED
WHEN PART IV, ANNEX A ATTACHED)

Book II Page II-1 of 21

PART II
CONTRACT SPECIAL PROVISIONS - INDEX OF CLAUSES

1.	ALTERATIONS, MODIFICATIONS AND DELETIONS OF THE NCIA CONTRACT GENERAL PROVISIONS	3
2.	SCOPE OF WORK	3
3.	PARTICIPATING COUNTRIES	4
4.	TRANSPORTATION OF EQUIPMENT	4
5.	PRICING OF CHANGES, MODIFICATIONS, FOLLOW-ON CONTRACTS AND CLAIMS	4
6.	INVOICES AND PAYMENT	5
7.	LIQUIDATED DAMAGES	7
8.	PURCHASER USE OF THIRD PARTIES	8
9.	INTELLECTUAL PROPERTY	9
10.	SUPPLEMENTAL AGREEMENT(S), DOCUMENTS AND PERMISSIONS	9
11.	PURCHASER FURNISHED EQUIPMENT (PFE)	9
12.	ACCEPTANCE OF DESIGN DOCUMENTATION	11
13.	SECURITY	12
14.	KEY PERSONNEL	12
15.	INDEPENDENT CONTRACTOR	14
16.	CARE AND DILIGENCE OF PROPERTY	14
17.	RESPONSIBILITY OF THE CONTRACTOR TO INFORM EMPLOYEES OF WORK ENVIRONMENT	15
18.	COMPREHENSION OF CONTRACT AND SPECIFICATIONS	15
19.	ADDITIONAL CONTRACT TASKS AND OPTIONS	16
20.	SOFTWARE	17
21.	WARRANTY	17
22.	OBSOLESCENCE	17
23.	OPTIMISATION	18
24.	CONTRACT ADMINISTRATION	18
25.	TECHNICAL DIRECTION	19
26.	CONFLICT OF INTEREST	20

1. ALTERATIONS, MODIFICATIONS AND DELETIONS OF THE NCI CONTRACT GENERAL PROVISIONS

Clause 9 “*PARTICIPATING COUNTRIES*” of the NCI AGENCY Contract General Provisions is augmented by Clause 3 “*PARTICIPATING COUNTRIES*”.

Clause 13 “*PURCHASER FURNISHED PROPERTY*” of the NCI AGENCY Contract General Provisions is replaced by Clause 12 “*PURCHASER FURNISHED EQUIPMENT (PFE)*”.

Clause 19 “*PRICING OF CHANGES, AMENDMENTS AND CLAIMS*” of the NCI AGENCY Contract General Provisions is augmented by Clause 5 “*PRICING OF CHANGES, MODIFICATIONS, FOLLOW-ON CONTRACTS AND CLAIMS*”.

Clause 25 “*INVOICES AND PAYMENT*” of the NCI AGENCY Contract General Provisions is augmented by Clause 6 “*INVOICES AND PAYMENT*”.

Clause 38 “*LIQUIDATED DAMAGES*” of the NCI AGENCY Contract General Provisions is replaced by Clause 7 “*LIQUIDATED DAMAGES*”.

Clause 30 “*INTELLECTUAL PROPERTY*” of the NCI AGENCY Contract General Provisions is augmented by Clause 9 “*INTELLECTUAL PROPERTY*”.

Clause 27 “*WARRANTY OF WORK (EXCLUSIVE OF SOFTWARE)*” and Clause 31 “*SOFTWARE WARRANTY*” of the NCI AGENCY Contract General Provisions is augmented by Clause 21 “*WARRANTY*”.

Clause 3 “*AUTHORITY*” of the NCI AGENCY Contract General Provisions is augmented by Clause 25 “*TECHNICAL DIRECTION*”.

Clause 32 “*NATO Codification*” of the NCI AGENCY Contract General Provisions is deleted and not applicable to this Contract.

2. SCOPE OF WORK

The Contractor shall deliver Commercial-Off-The-Shelf (COTS) and Military-Off-The-Shelf (MOTS) hardware and software to provide vehicular and static Electronic Countermeasure (ECM) systems against Radio Controlled Improvised Explosive Devices (RCIEDs). The effort will include the integration of the vehicular ECM systems into Purchaser provided armoured vehicles, installation of antenna suites and control units, overall system testing and verification, training, warranty and logistics support packages. In addition, the

Purchaser shall have the right to exercise contract options for additional warranty coverage, operational support, and equipment maintenance.

3. PARTICIPATING COUNTRIES

3.1 None of the work, including project design, labour and services shall be performed other than by firms from and within Participating Countries.

3.2 The term "Participating Country" as used herein means one of the 28 contributory NATO nations in the project, namely, (in alphabetical order): Albania, Belgium, Bulgaria, Canada, Croatia, The Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, The Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Turkey, The United Kingdom and The United States.

3.3 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.

4. TRANSPORTATION OF EQUIPMENT

In accordance with Clause 20 of the Contract General Provisions, all supplies covered under this Contract, including Purchaser Furnished Equipment (PFE) and items shipped under warranty for repair or otherwise, shall be transported to and from all delivery destinations as noted in the contract Schedule of Supplies and Services at the full responsibility of the Contractor. The Purchaser shall not be liable for any storage, damage, insurance, customs, duties, accessorial or any other charges involved in such transporting of supplies.

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

5.1 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.

5.2 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.

5.3 Contractor cost proposal preparation and negotiation costs for all proposed or executed contract changes shall be provided at no additional cost to the Purchaser and shall have a minimum validity period of six (6) months from submission.

5.4 The pricing information contained in the cost breakdown sheets submitted as part of the Contractor's proposal will constitute the reference basis for any future changes to this Contract.

6. INVOICES AND PAYMENT

6.1 Following Purchaser acceptance, in writing, payment for supplies and services furnished shall be made in the currency specified for the relevant portion of the Contract.

6.2 No payment shall be made with respect to undelivered supplies; works not performed, services not rendered and/or incorrectly submitted invoices.

6.3 No payment will be made for additional items delivered that are not specified in the contractual document.

6.4 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.

6.5 The Purchaser shall not bear any liability related to financial guarantees, which the Contractor is required to provide under this Contract.

6.6 The Purchaser is released from paying any interest resulting from any reason whatsoever.

6.7 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 (CO-14786-NRF), Purchase Order number [TBD], Contract Amendment number (if any) and the Contract Line Item(s) (CLIN) as they are defined in the Schedule of Supplies and Services.

6.8 The invoice shall contain the following certificate:

"I certify that the above invoice is true and correct, that the delivery of the above described items has been duly effected and/or that the above mentioned services have been rendered and the payment therefore has not been received."

The certificate shall be signed by a duly authorised company official on the designated original.

6.9 Invoices shall be submitted by email to:

accountspayable@ncia.nato.int

6.10 The Purchaser will make payment within forty-five (45) days of receipt by the Purchaser of a properly prepared and documented invoice.

6.11 The Contractor shall be entitled to submit invoices and payment in accordance with the following Payment Events schedule. This schedule is

NATO UNCLASSIFIED
(NATO RESTRICTED WHEN PART IV, ANNEX A
ATTACHED)

IFB-CO-14786-NRF

Book II – Part II – Contract Special Provisions

summarized in the following table and elaborated on in the sections that follow.

Payment	Milestone	CLIN(s)	Percentage of CLIN Value (** = when 100% of CLIN is paid)	Amount
1	CDR	1.5	80%	
2	FAT	1.5 1.6	20% ** 80%	
3	SAT	1.6 1.7	20% ** 80%	
4	Doc, HW, SW, Spares	1.7 1.1, 1.2, 1.3 + 1.4 1.9 3 4.1 + 4.2	20% ** 80% 100% ** 80% 80%	
5	Training	2	80%	
6	FSA	1.1, 1.2, 1.3 + 1.4 1.8 2 3 4.1 + 4.2	20% ** 100% ** 20% ** 20% ** 20% **	
7	Warranty & Support (each quarter)	4.3	25% at the end of each quarter	

6.11.1 Upon successful Purchaser confirmed Critical Design Review (CDR) (all systems):

- 80 % of the total value of CLIN 1.5.

6.11.2 Upon successful Purchaser confirmed Factory Acceptance Test (FAT) (all systems):

- 20 % of the total value of CLIN 1.5,
- 80 % of the total value of CLIN 1.6.

6.11.3 Upon successful Purchaser confirmed Site Acceptance Test (SAT) (all systems):

- 20 % of the total value of CLIN 1.6,
- 80 % of the total value of CLIN 1.7.

6.11.4 Upon Purchaser confirmed physical delivery of all documentation, hardware, software, consumables, and spares associated with CLIN 1 to

NATO UNCLASSIFIED
(NATO RESTRICTED WHEN PART IV, ANNEX A
ATTACHED)

IFB-CO-14786-NRF

Book II – Part II – Contract Special Provisions

CLIN 4.1 and 4.2 to NATO Storage Depot location (Southern Operational Centre (SOC), Taranto, Italy):

- 20 % of the total value of CLIN 1.7,
- 80 % of the total value of CLIN 1.1, CLIN 1.2, CLIN 1.3, and CLIN 1.4,
- 100% of the total value of CLIN 1.9,
- 80 % of the total value of CLIN 3,
- 80 % of the total value of CLIN 4.1 and CLIN 4.2.

6.11.5 Upon successful Purchaser confirmed Training delivery (all types):

- 80 % of the total value of CLIN 2,

6.11.6 Upon successful Purchaser confirmed Final System Acceptance (FSA) (all systems):

- 20 % of the total value of CLIN 1.1, CLIN 1.2, CLIN 1.3, and CLIN 1.4,
- 100 % of the total value of CLIN 1.8,
- 20 % of the total value of CLIN 2,
- 20 % of the total value of CLIN 3,
- 20 % of the total value of CLIN 4.1 and CLIN 4.2.

6.11.7 Warranty and Support:

- CLINs 4.3 – 25% of the total CLIN value every quarter in arrears.

7. LIQUIDATED DAMAGES

7.1 If the Contractor fails to:

7.1.1 meet the delivery schedule of the Deliverables or any major performance milestones specified in the Schedule of Supplies and Services to this Contract, or any extension thereof, or

7.1.2 deliver and obtain acceptance of the Deliverables or to acceptably perform the services as specified in the Schedule of Supplies and Services to this Contract,

the actual damage to the Purchaser for the delay will be difficult or impossible to determine. Therefore, in lieu of actual damages the Contractor shall pay to the Purchaser, for each day of delinquency in achieving the deadline or milestone, fixed and agreed liquidated damages of 0.1% (one tenth of one per cent) per day of the total payment amount for each Payment Event as scheduled in Clause 7 of the Contract Special Provisions.

7.2 In addition to the liquidated damages referred to in Clause 8.1, the Purchaser shall have the possibility of terminating this Contract in whole or in

part, as provided in Clause 39 (Termination for Default) of the Contract General Provisions. In the event of such termination, the Contractor shall be liable to pay the excess costs provided in Clause 39.5 (Termination for Default) of the Contract General Provisions.

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

7.4 Liquidated damages shall be payable to the Purchaser from the first day of delinquency and shall accrue at the rate specified in Clause 7.1.2 above to a maximum of 20% of the total payment amount for each Payment Event as scheduled in 7.11 (a), (b), and (c). The aggregate sum of liquidated damages which may be applied for the total Contract will not exceed 15% of the value of the total Contract. These liquidated damages shall accrue automatically and without any further notice being required. Application of liquidated damages for any exercised Contract Options will be as specified in the written amendment to the Contract exercising the Option.

7.5 The amount of Liquidated Damages due by the Contractor shall be recovered by the Purchaser in the following order of priority:

- a) By deducting such damages from the amounts due to the Contractor against the Contractor's invoices.
- b) By proceeding against any surety
- c) By reclaiming such damages through appropriate legal remedies.

7.6 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.

8. PURCHASER USE OF THIRD PARTIES

8.1 The Purchaser shall have the right to use third parties, including commercial entities, to assist it in the management of this Contract and the evaluation of the Contractor's performance.

8.2 The Contractor shall permit such third parties full and free access to its premises, and all data (including software), deliverable and non-deliverable, generated and/or used under this Contract, as and when required for the purposes of monitoring this Contract and shall ensure the same right of access to the premises of its subcontractors, by the inclusion of any such subcontracts of a provision substantially as set forth in this clause.

8.3 The Contractor shall have no rights to raise claims, ask for delays or interrupt the performance of the contract on the basis of, or in connection with, the presence of third parties running parallel work on or related to this Project.

9. INTELLECTUAL PROPERTY

This Clause augments Clause 30 (Intellectual Property) of the Contract General Provisions.

9.1 Considering that this Contract is for deployable systems to be used by the NATO Response Force (NRF), all Background Intellectual Property and Third Party Intellectual Property as well as any documentation delivered by the Contractor as part of this Contract shall be releasable to NATO nations, NATO operations, exercises and training and NATO bodies at no extra cost.

10. SUPPLEMENTAL AGREEMENT(S), DOCUMENTS AND PERMISSIONS

10.1 If any supplemental agreements, documents and permissions are introduced after Contract award, the execution of which by the Purchaser is/are required by national law or regulation, 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 39 (Termination for Default) of the Contract General Provisions.

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

11. PURCHASER FURNISHED EQUIPMENT (PFE)

11.1 The term "Purchaser Furnished Equipment" (PFE) as used in this Clause refers to items of equipment, material, data or property furnished by the Purchaser to the Contractor which shall be subject to overhaul, repair, modification, test, embodiment or other work as specified in the Contract to be performed by the Contractor.

11.2 The Purchaser shall deliver to the Contractor, for use only in connection with this Contract, PFE described in Section 2.1 of the SOW Annex A together with such related data and information as the Contractor may request and as may be reasonably required, on an “as-is” basis. The Purchaser makes no warranty whatsoever with respect to PFE or related data and information furnished “as-is”. In the event that PFE is not delivered or made available by such time or times stated in the Contract, 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 the procedures of the "Changes" Clause hereof.

11.3 Changes in Purchaser Furnished Equipment.

12.3.1 The Purchaser may, by written notice pursuant to the procedures of the "Changes" Clauses of this Contract:

12.3.1.1 Decrease the PFE provided or to be provided under this Contract, or,

12.3.1.2 Substitute other PFE for the property to be provided by the Purchaser or to be acquired by the Contractor for the Purchaser under this Contract,

12.3.1.3 The Contractor shall promptly take such action as the Purchaser may direct regarding the removal, shipment, or disposal of the Equipment covered by this notice.

11.4 Upon the Contractor’s written request, the Purchaser will make an equitable adjustment pursuant to the procedures of the “Changes” Clauses, if the Purchaser has agreed in the Schedule of Supplies and Services to make such equipment available for performing this Contract and there is any:

12.4.1 Decrease or substitution in this equipment pursuant to subparagraph 12.3.1 above; or

12.4.2 Withdrawal of authority to use equipment, if provided under any other Contract provision.

11.5 Title to Purchaser Furnished Equipment shall remain in the Purchaser in accordance with the Clause “Ownership And Title”.

11.6 The PFE as described above and in the Clause “Ownership And Title” shall be used only for performing this Contract, unless otherwise provided in this Contract or approved by the Purchaser.

11.7 Property Administration. The Contractor shall be responsible, accountable and maintain adequate property control records and establish/maintain a programme for the use, maintenance, repair, protection, and preservation of all PFE in accordance with sound industrial practice.

11.8 Equitable adjustment. When this Clause specifies an equitable adjustment, it shall be made to any affected Contract provision in accordance with the procedures of the Changes Clause. When appropriate, the Purchaser may initiate an equitable adjustment in favour of the Purchaser. The right to an equitable adjustment shall be the Contractor's exclusive remedy.

11.9 The Purchaser shall not be liable to action for breach of Contract for:

11.9.1 Any delay in delivery of PFE;

11.9.2 Delivery of PFE in an "as is" condition;

11.9.3 A decrease in or substitution of PFE; or

11.9.4 Failure to repair or replace Purchaser Equipment for which the Purchaser is responsible.

11.10 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 Equipment not consumed in the performance of this Contract or not theretofore returned to the Purchaser. The Contractor shall prepare for shipment, deliver "Delivery Duty Paid" (DDP), INCOTERMS 2000, or otherwise dispose of PFE 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 in such other manner as the Purchaser may direct.

11.11 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 PFE. 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 PFE.

12. ACCEPTANCE OF DESIGN DOCUMENTATION

12.1 This Article augments Clause 22 of the Contract General Provisions.

12.2 The acceptance by the Purchaser of the Contractor's design documentation required by this Contract signifies that the documents delivered appear logical and consistent. The acceptance does not constitute an endorsement or approval of the design by the Purchaser and does not relieve the Contractor of the obligation to meet the performance requirements of this contract in the event that the design eventually proves to be non-compliant at the testing.

13. SECURITY

13.1 The security classification of this Contract in its entirety is NATO RESTRICTED. The security classification of the Contract is downgraded to NATO UNCLASSIFIED when separated from Part IV, SOW – Annex A SRS (NR) which is classified as NATO RESTRICTED at all times.

13.2 In the performance of all works under this Contract it shall be the Contractor's responsibility to ascertain and comply with all applicable NATO and National security regulations as implemented by the Purchaser and by the local authorities.

13.3 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 a NATO security clearance up to this level.

13.4 All NATO CLASSIFIED material entrusted to the Contractor shall be handled and safeguarded in accordance with applicable security regulations.

13.5 The Contractor will be required to handle and store classified material at his facility to the level of "NATO RESTRICTED".

13.6 It shall be the Contractor's responsibility to obtain the appropriate personnel and facility clearances to the levels stated in the preceding paragraphs and to have such clearances confirmed to the Purchaser by the relevant National security authority for the duration of the Contract in its entirety.

13.7 Failure to obtain or maintain the required level of security for Contractor personnel and facilities 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 39 (Termination for Default) of the Contract General Provisions.

13.8 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.

14. KEY PERSONNEL

14.1 The designated Contractor personnel fulfilling the roles as described in Statement of Work (SOW) Section 3.1.2 are considered Key Personnel for successful Contract performance and are subject to the provisions of this Clause as set forth in the following paragraphs. Key Personnel minimum experience, academic, technical and security requirements as reflected in the SOW shall remain as valid requirements for the life of this contract.

NATO UNCLASSIFIED
(NATO RESTRICTED WHEN PART IV, ANNEX A
ATTACHED)

IFB-CO-14786-NRF

Book II – Part II – Contract Special Provisions

14.2 The following individuals are identified as Key Personnel under this Contract:

Role	Name
Contractor Project Manager (CPM)	[To be completed at award]
Contractor Technical Lead (CTL)	[To be completed at award]

14.3 Under the terms of this Clause, Key Personnel shall be assigned by the Contractor to perform the work under this Contract as their primary and overriding responsibility and may not be voluntarily diverted by the Contractor to perform work outside the Contract should other duties come into conflict with the work to be performed under the Contract. In cases where the Contractor has no control over the individual's non-availability (e.g. resignation, sickness, incapacity, etc.), the Contractor shall notify the Purchaser immediately of a change of Key Personnel and offer a substitute with equivalent qualifications at no additional costs to the Purchaser within 21 days of the date of knowledge of the prospective vacancy.

14.4 The Contractor shall take all reasonable steps to avoid changes to Key Personnel assigned to this project except where changes are unavoidable or are of a temporary nature. Any replacement personnel shall be of a similar grade, standard and experience as the individual to be substituted and must meet the minimum qualifications and required skills cited in the attached Statement of Work.

14.5 In the event of a substitution of any Key Personnel listed above and prior to commencement of performance, the Contractor shall provide a CV for the personnel proposed. The CV shall clearly stipulate full details of professional and educational background, and evidence that the personnel is qualified in pertinent Contract related areas per Section 4.4.8 and Annex C of the SOW.

14.6 The Purchaser reserves the right to interview any Contractor personnel proposed in substitution of previously employed Contractor Key Personnel to verify their language skills, experience and qualifications, and to assess technical compliance with the requirements set forth in Section 4.4.8 and Annex C of the SOW.

14.6.1 The interview, if required, may be conducted as a telephone interview, or may be carried out at the Purchaser's premises in Brussels, Belgium or Den Haag, The Netherlands.

14.6.2 If, as a result of the evaluation of the CV and/or interview the Purchaser judges that the proposed replacement Key Personnel does not meet the required skills levels, he shall have the right to request the Contractor to offer another qualified individual in lieu thereof.

14.6.3 All costs to the Contractor associated with the interview(s) shall be borne by the Contractor, independently from the outcome of the Purchaser's evaluation.

14.7 The Purchaser Contracting Authority will confirm any consent given to a substitution in writing and only such written consent shall be deemed as valid evidence of Purchaser consent.

14.8 Furthermore, even after acceptance of Contractor personnel on the basis of his/her CV and/or interview, the Purchaser may require the Contractor immediately to cease to employ any of the above named Key Personnel under the present contract if, in the sole opinion of the Purchaser, the individual is not meeting the required level of competence and/or his/her employment as Key Personnel is considered undesirable. The Purchaser will inform the Contractor, in writing, in cases where such a decision is taken and the Contractor shall propose and make qualified substitute Key Personnel available within ten (10) working days after the written notification. The Purchaser shall have no obligation to justify the grounds of its decision. The Purchaser's removal of Contractor Key Personnel shall in no way relieve the Contractor of his responsibility to achieve the contractual and technical requirements of this Contract nor imply any responsibility of the Purchaser.

14.9 In those cases where, in the judgement of the Purchaser, the inability of the Contractor to provide a suitable replacement in accordance with the terms of this Clause may potentially endanger the progress under the Contract, the Purchaser shall have the right to terminate the Contract as provided under Clause 39 (Termination for Default) of the Contract General Provisions.

15. INDEPENDENT CONTRACTOR

15.1 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.

15.2 The Purchaser shall not be responsible for securing work permits, lodging, leases nor tax declarations, driving permits, etc., with national or local authorities. Contractors personnel employed under this Contract are not eligible for any diplomatic privileges, logistics support privileges, or for NATO employee benefits.

16. CARE AND DILIGENCE OF PROPERTY

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

16.2 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.

16.3 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.

16.4 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.

17. RESPONSIBILITY OF THE CONTRACTOR TO INFORM EMPLOYEES OF WORK ENVIRONMENT

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

17.2 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.

18. COMPREHENSION OF CONTRACT AND SPECIFICATIONS

18.1 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.

18.2 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.

18.3 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.

18.4 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.

19. ADDITIONAL CONTRACT TASKS AND OPTIONS

19.1 The tasks identified in the Contract Schedule of Supplies and Services as Options (if any) are to be intended as options to be exercised by the Purchaser and at his sole discretion. The Purchaser shall have the right to exercise any of the listed priced options multiple times at its discretion any time during the performance of the Contract and up to its conclusion at the unit prices listed in the Schedule of Supplies and Services.

19.2 As the prices of Optional CLINs listed in the Contract Schedule of Supplies and Services (if any) were not part of the evaluation for Contract award, at the time of exercise of the Options, the Purchaser shall have the right to renegotiate those listed prices on the basis of detailed cost and price data to be provided by the Contractor as per the Contract terms.

19.3 Should any options be exercised, the Purchaser will increase the firm fixed price of the Contract via a formal Contract Amendment by the amount of the line items so exercised and the period of performance of the Contract will be extended as mutually agreed when necessary.

19.4 In no event shall the Contractor engage in the performance of any options or part thereof without the written consent of the Purchaser Contracting Authority.

19.5 Except as otherwise provided for in this Contract, Contractor’s price quotations for contract changes or modifications shall be provided at no cost to the Purchaser and shall have a minimum validity period of six (6) months from submission.

19.6 The pricing information contained in the cost breakdown sheets submitted as part of the Contractor’s proposal will constitute the reference basis for any future changes to this Contract.

19.7 The Purchaser may, in writing, place an order for such additional tasks throughout the entire Contract period. Such an order may be placed within

the framework of this Contract via the issuance of a Contract Amendment or be formulated via the issuance of a new contractual instrument.

20. SOFTWARE

The Purchaser reserves the right to exclude from the awarded Contract the purchase of software licenses for which NATO has established centralized Contracts. In this case, the Contract terms, schedule and prices will be modified accordingly, and the software licenses will be provided to the Contractor in the form of "Purchaser Furnished Equipment". Any Purchaser excess cost resulting from exclusion of software licenses from the awarded contract are not recoverable under Contract General Provision 40, "*Termination for the Convenience of the Purchaser*".

21. WARRANTY

21.1 Clause 27 (Warranty of Work) and Clause 31 (Software Warranty) of the Contract General Provisions are supplemented with the following:

21.1.1 The warranty period for all hardware shall be 1 (one) year from the Final Systems Acceptance (FSA).

21.1.2 The warranty period for all software shall be 1 (one) year from FSA.

22. OBSOLESCENCE

22.1 It is the responsibility of the Contractor to ensure that adequate supplies of replacement parts and equipment are available to perform the services for the duration of the Period of Performance. It is recognised that in some cases, the end of production of certain items of hardware and/or the end of support for certain software and software tools may occur suddenly and/or with limited or no warning. In the case where limited or no warning has been provided or where the acquisition of logistics stocks is not an adequate response, the Contractor shall notify the Purchaser of the event in writing as early as practicable after the Contractor has first knowledge. The notification shall provide a brief description of the nature of the event and the potential impact of the event on the ability of the Contractor to meet the performance requirements of the SOW. The Contractor shall further provide recommendations in the form of one or more Engineering Change Proposals (ECPs) as to the solution(s) to the potential impacts. These recommendations shall provide a full life cycle cost of implementation and support as well as the technical risks and impacts involved if the solution(s) or each of the solutions were implemented (trade off analysis).

22.2 ECPs issued pursuant to this Clause may also include proposals for Optimisation as set forth in Clause 24 below.

22.3 After review and analysis, the Purchaser will inform the Contractor of the acceptance of one or more ECP(s) and the changes and the agreed adjustment to the price of the Contract which will be incorporated into the

Contract by formal Amendment. Such adjustment shall cover the Contractor's cost associated to the in depth obsolescence study when applicable. The Purchaser may also decide to take no action and accept the impact on system performance/supportability as detailed by the Contractor. In such a case, an Amendment to the Contract will be executed changing the aspects of the SOW as required to reflect the impact of not taking any action, and the recovery of the cost associated to the in depth obsolescence study if applicable.

23. OPTIMISATION

23.1 The Contractor is encouraged to examine methods and technology that may increase efficient operation and management of the system(s) on which the required services are provided to the Purchaser, thus reducing operating and manpower costs and the overall cost to the Purchaser

23.2 The Contractor may, at any time during the Period of Performance, introduce Engineering Change Proposals (ECPs) offering innovations and/or technology insertion with a view towards reducing the overall cost to the Purchaser.

23.3 Any such ECP submitted shall cite this Clause as the basis of submission and provide the following information:

23.3.1 A detailed description of the technical changes proposed, the advantages, both long and short term, and an analysis of the risks of implementation;

23.3.2 A full analysis of the prospective savings to be achieved in both equipment and manpower, including, as appropriate, utility and fuel consumption and NATO manpower, travel, etc.;

23.3.3 A full impact statement of changes that the Purchaser would be required to make, if any, to its operational structure and management procedures;

23.3.4 A fully detailed proposal of any capital investment necessary to achieve the savings;

23.3.5 A schedule of how the changes would be implemented with minimal negative impact to on-going performance and operations.

24. CONTRACT ADMINISTRATION

24.1 The Purchaser is the NATO Communications and Information Agency (NCI Agency). The Purchaser is the Point of Contact for all contractual and technical issues. The Contractor shall accept Contract modifications only in writing from the Purchaser's Contracting Authority.

24.2 All notices and communications between the Contractor and the Purchaser shall be written and conducted in English. Contract modifications

NATO UNCLASSIFIED
(NATO RESTRICTED WHEN PART IV, ANNEX A
ATTACHED)

IFB-CO-14786-NRF

Book II – Part II – Contract Special Provisions

only become valid when received in writing from the General Manager, NCI Agency, and his authorised representative.

24.3 Formal letters and communications shall be personally delivered or sent by mail, registered mail, courier, email with return receipt, or other delivery service, to the official points of contact quoted in this Contract.

24.4 Informal notices and informal communications may be exchanged by any other communications means including telephone and e-mail.

24.5 All notices and communications shall be effective upon receipt.

24.6 Official points of contact are:

PURCHASER

Contractual issues:

NCI Agency
Acquisition Directorate
Boulevard Léopold III
1110 Brussels
Belgium

POC:
Tel:
Email:

Technical issues:

NCI Agency – JISR Service Line
JISR
Oude Waalsdorperweg 61,
2597 AK, The Hague
The Netherlands

POC:
Tel:
E-mail:

CONTRACTOR

Contractual issues:

Company Name
Address

POC:
Tel:
E-mail:

Technical issues:

Company Name
Address

POC:
Tel:
E-mail:

25. TECHNICAL DIRECTION

25.1 The Contract will be administered by the Purchaser in accordance with the Clause 25 of these Contract Special Provisions entitled “Contract Administration”.

25.2 The individuals working on this Contract shall perform the effort within the general scope of work identified in the Contract Part III - 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.

25.3 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.

25.4 Neither the Purchaser's Project Manager as identified in Clause 25 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 products and services 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.

25.5 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.

26. CONFLICT OF INTEREST

26.1 A conflict of interest means that because of other activities or relationships with other persons or entities, a Contractor is unable, or potentially unable to render impartial assistance or advice to the Purchaser, or the Contractor's objectivity in performing the Contract work is, or might be otherwise impaired, or the Contractor has an unfair competitive advantage. Conflict of interest includes situations where the capacity of a Contractor (including the Contractor's executives, directors, consultants, subsidiaries, parent companies or Subcontractors) to give impartial, technically sound advice or objective performance is or may be impaired or may otherwise result in a biased work product or performance because of any past, present or planned interest, financial or otherwise in organizations whose interest may substantially affected or be substantially affected by the Contractor's performance under the Contract.

26.2 The Contractor is responsible for maintaining and providing up-to-date conflict of interest information to the Purchaser. If, after award of this Contract or any task order herein, the Contractor discovers a conflict of interest with respect to this Contract or task order which could not reasonably have been known prior to award, or if any additional conflicts or potential conflicts arise after award, the Contractor shall give written notice to the Purchaser as set forth below.

26.3 If, after award of this Contract or any task order herein, the Purchaser discovers a conflict of interest with respect to this Contract or task order, which has not been disclosed by the Contractor, the Purchaser may at its sole discretion request additional information from the Contractor, impose mitigation measures, or terminate the Contract for default in accordance with Clause 39 (Termination for Default) of the Contract General Provisions.

26.4 The Contractor's notice called for in paragraph 28.2 above shall describe the actual, apparent, or potential conflict of interest, the action(s) the Contractor has taken or proposes to take to avoid or mitigate any conflict, and shall set forth any other information which the Contractor believes would be helpful to the Purchaser in analysing the situation. Any changes to the Contractor's conflict of interest mitigation plan, if any is incorporated in the Contract, should be also detailed.

26.5 The Contractor has the responsibility of formulating and forwarding a proposed conflict of interest mitigation plan to the Purchaser, for review and consideration. This responsibility arises when the Contractor first learns of an actual, apparent, or potential conflict of interest.

26.6 If the Purchaser in its discretion determines that the Contractor's actual, apparent, or potential conflict of interest remains, or the measures proposed are insufficient to avoid or mitigate the conflict, the Purchaser will direct a course of action to the Contractor designed to avoid, neutralize, or mitigate the conflict of interest. If the parties fail to reach agreement on a course of action, or if having reached such agreement, the Contractor fails to strictly adhere to such agreement during the remaining period of Contract performance, the Purchaser has the discretion to terminate the Contract for default or alternatively refrain from exercising any further Option or Work Package under the Contract.

26.7 The Contractor's misrepresentation of facts in connection with a conflict of interest reported, or a Contractor's failure to disclose a conflict of interest as required shall be a basis for default termination of this Contract.