

BOOK II

PROSPECTIVE CONTRACT

RFQ-CO-115283-NATINAMDS – Amendment 1

**Hardware for Installation of the local AirC2 System Accession to
NATO of the Republic of North Macedonia**



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NCI AGENCY CONTRACT	
1. Original Number ___ of 3	2. Accounting Data :
3. Contract Number: CO-115283-NATINAMDS	4. Effective date:
5. Contractor:	6. Purchaser: NCIO represented by: The General Manager NCI Agency Boulevard Leopold III B-1110 Bruxelles Tel: +32(0)2 707 8591 Fax: +32(0)2 707 8770
7. CONTRACT SCOPE: This is a fixed-price Contract for the procurement of hardware to be installed by NATO in the Air Operations Centre (AOC) of North Macedonia. The Contractor shall deliver the items specified in the Schedule of Supplies and Services in the manner and at the time and location specified in accordance with the terms of this Contract, and more particularly, in the Statement Of Work.	
8. TOTAL AMOUNT OF CONTRACT: DDP Destination (Incoterms) FFP _____	
9. PERIOD OF PERFORMANCE EDC + 8 weeks	10. LOCATION OF WORK AOC Drenov Dol, Petrovec, North Macedonia and The Hague, The Netherlands
11. CONTRACT This Contract consists of the following parts and named documents: a) Book II, Part I. Schedule of Supplies and Services b) Book II, Part II. Special Contract Provisions and Annexes c) Book II, Part III. BOA General Contract Provisions. Part II of the Basic Ordering Agreement _____ dated ____, is incorporated herein by reference. d) Book II, Part IV. Statement of Work	
12. Signature of Contractor	13. Signature of Purchaser
14. Name and Title of Signer	15. Name and Title of Signer
16. Date signed by the Contractor	17. Date signed by the Purchaser

NATO UNCLASSIFIED

RFQ-CO-115283-NATINAMDS-Amdt 1
Book II – The Prospective Contract
Part I – Schedule of Supplies and Services

PART I – SCHEDULE OF SUPPLIES AND SERVICES

~~(TO BE COMPLETED AT CONTRACT AWARD)~~

(THIS SECTION WILL BE DERIVED FROM THE BIDDING SHEETS SUBMITTED BY THE SUCCESSFUL BIDDER)

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Book II –Part I Page 4 of 12

PART II – CONTRACT SPECIAL PROVISIONS

ARTICLE 1 DEFINITIONS

- 1.1 For the purpose of this contract and unless otherwise explicitly indicated, the following definitions shall apply:
- 1.2 “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.
- 1.3 “Basic Ordering Agreement (BOA)”: Means the separate agreement the Contractor holds with the NCI Agency under the auspices of the NCI Agency BOA Program.
- 1.4 “Contracting Authority”: The General Manager of the NCI Agency, the Director of Acquisition 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.
- 1.5 “Contractor”: The person or legal entity from a Participating Country which has signed this Contract and is a Party thereto
- 1.6 “NCIA General Provisions”: Means the General Provisions contained in the Contractor’s BOA.
- 1.7 “Participating Country”: Means one of the contributory NATO nations in the project, namely, (in alphabetical order): ALBANIA, BELGIUM, BULGARIA, CANADA, CROATIA, CZECH REPUBLIC, DENMARK, ESTONIA, FRANCE, GERMANY, GREECE, HUNGARY, ICELAND, ITALY, LATVIA, LITHUANIA, LUXEMBOURG, MONTENEGRO, NETHERLANDS, NORTH MACEDONIA, NORWAY, POLAND, PORTUGAL, ROMANIA, SLOVAKIA, SLOVENIA, SPAIN, TURKEY, UNITED KINGDOM, UNITED STATES OF AMERICA.
- 1.8 “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 2 ORDER OF PRECEDENCE

- 2.1 In the event of any inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:
 - a. Part I - The Schedule of Supplies and Services
 - b. Part II - The Contract Special Provisions
 - c. Part III – The Terms of the governing Basic Ordering Agreement as specified in Block 11
 - d. Part IV – The Statement of Work

ARTICLE 3 PARTICIPATING COUNTRIES

- 3.1 Unless prior written authorisation of the Purchaser has been obtained, none of the Work, including project design, labour and services, shall be performed other than by firms from and within NATO Participating Countries.

ARTICLE 4 SCOPE OF WORK

- 4.1 The Contractor shall provide all material, equipment, transportation and supervision necessary for the provision of the equipment listed in the Contract Schedule of Supplies and Services in accordance with the specification set in the Statement of Work and with the terms set forth in the present Contract.
- 4.2 The Agreement and Acceptance of this Contract by the Parties neither implies an obligation on either part to extend the Contract beyond the specified scope or terms, nor to prohibit the Parties from mutually negotiating modifications thereto.

ARTICLE 5 SUB-CONTRACTORS

- 5.1 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.
- 5.2 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.

ARTICLE 6 FIRM FIXED PRICE

- 6.1 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.
- 6.2 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.
- 6.3 The Total Contract price is inclusive of all expenses related to the performance of the present contract.
- 6.4 The Total Contract price in this Contract is Delivered Duty Paid (INCOTERMS 2000).

ARTICLE 7 COMPREHENSION OF CONTRACT AND SPECIFICATIONS

- 7.1 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.
- 7.2 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.
- 7.3 The Contractor hereby acknowledges that he has no right to assert against the Purchaser, its officers, agents or employees, any claims or demands with respect to the aforesaid specifications as are in effect on the date of award of this Contract.
- a. Based upon impossibility of performance, defective, inaccurate, impracticable, insufficient or invalid specifications, implied warranties of suitability of such specifications, or
 - b. Otherwise derived from the aforesaid specifications, and hereby waives any claims or demands so based or derived as might otherwise arise.
- 7.4 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.

ARTICLE 8 SUPPLEMENTAL AGREEMENTS

- 8.1 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 the Clause "Termination for Default" of NCI Basic Ordering Agreement, General Provisions.
- 8.2 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 finalized 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 cannot reach a mutual satisfactory resolution of the contradictions, the Purchaser reserves the right to terminate this Contract and the Parties agree that in such case the Parties mutually release each other from claim for damages and costs of any kind, and any payments received by the Contractor from the Purchaser will be refunded to the Purchaser by the Contractor.

ARTICLE 9 PLACE AND TERMS OF DELIVERY

- 9.1 Deliverables under this Contract shall be delivered DDP (Delivered Duty Paid) to 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 10 TITLE AND RISK OF LOSS

- 10.1 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 IV - Statement of Work.
- 10.2 Notwithstanding Article 10.1 above, the risk of loss or damage to supplies which fail to conform to the requirements of the Contract shall remain with the Contractor until cure or acceptance, at which time Article 10.1 above shall apply.
- 10.3 Notwithstanding Article 10.1 above, the Contractor 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 Contract.

ARTICLE 11 CHANGES

- 11.1 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 NCI Agency Basic Ordering Agreement, General Provisions.
- 11.2 Except as otherwise provided for in this Contract, prices quoted for the changes, modifications, etc. shall have a minimum validity period of 3 months from submission.

ARTICLE 12 CONTRACT ADMINISTRATION

- 12.1 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.
- 12.2 All notices and communications between the Contractor and the Purchaser shall be written and conducted in the English language. Contract modifications shall only be valid when received in writing from the General Manager, NCI Agency, and/or the NCI Agency Contracting Authority.
- 12.3 Formal letters and communications shall subsequently be personally delivered or sent by mail, registered mail, courier or other delivery service, to the official points of contact quoted in this Contract. Facsimile and e-mail may be used to provide an advance copy of a formal letter or notice which shall subsequently be delivered through the formal communication means.
- 12.4 Informal notices and informal communications may be exchanged by all communication means, including telephone and e-mail. All informal communication must be confirmed by a formal letter or other formal communication to be contractually binding.
- 12.5 All notices and communications shall be effective on receipt.
- 12.6 Official Points of Contact:

Purchaser	Contractor
NCI Agency	
For contractual matters: Attn: Ms Elif Bailey, Senior Contracting Assistant Tel: +32 2 707 2259 E-mail: Elif.Bailey@ncia.nato.int	For contractual matters: Attn: Tel: Fax: E-mail:
For technical/project management matters: Attn: XXX Tel: XXX E-mail: XXX	For technical/project management matters: Attn: Tel: Fax: E-mail:

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

ARTICLE 13 RELEASE OF INFORMATION

- 13.1 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.

ARTICLE 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 Delivery Schedule 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 EUR 300 for each day of delivery delay of the respective Contract CLINs. 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.
- 14.2 In addition, the Purchaser may terminate this contract in whole or in part as provided in Clause 19 ("Termination for Default") of the BOA General Provisions. In the event of such a termination, the Contractor shall be liable for Liquidated Damages accruing to the date of termination, as well as the excess costs stated in the referred clause.
- 14.3 The Contractor shall not be charged with liquidated damages when the delay arises out of causes beyond the control and without the fault or negligence of the Contractor as defined in Clause 19 of the BOA General Provisions. In such event, subject to the provisions of the Disputes and Arbitration Clause, the Purchaser shall ascertain the facts and extent of the delay and shall extend the time for performance of the contract when in his judgement the findings of fact justify an extension.
- 14.4 Liquidated damages shall be payable to the Purchaser from the first day of delinquency in delivery and shall accrue at the rate specified in paragraphs above to a maximum of Fifteen Percent (15%) of the applicable payment for the line item in the Schedule of Supplies. Cumulative assessed Liquidated Damages will not exceed a total of Ten Percent (15%) of the total value of the Contract.
- 14.5 The amount of Liquidated Damages due by the Contractor shall be recovered by the Purchaser in the following order of priority:
- a. By deducting such damages from the amounts due to the Contractor against the Contractor's invoices.
 - b. By proceeding against any surety or deducting from the Performance Guarantee if any.
 - c. By reclaiming such damages through appropriate legal remedies.

ARTICLE 15 WARRANTY

- 15.1 The Contractor shall provide the standard manufacturer's warranty for all material provided under this Contract. The warranty period shall be 12 Months starting from Final Acceptance which shall coincide with the acceptance of the last delivery under this contract.
- 15.2 For this purpose the Contractor shall provide exact warranty conditions by type of equipment and detailed handling instructions, including information of Points of Contact to be contacted in case of a warranty claim.

ARTICLE 16 INVOICES AND PAYMENT

- 16.1 Following Purchaser acceptance, in writing, payment for supplies and services furnished shall be made in the currency specified for the relevant portion of the Contract.
- 16.2 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 CLINs.
- 16.3 No payment shall be made with respect to undelivered supplies; works not performed, services not rendered and/or incorrectly submitted invoices.
- 16.4 No payment shall be made for additional items delivered that are not specified in the contractual document.
- 16.5 The Contractor shall be entitled to invoice 100% of the total amount of the Base Contract, only after the successful delivery of CLINs 1 through 12 as well as Purchaser's inspection and acceptance on the basis of proper inventory and delivery documentation to be provided by the Contractor.
- 16.6 The invoice amount shall be exclusive of VAT and exclusive of all Taxes and Duties as per Clause "Taxes and Duties" of the NCI Agency Basic Ordering Agreement, General Provisions.
- 16.7 The Purchaser is released from paying any interest resulting from any reason whatsoever.
- 16.8 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, Purchase Order number, Contract Amendment number (if any) and the Contract Line Item(s) (CLIN) as they are defined in the priced Schedule of Supplies and Services.
- 16.9 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.

- 16.10 Invoices referencing “**CO-115283-NATINAMDS / PO TBD**” shall be submitted in electronic format to:

accountspayable@ncia.nato.int

An Electronic copy shall be sent to the Contracting Assistant, at the email address specified in the clause “Contract Administration”.

- 16.11 NCI Agency will make payment within 60 days of receipt by NCI Agency of a properly prepared and documented invoice.

ARTICLE 17 OPTIONS

- 17.1 The Purchaser may unilaterally exercise any Option(s) listed in the Schedule of Supplies and Services from EDC to EDC + 8 weeks.
- 17.2 This unilateral exercise shall be via a formal contract amendment, effective on the date of Purchaser signature, and communicated in accordance with ARTICLE 12 . In no event shall the Contractor engage in the performance of any options or part thereof without the written consent of the Purchaser Contracting Authority.
- 17.3 This unilateral right does not create an obligation on the part of the Purchaser to exercise any Option(s).