



**NAPMA**  
NATO AEW&C PROGRAMME MANAGEMENT AGENCY

Rimburgerweg 30  
Building 107  
6445 PA Brunssum  
The Netherlands

21 March 2016

**Postal Address**

PO Box 8002  
6440 HA Brunssum  
The Netherlands

NAPMA/PSC(16)41-185/2090

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**To:** Prospective Bidders  
**From:** NAPMA Contracting Branch  
**Subject:** Request For Proposal (RFP) – Programmatic and Engineering  
Support for the NATO AWACS Final Lifetime Extension  
Program (FLEP)

1. Your company is hereby invited to participate in an international competitive bid for the provision of “Programmatic and Engineering Support for the NATO AWACS Final Lifetime Extension Program (FLEP)”.
2. This RFP consists of the bidding instructions (Volume I) and the prospective contract (Volumes II and III). The prospective contract contains the schedules, Terms and Conditions of the contract (Volume II) and the Framework Statement of Work (Volume III). The Framework Statement of Work sets forth detailed specifications governing the performance requirements of the contract.
3. The overall security classification of this bid is “NATO UNCLASSIFIED”. This RFP remains the property of NAPMA and shall be protected in accordance with the NATO Security regulations as implemented by your National Security Authority or Designated Security Authority (NSA/DSA).
4. You are kindly requested to complete and return the enclosed acknowledgement of receipt within 5 days of receipt of this RFP, informing NAPMA of your intention to bid. Your company is not bound by its initial

decision, however if you decide to reverse your stated intention at a later date, you are requested to advise us by a separate letter.

5. The Bid Closing Date for submission of bids will be 16:00 hours (Netherlands time) on 18 May 2016.
6. It must be emphasized that this document is only a Request for Proposal which is not, in any way, binding on NAPMA and is therefore not to be construed as a formal order or contract offer. NAPMA reserves the right to amend or terminate this RFP at any time, to award a contract for only part of the efforts detailed herein, or not to award a contract at all. Furthermore, NAPMA will not accept charges for any proposal preparation costs.
7. Should you have any questions regarding the technical content of this RFP, please contact Mr. Heiko Juergens (ext. 2071) email: [juergens@napma.nato.int](mailto:juergens@napma.nato.int) or Ms. Ineke Goedhart (ext.2745) email: [goedhart@napma.nato.int](mailto:goedhart@napma.nato.int). Questions of a commercial or contractual nature should be addressed to Mr. Cristian Matei (ext. 2150) email: [matei@napma.nato.int](mailto:matei@napma.nato.int) or Mr. Les Hendriks (ext. 2750) email: [hendriks@napma.nato.int](mailto:hendriks@napma.nato.int).

Cristian Matei  
Contracting Officer



Attachments:

1. Acknowledgement of receipt of Request for Proposal
2. Volume I – Bidding Instructions
3. Volume II – Prospective contract
4. Volume III – Framework Statement of Work (SOW)

**ACKNOWLEDGEMENT/INTENTION TO BID CERTIFICATE**

**NATO AIRBORNE EARLY WARNING AND CONTROL  
PROGRAMME MANAGEMENT AGENCY (NAPMA)**

**Rimburgerweg 30**

**Bld 107**

**6445 PA Brunssum**

**The Netherlands**

Attention: Cristian Matei, Contracting Officer

matei@napma.nato.int

Date:

Subject: Acknowledgement of receipt of Request for Proposal

We hereby advise that we have received Request for Proposal  
NAPMA/PSC(16)41-185/2090 on ....., together with all  
enclosures listed in the Attachments list.

**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.

Signature .....

Company .....

Address: .....

POC .....

Tel. ....

E-mail .....

**NATO AIRBORNE EARLY WARNING AND CONTROL  
PROGRAMME MANAGEMENT AGENCY (NAPMA)**

**REQUEST FOR PROPOSAL**

**PROGRAMMATIC AND ENGINEERING SUPPORT for the NATO AWACS  
FINAL LIFETIME EXTENSION PROGRAM (FLEP)**

**VOLUME I**

**BIDDING INSTRUCTIONS**

<b>VOLUME I</b>	<b>BIDDING INSTRUCTIONS</b>
Section I	Introduction
Section II	General Bidding Information
Section III	Bid preparation instructions
Section IV	Bid evaluation procedure
Annex A	Required certifications
Annex B	Templates

## **SECTION I: INTRODUCTION**

1.1. The purpose of this Request For Proposal (RFP) is to acquire Programmatic and Engineering Support for the NATO AWACS Final Lifetime Extension Program (FLEP).

1.2. The contract resulting from this RFP will be a Basic Ordering Agreement (BOA) which will accommodate Task Requirement Notices (TRNs) based on Firm Fixed Price or Time and Material Not to Exceed (NTE) basis. TRN001 is intended to be signed immediately upon award of BOA. The expected Not to Exceed amount for the initial Period of Performance of BOA is EUR 1M, subject to TRNs' approval.

1.3. The initial Period of Performance (PoP) of the BOA will start on 1 July 2016 for one year, subject to the availability of funds, determined by NAPMO Board of Directors in June 2016. The PoP may be extended to the end of 2018.

1.4. This solicitation is a Request for Proposal and is issued in accordance with the NAPMA procedures for International Competitive Bidding. Pursuant to these procedures, bidding is restricted to companies from participating NAPMO member nations.

1.5. The evaluation method to be used in the selection of the successful Bidder will follow the Best Value procedure described in Section IV. Bid evaluation criteria and the detailed evaluation procedures are also described in Section IV.

1.6. This RFP will not be subject to a public bid opening.

1.7. The security classification of this RFP is "NATO UNCLASSIFIED".

1.8. Because the NATO AWACS Programme involves classified information higher than NATO RESTRICTED up to and including NATO SECRET, for the purpose of the performance under the contract, the Contractor may be required to handle and store classified material up to the level of NATO SECRET. Therefore the contractor shall comply with the NATO security regulations as implemented by its National Security Authority or Designated Security Authority (NSA/DSA), and shall possess the appropriate Facility and Personnel Security Clearances (FSC/PSC), at the time of contract award.

1.9. The solicitation, evaluation and award processes will be conducted in accordance with the terms and conditions contained herein.

1.10. The Bidder shall refer to the Purchaser all queries for a resolution of conflicts found in information contained in this document in accordance with the procedures set forth in Section II "General Bidding Instructions" paragraph entitled "Requests for RFP Clarifications/Explanation to Bidders".

## **SECTION II: GENERAL BIDDING INFORMATION**

### **1. General**

1.1. The Bidders shall prepare and submit their Bid in accordance with the requirements and format set forth in this RFP. Compliance with all bid submission requirements is mandatory. Failure to submit a bid in conformance with the stated requirements may result in a determination of non-compliance by the Purchaser and the elimination of the bid from further consideration.

### **2. Definitions**

2.1. The term "Bidder" as used herein refers to a firm, consortium, or joint venture which submits an offer in response to this solicitation.

2.2. The term "Compliance" as used herein means strict conformity to the requirements and standards specified in this RFP.

2.3. The term "Contractor" refers to a firm of a participating country which has signed a contract under which he will perform services or carry out works for NATO.

2.4. The term "Participating Country" as used herein means one of the contributing countries NAPMO nations in the project: Belgium, Czech Republic, Denmark, Germany, Greece, Hungary, Italy, Luxembourg, The Netherlands, Norway, Poland, Portugal, Romania, Spain, Turkey and the United States of America.

2.5. The term "Purchaser" refers to the authority issuing the RFP and/or awarding the contract (NAPMA).

### **3. Bid Eligibility**

3.1. None of the work shall be performed other than by companies from Participating Countries.

### **4. Bid Delivery Time and Bid Closing**

4.1. All Bids shall be in the possession of the Purchaser at the address given below on/or before 16:00 hours (Netherlands time) on 18 May 2016 at which time and date bidding shall be closed.

4.2. Bids shall be delivered by Post or hand carried to the following address:

**NAPMA  
PSC (ATTN: Cristian Matei PSC-31)  
Rimburgerweg 30, Building 107**

**6445 PA Brunssum  
The Netherlands**

4.3. Bids submitted by electronic means are not permitted and will not be considered. Bidders shall note that electronic (CD ROM) copies of their bid are required to be submitted with their "hard copy".

4.4. 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 will be returned unopened to the Bidder at the Bidder's expense unless the Purchaser can determine that the bid in question meets the criteria for consideration as specified below.

4.5. 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. Considering number and quality of express delivery services, courier services and special services provided by the national postal systems, a late bid shall only be considered for award under the following circumstances:

- (a) A contract has not already been awarded pursuant to the RFP, and
- (b) the bid was sent to the address specified in the RFP by ordinary, registered or certified mail not later than ten (10) calendar days before the bid closing date and the delay was due solely to the national or international postal system for which the Bidder bears no responsibility (the official postmark for ordinary and Registered Mail or the date of the receipt for Certified Mail will be used to determine the date of mailing), or
- (c) the bid was hand carried, or delivered by a private courier service and the Bidder can produce a receipt which demonstrates that the delivery was made to the correct address and received by a member of the NAPMA Agency and the failure to be received by the Contracting Authority was due to mishandling within the Purchaser's organization.

4.6. A late bid which was hand-carried, or delivered by a private courier service for which a proper receipt cannot be produced cannot be considered for award under any circumstances nor can late bids which bear no post marks or for which documentary evidence of mailing date cannot be produced.

4.7. Bidders are advised that security or other personnel remaining on the premises outside of normal business hours may decline to sign or issue receipts for delivered items.

**5. Requests for Extension of Bid Closing Date**

5.1. Bidders are informed that requests for extension to the closing date for the RFP shall be submitted only via request to NAPMA PSC Mr. Cristian Matei, matei@napma.nato.int. Any request for extension shall be submitted in sufficient time no later than ten (10) days prior to the established bid closing date. Execution of a request for extension is at the sole discretion of the Purchaser and if granted will be applied uniformly to all Bidders.

**6. Purchaser's Point of Contact**

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

**Mr. Cristian Matei, Contracting Officer**

**NAPMA - Contracting Branch**

**E-mail: matei@napma.nato.int**

**Tel: +31.45.526.2150**

**7. Requests for RFP Clarifications**

7.1. Bidders are encouraged to query and seek clarification of any matters of a contractual, administrative and technical nature pertaining to this RFP.

7.2. All questions and requests for clarification must be submitted via e-mail. Such questions shall be forwarded to the point of contact specified in paragraph 6 above and shall arrive not later than 15 (fifteen) days prior to the stated "Bid Closing Date". The Purchaser is under no obligation to answer questions submitted after this time.

7.3. 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 writing to all prospective Bidders.

7.4. The published answers issued by the Purchaser shall be regarded as the authoritative interpretation of the RFP. If necessary, amendments to the language of the RFP will be included in the Purchaser's response and shall be incorporated by the Bidder in his offer.

**8. Requests for Waivers and Deviations**

8.1. Bidders are informed that requests for alteration to, waivers of, or deviations from the terms and conditions of this RFP and attached Prospective Contract or Statement of Work will not be considered after the Request for

Clarification process.

**9. Bid Validity**

9.1. Bids shall be valid for a period of 6 months starting from the Bid Closing Date specified at paragraph 4.1 above.

9.2. 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.

## **SECTION III: BID PREPARATION**

### **1. General**

1.1 The proposal shall be clear, coherent and prepared in sufficient detail for effective evaluation of the Bidder's proposal against the evaluation criteria. The proposal shall address all requirements stated herein and include convincing rationale and substantiation of all claims.

1.2 Bidders shall prepare their bid in three parts in the following quantities (see also Section II para.4.3):

- a. Past Performance volume (Part I) - 1 original and 1 hard-copy
- b. Technical volume (Part II) - 1 original and 1 hard-copy
- c. Price volume (Part III) - 1 original and 1 hard-copy

1.3 Bidders shall include within their Bid package a separate "Administrative Envelope" containing signed original of the Required Certifications.

1.4 Documents submitted in accordance with paragraphs 1.2 and 1.3 above shall be "NATO UNCLASSIFIED" material.

1.5 Bidders are advised that the Purchaser reserves the right to incorporate the Bidder's technical proposal in whole or in part in the resulting contract.

### **2. Preparation of the Past Performance volume**

2.1 The Past Performance volume (Factor 1) shall provide a description of previous or current contracts to include, but not limited to, contract numbers, contract type, values, personnel employed, period of performance, subcontractors and/or teaming partners, and customer's Contracting Manager's contact information.

2.2 For each previous or current contract submitted, the Bidder shall complete and submit a Past Performance Information Sheet (Attachment B-1 to this document).

2.3 All past performance information submitted shall be recent (within three (3) years from the date of the RFP) and relevant (similar in size, type and complexity to the requirements stated in the RFP). The Bidder shall demonstrate that he has international experience, experience with establishing multinational teams and that the company has experience with establishing

Non-Disclosure Agreements (NDA) and managing export restrictions (e.g. Technical Assistance Agreements TAA). The Bidder shall also demonstrate his experience in providing technical and programmatic support in English language.

Past Performance Questionnaires (Attachment B-2) shall be sent to previous/present contracting officers for the contracts provided in the Past Performance Information Sheet with a request to complete and send directly to NAPMA via e-mail. All questionnaires received by Bid Closing Date will be reviewed and utilized in assessing past performance. The lack of questionnaires may result in a lower rating of the Past Performance factor. Additionally, NAPMA may contact any of the submitted references by telephone in order to obtain a greater appreciation of the relevance of the work performed and associated performance.

### **3. Preparation of the Technical volume**

3.1. The Technical volume (Factor 2) shall contain information that demonstrates the Bidder has the competence, experience and resources necessary to meet the requirements described in the Framework SOW attached. It must be emphasized that the SOW of each TRN will be within the scope of the Framework SOW.

3.2. The Bidder shall be able to fulfil, if requested by TRNs, any of the requirements described in the Framework SOW.

3.3. The technical proposal shall include, but is not limited to:

- a. a clear description of Bidder's Corporate Organization underlying if the requested support described in the SOW belongs to the Bidder's core area/expertise.
- b. identify in detail and by example the Bidder's experience and competence to assess and provide technical solutions for the areas indicated in the SOW paragraph 2.
- c. identify in detail and by example how programmatic support will be provided to fulfil the requirements for the areas indicated in the SOW paragraph 2.
- d. provide a description of bidder's human resources management, which includes level of training/ qualifications of the personnel

identified to work on the contract and to present a concept to establish a multinational team in order to obtain qualified resources to cover all requested areas of expertise. References to the English language skills of the personnel shall be provided.

**4. Preparation of the Price volume**

4.1 Bidders shall provide their fully burdened hourly rates by labor category, seniority level and calendar year as outlined in the following table. Fully burdened rates are defined as rates including all cost elements with the exception of travel cost (i.e., overhead cost, G&A cost and profit are fully included).

<b>Labor Category (please indicate selected currency)</b>	<b>Seniority Level</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
<b>Managers</b> (Program/Acquisition/Risk)	Junior			
	Mid-Level			
	Senior			
<b>Engineers</b> (SW, Systems, Test, Comms, QA etc.)	Junior			
	Mid-Level			
	Senior			
<b>Specialists</b> (Configuration, Contracting, Logistics, Finance, etc.)	Junior			
	Mid-Level			
	Senior			

4.2 The seniority level "Mid-Level" is defined as 4+ years of relevant professional experience. The seniority level "Senior" is defined as 8+ years of relevant professional experience.

4.3 Bidders may quote in Euro, US\$ or any combination of the two.

4.4 Bidders are informed that the Purchaser, by virtue of his status is exempt from taxes (incl. VAT on Deliverables and Services provided), and all customs duties on goods and services.

4.5 The hourly rates offered in the Price Quotation shall be used as a basis for future TRN price proposals.

## **5. Preparation of the Administrative Envelope**

a. In this envelope the Bidder shall include the signed originals of the Certifications set forth in Annex A hereto, specifically:

- (A-1) Certificate of Legal Name of Bidder
- (A-2) Conflict of Interest
- (A-3) Certificate of Bid Validity
- (A-4) Certificate of Exclusion of Taxes, Duties and Charges
- (A-5) Comprehension and acceptance of RFP requirements, contract clauses and contract terms and conditions
- (A-6) Certification of NAPMO Member Country of Origin of Delivered Equipment, Services, Material and Intellectual Property Rights
- (A-7) Security Clearances
- (A-8) Initial Screening Questionnaire (ISQ)

## **6. Packaging and Marking of Bids**

a. All copies of the Past Performance, Technical, and Price Quotation shall be segregated and enclosed in separate outer envelopes or packages marked as follows:

- a. the name and address of the Bidder
- b. the words "Sealed Bid – "FLEP Support for NAPMA";
- c. the designating number: "RFP NAPMA/PSC(16)41-185/2090" followed by the designation "Past Performance Volume" "Technical Volume", or "Price Volume" as appropriate.

b. The separate envelopes or packages and the Administrative Envelope (clearly marked as such) shall be placed in an outer container or containers suitable for mailing or shipping and marked with NAPMA's address. The following legend shall be prominently printed on the top and sides of each container:

**"SEALED BID: RFP NAPMA/PSC(16)41-185/2090.  
NOTIFY PSC (Cristian Matei) UPON RECEIPT!"**

## **SECTION IV: BID EVALUATION**

### **1. General**

1.1 The evaluation of Bids will be made by the Purchaser solely on the basis of the requirements specified in this RFP.

1.2 The evaluation of bids and the determination as to the compliance or technical adequacy of the 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 identified in the Bid.

1.3 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.

1.4 The selection process will be based on Best Value methodology.

1.5 NAPMA will award to the Bidder whose proposal, based on the NAPMA Source Selection Board's opinion, offers the best value in terms of cost and anticipated ability to successfully accomplish all required tasks. NAPMA will employ a trade-off analysis of cost/price and non-cost/price factors in evaluating the proposals submitted.

1.6 Proposals will be assessed for how well the Bidder's proposal meets the RFP requirements and the risks associated with the Bidder's proposal. Determining how well the Bidder's proposal meets the RFP requirements will be accomplished in two steps. First, a determination will be made if the proposal meets RFP requirements. Next, discriminators will be identified for the proposals reflecting the significant strengths, strengths, weaknesses, significant weaknesses and deficiencies with regard to a Bidder's perceived ability to meet the contract requirements. In addition, NAPMA will examine the impact of each discriminator and assess its relative value to NAPMA.

## **2. Administrative Compliance**

2.1 Prior to the commencement of the Best Value Evaluation, Bids will be reviewed for compliance with the Bid Submission Requirements of this RFP. These are as follows:

- a. The Bid was received by the Bid Closing Date and Time.
- b. The Bid was packaged and marked properly.
- c. The Bidder has submitted originally signed copies of the required certificates in Annex A hereto.

2.2 The answers provided in the Initial Screening Questionnaire (A8) will be evaluated against pre-defined criteria.

2.3 A Bid which fails to conform to the above requirements or will not meet the criteria defined for ISQ may be declared non-compliant and may be excluded from further evaluation.

2.4 If it is discovered during the evaluation that the Bidder has taken exception to the RFP requirements, to include Terms and Conditions of the Prospective Contract, or has qualified and/or otherwise conditioned his offer on a modification or alteration of the RFP, Terms and Conditions or the language of the Statement of Work, the Bidder may be determined to have submitted a non-compliant bid.

## **3. Best Value evaluation**

3.1 The evaluation will be based on a complete assessment of the Bidders' proposals. Proposals shall be evaluated on the following three factors:

- a. Factor 1: Past Performance
- b. Factor 2: Technical
- c. Factor 3: Price

3.2 **Factor 1: Past Performance:** All past performance information submitted shall be recent (within three (3) years from the date of the RFP), and relevant (similar in size, type and complexity to the requirements stated in the RFP). The Bidder shall demonstrate that he has international experience, experience with establishing multinational teams and that the company has experience with establishing NDAs and managing export restrictions (e.g.TAAs). The Bidder shall also demonstrate his experience in providing technical and programmatic support in English language.

Sub-factor 1: Relevancy: the Bidder shall be evaluated and scored by assessment of the past performance information provided.

The following ratings will be used to determine relevancy:

- a. Very Relevant – Past/present performance involved essentially the same magnitude of effort, program complexity and skill mix this solicitation requires.
- b. Relevant - Past/present performance involved much of the magnitude of effort, program complexity and skill mix this solicitation requires.
- c. Somewhat Relevant - Past/present performance involved some of the magnitude of effort, program complexity and skill mix this solicitation requires.
- d. Not Relevant - Past/present performance did not involve any of the magnitude of effort, program complexity and skill mix this solicitation requires.

Sub-factor 2: Performance: the Bidder shall provide past performance information which will allow for an assessment of the quality of previous recent and relevant contracts and NAPMA will evaluate based on the information it obtains. The Bidder shall be evaluated and scored by assessment of the past performance information provided. NAPMA will focus on information that demonstrates quality of performance relative to the size and complexity of the procurement under consideration.

The following performance ratings will be used to rate this sub-factor:

- a. Exceptional: the evidences provided are assessed as greatly exceeding the contract requirements.
- b. Good: the evidences provided are assessed as exceeding the contract requirements.
- c. Satisfactory: the evidences provided are assessed as meeting the contract requirements.
- d. Unsatisfactory: the evidences provided are assessed as failing to meet the contract requirements.

3.3 **Factor 2: Technical** - The Bidder shall demonstrate in its proposal that it has the competence, experience, and resources necessary to meet the requirements of the tasks.

Sub-factor 1: Technical Competence: The technical proposal will be evaluated to determine if the required support described in this RFP (see below the required Areas of Technical competences) generally belong to the Bidder's

core area/expertise and if the Bidder is able to provide the necessary level of technical competence to fulfil the tasks. Also the technical proposal will be evaluated to determine if the Bidder provided similar services to Government/NATO with respect to aircraft programs. In addition, the level of complexity of programs previously supported will be evaluated, to include any research and development responsibilities.

Areas of Technical Competence:

1. Data Link-16 and BLOS links
2. Mission Computing in C2 systems (SW, HW)
3. Human Machine Interfaces (HMI)
4. Airborne Networking
5. UHF, VHF, HF Radios
6. Comms Architectures
7. ESM (Electronic Support Measures)
8. Crypto Devices
9. Working within EU and International air traffic rules and regulations
10. Working within NATO and MIL standards
11. Airborne C2 Platforms
12. Airworthiness processes
13. Information Assurance requirements and implementation

Sub-factor 2: Programmatic Competence: The programmatic proposal will be evaluated to determine if the required support described in this RFP generally belong to the bidder's core area/expertise. The evaluation team will assess the capability of the Bidder to perform the tasks associated with the following Programmatic Areas:

1. RFP development
2. Generating and evaluating Technical Requirements Document (TRD)
3. Generating VCRM (Verification Cross Reference Matrix) and Test Plans

4. Generating Statement of Work (SOW) and Contract Data Requirements Lists (CDRL)
5. Generating Integrated Master Schedule
6. Conducting technical/cost evaluation of large bids for complex System Configurations
7. Use of modern management tools
8. Life Cycle Management
9. Diminishing Manufacturing Source (DMS) management
10. Risk management
11. Configuration Management
12. Evaluate complex Industrial Returns Plans
13. Generating model contracts for complex Engineering Manufacturing Development (EMD) phase
14. Managing of large Government Furnished Equipment (GFE) lists
15. Mitigation of cost and schedule challenges

Sub-factor 3: Resources management. The evaluation of Resources Management will assess the company's existing workforce and the potential to augment with qualified resources.

The following performance ratings will be used to rate all Technical sub-factors:

- a. Exceptional: the evidences provided are assessed as greatly exceeding contract requirements
- b. Good: the evidences provided are assessed as exceeding contract requirements
- c. Satisfactory: the evidences provided are assessed as meeting contract requirements
- d. Unsatisfactory: the evidences provided are assessed as failing to meet contract requirements.

3.4 **Factor 3: Price** - The Bidder will be evaluated on the hourly prices submitted for each labor category and seniority level for 2016, 2017 and 2018. Each labor category will have 3 seniority levels identified: Junior, mid-level and senior. Mid-level requires 4+ years of relevant professional experience.

Senior level requires 8+ years of relevant professional experience.

**3.5 Proposal Evaluation for Factors 1 and 2:** Source Selection Board (SSB) Evaluators will assess and rate proposals based on how well the Bidders meet the factors and requirements outlined in the RFP. Evaluators will be assigned to assess each proposal, and then prepare a narrative description of the strengths, weaknesses, and areas requiring clarification to support the proposal's rating. Telephone interviews for past performance, utilizing the points of contact identified in the proposal or the returned Past Performance Questionnaires, may be conducted during the review process as deemed necessary to verify the information submitted.

The following definitions will be used during the assessment of the Past Performance sub-factor 2 (Performance) and for all Technical sub-factors:

- a. *Significant strength* is defined as an aspect of the proposal that appreciably increases the likelihood of successful contract performance.
- b. *Strength* is defined as an aspect of the proposal that increases the likelihood of successful contract performance.
- c. *Weakness* is defined as a flaw in the proposal that increases the risk of unsuccessful contract performance.
- d. *Significant weakness* is a flaw in the proposal that appreciably increases the risk of unsuccessful contract performance.
- e. *Deficiency* is defined as an aspect of the proposal that fails to meet a contract requirement or a combination of significant weaknesses in the proposal that increases the risk of unsuccessful contract performance to an unacceptable level.

The following confidence ratings (general score) will be used to rate the Past Performance and Technical factors:

- a. High Confidence: Evaluated that virtually no doubt exists that the Bidder will successfully perform the proposed effort. Virtually no NAPMA intervention is expected to be required in achieving the proposed level of performance.
- b. Significant Confidence: Evaluated with a certainty, that the Bidder will successfully perform the proposed effort. Little NAPMA intervention is expected to be required in achieving the proposed level of performance.
- c. Confidence: The Bidder should be able to successfully perform the proposed effort. Some NAPMA intervention is expected to be required to meet the proposed level of performance.

- d. Little Confidence: Substantial doubt exists that the Bidder will successfully perform the proposed effort. Substantial NAPMA intervention is expected to be required to meet the proposed level of performance.
- e. No Confidence: Extreme doubt exists that the Bidder will successfully perform the required effort. Regardless of the degree of NAPMA intervention, successful performance as proposed is doubtful.

3.6 Factors and sub-factors will be weighted in accordance with the following guidelines:

- Past Performance and Price factors will be weighted equally and each will be less important than Technical.
- Technical sub-factors: Technical Competence and Programmatic Competence will be weighted equally and each will be significantly more important than Resources Management.
- Past Performance sub-factors will be weighted equally.

3.7 The complete evaluation table is presented below:

Factor/Sub-factor	Score	Weighting applied to factor	Weighted Score (Score x Weighting)
<b>Past Performance</b>	HC,SC,C,LC,NC	%	x
Sub-factor 1 Relevancy	VR,R,SR,NR		
Sub-factor 2 Performance	E,G,S,US		
<b>Technical</b>	HC,SC,C,LC,NC	%	y
Sub-factor 1: Technical Competence	E,G,S,US		
Sub-factor 2: Programmatic Competence	E,G,S,US		
Sub-factor 3: Resources Management	E,G,S,US		
<b>Price</b>	points	%	z
			<b>Weighted score</b>
			<b>x+y+z</b>

HC – High Confidence	VR – Very Relevant	E – Exceptional
SC – Significant Confidence	R – Relevant	G – Good
C – Confidence	SR – Somewhat Relevant	S - Satisfactory
LC – Little Confidence	NR – Not Relevant	US - Unsatisfactory
NC – No Confidence		

**ANNEX A**

**REQUIRED CERTIFICATIONS**

**A1 - CERTIFICATE OF  
LEGAL NAME OF BIDDER  
TO BE SIGNED BY RFP RESPONDENTS**

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

FULL NAME OF CORPORATION:

\_\_\_\_\_

DIVISION (IF APPLICABLE):

\_\_\_\_\_

OFFICIAL MAILING ADDRESS:

\_\_\_\_\_

E-MAIL ADDRESS:

\_\_\_\_\_

POINT OF CONTACT FOR THIS BID:

NAME:

\_\_\_\_\_

POSITION:

\_\_\_\_\_

TELEPHONE:

\_\_\_\_\_

ALTERNATIVE POINT OF CONTACT:

NAME:

\_\_\_\_\_

POSITION:

\_\_\_\_\_

TELEPHONE:

\_\_\_\_\_

DATE

SIGNATURE OF AUTHORISED REPRESENTATIVE

\_\_\_\_\_

\_\_\_\_\_

**A2 - CONFLICT OF INTEREST  
CERTIFICATION  
TO BE SIGNED BY RFP RESPONDENTS**

This is to certify that [insert company name] does not have any direct commercial interest in providing technical solutions for NATO AWACS Final Lifetime Extension Program (FLEP), nor will it support any industry in providing technical solutions for the FLEP; consequently [insert company name] does not have any interest which conflicts substantially, or appears to conflict substantially, with the ability to impartially execute the Programmatic and Technical Support for FLEP contract requirements.

The undersigned certifies the above with the understanding that failure to disclose information to the contrary is grounds for exclusion from the bidding process or termination for default of the contract. As such, [insert company name] may be held liable for costs associated with re-procurement action for this acquisition.

\_\_\_\_\_

Typed Name

\_\_\_\_\_

Signature

\_\_\_\_\_

Title

\_\_\_\_\_

Date

**A3 - CERTIFICATE OF BID VALIDITY**

**TO BE SIGNED BY RFP RESPONDENTS**

I, the undersigned, as an authorised representative of the company 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 Proposal.

\_\_\_\_\_  
Typed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**A-4 - CERTIFICATE OF EXCLUSION OF TAXES, DUTIES AND CHARGES**  
**TO BE SIGNED BY RFP RESPONDENTS**

I hereby certify that the prices offered in the price quotation of this bid exclude all taxes, duties and customs charges from which the Purchaser has been exempted by international agreement (see paragraph 4.4 of Section III).

\_\_\_\_\_  
Typed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**A5 - COMPREHENSION AND ACCEPTANCE OF RFP REQUIREMENTS,  
CONTRACT CLAUSES AND CONTRACT TERMS AND CONDITIONS**

**TO BE SIGNED BY RFP RESPONDENTS**

The Bidder hereby certifies that he has reviewed the RFP requirements, contract clauses and contract terms and conditions set forth in the Prospective Contract, Volume II of this Request for Proposal. The Bidder hereby provides his confirmation that he fully comprehends the rights, obligations and responsibilities of the Contractor as set forth in the RFP requirements as well as in the clauses of the Prospective Contract. The Bidder additionally certifies that the proposal as submitted is without prejudice, qualification or exception to any of the Terms and Conditions and he will accept and abide by the stated contractual provisions if awarded the contract as a result of this competitive bidding process.

\_\_\_\_\_

Typed Name

\_\_\_\_\_

Signature

\_\_\_\_\_

Title

\_\_\_\_\_

Date

**A6 - CERTIFICATION OF NAPMO MEMBER COUNTRY ORIGIN OF  
DELIVERED EQUIPMENT, SERVICES, MATERIALS AND INTELLECTUAL  
PROPERTY RIGHTS**

**TO BE SIGNED BY RFP RESPONDENTS**

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

- (a) none of the work shall be performed other than by companies from the Participating Countries;
- (b) no material or items delivered under this contract shall be manufactured or assembled by a company other than from the Participating Countries; and
- (c) The intellectual property rights to all design documentation and related system operating software shall reside in NAPMO member countries, and no license fees, or royalty charges shall be paid by the Contractor to companies, individuals or governments other than these within the Participating Countries.

\_\_\_\_\_  
Typed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**A7 - SECURITY CLEARANCES**

**TO BE SIGNED BY RFP RESPONDENTS**

**SECURITY CLEARANCES**

The Bidder certifies that he will comply with the NATO security regulations as implemented by its National Security Authority or Designated Security Authority (NSA/DSA), and that the Contractor's Facility and Personnel to perform the tasks described in the SOW will be in possession of the appropriate NATO SECRET security clearances at the time of contract award.

\_\_\_\_\_

Typed Name

\_\_\_\_\_

Signature

\_\_\_\_\_

Title

\_\_\_\_\_

Date

**A8 - INITIAL SCREENING QUESTIONNAIRE**  
**TO BE COMPLETED AND SIGNED BY RFP RESPONDENTS**

**I. GENERAL INFORMATION**

Company Name:

Address:

Date:

**II. PAST PERFORMANCE INFORMATION**

**1. List three (3) contracts that your company has established in the last three years that are similar in type and complexity to the requirements for this effort (see the attached SOW).**

Contract:

Short description of the scope:

Contract Start Date:

Period of Performance:

Counterparty:

Value:

Contract:

Short description of the scope:

Contract Start Date:

Period of Performance:

Counterparty:

Value:

Contract:

Short description of the scope:

Contract Start Date:

Period of Performance:

Counterparty:

Value:

**III. ENGLISH LANGUAGE**

Please confirm that your company has enough qualified personnel to provide the required support in English language.

**IV. SECURITY CLEARANCES**

Please confirm that your company has or will obtain the necessary Facility and Personnel NATO security clearances at the time of contract award (see Certificate A7 - Security Clearances)

\_\_\_\_\_  
Typed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**ANNEX B**

**TEMPLATES**

**B1 - PAST PERFORMANCE INFORMATION SHEET**

**TO BE COMPLETED BY RFP RESPONDENTS**

Provide the information requested in this form for each contract/program (citation) being described.

Provide frank, concise comments regarding your company's performance on the contracts you identify. Provide a separate completed form for each contract/program submitted.

A. Bidder's Name (Company/Division): \_\_\_\_\_

B. Program Title: \_\_\_\_\_

C. Contract Specifics:

**1. Contracting Agency or Customer**

\_\_\_\_\_

**2. Contract Number** \_\_\_\_\_

**3. Contract Type** \_\_\_\_\_

**4. Period of Performance** \_\_\_\_\_

**5. Original Contract Value (EUR or USD equivalent)** \_\_\_\_\_

(Do not include unexercised options)

**6. Current Contract Value (EUR or USD equivalent)** \_\_\_\_\_

(Do not include unexercised options)

**7. If Amounts for 5 and 6 above are different, provide a brief description of the reason**

\_\_\_\_\_

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**D. Brief Description of Effort as \_\_Prime or \_\_Subcontractor**

(Please indicate whether it was development and/or production, or other acquisition phase (or Service) and highlight portions considered most relevant to current acquisition)

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**E. Completion Date:**

- 1. Original date:** \_\_\_\_\_
- 2. Current Schedule:** \_\_\_\_\_
- 3. Estimate at Completion:** \_\_\_\_\_
- 4. How Many Times Changed:** \_\_\_\_\_
- 5. Primary Causes of Change:**

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F. Primary Customer Points of Contact: (For Government contracts provide current information on all three individuals. For commercial contracts, provide points of contact fulfilling these same roles).

**1. Program Manager and/or Site Manager:**

**Name** \_\_\_\_\_

**Office** \_\_\_\_\_

**Address** \_\_\_\_\_

**Telephone** \_\_\_\_\_

**FAX Number** \_\_\_\_\_

**2. Contracting Officer:**

**Name** \_\_\_\_\_

**Office** \_\_\_\_\_

**Address** \_\_\_\_\_

**Telephone** \_\_\_\_\_

**FAX Number** \_\_\_\_\_

**3. Administrative Contracting Officer:**

**Name** \_\_\_\_\_

**Office** \_\_\_\_\_

**Address** \_\_\_\_\_

**Telephone** \_\_\_\_\_

**FAX Number** \_\_\_\_\_

G. Address any technical (or other) area about this contract/program considered relevant for the Bid evaluation.

H. For each of the applicable sub-factors under the Technical portion of the RFP, illustrate how your experience from this program applies.

**B2 - PAST PERFORMANCE QUESTIONNAIRE**  
**SOURCE SELECTION SENSITIVE INFORMATION**

Name of Bidder:

Client/Contact Information (supplied by the Bidder):

Contact Name/Telephone Number/E-mail Address:

Name of Procuring Contracting Officer:

Contract Number and Title:

Contract Value:

Contract Performance Period:

Number of Contractor Employees Furnished:

What labor categories were included (Program Management, Engineering, Cost Analysis, etc.):

<b>Performance Elements</b>	<b>Unsatisfactory</b>	<b>Poor</b>	<b>Fair</b>	<b>Good</b>	<b>Excellent</b>	<b>Outstanding</b>	<b>N/A</b>
	<b>0</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>0</b>
1. Quality of service							
2. Timeliness of performance							
3. Compliance with contract requirements							
4. Competence of workforce							
5. Problem solving initiative							
6. Verbal communication with government personnel							
7. Written communication from contractor personnel							
8. Ability to integrate new contractor employees							
9. Ability to fill vacancies in a timely manner							
10. Management of personnel resources							
11. Ability to implement export regulations requirements							
12. Contractor's overall performance							

13. Please identify any positive remarks on performance:

14. Please explain any unsatisfactory or poor remarks on performance:

Evaluator Name:

Title:

**NATO UNCLASSIFIED**

**NATO AIRBORNE EARLY WARNING AND CONTROL  
PROGRAMME MANAGEMENT AGENCY (NAPMA)**

**VOLUME II**

**PROSPECTIVE CONTRACT 41-185**

**PROGRAMMATIC AND ENGINEERING SUPPORT  
FOR FLEP**

**BETWEEN**

**NATO AEW&C PROGRAMME MANAGEMENT ORGANISATION  
BRUNSSUM  
THE NETHERLANDS**

**AND**

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The contents of this document shall not be disclosed to industrial/commercial organisations or their representatives without the specific authority of the NAPMA

**NATO UNCLASSIFIED**

## **PART I - PREAMBLE**

This Contract is entered into between the NATO AEW&C Programme Management Organisation (NAPMO), an integral part of the North Atlantic Treaty Organisation, acting through its executive agency the NATO AEW&C Programme Management Agency (NAPMA), located at Brunssum, The Netherlands (hereinafter referred to as the "Purchaser"), and Company, having offices at Company address (hereinafter referred to as the "Contractor").

## **PART II - SCOPE**

1. The Purchaser requires and the Contractor agrees to provide, subject to individual Task Requirement Notices (TRNs), those supplies and services necessary to support NATO AWACS Final Lifetime Extension Program.
2. The exact supplies and/or services to be provided will be defined in detail in a Statement of Work attached to each Task Requirement Notice (TRN) issued under this contract in accordance with Part IV of this Contract. The general framework of the tasks to be performed by the Contractor are included in Attachment 2 to this contract (Framework Statement of Work).

## **PART III - PERIOD OF EFFECTIVITY**

1. The initial Period of Performance of the Contract shall be from 01 July 2016 until 30 June 2017, subject to the availability of funds, with an option to extend until 31 December 2018.
2. Notwithstanding the aforementioned period of performance of the Contract, each TRN issued will specify the period of performance for that particular task which may extend beyond the contractual period of performance in effect at that time.

## **PART IV - TASK REQUIREMENT NOTICES**

1. Task Requirements Notices (TRNs), which will specify the work to be performed, will be used to contract for defined packages of work within the general scope of this contract. Each TRN will contain some, or all, of the following information which is subject to mutual agreement:
  - a. Statement of Work to be performed.
  - b. Number of labor hours (FFP or NTE).
  - c. Amount authorised and pricing conditions.
  - d. Requirements.
  - e. Period of performance and dates for deliveries
  - f. Payment schedule
  - g. Special Provisions.
2. For each TRN, NAPMA will issue a Request for Quotation/Proposal (RFQ/RFP) with a Statement of Work or Statement of Requirements for the supplies or services to be provided by the Contractor. The Contractor's response to a RFQ/RFP will be reviewed for responsiveness and price reasonableness and

may be subject to fact-finding and negotiation. The Contractor may, if considered justified, reject a task by returning a RFQ/RFP with an explanation of the reasons for rejection. The Contractor shall respond within ten (10) working days of receipt of a RFQ/RFP with either an acceptance or rejection. Extensions to this response time may be authorised by the Contracting Officer if circumstances dictate.

3. When price and content of a task have been mutually agreed, NAPMA will issue a TRN in duplicate, the Contractor shall sign both originals, return an advance copy of the signed version by the fastest means available (e.g., fax or scanned electronic copy) and mail both signed originals to NAPMA. The Purchaser will then countersign both originals and return one to the Contractor. Modifications to a TRN, prior to full execution, shall not be made unilaterally and must have the mutual agreement of both parties. After full signature of a TRN, changes can only be made in accordance with the Clause of the Terms and Conditions entitled "CHANGES".

#### **PART V – PRICES AND PAYMENT**

1. Prices  
Each TRN shall specify the applicable pricing conditions which will be established in accordance with the content of the task. To the maximum extent possible TRNs will be issued on a Firm Fixed Price (FPP) basis.
2. Payment  
NAPMA shall pay the Contractor for Firm Fixed Price TRNs upon satisfactory performance, completion and formal acceptance of the work, and for Time and Materials TRNs on a monthly basis for labor hours and materials cost incurred, as detailed in each TRN, in accordance with the clause of the Terms and Conditions entitled "INVOICING AND PAYMENT" and the payment schedule of each individual TRN.

#### **PART VI – TERMS AND CONDITIONS**

The Terms and Conditions which will govern this contract and its associated TRNs are provided at Attachment 1 hereto.

#### **PART VII - ORDER OF PRECEDENCE**

In the event of an inconsistency between provisions of this Contract and those of the TRN, the inconsistency shall be resolved by giving precedence in the following order:

- a. The Contract
- b. Terms and Conditions (Except where modified by specific Special Provisions within individual Task Requirement Notices)
- c. Task Requirement Notices
- d. Other provisions of the Contract, when attached or incorporated by reference.

**PART VIII - SIGNATURES**

This Contract is made in duplicate to be effective on the date of last signature by the following parties:

THE NATO AEW&C PROGRAMME MANAGEMENT ORGANISATION (NAPMO) acting on behalf of NATO by virtue of a Charter approved by the North Atlantic Council on 6th December, 1978, represented by the Contracting Officer of the NATO AEW&C Programme Management Agency (NAPMA)

and

Company

FOR THE PURCHASER

FOR THE CONTRACTOR

.....

.....

NAME

NAME

.....

.....

SIGNATURE

SIGNATURE

.....

.....

DATE

DATE

**NATO UNCLASSIFIED**

**NATO AIRBORNE EARLY WARNING AND CONTROL  
PROGRAMME MANAGEMENT AGENCY (NAPMA)**

**PROSPECTIVE CONTRACT 41- 185**

**PROGRAMMATIC AND ENGINEERING SUPPORT  
FOR FLEP**

**ATTACHMENT 01**

**CONTRACT TERMS AND CONDITIONS**

The contents of this document shall not be disclosed to industrial/commercial organisations or their representatives without the specific authority of the NAPMA

**NATO UNCLASSIFIED**

**INDEX OF CLAUSES**

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2. MOST FAVOURED CUSTOMER
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4. APPROVAL AND ACCEPTANCE OF CONTRACT TERMS
5. CONTRACT LANGUAGE
6. AUTHORISATION TO PERFORM/CONFORMANCE TO NATIONAL LAWS AND REGULATIONS
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- 27. TERMINATION FOR DEFAULT
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- 29. GOVERNING LAW
- 30. DISPUTES
- 31. ARBITRATION

1. **DEFINITIONS OF TERMS AND ACRONYMS**

As used throughout this Contract, the following terms shall have the meaning set forth below:

- 1.1. **Claim:** 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. A claim arising under the Contract shall clearly identify the Contract Clause which provides for the relief sought by the Party;
- 1.2. **Computer Software:** means computer programs and computer databases including applicable documentation concerning its description and/or use
- 1.3. **Confidential Information:** means confidential information as defined under Clause 11.4
- 1.4. **Contract:** the agreement concluded between the Purchaser and Contractor, duly signed by both Contracting parties.
- 1.5. **Contracting Authority (CA):** NAPMO represented by its executive agency NAPMA;
- 1.6. **Contracting Officer (CO):** the individual authorised by NAPMA to enter into any agreement on behalf of NAPMO for the purposes of carrying out the Contract;
- 1.7. **Contractor:** the person or legal entity which has signed this Contract with the CA and is a Party thereto;
- 1.8. **Day:** means a calendar day;
- 1.9. **Data:** means all recorded information, whether written or otherwise, provided to Purchaser by Contractor or to the Contractor by the Purchaser. Data includes Computer Software.
- 1.10. **Defect/Defective:** 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;
- 1.11. **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;
- 1.12. **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;
- 1.13. **Facility Representative:** shall be deemed to refer to the authority

designated by the Purchaser responsible for the site, property or utility;

- 1.14. **Intellectual Property Rights (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;
- 1.15. **MMOU:** the Multilateral Memorandum of Understanding on the NATO E-3A Cooperative Programme originally signed on 06 December 1978 by the Ministers of Defence of the participating governments, as currently amended and addended;
- 1.16. **NAPMA:** NATO AEW&C Programme Management Agency, the executive management agency for NAPMO;
- 1.17. **NAPMO:** NATO AEW&C Programme Management Organization;
- 1.18. **Ottawa Agreement:** the Agreement on the Status of the North Atlantic Treaty Organisation, National Representatives and International Staff signed in Ottawa on 20 September 1951;
- 1.19. **Parties:** the Contracting Parties to this Contract, i.e., the Purchaser and the Contractor;
- 1.20. **Proprietary Information:** means Data and any other information or know-how properly identified as proprietary by markings
- 1.21. **Purchaser:** NAPMA that has been entrusted by NAPMO to prepare, negotiate, execute and administer the Contract;
- 1.22. **Purchaser Facilities:** shall be deemed to include sites, property or utilities;
- 1.23. **Services:** any support to be provided from the Contractor under the terms of the Contract to the Purchaser at the Purchaser or Contractor facilities
- 1.24. **Sub-Contract:** any agreement made by the Contractor with any third Party in order to fulfil any part of this Contract. Sub-Contracts may be in any legal binding form, e.g., Contract, purchase order, etc.;
- 1.25. **Sub-Contractor:** any person or legal entity directly or indirectly under sub-Contract to the Contractor in performance of this Contract;
- 1.26. **Technical Assistance:** technical data and know-how provided for the purpose of performing this Contract;
- 1.27. **Work:** any Deliverable or Service to be performed by the Contractor under the terms of this Contract;

Any other definition or expression mentioned in the Contract shall have the meaning assigned to it in the relevant part where it is used.

**2. MOST FAVOURED CUSTOMER**

- 2.1. The Contractor guarantees that the prices under this Contract will not be less favourable than the prices recalculated to comparable conditions quoted, obtained, or to be obtained for any other customer. The Contractor is obligated to render reasonable evidence required thereto. If the Contractor has quoted or will quote more favourable prices to any other customer, he will so notify the Purchaser, and these more favourable prices will be applicable to this Contract. Overpayments will be reimbursed.
- 2.2. If the Purchaser wants to have investigated the compliance with the guarantee in paragraph 2.1 above and this cannot be determined by the Purchaser on the basis of market prices or competition, the Purchaser may request the government of the Contractor nation to investigate the reasonableness of the prices offered in accordance with the pricing regulations for government military orders in force in the Contractor nation. The Contractor agrees to co-operate in such investigation and undertakes to furnish to the authorities concerned all reasonable information required. The Purchaser cost of such investigation is not to be an expense of the Contractor

**3. AUTHORITY**

- 3.1. All binding Contractual instruments, including amendments, and formal letters issued pursuant to this Contract shall be issued in writing by the Purchaser and authorized only by a Contracting Officer.
- 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.
- 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 previous to or subsequent to this Contract.
- 3.4. Personal notes, signed minutes of meetings, comments to delivered documentation and letters, e-mails and 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**

By signing the Contract, the Contractor declares that he is sufficiently informed of the objectives of the Purchaser for the Work to be performed and that the Contractor has been furnished with adequate and accurate information with respect to the Work, and that the Work will be suitable for the purpose intended by the Purchaser.

**5. CONTRACT LANGUAGE**

The official language of this Contract is English. In the event of any inconsistency between this original English language text of the Contract and any translations into another language, the original text will prevail. All written correspondence, communication and deliverables submitted 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 if applicable 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 and that no claim with respect to any costs to obtain the authorisations to perform will be made upon the Purchaser.
- 6.2. The Contractor acknowledges that he and his Sub-Contractors are responsible during the period of performance of this Contract for ascertaining and complying with all the national and local laws, decrees, labour standards, environmental laws and health and safety regulations of such country or countries, in effect at the time of Contract signature or scheduled to go into effect during the period of Contract performance. Failure to fully ascertain and comply with such laws, decrees, regulations or standards shall not be the basis for claims for change to any element of this Contract. Ignorance will not be accepted as a rationale for failure to comply and, depending on the severity of the non-compliance, may lead to termination of the Contract in whole or part according to Clause 32.
- 6.3. NAPMA will not accept any liability for any non-compliance on behalf of the Contractor or its Sub-Contractors.

**7. SUB-CONTRACTS**

- 7.1. The Contractor shall seek the approval in writing of the Purchaser prior to the placing of any sub-Contract if:
- a. the Sub-Contract was not part of the Contractor's original proposal; and
  - b. the value of the Sub-Contract is known or estimated to exceed EUR 100.000,00 (or other currency equivalent);
- 7.2. On specific request the Contractor shall submit a copy of any such proposed sub-Contract 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.
- 7.3. 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.
- 7.4. The Contractor agrees to include in all sub-Contracts provisions which are appropriate to the specific type of sub-Contract imposing the same or equivalent obligations as those as those which he himself has assumed towards the Purchaser in this Contract and in particular with regard, but not limited to:
- a. Clause - Definitions
  - b. Clause - Most Favoured Customer
  - c. Clause - Taxes and Duties
  - d. Clause - Default
  - e. Clause - Termination for Convenience of the Purchaser
  - f. Clause - Disputes
  - g. Clause - Security
  - h. Clause - Liability
  - i. Clause - Examination of Records
  - j. Clause - Export License
  - k. Clause - Rights in Data
- 7.5. Sub-Contracts shall be placed only within the NAPMO participating / contributing Countries
- 7.6. To the maximum extent possible all sub-Contracts shall be subjected to competitive tendering.

**8. TIME AND MATERIAL REPORTING REQUIREMENTS**

- 8.1. In order to allow NAPMA to manage the consumption of each of the time-and-material (T&M NTE) authorizations, the Contractor shall provide monthly cost status reports showing the monthly and cumulative budget consumption by task i.e. On-Site Support, Optional On-Site Support, Reach Back Support, Back Shop Support and Travel.
- 8.2. Furthermore, the Contractor is to formally notify the Purchaser in writing or notice by email, when actual expenditures have reached the 75% level of the authorized NTE prices.
- 8.3. The Contractor is also to state if the respective authorized T&M NTEs are sufficient to complete the task or, if not, to provide an estimate of the additional funds required. If additional funds are required, NAPMA will notify the Contractor how to proceed within 10 working days of receipt of the Contractor's notification. Under no circumstances shall the Contractor exceed the NTE without prior authorization from NAPMA Contracts. NAPMA will bear no liability for any such overspend which will be at the Contractor's own risk. Notwithstanding the foregoing, the Contractor will use best endeavors to complete the Contracted effort within the NTE Ceiling Price.
- 8.4. Each Contract Data Deliverable List (CDRL) will specify the reporting requirements for that particular task.

**9. SECURITY**

- 9.1. 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.
- 9.2. Prior to 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.
- 9.3. The assigned Contractor personnel are required to provide a copy of their National Security Clearances "Secret" (with additional briefing for NATO) which should be valid for at least six (6) months, after start of the performance date of the Contract and a signed copy of the Non-Disclosure Agreement .

- 9.4. Prior to commencing Work under the Contract, the Contractor shall contact the relevant authorities at the sponsoring organization where the Services will be delivered to obtain all necessary passes/access badges for persons who will require access to the installation. Personnel without appropriate passes will not be granted access to the facilities. NAPMA will not accept liability for any costs for periods during which Contractor personnel were not allowed access to NATO facilities due to lack of appropriate access passes arising out of negligence on the part of the Contractor/Contractor's personnel.
- 9.5. The Contractor agrees that assigned personnel will be responsible to abide by all regulations, procedures, and standards of conduct in place at the facilities where the Services will be delivered. Failure to do so will result in corresponding penalties being imposed.
- 9.6. Any breach on the part of the assigned personnel will be regarded as a breach by the Contractor which, at the Purchaser's discretion, could lead to termination of all or part of the Contract.

**10. RELEASE OF INFORMATION**

- 10.1. Except as otherwise specified elsewhere in the Contract and to the extent that it is demonstratively unavoidable and without prejudice to Clause entitled 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.
- 10.2. 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.
- 10.3. These provisions under 10.1. and 10.2. 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.

**11. EXCHANGE OF INFORMATION**

- 11.1. The Contractor undertakes to fully cooperate with and share programme specific information, on an as needs basis, with other companies for the furtherance and success of the implementation of the Contract. Sharing of information shall be in accordance with the respective executed Technical Assistance Agreements (TAAs) and Non-Discloser Agreements (NDAs) / Proprietary Information Agreements (PIAs) as applicable. It is in each Party's best interest to ensure that the necessary NDAs / PIAs are in place in order to safeguard their individual data. Should any Party to the Programme decline to reciprocate, then the Contractor is to notify NAPMA immediately in order that the issue can be quickly reconciled.

- 11.2. In connection with this Contract, certain information of a confidential nature may be transmitted by one Party to the other. For the purposes of this Contract, the term "Confidential Information" shall mean and include all documented information, either in electronic, paper format or verbally. The receiving Party shall treat such information as confidential using the same degree of care that it would normally use in protecting its own confidential information.

**12. USE OF ELECTRONIC TRANSMISSION**

- 12.1. The Contractor and the Purchaser may communicate with one another via electronic transmission. Electronic transmissions sent in the execution of this Contract shall have the same force and effect as physical receipt of correspondence provided the following condition is met:
- 12.2. The image electronically transmitted is of a properly signed, dated executed instrument.

**13. NAPMO FURNISHED DATA**

- 13.1. The Purchaser may deliver to the Contractor, for use in connection with and under the terms of this Contract, data and documents and information hereafter referred to as "NAPMO Furnished Data" (NFD).
- 13.2. In the event that NAPMO Furnished Data are 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 or correct such data. The Purchaser shall, upon timely written request of the Contractor, equitably adjust, if warranted, any affected provision of this Contract pursuant to Clause entitled Changes
- 13.3. Title to NAPMO Furnished Data shall remain with the Purchaser. The Contractor shall administer NAPMO Data, in accordance with sound industrial practice, and in accordance with any other applicable provision as may be specified in this Contract. In addition, the Contractor shall create and maintain records in support of its stewardship responsibilities, which shall be made available to NAPMA upon request.
- 13.4. NAPMO Data shall, unless otherwise provided herein or approved by the Purchaser, be used only for the performance of this Contract.

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

- 14.1. 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.

- 14.2. The Purchaser shall provide the following Services on an as-required, for the duration of the Contract:
- Access to Purchaser internet and telephone service;
  - Storage of, and if required, review and release of classified documents generated under, accountable to, or necessary for the performance of the Contract;
  - Use of office space to include a desk, chair, computer and telephones;
- 14.3. Failure to provide these Services shall not result in a change to the Contract price or schedule. The Services shall be provided at no cost to the Contractor
- 14.4. This Facility Representative shall also determine whether additional Services will be provided free of charge to the Contractor or determine what charges are payable.
- 14.5. 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 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.
- 14.6. 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.
- 14.7. The work to be executed at NAPMA, Brunssum, is scheduled Monday to Thursday 08:00 to 17:00 and Friday 08:00 to 15:00 with the exception of the NAPMA holidays; deviations from this are subject to mutual agreement
- 14.8. The published NATO holidays may preclude access to the Purchaser's facility. Access to the Purchaser's facilities during national holidays and stand-down days will be considered on case by case basis and accommodated as practical.
- 14.9. 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.

**15. USE OF FACILITIES AND EQUIPMENT ACCOUNTABLE UNDER OTHER CONTRACTS**

- 15.1. In the performance of this Contract, the Contractor is authorized to use on a rent-free, non-interference basis the Purchaser's facility and any NATO-furnished equipment.
- 15.2. Should the Contractor's use of this equipment on a no-charge, non-interference basis render the equipment "in a condition not suitable for its intended use" the Contractor shall repair and/or replace the equipment at its own cost.

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

- 16.1. 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 to stop work 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.
- 16.2. The Purchaser shall in no way be responsible for any accident or disease occurring to Contractor personnel during performance of work or travel under this Contract, except where such accident or disease is the result of a willful act or gross negligence on the part of the Purchaser or if responsibility is mandatory by law.

**17. CHANGES**

- 17.1. The Purchaser may at any time, by written order make changes within the general scope of this Contract, including, without limitation, any one or more of the following:
- a. Specifications (including drawings and designs);
  - b. Method and manner of performance of the work, including engineering standards, quality assurance and configuration management procedures;
  - c. Modified or additional Services;
  - d. Prices and quantities;
  - e. Place of delivery;
- 17.2. The Purchaser shall submit a proposal for Contract amendment describing the change to the Contract in case of a Change Order as defined above. Any change or amendment to the Contract due to a Change Order shall be made by agreement in writing executed by both Parties.

- 17.3. 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 unless this period is extended by the Purchaser.
- 17.4. 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.
- 17.5. 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.
- 17.6. Failure to agree to any requested adjustment shall be a dispute within the meaning of the Clause Disputes. However, nothing in this Clause shall excuse the Contractor from proceeding with the Contract as changed.
- 17.7. No proposal for adjustment by the Contractor for an equitable adjustment shall be allowed if asserted after final payment and its acceptance under this Contract.
- 17.8. 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; and (ii) that the Contractor regards the order as a Change Order, and that the Order is accepted in writing by the Purchaser as a Change Order.
- 17.9. 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.

**18. ACCEPTANCE OF DELIVERABLES AND SERVICES**

- 18.1. All Deliverables and Services may be subject to an acceptance process to verify the compliance with the contractual requirements. Acceptance or rejection of the Deliverables or Services shall be made as promptly as practicable after delivery, except as otherwise provided in the Contract. Failure to timely accept or reject the Deliverables or Services shall neither relieve the Contractor from responsibility for such Deliverables or Services nor impose liability on the Purchaser.

- 18.2. The information provided by the Contractor shall be reliable, be of good quality and sufficient for the objectives defined by the Purchaser.
- 18.3. In the event that any Deliverable or Services are not in conformity with the requirements of this Contract the Purchaser shall have the right either to reject them or to require their correction or replacement. If the Contractor fails promptly to replace or correct such Deliverables or Services, the Purchaser may either:
- a. by Contract or otherwise return, replace or correct such Deliverables or Services and charge to the Contractor the cost incurred by the Purchaser; and/or
  - b. terminate this Contract for default as provided in Clause Termination for Default.
- 18.4. 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.

**19. INVOICING AND PAYMENT**

- 19.1. Invoicing for efforts performed will be in accordance with Payment Schedule detailed in the respective TRN. Payment shall be effected within 30 days, upon the receipt by NAPMA of duly signed, certified and properly substantiated invoices.
- 19.2. All invoices submitted shall include the address of the bank to which payment shall be made, together with pertinent information concerning sorting code and the Contractor's account number
- 19.3. Invoices shall be certified by the Contractor as follows:
- "I certify that this invoice is correct, that payment has not been received and that the price is exclusive of all taxes and duties of which the Contractor is aware and from which the Purchaser is exempted".*
- 19.4. On Contractor's request, the following declaration will be stamped on the copy of the invoice by NAPMA and returned to Contractor:

*"Declaration regarding VAT exemption*

*The goods and Services mentioned are intended for official use of the NATO Airborne Early Warning and Control Programme Management Organisation.*

*NAPMA STAMP*

*For the General Manager*

*NAPMA*

*Brunssum,*

*Chief Accounting"*

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- 19.5. All invoices shall be submitted electronically to the following email address:

[NAPMA\\_info@napma.nato.int](mailto:NAPMA_info@napma.nato.int) , or by mail to:

NAPMA/ Accounts Payable  
Rimburgerweg 30  
Building 107  
6445 HA BRUNSSUM  
The Netherlands

- 19.6. Payments to the Contractor against firm-fixed-price (FFP) CLINs shall be made in accordance with the schedules set forth in the Contract on completion and acceptance of each effort
- 19.7. Payment against the time-and material (T&M) CLINs shall be made after receipt of corresponding invoices which shall be supported by a detailed breakdown of the tasks performed, man-hours expended and materials purchased in order to validate the costs incurred. Payment for travel shall be based on reasonable actual costs for a combination of airfares, rental car, fuel, taxis, local transport, mileage allowance, hotel accommodation and per diem. Reimbursement will be made on the basis that the travel policy applied is the same as that which is used and accepted by NATO for similar work
- 19.8. At completion of each FFP CLIN, the Contractor shall submit a Certificate of Completion (COC) for endorsement by NAPMA. After receipt of the countersigned COC, the Contractor will submit a final invoice.
- 19.9. The Contractor may, at its own discretion, accelerate its schedule to the extent that milestones are achieved ahead of the dates that were originally planned. To ensure that timely payment of an accelerated schedule can be effected, a revised schedule should be submitted for Purchaser approval and subsequent incorporation into the Contract in accordance with the Clause of this Contract entitled "Changes". Funding availability from the NAPMO nations can then be adjusted accordingly.
- 19.10. Upon receipt of the final invoice, NAPMA will request the national audit Agency to commence audit of the total T&M expenditures. However, NAPMA will only effect payment of the final invoice amount up to the NTE value. Any downward adjustment required on the basis of the audit findings will be effected retroactively.
- 19.11. Invoices submitted later than one year (365 calendar days) after completion of Work will not be payable by the Purchaser, unless the Contractor can prove that the delay is due to circumstances out of his control and that these external causes are acceptable to the Purchaser.
- 19.12. NAPMA reserves the right to withhold payments if the Contractor fails to perform the work under this Contract to the satisfaction of NAPMA.

**20. TAXES AND DUTIES**

- 20.1. The Purchaser, by virtue of his status under the terms of Article IX and X of the Ottawa Agreement and its agreement with the Netherlands, is exempt from all taxes (incl. VAT) and all customs duties on goods and services. The Contractor, therefore, certifies that the prices stipulated in this Contract do not include amounts to cover such direct taxes or customs duties.
- 20.2. 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 services provided under this Contract nor assess taxation (VAT) on goods and services provided to the Purchaser under this Contract.
- 20.3. If, after complying with all national and local legal and administrative 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.
- 20.4. 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.
- 20.5. 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.
- 20.6. Following payment by the Purchaser of the taxes and/or duties pursuant to Clause 20.4 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.

- 20.7. 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.

**21. EXPORT LICENSING AND DISCLOSURE REVIEW**

- 21.1. The Contractor is aware that according to the Multinational Memorandum of Understanding (MMOU) on the NATO E-3A Cooperative Program all participating governments have agreed to arrange for the grant of any export licenses necessary for the Programme. In implementation of this program principle, it shall be the Contractor's responsibility to obtain any export license(s) as may be required under this Contract.
- 21.2. The Contractor shall prepare technical data in accordance with the Statement of Work of this Contract and such technical data may be subject to export restrictions. For purposes of this Contract, delivery of such data to foreign addressees is contingent upon release authorization by the respective government agency.
- 21.3. In the event any government does not provide to the Contractor written approval of Technical Assistance Agreements and any other applicable licenses, export or import licenses, visas, residence permits, work permits, non-transfer and end use certificate or other similar government actions or approvals necessary: (1) to perform this Contract; (2) to export from or to deliver to NAPMO any items involved in the performance of this Contract; or (3) to permit the Contractor and its Sub-Contractors to Contract consistent with the performance and delivery schedules of this Contract, an equitable adjustment shall be negotiated. Failure to reach agreement will constitute a dispute as laid down in Disputes Clause.

**22. EXAMINATION OF RECORDS**

- 22.1. This clause is applicable to this Contract only if:
- a. The price, or any of the prices, to be paid for the Work to be furnished hereunder is/are other than a firm fixed price(s), or
  - b. If this Contract is terminated by Purchaser, in whole or in part, and the Contractor submits a termination claim as a result thereof; or
  - c. In the event a dispute arises between the Parties and arbitration proceedings are instituted pursuant to the clause of this Contract entitled "Disputes".
- 22.2. The Contractor agrees that authorized representatives of its national government only shall, until the expiration of three (3) years after final

payment under this Contract, have access to and the right to examine any pertinent books, documents, papers and records of the Contractor involving transactions related to this Contract. Notwithstanding any other provision of this Contract, the examination and audit of the Contractor's financial books and records shall be limited to authorized representatives of its national government.

- 22.3. The Contractor further agrees to include in all his Sub-Contracts hereunder a provision substantially as set forth in this clause, including this paragraph. In addition, a provision is to be added in such Sub-Contracts to the effect that the auditing of the Sub-Contractor's books, documents, papers and records involving transactions related to the Sub-Contract may be performed by the Sub-Contractor's national auditing services.
- 22.4. The period of access and examination described in 22.2 above for records which relate to the "Disputes" clause or "Arbitration" clause of this Contract, litigation, or the settlement of claims arising out of the performance of this Contract, shall continue until such appeals, litigation or claims have been disposed of.

**23. RIGHTS IN DATA**

- 23.1. All data and deliverables, developed and funded under this Contract shall be the legal and absolute property of the Purchaser.
- 23.2. The Contractor shall provide all background information required to assess the information, data and deliverables at no cost to the Purchaser.
- 23.3. NAPMO shall have the right to use, duplicate, or disclose Data and Deliverables, including background information, provided under this Contract, in whole or in part, for NATO purposes. This includes, but is not limited to any modernization project within the NATO AWACS program by NAPMO countries industry.
- 23.4. All data delivered or disclosed under this Contract, but not originally developed under this Contract, and validated as Proprietary Information to the Contractor or his Sub-Contractor shall be clearly marked with the appropriate proprietary legend(s).
- 23.5. If data, on legitimate grounds, is identified as Proprietary Information, then the restrictions imposed by paragraph 23.6 below shall apply to that Data.
- 23.6. The Purchaser agrees and undertakes to use his best efforts not to divulge any of the Contractor's proprietary information, and further to protect said proprietary information in accordance with its associated marking(s). The Purchaser agrees to provide immediate notification to the Contractor upon discovery that Contractor's proprietary information was improperly released or disclosed. Purchaser's notification shall include the name of recipient(s) said Data was disclosed to and the steps taken for recovery of said Data by

the Purchaser.

- 23.7. Should the Purchaser deem it necessary to release any of the Contractor's proprietary information to any partners, including NATO Organisations and participating NAPMO Governments and their industries providing support within the NATO AWACS program, then the Purchaser shall first obtain the Contractor's prior written consent to release such data. Parties receiving such information are subject to the same limitation for further release. Such Proprietary Information may be used by the Purchaser but only for purposes of operation and maintenance of the Contract Items.
- 23.8. All Export Controlled Data and Contractor Proprietary Data supplied under this Contract shall be clearly marked with the appropriate proprietary legend(s).
- 23.9. Purchaser will not be precluded from disclosing or using any Data or information marked as proprietary which:
- a. Is known to Purchaser at the time of receipt from Contractor or is received from a source other than Contractor without a restriction on further disclosure;
  - b. Is or subsequently becomes freely available to the public without breach of the provisions of this Clause;
  - c. Is subsequently developed by Purchaser through means independent of the information provided by Contractor.
- 23.10. Nothing contained herein or in any subsequent communication made pursuant to this Contract will be construed as a waiver of any Contractor Affiliate's rights or any third Party's rights in Proprietary Information. All Proprietary Information delivered hereunder will remain the property of the originator.
- 23.11. Trademarks. Purchaser will not use the trademark "Contractor" or its equivalent, or any other trademarks of Contractor, without the express written approval of Contractor's Authorized Representative.
- 23.12. This Clause shall survive the expiration, completion or termination of this Contract.

**24. ASSIGNMENT OF CONTRACT**

- 24.1. The Purchaser reserves the right to assign this Contract, in whole or in part, to another NATO body, agency or representative as the legal successor to NAPMO. In such a case, the Purchaser shall notify the Contractor accordingly in writing. The NAPMO or the legal successor shall remain responsible for its obligations under the Contract.
- 24.2. Except as otherwise provided in this Contract, this Contract shall not be assignable by the Contractor without the prior approval of NAPMA in writing.

No such assignment shall become effective until the assignee has received written approval from NAPMA. Any request for such approval shall be accompanied by a true copy of the intended instrument of assignment. NAPMA will not unreasonably withhold any such approval of assignment.

**25. LIABILITY AND INDEMNITY**

- 25.1. The Contractor shall in advance waive all claims he could have with regard to NAPMO, NATO and NATO personnel or personnel under NATO command, or personnel controlled by NAPMO (hereinafter referred to as "NATO" purely for the purposes of this Clause) for any damage, death or injury caused in any connection with the performance and work provided, unless the damage, death or injury are caused by intent or gross negligence of NATO.
- 25.2. The Contractor shall indemnify and hold harmless NATO against the financial consequences of claims whosoever could have against them on account of damage, death or injury caused in any connection with the performance of the work provided, unless the damage, death or injury are caused by intent or gross negligence of NATO.
- 25.3. Contractor shall indemnify the Purchaser against all claims brought by third parties in respect of any breach of intellectual property rights.
- 25.4. Limitation of Damages: the total cumulative liability of the Contractor due to any and all cause(s) whatsoever, whether based on breach of Contract or in tort (including negligence) or otherwise, shall in no event exceed the amount of the Contract value
- 25.5. In the case that NATO property has been damaged by Contractor employees, then such event shall be reported to the Purchaser's Contracting Officer without delay. The Contractor shall be responsible to reimburse to NATO for all costs associated with damage to any item of property that occurs during performance hereunder where such damage is attributable to any fault or negligence on the part of Contractor and his employees. Such costs shall include, but are not limited to, the cost to repair the property, the depreciated value of any property that is damaged beyond economic repair, costs to repair any other involved item of property and/or third Party items or property, recovery costs.

**26. FORCE MAJEURE**

- 26.1. A failure to perform the Contract that is not attributable to the fault of a Party and for which it is also not accountable by law or juristic act or according to generally accepted standards constitutes Force Majeure. The term Force Majeure in relation to the Contractor is in any event deemed not to include staff shortages, staff illness, late delivery or unsuitability of items required for the performance of the contractual obligations in relation to the Deliverables

and liquidity or solvency problems

- 26.2. In the event any such delay due to the foregoing causes or events occurs or is anticipated, the Contractor shall promptly notify the Purchaser of such delay or expected delay and the cause and estimated duration of such delay. In the event of a delay due to the foregoing causes or events, the Contractor shall exercise due diligence to shorten and avoid the delay and shall keep the Purchaser advised as to the continuance of the delay and steps taken to shorten or terminate the delay.
- 26.3. In the event of a delay, caused by Force Majeure, by which the Contractor is temporarily or permanently unable to meet its obligations, the Purchaser is allowed to terminate the Contract. If the Contract is terminated due to Force Majeure, the Contractor shall refund all amounts already paid by the Purchaser, increased with legal interest on such payments from the day on which they were paid. In case the Contract is terminated in part, only the liability to repay shall exist and only with respect to the amount relating to the annulled part of the Contract.

**27. TERMINATION FOR DEFAULT**

- 27.1. The Purchaser may by written notice of default to the Contractor, terminate the whole or any part of this Contract if the Contractor:
- a. fails to make delivery of all or part of the Work within the time specified in the Contract or any agreed extension thereof;
  - b. fails to make progress as to endanger performance of this Contract in accordance with its terms;
  - c. fails to meet the requirements of the Contract;
  - d. fails to comply with Clause Security;
  - e. transfers this Contract without the Purchaser's prior written consent;
  - f. breaches any other material provision of this Contract.
- 27.2. In the case of any of the circumstances set forth in Clause 27.1 above, the Purchaser shall issue a letter to the Contractor stating that an actual or potential default exists and requires a response from the Contractor within ten (10) Days that identifies:
- a. in the case of late delivery of Deliverables or non-performance of Services, when the Contractor shall deliver the Deliverables or perform the Services and what circumstances exist which may be considered excusable delays .
  - b. in the case of the other circumstances identified in Clause 27.1 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.

- 27.3. The Purchaser shall evaluate the response provided by the Contractor or, in the absence of a reply within the time period mentioned in Clause 27.2, all relevant elements of the case, and make a written determination within a reasonable period of time that:
- a. sufficient grounds exist to terminate the Contract in whole or in part in accordance with this Clause and that the Contract is so terminated;
  - b. there are mitigating circumstances and the Contract should be amended accordingly; or
  - c. 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.
- 27.4. 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 27.1 if the Contractor has not made adequate progress, deliveries or compliance with the Contract provisions which were the terms of the period of forbearance.
- 27.5. In the event the Purchaser terminates this Contract in whole or in part, as provided in Clause 27.1, the Purchaser may procure, upon such terms and in such manner as the Purchaser may deem appropriate, Deliverables or Services similar to those so terminated, and the Contractor shall be liable to the Purchaser for any excess costs for such similar Deliverables or Services; however, the Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this clause.
- 27.6. Payment for completed Deliverables delivered to and accepted by the Purchaser shall be at the Contract price.
- 27.7. The Purchaser may withhold from amounts otherwise due to the Contractor for such completed Deliverables 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.
- 27.8. 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.

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

28.1. 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.

28.2. After receipt of a Notice of Termination and except as otherwise directed by the Contracting Authority, the Contractor shall:

- a. stop the Work on the date and to the extent specified in the notice of termination;
- b. place no further orders or Sub-Contracts for Deliverables or Services, except as may be necessary for completion of such portion of the Work under the Contract as is not terminated;
- c. terminate all orders and Sub-Contracts to the extent that they relate to the performance of Work terminated by the Notice of Termination;
- d. settle all outstanding liabilities and all claims arising out of such termination of orders and Sub-Contracts; and
- e. complete performance of such part of the Work as shall not have been terminated by the Notice of Termination.

28.3. Any termination exercised under the provisions of this Clause, will entitle the Contractor to submit to the Purchaser a claim for reimbursement of cost and expenses incurred by the Contractor for the terminated portion of the Contract. Work in hand will be paid for in accordance with the terms and conditions of the Contract and with the work order. The reimbursement of all other costs and expenses associated with the terminated work will be the subject of negotiation. These reimbursable costs include but are not limited to, the following:

- a. The total of the costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to technical data Services paid or to be paid under paragraph 28.2 above, for work in hand;
- b. The total of the cost of settling and paying termination settlement proposal under terminated Sub-Contracts that are properly chargeable to the terminated portion of the Contract and is not included in paragraph a. above.
- c. The total of a fair and reasonable profit/fee (no fee for terminated work (ie., anticipatory profits). Reasonable fee IS allowable for proposal termination work)
- d. The reasonable costs of settlement of the work terminated including:
  - Accounting, legal, clerical, administrative and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

- The termination and settlement of Sub-Contracts (excluding the amounts of such settlements); and

28.4. Such claim will be submitted to the Purchaser not later than six (6) months after receipt of the Purchaser's notice of termination. The Contractor's claim will be fully documented, substantiated and justified. Its settlement will be negotiated between the Purchaser and the Contractor.

28.5. Failure to reach agreement on the settlement of the Contractor's claim shall constitute a dispute within the meaning of the Clause Disputes.

### **29. GOVERNING LAW**

29.1. Except as otherwise provided in this Contract, this Contract shall be governed, interpreted and construed in accordance with the laws of The Netherlands.

### **30. DISPUTES**

30.1. The Purchaser is an integral part of the North Atlantic Treaty Organisation (NATO). The Purchaser shares in the international personality of NATO as well as in the juridical personality possessed by NATO by virtue of Article 4 of the Ottawa Agreement. The juridical personality of the Purchaser is subsumed in that of NATO and cannot be distinguished from it. Rights and privileges that apply to NATO and that are specifically addressed in Article 4 to 11 and 24 of the Ottawa Agreement apply to the Purchaser.

30.2. Therefore, any dispute arising out of the Contract shall be settled according to the Arbitration Clause of this Contract.

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

### **31. ARBITRATION**

31.1. The Party instituting the arbitration proceedings shall advise the other Party by registered letter, with official notice of delivery, of his desire to have recourse to arbitration.

31.2. Within a period of thirty days from the date of receipt of the notification referred to in Clause 31.1 above, the Parties shall jointly appoint an arbitrator. In the event of failure to appoint an arbitrator, the dispute or disputes shall be 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.

- 31.3. 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.
- 31.4. 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.
- 31.5. 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.
- 31.6. An arbitrator who, for any reason whatsoever, ceases to act as an arbitrator shall be replaced under the procedure laid down in the paragraph 31.2 of this clause.
- 31.7. 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.
- 31.8. 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.

**NATO UNCLASSIFIED**

**VOLUME III**  
**FRAMEWORK**  
**STATEMENT OF WORK**

**Programmatic and Engineering Support for  
Final Lifetime Extension Programme (FLEP)**

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### 1 Introduction

NAPMA is preparing to manage the Risk Reduction Phase for the NATO AWACS Final Lifetime Extension Program (FLEP).

The purpose of the FLEP is to:

- 1.1.1 Maintain NATO E-3A operational relevancy through 2035 by delivering the established priority capabilities.
- 1.1.2 Ensure the airframe and mission equipment is sustainable until 2035.
- 1.1.3 Establish and/or maintain interoperability with other NATO platforms.

NAPMO nations will decide to start Risk Reduction (RR) for the FLEP in mid-2016. Risk Reduction will consist of three phases. The first phase will define a system configuration and program scope to go under contract based on the results of trade space analysis studies. The second phase will focus on contract and proposal preparation efforts and the third phase will continue to build on the previous phases to maintain the industry knowledge base. The goal of the first phase is to define a System Configuration/ Program Scope that is affordable, meets relevant requirements, safeguards sustainability until 2035 and provides the proper return of investment for the nations. The goal of the second phase (based on the approved System Configuration) is to define the program scope by developing the SOW, TRD, VCRM, CDRLs, contracting language (e.g. Terms and Condition, Ground Rules and Assumption) for an RFP release to the prime contractor in early 2018 to enable contract award for the Engineering, Manufacturing and Development (EMD) Phase in January 2019.

The FLEP will be a "Design-for-Affordability" effort and also include a Return of Investment Strategy for NAPMO nations. The FLEP activities must be complete by 2025 in order to assure an average use time of 10 years for the modernized jets and to not collide with the potential start of activities for a follow on capability replacing the E-3A.

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### 2 Statement of Work

This Statement of Work (SOW) reflects the required support from the Contractor to NAPMA during the Final Lifetime Extension Program (FLEP) Risk Reduction phase.

#### 2.1 The Contractor shall provide the following support to NAPMA

- 2.1.1 Provide support to NAPMA during the development of RFPs for the Risk Reduction activities and during the proposal review.
- 2.1.2 Provide support during Risk Reduction to evaluate industry deliveries in support of System Configuration decisions looking at capability, cost and schedule implications as well as infrastructure proposals for the execution of the actual FLEP program and industrial return plans
- 2.1.3 Beyond knowledge of best practices procurement approaches for multinational programs, dedicated technical, programmatic & commercial knowledge in the areas of - but not limited to - Data Links (Link 16 and Beyond Line of Sight Data Link), Communications Systems (Crypto, Radios, Airborne Networking), Mission Computing Systems (Hardware, Software, Human Machine Interfaces) and Electronic Support Measures will be required.
- 2.1.4 In addition providing support to aspects of Technical Airworthiness, Configuration Control, Life Cycle Management, Risk Management as well as Information Assurance
- 2.1.5 Provide support in drafting a Model Contract for the FLEP EMD Phase with all elements tailored to a Single Prime Contractor, however with a program depending on Government Furnished Equipment (GFE) in quite a few areas. The Model Contract shall include:
  - Terms & Conditions
  - Programmatic and related payment milestones
  - A technical requirements document
  - A statement of work
  - A CDRL list
  - A notional verification & test plan
  - Dedicated Airworthiness Considerations
  - Dedicated IA considerations
  - Definitions concerning the milestones and criteria when milestones are met
  - An initial draft of a GFE list
- 2.1.6 Provide support to the assessment of necessary activities outside of the main contract, resulting management requirements, resources, cost and schedule considerations.
- 2.1.7 Asses the compliance of technical solutions with applicable Military-, Industry-, Commercial- and Aviation Standards where feasible
- 2.1.8 Provide NAPMA assistance in evaluating schedule challenges for the Risk Reduction Activities as well as the FLEP EMD & PAR activities.

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### **2.2 Meetings, Teleconferences, On-site support**

- 2.2.1 If requested by NAPMA, the Contractor shall provide on-site support in Brunssum for a certain time period in coordination with the NAPMA FLEP team.
- 2.2.2 The Contractor shall support teleconferences with NAPMA during the period of performance (PoP).
- 2.2.3 The Contractor shall support and be able to host meetings duration during the PoP. The meeting may include industry participation as required.
- 2.2.4 Data to support meetings shall be provided to NAPMA two-weeks in advance. Unless specified by NAPMA, data will be shared with all participating Contractor and Government teams.

### **2.3 Licenses/ agreements/ clearances**

- 2.3.1 The contractor shall prepare and sign necessary licenses and agreements (e.g. Non-Disclosure Agreements, Technical Assistance Agreement) with participating industry and government partners in EU and USA.
- 2.3.2 The contractor shall be in possession of the required NATO clearances.

### **2.4 Monthly Cost Reporting**

The Contractor shall adhere to the standard NAPMA cost reporting procedures as described in the contract terms and conditions.

### **3 Deliverables**

- 3.1 The contractor shall provide white papers and briefings to document the assessments, conclusions and recommendations.
- 3.2 All support shall be provided in English language.

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