



NATO UNCLASSIFIED

Acquisition Directorate

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NCIA/ACQ/2018/1099

9 April 2018

To: **All Prospective Bidders**

Subject: **RFQ-CO-14733-BRASS**

Wireless and Maritime Services Area - Technical Support Consultancy Services

Project Serial 9CM80096

References: **AC/4-DS(2017)0023**

1. Your firm maintains a Basic Ordering Agreement with this Agency and has been identified as a potential source of services for the areas of interest. The technical specifications and contract performance requirements are set forth in the Statement of Work of the Prospective Purchase Order attached hereto as Enclosure B.
2. You are invited to participate in a BOA competition for a contract covering this effort and you are therefore requested to submit an offer including the Curriculum Vitae of the proposed individual who may have the required expertise in the areas needed.
3. You are requested to provide fixed firm daily labour rates for the category of personnel specified to undertake the tasks set forth in the Schedule of Services attached to the prospective Contract. These rates shall remain fixed for the duration of the work under the proposed contract.
4. This Request For Quotation consists of the Bidding Instructions and the Prospective Contract. The Prospective Contract contains the Schedules, Special Provisions and the Statement of Work. The Statement of Work sets forth the expected performance requirements of the contract.
5. The security classification of this offer is "NATO UNCLASSIFIED". The requirements of the Statement of Work involve security classification of personnel to a level of "NATO SECRET". Compliance with requirements for personnel security is mandatory. This Request For Quotation remains the property of the NCI Agency and shall be protected in accordance with the applicable national security regulations.



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

Avenue du Bourget 140
1140 Brussels, Belgium

www.ncia.nato.int

6. Prospective Offerors are further advised that the NCI Agency reserves the right to cancel this RFQ at any time in its entirety and bears no liability for preparation costs incurred by firms or any other collateral costs if cancellation occurs.
7. The technical evaluation of the lowest bid will include an interview with the proposed individual, to be held within the shortest timeframe possible (approximately one (1) or two (2) weeks after the Bid Closing Date). Only upon satisfactory completion of this interview will the technical evaluation be considered as completed.
8. You are requested to complete and return the enclosed Acknowledgement of Receipt within seven (7) calendar days of receipt of this RFQ, informing the NCI Agency of your intention to bid/not to bid. Your firm is not bound by its initial decision, and if you decide to reverse your stated intention at a later date, you are requested to advise us by a separate letter.
9. The NCIA point of contact for this procurement is Mrs Tiziana Pezzi, Tel. +32 (2) 707-8472, fax 32 (2) 707-8770 / 8271, or e-mail at Tiziana.pezzi@ncia.nato.int. All correspondence can be sent to Mr Werner Goos, Tel. +32 (2) 707 8804, or e-mail at werner.goos@ncia.nato.int.
10. **THE CLOSING TIME FOR SUBMISSION OF OFFERS IS 1400 HOURS (BRUSSELS TIME) ON 9th May 2018.**

FOR THE DIRECTOR ACQUISITION



Tiziana Pezzi

Principal Contracting Officer

Enclosures:

- A. Book I – Bidding Instructions**
- B. Book II – Prospective Contract**

ACKNOWLEDGEMENT OF RECEIPT OF REQUEST FOR QUOTATION
RFQ-CO-14733-BRASS

Please complete and return (as .pdf scan) within 10 working days
by e-mail to: werner.goos@ncia.nato.int

Date: _____

We hereby advise that we have received Request for Quotation RFQ-CO-14733-BRASS on, together with all the enclosures.

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 (please find in return the RFQ documents/or Certificate of Destruction).

Signature

Company

BOA no.

Address

.....

.....

POC:

Tel.:

Fax:

E-mail:

Distribution List**Prospective Bidders** 1**NATO Delegations (Attn: Investment Committee Adviser):**

Belgium	1
Bulgaria	1
Canada	1
Czech Republic	1
Denmark	1
Estonia	1
Germany	1
Greece	1
Hungary	1
Iceland	1
Italy	1
Latvia	1
Lithuania	1
Luxembourg	1
The Netherlands	1
Norway	1
Poland	1
Portugal	1
Romania	1
Slovakia	1
Slovenia	1
Spain	1
Turkey	1
United Kingdom	1
United States	1

Belgian Ministry of Economic Affairs 1**Embassies in Brussels (Attn: Commercial Attaché):**

Belgium	1
Bulgaria	1
Canada	1
Czech Republic	1
Denmark	1
Estonia	1
Germany	1
Greece	1

Hungary	1
Iceland	1
Italy	1
Latvia	1
Lithuania	1
Luxembourg	1
The Netherlands	1
Norway	1
Poland	1
Portugal	1
Romania	1
Slovakia	1
Slovenia	1
Spain	1
Turkey	1
United Kingdom	1
United States	1

NATEXs

Belgium	1
Bulgaria	1
Canada	1
Czech Republic	1
Denmark	1
Germany	1
Italy	1
The Netherlands	1
Norway	1
Poland	1
Spain	1
Turkey	1
United States	1

NATO International Staff

NATO Office of Resources (Mr Stephen Baker)	1
Management and Implementation Branch - Attn: Deputy Branch Chief	1
Director, NATO HO C3 Staff, Attn: Executive Co-Ordinator	1
SACTREPEUR, Attn: Infrastructure Assistant	1

Strategic Commands

ACT HQ - Attn: R&D Contracting Office	1
ACO Liaison Office - Attn: Mr Wallace and Ms Lund	1

NCI Agency

ACQ Director of Acquisition – Mr P. Scaruppe through Ms D. Cani	1
ACQ Deputy Director of Acquisition – Mrs A. Szydelko	1
ACQ Contract Award Board Administrator – Ms M.L. Le Bourlot	1
ACQ Chief of Contracts – Mr Alain Courtois	1
ACQ Principal Contracting Officer – Mrs Tiziana Pezzi	1
ACQ Chief ILS – Mr R. Proietto	1
ACQ Head CEA Office – Mr R. Berghuijs	1
DIS NSII SL Chief – Mr A. Calderon	1
DIS NSII WMSA Owner – Mr A. Bertin	1
DIS NSII WMSA Project Manager – Mr Can Oz	1
COO NLO – Mr X. Desfougeres	1
Legal Office – Mrs S. Rocchi through Mr V. Roobaert	1
FMU – Mrs I. Nechelput	1
Security	1
Registry (for distribution)	1

REQUEST FOR QUOTATION

RFQ-CO-14733-BRASS

**WIRELESS AND MARITIME SERVICES AREA
TECHNICAL SUPPORT CONSULTANCY
SERVICES**

AUTHORISATION/SERIAL NO.

AC/4-DS(2017)0023

2005/9CM80096-00



GENERAL INDEX

BOOK I - THE BIDDING INSTRUCTIONS

- Section I Introduction
- Section II General Bidding Information
- Section III Bid Preparation Instructions
- Section IV Bid Evaluation
- Annex A Bidding Sheets
- Annex B Bidding Sheets - Instructions
- Annex C Certificates
- Annex D Clarification Requests forms

BOOK II - THE PROSPECTIVE CONTRACT

- Signature Sheet
- Part I Schedule of Supplies and Services
- Part II Contract Special Provisions
- Part III BOA Contract General Provisions
- Part IV Statement of Work

NATO UNCLASSIFIED

RFQ-CO-14733-BRASS
Book I – Bidding Instructions



RFQ-CO-14733-BRASS

BOOK I

BIDDING INSTRUCTIONS

NATO UNCLASSIFIED

Book I Page 1 of 48

CONTENTS

1 SECTION I - INTRODUCTION.....3

2 SECTION II - GENERAL BIDDING INFORMATION5

2.1 DEFINITIONS5

2.2 ELIGIBILITY5

2.3 BID DELIVERY AND BID CLOSING6

2.4 REQUESTS FOR EXTENSION OF BID CLOSING DATE7

2.5 PURCHASER POINT OF CONTACT7

2.6 REQUESTS FOR RFQ CLARIFICATIONS8

2.7 REQUESTS FOR WAIVERS AND DEVIATIONS8

2.8 AMENDMENT OF THE REQUEST FOR QUOTATION9

2.9 MODIFICATION AND WITHDRAWAL OF BIDS9

2.10 BID VALIDITY9

2.11 BID GUARANTEE10

2.12 CANCELLATION OF REQUEST FOR QUOTATIONS13

2.13 ELECTRONIC TRANSMISSION OF INFORMATION AND DATA14

3 SECTION III - BID PREPARATION INSTRUCTIONS.....15

3.1 GENERAL15

3.2 PREPARATION OF THE ADMINISTRATIVE ENVELOPE (PART 1)15

3.3 PREPARATION OF THE PRICE QUOTATION (PART 2)17

3.4 PREPARATION OF THE TECHNICAL PROPOSAL (PART 3)18

3.5 PACKAGING AND MARKING OF BIDS19

4 SECTION IV - BID EVALUATION20

4.1 GENERAL20

4.2 ADMINISTRATIVE CRITERIA21

4.3 PRICE CRITERIA21

4.4 TECHNICAL CRITERIA24

ANNEX A – BIDDING SHEETS.....26

ANNEX B - INSTRUCTIONS FOR THE PREPARATION OF BIDDING SHEETS27

ANNEX C – CERTIFICATES28

ANNEX D – CLARIFICATION REQUESTS FORMS44

SECTION I – INTRODUCTION

- 1.1 The contract performance requirements are set forth in the Statement of Work (SOW) of the Prospective Contract in Enclosure B. The Contractor shall supply expertise for the basic contract at a fixed daily rate for the proposed individual. The Purchaser's Technical Lead will direct the detailed aspects of the efforts to be provided under the contract to produce the results and documentation described in the Statement of Work
- 1.2 This RFQ is issued in accordance with the Procedures Governing the Use of Basic Ordering Agreements (**BOAs**) set forth in the NATO document AC/4 D(2002)002-FINAL (2002 Edition).
- 1.3 The security classification of this RFQ is "NATO UNCLASSIFIED".
- 1.4 Contractor personnel that will work at or visit NATO sites is required to hold a security clearance of "NATO SECRET" at the time of Contract award. All Contractor personnel without such a clearance, confirmed by the appropriate national security authority and transmitted to the cognisant NATO security officer in accordance with the specific instructions contained in this RFQ, will be denied access to the site. Denial of such access by the Purchaser may not be used by the Contractor as the basis for a claim of adjustment or an extension of schedule nor can the denial of access be considered a mitigating circumstance in the case of an assessment of Liquidated Damages or a determination of Termination for Default by the Purchaser.
- 1.5 All NATO CLASSIFIED material entrusted to the Contractor shall be handled and safeguarded in accordance with applicable security regulations. The Contractor shall be required to possess a Facility clearance of "NATO SECRET" for those sites in which it intends to handle and store NATO classified material in the conduct of work under this Contract. This requirement applies also to all facilities and personnel involved in this project as a result of subcontracts issued by the Contractor for effort under this prime Contract.
- 1.6 Bidders are advised that Contract signature will not be delayed in order to allow the processing of security clearances for personnel or facilities and, should the otherwise successful Bidder not be in a position to accept the offered Contract within a reasonable period of time, due to the fact that its personnel or facilities do not possess the appropriate security clearance(s), the Purchaser may determine the Bidder's Offer to be non-compliant and offer the Contract to the next ranking Bidder. In such a case, the Bidder who would not sign the Contract shall be liable for forfeiture of the Bid Guarantee. The Bidders are informed that the Prospective Contractor shall conform to the above requirements at the time of the Contract Award.
- 1.7 This Request for Quotation will not be the subject of a public bid opening.

- 1.8 Award of the Contract will be made on a Not to Exceed Basis to the lowest price technically compliant Bidder.
- 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 paragraph 2.6 of Section II of the Bidding Instructions entitled “Requests for RFQ Clarifications”.
- 1.11 The target date for Contract award is June 2018.
- 1.12 The purpose of this Request for Quotation (RFQ) is to establish a Contract for acquiring technical support to help operationally maintain the BRASS Initial Core Capability Software (ICC SW) baseline, and assist in development of ongoing adaptive and corrective changes and modifications at The Wireless and Maritime Services Area (WMSA) of the Network Services and IT Infrastructure Service Line (NSII) - NCI AGENCY/NSII/WMSA.

SECTION II - GENERAL BIDDING INFORMATION

2.1 DEFINITIONS

- 2.1.1 The term “Contractor” as used herein means the person or legal entity from a Participating Country which has signed this Contract and is a Party thereto.
- 2.1.2 The terms “Contractor employee” or “individual” as used herein refers to the individual, male or female, who will be carrying out the work specified in the Statement of Work.
- 2.1.3 The term “Basic Ordering Agreement” (BOA) refers to the acquisition instruments negotiated between suppliers of products / services and the NCI Agency, on behalf of NATO.
- 2.1.4 The term “Bidder” as used herein refers to a firm, consortium, or joint venture which submits an offer in response to this solicitation.
- 2.1.5 The term “Compliance” as used herein means strict conformity to the requirements and standards specified in this Request for Quotation.
- 2.1.6 The term “Participating Country” as used herein means one of the contributory NATO nations in the project, namely, (in alphabetical order):
- BELGIUM, BULGARIA, CANADA, CZECH REPUBLIC, DENMARK, ESTONIA, GERMANY, GREECE, HUNGARY, ICELAND, ITALY, LATVIA, LITHUANIA, LUXEMBOURG, NETHERLANDS, NORWAY, POLAND, PORTUGAL, ROMANIA, SLOVAKIA, SLOVENIA, SPAIN, TURKEY, UNITED KINGDOM, UNITED STATES OF AMERICA.
- 2.1.7 The term “Purchaser” refers to the authority issuing the RFQ and/or awarding the Contract (the NATO Communications and Information Agency, alternatively named “NCI Agency”, or “NCIA”).

2.2 ELIGIBILITY

- 2.2.1 Only firms which hold an active BOA stipulated with the NCI Agency are eligible to take part in this RFQ. In addition, all Contractors, sub-Contractors and manufacturers, at any tier, must be from Participating Countries.
- 2.2.2 None of the work, including labour and services shall be performed other than by firms from and within Participating Countries. The Contractor Employee must be a national of one of the NATO Nations.
- 2.2.3 The intellectual property rights to all design documentation and related system operating software shall reside in NATO member countries, and no license fee, or royalty charges shall be paid by the Contractor to firms, individuals or governments other than within the NATO member countries.

2.2.4 Bidders are at liberty to constitute themselves into any form of contractual arrangements or legal entity they desire, bearing in mind that in consortium-type arrangements a single judicial personality shall be established to represent that legal entity. A legal entity, such as an individual, Partnership or Corporation, herein referred to as the “Prime Contractor”, shall represent all members of the consortium with the NCI Agency and/or NATO. The “Prime Contractor” shall be vested with full power and authority to act on behalf of all members of the consortium, within the prescribed powers stated in an irrevocable Power of Attorney issued to the “Prime Contractor” by all members associated with the consortium. Evidence of authority to act on behalf of the consortium by the “Prime Contractor” shall be enclosed and sent with the Bid. Failure to furnish proof of authority shall be a reason for the Bid being declared non-compliant.

2.3 BID DELIVERY AND BID CLOSING

2.3.1 All Bids shall be in the possession of the Purchaser at the address given below in paragraph 2.3.2 **before 14.00 hours (Brussels Time) on 09 May 2018** at which time and date bidding shall be closed.

2.3.2 Bids shall be delivered to the following address:

By National Postal Service, Hand Carried or Courier Service:

NATO Communications and Information Agency
Acquisition
Boulevard Leopold III
1110 Brussels
Belgium

Attention: Mr Werner Goos

2.3.3 Bids forwarded by electronic means, including but not limited to email and/or fax, are not permitted and will not be considered.

2.3.4 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.

2.3.5 Consideration of Late Bid. It is the responsibility of the Bidder to ensure that the bid submission is duly completed by the specified Bid Closing time. Considering the number and the 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 Request for Quotation, and

- (b) the bid was sent to the address specified in the RFQ by ordinary, registered or certified mail not later than five (5) 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 NCI Agency and the failure to be received by the Contracting Authority was due to mishandling within the Purchaser's organisation.

2.3.6 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 postmarks or for which documentary evidence of mailing date cannot be produced.

2.3.7 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. It is therefore of the paramount importance that all deliveries are arranged and scheduled to occur between 09:00 hrs – 16:00 hrs Brussels, Belgium time during the normal NATO working days.

2.4 REQUESTS FOR EXTENSION OF BID CLOSING DATE

The Purchaser does not accept, except in exceptional cases, the Bidder requests to extend the Bid Closing Date. In any event, all questions and requests for extension of bid closing date must be submitted in writing by fax or e-mail. Such questions shall be forwarded to the Point of Contact specified in paragraph 2.5 below and shall arrive not later than 14 calendar days before the closing date of the bid. The Purchaser is under no obligation to consider or answer requests submitted after this time. Extensions to the Bid Closing Date are at the sole discretion of the Purchaser.

2.5 PURCHASER POINT OF CONTACT

The Purchaser Point of Contact (POC) for all information concerning this RFQ is:

Mr Werner Goos
E-mail: werner.goos@ncia.nato.int

NATO Communications and Information Agency
Acquisition
Boulevard Leopold III
1110 Brussels
Belgium

2.6 REQUESTS FOR RFQ CLARIFICATIONS

- 2.6.1 Bidders, during the solicitation period, are encouraged to query and seek clarification of any matters of a contractual, administrative and technical nature pertaining to this RFQ.
- 2.6.2 All questions and requests for clarification must be submitted in writing through Annex D – Clarification Requests Form, by mail, by FAX or by E-mail. All questions and requests must reference the Section(s) in the RFQ subject for clarifications. The questions and/or requests shall be forwarded to the POC specified in paragraph 2.5 above and shall arrive **not later than 14 calendar days before the closing date of the bid**. The Purchaser is under no obligation to answer questions submitted after this time. Requests for clarification must address the totality of the concerns of the Bidder for any given area, as the Bidder will generally not be permitted to revisit areas of the RFQ for additional clarification except as noted in 2.6.3 below.
- 2.6.3 Bidders are advised that subsequent questions and/or requests for clarification included in a bid shall neither be answered nor considered for evaluation and may be grounds for a determination of non-compliance.
- 2.6.4 Except as provided above, all questions will be answered by the Purchaser and the questions and answers (deprived of any means of identification of the questioner) will be issued in writing to all prospective bidders.
- 2.6.5 The published answers issued by the Purchaser shall be regarded as the authoritative interpretation of the RFQ. Amendments to the language of the RFQ included in the answers shall be incorporated by the Bidder in its offer.

2.7 REQUESTS FOR WAIVERS AND DEVIATIONS

- 2.7.1 Bidders are informed that requests for alteration to, waivers of, or deviations from the Schedules, the Special Contract Provisions, the Terms and Conditions in the NCI Agency's Basic Ordering Agreement, the Technical Specifications, the Statement of Work and any other Terms and Conditions of the Prospective Contract will not be considered after the Request for Clarification process.
- 2.7.2 Requests for alterations to the other requirements, terms or conditions of the Request for Quotation or the Prospective Contract may only be considered as part of the clarification process set forth in paragraph 2.6 above. Requests for alterations to the specifications, terms and conditions of the Contract which are included in a Bid as submitted may be regarded by the Purchaser as a qualification or condition of the Bid and may be grounds for a determination of non-compliance.

2.8 AMENDMENT OF THE REQUEST FOR QUOTATION

- 2.8.1 The Purchaser may revise, amend or correct the terms, conditions and/or specifications and provisions of the RFQ documents at any time prior to the date set for the Bid Closing. Any and all modifications will be transmitted to all prospective bidders by an official amendment designated as such and signed by the Contracting Authority. Such amendment shall be recorded in the Acknowledgement of Receipt which the bidder shall complete and enclose as part of its bid. This process may be part of the clarification procedures set forth in paragraph 2.6 above or may be an independent action on the part of the Purchaser.
- 2.8.2 The Purchaser will consider the potential impact of amendments on the ability of prospective Bidders to prepare a proper bid within the allotted time. The Purchaser may extend the “Bid Closing Date” at its discretion and such extension will be set forth in the amendment document.
- 2.8.3 In no case, however, will the closing date for receipt of bids be less than seven (7) days from the date of issuance of any amendment to the RFQ.

2.9 MODIFICATION AND WITHDRAWAL OF BIDS

- 2.9.1 Bids, once submitted, may be modified by Bidders, but only to the extent that the modifications are in writing, conform to the requirements of the RFQ, and are received by the Purchaser prior to the exact time and date established for Bid Closing. Such modifications shall be considered as an integral part of the submitted bid.
- 2.9.2 Modifications to bids which arrive after the Bid Closing Date will be considered as “Late Modifications” and will be processed in accordance with the procedure set forth above concerning “Late Bids”, except that unlike a “Late Bid”, the Purchaser will retain the modification until a selection is made. A modification to a bid which is determined to be late will not be considered in the evaluation and selection process. If the Bidder submitting the modification is determined to be the successful Bidder on the basis of the unmodified bid, the modification may then be opened. If the modification makes the terms of the bid more favourable to the Purchaser, the modified bid may be used as the basis of Contract award. The Purchaser, however, reserves the right to award a Contract to the apparent successful Bidder on the basis of the bid submitted and disregard the late modification.
- 2.9.3 A Bidder may withdraw its bid at any time prior to Bid Opening without penalty. In order to do so, an authorised agent or employee of the Bidder must provide an original statement of the firm's decision to withdraw the bid and remove the bid from the Purchaser's premises.

2.10 BID VALIDITY

- 2.10.1 Bidders shall be bound by the term of their bids for a period of six (6) months starting from the Bid Closing Date specified at paragraph 2.3.1 above.

- 2.10.2 In order to comply with this requirement, the Bidder shall complete the Certificate of Bid Validity set forth in Annex C-3. Bids offering less than the period of time referred to above for acceptance by the Purchaser may be determined to be non-compliant.
- 2.10.3 The Purchaser will endeavour to complete the evaluation and make an award within the period referred to above. However, should that period of time prove insufficient to render an award, the Purchaser reserves the right to request an extension of the period of validity of all bids which remain under consideration for award.
- 2.10.4 Upon notification by the Purchaser of such a request for a time extension, the Bidders shall have the right to:
- (a) accept this extension of time in which case Bidders shall be bound by the terms of their offer for the extended period of time and the Certificate of Bid Validity extended accordingly; or
 - (b) refuse this extension of time and withdraw the bid without penalty.
- 2.10.5 Bidders shall not have the right to modify their bids due to a Purchaser request for extension of the bid validity unless expressly stated in such request.

2.11 BID GUARANTEE

- 2.11.1 The Bidder shall furnish with its Bid a guarantee in an amount equal to twenty-one thousand Euro (€ 21,000). The Bid Guarantee shall be in the form of an irrevocable, unqualified and unconditional bid bond, i.e. Standby Letter of Credit issued by a Belgian banking institution fully governed by Belgian legislation or issued by a non-Belgian financial institution and confirmed by a Belgian banking institution fully governed by Belgian legislation. In the latter case signed original letters from both the issuing institution and the confirming institution must be provided. The confirming Belgian bank shall clearly state that it will guarantee the funds, the drawing against can be made by the NCI Agency at its premises in Belgium. Bid Guarantees shall be made payable to the Treasurer, NATO Communications and Information Agency and its legal successor.
- 2.11.2 Alternatively, a Bidder may elect to post the required Guarantee in cash (via direct bank deposit) or by certified cheque to be submitted in the Bidders Bid Administration Package (Ref. Para 3.2). If the latter method is selected, Bidders are informed that the Purchaser will cash the cheque on the Bid Closing Date. Instructions regarding direct bank deposit can be obtained from the Para 2.5 designated Point of Contact.
- 2.11.3 “Standby Letter of Credit” as used herein, means a written commitment by a Belgian financial institution either on its own behalf or as a confirmation of the Standby Letter of Credit issued by a non-Belgian bank to pay all or part of a stated amount of money, until the expiration date of the letter, upon presentation by the Purchaser of a written demand therefore. Neither the

financial institution nor the Bidder can revoke or condition the Standby Letter of Credit. The term “Belgian financial institution” includes non-Belgian financial institutions licensed to operate in Belgium.

2.11.4 The following format may be used by the issuing financial institution to create a Standby Letter of Credit:

BID GUARANTEE - STANDBY LETTER OF CREDIT

Standby Letter of Credit Number: _____

Issue Date: _____

Beneficiary: NATO Communications and Information Agency,
(NCI Agency) or its legal successor
Acquisition Directorate – Attn: Mrs. Tiziana Pezzi
CO-14733-BRASS
Boulevard Leopold III, B-1110, Brussels, Belgium

Expiry Date: _____

1. We, (issuing bank) hereby establish in your favour our irrevocable standby letter of credit number {number} by order and for the account of (NAME AND ADDRESS OF BIDDER) in the original amount of [€ 21,000 (Twenty One Thousand Euro)]. We are advised this Guarantee fulfils a requirement under Request for Quotation CO-14733-BRASS dated _____.

2. Funds under this standby letter of credit are available to you upon first demand and without question or delay against presentation of a certificate from the NCI Agency Contracting Officer that:
(NAME OF BIDDER) has submitted a bid and, after Bid Closing Date (including extensions thereto) and prior to the selection of the lowest priced, technically compliant bid, has withdrawn its Bid, or stated that it does not consider its bid valid or agree to be bound by its bid, or
(NAME OF BIDDER) has submitted a bid determined by the Agency to be the lowest priced, technically compliant bid, but (NAME OF BIDDER) has declined to execute the contract offered by the Agency, such contract being consistent with the terms of the Request for Quotation , or
The NCI Agency or its legal successor has offered (NAME OF BIDDER) the contract for execution but (NAME OF BIDDER) has been unable to demonstrate compliance with the security requirements of the contract within a reasonable time, or
The NCI Agency or its legal successor has entered into the contract with (NAME OF BIDDER) but (NAME OF BIDDER) has been unable or unwilling to provide the Performance Guarantee required under the terms of the contract within the time frame required.

3. This Letter of Credit is effective the date hereof and shall expire at our office located at (Bank Address) on _____. All demands for payment must be made prior to the expiry date.

4. *It is a condition of this letter of credit that the expiry date will be automatically extended without amendment for a period of sixty (60) calendar days from the current or any successive expiry date unless at least thirty (30) calendar days prior to the then current expiry date the NCI Agency Contracting Officer notifies us that the Letter of Credit is not required to be extended or is required to be extended for a shorter duration.*

5. *We may terminate this letter of credit at any time upon sixty (60) calendar days notice furnished to both (NAME OF BIDDER) and the NCI Agency or its legal successor by registered mail.*

6. *In the event we (the issuing bank) notify you that we elect not to extend the expiry date in accordance with paragraph 4 above, or, at any time, to terminate the letter of credit, funds under this credit will be available to you without question or delay against presentation of a certificate signed by the NCI Agency Contracting Officer which states:*

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

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

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

8. *Multiple partial drawings are allowed to the maximum value of this letter of credit.*

9. *Drafts drawn hereunder must be marked, “Drawn under {issuing bank} Letter of Credit No. {number}” and indicate the date hereof.*

10. *This letter of credit sets forth in full the terms of our undertaking, and this undertaking shall not in any way be modified, amended, or amplified by*

reference to any document, instrument, or agreement referred to herein (except the International Standby Practices (ISP 98) hereinafter defined) or in which this letter of credit is referred to or to which this letter of credit relates, and any such reference shall not be deemed to incorporate herein by reference any document, instrument, or agreement.

11. *We hereby engage with you that drafts drawn under and in compliance with the terms of this letter of credit will be duly honoured upon presentation of documents to us on or before the expiration date of this letter of credit.*

12. *This Letter of Credit is subject to The International Standby Practices-ISP98 (1998 Publication) International Chamber of Commerce Publication No.590*

2.11.5 If the Bid Closing Date is extended after a Bidder's financial institution has issued a Bid Guarantee, it is the obligation of the Bidder to have such Bid Guarantee (and confirmation, as applicable) extended to reflect the revised Bid Validity date occasioned by such extension.

2.11.6 Failure to furnish the required Bid Guarantee in the proper amount, and in the proper form and for the appropriate duration by the Bid Closing Date may be cause for the bid to be determined non-compliant.

2.11.7 Bid Guarantees will be returned to Bidders as follows:

- (a) to non-compliant Bidders forty-five (45) days after notification by the Purchaser of a non-compliant bid (except where such determination is challenged by the Bidder; in which case the Bid Guarantee will be returned forty-five (45) days after a final determination of non-compliance);
- (b) to all other unsuccessful Bidders within thirty (30) days following the award of the Contract to the successful Bidder;
- (c) to the successful Bidder upon submission of the Performance Guarantee required by the Contract or, if there is no requirement for such a Performance Guarantee, upon contract execution by both parties.
- (d) pursuant to paragraph 2.10.4 (b).

2.12 CANCELLATION OF REQUEST FOR QUOTATIONS

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

2.13 ELECTRONIC TRANSMISSION OF INFORMATION AND DATA

The Purchaser will endeavour to communicate answers to requests for clarification and amendments to this RFQ to the prospective bidders by the fastest means possible, including the use of e-mail where the firms have forwarded the necessary address information. All bidders are consequently strongly encouraged to provide accurate email addressing information and notify the Purchaser at the earliest practicable date should any changes occur.

SECTION III - BID PREPARATION INSTRUCTIONS

3.1 GENERAL

- 3.1.1 Bids shall be prepared in accordance with the instructions set forth herein. Failure to comply with these instructions may result in the Bid being declared non-compliant.
- 3.1.2 Bidders shall prepare a complete bid which comprehensively addresses all requirements stated herein. The Bid shall demonstrate the Bidder's understanding of the RFQ and its ability to provide all the deliverables and services listed in the Schedule of Supplies and Services. Bids, which are not complete, will be declared non-compliant.
- 3.1.3 The Bidder shall not restate the RFQ requirements in confirmatory terms only. The Bidder must clearly describe what is being offered and how the Bidder will meet all RFQ requirements. Statements in confirmatory terms only will be sufficient grounds for determining the bid to be non-compliant.
- 3.1.4 **Bidders shall prepare their bid in 3 parts in the following quantities:**
- (a) Administrative Envelope (Part 1): Paper: 1 signed Original
 - (b) Price Quotation (Part 2): Paper: 1 Original
 - (c) Technical Proposal (Part 3): Paper: 1 Original
- 3.1.5 Documents submitted in accordance with section 3.1.4 above shall be classified no higher than "NATO UNCLASSIFIED" material.
- 3.1.6 Partial Bids and/or bids containing conditional statements will be declared non-compliant.
- 3.1.7 Bidders are advised that the Purchaser reserves the right to incorporate the Bidders Technical Proposal in whole or in part in the resulting Contract.

3.2 PREPARATION OF THE ADMINISTRATIVE ENVELOPE (PART 1)

- 3.2.1 The Bidder shall insert the number of the active Basic Ordering Agreement (BOA) currently maintained with the NCI Agency. If the Bidder is uncertain as to the number or status of their BOA, the Bidder may email boa@ncia.nato.int to verify.
- 3.2.2 The "Bid Administration" Part shall contain a **Bid Guarantee** as described in Section 2.11 to these Bidding Instructions. If the Bid Guarantee is sent to the Purchaser directly from the Bidder's bank, a letter in lieu of the actual Guarantee shall be included in the Bid Administration Package, specifying the details of the transmittal.

3.2.3 For this RFQ, in the Administrative Envelope the bidder shall include the signed originals of the **certifications set forth in Annex C** hereto, specifically:

- (a) C-1 Certificate of Legal Name of Bidder
- (b) C-2 Certificate of Independent Determination
- (c) C-3 Certificate of Bid Validity
- (d) C-4 Certificate of Understanding
- (e) C-5 Certificate of Exclusion of Taxes, Duties and Charges
- (f) C-6 Acknowledgement of Receipt of RFQ Amendments (if applicable)
- (g) C-7 Disclosure of Requirements for NCI Agency Execution of Supplemental Agreements
- (h) C-8 Certification of NATO Member Country of Origin of Delivered Equipment, Services, Material and Intellectual Property Rights
- (i) C-9 Comprehension and Acceptance of Contract Special Provisions and general BOA Provisions
- (j) C-10 List of Prospective Sub-Contractors / Consortium members
- (k) C-11 List of Key Personnel with Security Clearance Information
- (l) C-12 Disclosure of Involvement of Former NCI Agency Employment

3.2.4 Concerning Certificate C-10, the Contractor shall identify by name, project role, and country of origin, all sub-contractors whose sub-contract value is expected to equal or exceed EUR 125,000, if any. A list of consortium members shall also be completed and included. If there are no sub-contractors/consortium members involved, the Bidder shall state this separately.

3.2.5 Concerning Certificate C-7, Disclosure of Requirements for NCI Agency Execution of Supplemental Agreements, Bidders shall note especially the following:

3.2.5.1 If supplemental agreements, such as End-User Certificates or Technical Assistance Agreements, are required by national regulations, these must be submitted with the Bidders Bid. Supplemental agreements submitted after the Bid Closing Date shall not be considered.

3.2.5.2 The terms of supplemental agreements, if necessary, are the Bidders / Contractors responsibility and shall be totally consistent with the terms of the (Prospective) Contract, and shall not duplicate, negate, or further interpret any provisions of this Contract. The terms of the (Prospective) Contract shall take precedence over the Supplemental Agreement.

3.2.5.3 A problem with the supplemental agreement in any of the areas mentioned previously in this provision may result in a determination that the Bid is not compliant with the terms of the RFQ, and in rejection of the Bid, or termination for default of the Contract if the supplemental agreement is submitted after Contract award.

3.3 PREPARATION OF THE PRICE QUOTATION (PART 2)

3.3.1 The Price Quotation shall be prepared and submitted in the form of completed Bidding Sheets in accordance with RFQ Book I, Section III and Annexes A and B hereto. No alteration of the form and pre-filled content of the Bidding Sheets is allowed, unless otherwise specified.

3.3.2 This envelope must contain one (1) printed original of Book I Annex A completed as per Book I Annex B instructions.

3.3.3 Bidders shall prepare their Price Quotation by completing Annex A, in accordance with the instructions specified in Annex B.

3.3.4 Bidders shall quote in their own national currency or in EUR, the host nation currency. Bidders may also submit bids in multiple currencies including other NATO member states' currencies under the following conditions:

- (a) the currency is of a "Participating Country" in the project, and
- (b) the Bidder can demonstrate, either through sub-contract arrangements or in its proposed work methodology, that it will have equivalent expenses in that currency. All major sub-contracts and their approximate anticipated value should be listed on a separate sheet and included with the Price Quotation.

3.3.5 The Purchaser, by virtue of its status under the terms of Article IX and X of the Ottawa Agreement, is exempt from all direct taxes (incl. VAT) and all customs duties on merchandise imported or exported. The Contractor, therefore, shall certify that the prices stipulated in this Contract do not include amounts to cover such direct taxes or customs duties.

3.3.6 The Contractor shall be responsible for ensuring that its respective Sub-contractors are aware that the Purchaser is exempt from taxes and customs duties. The Contractor (and its respective Sub-contractors) shall be responsible for complying with all applicable national and local legal and administrative procedures to ensure that authorities do not attempt to assess taxes and customs duties on goods and property imported or exported through NATO member nation frontiers under this Contract nor assess direct taxation (VAT) on goods sold to the NCI Agency under this Contract. Bidders are reminded of the requirement to complete the certification to this effect in Annex C-5.

3.3.7 Unless otherwise specified in the instructions for the preparation of bidding sheets, all prices quoted in the proposal shall be DDP (Delivered Duty Paid) to

specified destination, in accordance with the International Chamber of Commerce INCOTERMS 2000 and shall also cover all packaging, packing, preservation, insurance and transportation charges. Prices quoted shall include all costs for items supplied and delivered to final destination.

- 3.3.8 The Bidder's attention is directed to the fact that Price Quotation shall contain no document and/or information other than the priced copies of the Bidding Sheets. Any other document of a contractual or technical nature will not be considered for evaluation and may be cause for a determination of non-compliance by the Purchaser.
- 3.3.9 When completing the Bidding Sheets, a daily price and Not to Exceed price needs to be supplied on the CLIN line item. Prices should not be grouped. The prices and quantities entered on the document shall reflect the amount of the days required to meet the contractual requirements, partial quotations shall be rejected. The total price shall be indicated in the appropriate column and in the currency quoted. If the price of a line item is expressed in different currencies, these shall be identified, and there shall be as many totals on that line item as there are currencies. The accuracy of the inputs of the Bidding Sheets is the responsibility of the Bidder. The Purchaser in its favour may resolve ambiguous computation of prices.
- 3.3.10 The Bidding Sheets shall clearly illustrate the totals per CLIN and the total price of the bid in accordance with the format set out in the Annex A of these Bidding Instructions.
- 3.3.11 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 itself of its liability in each country where such liability may arise.
- 3.3.12 Price Proposals specifying exceeding the deadlines for delivery and completion of works indicated in the Schedule of Supplies and Services may be declared non-compliant.

3.4 PREPARATION OF THE TECHNICAL PROPOSAL (PART 3)

- 3.4.1 Bidders shall submit their Technical Proposal in one bound volume containing all **qualifications** in compliance with the technical specification addressed in the **Statement of Work (SOW)**.
- 3.4.2 This package must include the following items:
- 3.4.2.1 Project Personnel. The Bidder shall provide a curriculum vitae and security clearance information for the personnel proposed for this project listed in SOW Section 2. The Bidder shall provide a narrative describing the rationale for the selection of this individual for the post and provide detailed descriptions of the relevant experience of the individual.

- 3.4.2.2 A declaration issued by the Security Officer of the Company that the proposed individual has the required Security Clearance or already is Security Cleared at the SECRET level at a National level and will be in possession of the required **NATO SECRET** Security Clearance at the time of Contract award. Failure to possess the required Security Clearance at the time of Contract award, at the latest, will be a case for a determination of non-compliance.
- 3.4.2.3 The Bidder shall provide a curriculum vitae the individual proposed for this project in compliance with the Statement of Work.
- 3.4.2.4 The Bidder shall provide details about the Quality Assurance it intends to apply to this project.
- 3.4.3 The Bidder shall provide documentary evidence that clearly shows that the proposed individual possesses the required qualifications and experience to be considered for the post. Those qualifications and experience are those defined in Section 10 of the Statement of Work.
- 3.4.4 Additional materials such as brochures, sales literature, product endorsements and unrelated technical or descriptive narrative shall not be included in the Technical Proposal. These materials may be included in a separate volume marked as Supplemental Material, but will not be evaluated.

3.5 PACKAGING AND MARKING OF BIDS

- 3.5.1 All copies of the Administrative Envelope, Price Quotation and the Technical Proposal 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 Offer – SEALED OFFER BRASS”
 - (c) The designated RFQ number: “RFQ-CO-14733-BRASS” followed by one of the following identifications as appropriate:
 - “Administrative Envelope”,
 - “Price Quotation”,
 - “Technical Proposal”.
- 3.5.2 The separate envelopes or packages shall be placed in an outer container or containers suitable for mailing and shipping and marked with the Purchaser’s address. The following legend shall be prominently printed on the top and sides of each container:

"SEALED BID: RFQ-CO-14733-BRASS. NOTIFY ACQ (W. GOOS) UPON RECEIPT!"

SECTION IV - BID EVALUATION

4.1 GENERAL

- 4.1.1 The evaluation of bids will be made by the Purchaser on the basis of the prices offered by the Contractor and compliancy with the RFQ requirements. The Basis for Award for the Contractor will be the lowest evaluated price offered by a Bidder that is determined to satisfy the bidding requirements for the Technical Section of the Bid as stated in paragraph 3.4 of Section III of the Bidding Instructions, including conduct of an interview with the prospective individual.
- 4.1.2 The evaluation of bids and the determination as to the compliance or technical adequacy of the services offered will be based on that information furnished by the Bidder and contained in its bid, as well as the result of the interview. The Purchaser shall not be responsible for locating or securing any information which is not included in the bid.
- 4.1.3 To ensure that sufficient information is available, the Bidder shall furnish with its bid all information appropriate to provide a complete description of the work which will be performed and/or the supplies to be delivered. The information provided shall be to a level of detail necessary for the Purchaser to determine exactly what the Bidder proposes to furnish and whether the offer meets the technical, administrative and contractual requirements of this RFQ.
- 4.1.4 During the evaluation, the Purchaser may request clarification of the bid from the Bidder, and the Bidder shall provide sufficient detailed information in connection with such requests as to permit the Purchaser to make a final determination based upon the facts. The purpose of such clarifications will be to resolve ambiguities in the bid and to permit the Bidder to state its intentions regarding certain statements contained therein. The Bidder is not permitted any cardinal alteration of the bid regarding technical matters and shall not make any change to its price quotation at any time.
- 4.1.5 The Bidder's prompt response to the Purchaser's RFQ clarification requests is important and therefore failure to provide the requested clarifications within the time-limits set forth in the specific Clarification Requests may cause the bid to be deemed non-compliant.
- 4.1.6 The evaluation will be conducted in accordance with the Use of Basic Ordering Agreements (BOAs) by the NATO Communications and Information Agency (NCI Agency) set forth in the NATO document AC/4-D(2002)002-FINAL.
- 4.1.7 The administrative compliance of the Bids will be evaluated first. Bids that are declared administratively non-compliant may be rejected without further

evaluation. Following evaluation for administrative compliance, evaluation will be carried out in the following two areas: Part 2 - Price, Part 3 - Technical.

- 4.1.8 All administrative compliant Bids will be reviewed for price compliancy. The Contract resulting from this RFQ will be awarded to the bidder whose offer, as evaluated by the Purchaser, is the lowest priced bid and in compliance with the requirements of this RFQ.

4.2 ADMINISTRATIVE CRITERIA

- 4.2.1 Prior to commencement of the Price and Technical evaluation, Bids will be reviewed for compliance with the Bid Submission Requirements of this RFQ. 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 Administrative Package contained the Bid Guarantee in the proper amount, in the proper form and for the established length of time,
- (d) The Administrative Package contains all the requested signed originals of the required Certificates as described in Annex C.

- 4.2.2 A Bid that fails to conform to the above requirements may be declared non-compliant and may not be evaluated further by the Purchaser.

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

4.3 PRICE CRITERIA

- 4.3.1 A bid which fails to meet the compliance standards defined in this section may be declared non-compliant and may not be evaluated further by the Purchaser.

- 4.3.1.1 The Price Quotation shall meet the requirements for preparation and submission of the Price Quotation set forth in the Bid Preparation Section (Book I, Section 3) and the Instructions for Contractor's Bidding Sheets (Annex B hereto), in particular:
- a. The Bidder has prepared the Price Proposal in the form of the Bidding Sheets provided under Annex A of these Bidding Instructions, in accordance with the instructions specified in Annex B.
 - b. The Bidder has provided Firm Fixed Daily Rates for all items listed.

- c. Bid prices include all costs for items and services supplied, delivered, and supported.
 - d. All prices have been accurately entered into appropriate columns, and accurately totalled.
 - e. The Bidder has provided accurate unit price, and total price for each line item and sub-item (if any). The prices of the sub-items (if any) total the price of the major item of which they constitute a part.
 - f. The totals per CLIN and the bid grand total are accurate.
 - g. The currency of all line items has been clearly indicated (if applicable). Line items with multiple currencies contain as many totals on that line item as there are identified currencies.
 - h. The Bidder has quoted in its own national currency or in the Host Nation currency, Euros. Where multiple currencies including other NATO member states' currencies are quoted, the conditions of Section III, paragraph 3.3.4 are met.
 - i. The Bidder has indicated that in accordance with the treaties governing the terms of business with NATO, it excluded from its prices all taxes, duties and customs charges from which the Purchaser has been exempted.
 - j. Price quotes for each individual item(s) and totalled prices are accurate, realistic (based on historic data, and/or market and competitive trends in the specified industrial sector(s)), adequate and traceable.
- 4.3.1.2 Price Quotation does not contain any document and/or information other than the priced copies of the Bidding Sheets. Any other document of a contractual or technical nature will not be considered for evaluation and may be cause for a determination of non-compliance by the Purchaser.
- 4.3.1.3 The Price Quotation meets requirements for price realism and balance as described below in paragraph 4.3.4.
- 4.3.1.4 Completed Bidding Sheets shall show that the offered delivery schedule meets the mandatory delivery requirements of the Prospective Contract.
- 4.3.2 Basis of Price Comparison
- 4.3.2.1 The Purchaser will convert all prices quoted into EURO for purposes of comparison and computation of price scores. The exchange rate to be utilised by the Purchaser will be the average of the official buying and selling rates of the European Central Bank at close of business on the last working day preceding the Bid Closing Date.

- 4.3.2.2 The price comparison will be based on the offered Grand Total Firm Fixed Price.
- 4.3.3 Inconsistencies and discrepancies in bid price quotations.
- 4.3.3.1 In case of inconsistencies, discrepancies and/or contradictory pricing information in the different parts of the bid price submission and notwithstanding the possibility for the Purchaser, at its sole discretion to obtain clarification from the bidder, for the purpose of determining the total price of the Bid, the following order of precedence shall apply:
- a. Bidding Sheet Total to be Evaluated Bid Price as indicated by the Bidder
 - b. Total of the Bid calculated from the indicated Total Prices(s) indicated per CLIN(s)
- 4.3.4 Price Realism
- 4.3.4.1 Otherwise successful Bidders that submit a price quotation so low that it is not a realistic reflection of the objective cost of performance of the associated technical proposal may be considered by the Purchaser to have submitted an unrealistic offer and that offer may be determined to be non-compliant.
- 4.3.4.2 Indicators of an unrealistically low bid may be the following, amongst others:
- a. Labour Costs that, when amortised over the expected or proposed direct labour hours, indicate average labour rates far below those prevailing in the Bidders locality for the types of labour proposed.
 - b. Direct Material costs that are considered to be too low for the amounts and types of material proposed, based on prevailing market prices for such material.
 - c. Numerous Line Item prices for supplies and services that are provided at no cost or at nominal prices.
- 4.3.4.3 If the Purchaser has reason to suspect that a Bidder has artificially debased its prices in order to secure contract award, the Purchaser will request clarification of the bid in this regard and the Bidder shall provide explanation on one of the following bases:
- a. An error was made in the preparation of the Price Quotation. In such a case, the Bidder must document the nature of the error and show background documentation concerning the preparation of the Price Quotation that makes a convincing case that a mistake was made by the Bidder. In such a case, the Bidder shall petition the Purchaser to both remain in the competition and accept the Contract at the offered price, or to withdraw from the competition.

- b. The Bidder has a competitive advantage due to prior experience or industrial/technological processes that demonstrably reduce the costs of Bidder performance and therefore the price offered is realistic. Such an argument must support the technical proposal offered and convincingly and objectively describe the competitive advantage and the net savings achieved by this advantage over standard market practices and technology.
- c. The Bidder recognises that the submitted Price Quotation is unrealistically low compared to its cost of performance and, for business reasons, the Bidder is willing to absorb such a loss. Such a statement can only be made by the head of the business unit submitting the Bid and will normally be made at the level of Chief Operating Officer or Chief Executive Officer. In such a case, the Bidder shall estimate the potential loss and show that the financial resources of the Bidder are adequate to withstand such reduction in revenue.

- 4.3.4.4 If a Bidder fails to submit a comprehensive and compelling response on one of the bases above, the Purchaser may determine the Bid submitted as non-compliant. If the Bidder responds on the basis of a) above and requests to withdraw from the competition, the Purchaser may, depending on the nature and gravity of the mistake, allow the Bidder to withdraw.
- 4.3.4.5 If the Purchaser accepts the Bidder's explanation of mistake in paragraph 4.3.4.3(a) and allows the Bidder to accept the Contract at the offered price, or the Purchaser accepts the Bidder's explanation pursuant to paragraph 4.3.4.3(c) above, the Bidder shall agree that the supporting pricing data submitted with its Bid will be incorporated by reference in the resultant Contract. The Bidder shall agree as a condition of Contract signature, that the pricing data will be the basis of determining fair and reasonable pricing for all subsequent negotiations for modifications of or additions to the Contract and that no revisions of proposed prices will be made.
- 4.3.4.6 If the Bidder presents a convincing rationale pursuant to paragraph 4.3.4.3(b) above, no additional action will be warranted. The Purchaser, however, reserves its right to reject such an argument if the rationale is not compelling or capable of objective analysis. In such a case the Bid may be determined to be non-compliant.

4.4 TECHNICAL CRITERIA

- 4.4.1 Upon determination of the lowest-priced Bid as described above, the Bid submitted shall be evaluated to confirm compliance with the criteria and requirements set forth in the SOW.
- 4.4.2 As part of the evaluation, the Purchaser shall interview the proposed Contractor Personnel prior to contract award in order to verify the experience and qualifications of the proposed individual and in order to assess technical

compliance with the requirements set forth in this RFQ. All costs associated to the interview shall be borne by the Bidder.

- 4.4.2.1 The interview is part of the technical evaluation, therefore if the Purchaser judges that the results of the interview do not satisfy the requirements, the Bidder may be declared non-compliant.
- 4.4.2.2 The interview with the prospective individual will be conducted by and Interview Board During the interview, the individual will be required to provide both oral and written answers to questions concerning the technical and managerial aspects of the tasks as set out in the Statement of Work.
- 4.4.2.3 The individual may also have to complete a short examination to assess their skill level as part of the interview process.
- 4.4.3 The individual shall be evaluated according to the requirements defined in the statement of work, particularly those stated in section 10, the technical qualifications; and section 11, the security clearance.

ANNEX A – BIDDING SHEETS

CLIN	DESCRIPTION	QTY	FIRM FIXED PRICE	
			DAILY RATE	TOTAL
		Not to exceed Working Days		Not to Exceed Amount
1.1	Contractor Individual man days in support of BRASS Reference System (STIV-RMD) – year 1 (basic contract)	230		
1.2	Man days – year 2 (basic contract)	230		
	GRAND TOTAL Item 1	460	[Currency]	

ANNEX B - INSTRUCTIONS FOR THE PREPARATION OF BIDDING SHEETS

1. Bidders are required, in preparing their Price Quotation to utilise the Bidding Sheets of Annex A following the instructions detailed in Section III – Bid Preparation Instructions.
2. The prices entered on the Bidding Sheets shall reflect the maximum amount of days required to meet the contractual requirements, as described in the SOW. The total amount of days allocated per year is 230, with the understanding that one full day consists of 7.6 hours.
3. The total price shall be indicated in the appropriate columns and in the currency quoted.
4. The total evaluated price shall be the total price of CLIN 1 and CLIN 2.
5. If the price of a CLIN is expressed in different currencies, these shall be identified, and there shall be as many bidding sheets for that CLIN as there are currencies.
6. Prices shall not include any provision for taxes or duties for which the Purchaser is exempt.
7. Bidders shall not introduce any changes or deviations to the Schedule of Supplies and Services as Published by the Purchaser, unless otherwise specified.

ANNEX C – CERTIFICATES

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ANNEX C-1

CERTIFICATE OF LEGAL NAME OF BIDDER

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

FULL NAME OF CORPORATION: _____

DIVISION (IF APPLICABLE): _____

SUB DIVISION (IF APPLICABLE): _____

OFFICIAL MAILING ADDRESS: _____

E-MAIL ADDRESS: _____

FAX NO.: _____

BOA NO.: _____

POINT OF CONTACT (POC) REGARDING THIS BID:

NAME: _____

POSITION: _____

TELEPHONE: _____

E-MAIL ADDRESS: _____

ALTERNATIVE POC:

NAME: _____

POSITION: _____

TELEPHONE: _____

E-MAIL ADDRESS: _____

DATE

SIGNATURE OF AUTHORISED REPRESENTATIVE

PRINTED NAME

TITLE

ANNEX C-2

CERTIFICATE OF INDEPENDENT DETERMINATION

1. Each Bidder shall certify that in connection with this procurement:
 - a. This Bid has been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition, with any other Bidder or with any competitor;
 - b. The contents of this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to award, directly or indirectly to any other Bidder or to any competitor, and
 - c. No attempt has been made, or will be made by the Bidder to induce any other person or firm to submit, or not to submit, a Bid for the purpose of restricting competition.

2. Each person signing this Bid shall also certify that:
 - a. He/she is the person in the Bidder's organisation responsible within that organisation for the decision as to the bid and that he/she has not participated and will not participate in any action contrary to 1(a) through 1(c) above, or
 - b. (i) He/she is not the person in the Bidder's organisation responsible within that organisation for the bid but that he/she has been authorised in writing to act as agent for the persons responsible for such a decision in certifying that such persons have not participated, and will not participate in any action contrary to 1(a) through 1(c) above, and as their agent does hereby so certify, and
(ii) He/she has not participated and will not participate in any action contrary to 1(a) through 1(c) above.

.....
Date

.....
Signature of Authorised Representative

.....
Printed Name and Title

.....
Company

ANNEX C-3

CERTIFICATE OF BID VALIDITY

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

.....
Date

.....
Signature of Authorised Representative

.....
Printed Name and Title

.....
Company

ANNEX C-4

CERTIFICATE OF UNDERSTANDING

I certify that

.....
.....(Company Name) has read and fully understands the requirements of this Request for Quotation (RFQ) and that the Bid recognises these requirements in total.

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

.....
Date

.....
Signature of Authorised Representative

.....
Printed Name and Title

.....
Company

ANNEX C-5

CERTIFICATE OF EXCLUSION OF TAXES, DUTIES AND CHARGES

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.

.....
Date

.....
Signature of Authorised Representative

.....
Printed Name and Title

.....
Company

ANNEX C-6

ACKNOWLEDGEMENT OF RECEIPT OF RFQ AMENDMENTS

I confirm that the following Amendments to Request for Quotation No RFQ-CO-14733-BRASS have been received and the Bid as submitted reflects the content of such Amendments:

Amendment Number	Date Issued	Date of Receipt

.....
Date

.....
Signature of Authorised Representative

.....
Printed Name and Title

.....
Company

ANNEX C-7

**DISCLOSURE OF REQUIREMENTS FOR NCI AGENCY EXECUTION OF
SUPPLEMENTAL AGREEMENTS**

I, the undersigned, as an authorised representative of
.....(Company Name), certify the following statement:

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

2. These supplemental agreements are listed as follows:

3. Examples of the terms and conditions of these agreements are attached hereto. The anticipated restrictions to be imposed on NATO, if any, have been identified in our offer along with any potential conflicts with the terms, conditions and specifications of the Prospective Contract, see (complete, if any). These anticipated restrictions and potential conflicts are based on our knowledge of and prior experience with such agreements and their implementing regulations. We do not certify that the language or the terms of these agreements will be exactly as we have anticipated.

4. The processing time for these agreements has been calculated into our delivery and performance plans and contingency plans made in the case that there is delay in processing on the part of the issuing government(s), see (complete, if any).

5. We recognise that additional supplemental agreements, documents and permissions presented as a condition of Contract performance or MOU signature after our firm would be selected as the successful Bidder may be cause for the NCI to determine the submitted bid to be non-compliant with the requirements of the RFQ.

6 We accept that should the resultant supplemental agreements issued in final form by the government(s) result in an impossibility to perform the Contract in accordance with its schedule, terms or specifications, the Contract may be terminated by the Purchaser at no cost to either Party.

.....
Date

.....
Signature of Authorised Representative

.....
Printed Name and Title

.....
Company

ANNEX C-8

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

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

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

.....
Date

.....
Signature of Authorised Representative

.....
Printed Name and Title

.....
Company

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

ANNEX C-9

**COMPREHENSION AND ACCEPTANCE OF CONTRACT SPECIAL PROVISIONS
AND GENERAL BOA PROVISIONS**

The Bidder hereby certifies that it has reviewed the Contract Special Provisions set forth in the Prospective Contract, Book II of this Request for Quotation and the Contract Provisions set forth in the Basic Ordering Agreement signed with the NCI Agency. The Bidder hereby provides its confirmation that it fully comprehends the rights, obligations and responsibilities of the Contractor as set forth in the Articles and Clauses of the Prospective Contract. The Bidder additionally certifies that the offer submitted by the Bidder is without prejudice, qualification or exception to any of the Terms and Conditions and it will accept and abide by the stated Special Contract Provisions if awarded the contract as a result of this Request for Quotation.

.....
Date

.....
Signature of Authorised Representative

.....
Printed Name and Title

.....
Company

ANNEX C-10

LIST OF PROSPECTIVE SUB-CONTRACTORS/CONSORTIUM MEMBERS

Name and Address of Sub-Contractor, incl. country of origin/registration	Primary Location of Work	Items/Services to be Provided	Estimated Value of Sub-Contract

If no sub-Contractors/consortium members are involved, state this here:

.....
.....
.....
.....

.....
Date

.....
Signature of Authorised Representative

.....
Printed Name and Title

.....
Company

ANNEX C-12

DISCLOSURE OF INVOLVEMENT OF FORMER NCI AGENCY EMPLOYMENT

The Bidder hereby certifies that, in preparing its Bid, the Bidder did not have access to solicitation information prior to such information been authorized for release to Bidders (e.g., draft statement of work and requirement documentation).

The Bidder hereby acknowledges the post-employment measures applicable to former NCI Agency Personnel as per the NCI Agency Code of Conduct.

The Bidder hereby certifies that its personnel working as part of the company's team, at any tier, preparing the Bid:

- Have not held employment with NCI Agency within the last two years.
- Has obtained a signed statement from the former NCI Agency personnel below, who departed the NCI Agency within the last two years, that they were not previously involved in the project under competition (as defined in the extract of the NCI Agency Code of Conduct provided in Annex B of the prospective Contract Provisions):

Employee Name	Former NCIA Position	Current Position	Company

The Bidder also hereby certifies that it does not employ and/or receive services from former NCI Agency Personnel at grades A5 and above or ranks OF-5 and above, who departed the NCI Agency within the last 12 months. This prohibitions covers negotiations, representational communications and/or advisory activities.

Date :

Signature :

Name & Title :

Company :

Bid Reference :

Excerpt of NCI Agency AD. 05.00, Code of Conduct dated May 2017.**Article 14 PROCUREMENT AND CONTRACTORS**

- 14.1 NCI Agency Personnel are required to maintain unquestionable integrity and impartiality in relation to procurements initiated by the NCI Agency.
- 14.2 NCI Agency Personnel shall not disclose any proprietary or contract related information regarding procurement directly or indirectly to any person other than a person authorized by the NCI Agency to receive such information. NCI Agency Personnel shall not disclose any documentation related to a procurement action to any third party without a need to know¹ (e.g., draft statement of work, statement of requirements) unless this is expressly provided under NATO Procurement Regulations or authorized in writing by the Director of Acquisition. During an on-going selection, NCI Agency Personnel shall not disclose any information on the selection procedure unless authorized by the Chairman of the award committee/board. The NCI Agency Personnel concerned will ensure that proper access controls are put in place to prevent disclosure of procurement information that has not yet been authorized for release for outside distribution, including draft statements of work and requirement documentations.
- 14.3 NCI Agency Personnel will not participate in a source selection if an offer has been provided by a friend, family member, a relative, or by a business concern owned, substantially owned, or controlled by him/her or by a friend, family member or a relative. NCI Agency Personnel appointed as part of an evaluation shall report such links to the Director of Acquisition immediately upon becoming aware of it.
- 14.4 Contractors and consultants shall not be allowed to participate in the drafting of the statement of work or in the source selection process unless they and their company/employer will be excluded from competition of the related contract. The same will apply to contractors and consultants involved in the definition and development of requirements.
- 14.5 Contractors will be given specific and coherent statements of work, providing precise explanation of how she/he is going to be employed. Tasks to be performed and minimum qualifications are to be well defined from the start. In addition, supervisors will ensure that contractors do not occupy managerial positions within the Agency.
- 14.6 NCI Agency Personnel shall not enter into authorized commitments in the name of NCI Agency or NATO unless specifically authorized. NCI Agency Personnel must abstain from making promises or commitment to award or amend a contract or otherwise create the appearance of a commitment from the NCI Agency unless properly authorized by the NCI Agency.
- 14.7 NCI Agency Personnel shall not endorse directly or indirectly products from industry. Therefore, NCI Agency Personnel shall not name or make statements endorsing or appearing to endorse products of specific companies.
- 14.8 Industry partners will need to abide with the post-employment measures under this Directive upon submission of their bids / proposals to the NCI Agency. As part of the selection process, industry will be requested to agree with an ethical statement.

15 INDUSTRY INITIATIVES

- 15.1 Industry initiatives may include loans, displays, tests or evaluation of equipment and software, requesting NCI Agency speakers at industry gatherings and conferences, inviting speakers from industry to NCI Agency events, consultancy or studies of

technical or organizational issues, etc. These initiatives are usually at no cost to the NCI Agency and take place at a pre-contractual phase or before the development of requirements and specifications. While there are benefits associated with the early involvement of industry in the definition of requirements and specifications, this also raises the potential for unfair treatment of potential competitors.

- 15.2 Industry initiatives which go beyond routine interaction in connection with on-going contracts must be reported to and coordinated by the NCI Agency Acquisition Directorate for approval. Industry initiatives shall be properly documented and governed by written agreements between the NCI Agency and the company concerned where relevant. Such agreements may contain provisions describing the nature of the initiative, the non-disclosure of NCI Agency/NATO information, NCI Agency ownership of any resulting work, the NCI Agency's right to release such work product to future competitors for any follow-on competition or contract, the requirement that any studies must provide non-proprietary solutions and/or an acknowledgement that the participating companies will not receive any preferential treatment in the contracting process.
- 15.3 Any authorized industry initiatives must be conducted in such a way that it does not confer an unfair advantage to the industry concerned or create competitive hurdles for potential competitors.

16 POST EMPLOYMENT MEASURES

- 17.1 The NCI Agency will not offer employment contracts to former NCI Agency Personnel who departed less than 2 years earlier, unless prior approval by the General Manager has been received.
- 17.2 Former NCI Agency Personnel will not be accepted as consultants or commercial counterpart for two (2) years after finalization of their employment at NCI Agency, unless the General Manager decides otherwise in the interest of the Agency and as long as NATO rules on double remuneration are observed. Such decision shall be recorded in writing. Commercial counterparts include owners or majority shareholders, key account managers, or staff member, agent or consultant of a company and/or subcontractors seeking business at any tier with the NCI Agency in relation to a procurement action in which the departing NCI Agency staff member was involved when he/she was under the employment of the NCI Agency. As per the Prince 2 Project methodology, a Project is defined as a "temporary organization that is created for the purpose of delivering one or more business products according to an agreed business case". For the purpose of this provision, involvement requires (i) drafting, review or coordination of internal procurement activities and documentation, such as statement of work and statement of requirement; and/or (ii) access to procurement information that has not yet been authorized for release for outside distribution, including draft statements of work and requirement documentations; and/or (iii) being appointed as a representative to the Project governance (e.g., Project Board) with access to procurement information as per (ii) above; and/or (iv) having provided strategic guidance to the project, with access to procurement information as per (ii) above.
- 17.3 In addition to Section 17.2 above, former NCI Agency Personnel at grades A5 and above or ranks OF-5 and above are prohibited during twelve months following the end of their employment with the NCI Agency to engaging in negotiations, representational communications and/or advisory activities with the NCI Agency on behalf of a private entity, unless this has been agreed in advance by the NCI Agency General Manager and notified to the ASB.

- 17.4 NCI Agency Personnel leaving the Agency shall not contact their former colleagues in view of obtaining any information or documentation about procurement activities not yet authorized' release. NCI Agency Personnel shall immediately report such contacts to the Director of Acquisition.
- 17.5 The ASB Chairman will be the approving authority upon recommendation by the Legal Adviser when the NCI Agency Personnel concerned by the above is the NCI Agency General Manager and will notify the ASB.
- 17.6 NCI Agency Personnel leaving the Agency shall sign a statement that they are aware of the post-employment measures set out in this Directive.
- 17.7 The post-employment measures set out in this Directive shall be reflected in the NCI Agency procurement documents, such as IFBs, and contract provisions.

ANNEX D – CLARIFICATION REQUESTS FORMS

INSERT COMPANY NAME HERE

INSERT SUBMISSION DATE HERE

ADMINISTRATION or CONTRACTING					
Serial Nr	RFQ portion	RFQ Section Ref.	QUESTION	ANSWER	Status
A.1					
A.2					
A.3					

INSERT COMPANY NAME HERE

INSERT SUBMISSION DATE HERE

PRICE					
Serial Nr	RFQ portion	RFQ Section Ref.	QUESTION	ANSWER	Status
P.1					
P.2					
P.3					

INSERT COMPANY NAME HERE

INSERT SUBMISSION DATE HERE

TECHNICAL					
Serial Nr	RFQ portion	RFQ Section Ref.	QUESTION	ANSWER	Status
T.1					
T.2					
T.3					



RFQ-CO-14733-BRASS

BOOK II

PROSPECTIVE CONTRACT

CONTENTS

BOOK II - THE PROSPECTIVE CONTRACT

- Part I Signature Sheet
- Part II Schedule of Supplies/Services and Prices
- Part III Contract Special Provisions
- Part IV BOA Contract General Provisions
- Part V Statement of Work

PART I – SIGNATURE SHEET

NCIA Contract	
1 Original Number 1 of 3	2 For internal use: NSP013015 <div style="text-align: right;">Page 1 of 40</div>
3 Contract Number: CO-14733-BRASS	4 Effective Date:
5 Contractor:	6 Purchaser: NCIO represented by: The General Manager NCI Agency Boulevard Léopold III B-1110 Bruxelles Tel: +32(0)2 707 84.72 Fax: +32(0)2 707 87.70
7 <u>SCHEDULE OF SUPPLIES/SERVICES:</u> See Page 2 and Statement of Work	
8 TOTAL AMOUNT OF CONTRACT: Not to Exceed Ceiling Price	
9 Period of Performance: 2 years, a total of 460 days (230 workings days per year) from the Effective Date of Contract	10 Location of Work: As specified in Statement of Work
11 CONTRACT AGREEMENT: The Contractor agrees to furnish all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this Contract shall be subject to and governed by the Contractor's Basic Ordering Agreement No. currently in effect with the Purchaser, and Special Conditions attached to this Purchase Order.	
12 Signature of Contractor	13 Signature of Purchaser
14 Name and Title of Signer	15 Name and Title of Signer
16 Date signed by Contractor	17 Date Signed by Purchaser

PART II
BLOCK 7. – SCHEDULE OF SUPPLIES/SERVICES AND PRICES

CLIN	DESCRIPTION	QTY	FIRM FIXED PRICE	
			DAILY RATE	TOTAL
		Not to exceed Working Days		Not to Exceed Amount
1	Contractor working days in support of BRASS Reference System (STIV-RMD) – year 1 (basic contract)	230		
2	Contractor – year 2 (basic contract)	230		
	GRAND TOTAL Item 1	460	Currency	

PART III SPECIAL CONTRACT PROVISIONS

ARTICLE I - DEFINITIONS

For the purpose of this contract and unless otherwise explicitly indicated, the following definitions shall apply:

- A. Acceptance: The act of an authorized representative of the Purchaser by which the Purchaser assumes title and ownership of delivered Works rendered as partial or complete performance of the Contract. "Acceptance" in this regard, unless specifically provided otherwise in the Contract Special Provisions, means final Acceptance where the Contract provides for Provisional or Partial Acceptance.
- B. Basic Ordering Agreement (BOA): Means the separate agreement the Contractor holds with the NCI Agency under the auspices of the NCI Agency BOA Program.
- C. Contracting Authority: The General Manager of the NCI Agency, the Chief of Contracts of the NCI Agency or the authorised representatives of the Chief of Contracts of the NCI Agency.
- D. Contractor: The person or legal entity from a Participating Country which has signed this Contract and is a Party thereto.
- E. "Contractor employee", or "individual": the individual, male or female, who will be carrying out the work specified in the Statement of Work.
- F. Technical Lead: The NCI Agency System Manager who will be supervising the individual on a day-to-day basis as per Article "Technical Direction".
- G. BOA General Provisions: Means the General Provisions contained in the Contractor's Basic Ordering Agreement (BOA).
- H. Purchaser: NCI Agency, as represented by the General Manager, NCI Agency. The Purchaser is the legal entity who awards and administers the Contract and stands as one of the Contracting Parties.

ARTICLE II – ORDER OF PRECEDENCE

In the event of any inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- (a) The Schedule of Supplies and Services
- (b) The Special Contract Provisions

(c) The Statement of Work

(d) The Terms of the governing Basic Ordering Agreement specified in Block 11.

ARTICLE III - SCOPE OF WORK

- A. The Contractor shall provide the personnel with the qualifications and experience specified in the Statement of Work for the maximum number of working days specified in the Schedule of Supplies and Services and for the prices set forth therein, to perform the duties and responsibilities specified in the Statement of Work.
- B. The Statement of Work is a description of the expected work the Contractor's personnel is to perform. Due to results obtained during the progress of the work, the subsequent work may vary from the exact language of the Statement of Work, or the duration of some of the work may be longer than expected.
- C. The individual shall be ready to undertake travel to different sites at short notice.

ARTICLE IV- PERIOD OF PERFORMANCE

- A. The period foreseen for execution of the basic contract is 2 years, a total of 460 days (230 working days per year) from the Effective Date of Contract
- B. The Purchaser shall have the right to introduce breaks in the working periods of the contractor when necessary to synchronise with other related work conducted by the Project Team. The Purchaser shall have the right to exercise options to perform additional work.
- C. The period of performance may be extended by a period commensurate with any breaks introduced by the Purchaser or any options exercised by the Purchaser, taking into account the logical relationships between the additional tasks to be performed.
- D. The number of days actually worked shall not exceed the number of days specified in the Schedule of Supplies and Services for the basic contract.
- E. The period of performance may be extended by a period commensurate with any breaks introduced by the Purchaser. However, the number of days actually worked shall not exceed the number of days specified in the Schedule of Supplies and Services for the basic contract.
- F. The Purchaser requires a timely and effective start to the Project. Therefore the individual shall begin work on the first effective day of the contract, unless agreed otherwise prior to contract award.
- G. The first 35 man-days of actual work for the Contractor employee will be considered as probationary period for the individual selected to work under the contract.

- H. If at any time during the probationary period, the individual working under the contract is considered not to meet the requirements indicated in the contract and the standards of Article VI and XV below, the Purchaser will have the right to ask for replacement of the individual at no cost.
- I. In case of replacement for the above reason, the days already worked will be considered as a credit to the Purchaser and will be added to the individual replacing the person removed from the Contract. A new probationary period will then start for the newly employed individual.
- J. If the Purchaser considers that there are performance issues after the probationary period has passed, the Purchaser retains the right to stop the work of the individual and to request a replacement at no additional cost. The newly employed individual will then continue with the amount of working days remaining on the contract.
- K. During the period of performance, the Purchaser will have the right to stop the work of the individual and stop the contract at no cost, without recurring to the Termination clause, as long as 45 calendar days advance notice is given to the Contractor. In this case, the Contractor will have no right to claim any reimbursement or cost in relation to the interruption of the contract.

ARTICLE V – NOT TO EXCEED CEILING PRICE

- A. The Total Amount of the Contract is a Not to Exceed Ceiling Price. Therefore, the total amount of working days indicated in the Schedule of Supplies/Services and Prices, and the Total Amount of Contract may not be exceeded but may result being less than those indicated in the Contract.
- B. The Total number of working days are indicative and may be subject to adjustment according to the actual needs, within the Total price of each Task. The rates indicated in the Schedule of Supplies/Services and Prices are firm fixed prices for the duration of the contract. The Purchaser assumes no liability for costs incurred by the Contractor in excess of the stated firm fixed price for the indicated rates except as provided under other provisions of this Contract.
- C. The Total Contract price is inclusive of all expenses related to the performance of the present Contract.

ARTICLE VI - COMPREHENSION OF CONTRACT AND SPECIFICATIONS

- A. The Contractor warrants that he has read, understood and agreed to each and all terms, clauses, specifications (including drawings) and conditions specified in the contract and that this signature of the contract is an acceptance, without reservations, of the said contract terms within their normal and common meaning.
- B. The specifications set forth the performance requirements for the Contractor's proposed work as called for under this contract. Accordingly, notwithstanding any conflict or inconsistency which hereafter may be found between

achievement of the aforesaid performance requirements and adherence to the Contractor's proposed design for the work, the Contractor hereby warrants that the work to be delivered will meet or exceed the performance requirements of the said specifications.

- C. The Contractor hereby acknowledges that he has no right to assert against the Purchaser, its officers, agents or employees, any claims or demands with respect to the aforesaid specifications as are in effect on the date of award of this contract.
 - (a) Based upon impossibility of performance, defective, inaccurate, impracticable, insufficient or invalid specifications, implied warranties of suitability of such specifications, or
 - (b) Otherwise derived from the aforesaid specifications, and hereby waives any claims or demands so based or derived as might otherwise arise.
- D. Notwithstanding the "Changes" clause or any other clause of the contract, the Contractor hereby agrees that no changes to the aforesaid specifications which may be necessary to permit achievement of the performance requirements specified herein for the Contractor's proposed work shall entitle the Contractor either to any increase in the firm fixed price as set forth in this contract or to any extension of the delivery times for the work beyond the period of performance in the Schedule of Supplies and Services.

ARTICLE VII – INSPECTION OF SERVICES

- A. The services to be provided by the individual under this contract shall conform to the highest professional and industrial standards and practices. Inspection of the services provided will be made by the Purchaser's Technical Lead or another authorised designee. Services performed by the individual which do not conform to the highest professional and industry standards may result in the Purchaser requesting that such work be performed again at no increase in the price of the contract and in the total working days allocated for the Tasks.
- B. Repeated instances of work performed which fails to meet the standards and practices may result in a request for replacement of the individual. The number of working days of effort judged to have been lost due to inadequate performance after due warning has been given shall be assessed and credited to the purchaser.
- C. Repeated instances of work performed which fails to meet the standards and practices and an inability to replace the individual may result in termination of the contract for Default.

ARTICLE VIII – TECHNICAL DIRECTION

- A. The Contract will be administered by the NCI Agency in accordance with the Article of these Special Contract Provisions entitled "Contract Administration".

- B. At the site of the main efforts of the Tasks, the Purchaser will assign a Technical Lead who will provide the Contractor personnel with instruction and guidance (within the general scope of work) in performance of their duties and working schedule. The Technical Lead does not have the authority to change the terms of the Contract or to increase the overall cost, duration or level of effort of the Contract. The Technical Lead does have the authority to interpret the Statement of Work and provide direction to the personnel in performance of their duties. In addition, the Technical Lead will monitor performance and recommend whether the services provided by the individual are satisfactory and acceptable for payment.

ARTICLE IX – BASES OF COMPENSATION

- A. The Contractor will be reimbursed, provided the confirmation from the Purchaser's Technical Lead of the actual working days performed and recommendation that the services provided are satisfactory and acceptable for payment, at the daily rate specified in the Schedule of Supplies and Services for the personnel for each working day of effort furnished to the Purchaser by the Contractor employee up to the maximum number of days. The reimbursement will be made on a monthly basis for the number of days worked during the preceding month. The number of working hours to make up one work week shall equal up to 38.
- B. In case the work is not considered to be satisfactory by the Purchaser's Technical Lead, the payment will be made for 90% of the full amount invoiced. The remaining will be released at confirmation from the Technical Lead that the deficiency has been corrected and the required results have been achieved.
- C. The hourly rate for the Contractor personnel encompasses all charges of deploying and keeping the individual at the assigned post and the Purchaser will not pay additional charges involved in deploying or maintaining the individual at the main location of work.
- D. Overtime, work during weekends and holiday premiums are not permitted for remuneration; overtime, work during weekends or holidays may be permitted but only if agreed with the Purchaser. Local NATO official holidays are to be considered non-working days for the contract purpose.
- E. Travel requirements (TDY) to locations other than the main location of work shall be authorized in advance by the Purchaser and expenses incurred for travel shall be in addition and billed at a cost not to exceed the price of economy air or first-class rail ticket. The rate of compensation for personal automobile used in travel shall be the same rate as a first-class rail ticket between the point of departure and destination. Expenses will be compensated to the Contractor by the Purchaser on the basis of actual cost of the travel and allowable NATO per diem at the rate of a Level II NATO employee. In no case will the Purchaser make payment for travel/per diem claims without proper support in the form of receipts/cancelled tickets, etc.

- F. If travels occur on a non-working day, this day will not be reimbursed at the daily rate specified in the Schedule of Supplies and Service but only under the allowable NATO per diem.
- G. NCIA bears no insurance liability or risk of loss for the contractor's personnel travel.

ARTICLE X– PAYMENT AND INVOICES

- A. Payment will be made by NATO within 60 days after receipt and acceptance of properly prepared and supported invoices.
- B. All invoices shall be addressed to the designated authority as specified by the Purchaser, which, for the purposes of this contract, shall be "Accounts Payable, NCIA" at accountspayable@ncia.nato.int. Each copy of the invoice shall contain the following certificate:

"I certify that the above invoice is true and correct, and that the delivery of the described item(s)/service(s) has been duly effected and the payment therefore has not been received."

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

- C. Invoices shall be prepared and submitted to the Purchaser and shall contain:
 - Contract number: **CO-14733-BRASS**
 - BOA number: **xxxx**
 - PO number: **PO xxxx**
 - CLIN Item number as defined in the Contract
 - Contract Description of Work and Services, sizes, quantities, unit prices and extended totals
 - A copy of the approved and duly signed NCI Agency timesheet.
- D. The term of the contract and of each item can not be exceeded without prior approval of the Purchaser.

ARTICLE XI– SECURITY

- A. All personnel working under this contract shall have a security clearance of "NATO SECRET" at the Effective Date of the Contract, confirmed by the appropriate national security authority and transmitted to the cognisant NCIA Security Office at least seven (7) days before the Effective date of Contract (EDC). Failure to obtain or maintain the required level of security for the Contractor employee for the period of performance of this contract shall not be grounds for any delay in the scheduled performance of this Contract and may be grounds for termination under the provisions of the Contract entitled "Termination for Default" (BOA General Provisions). Nor can the denial of access be considered a mitigating circumstance in the case of an assessment of Liquidated Damages or a determination of Termination For Default by the Purchaser.

- B. The Contractor's personnel working under this contract shall own a valid passport and is required to maintain its validity for the duration of the contract.
- E. The Contractor's personnel working under this contract will also be required to sign Annex A certificate before beginning any work against the Contract.
- F. All NATO CLASSIFIED material entrusted to the Contractor shall be handled and safeguarded in accordance with applicable security regulations.
- G. The Contractor shall note that there are restrictions regarding the carriage and use of electronic devices (e.g. laptops) in Purchaser secured locations. The Contractor shall be responsible for satisfying and obtaining from the appropriate site authorities the necessary clearance to bring any such equipment into the facility.

ARTICLE XII – PURCHASER PROVIDED SUPPORT

The Purchaser will provide, free of charge, to the Contractor's personnel while at NATO sites:

- a. Office space.
- b. Standard issue office furniture.
- c. Communications (telephone, fax) service (Long-distance telephone service as authorised by the Purchaser).
- d. Utility services within the work area.

ARTICLE XIII – CONTRACTOR'S PERSONNEL WORKING AT PURCHASER FACILITIES

- A. The term "Purchaser Facilities" as used in this clause shall be deemed to include sites, property, utilities, ships or vessels and the term "Facility Representative" shall be deemed to refer to the authority designated by the Purchaser responsible for the site, property, utility, ship or vessel.
- B. The term "Contractor's Personnel" as used in this clause shall be deemed to refer to any employees, including the Contractor's personnel, which will be working on, or involved in, any of the aspects under the Statement of Work for this contract.
- C. The Contractor's personnel shall work together with the Project Team as an integrated team in the Purchaser's premises in SHAPE, Mons (Belgium) for activities covered in this Contract (except for TDYs as per Art IX Clause E).
- D. The Contractor shall have no claim against the Purchaser for any such additional cost of delay occasioned by the closure for holidays, or other reasons, where this is generally published or made known to the Contractor by the Purchaser of his authorised representatives.
- E. Notwithstanding the provisions of the "Purchaser Furnished Facilities" Clauses above, where those conditions form part of the Contract, 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, or by his servants, agents or sub-

contractors, arising from his or their presence on Purchaser Facilities in connection with the Contract; provided that these Conditions 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 of sub-contractors, or by any circumstances within his or their control.

- F. 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.

ARTICLE XIV – INDEMNIFICATION

The Contractor shall indemnify and hold the Purchaser harmless against claims for injury to persons or damages to property of the Contractor or others arising from the Contractor's possession or use of Purchaser Furnished Property or Facilities.

ARTICLE XV - KEY PERSONNEL

- A. The Contractor's personnel, Mr/Mrs. is considered to be Key Personnel for successful contract performance and is subject to the provisions of this Article as set forth in the following paragraphs.
- B. Under the terms of this Article, Key Personnel may not be voluntarily diverted by the Contractor to perform work outside of the Contract, as this may be a cause of Termination for Default. In cases where the Contractor has no control over the individual's non-availability (e.g., resignation, sickness, incapacity, etc.), the Contractor shall notify the Purchaser of a change of key personnel as soon as possible, preferably at least 21 days prior to the prospective vacancy, and offer a substitute with equivalent qualifications with no additional costs for the Purchaser. Any replacement of the Contractor's personnel (including replacement due to unsatisfactory probationary period, unsatisfactory performance, unsatisfactory english skills...etc) shall not commence work for the Purchaser until he has fully acquired and understood all knowledge of the work already performed by the existing Contractor' individual. The Contractor shall ensure full transfer of knowlege from the existing Contractor's individual to the replacement Contractor's individual at no cost to the Purchaser. The Purchaser has the right to refuse any proposed substitution as not meeting the qualifications and request the Contractor to offer another qualified individual in lieu thereof. The Purchaser will confirm any consent given to a substitution in writing through an Amendment to the Contract stating the effective date of change of personnel and only such written consent shall be deemed as valid evidence of Purchaser consent.
- C. The Purchaser may, for just cause, require the Contractor to remove the Contractor's personnel. Notice for removal will be given to the Contractor by the Purchaser in writing and will state the cause justifying the removal. The notice

will either demand substitution for the individual involved and/or contain a notice of default and the remedies to be sought by the Purchaser.

- D. The Contractor shall replace the lost Contractor's personnel within calendar 20 days of interruption of services. In case substitution cannot be made in sufficient time to avoid disruption in the Project Team activities, the Contractor may be subject to payment of nominal liquidated damages of 1,000.00 Euro for each day of delay starting from the 21st day after interruption of services.
- E. If the Contractor is unable to replace the lost personnel, the Purchaser may conclude that the loss of the Key Personnel endangers progress under the Contract to the extent that the Purchaser may resort to the Provisions of the Contract regarding "Termination for Default" (BOA General Provisions) for redress of the situation.

ARTICLE XVI – WORKING CONDITIONS

- A. The individual working at NATO facilities shall work a average of 7.6 - hours per day, 38 hours a week, the start and end times set by the Purchaser's Technical Lead. The individual shall observe local NATO holidays and will not observe his/her traditional national holidays. Access to NATO facilities on weekend or holiday period will only be available at the discretion of local authorities.
- B. Requests for leave from work and other time off shall be co-ordinated and approved by the NATO Project Manager or Technical Lead in advance. Leave taken shall result in an equivalent credit to the Purchaser for the month in which the leave occurs.

ARTICLE XVII - LANGUAGE OF WORK

The working language of the Project Team is English and the associated technical documents are printed in English. Accordingly, the Contractor employee shall be competent to converse and write in correct English. Failure to satisfy this requirement may be the basis for Purchaser's request of change of individual or for Termination for default in case the Contractor is unable to replace the individual with a candidate fully meeting the contractual requirements.

ARTICLE XVIII - INDEPENDENT CONTRACTOR

For the purposes of this contract, the individual provided by the Contractor remains at all times an employee of the Contractor and not the Purchaser. In no case shall the individual act on behalf of or as an agent for NATO or any of its bodies. In no way shall the individual claim directly or indirectly to represent NATO in an official capacity or claim themselves to be NATO employees. Notwithstanding the above, as the Contractor employee is part of a NCIA Project Team, his/her appearance and behaviour shall be in keeping with NCIA's professional reputation.

ARTICLE XIX - RESPONSIBILITY OF THE CONTRACTOR TO INFORM EMPLOYEES OF WORK ENVIRONMENT

- A. The Contractor shall inform the Contractor employee under this Contract of the terms of the Contract and the conditions of the working environment.
- B. The Purchaser shall not be responsible for securing work permits, lodging, leases nor tax declarations, driving permits, etc., with national or local authorities. The individual, or any other Contractor employee, employed under or working on this Contract are not eligible for any diplomatic privileges nor NATO employee benefits.

ARTICLE XX - CONTRACT ADMINISTRATION

- A. The Purchaser reserves the right to re-assign this contract to a representative(s) for administrative purposes, in whole or in part, provided that the Purchaser shall always be responsible for his obligations under the contract and for actions or lack of actions of its assigned administrator. The Purchaser undertakes to advise the Contractor in writing whenever this right is to be exercised.
- B. The Contractor shall accept Contract modifications only in writing from the NCIA Contracting Authority.
- C. All notices and communications between the Contractor and the Purchaser shall be written in English and may be personally delivered, mailed, telegraphed, cabled or FAXed at the following address:

Contractor:
(TBD)

NCIA: NCI Agency
Acquisition Directorate
Attn: Mrs T. Pezzi
Boulevard Léopold III
1110 Brussels
Belgium
Tel: +32.2.707.84.72
Fax: +32.2.707.87.70
E-mail: tiziana.pezzi@ncia.nato.int

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

- D. Invoices shall be addressed to the Purchaser, to the attention of Accounts Payable, as per the Article titled "Payment and Invoices".

ARTICLE XXI – PURCHASER RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE

Subject to the rights of third parties and to any rights of the Contractor arising otherwise than by virtue of this contract, and with due regard to national security regulations, all rights in the results of work undertaken by or on behalf of the Purchaser for the purposes of this contract, including any technical data specifications, report, drawings, computer software data, computer programmes, computer databases, computer software, documentation including software documentation, design data, specifications, instructions, test procedures, training material produced or acquired in the course of such work and, in particular, all rights, including copyright therein, shall vest in and be the sole and exclusive property of the Purchaser.

ARTICLE XXII - SUB-CONTRACTORS

- A. 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.
- B. The Contractor shall not place sub-contracts outside the NATO member Nations unless the prior authorisation of the Purchaser has been obtained. Such authorisation will not be granted when the sub-contract involves the carrying out of classified work.
- C. The Contractor shall determine that any sub-contractor proposed by him for the furnishing of supplies or services which will involve access to classified information in the Contractor's custody has been granted an appropriate facility security clearance by the sub-contractor's national authorities, which is still in effect, prior to being given access to such classified information.
- D. The Contractor shall submit a copy of any such proposed contract when seeking approval of the Contracting Authority but such approval by the Contracting Authority shall in no way relieve the Contractor of his responsibilities to achieve the contractual and technical requirements of this Contract.
- E. The Contractor shall, as far as practicable, select sub-contractors on a competitive basis consistent with the objectives and requirements of the Contract.

ARTICLE XXIII - SUPPLEMENTAL AGREEMENTS

- A. The Contractor and their subcontractors shall perform the required effort in accordance with the terms of the contract without the necessity of any supplemental agreements related to this contract. If supplemental agreements, such as End User Certificates or Technical Assistance Agreements, are required by national regulations, these must be submitted with the Contractor's bid by the Bid Closing Date indicated in the RFQ. Supplemental agreements submitted after

the Bid Closing Date shall not be considered. Supplemental agreements submitted after contract award shall not be considered.

- B. The terms of supplemental agreements, if necessary, are the Contractor's responsibility and shall be totally consistent with the terms of the contract, and shall not duplicate, negate or further interpret any provisions of this contract. The terms of the contract shall take precedence over the terms of the supplemental agreement.
- C. A problem with the supplemental agreement in any of the areas mentioned previously in this provision may result in a determination that the bid is not compliant with the terms of the RFQ and rejection of the bid or Termination for Default of the contract, if the supplemental agreement is submitted after contract award.

ARTICLE XXIV - PERFORMANCE GUARANTEE

- A. As a guarantee of performance under the Contract, the Contractor shall deposit with the Purchaser within thirty (30) calendar days from the Effective Date of Contract, or the Contract Signature Date by both parties, whichever is the later, a bank guarantee to the value of ten per cent (10%) of the total contract price.
- B. The guarantee, the negotiability of which shall not elapse before the expiration of the period of performance of the contract, or such other period as may be specified in the Contract, shall be made payable to the Purchaser and may be in the form of:
 - 1. a certified cheque;
 - 2. an irrevocable letter of credit; or
 - 3. a bank guarantee such as a performance bond or promissory note;and subject to the agreement of the Purchaser. Such payment shall be made without question and upon first demand by the Purchaser against a certificate from the Purchaser that the Contractor has not fulfilled its obligations under the Contract.
- C. The performance guarantee shall be subject to Belgian Law and shall be issued by a Belgian bank or a Belgian affiliate of an overseas bank, unless otherwise specified by the Purchaser.
- D. Relief of the performance guarantee shall be granted by the Purchaser in writing upon request by the Contractor on expiration of contract period of performance and only if all the tasks and activities foreseen in the contract and/or further agreed have been fully and successfully completed.
- E. The Contractor shall be responsible, as a result of duly authorised adjustments in the total contract price and period of performance by the Purchaser, for obtaining a commensurate extension and increase in the performance guarantee, the value of which shall not exceed ten per cent (10%) of the total contract price, and for depositing such guarantee with the Purchaser, within thirty (30) calendar days from the effective date of aforesaid duly authorised adjustment.

ARTICLE XXV - RELEASE OF INFORMATION

Except as otherwise specified elsewhere in the Contract, and to the extent that it is demonstratively unavoidable and without prejudice to the "Security" Clause of the General Provisions, the individual, the Contractor, or his employees shall not, without prior authorisation from the Purchaser, release any information pertaining to this Contract, its subject matter, performance thereunder or any other aspect thereof.

ARTICLE XXVI - PURCHASER USE OF THIRD PARTIES

The Contractor shall be aware of the possible presence of third parties who perform work which contributes to, or is strongly related to, work conducted under this Project.

The Contractor shall work closely with and participate in meetings and reviews to be held jointly with these third parties.

The Contractor undertakes to make the best effort in producing plans and technical agreements that could be commonly agreed by all participants to the Project. The Contractor shall have no rights to raise claims, ask for delays or interrupt the performance of the contract on the basis of, or in connection with, the presence of third parties running parallel work on or related to this Project.

ANNEX A : SECURITY AND LOYALTY DECLARATION

To be signed by the consultant, contractor, temporary staff or intern upon commencement of employment or assignment at the NCI Agency.

I UNDERSTAND:

1. That I must preserve the security of all classified information which comes to my knowledge as a result of my contract with the NCI Agency and that I undertake to comply with all relevant security regulations.
2. That I must not divulge to any unauthorized person, any classified information gained by me as a result of my contract with the NCI Agency unless prior permission for such disclosure has been granted by the General Manager of the NCI Agency.
3. That I must preserve the security of all sensitive information which comes to my knowledge as a result of my contract with the NCI Agency. This includes information that is not public and/or subject to a specific restrictive marking including, but not limited to, management in-confidence, commercial in-confidence, personnel in-confidence and any other information not available to the public concerning NATO/NCI Agency, its staff, projects and procurement activities and actions.
4. That I must not, without the approval of the General Manager of the NCI Agency, publish (in any document, article, book, CD, video, film, play, or other form) any classified or sensitive information which I have acquired in the course of my work at the NCI Agency.
5. That, on leaving the NCI Agency, I must surrender any official document or materiel made or acquired by me in the course of my work, save such as I have been duly authorized to retain.
6. That if I violate prescribed security practices, either intentionally or accidentally, my contract could be immediately terminated, without prejudice to other criminal proceedings.
7. That the provisions of this Security and Loyalty Declaration apply not only during the period of my employment but also after my employment with the NCI Agency has ceased and that I am liable to prosecution if, either by intent or negligence, I allow classified or sensitive information to pass into unauthorized hands.

I CERTIFY THAT:

1. I solemnly undertake to exercise in all loyalty, discretion and conscience the functions entrusted to me by the NCI Agency and to discharge these functions with the interests of NCI Agency only. I undertake not to seek or accept instructions in regard to the performance of my duties from any government or from any authority other than that of NCI Agency.
2. I shall acquaint myself with the NCI Agency and NATO security regulations and security operating instructions.

FULL NAME (block capitals)

SIGNATURE

DATE

**PART IV
BOA CONTRACT GENERAL PROVISIONS**

Table of Contents

1.	<u>NOTICE OF SHIPMENT</u>	20
2.	<u>CONTRACTOR PERSONNEL WORKING AT PURCHASER'S FACILITIES</u>	20
3.	<u>PURCHASER FURNISHED PROPERTY</u>	21
4.	<u>INDEMNIFICATION</u>	22
5.	<u>TITLE AND RISK OF LOSS</u>	22
6.	<u>TRANSFER REQUIREMENTS</u>	23
7.	<u>INSPECTION, ACCEPTANCE AND REJECTION</u>	23
8.	<u>PREFERRED CUSTOMER</u>	26
9.	<u>PRICE FIXING</u>	26
10.	<u>TAXES AND DUTIES</u>	28
11.	<u>INVOICES</u>	29
12.	<u>CHANGES</u>	29
13.	<u>PURCHASER DELAY OF WORK</u>	30
14.	<u>STOP WORK ORDER</u>	31
15.	<u>ORDER OF PRECEDENCE</u>	32
16.	<u>APPLICABLE LAW</u>	32
17.	<u>DISPUTES AND ARBITRATION</u>	32
18.	<u>DELAYS IN DELIVERY</u>	33
19.	<u>TERMINATION FOR DEFAULT</u>	33
20.	<u>TERMINATION FOR CONVENIENCE OF THE PURCHASER</u>	35
21.	<u>SUB-CONTRACTS</u>	40
22.	<u>PATENT AND COPYRIGHT INDEMNIFICATION</u>	40
23.	<u>CLAIMS</u>	41
24.	<u>RELEASE OF CLAIMS</u>	42
25.	<u>EXTRAS</u>	42
26.	<u>LANGUAGE</u>	42
27.	<u>SECURITY</u>	43
28.	<u>HEALTH, SAFETY AND ACCIDENT PREVENTION</u>	44
29.	<u>RELEASE OF INFORMATION</u>	44
30.	<u>FORCE MAJEURE</u>	45
31.	<u>RIGHTS IN TECHNICAL DATA</u>	45
32.	<u>COMPANY'S RESPONSIBILITY ON ACCURACY OF THE COMPANY'S DATA</u>	45

1. NOTICE OF SHIPMENT

- 1.1 "Company" shall, as appropriate and prior to the delivery of any shipment, give notice of shipment to the Purchaser and to such other persons as may reasonably be designated by the Purchaser. Unless otherwise specified by the Purchaser, delivery will be made to the address specified in the country of purchase on Purchaser's Order. The scheduled delivery date shall be that date acknowledged by "Company". "Company" shall consider any date requested by the Purchaser.
- 1.2 The Notice of Shipment shall contain, as appropriate, the request for Customs Form 302, or equivalent document, which shall enable any carrier to effect duty free import/export clearance through customs for the Purchaser on behalf of NATO. The Form 302 is an official Customs Clearance Declaration issued in advance of shipment to provide certified information as to the import/export, or transit of NATO Member Nations.
- 1.3 The Notice of Shipment and request for Form 302 shall contain the following information, as appropriate:
- 1.3.1 Purchaser's Order Number;
 - 1.3.2 Order Item Number, Designation and Quantities;
 - 1.3.3 Destination;
 - 1.3.4 Number and Description of Packages (gross and net weight);
 - 1.3.5 Consignor's Name and Address;
 - 1.3.6 Consignee's Name and Address;
 - 1.3.7 Method of Shipment (i.e. road, rail, sea, air, etc.);
 - 1.3.8 Name and Address of Freight Forwarder.
- 1.4 Forwarding Agents, Carriers or other responsible organisations shall be informed by "Company" of the availability of FORM 302 and how the form should be utilised to avoid the payment of custom duties.

2. CONTRACTOR PERSONNEL WORKING AT PURCHASER'S FACILITIES

- 2.1 The term "Purchaser Facilities" as used in this clause shall be deemed to include sites, property, utilities, ships or vessels owned or controlled by NATO, NATO Bodies or NATO Member Nations or NATO Contractor and the term "Facility Representative" shall be deemed to refer to the authority designated by the Representative responsible for such site, property, utility, ship or vessel.

- 2.2 The Facility Representative shall provide such available administrative and technical facilities for "Company"'s personnel working at the Purchaser's Facilities for the purpose of the Agreement as in the opinion of the Facility Representative may be necessary for the effective and economical discharge of work under this Agreement. These facilities may be provided at no cost at the discretion of the Facility Representative. "Company" shall be responsible for ascertaining what necessary facilities may be provided and whether they will be provided free of charge, or determining what charges are payable.
- 2.3 "Company" shall, except as otherwise provided for in the Agreement, make good or, at the option of the Purchaser, pay compensation for all damage occurring to any Purchaser's Facilities occasioned by "Company" or by his servants, agents or subcontractors, arising from his or their presence on Purchaser Facilities in connection with the Agreement; provided that this Condition shall not apply to the extent that "Company" is able to show that any such damage was not caused by "Company"'s neglect or default, or the neglect or default of "Company"'s servants, agents or subcontractors.
- 2.4 All property of "Company" while at a Purchaser Facility shall be at risk of "Company" 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.

3. PURCHASER FURNISHED PROPERTY

- 3.1 The term "Purchaser Furnished Property" as used in this clause refers to items of equipment, material or property furnished by the Purchaser to "Company" which shall be subject to overhaul, repair, modification, test, embodiment or other work as specified in any Order under this Agreement to be performed by "Company".
- 3.2 The Purchaser shall deliver to "Company", for use only in connection with any Order under this Agreement, the property described in the schedule or specifications (hereinafter referred to as "Purchaser Furnished Property"), at the times and locations stated therein. In the event that Purchaser Furnished Property is not delivered by such time or times stated in the Schedule, or if not so stated, in sufficient time to enable "Company" to meet such delivery or performance dates the Purchaser shall, upon timely written request made by "Company", and if the facts warrant such action, equitably adjust any affected provision of the Order pursuant to the procedures of the "Changes" clause hereof.
- 3.3 In the event that Purchaser Furnished Property is received by "Company" in a condition not suitable for its intended use, "Company" shall immediately notify the Purchaser. The Purchaser shall within a reasonable time of receipt of such notice replace, re-issue, authorise repair or otherwise issue instructions for the disposal of Purchaser Furnished

Property agreed to be unsuitable. The Purchaser shall, upon timely written request by "Company", equitably adjust any affected provision of the Order pursuant to the procedures of the "Changes" clause hereof.

- 3.4 Title to Purchaser Furnished Property shall remain in the Purchaser. "Company" shall maintain adequate property control records of Purchaser Furnished Property in accordance with sound industrial practice.
- 3.5 Unless otherwise provided in the Order, "Company", upon delivery to him of any Purchaser Furnished Property, assumes the risk of, and shall be responsible for, any loss thereof or damage thereof except for reasonable wear and tear, and except to the extent that such property is consumed in the performance of the Order.
- 3.6 Upon completion of the Order, or at such earlier dates as may be specified by the Purchaser, "Company" shall submit, in a form acceptable to the Purchaser, inventory schedules covering all items of Purchaser Furnished Property not consumed in the performance of the Order or not theretofore returned to the Purchaser. "Company" shall prepare for shipment, deliver FOB origin, or otherwise dispose of Purchaser Furnished Property as may be directed or authorized by the Purchaser. The net proceeds of any such disposal shall be credited to the contract price or paid in such other manner as the Purchaser may direct.
- 3.7 "Company" shall not modify any Purchaser Furnished Property unless specifically authorized by the Purchaser or directed by the terms of the Order.

4. INDEMNIFICATION

- 4.1 "Company" shall indemnify and hold the Purchaser harmless against claims for injury to "Company" employees, agents, or subcontractors, or damages to property of "Company" or others arising from "Company"'s possession or use of Purchaser Furnished Property or Facilities in the performance of work as specified in an Order; except to the extent that "Company" is able to show any such injury or damage was caused by Purchaser's wilful act or negligence.

5. TITLE AND RISK OF LOSS

- 5.1 Unless the Order specifically provides for earlier passage of title, title to supplies covered by the Order shall pass to the Purchaser upon acceptance as specified in the Order, regardless of when or where the Purchaser takes physical possession.
- 5.2 Unless the Order specifically provides otherwise, risk of loss or damage to supplies covered by this Agreement and any Order shall remain with "Company" until, and shall pass to the Purchaser upon:
 - 5.2.1 delivery of supplies as specified in accordance with the Agreement; or

- 5.2.2 acceptance by the Purchaser or receipt of supplies by the Purchaser at the destination specified in the Order, whichever is the later.
- 5.3 Notwithstanding 5.2 above, the risk of loss or damage to supplies which fail to conform to the requirements of the Order shall remain with "Company" until cure or acceptance, at which time 5.2 above shall apply.
- 5.4 Notwithstanding 5.2 above "Company" shall not be liable for the loss of or damage to supplies caused by the negligence of officers, agents or employees of the Purchaser acting within the scope of their employment under the terms and conditions of this Agreement.

6. TRANSFER REQUIREMENTS

- 6.1 "Company" shall not give, bargain, sell, assign, sub-let or otherwise dispose of any order under this Agreement or any part thereof or the benefit or advantage of the Order or any part thereof without the previous consent in writing of the Purchaser.

7. INSPECTION, ACCEPTANCE AND REJECTION

- 7.1 Unless otherwise specifically provided for in the Order, all equipment, materials and supplies incorporated in the work covered by this Agreement are to be new and of the most suitable grade of their respective kinds for the purpose, notwithstanding the requirements for testing, inspection and performance as required under this Agreement. All workmanship shall be as required under the Order or, if not specified, best commercial (National and International) standard.
- 7.2 All supplies (which term throughout this clause includes without limitation raw materials, components, intermediate assemblies, end products, data including software and firmware) and services may be subject to inspection and test by the Purchaser, or his authorised representative to the extent practicable at all times and places prior to acceptance, including the period of manufacture, or after delivery, or as otherwise specified in the Order. For the purposes of inspection and testing the Purchaser may delegate as his representative the authorised National Quality Assurance Representative (NQAR) in accordance with STANAG 4107.
- 7.3 No representative or NQAR appointed by the Purchaser for the purpose of determining the Contractor's compliance with the technical requirements of the Order shall have the authority to change any of the specifications. Such changes may only be made by the Contracting Authority in writing in accordance with the clause of this Agreement entitled "Changes".
- 7.4 The presence or absence of an NQAR or other Purchaser representative shall not relieve "Company" from any of the requirements of this Agreement.

- 7.5 In the event that any supplies, or lots thereof, or services are defective in design, material, workmanship or manufacturing quality, or as a result of undue wear and tear or otherwise not in conformity with the requirements of the order, including any characteristic or condition which is or becomes at variance to the performance specifications and to the intended function of the supplies, the Purchaser shall have the right either to reject them (with or without instructions as to their disposition) or to require their correction or replacement. Supplies, or lots thereof or services which have been rejected or required to be corrected or replaced shall, at the expense of "Company", be removed, or, if permitted or required by the Contracting Authority, corrected in place by "Company" promptly after notice, and shall not thereafter be tendered for acceptance by "Company" unless the former rejection or requirement of correction or replacement is disclosed. If "Company" fails promptly to remove, replace or correct such supplies or lots thereof, or services, the Purchaser either:
- 7.5.1 may by Order or otherwise return, replace or correct such supplies or services and charge "Company" the cost incurred by the Purchaser, or
- 7.5.2 may terminate this Agreement for default as provided in the clause of this Agreement entitled "Termination for Default".
- 7.6 Unless "Company" corrects or replaces such supplies or services within the delivery schedule, the Purchaser may require the delivery of such supplies or services at a reduction in price which is equitable under the circumstances. Failure to agree to such reduction of price shall be a dispute within the meaning of the clause of this Agreement entitled "Disputes".
- 7.7 If any inspection or test is made by the Purchaser's representatives on the premises of "Company" or sub-contractor, "Company", without additional charge, shall provide all reasonable facilities and assistance for the safety and convenience of the Purchaser's representatives in the performance of their duties. The NQAR or other Purchaser representatives shall have the right of access to any area of "Company"'s or his sub-contractor's premises where any part of the contractual work is being performed. If Purchaser inspection or test is made at a point other than the premises of "Company" or sub-contractor, it shall be at the expense of the Purchaser except as otherwise provided in this Agreement; provided that in case of rejection the Purchaser shall not be liable for any reduction in value of samples used in connection with such inspection or test. All inspections and tests by the Purchaser shall be performed in such a manner as not to unduly delay the work. The Purchaser reserves the right to charge to "Company" any additional cost of Purchaser inspection and test when supplies or services are not ready at the time such inspection and test is requested by "Company" or when re-inspection or retest is necessitated by prior rejection. Acceptance or rejection of the supplies or services shall be made as promptly as practicable after delivery, except as otherwise provided in the Order, but failure to inspect and accept or reject supplies or services shall neither relieve "Company" from responsibility for such

supplies or services as are not in accordance with the Order requirements nor impose liability on the Purchaser thereof.

- 7.8 The inspection and test by the Purchaser of any supplies or lots thereof, or services does not relieve "Company" from any responsibility regarding defects or other failures to meet the contract requirements which may be discovered prior to acceptance. Except as otherwise provided in the Order, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.
- 7.9 Acceptance of supplies or services shall take place when the Purchaser confirms acceptance of the supplies or services in accordance with the procedure specified in the Order, or if none is so specified then the Purchaser shall be deemed to have accepted the supplies or services without prejudice to any other remedies, when and as soon as any of the following events have occurred:
 - 7.9.1 The Purchaser has taken the supplies or services into use;
 - 7.9.2 The Purchaser has not exercised its right of rejection of the supplies or services within any period specified for that purpose in the Order;
 - 7.9.3 There being no period of exercising the right of rejection specified in the Order, a reasonable time, all the circumstances having been taken into account, has elapsed since delivery of the supplies or services was effected in accordance with the Order.
- 7.10 Unless otherwise specified in this Agreement, "Company" shall have or establish, implement and maintain an effective and economical quality control system, planned and developed in conjunction with other contractor functions necessary to satisfy the contract requirement. The system shall be acceptable to the Purchaser and its authorised representatives. The system shall provide for the early and prompt detection of deficiencies, trends and conditions which could result in unsatisfactory quality, and for timely and effective corrective action. Objective evidence that the system is effective shall be readily available to the Purchaser and its authorised representatives. Records of all inspection and testing work by "Company" shall be kept complete and available to the Purchaser's representatives during the performance of any Order under this Agreement and for such longer periods as may be specified elsewhere in the Order.
- 7.11 Product acceptance shall be accomplished by using test procedures and/or programs established by "Company" which are applicable to the Products, unless otherwise agreed in writing by the Purchaser and "Company". Such acceptance shall be at the time of completion of final tests at "Company"'s facilities, except as otherwise specified below. If Purchaser has conveyed in writing its intention to witness final tests in the Order, "Company" will give Purchaser prior notice of the date of such tests. Purchaser shall be responsible for any charges that may be

associated with witnessing said tests. If installation by "Company" is included in the purchase price, acceptance will be at any installation site specified by the Purchaser, when "Company" demonstrates that the applicable diagnostic and/or verification programs work properly. If "Company"'s demonstration of the programs at the installation site is delayed for more than fifteen (15) calendar days, except due to the fault of "Company", the Products will be deemed accepted.

8. PREFERRED CUSTOMER

8.1 "Company" warrants that the prices set forth in this Agreement, and appendices thereto, are as favourable as those extended to any Government, Agency, Company, Organisation or individual purchasing or handling like quantities of equipment and/or parts covered by the Agreement under similar conditions. In the event that prior to complete delivery under this Agreement "Company" offers any of such items in substantially similar quantities under similar conditions to any customer at prices lower than those set forth herein, "Company" shall so notify the Purchaser and the prices of such items shall be correspondingly reduced by a supplement to this Agreement. Price in this sense means "Base Price" prior to applying any bonus, export tax reduction, turn-over tax exemptions and other reductions based on National Policies.

9. PRICE FIXING

9.1 Offers for sole source procurement, changes, modifications, and claims in excess of \$500,000 shall be priced in accordance with this provision and the Purchaser's Pricing Principles as set out in Appendix 1 to this provision, or the National Government Pricing Rules and Regulations for "Company"'s own country where in force.

9.2 This provision shall also apply to follow-on contracts of any nature including maintenance and supply of spare parts which exceed \$500,000. Should such contracts be placed by NATO, NATO Bodies or Governmental Agencies of NATO Member Nations, such organisations shall be entitled to all rights, powers and privileges that the Purchaser has under this Agreement.

9.3 To the extent the product proposed is a Commercial Off The Shelf (COTS) or COTS derivative item which has been sold to the general public or which is being developed for sale to the general public, including services normally provided for maintenance and installation, and consistent with, for example, the Rules of the Federal Acquisition Regulation (FAR), said items will be defined as "COMMERCIAL" and shall not be subject to paragraphs 9.4 or 9.5.

9.3.1 For the purposes of verifying that cost or pricing data submitted in conjunction with paragraphs 9.1 and 9.2 above are accurate, complete and current, the Purchaser shall, until the expiration of three (3) years from the date of final payment of all sums due under the Agreement, have

the right of access to "Company"'s facilities to examine those books, records, documents and other supporting data which will permit adequate evaluation and verification of the cost or pricing data submitted along with the computations and projections used therein which were available to "Company" as of the date of "Company"'s price proposal.

- 9.4 "Company", when the price exceeds \$500,000, and subject to paragraph 9.3 above, shall require its Subcontractors to provide to the Purchaser, either directly or indirectly:
 - 9.4.1 cost or pricing data or substantiation of commercial product status;
 - 9.4.2 access to Subcontractor's facilities and records by the National Audit Agency for the purpose of verification of such cost or pricing data; and
 - 9.4.3 a Certificate of Current Cost or Pricing Data when required.
- 9.5 Price Reduction for Defective Cost or Pricing Data.
 - 9.5.1 If any price, including profit or fee, negotiated in connection with this Agreement or any cost reimbursable under this Agreement was increased by any significant sums because:
 - 9.5.1.1 "Company" furnished cost or pricing data which was not complete, accurate and current as certified in "Company"'s Certificate of Current Cost or Pricing Data provided in accordance with paragraph 9.6 below.
 - 9.5.1.2 A Subcontractor, pursuant to paragraph 9.4 above or any subcontract clause therein required, furnished cost or pricing data which was not complete, accurate and current as certified in the Subcontractor's Certificate of Current Cost or Pricing Data.
 - 9.5.1.3 A Subcontractor or prospective Subcontractor furnished cost or pricing data which was required to be complete, accurate and current and to be submitted to support a Subcontract cost estimate furnished by "Company" but which was not complete, accurate and current as of the date certified in "Company"'s Certificate of Current Cost or Pricing Data; or
 - 9.5.1.4 "Company" or a Sub-contractor or prospective Subcontractor furnished any data, not within paragraphs 9.5.1.1, 9.5.1.2 or 9.5.1.3 above, which was not accurate as submitted
 - 9.5.2 Then the price or cost shall be reduced accordingly and the Order shall be modified in writing as may be necessary to reflect such reductions.
- 9.6 Certificate of Current Cost or Pricing Data.
 - 9.6.1 At the time of negotiating any price, including profit or fee, "Company" shall be required to submit a Certificate of Current Cost or Pricing Data as required by paragraph 9.4.3.

- 9.6.2 Such Certificate will certify that, to the best of "Company"'s knowledge and belief, cost or pricing data submitted to the Purchaser in support of any proposal for a price, price adjustment or claim, are accurate, complete and current, as per the completion of the negotiations or, in the case of a claim, as per the submission date of the claim.
- 9.6.3 All such certificates shall be in the format shown below and shall be dated and signed by a responsible officer of the company.

CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, cost or pricing data as submitted, either actually or by specific identification in writing to the Purchaser or his representative in support of _____ are accurate, complete and current as of _____.
day month year

Firm _____

Name _____

Title _____

Date of Execution

9.7 "Company" shall insert the substance of this Clause in each Subcontract where applicable.

10. TAXES AND DUTIES

10.1 NATO, NATO Bodies and certain other Eligible Purchasers are exempt from all taxes and all customs duties on Products and Services imported or exported hereunder. "Company" therefore, certifies that the prices stipulated under this Agreement do not include amounts to cover such taxes or customs duties. "Company" shall be responsible for determining whether such exemptions apply for other Eligible Purchasers, as defined under paragraphs 3.1.3, 3.1.4 and 3.2 of Part I, Special Provisions above.

10.2 In cases where taxes and duties are levied, "Company" should seek reimbursement directly from the authorities concerned in compliance with the applicable procedures. The Purchaser shall provide reasonable assistance in claiming reimbursement.

10.3 In the event that reimbursement is not made by the authorities concerned, and providing that "Company" has complied with applicable procedures, Purchaser shall reimburse the full amount of the payments upon receipt of "Company"'s invoice indicating such tax or duty as a separate item or cost and fully identified by reference to any governmental law, regulation and/or instruction pursuant to which such tax or duty is enforced.

10.4 Following payment by the Purchaser of the taxes and/or duties pursuant to paragraph 10.3 above, should "Company" receive a rebate of any amount paid by Purchaser, "Company" shall immediately notify Purchaser, and the amount of such rebate shall be credited or reimbursed to the Purchaser, as directed. "Company" shall be responsible for taking any and all action that could reasonably be required in order to obtain such rebate.

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

Book II Page 29 of 48

11. INVOICES

- 11.1 Invoices shall be prepared and submitted by "Company" in a manner as agreed with Purchaser and shall contain: BOA number, Order number (if any), description of Products, sizes, quantities, unit prices, and extended totals (exclusive of taxes and duties for which relief is available). Details of Bills of Lading or Freight Warrant numbers and weight of shipment shall be identified on each invoice as appropriate.
- 11.2 In addition, where applicable and on request by Purchaser, documentary evidence of acceptance (as defined in the Agreement) shall be submitted together with each invoice.
- 11.3 All invoices shall be addressed to the designated authority specified by Purchaser.

12. CHANGES

- 12.1 The Purchaser may at any time, by written order designated or indicated to be a change order, and without notice to the sureties, if any, make changes within the scope of any Order, in any one or more of the following:
 - 12.1.1 Specifications (including drawings and designs) except to Commercial Products;
 - 12.1.2 Method and manner of performance of the work;
 - 12.1.3 Marking, method of shipment and packing;
 - 12.1.4 Time and place of delivery; and
 - 12.1.5 Purchaser Furnished Property and Facilities (including Equipment, materials, services or sites).
- 12.2 Any other written or oral order (which, as used in this paragraph 12.2, 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 "Company" gives the Purchaser written notice within thirty (30) days after receipt of such change order stating:
 - 12.2.1 the date, circumstances, and source of the order and
 - 12.2.2 that "Company" regards the order as a change order, and that the order is accepted in writing by the Purchaser as a change order. The timely written notice requirement, as detailed above, remains in force in all cases, even where, for example, the Purchaser has positive knowledge of the relevant facts.

- 12.3 Except as provided in this clause, no order, statement, or conduct of the Purchaser shall be treated as a change order under this clause or entitle "Company" to an equitable adjustment.
- 12.4 If any such change order causes an increase or decrease in "Company"'s cost of, or the time required for the performance of any part of the work under the Order, whether or not changed by any such order, the Purchaser shall make an equitable adjustment and modify the Order in writing accordingly. However, except for a "proposal for adjustment" (hereafter referred to as "proposal") based on defective specifications, no proposal for any change under paragraph 12.2 above shall be allowed for any costs incurred more than thirty (30) days before "Company" gives written notice as required. In the case of defective specifications for which the Purchaser is responsible, the equitable adjustment shall include any increased cost reasonably incurred by "Company" in attempting to comply with the defective specifications. Where the cost of property made obsolete or excess as a result of a change is included in the "Company"'s claim for adjustment, the Purchaser shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute within the meaning of the clause of this Agreement entitled "Disputes." However, nothing in this clause shall excuse "Company" from proceeding with the Order as changed.
- 12.5 "Company" must submit any proposal under this clause within thirty (30) days after
- 12.5.1 receipt of a written change order under paragraph 12.1 above or
- 12.5.2 the furnishing of a written notice under paragraph 12.2, by submitting to the Purchaser a written statement describing the general nature and amount of the proposal, unless this period is extended by the Purchaser. The statement of proposal for adjustment may be included in the notice under paragraph 12.2 above.
- 12.6 No proposal by "Company" for an equitable adjustment shall be allowed if asserted after final payment and acceptance under the Order.

13. PURCHASER DELAY OF WORK

- 13.1 If the performance of all or any part of the work is delayed or interrupted by an act of the Purchaser in the administration of the Order, which act is not expressly or implicitly authorised by the Order, or by his failure to act within the time specified in the Order (or within a reasonable time if not time is specified), an adjustment shall be made for any increase in the cost of performance of the Order caused by such a delay or interruption and the Order modified in writing accordingly. Adjustments shall be made also in the delivery or performance dates and any other contractual provision affected by such delay or interruption. However, no adjustment shall be made under this clause for any delay or interruption:

- 13.1.1 to the extent that performance would have been delayed or interrupted by any other clause, including the fault or negligence of "Company"; or
- 13.1.2 for which an adjustment is provided under any other provision of this Agreement.
- 13.2 No claim under this clause shall be allowed:
 - 13.2.1 for any costs incurred more than twenty (20) days before "Company" shall have notified the Purchaser in writing of the act or failure to act involved; and
 - 13.2.2 unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such delay or interruption, but not later than the date of final payment under the Order.

14. STOP WORK ORDER

- 14.1 The Purchaser may, at any time, by written order to "Company", require "Company" to stop all, or any part, of the work called for by the Order for a period of ninety (90) days after the order is delivered to "Company", and for any further period to which the Parties may agree. Any such order shall be specifically identified as a Stop Work Order issued pursuant to this clause. Upon receipt of such an order, "Company" shall forthwith comply with its terms and take all reasonable steps to minimise costs incurred allocable to the work covered by the order during the period of work stoppage. Within a period of ninety (90) days after a stop work order is delivered to "Company", or within any extension of that period to which the Parties shall have agreed, the Purchaser shall either:
 - 14.1.1 cancel the stop work order, or
 - 14.1.2 terminate the work covered by such order in accordance with paragraph 20,

TERMINATION FOR CONVENIENCE OF THE PURCHASER.

- 14.2 If a stop work order issued under this clause is cancelled or the period of the order or any extension thereof expires, "Company" shall resume work. An equitable adjustment shall be made in the delivery schedule or Contract price, or both, and the Order shall be modified in writing accordingly, if:
 - 14.2.1 the stop work order results in an increase in the time required for, or in "Company"'s cost properly allocable to, the performance of any part of the Order, and
 - 14.2.2 "Company" asserts a claim for such adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if the Purchaser decides the facts justify such action, he may receive and act

upon any such claim asserted at any time prior to final payment under any Order.

- 14.3 If a stop order is not cancelled and the work covered by such order is terminated for the convenience of the Purchaser, the reasonable costs resulting from the stop work order shall be allowed in arriving at the termination settlement.

15. ORDER OF PRECEDENCE

- 15.1 In the case of any inconsistencies herein, the order of precedence of the contractual documents is as follows:
 - 15.1.1 the Special Provisions
 - 15.1.2 the General Provisions
 - 15.1.3 Exhibits and Appendices,
- 15.2 Except where inconsistency between the terms of this Agreement and those contained in any Order have been expressly agreed between the Purchaser and "Company", the terms of this Agreement shall take precedence.

16. APPLICABLE LAW

- 16.1 This Agreement and each subsequent Order under this Agreement between NCIA and "Company" shall be governed by and construed in accordance with the private contract law of the Kingdom of Belgium. Orders signed between "Company" and any other Purchaser under this Agreement shall be governed by the laws applicable to the country of the Purchaser, unless otherwise agreed between the Purchaser and "Company".

17. DISPUTES AND ARBITRATION

- 17.1 In the event of a dispute under this Agreement or any Order issued hereunder, the Parties shall attempt to settle their difference in an amicable manner. However, in the event that a settlement cannot be made under this Agreement within a reasonable period of time, the Parties agree to institute arbitration proceedings in the manner provided in the following Arbitration provision and such disputes shall finally be settled thereby, unless otherwise agreed between the Purchaser and "Company".
 - 17.1.1 "Company" agrees to submit to the Arbitration Tribunal only such issues, facts, evidence and proof which "Company" had beforehand identified and submitted to the Purchaser for decision. The jurisdictional authority of the Arbitration Tribunal shall be restricted to consider only those identical issues, facts, evidence and proof so identified and submitted to the Purchaser.
 - 17.1.2 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. Within a period of thirty days from the date of receipt of this letter, 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 "Company" 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.

- 17.1.3 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.
- 17.1.4 Any arbitrator must be of the nationality of any one of the NATO Member Nations and shall be bound by the rules of security in force within NATO.
- 17.1.5 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 NATO Member Nations, 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.
- 17.1.6 An arbitrator who, for any reason whatsoever, ceases to act as an arbitrator, shall be replaced under the procedure laid down in paragraph 17.1.2 above.
- 17.1.7 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 Agreement.
- 17.1.8 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.
- 17.2 The place of arbitration shall be Brussels, Belgium, in the case of dispute under this Agreement or under any subsequent Order between "Company" and NCIA, and shall be the country of the Purchaser in the case of a dispute between "Company" and any other Purchaser, unless otherwise agreed between the Purchaser and "Company".

18. DELAYS IN DELIVERY

- 18.1 "Company" agrees to notify Purchaser in the event that it anticipates difficulty in meeting delivery schedule. Receipt of such notice shall not be deemed to be a waiver by Purchaser of rights or remedies which it may have for failure to meet an agreed delivery date. Notwithstanding the above "Company" shall be deemed to be in delay without notice from the Purchaser and only by simple expiry of the due delivery date.

19. TERMINATION FOR DEFAULT

- 19.1 The Purchaser may, subject to the provisions of paragraph 19.3 below, by written notice of default to "Company", terminate the whole or any part of an Order in any one of the following circumstances:
- 19.1.1 if "Company" fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or
- 19.1.2 if "Company" fails to perform any of the other provisions of this Agreement, or so fails to make progress as to endanger performance of an Order in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of ten days (or such longer period as the Purchaser may authorize in writing) after receipt of notice in writing from the Purchaser specifying such failure.
- 19.2 In the event the Purchaser terminates an Order in whole or in part, as provided in paragraph 19.1 of this clause, the Purchaser may procure, upon such terms and in such manner as the Purchaser may deem appropriate, supplies or services similar to those so terminated, and "Company" shall be liable to the Purchaser for any excess costs for such similar supplies or services. However, "Company" shall continue the performance of an Order to the extent not terminated under the provisions of this clause.
- 19.3 Except with respect to defaults of sub-contractors, "Company" shall not be liable for any excess costs if the failure to perform the Order arises out of causes beyond the control and without the fault or negligence of "Company". Such causes may include, but are not restricted to, acts of God, or of the public enemy, acts of the Purchaser in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of "Company". If the failure to perform is caused by the default of a sub-contractor, and if such default arises out of causes beyond the control of both "Company" and sub-contractor, without the fault or negligence of either of them, "Company" shall not be liable for any excess costs for failure to perform unless the supplies or services to be furnished by the sub-contractor were obtainable from other sources in sufficient time to permit "Company" to meet the required delivery schedule.
- 19.4 If an Order is terminated as provided in paragraph 19.1 of this clause, the Purchaser, in addition to any other rights provided in this clause, may require "Company" to transfer title and deliver to the Purchaser, in the manner and to the extent directed by the Purchaser:
- 19.4.1 any completed supplies, and
- 19.4.2 such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter

called "manufacturing materials") as "Company" has specifically produced or specifically acquired for the performance of such part of an Order as has been terminated;

and "Company" shall, upon direction of the Purchaser, protect and preserve property in the possession of "Company" in which the Purchaser has an interest. Payment for completed supplies delivered to and accepted by the Purchaser shall be at the contract price. Payment for manufacturing materials delivered to and accepted by the Purchaser and for the protection and preservation of property shall be in an amount agreed upon by "Company" and Purchaser. Failure to agree to such amount shall be a dispute within the meaning of the clause of this agreement entitled "Disputes and Arbitration". The Purchaser may withhold from amounts otherwise due to "Company" for such completed supplies 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.

19.5 If, after notice of termination of an Order under the provisions of this clause, it is determined for any reason that "Company" was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the Parties, shall be the same as if the notice of termination had been issued pursuant to a clause providing for termination of convenience of the Purchaser. If after such notice of termination of an Order under the provisions of this clause, it is determined for any reason that "Company" was not in default under the provisions of this clause and if the Order does not contain a clause providing for termination for convenience of the Purchaser the Order shall be equitably adjusted to compensate for such termination and the Order modified accordingly. Failure to agree to any such adjustment shall be a dispute within the meaning of the clause of this Agreement entitled "Disputes".

19.6 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 Agreement or any Order issued under the present BOA.

20. TERMINATION FOR CONVENIENCE OF THE PURCHASER

20.1 The performance of work under an Order may be terminated by the Purchaser in accordance with this clause in whole, or from time to time in part, whenever the Purchaser shall determine that such termination is in the best interest of the Purchaser. Any such termination shall be effected by delivery to "Company" of a Notice of Termination specifying the extent to which performance of work under an Order is terminated, and the date upon which such termination becomes effective.

20.2 After receipt of a Notice of Termination and except as otherwise directed by the Purchaser, "Company" shall:

- (i) stop work under the Order on the date and to the extent specified in the Notice of Termination;
- (ii) place no further orders or sub-contracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the Order as is not terminated;
- (iii) terminate all orders and sub-contracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
- (iv) assign to the Purchaser, in the manner, at the times and to the extent directed by the Purchaser, all of the right, title and interest of "Company" under the orders and sub-contracts so terminated, in which case the Purchaser shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and sub-contracts;
- (v) settle all outstanding liabilities and all claims arising out of such termination of orders and sub-contracts, with the approval or ratification of the Purchaser to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;
- (vi) transfer title and deliver to the Purchaser in the manner at the times, and to the extent, if any, directed by the Purchaser:
 - a. the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of the work terminated by the Notice of Termination, and
 - b. the completed or partially completed plans, drawings, information, and other property which, if the Order had been completed, would have been required to be furnished to the Purchaser;
- (vii) use his best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorised by the Purchaser, any property of the types referred to in (vi) above. However, "Company":
 - a. shall not be required to extend credit to any Buyer; and,
 - b. may acquire any such property under the conditions prescribed by and at a price or prices approved by the Purchaser; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Purchaser to "Company" under an Order or shall otherwise be credited to the price or cost of the work covered by an Order or paid in such manner as the Purchaser may direct;
- (viii) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

- (ix) take such action as may be necessary, or as the Purchaser may direct, for the protection and preservation of the property related to an Order which is in the possession of "Company" and in which the Purchaser has or may acquire an interest.
- 20.3 "Company" may submit to the Purchaser a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorised by the Purchaser, and may request the Purchaser to remove such items or enter into a storage agreement covering the same; provided that the list submitted shall be subject to verification by the Purchaser upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.
- 20.4 After receipt of a Notice of Termination, "Company" shall submit to the Purchaser his termination claim, in the form and with certification prescribed by the Purchaser. Such claim shall be submitted promptly but in no event later than six months from the effective date of termination, unless one or more extensions in writing are granted by the Purchaser, upon request of "Company" made in writing within such six-month period or authorised extension thereof. However, if the Purchaser determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such six-month period or any extension thereof. Upon failure of "Company" to submit his termination claim within the time allowed, the Purchaser may determine on the basis of information available to him, the amount, if any, due to "Company" by reason of the termination and shall thereupon pay to "Company" the amount so determined.
- 20.5 Subject to the provisions of paragraph 20.2 "Company" and the Purchaser may agree upon the whole or any part of the amount or amounts to be paid to "Company" by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done; provided that such agreed amount or amounts exclusive of settlement costs shall not exceed total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of the work not terminated. The Order shall be amended accordingly and "Company" shall be paid the amount agreed. Nothing in paragraph 20.6 of this clause, prescribing the amount to be paid to "Company" in the event of failure of "Company" and the Purchaser to agree upon the whole amount to be paid to "Company" by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to "Company" pursuant to this paragraph 20.5.
- 20.6 In the event of the failure of "Company" and the Purchaser to agree as provided in paragraph 20.5 upon the whole amount to be paid to

"Company" by reason of the termination of work pursuant to this clause, the Purchaser shall pay to "Company" the amounts determined by the Purchaser as follows, but without duplication of any amounts agreed upon in accordance with paragraph 20.5:

- (i) for completed supplies accepted by the Purchaser (or sold or acquired as provided in paragraph 20.2 (vii) above) and not therefore paid for, a sum equivalent to the aggregate price for such supplies computed in accordance with the price or prices specified in the Order, appropriately adjusted for any saving of freight or other charges;
- (ii) the total of:
 - a. the costs incurred in the performance of the work terminated including initial costs and preparatory expense allocable thereto, but exclusive of any costs attributable to supplies paid or to be paid for under paragraph 20.6 (i) hereof;
 - b. the cost of settling and paying claims arising out of the termination of work under sub-contracts or orders, as provided in paragraph 20.2 (v) above, which are properly chargeable to the terminated portion of the Order, exclusive of amounts paid or payable on account of supplies or materials delivered or services furnished by sub-contractors or vendors prior to the effective date of the Notice of Termination, which amounts shall be included in the costs payable under a. above; and
 - c. a sum, as profit on a. above, determined by the Purchaser to be fair and reasonable; provided, however, that if it appears "Company" would have sustained a loss on the entire Order, had it been completed, no profit shall be included or allowed and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and
- (iii) the reasonable costs of settlement, including accounting, legal, clerical and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Order and for the termination and settlement of sub-contracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection, or disposition of property allocable to the Order.

20.7 The total sum to be paid to "Company" under (i) and (ii) of paragraph 20.6 shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the Purchaser shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to "Company", as

provided in paragraph 20.6 (i) and (ii)(a) above, the fair value, as determined by the Purchaser, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Purchaser or to a buyer pursuant to paragraph 20.2 (vii) above.

20.8 "Company" shall have the right of appeal, under the clause of this Agreement entitled "Disputes", from any determination made by the Purchaser under paragraphs 20.4 or 20.6 above, except that if "Company" has failed to submit his claim within the time provided in paragraph 20.4 above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Purchaser has made a determination of the amount due under paragraphs 20.4 or 20.6 above, the Purchaser shall pay "Company" the following:

- (i) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Purchaser, or
- (ii) if an appeal has been taken, the amount finally determined on such appeal.

20.9 In arriving at the amount due to "Company" under this clause there shall be deducted:

- (i) all unliquidated advance or other payments on account theretofore made to "Company", applicable to the termination portion of the Order;
- (ii) any claim which the Purchaser may have against "Company" in connection with the Order, and
- (iii) the agreed price for, or the proceeds of the sale of, any materials, supplies, or other things acquired by "Company" or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the Purchaser.

20.10 If the termination hereunder is partial, prior to the settlement of the terminated portion of the Order, "Company" may file with the Purchaser a request in writing for an equitable adjustment of the price or prices specified in the Order relating to the continued portion of the Order (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices.

- 20.11 The Purchaser may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by "Company" in connection with the terminated portion of an Order whenever in the opinion of the Purchaser the aggregate of such payments shall be within the amount to which "Company" will be entitled hereunder. If the total of such payment is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by "Company" to the Purchaser upon demand, together with interest calculated using the average of the official base rate(s) per annum as notified by the Banque Nationale de Belgique or such other official source as may be determined by the Purchaser, for the period from the date the excess is received by "Company" to the date such excess is repaid to the Purchaser, provided, however, that no interest shall be charged with respect to any such excess payment attributed to a reduction in "Company"'s claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition or such later date as determined by the Purchaser by reason of the circumstances.
- 20.12 Unless otherwise provided for in the Order, "Company", from the effective date of termination and for a period of three years after final settlement under the Order, shall preserve and make available to the Purchaser at all reasonable times at the office of "Company", but without direct charge to the Purchaser, all his books, records, documents, and other evidence bearing on the costs and expenses of "Company" under an Order and relating to the work terminated hereunder, or, to the extent approved by the Purchaser, photographs, micro-photographs, or other authentic reproductions thereof.

21. SUB-CONTRACTS

- 21.1 "Company" 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 the Order in full.
- 21.2 "Company" shall not place sub-contracts outside the NATO member Nations unless the prior authorisation of the Purchaser has been obtained. Such authorisation will not be granted when the sub-contract involves the carrying out of classified work.
- 21.3 "Company" shall determine that any sub-contractor proposed by him for the furnishing of supplies or services which will involve access to classified information in "Company"'s custody has been granted an appropriate facility security clearance by the sub-contractor's national authorities, which is still in effect, prior to being given access to such classified information.
- 21.4 "Company" shall seek the approval in writing of the Purchaser prior to the placing of any sub-contract if:-
- 21.4.1 the value of the sub-contract is known or estimated to exceed € 125,000, or the equivalent currency;
- 21.4.2 the sub-contract is one of a number of sub-contracts with a single sub-contractor for the same or related supplies or services under the Order that in the aggregate are known or expected to exceed € 125,000.
- 21.5 "Company" shall submit a copy of any such proposed contract when seeking approval to the Purchaser but such approval by the Purchaser shall in no way relieve "Company" of his responsibilities to achieve the contractual and technical requirements of the Order.
- 21.6 "Company" shall, as far as practicable, select sub-contractors on a competitive basis consistent with the objectives and requirements of the Order.

22. PATENT AND COPYRIGHT INDEMNIFICATION

- 22.1 Except as otherwise provided in this Agreement, "Company" shall assume all liability and indemnify the Purchaser, its officers, agents and employees against liability, including costs for the infringement of any patents or copyright in force in any countries arising out of the manufacture, services performed or delivery of supplies, or out of the use or disposal by or for the account of the Purchaser of such supplies. "Company" shall be responsible for obtaining any patent or copyright licences necessary for the performance of an Order and of remaking all other arrangements required to indemnify the Purchaser from any liability for patent or copyright infringement in said countries.

- 22.2 "Company" shall immediately notify the Purchaser of any patent or copyright infringement claims of which he has knowledge and which pertain to the goods and services under this Agreement.
- 22.3 This indemnity shall not apply under the following circumstances:
 - 22.3.1 Patents or copyright which may be withheld from issue by order of the applicable government whether due to security regulations or otherwise;
 - 22.3.2 An infringement resulting from specific written instructions from the Purchaser under this Agreement;
 - 22.3.3 An infringement resulting from changes or additions to the goods and services subsequent to final delivery and acceptance under this Agreement.

23. CLAIMS

- 23.1 "Company" shall assert claims in writing and by registered mail, and in accordance with the terms set out below:
- 23.2 Claims shall be submitted within:
 - 23.2.1 the time specified in the Clause or Article under which "Company" alleges to have a claim. If no time is specified in the clause or Article under which "Company" intends to base its claim, the time limit shall be forty-five (45) days from the date "Company" has knowledge or should have had knowledge of the facts on which it bases its claim;
 - 23.2.2 three (3) months after final payment, release of guarantees or performance bond provided under the Order, whichever occurs last. This shall only apply to those claims for which "Company" could not have had earlier knowledge and were not foreseeable.
- 23.3 "Company" shall be foreclosed unless it presents complete documentary evidence, justification and cost for each of its claims within three months from the assertion date of such claims. Claims shall be supported by specifically identified evidence (including applicable historical and planned cost and production data from "Company"'s books and records). Opinions, conclusions or judgmental assertions not supported by such evidence shall be rejected.
 - 23.3.1 An individual breakdown of cost is required for each element of "Company"'s claims at the time of claim submission or for any material revision of the claim.
- 23.4 "Company" shall present, at the time of submission of a claim, an attestation as follows:

"I the responsible senior company official authorised to commit the with respect to its claims dated being duly sworn, do

hereby depose and say that: (i) the facts described in the claim are current, complete and accurate; and (ii) the conclusions in the claim accurately reflect the material damages or contract adjustments for which the Purchaser is allegedly liable.”

SIGNATURE

23.5 Failure to comply with any of the above requirements shall result in automatic forfeiture of the claim. This foreclosure takes effect in all cases and also where, for example, the claim is based on additional orders, where the facts are known to the Purchaser, where the claim is based on defective specifications of the Purchaser or an alleged negligence in the precontractual stage.

23.6 No claim arising under this Agreement may be assigned by "Company" without prior approval of the Purchaser.

24. RELEASE OF CLAIMS

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

24.1.1 Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by "Company";

24.1.2 Claims for reimbursement of costs (other than expenses of "Company" by reason of its indemnification of the Purchaser against patent liability) including reasonable expenses incidental thereto, incurred by "Company" under the provisions of this Agreement relating to patents.

24.1.3 An infringement resulting from specific written instructions from the Purchaser under the Order.

24.1.4 An infringement resulting from changes or additions to the goods and services subsequent to final delivery and acceptance under the Order.

25. EXTRAS

25.1 Except as otherwise provided in an Order, no payment for extras shall be made unless such extras and the price therefore have been authorised in writing by the Purchaser.

26. LANGUAGE

26.1 In the event of any inconsistency between the original English text of this Agreement and any translation into another language, the original English text will govern.

26.2 All written correspondence and reports provided by and to "Company" shall be, as a minimum, in English.

27. SECURITY

27.1 "Company" 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 Member Nations in which the Agreement is being performed. "Company" 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 an Order.

27.2 In particular "Company" undertakes to:

27.2.1 appoint an official responsible for supervising and directing security measures in relation to the Order and communicating details of such measures to the Purchaser on request;

27.2.2 maintain, preferably through the official responsible for security measures, a continuing relationship with the National Security Authority or designated Security Agency charged with ensuring that all NATO or National classified information involved in the Order is properly safeguarded;

27.2.3 abstain from copying by any means, without the authorisation of the Purchaser, the National Security Authority or designated Security Agency, any classified documents, plans, photographs or other classified material entrusted to "Company";

27.2.4 furnish, on request, information to the National Security Authority or designated Security Agency pertaining to all persons who will be required to have access to NATO or National classified information;

27.2.5 maintain at the work site a current record of its employees at the site who have been cleared for access to NATO or National classified information. The record should show the date and level of clearance;

27.2.6 deny access to NATO or National classified information to any person other than those persons authorised to have such access by the National Security Authority or designated Security Agency;

27.2.7 limit the dissemination of NATO or National classified information to the smallest number of persons as is consistent with the proper execution of the Order;

- 27.2.8 comply with any request from the National Security Authority or designated Security Agency that persons entrusted with NATO or National classified information sign a statement undertaking to safeguard that information and signifying their understanding both of their obligations under national legislation affecting the safeguarding of classified information, and of their comparable obligations under the laws of the other NATO Member Nations in which they may have access to classified information;
- 27.2.9 report to the National Security Authority or designated Security Agency any breaches or suspected breaches of security, suspected sabotage, or other matters of security significance which would include any changes that may occur in the ownership, control or management of the facility or any changes that affect the security arrangements and security status of the facility and to make such other reports as may be required by the National Security Authority or designated Security Agency, e.g. reports on the holdings of NATO or National classified information;
- 27.2.10 apply to the Purchaser for approval before subcontracting any part of the work, if the subcontract would involve the subcontractor in access to NATO or National classified information, and to place the subcontractor under appropriate security obligations no less stringent than those applied to its own contract;
- 27.2.11 undertake not to utilise, other than for the specific purpose of the Order, without the prior written permission of the Purchaser or its authorised representative, any NATO or National classified information furnished to him, including all reproductions thereof in connection with the Order, and to return all NATO or National classified information referred to above as well as that developed in connection with the Order, unless such information has been destroyed, or its retention has been duly authorised with the approval of the Purchaser. Such NATO or National classified information will be returned at such time as the Purchaser or its authorised representative may direct;
- 27.2.12 classify any produced document with the highest classification of the NATO or National classified information disclosed in that document.

28. HEALTH, SAFETY AND ACCIDENT PREVENTION

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

29. RELEASE OF INFORMATION

- 29.1 Except as otherwise specified elsewhere in the Order, and to the extent that it is demonstratively unavoidable and without prejudice to the "Security" Clause, "Company" or its employees shall not, without prior authorisation from the Purchaser, release any information pertaining to the Order, its subject matter, performance thereunder or any other aspect thereof.

30. FORCE MAJEURE

- 30.1 If the performance of this Agreement, or any obligation hereunder is prevented, restricted or interfered with by reason of fire, flood, earthquake, explosion or other casualty or accident, strikes or labour disputes, war or other violence, including acts of terrorism, any law, order, proclamation, regulation, ordinance, demand or requirement of any governmental agency, or any other act, event or condition whatsoever beyond the reasonable control of the affected Party, the Party so affected, upon giving prompt notice to the other Party, shall be excused from such performance to the extent of such prevention, restriction or interference, provided, however, that the Party so affected shall take all reasonable steps to avoid or remove such cause of non-performance and shall resume performance hereunder with dispatch whenever such causes are removed.

31. RIGHTS IN TECHNICAL DATA

- 31.1 Subject to the rights of third parties and to existing rights of "Company" arising otherwise than by virtue of the Order, and with due regard to national security regulations, all rights in the results of work undertaken by or on behalf of the Purchaser for the purposes of the Order, including any technical data specifications, report, drawings, computer software data, computer programmes, computer databases, computer software, documentation including software documentation, design data, specifications, instructions, test procedures, training material produced or acquired in the course of such work and, in particular, all rights, including copyright therein, shall vest in and shall be the sole and exclusive property of the Purchaser.

32. COMPANY'S RESPONSIBILITY ON ACCURACY OF THE COMPANY'S DATA

- 32.1 In case of change of any nature in "Company"s data including, but not limited to change(s) in name, ownership, address, and other changes of similar nature, "Company" is obliged to inform NCIA about the change(s) at the earliest possible moment that "Company" becomes aware of the change(s).

- 32.2 Information about all changes shall be presented in the form of official registered letter, addressed to NCIA Point Of Contact (POC), indicated in Clause 10 - Miscellaneous of the Part I - Special Provisions of the BOA.
- 32.3 In case if NCIA becomes aware of the change(s) described in para 1 above from any other source than official registered letter received from the "Company", NCIA reserves the right to suspend "Company"'s BOA immediately after NCIA becomes aware of the change(s) and until the issue is fully clarified.

APPENDIX 1 TO PART II - PURCHASER'S PRICING PRINCIPLES

The following principles shall apply to all contracts not awarded on the basis of an adequate price competition as well as to all contract modifications.

"Company" shall also incorporate provisions corresponding to those mentioned herein in all subcontracts, and shall require price and cost analysis provisions be included therein.

A. Allowability of Costs

(1) Allowable Cost

A cost is allowable if the following conditions are fulfilled:

- (a) it is incurred specifically for the Agreement or benefits both the Agreement and other work or is necessary to the overall operation of the business although a direct relationship to any particular product or service cannot be established and is allocated to them in respective proportion according to the benefit received;
- (b) it is reasonable and expedient in its nature and amount and does not exceed that which would be incurred by an ordinary prudent person in the conduct of competitive business;
- (c) it is not liable to any limitations or exclusion as to types or amounts of cost items as set forth herein.

(2) Partially allowable cost

The following cost items are examples of costs which are normally partially allowable only as indirect costs within the limitations described below provided that such costs are reasonable in nature and amount and are allocated as indirect costs to all work of "Company".

- (a) Advertising costs.
- (b) Contributions.
- (c) Bonuses paid pursuant to an agreement entered into before the Order was made or pursuant to a plan established and consistently followed before the Order was concluded.
- (d) Depreciation of plant equipment or other capital assets.
- (e) Costs of normal maintenance and repair of plant, equipment and other capital assets.
- (f) The costs of general research and development work which are not chargeable directly to an Order and which are not aimed at the preparation or development of a specific product.
- (g) Travel costs, except those which, according to the terms of the Order, are to be charged directly to it.
- (h) Pre-contract cost (cost prior to the effective date stated in the Order) in anticipation of the award of the Order or pursuant to its negotiation.

(3) Unallowable costs

In general all costs which cannot be shown by "Company" to be directly or indirectly of benefit to the Order under this Agreement are totally unallowable. Examples of such costs are:

- (a) Costs of a particular advertising campaign without prior agreement of the Purchaser or which has no connection with the Order under this Agreement.
- (b) Costs of remuneration, having the nature of profit sharing.
- (c) Costs of maintaining, repairing and housing idle and excess facilities.
- (d) Fines and penalties as well as legal and administrative expenses resulting from a violation of laws and regulations.
- (e) Losses on other contracts.
- (f) Costs incurred for the creation of reserves for general contingencies or other reserves (e.g. for bad debts, including losses).
- (g) Losses on bad debts, including legal expenses and collection costs in connection with bad debts.
- (h) Costs incurred to raise capital.

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

B. Cost Groupings

- (1) In estimating or calculating the costs of the supplies to be furnished and the services to be performed under the Order, "Company" shall distinguish the following cost groupings:
 - (a) Direct Costs

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

An indirect cost is one which is not readily subject to treatment as a direct cost.
- (2) "Company" shall specify the allocation of costs to either of the cost groupings. The method by which costs are accumulated and distributed as part of direct or indirect costs cannot be modified during the duration of the Order.

C. Overhead Rates

- (1) Indirect costs, which as a rule are to be allocated to all work of "Company", shall be accumulated by logical cost groupings in accordance with sound accounting principles and "Company"'s established practices. Such costs shall be presented as overhead rates and be applied to each related direct cost grouping.
- (2) "Company" shall inform the Purchaser of its overhead rates and the basis upon which they were computed.
- (3) The term "provisional overhead rate" means a tentative overhead rate established for interim billing purposes pending negotiation and agreement to the final overhead rate.
- (4) An overhead rate is pre-determined if it is fixed before or during a certain period and based on (estimated) costs to be incurred during this period. An overhead rate is post-determined if it is fixed after a

certain period and based on costs actually incurred during this period.

Pre-determined overhead rates shall be agreed upon as final rates whenever possible; otherwise the provisions of paragraph (3) above shall apply pending agreement to post-determined rates.

- (5) Such rates shall be determined on the basis of "Company"'s properly supported actual cost experience.
- (6) If the overhead rates of "Company" for similar contracts placed by national or international public services have been established or approved by a government agency or an agency accepted by "Company"'s Government and "Company" proposes the application of these rates, "Company" shall state the name and address of the agency which has accepted or approved the rates and the period for which they were established. If "Company" proposes rates which vary from the rates mentioned above, "Company" shall furthermore provide a justification for the difference.
- (7) If the overhead rates of "Company" for similar contracts placed by national or international public services have not been established or approved by a government agency or an agency accepted by "Company"'s government, "Company" shall provide the necessary data to support the proposed rates.

PART V STATEMENT OF WORK

WIRELESS AND MARITIME SERVICES AREA TECHNICAL SUPPORT CONSULTANCY SERVICES BRASS

1. Introduction

The Wireless and Maritime Services Area (WMSA) of the Network Services and IT Infrastructure Service Line (NSII) in the NATO Communication and Information Agency (NCI AGENCY) has the responsibility of supporting and maintaining the NATO Broadcast, the Ship-Shore and the Maritime Rear Link (BRASS) system designed to support all NATO Maritime missions. It provides automated support for the NATO Maritime Surface Broadcast, the Ship-Shore and the Maritime Rear Link (MRL) HF communications networks.

NATO requirement for additional resources to support operationally BRASS at NCI AGENCY is stated in CP 9B3012/15A0006 MARITIME SHORE-BASED COMMAND AND CONTROL (C2) SURFACE COMMUNICATIONS" REVISION 1.

2. Scope

BRASS Initial Core Capability Software (ICC SW) is a software application of primary importance to the Maritime community with O&M responsibilities assigned to NCI AGENCY.

NATO has a requirement for consultancy services to perform the subject work as described in this SOW. The scope of this document is to state the requirements for acquiring technical support to help operationally maintain the BRASS ICC SW baseline, and assist in development of ongoing adaptive and corrective changes and modifications at NCI AGENCY /NSII/WMSA.

The work is expected to start in 2018 (as soon as possible) and is projected to be ongoing for two years (one man-year per year for 2 years).

3. Tasks/Objectives

The contractor shall provide one onsite, full time Contractor personnel to support NCI AGENCY/NSII/WMSA with operational maintenance of BRASS SW and reference system using Visual Basic, Visual C++, Oracle DBMS and SNMP system monitoring tools. The individual shall work under the daily direction of NCI AGENCY/NSII/WMSA. Primarily the individual will work to support the project in the WMSA Section providing users needed capabilities in command and static headquarters, and provide technical support and knowledge transfer involving BRASS software, documentation, testing and configuration management activities. The main tasks are detailed below:

3.1 Software Changes

Software Changes, involving bug identification, prioritization & resolution followed by testing and delivery of subsequent bug fixes. The individual shall perform the analysis, design and implementation of modifications required for BRASS SW.

3.2 Provision of Technical Assistance

The individual is expected to assist NCI AGENCY/NSII/WMSA Staff with incoming technical assistance requests from NATO and National users. The request can cover software issues or general requirements on system configurations.

3.3 Organization / Administration of user help requests

Requests must be logged and software changes must be performed expeditiously. The elapsed time in order to handle the requests must be monitored and priorities must be recommended to the project leader as necessary.

3.4 Configuration Control

The individual is expected to implement and enforce strict configuration control of the software baseline released for use at all NATO sites.

3.5 Knowledge Transfer

The individual is expected to transfer the BRASS SW knowledge whenever possible to NCI AGENCY/NSII/WMSA Staff.

3.6 Documentation and Test

For the new version of BRASS SW and its related applications the software has to be documented. Mainly traditional documentation using normal Office applications will be created.

3.7 Additional duties

The individual may be requested to perform additional duties outside the normal scope but similar in nature (within related and overlapping areas).

4 Working Procedures

The Contractor employee must:

- Follow the NCI AGENCY business model and existing management plans, policies and procedures,
- Adhere to existing NATO security procedures for physical and logical protection of NATO materials, Ethics and Anti-Fraud rules and principles.
- All changes made to the system must be properly documented through the NCI AGENCY processes and tool suites,
- Non-trivial changes to the system require prior approval from NCI_AGENCY/NSII/WMSA.

The working language shall be English.

5 Working Days

The standard working day at SHAPE is 8 hours (08:30 to 17:30 Monday through Thursday and 08:30 to 15:30 on Fridays) and shall be booked as 38 hours per week. A one hour break for lunch is allowed each working day. The individual will observe all the NCI AGENCY/NSII/WMSA official holiday periods. Unless specific exemption is granted, all work shall be performed during normal working hours.

6 Management

For the duration of the period of work, the individual shall work under the direct supervision of the NSII/WMSA BRASS Services System Manager.

The individual shall submit in writing monthly manpower timesheets documenting the time spent to render the services requested. The signed time sheets must be attached to all invoices. All leave periods requested by the individual shall be subject to approval by NCI AGENCY/NSII/WMSA.

Timesheets and invoices shall be submitted in the NCI Agency approved manner, with time worked per hour (for instance 7.6 every day, 8 Monday-Thursday and 6 on Friday, etc.).

The individual shall have the experience in the NATO Maritime Communication environment and all the specific BRASS ICC software knowledge to support NATO operations.

7 Work Location

The present principal working location will be Building 119, a secure, windowless computer facility, located at SHAPE, Mons, Belgium.

8 Travel

The individual might be required, at Purchaser discretion, to travel up to remote sites (e.g. other NATO countries) in order to provide on-site support. Such travel would be normally of short duration, up to 1 week and occur infrequently, possibly 4 times a year. All travel requests in support of this Contract would be approved by the Purchaser. All travel costs associated with on-site support (travel and per diem) are reimbursable by NATO. No Travel is performed without written approval by the Purchaser and without final NCI Agency approval.

9 Required Hardware and Software Tools

NCI AGENCY/NSII/WMSA will provide office space, office supplies, workstations, tools and other materials as shall be needed for use by the individual in performing assigned tasks.

10 Required Qualifications

10.1 The individual assigned to this work must be an experienced information system professional. It is essential that the individual hold a University Degree, preferably equivalent to a Master's Degree from a Nationally recognized University in a relevant subject such as Software Engineering. Exceptionally, the lack of a Master's Degree may be compensated by a lower academic qualification combined with the demonstration of particular abilities or experience of relevance to this post or the NCI Agency.

10.2 Essential Skills

Essential skills and proven experience of at least 5 years with software development and maintenance of:

- BRASS ICC applications or similar software
- Microsoft Visual Studio 6.0 and newer
- Microsoft Visual SourceSafe
- Microsoft Visual Basic
- Microsoft Visual C++
- SQL queries and Install Shield
- Oracle Database Management System Software 10g (Oracle DBMS), or subsequent versions

- Windows Operating Environment with Active Directory, Clustering and Microsoft Messaging Queues
- Software interfaces (drivers) for specialized equipment (modems, matrixes, transmitters, receivers etc.)
- SNMP based Network Management Systems
- Sound technical knowledge on wide and local area networks
- Object oriented analysis, design, modeling, and design patterns
- Proven ability to communicate effectively in English orally and in writing.

10.3 Desirable Skills

- Knowledge and experience of Military Message Handling Systems
- Knowledge and experience of HF Maritime Communications
- Knowledge and experience of protocols used in HF communication (ALE, STANAG 5066)
- Knowledge of system security requirements and their implementation
- Experience of systems implementation in the NATO environment.

11 Security Clearance

The Contractor employee shall have a NATO Secret Security Clearance in order to work on the project at NCI AGENCY/NSII/WMSA. The Security Clearance certificate of the individual shall be available at NCI AGENCY before contract award or the replacement personnel takes up his duties.

12 Points of Contact

ACQ Principal Contracting Officer is Tiziana Pezzi.
Email: Tiziana.Pezzi@ncia.nato.int

ACQ Action Officer is Werner Goos
Email: Werner.Goos@ncia.nato.int