

## **CO-115370-HSSR**

### **HARDWARE SUPPORT AND SOFTWARE LICENSE RENEWAL OF EXISTING LICENSES AND PROCUREMENT OF NEW LICENSES**



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

## **BOOK II**

### **CONTRACT SPECIAL PROVISIONS**



## Table of Contents

1.	SCOPE OF WORK .....	2
2.	DEFINITIONS .....	2
3.	ORDER OF PRECEDENCE .....	3
4.	CONTRACT TYPE.....	3
5.	REQUIREMENTS CONTRACT .....	3
6.	PERIOD OF PERFORMANCE .....	4
7.	OPTIONS .....	4
8.	PARTICIPATING COUNTRIES.....	5
9.	COMPREHENSION OF CONTRACT AND SPECIFICATIONS .....	5
10.	NON DISCLOSURE.....	6
11.	ADVERTISEMENTS, PUBLICIZING AWARDS, NEWS RELEASES, AND CONFERENCES	6
12.	CONFLICT OF INTEREST .....	6
13.	MERGERS, ACQUISITIONS, NOVATIONS, AND CHANGE-OF-NAME AGREEMENTS .....	7
14.	LIQUIDATED DAMAGES.....	8
15.	INVOICES AND PAYMENT TERMS.....	8
16.	TAXES AND DUTIES .....	9
17.	TECHNICAL DIRECTION.....	9
18.	CONTRACT ADMINISTRATION.....	10

## **1. SCOPE OF WORK**

- 1.1.** The NCI Agency is seeking to:
  - 1.1.1.** renew hardware support and software license agreements, previously maintained by a service integrator at multiple locations and;
  - 1.1.2.** procure new licenses
- 1.2.** The geographical location within the scope of the Contract is shown in the Schedule of Supplies and Services (SSS).
- 1.3.** The full scope of requirements to include the delivery destination is in the SSS and the Technical Specifications.

## **2. DEFINITIONS**

- 2.1.** For the purpose of this contract and unless otherwise explicitly indicated, the following definitions shall apply:
  - 2.1.1.** Basic Ordering Agreement (BOA): Means the separate agreement the Contractor holds with NCI Agency under the auspices of the NCI Agency BOA Program.
  - 2.1.2.** Contracting Authority: The General Manager of the NCI Agency, or the authorised representatives of the General Manager acting within authority delegated by the General Manager. These authorised representatives are:
    - 2.1.2.1.** The Director of Acquisition of the NCI Agency,
    - 2.1.2.2.** The Chief of Contracts of the NCI Agency,
    - 2.1.2.3.** Principal Contracting Officers, Senior Contracting Officers and Contracting Officers of the NCI Agency

This Contract does not recognise the doctrine of apparent authority.

- 2.1.3.** Contractor: The person or legal entity from a Participating Country which has signed this Contract and is a Party thereto.
- 2.1.4.** Effective Date of Contract (EDC): The date upon which this Contract is deemed to start. Unless otherwise specified, a Contract enters into force on the date of the last signature of the Contract by the Contracting Officer.
- 2.1.5.** 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.

### **3. ORDER OF PRECEDENCE**

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

- 3.1.1.** The Contract Signature Page;
- 3.1.2.** Part I: Schedule of Supplies and Services (SSS);
- 3.1.3.** Purchaser-issued Purchase Orders
- 3.1.4.** Part II: Contract Special Provisions;
- 3.1.5.** Part III: BOA General Provisions;
- 3.1.6.** Part IV: The Technical Specifications;
- 3.1.7.** The Contractor's Offer, any subsequent Amendments, and any clarifications thereto, are incorporated herein by reference.
- 3.1.8.** The Contractor's Orderform(s).

### **4. CONTRACT TYPE**

- 4.1.** This is a Firm Fixed Price Contract.
- 4.2.** The prices stated herein (to include all Purchase Orders) are not subject to any adjustment on the basis of the Contractor's cost experience in performing the Contract.
- 4.3.** The total Firm Fixed Price of this Contract is stated on the Signature page of the Contract and is based on the price of the Purchase Orders issued since the first iteration of the Contract (i.e. since 2012). The full list of all Purchase Orders can be found in the SSS.
- 4.4.** The Purchaser assumes no liability for costs incurred by the Contractor in excess of the stated Total Price.

### **5. REQUIREMENTS CONTRACT**

- 5.1.** This contract is a Requirements type contract. This means the Contract has no intrinsic monetary value. The Agency will place definitive Purchase Orders against this contract when requirements are identified and funding is available.
- 5.2.** Each Purchase Order will have a monetary obligation for the Contractor to perform and that is within the general scope of this Contract.
- 5.3.** The Purchaser considers this Contract to be the "preferred vehicle" for obtaining the type of work specified in the SSS. Only if the Contractor is unable to meet the requirements within the required timeframe or at the contracted price, will another source be solicited. If the Contractor fails to perform well in executing Purchase Orders under this contract, the Purchaser is under no obligation to continue to use the contract as a preferred vehicle.

- 5.4.** The Contractor recognises Purchase Orders under this Contract are dependent on funding not always under the control of the Purchaser. Consistent with the provisions of paragraph 6.1 above, the Purchaser is not obligated to issue any certain amounts of Purchase Orders under this Contract beyond the initial Purchase Order that activated the Contract.

## **6. PERIOD OF PERFORMANCE**

- 6.1.** The Period of Performance shall be: (a) Basic Period of EDC until 31 December 2021 plus (b) four 12-month Option Periods.

## **7. OPTIONS**

- 7.1.** Any tasks identified in the Contract Schedule of Supplies and Services as Options are to be intended as options to be exercised by the Purchaser and at its sole discretion. The Purchaser shall have the right to exercise any of the listed priced options during the period specified in the schedule of supplies and services.
- 7.2.** Should any options be exercised, the Purchaser will increase the firm fixed price of the Contract via a formal Contract Amendment by the amount of the line items so exercised and the period of performance of the Contract will be extended as specified in the schedule of supplies and services.
- 7.3.** In no event shall the Contractor engage in the performance of any options or part thereof without the written consent of the Purchaser's Contracting Authority.
- 7.4.** In addition to the specific Contract options, the Purchaser reserves the right to order any foreseeable or additional Contract tasks or deliverables, listed or not, either occasionally or at a further stage in the life of the project. The additional tasks and/or deliverables shall be priced in using the rates provided by the Contractor as part of its original proposal and included in this Contract by reference.
- 7.5.** The Purchaser reserves the right to order additional tasks and/or deliverables of listed items included in the base Contract within the calendar year of the Effective Date of Contract, without renegotiation. Such additional order(s) will be subject to an amendment reflecting the same Contract terms and conditions (i.e. including listed prices).
- 7.6.** Except as otherwise provided for in this Contract, Contractor's price quotations for contract changes or modifications shall be provided at no cost to the Purchaser and shall have a minimum validity period of six (6) months from submission.
- 7.7.** The Purchaser may, in writing, place an order for such additional tasks throughout the entire Contract period up until end of Warranty.

Such an order may be placed within the framework of this Contract via the issuance of a Contract Amendment or be formulated via the issuance of a new contractual instrument.

## **8. PARTICIPATING COUNTRIES**

- 8.1.** Unless prior written authorisation of the Purchaser has been obtained, none of the Work, including services, shall be performed other than by firms from and within NATO Participating Countries
- 8.2.** The intellectual property rights to all designed documentation and 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 community.
- 8.3.** The list of current NATO Participating Countries, can be found here: [https://www.nato.int/cps/ie/natohq/topics\\_52044.htm](https://www.nato.int/cps/ie/natohq/topics_52044.htm)

## **9. COMPREHENSION OF CONTRACT AND SPECIFICATIONS**

- 9.1.** The Contractor warrants that he has read, understood and agreed to each and all terms, articles, specifications and conditions specified in the Contract and that this signature of the Contract is an acceptance through delivery of the said Contract terms within their normal and common meaning.
- 9.2.** The specifications set forth the performance requirements for the Contractor's proposed work as called for under this Contract. Accordingly, notwithstanding any conflict or inconsistency which hereafter may be found between achievement of the aforesaid performance requirements and adherence to the Contractor's proposed design for the work, the Contractor hereby warrants that it shall use reasonable endeavours to ensure that the work be delivered to meet or exceed the performance requirements of the said specifications.
- 9.3.** The Contractor hereby acknowledges that he has no right to assert against the Purchaser, its officers, agents or employees, any claims or demands with respect to the aforesaid specifications as are in effect on the date of award of this Contract.
- 9.4.** Based upon impossibility of performance, defective, inaccurate, impracticable, insufficient or invalid specifications, implied warranties of suitability of such specifications, or,
- 9.5.** Otherwise derived from the aforesaid specifications, and hereby waives any claims or demands so based or derived as might otherwise arise.

- 9.6.** Notwithstanding the “Changes clause of the BOA 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.

## **10. NON DISCLOSURE**

- 10.1.** 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 BOA General Provisions, the Contractor or his employees shall not, without prior authorisation from the Purchaser, release any information pertaining to this Contract, its subject matter, its related performance or any other aspect thereof.

## **11. ADVERTISEMENTS, PUBLICIZING AWARDS, NEWS RELEASES, AND CONFERENCES**

- 11.1.** All press releases or announcements about any contract/task order award hereunder shall be approved by the contract/task order CO prior to release. Under no circumstances shall the Contractor, subcontractor, teaming partner, or anyone acting on behalf of the Contractor, refer to the supplies, services, or equipment furnished pursuant to the provisions of this contract in any publicity news release or commercial advertising without first obtaining explicit written consent to do so from the contract/task order CO. The Contractor agrees not to refer to awards in commercial advertising in such a manner as to state or imply that the product or service provided is endorsed or preferred by the Purchaser or is considered by the Purchaser to be superior to other products or services.
- 11.2.** Any presentation, white paper, article et cetera written, submitted or presented by Contractor personnel shall be reviewed and approved by the CO prior to delivery. This special requirement shall apply whether the Contractor personnel is acting on behalf of the company or unofficially on behalf of himself or herself.

## **12. CONFLICT OF INTEREST**

- 12.1.** A conflict of interest means that because of other activities or relationships with other persons or entities, a Contractor is unable, or potentially unable to render impartial assistance or advice to the Purchaser, or the Contractor’s objectivity in performing the Contract work is, or might be otherwise impaired, or the Contractor has an unfair competitive advantage. Conflict of interest includes situations where the capacity of a Contractor (including the Contractor’s executives, directors, consultants, subsidiaries, parent companies or

subcontractors) to give impartial, technically sound advice or objective performance is or may be impaired or may otherwise result in a biased work product or performance because of any past, present or planned interest, financial or otherwise in organizations whose interest may substantially affected or be substantially affected by the Contractor's performance under the Contract.

- 12.2.** The Contractor is responsible for maintaining and providing up-to-date conflict of interest information to the Contracting Officer. If, after award of this Contract, the Contractor discovers a conflict of interest with respect to this Contract which could not reasonably have been known prior to award, or if any additional conflicts or potential conflicts arise after award, the Contractor shall give written notice to the Contracting Officer as set forth below.
- 12.3.** The Contractor's notice called for in Clause 12.2 above shall describe the actual, apparent, or potential conflict of interest, the action(s) the Contractor has taken or proposes to take to avoid or mitigate any conflict, and shall set forth any other information which the Contractor believes would be helpful to the Contracting Officer in analyzing the situation. Any changes to the contractors Conflict of Interest Mitigation Plan, if any is incorporated in the contract, should be also detailed.
- 12.4.** The Contractor has the responsibility of formulating and forwarding a proposed mitigation plan to the Contracting Officer, for review and consideration. This responsibility arises when the Contractor first learns of an actual, apparent, or potential conflict of interest.
- 12.5.** If the Contracting Officer in his/her discretion determines that the Contractor's actual, apparent, or potential conflict of interest remains, or the measures proposed are insufficient to avoid or mitigate the conflict, the Contracting Officer will direct a course of action to the Contractor designed to avoid, neutralize, or mitigate the conflict of interest. If the parties fail to reach agreement on a course of action, or if having reached such agreement the Contractor fails to strictly adhere to such agreement during the remaining period of Contract performance, the Contracting Officer has the discretion to terminate the Contract for default or alternatively refrain from exercising any further Option or Work Package under the contract.
- 12.6.** The Contractor's misrepresentation of facts in connection with a conflict of interest reported or a Contractors failure to disclose a conflict of interest as required shall be a basis for default termination of this contract.

### **13. MERGERS, ACQUISITIONS, NOVATIONS, AND CHANGE-OF-NAME AGREEMENTS**

- 13.1.** If a Contractor merges, is acquired, or recognizes a successor in



interest to Purchaser contracts when Contractor assets are transferred; or, recognizes a change in a Contractor's name; or, executes novation agreements and change-of-name agreements, the Contractor must notify the Purchaser's at least thirty (30) days in advance and provide a copy of the novation or other any other agreement that changes the status of the Contractor for signature by the Purchaser. Any successor must be in full compliance with all terms and conditions of this contract.

#### **14. LIQUIDATED DAMAGES**

- 14.1.** If the Contractor fails to meet the delivery schedule of the items required under this contract at the times specified in the SSS of this Contract, or any agreed extension thereto, the actual damage to the Purchaser for the delay will be difficult or impossible to determine. Therefore, in lieu of actual damages, the Contractor shall pay to the Purchaser fixed and agreed liquidated damages of 0.01% of the associated Delivery Order/CLIN value as set forth in the Schedule of Supplies and Services herein, for each day of delinquency in achieving the milestone. These liquidated damages will begin to accrue on the first day after the date on which delivery was to have been made and/or the milestone was to have been reached.

#### **15. INVOICES AND PAYMENT TERMS**

- 15.1.** Payment for supplies and services furnished under this Contract shall be made in the currency quoted by the Contractor for the relevant portion of the Contract.
- 15.2.** Payments will be made after the Contractor successfully delivers the milestones as defined in the SSS and receives written acceptance from the Purchaser.
- 15.3.** Where Optional CLINs are exercised, payments shall be made in accordance with the stipulations of the relevant amendment providing for the exercise of such Options.
- 15.4.** No payment shall be made with respect to undelivered supplies, works not performed; services not rendered and/or incorrectly submitted invoices.
- 15.5.** The Purchaser shall not be liable for any amount resulting from the performance of services or the delivery of equipment outside the scope of this Contract.
- 15.6.** Payment to the Contractor will be made within 45 days of receipt of properly supported and documented invoices and upon acceptance in writing by the Purchaser.

- 15.7. All invoices shall refer to CO-115370-HSSR and the Purchase Order Number.
- 15.8. Invoices shall be properly supported with any necessary reports, certificates, statements, receipts, written evidence of acceptance by the Purchaser and any other required documentation in accordance with the terms of the Contract.
- 15.9. All invoices shall be sent electronically to: [accountspayable@ncia.nato.int](mailto:accountspayable@ncia.nato.int)
- 15.10. No paper invoices will be accepted.

## 16. TAXES AND DUTIES

- 16.1. NATO, NATO Bodies are exempt from all taxes and all customs duties on Products and Services imported or exported hereunder. The Contractor therefore, certifies that the prices stipulated under this Contract do not include amounts to cover such taxes or customs duties.
- 16.2. In cases where taxes and duties are levied, the Contractor should seek reimbursement directly from the authorities concerned in compliance with the applicable procedures. The Purchaser shall provide reasonable assistance in claiming reimbursement.
- 16.3. In the event that reimbursement is not made by the authorities concerned, and providing that the Contractor has complied with applicable procedures, the Purchaser shall reimburse the full amount of the payments upon receipt of the Contractor'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.
- 16.4. Following payment by the Purchaser of the taxes and/or duties pursuant to paragraph 16.3 above, should the Contractor receive a rebate of any amount paid by Purchaser, the Contractor shall immediately notify the Purchaser, and the amount of such rebate shall be credited or reimbursed to the Purchaser, as directed. The Contractor shall be responsible for taking any and all action that could reasonably be required in order to obtain such rebate.

## 17. TECHNICAL DIRECTION

- 17.1. For the direct official control and coordination of requirements, the Purchaser designates the Project Manager (per Purchase Order) as the staff element that has the authority to coordinate, monitor, and control Contractor's performance under this Contract:
- 17.2. The individuals working on this Contract shall perform the effort within the general scope of work identified in the SOW. This effort will be

directed on a more detailed level by the Agency's PM who will provide detailed tasking and instruction as to how to proceed and whether deliverables are required under the task.

- 17.3. The Contractor is advised that the Agency's PM has no authority to change the terms and conditions of the Contract. If the Contractor has reason to believe that the Agency's PM is requiring effort on terms inconsistent with that in the Contract, the Contractor shall immediately inform the Purchaser's Contracting Authority for confirmation of the actions of the Agency's PM. Failure to obtain confirmation that the action of the Agency's PM is under the authority of the Contract will render any subsequent claim of change null and void.
- 17.4. Upon receipt of such notification detailed in paragraph 17.3 above, the Purchaser's Contracting Authority will (1) confirm the actions of the Agency's PM as within scope, (2) confirm that the Agency's PM's instructions constitute a change and request a quotation for a modification of scope and/or price or (3) rescind the instructions of the Agency's PM.

**18. CONTRACT ADMINISTRATION**

- 18.1. The Purchaser is the NATO Communications and Information Agency (NCI Agency). The Purchaser is the Point of Contact for all Contractual and Technical issues.
- 18.2. The Contractor shall accept Contract modifications only in writing from the Purchaser's Contracting Authority.
- 18.3. The Purchaser reserves the right to re-assign this Contract to a representative(s) for administrative purposes, in whole or in part, provided that the Purchaser shall always be responsible for its obligations under the Contract and for actions or lack of actions of its assigned administrator. The Purchaser undertakes to advise the Contractor in writing whenever this right is to be exercised.
- 18.4. All notices and communications between the Contractor and the Purchaser shall be written in English and may be personally delivered, mailed, or emailed at the following address:

**18.5.**

<b>PURCHASER</b>	
<b>Contractual issues:</b>	<b>Technical issues:</b>
The NCI Agency	The NCI Agency
Acquisition Directorate	NCSC Directorate
Boulevard Léopold III	SHAPE
B-1110 Brussels	B-7010 Mons
Belgium	Belgium
POC: Leonora Alushani	POC: <i>To Be Inserted at Contract Award</i>
Tel: +32 2707 1176	Tel: <i>To Be Inserted at Contract Award</i>

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

E-mail: *To Be Inserted at Contract Award*

**CONTRACTOR**

**Contractual issues:**

Name: *To Be Inserted at Contract Award*  
Address: *To Be Inserted at Contract Award*  
POC: *To Be Inserted at Contract Award*  
Tel: *To Be Inserted at Contract Award*  
Email: *To Be Inserted at Contract Award*

**Technical issues:**

Name: *To Be Inserted at Contract Award*  
Address: *To Be Inserted at Contract Award*  
POC: *To Be Inserted at Contract Award*  
Tel: *To Be Inserted at Contract Award*  
Email: *To Be Inserted at Contract Award*