



NATO SUPPORT AND PROCUREMENT AGENCY
AGENCE OTAN DE SOUTIEN ET D'ACQUISITION

COLLECTIVE NUMBER: JTH24003 – Draft Outline Agreement

CONTRACT No:
460000XXXX

VENDOR
NAME AND
ADDRESS

(Please refer to this number
in all future
correspondences)

Vendor No:

EFFECTIVE DATE: 00 XXX 202X

SCOPE OF CONTRACT: Vasco de Gama Frigates (FFGH) Mid Life Upgrade (MLU)/Ocean Patrol Vessels (OPV) Sensor Weapon and Command Control (SEWACO) Acquisition, Integration, Installation and Integrated Logistics

The Contractor represents that it operates as ☐ an individual ☐ a non-profit organization ☐ a corporation incorporated in

The Contractor agrees to furnish and deliver all the supplies and to perform all the services set forth in the Price Matrix attached to the Terms and Conditions for the consideration stated herein. The rights and obligations of the parties to this Contract shall be subject to and governed by the Terms and Conditions and the General Provisions. To the extent of any inconsistency between the Terms and Conditions or the General Provisions and any specifications or other provisions which are made a part of this Contract, by reference or otherwise, the Terms and Conditions and the General Provisions shall control. To the extent of any inconsistency between the Terms and Conditions and the General Provisions, the Terms and Conditions shall control.

This Contract consists of:

- Terms and Conditions containing 35 Parts
- NSPA General Provisions for Fixed Price Contracts (Materiel)
- NSPA General Provisions for Fixed Price Contracts (Services)
- Termination for Convenience of NSPA
- NSPA Supplier Code of Conduct
- NSPA Materiel Inspection and Shipping Report (MISR) NSPA Form 194
- Statement of Work dated 14 November 2023
- Price Matrix

all of which are hereby made a part of the Contract and incorporated herein by reference.

The following documents are available on the Internet at:

<https://www.nspa.nato.int/business/procurement/general-information>

- NSPA General Provisions for Fixed Price Contracts (Materiel)
- NSPA General Provisions for Fixed-Price Contracts (Services)
- Termination for Convenience of NSPA
- NSPA Materiel Inspection and Shipping Report (MISR) NSPA Form 194 with relevant distribution instructions
- NSPA Supplier Code of Conduct

TERMS AND CONDITIONS

Part 1 - Items and Services to be furnished by the Contractor	4
Part 2 - Ordering Procedure for Optional Items	4
Part 3 - Validity of Contract.....	4
Part 4 - Purchase Orders.....	5
Part 5 - Revision of Fixed Prices / Rates	5
Part 6 - Delivery Terms.....	6
Part 7 - Place of Delivery and Testing	7
Part 8 - Contractor Notice Regarding Late Delivery	7
Part 9 - Invoicing and Payment	7
Part 10 - Conflict Resolution	9
Part 11 - Liquidated Damages.....	9
Part 12 - Quality Control, Inspection and Acceptance	10
Part 13 - Permits and Customs Clearance Formalities.....	10
Part 14 - Completion & Distribution of NSPA Materiel Inspection Shipping Report (MISR)	11
Part 15 - Marking, Packaging, Handling, Storage and Transportation	11
Part 16 - Contractor Facilities and Capabilities	11
Part 17 - Security	12
Part 18 - Safety and Accident Prevention.....	12
Part 19 - NSPA Representatives and Verification	12
Part 20 - NSPA Furnished Property	13
Part 21 - NSPA Property upon which Work is to be performed.....	13
Part 22 - Warranty	14
Part 23 - Subcontracts	15
Part 24 - Intellectual Property Rights, Royalties and License Rights.....	15
Part 25 - Termination for Convenience of NSPA.....	16
Part 26 - Reporting	16
Part 27 - Notification of Changes.....	16
Part 28 - Performance of the Contractor in Time of Alert or War.....	17
Part 29 - Contract Administration	17
Part 30 - Publicity and Public Relations.....	18
Part 31 - NSPA Supplier Code of Conduct.....	18
Part 32 - Information Technology- Cyber Security.....	18
Part 33 - Intellectual Property Rights (IPR) – Limited Rights, NSPA/End User Right of Use	19
Part 34 - Intellectual Property Rights (IPR) of Ship Platform Systems Engineering (Ship Modifications) Design – Vesting in NATO/End User.....	20
Part 35 - Limitation of Liability	21
Part 36 - Force Majeure.....	21

Part 1 - Items and Services to be furnished by the Contractor

1. The Contractor shall furnish to NSPA the items and services listed and priced in the attached document entitled Price Matrix and in accordance with the Statement of Work dated 16 April 2024.
2. The prices set forth in the "Price Matrix" cover full and unconditional acceptance by the Contractor of all the requirements and conditions included in the Contract. These pricing arrangements satisfy any and all expenses incurred by the Contractor for a satisfactory performance of the workscope as required under the Contract at contract award and priced in the Price Matrix. Any subsequent changes in scope after award are subject to Part 28 – Notification of Changes.

Part 2 - Ordering Procedure for Optional Items

NSPA reserves the right to order those requirements marked in the Statement of Work as Optional items/services during the Contract term within a bilaterally coordinated timeframe. Any time limits for the exercise of certain options due to conflicts with the progress of the project shall be communicated in advance – not later than the finalization of the Master Schedule.

Part 3 - Validity of Contract

1. The Contract shall be effective for the period commencing with the effective date indicated on the page one of the Contract and shall be valid for a period of 9 years.
2. NSPA reserves the unilateral right to extend the Contract for either one (1) further period of two (2) years or two (2) further periods of one (1) year with the issue of a Change Order to this Contract six (6) months prior to its expiration date. Pursuant to Part 2, NSPA shall have the irrevocable and unilateral right to exercise the ILS options (upon bilateral timing arrangements) reflected in the Price Matrix at any point during the validity period of the Contract. The prices of such options shall be those set forth in the Price Matrix also subject to Part 5 -Revision of fixed prices/rates.

NSPA shall have the irrevocable and unilateral right to exercise the systems options (i.e. FFGH 2D Radar & FFGH EOS) reflected in the Price Matrix within 3 months from the effective date of the Contract. The prices of such options shall be those set forth in the Price Matrix also subject to Part 5 -Revision of fixed prices/rates.

Part 4 - Purchase Orders

1. All services and items to be provided by the Contractor under the Contract shall be ordered by NSPA by Purchase Orders.
2. Purchase Orders represent a financial commitment from NSPA upon execution. The Purchase Orders for the Sensor/Navigation Systems, Combat Management System Design and Frigate Systems Engineering Design will be issued in tandem with signing the Contract.
3. Purchase Orders shall be in writing, dated and numbered, and shall set forth:
 - The services to be performed and/or material to be delivered
 - The description and quantities of components to be serviced or supplied and work to be done.
 - The unit prices and total prices
 - Delivery and performance dates, where agreed.
 - Transport requirements, if different from the ones specified in Part 15 hereof.
4. The terms and conditions, as well as the prices set forth herein shall govern all Purchase Orders issued against this Contract. Amendments to Purchase Orders may be issued subject to the same conditions as the original Purchase Order. The Contractor will acknowledge receipt of the Purchase Order or amendment by signing it.
5. To the extent a Purchase Order sets forth an expenditure limit (e.g. Not to Exceed – NTE), NSPA shall not be obliged to pay the Contractor any amount in excess of that amount and the Contractor shall not be obligated to continue the performance of work by virtue of which NSPA's obligation hereunder would exceed that amount.
6. No Purchase Orders will be issued by NSPA beyond the validity period of the Contract. In case of Purchase Orders which have been issued but are not completed prior to the expiration of the Contract, their processing will continue until completion, at the terms and conditions specified herein or in the relevant Purchase Order(s), unless otherwise notified by NSPA.

Part 5 - Revision of Fixed Prices / Rates

1. The prices are fixed at economical conditions of the year 2024 and shall not be subject to revision for the first three (3) years of Contract validity. Prices for years 4, 5, 6, 7, 8, 9 and thereafter (in case the Contract validity is extended) shall be revised in 2 year increments by application of the below formula based on indexes published by the applicable National Statistics Institute where the Contractor's operations are based. The indexes are to be nominated by the Contractor before contract award and cannot be changed:

$$P = P_o \{0.2 + [0.3 (M/M_o)] + [0.5 (L/L_o)]\}$$

where

P	revised /fixed price for the applicable 2 year period
Po	For Years 4-5: fixed price set forth in the Price Matrix for Year 3 of the Contract. For Years 6-7 & 8-9: Po equals the P value of the previous revision.
M	For Years 4-5: Material Index for the applicable month (or quarter) and year that the period of performance for Year 3 ends. For Years 6-7 & 8-9: Material Index for the applicable month (or quarter) and year that the period of performance for the previous year ends.
Mo	For Years 4-5: Material index for the base reference month (or quarter) and year of contract award For Years 6-7 & 8-9: Mo equals the M value of the previous revision.
L	For Years 4-5: Labor Index for the applicable month (or quarter) and year that the period of performance for Year 3 ends. For Years 6-7 & 8-9: Labor Index for the applicable month (or quarter) and year that the period of performance for the previous year ends.
Lo	For Years 4-5: Labor index for the base reference month (or quarter) and year of contract award For Years 6-7 & 8-9: Lo equals the L value of the previous revision.

- Price revision will be effective four (4) weeks after the date of receipt of the indices above as furnished by the Contractor and will not be applied retroactively.

In cases where the index increase is greater than 5% within an established 2 year increment, the price revision formula will be applied annually re-establishing the 2-year increment baseline.

Part 6 - Delivery Terms

- The Contractor shall deliver all items under this Contract as **FCA – Port of Debarkation (Incoterms 2020)**_customs cleared for export to the European Union.
- All Purchase Orders issued under this Contract shall set forth a contractual delivery date.
- The maximum acceptable time frame (contractual delivery date) shall be in accordance with the time frames specified in MGMT_Req.2 in the Statement of Work. The Contractor shall be responsible for completing all tasks ordered under the Purchase Orders as delineated in MGMT_Req.2 of the SOW and/or to be finalized in the Master Schedule after award.
- The Contractor shall be responsible for performing all customs clearance formalities and providing shipping documents, as required per INCOTERM FCA requirements,

NATO UNCLASSIFIED

and for arranging inspections by NSPA or the End User within the contractual delivery date.

5. The Contractor shall not be held liable for NSPA/End User-caused delays to include delays in providing Government/NATO Furnished Property as delineated in the Statement of Work. In cases of NSPA/End User-caused delays, the delivery date will be extended. For NSPA/End User-caused delays exceeding six (6) months, costs incurred by the Contractor as a direct result of the delay will be considered for reimbursement contingent upon submission of adequate supporting documentation/information to validate the cost incurrence. The Contractor shall take all reasonable measures to minimize the cost impact of such delay. Such reimbursement will be limited to incurred costs only and shall not include indirect costs, punitive damages or anticipated profits. The provided support must be of a sufficient detail for NSPA to be able to make an independent assessment of fair and reasonableness. Any disagreements regarding the reimbursement of incurred costs as a result of an NSPA/End User-caused delay are subject to Clause 13 – Disputes in the General Provisions.

Part 7 - Place of Delivery and Testing

1. VGAM FFGH: The place of performance to include all supply/service deliveries, onboard activities (i.e. installation, setting to work, etc.) and commissioning (Harbor Acceptance/Sea Acceptance Trials) is Arsenal do Alfeite Shipyard in Lisbon, Portugal.
2. OPV3S: The place of performance for supply deliveries and installation activities is West Sea Viana Shipyard in Viana do Castelo, Portugal.
3. The place of performance for all other activities (integration, setting to work, commissioning) either Arsenal do Alfeite or Lisbon Naval Base in Lisbon, Portugal.

Part 8 - Contractor Notice Regarding Late Delivery

In the event that the Contractor encounters difficulty in meeting the contractual delivery date(s) specified in any Purchase Order, they shall notify NSPA in writing as soon as possible and not later than four (4) business days, giving pertinent details. However, this data shall be for information only and shall not be construed as a waiver by NSPA of any time limit or of any rights or remedies provided under this Contract and/or any Purchase Order released against this Contract.

Part 9 - Invoicing and Payment

1. The items and services ordered through Purchase Order(s) shall be invoiced within 45 days after milestone acceptance of items and services called for.
2. Invoices shall be sent as PDF-document to:
CIMO@nspa.nato.int
(Only invoices and credit notes are treated under this email address.)

3. For the supply deliverables (e.g. sensor, navigation, auxiliary systems as well as special tooling and spares) the invoice must be accompanied by 1 copy of the NSPA Materiel Inspection and Shipping Report (MISR, NSPA Form 194). The invoice submitted and the attached MISR form shall bear the contract and/or purchase order reference number, shall refer to the service line item and shall show as separate items of cost all repair parts used. Faxed invoices are not accepted for payment.

4. The following certificates shall be affixed to each invoice submitted for services, repair parts and other reimbursable costs:

- a. All invoices:

"I certify that this invoice is correct and just, that payment has not been received and that the price is exclusive of all taxes and duties from which NSPA is exempted."

- b. In addition:

- i. For work done on a labor hour basis

"I certify that the labor hours of producing personnel as shown are true summaries of direct labour hours actually used in the performance of the work as extracted from the company timekeeping records which are available to NSPA for verification and audit."

5. Payment

Payment against Contractor invoices shall be made in ----- (bidder to specify currency) within (...) days with .. % prompt payment discount or (...) days net following receipt by NSPA of invoices duly certified, supported and substantiated as specified above.

(This paragraph will be completed at time of award)

6. NSPA will pay the net invoice amount and support the charges of its bank. All other charges will be for the Contractor.
7. The payments will be made to the account identified by the Contractor at time of registration to the NSPA Source file.

OR

The payment will be made by NSPA as follows:

- a. Full name and address of banker(s)
- b. Detailed bank account information as follows:
- For EU countries: IBAN code plus BIC
 - For USA: bank account number(s) + ABA code (or SWIFT code)
 - For Canada: bank account number(s) + bank code (5 digits) and branch code (3 digits)
 - For any other country: bank account number(s) plus any country-specific codes, if applicable.

Part 10 - Conflict Resolution

1. The Parties shall endeavor, by negotiations in good faith, to settle any dispute between them arising out of or relating to the Contract including the breach, termination or invalidity of the Contract. Any dispute, which cannot be settled by negotiation, may, with the agreement of the Parties, be referred to conciliation. Any dispute, which cannot be settled by negotiation or conciliation, or both, shall be referred, on the application of either Party, to arbitration for a final and conclusive determination in accordance with the General Provisions.
2. During any negotiation, conciliation or arbitration, the Parties shall continue to meet their respective obligations in accordance with the provisions of the Contract.
3. Either Party shall have the right to initiate arbitration at any time during a negotiation or conciliation process, notwithstanding that a negotiation or conciliation may continue concurrently with an arbitration process.
4. Conciliation

Either Party may invite the other to conciliate the Dispute under the International Chamber of Commerce (ICC) Optional Conciliation Rules in effect on the date of the Contract unless the Parties agree on other rules and procedures. Agreements reached are to be recorded in writing and the Contract modified as appropriate. Any Party not wishing to use conciliation shall give its reasons in writing to the other Party.

Part 11 - Liquidated Damages

1. If the Contractor fails to deliver within the time specified in the Purchase Order, they shall pay NSPA liquidated damages:
 - a. For the ship level deliverables (e.g. sensor/navigation systems, design deliverables, commissioning services, etc.) at the rate of 1 % for each six (6) month period of such delay of the provisional acceptance of each ship but not more than a total of 10 % of the total price of the applicable ship not delivered on time.
 - b. For the ILS deliverables at the rate of 1% for each full month of such delay from the delivery date established in the applicable Purchase Order but not more than a total of 10% of the total price of the ILS services/supplies not delivered on time.
2. Without prejudice to the final decision regarding the liquidated damages, NSPA shall be entitled to deduct imposed liquidated damages when paying invoices, even in the event that claims deriving from submitted invoices have been assigned or otherwise transferred to third parties. The total of the deductions made by NSPA pursuant to this clause will be considered as full and final satisfaction of all claims received out of late delivery of any systems, supplies and/or services.
3. During a period of one year after delivery and acceptance of the services performed, NSPA shall have the right to claim liquidated damages even if such right is not

reserved at the time when delivery is accepted. This is to allow time for the Contract Remedies process to run its course.

4. The liquidated damages will not apply if the Contractor's failure to perform is due to causes beyond their control and without their fault or negligence such as force majeure events as defined in Part 36.
5. Such causes are defined in Part 36 - Force Majeure. If the Contractor is responsible for obtaining necessary export licenses / permits / DSP forms, it has to ensure that such requests are made in a timely manner so as to not delay shipment. Failure to do so will NOT be considered Force Majeure. As such, the Conflict Resolution described in Part 10 shall be exercised before the application of liquidated damages allowing due process to fully investigate deficiencies.
6. The foregoing provisions of this part apply only to delinquencies in deliveries and do not prejudice NSPA's rights under the provisions of the clause entitled "Default" of the General Provisions for Fixed Price Contracts (Services) & (Materiel).

Part 12 - Quality Control, Inspection and Acceptance

1. The Contractor is responsible for maintaining effective control of the quality of materiel and services. If the Contractor is not the manufacturer of the contracted materiel, they shall impose these quality requirements upon their subcontractor(s).
2. In cases where an AQAP is specified: The Contractor shall meet its requirements. The Contractor must provide a Certificate of Conformance (CoC). In case they are not the manufacturer, they shall provide a copy of the CoC received from the original manufacturer.
3. The MISR shall not be used in lieu of a CoC.
4. The Verification and Acceptance process is outlined in paragraph 10.6 of the SOW.

Part 13 - Permits and Customs Clearance Formalities

1. The Contractor warrants that they have or will obtain at no cost to NSPA all necessary licenses and permits required in connection with the Contract; also that they will fully comply with all laws, decrees and regulations of the country or countries concerned during the performance of the Contract, including the observance of all applicable rules and regulations governing the site on which work is to be performed.
2. All customs clearance formalities for export from origin country (when applicable) shall be performed by the Contractor at their cost per the Seller's responsibility under INCOTERM FCA. NSPA shall in no case be responsible for charges of any nature incurred by the Contractor in effecting such export clearance or for any customs infraction committed by the Contractor in connection therewith. The Contractor shall be responsible for compliance with all applicable national import and export customs regulations and formalities at Origin, including payment of fees incident thereto and the posting of a customs bond, if required, and further, including all required licenses, customs declarations and other documentation, concerning the entry to and the exit

NATO UNCLASSIFIED

from the Contractor's facility, of all items or materiel pertinent to the Contractor's performance under this Contract. This liability shall also cover potential return of the equipment to the OEM's facility. NSPA will responsible for import into the European Union per the Buyers' responsibility under INCOTERMS FCA. Associated documentation related to custom clearance needed from either party shall be provided as required.

Part 14 - Completion & Distribution of NSPA Materiel Inspection Shipping Report (MISR)

1. Completion (for supply deliverables only).
 - a. The MISR is printed on Form 194. The MISR is available in the Internet. United States Contractors may use DD Form 250, or a modification thereof in lieu of the MISR.
 - b. The Contractor shall complete all blocks, except blocks 22 and 27, which are reserved for use by NSPA. Block 19 of form 194 must also be completed with the relevant Document Number(s).
 - c. The MISR shall be used to document NSPA acceptance of the physical delivery of items.
2. Distribution.
 - a. Four copies inside the exterior container in which materiel is packed for shipment and four copies inserted in a waterproof envelope attached to the outside of the exterior container. If the shipment consists of more than one exterior container, the copies should accompany container n° 1.
 - b. One (1) copy to be attached to the Contractor's invoice.

Part 15 - Marking, Packaging, Handling, Storage and Transportation

1. The shipping documentation and all items or tags attached thereto will bear the following information: purchase order number, purchase order line number, NATO Stock number/Part number and quantity.
2. All containers (interior and exterior) will show the vendor's shipment notification number.
3. See detailed packaging, handling, storage and transportation requirements in paragraph F.9 of SOW Annex E of the Statement of Work.

Part 16 - Contractor Facilities and Capabilities

1. The Contractor warrants that they have suitable facilities available and that they have all necessary license rights and skilled personnel, technical orders, data, specifications, drawings, standard and special test equipment and tooling to enable them to comply with the requirements of this Contract.

NATO UNCLASSIFIED

2. The Contractor warrants that all parts/components for the performance of the requested services for NSPA will be obtained from authorized sources. NSPA reserves the right to demand proof of compliance with this requirement.
3. The Contractor shall use its best endeavors to furnish deliverables under this Contract free of defects and vulnerabilities to IT-/cyber security. To that end, the Contractor shall employ adequate means such as penetration testing, code review, unit testing and other methods as appropriate, and shall provide the results of such means upon NSPA request at no additional cost.

Part 17 - Security

1. The Contractor undertakes to inform NSPA upon contract award date of the identities and NATO clearances of the members of staff who may require access under the Contract to NATO classified information and/or facilities.
2. The Contractor shall adhere to NSPA's information security practices as detailed in this Contract and to IT-/cyber security best practices as detailed in the latest version of the SANS's CIS Controls or alternate framework accepted by NSPA (ISO 27001 series, UK NCSC Cyber Essentials, US DOD Cybersecurity Maturity Model Certification - CMMC, NIST Cybersecurity Framework, AICPA Trust Services Criteria Certification - SOC 2 Framework) or alternate framework approved by NSPA under this Contract. The Contractor shall immediately notify NSPA of any situation when this adherence becomes no longer achievable.
3. The NATO policy on The Management of Non-Classified NATO Information (C-M(2002)60) sets forth the basic principles and minimum standards the Contractor must comply with when handling non-classified NATO information. Any breach of this policy must be reported as an incident in accordance with Part 32 below.

Part 18 - Safety and Accident Prevention

1. In performing any work or services under this Contract on premises which are under the direct control of NSPA's customers, the Contractor shall conform to all safety rules and requirements, and take such additional precautions as may be prescribed on such premises for safety and accident prevention purposes. The Contractor agrees to take all reasonable steps and precautions to prevent accidents and preserve the life and health of Contractor's personnel, NSPA's personnel and/or any third party, performing or in any way involved in the performance of this Contract on such premises.
2. The Contractor is responsible for and must strictly comply with the safety and environmental provisions of the attached SOW, if any.

Part 19 - NSPA Representatives and Verification

1. Subject to prior notification, NSPA/End User representatives will have reasonable access to the premises where the work required by the Contract is being undertaken and to observe or inspect any work or test performed. Accordingly, the Contractor

undertakes to permit such access to their own premises and to ensure that similar rights are included in the terms and conditions of all sub-contracts.

2. Upon NSPA request, the Contractor shall make available all relevant drawings, specifications, procedures, tools, measuring instruments, test equipment and records.

Part 20 - NSPA Furnished Property

1. Tools and Equipment

All necessary tools and other materials not listed in the Statement of Work as being supplied as NSPA/End User Furnished Property must be supplied by the Contractor. The End User will provide some equipment, tooling, office space, etc. needed in order to perform the physical ship modifications. The exact list of what will be provisioned by the End User will be provided prior to bid closing. Any equipment, tooling, etc. not provisioned by the End User must be arranged by the Contractor.

2. Parts and Materials

All parts and materials required for the services under this Contract shall be provided by the Contractor. The Contractor shall procure parts and materials from authorized sources at the best terms possible by obtaining price and delivery quotations in accordance with good procurement practice.

Part 21 - NSPA Property upon which Work is to be performed

1. The term "NSPA Property upon which work is to be performed" as used in this part refers to those end-items or equipment, subject of this Contract, furnished by NSPA/End User for modification.
2. The NSPA property upon which work is to be performed, under this part is to be considered as distinct from NSPA-furnished property to be used in the performance of such work. NSPA property upon which work is to be performed is hereby identified as:
 - Vasco de Gama Class Frigates for modification to fit and installation of procured Navigation, Auxiliary and SEWACO systems
 - Ocean Patrol Vessels for installation of procured Navigation and SEWACO systems.
 - The equipment as listed in Appendix C of the Statement of Work
3. The Contractor's liability for NSPA property upon which work is to be performed shall be subject to the provisions of clause 12 of the General Provisions for Fixed-Price Contracts (Services) of this Contract entitled "NSPA-Furnished Property". However, the end-items or equipment identified in paragraph 1 of this part shall not be considered as "property" or "NSPA-furnished property" within the meaning and for the purpose of any other paragraph of the clause of the General Provisions of this Contract, entitled "NSPA-Furnished Property".

4. Title to NSPA property upon which work is to be performed shall remain with NSPA. The Contractor shall protect such property in accordance with sound industrial practice. For the purpose of this part, it shall be assumed that title to NSPA property upon which work is to be performed is vested in NSPA even though it may, in actuality, be owned by one or more NSPA customers or NATO member states. NSPA shall at all reasonable times have access to the premises where such NSPA property is located.
5. The Contractor shall maintain adequate property records of NSPA property upon which work is to be performed in accordance with the requirements of this Contract.
6. Except as otherwise provided in this Contract, should the NSPA property upon which work is to be performed not be delivered to the Contractor by the time or times specified in the terms and conditions or in any Purchase Order, NSPA shall upon timely written request by the Contractor, make a determination of the delay occasioned by the Contractor thereby, and shall equitably adjust the delivery or performance dates, or the contract price, or both, and any other contractual provision affected by such delay, in accordance with the procedures provided for by the clause in the General Provisions of this Contract entitled "Changes".

Part 22 - Warranty

1. In connection with Clause 9 "Warranty" of the General Provisions Services and Clause 8 "Warranty" of the General Provisions Materiel hereof, the warranty period shall be 12 months provided after acceptance of the Sea Acceptance Test for each respective ship of the ordered supplies and/or services by NSPA or the End User provided on/for said ship. A priced option for an additional 12-month warranty is available upon exercise under the same conditions and based on the price as listed in the Price Matrix.
2. This warranty also includes the performance criteria parameters required in the SOW for any accepted sensor, navigation or auxiliary systems.
3. The warranty period for all design deliverables (e.g. FFGH Modifications and Combat Management System Software) shall be 12 months from the date of Program Final Acceptance (see SOW paragraph 10.6.2, Table 1). A priced option for an additional 12-month design warranty is available upon exercise under the same conditions and based on the price as listed in the Price Matrix.
4. The warranty period for ILS deliverables ordered under separate Purchase Orders shall be 12 months from delivery (see SOW paragraph 10.6.2, Table 1). A priced option for an additional 12-month design warranty is available upon exercise under the same conditions and based on the price as listed in the Price Matrix.
5. In case a defective item is accepted by the Contractor for return and replacement / repair under the warranty conditions of this Contract, the transportation costs for the defective item from NSPA's customer to the place where replacement and correction will be made and back to NSPA's customer, will be borne by the Contractor.
6. Contractor warrants that the parts procured or manufactured by them and utilized in the performance of work under this Contract, shall be free from any defects in materials, manufacture, and workmanship for the same period of time as set forth above.

7. Contractor will inspect and test an item under “warranty” at no cost to NSPA. Also, in cases where Contractor travel to a site is required to confirm a warranty case, for those cases confirmed as warranty returns/replacements/repairs, the associated travel expenses shall be borne by the Contractor.

Part 23 - Subcontracts

1. For the purpose of this clause, sub-contracts means orders to sub-contractors for the services required in the performance of a Purchase Order. Material and supplies acquired by the contractor to perform a Purchase Order is governed by the Special Areas Clause 8 of the General Provisions (Services) and (Material)
2. The Contractor is solely responsible for the performance of the Contract. No consent or approval by NSPA of any sub-contract or any provisions thereof shall be construed to be a determination of the acceptability of any sub-contract price or of any amount paid under any sub-contract or to relieve the Contractor of any responsibility for performing the Contract in accordance with its terms and conditions, unless such approval or consent specifically provides otherwise.
3. The Contractor will inform NSPA of any change of top-tier sub-contractor(s) performing significant portions of the work packages after contract award, prior to the commencement of the service to be subcontracted. In case a change of a sub-contractor is required after contract award, the Contractor shall provide all the necessary documentation and certifications of the proposed sub-contractor to NSPA for approval. Upon receipt of this information, the NSPA’s technical authority (as nominated under Part 30 of this Contract) will accept or reject the proposed sub-contractor and will provide the contractor with a written notification. This clause does not apply to suppliers of routine parts/materials/components.
4. The Contractor shall not enter into any sub-contract with firms located outside NATO countries or having their legal residence outside NATO countries without the written approval of NSPA - Contracting Officer. Only in exceptional cases would NSPA consider such approval.
5. In order to ensure NSPA's rights under this Contract the Contractor shall flow down the relevant requirements. i.e. those for which the Contractor has an obligation towards NSPA to any subcontract they will conclude.
6. Paragraphs 2 to 4 above are critical elements in the performance under this Contract.

Part 24 - Intellectual Property Rights, Royalties and License Rights

1. The Contractor guarantees that it is in possession of all the necessary intellectual property rights in force in the countries where the items will be manufactured and / or services will be performed, under this Contract and in other countries where the intellectual property rights are in force. The Contractor possesses any licenses necessary for the performance of this Contract and made any other arrangements required to protect NSPA from any liability for intellectual property rights infringement in said countries. The Contractor will at its expense hold NSPA harmless and fully indemnify NSPA against all damages, costs, charges, expenses and the like arising from or incurred by any reason of any infringement or alleged infringement of

NATO UNCLASSIFIED

intellectual property rights in consequence of the provision of the service and / or materiel.

2. The Contractor agrees to assure itself that the Original Equipment Manufacturer(s) (OEM) or any entitled third party have not retained any intellectual property rights, before it provides services and / or manufactures items under the Contract. NSPA shall not be liable for intellectual property rights infringements as may be caused by the Contractor.
3. The Contractor confirms that no payments of royalties or fees for intellectual property rights will be claimed by the OEM or any entitled third party for the services performed and / or materiel provided under this Contract. In the event that such fees are claimed, the Contractor will bear any and all responsibility to include adjudicating the claim with the OEM(s).

Part 25 - Termination for Convenience of NSPA

4. The provisions applicable to "Termination for Convenience of NSPA" are appended hereto.

Part 26 - Reporting

The Contractor shall furnish to NSPA the reports set forth in the attached SOW, and any relevant information and data related to the performance of the Contract that may be reasonably requested by NSPA.

Part 27 - Notification of Changes

1. If at any time during the performance of this Contract, the Contractor considers that it has been directed to change or deviate from, in any way, the terms and conditions and/or the scope of this Contract, it shall notify the Contracting Officer immediately. This notification shall as a minimum contain a cost breakdown of the additional costs to be incurred by the Contractor if it would implement the change/deviation and the related impacts on the terms and conditions. This information must be provided to such level of detail to allow the Contracting Officer to provide a comprehensive response within 14 days after receipt of the notification from the Contractor.
2. Following the submission of this notification, the Contractor shall diligently continue performance of this Contract to the maximum extent possible in accordance with its terms and conditions as originally agreed.
3. NSPA shall not bear any responsibility for work performed by the Contractor outside the contract scope and NSPA shall not compensate the Contractor in either time or money for such work not specifically authorized or requested by the Contracting Officer in writing and subsequently included in the Contract through a Supplemental Agreement.
4. Consequently, the Contractor cannot claim additional money and/or time for work performed during the performance of the Contract which has not been identified as part of the scope of this Contract.

NATO UNCLASSIFIED

Part 28 - Performance of the Contractor in Time of Alert or War

The Contractor warrants that, on the basis of information available to it that it is not aware of any national law or regulation, or any circumstances that might prevent it from fulfilling its obligations under this Contract in time of alert or war.

Part 29 - Contract Administration

By the Contractor:

The names of the officials designated by the Contractor to administer this Contract are:

Contractual matters:

Company name: -----
Address: -----

Attn: -----
Phone: -----
Fax: -----
email: -----

Technical matters:

Company name: -----
Address: -----

Attn: -----
Phone: -----
Fax: -----
email: -----

(Will be completed at time of award)

By NSPA:

All correspondence and communications pertaining to contract administration shall be sent to the following:

NATO SUPPORT AND PROCUREMENT AGENCY (NSPA)
L-8302 CAPELLEN, LUXEMBOURG
Attn: ..-MMC (.....)
Phone: (+352) 3063
Fax: (+352)
email:

For all technical matters, the responsible technical authority is:

NATO SUPPORT AND PROCUREMENT AGENCY (NSPA)
L-8302 CAPELLEN, LUXEMBOURG
Attn: ..-MMC (.....)

NATO UNCLASSIFIED

Phone: (+352) 3063
Fax: +352)
email:

(Will be completed at time of award)

Part 30 - Publicity and Public Relations

1. The Contractor shall not make any press release or public statement concerning this Contract without the prior written approval of NSPA.
2. The Contractor agrees that, upon request NSPA may provide copies of the signed Contract to officials of NSPA's customer nation who are or were directly involved in the procurement of the goods and / or services ordered hereunder.
3. The Contractor shall not use the name, emblem or official seal of NSPA / NSPO or any abbreviation of the name of NSPA / NSPO in connection with its business or otherwise, unless prior authorized in writing by NSPA.

Part 31 - NSPA Supplier Code of Conduct

1. The Contractor, its employees, subsidiary or affiliate entities and subcontractors, shall adhere to the minimum standards set forth in the NSPA Supplier Code of Conduct.
2. If the Agency establishes that any of the provisions of the NSPA Supplier Code of Conduct are not complied with, NSPA may terminate this Contract at no cost to NSPA and your firm may be removed from the Agency's source file after the Agency has informed the relevant national authorities.

Part 32 - Information Technology- Cyber Security

1. The Contractor shall inform the NSPA of any IT-/cyber security incident or suspicion of, occurring in its area of responsibility that may adversely impact its obligations under this Contract, or adversely affect NSPA or its Customer Country with regard to their activities, their property, the integrity of their IT-systems, the integrity of data provided by them to the Contractor or by the Contractor to them, their reputation or to any of their readily recognizable interests.
2. This Contractor notification shall occur immediately after discovery of the suspicion as a warning notification to the points of contact identified at Part 30 and the NSPA Cyber Team via email at security-notifications@nspace.nato.int and shall include at a minimum: type of incident, affected data, incident timeline/summary, projected impact, mitigation measures and current status. As soon as possible after the IT-/cyber security incident is averred, and under no circumstances later than 48 hours after the warning notification was issued to NSPA, the Contractor shall provide NSPA with a comprehensive update notification. The Contractor shall at any time provide further details regarding the suspected or averred incident upon NSPA request and duly take into account any advice provided by NSPA to the Contractor with a view to adequately manage the incident in all involved parties' best interest.

NATO UNCLASSIFIED

3. NSPA will endeavor to notify the Contractor when NATO security policy permits, if it becomes aware of any possible IT-/cyber security incident that may adversely impact the Contractor or its supply chain with regard to their activities, their property, the integrity of their IT-systems, the integrity of data provided by NSPA to the Contractor or by the Contractor to NSPA, their reputation or to any of their readily recognizable interests.

Part 33 - Intellectual Property Rights (IPR) – Limited Rights, NSPA/End User Right of Use
--

1. NSPA and the End User shall have the unrestricted right to use, modify, reproduce, release, perform, display, or disclose technical data, and to permit others to do so, that;
 - a. Have been provided to NSPA/End User without restrictions on use, modification, reproduction, or release;
 - b. Are form, fit, and function data. Form, fit and function data is defined as IPR describing overall physical, functional and performance characteristics of an item, component or process to the extent necessary to permit identification of physically and functionally interchangeable items;
 - c. Are a correction or change to technical data furnished to the Contractor by NSPA/End User;
 - d. Are necessary for operation, maintenance, installation, or training (other than detailed manufacturing or process data); or
 - e. Have been provided to the NSPA/End User under a prior contract or licensing agreement through which NSPA/End User has acquired right to use, modify, reproduce, release, perform, display, or disclose the data without restrictions.
 - f. The Contractor agrees that NSPA/End User, and other persons to whom NSPA/End User may have released or disclosed technical data delivered or otherwise furnished under this Contract, shall have no liability for any release or disclosure of technical data that are not marked to indicate that such data are licensed data subject to use, modification, reproduction, release, performance, display, or disclosure restrictions.
2. Except as provided in paragraph 1 above, NSPA/End User may use, modify, reproduce, release, perform, display or disclose technical data within NSPA/End User organizations only. NSPA/End User shall not;
 - a. Use the technical data to manufacture additional quantities of the commercial products; or
 - b. Release, perform, display, disclose, or authorize use of the technical data outside of NSPA/End User without the Contractor's written permission unless a release, disclosure, or permitted use is necessary for emergency repair or overhaul of the commercial products furnished under this Contract, or for performance work by covered NSPA/End User support vendors.
3. The Contractor acknowledges that—

NATO UNCLASSIFIED

- a. Technical data covered by paragraph 2 of this clause are authorized to be released or disclosed to covered NSPA/End User support Contractors;
- b. The Contractor will be notified of such release or disclosure;
- c. The Contractor (or the party asserting restrictions as identified in a restrictive legend) may require each such covered NSPA/End User support contractor to enter into a non-disclosure agreement directly with the Contractor (or the party asserting restrictions) regarding the covered support contractor's use of such data, or alternatively, that the Contractor (or party asserting restrictions) may waive in writing the requirement for an non-disclosure agreement; and
- d. Any such non-disclosure agreement shall address the restrictions on the covered support Contractor's use of the data. The non-disclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement.

Part 34 - Intellectual Property Rights (IPR) of Ship Platform Systems Engineering (Ship Modifications) Design – Vesting in NATO/End User

1. This clause applies to the FFGH Ship Modification design IPR only.
2. All Foreground Information shall vest in and be the property of NATO/End User as soon as it comes into existence, including all Intellectual Property Rights of any nature in Information generated in the performance of work under the Contract as Foreground Information and recorded in any written or other tangible form (including electronically/digitally recorded). The Contractor shall take all necessary measures to secure that vesting for NATO to secure ownership in the Foreground Information. The Contractor shall flow down such vesting requirement to all sub-contractors. On request, the Contractor shall demonstrate to NATO's satisfaction that, where it has sub-contracted work under the Contract, it has secured that vesting in the work performed by its sub-contractors.
3. The Contractor shall take all necessary measures to secure NSPA's legal ability to grant to NATO Member countries any right to use, have used, copy, disclose, reproduce, modify, improve, develop and translate, or have it done by a third party, the Foreground Information, without restrictions.

Note: Foreground Information (FI) is defined as all Information, generated in the performance of work under the Contract and Information conceived out of the technical requirements of the Contract if these have been first enabled in the performance of work under the Contract.

Part 35 - Limitation of Liability

1. Except in cases of gross negligence or misconduct, the Contractor, Contractor's suppliers and personnel shall in no event be liable for any special, indirect, incidental, consequential, collateral, punitive damages or losses (e.g. revenues, anticipated savings, lines stops, recalls, harm to reputation arising in connection with the performance of the Contractor under this Contract.
2. The Contractor shall not be liable for any direct damages exceeding one hundred percent (100%) of the total sum of all issued Purchase Orders under the Contract.
3. The Contractor shall be held liable up the total sum of all issued Purchase Orders under the Contract for any injury (including death), or for any property damage, caused directly by the Contractor and its personnel under performance of the Contract especially in cases caused directly by the gross negligence or willful misconduct of the Contractor and its personnel.
4. A determination of Contractor liability in all cases shall be subject to the Conflict Resolution described in Part 10 as well as Clause 13 – Disputes of the General Provisions.

Part 36 - Force Majeure

1. A Force Majeure is an event beyond the reasonable control of the Contractor or which could not have been reasonably foreseen during solicitation of the Contract, and without its fault or negligence could not have avoided the effects by appropriate measures and has caused a delay in providing services or has precluded the Contractor from performing some or all of the services as provided in the Contract. Subject to the qualifications described above, these include, but are not limited to, extraordinary acts of nature, war, terrorism, hostilities, acts of a reasonably associated Government in either its sovereign or contractual capacity, floods, epidemics/pandemics, quarantine restrictions, strikes, unusually severe weather, and extraordinary delays of common carriers or freight embargoes or of any fire, at any of the Contractor's premises, those of their sub-contractor or where the Contractor is performing work under this Contract.
2. The Contractor shall notify the Contracting Officer (CO) as soon as reasonably possible but not later than four (4) business days after a Force Majeure event. The notice shall be made in writing, identifying the nature of the occurrence and the expected time period of the delay or the inability to perform services. The CO will consider granting an extension of services or a waiver, whichever is deemed appropriate.
3. The Contractor shall not be entitled to any extension of time or waiver, unless the Contractor shall at all times have taken all reasonable measures to prevent or minimize any such delay or inability and to do all that may be reasonably required to proceed with the work.