

NATO UNCLASSIFIED

RFQ-CO-12534-GITC
Book II – The Prospective Contract
Part II - Special Contract Provisions



RFQ-CO-12534-GITC

**PROVIDE ISAF GEOSPATIAL IMAGERY AND
TARGETING CAPABILITY FOR JFC BRUNSSUM**

BOOK II - PART II

SPECIAL CONTRACT PROVISIONS

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PART II
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ARTICLE 1 ORDER OF PRECEDENCE

- 1.1 In the event of any inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:
- a. The Schedule of Supplies and Services
 - b. The Special Contract Provisions
 - c. The Statement of Work
 - d. NC3A Basic Ordering Agreement, General Provisions

ARTICLE 2 SCOPE OF WORK

- 2.1 The scope of this contract is the procurement of IT equipment for a project to provide ISAF Geospatial Imagery and Targeting Capabilities for JFC Brunssum, Netherlands as described in Part I - Schedule of Supplies and Services and Part III - Statement of Work.

ARTICLE 3 PARTICIPATING COUNTRIES

- 3.1 None of the work, including project design, labour and services shall be performed other than by firms from and within participating countries.
- 3.2 The term “Participating Country” as used herein means one of the 26 contributing NATO nations in the project, namely, (in alphabetical order): BELGIUM, BULGARIA, CANADA, THE CZECH REPUBLIC, DENMARK, ESTONIA, FRANCE, GERMANY, GREECE, HUNGARY, ICELAND, ITALY, LATVIA, LITHUANIA, LUXEMBOURG, THE NETHERLANDS, NORWAY, POLAND, PORTUGAL, ROMANIA, SLOVAKIA, SLOVENIA, SPAIN, TURKEY, THE UNITED KINGDOM and THE UNITED STATES.
- 3.3 No materials or items of equipment down to and including identifiable sub-assemblies shall be manufactured or assembled by a firm other than from and within a participating country.
- 3.4 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 community.

ARTICLE 4 FIRM FIXED PRICE

- 4.1 This is a Firm Fixed Price Contract. Firm Fixed Prices are established for the supplies and services defined in Part I - Schedule of Supplies and Services.
- 4.2 The Purchaser assumes no liability for costs incurred by the Contractor in excess of the stated Firm Fixed Price except as provided under other provisions of this Contract.
- 4.3 The Total Contract price is inclusive of all expenses related to the performance of the present contract.
- 4.4 The Total Contract price in this Contract is Delivery Duty Paid (Incoterms 2000).

ARTICLE 5 TRANSPORTATION OF EQUIPMENT

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

ARTICLE 6 PLACE AND TERMS OF DELIVERY

- 6.1 Deliverables under this Contract shall be delivered DDP (Delivery Duty Paid) in accordance with the International Chamber of Commerce INCOTERMS 2000 to the destination(s) and at such times as set forth in the Schedule of Supplies and Services. The Contractor shall note that the Purchaser is exempt from customs duties and VAT.

ARTICLE 7 TITLE AND RISK OF LOSS

- 7.1 Title and Risk of Loss to all delivered equipment, software and documentation shall transfer to and vest with the Purchaser, upon Acceptance of each delivered equipment, software and documentation as defined in Part III - Statement of Work.

ARTICLE 8 COMPREHENSION OF CONTRACT AND SPECIFICATIONS

- 8.1 The Contractor warrants that he has read, understood and agreed to each and all terms, clauses, specifications 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.
- 8.2 The specifications set forth the performance requirements for the Contractor's proposed work as called for under this contract. Accordingly, notwithstanding any conflict or inconsistency which hereafter may be found between achievement of the aforesaid performance requirements and adherence to the Contractor's proposed design for the work, the Contractor hereby warrants that the work to be delivered will meet or exceed the performance requirements of the said specifications.
- 8.3 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.
- 8.3.1 Based upon impossibility of performance, defective, inaccurate, impracticable, insufficient or invalid specifications, implied warranties of suitability of such specifications, or
- 8.3.2 Otherwise derived from the aforesaid specifications, and hereby waives any claims or demands so based or derived as might otherwise arise.
- 8.4 Notwithstanding the "Changes" clause or any other clause of the contract, the Contractor hereby agrees that no changes to the aforesaid specifications which may be necessary to permit achievement of the performance requirements specified herein for the Contractor's proposed work shall entitle the Contractor either to any increase in the 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 9 CHANGES

- 9.1 The Purchaser may at any time, by written order designated or indicated to be a change order, and without notice to the sureties, if any, make changes within the scope of any Contract or Task Order, as described in the “Changes” clause of the NC3A Basic Ordering Agreement, General Provisions.
- 9.2 Except as otherwise provided for in this contract, prices quoted for the changes, modifications, etc. shall have a minimum validity period of 6 months from submission.

ARTICLE 10 OPTIONS

- 10.1 The Purchaser may increase the quantity of supplies and set forth in any line item of Part I - Schedule of Supplies and Services. The contractor will use all reasonable endeavours to maintain the prices specified therein. Changes to these prices shall be accompanied with documentation and explanation of the change. If this Option is exercised, delivery of the added items shall be to the same destination as specified in the basic contract; unless otherwise specified on the written notice. If the contract provides for multiple destinations, the Purchaser will specify to which destinations the additional quantities are to be shipped. If the Purchaser specifies a destination that is not part of the basic contract requirements, the Parties will agree to an equitable adjustment as may be required to reflect any additional costs incurred by the Contractor in making such delivery.
- 10.2 The options will be exercised by written amendment to the contract.

ARTICLE 11 LIQUIDATED DAMAGES

- 11.1 If the Contractor fails to meet the delivery/performance at the times specified in the Schedule of Supplies and Services 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 liquidated damages 0.25 percent of the respective CLIN per calendar day of the value of the associated payment, if any. These liquidated damages shall begin to accrue on the first working day after the date on which the delivery/performance was to have been reached.
- 11.2 The total accumulated amount of liquidated damages which may be assessed under the above paragraph shall not exceed (10) ten per cent of the total value of the Contract.
- 11.3 In addition, the Purchaser may terminate this Contract in whole or in part, as provided in Clause 19 – “Termination for Default” of the NC3A Basic Ordering Agreement, General Provisions and in that event the Contractor shall be liable to pay the excess costs provided in paragraph 19.2 of the said Clause 19.
- 11.4 The Contractor shall not be charged with liquidated damages when the delay arises out of causes beyond the control and without the fault or negligence of the Contractor as defined in Clause 19 – “Termination for Default” of the NC3A Basic Ordering Agreement, General Provisions. In such event the Purchaser shall ascertain the facts and extent of the delay and shall extend the time for performance of the Contract when in his judgment the findings of fact justify an extension.

- 11.5 The amount of Liquidated Damages due by the Contractor shall be recovered by the Purchaser in the following order of priority:
- 11.5.1 By deducting such damages from the amounts due to the Contractor against the Contractor's invoices.
- 11.5.2 By proceeding against any surety.
- 11.6 By reclaiming such damages through appropriate legal remedies.

ARTICLE 12 INTELLECTUAL PROPERTY RIGHT INDEMNITIES AND ROYALTIES

- 13.1 The Contractor 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. The Contractor shall be responsible for obtaining any patent or copyright licences necessary for the performance of this Contract and for making all other arrangements required to indemnify the Purchaser from any liability for patent or copyright infringement in said countries.
- 13.2 The Contractor shall exclude from his prices any royalty pertaining to patents which in accordance with agreements reached between NATO countries may be utilised free of charge by member nations of NATO and by NATO organisations.
- 13.3 The Contractor shall report in writing to the Purchaser during the performance of this Contract:
- 13.3.1 The royalties excluded from his price for patent utilised under the agreements mentioned in the paragraph above.
- 13.3.2 The amount of royalties paid or to be paid by the Contractor directly to others in performance of this Contract.

ARTICLE 13 RIGHTS IN TECHNICAL DATA & COMPUTER SOFTWARE

- 13.1 Unless the Contractor has advised the Purchaser before contract award on existing third parties or Contractor's rights 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 14 SUPPLEMENTAL AGREEMENTS

- 14.1 The Contractor has submitted all relevant draft supplemental agreement(s), documents and permissions prior to contract award, the execution of which by the Purchaser is/are required by national law or regulation. If any supplemental agreements, documents and permissions are introduced after contract award, and it is determined that the Contractor failed to disclose the requirement for the execution of such

agreement from the Purchaser prior to contract signature, the Purchaser may terminate this contract for Default, in accordance with Clause 19 of NC3A Basic Ordering Agreement, General Provisions.

- 14.2 Supplemental agreement(s), documents and permissions, the execution of which by the Purchaser is/are required by national law or regulation and that have been identified by the Contractor prior to the signature of this contract, but have not yet been finalised and issued by the appropriate governmental authority, are subject to review by the Purchaser. If such supplemental agreement(s), documents and permissions are contrary to cardinal conditions of the signed contract between the Parties, and the Purchaser and the appropriate governmental authority can not reach a mutual satisfactory resolution of the contradictions, the Purchaser reserves the right to terminate this contract and the Parties agree that in such case the Parties mutually release each other from claim for damages and costs of any kind, and any payments received by the Contractor from the Purchaser will be refunded to the Purchaser by the Contractor.

ARTICLE 15 INVOICES AND PAYMENT

- 15.1 Payment for supplies and services furnished shall be made in the currency quoted by the Contractor for the relevant portion of the Contract.
- 15.2 The term of the contract may not be exceeded without prior approval of the Purchaser. In no case will the Purchaser make payment above the total of the corresponding CLIN.
- 15.3 No payment shall be made with respect to undelivered supplies; works not performed, services not rendered and/or incorrectly submitted invoices.
- 15.4 The Contractor shall be entitled to submit invoices in accordance with the following Payment schedule:
- (a) 100% of CLIN 1 through 3 after delivery and successful Purchaser's inspection and acceptance on the basis of proper inventory and delivery documentation to be provided by the Contractor.
- 15.5 The Contractor shall render all invoices in a manner, which shall provide a clear reference to the Contract. Invoices in respect of any service and/or deliverable shall be prepared and submitted as specified hereafter and shall contain: contract number, contract amendment number (if any) and the Contract line item(s) if the invoices cover several CLINs as they are defined in the priced Schedule of Supplies and Services.
- 15.6 The invoice shall contain the following certificate:
"I certify that the above invoice is true and correct, that the delivery of the above described items has been duly effected and/or that the above mentioned services have been rendered and the payment therefore has not been received."
The certificate shall be signed by a duly authorised company official on the designated original.
- 15.7 The invoice amount is exclusive of VAT and exclusive of all Taxes and Duties as per Clause "Taxes and Duties" of the NC3A Basic Ordering Agreement, General Provisions.

- 15.8 The Purchaser is released from paying any interest resulting from any reason whatsoever.
- 15.9 Invoices shall be submitted to:
NC3A Financial Management Office (FMO)
Boulevard Léopold III
B-1110 Brussels, Belgium
- 15.10 NC3A will make payment within 45 days of receipt by NC3A of a properly prepared and documented invoice

ARTICLE 16 CONTRACT ADMINISTRATION

- 16.1 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.
- 16.2 The Contractor shall accept Contract modifications only in writing from the NC3A Contracting Authority.
- 16.3 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 to the following address:

Purchaser	Contractor
NATO C3 AGENCY Boulevard Leopold III B-1110 Brussels Belgium	
For contractual matters: attn: Mr. Sven Schumacher Contracting Officer Tel: +32 (0)2 707 8576 Fax: +32 (0)2 707 8770 E-mail for UNCLASSIFIED use only: sven.schumacher@nc3a.nato.int	For contractual matters:
For technical matters: attn. LtCol Radu Rosianu IPT5 Project Manager Tel: +32 (0)2 707 8212 Fax: +32 (0)2 707 8770 E-mail for UNCLASSIFIED use only: radu.rosianu@nc3a.nato.int	For technical matters:

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