
DRAFT PURCHASE ORDER

SCOPE OF PURCHASE ORDER: PROCUREMENT OF AN ANTI AIRCRAFT ARTILLERY (AAA) SYSTEM FOR PORTUGAL (PRT) AS DETAILED IN THE STATEMENT OF WORK DATED 06.12.23

The Contractor represents that it operates as ☐ an individual ☐ a non-profit organization ☐ a corporation incorporated in **(Note: To be inserted on award)**

The Contractor agrees to deliver all the materiel set forth in the list of items attached to the Terms and Conditions for the consideration stated herein. The rights and obligations of the parties to this purchase order 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 purchase order, 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.

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This purchase order consists of:

- Terms and Conditions containing 23 Parts
- NSPA General Provisions for Fixed Price Contracts (Materiel) dated 02.11.2023
- Termination for Convenience of NSPA
- [NSPA Supplier Code of Conduct](#)
- NSPA Materiel Inspection and Shipping Report (MISR) NSPA Form 194
 - Shipping notification form
 - Request for exemption of value added tax

all of which are hereby made a part of the purchase order 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)**
- **Termination for Convenience of NSPA**
- **NSPA Materiel Inspection and Shipping Report (MISR) NSPA Form 194 with relevant distribution instructions**

If you have no Internet access, please contact the undersigned and a printed copy of these documents will be forwarded to you

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Part 1 - Materiel to be furnished
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1. The Contractor will supply to the NATO Support and Procurement Agency in the quantity, at the unit and total price indicated, and on the delivery dates specified, the items described in the attached "List of Items" and described in the Statement of Work
2. The prices include all costs in respect of identification, preservation, packaging, packing, marking, quality assurance and inspection incurred by the Contractor.
3. Condition of materiel must be new of current production.

Part 2 - Prices

The prices of this purchase order are firm fixed prices for the core requirement.

The Fixed Firm Prices for the Options are fixed until the third contract year and shall be revised annually thereafter by application of the following formula:

$$P = P_o (0.2 + 0.8 S/S_o)$$

where:

P: Revised Item Price in the subsequent contract year(s) after the third year

P_o: Firm Prices at the third contract year

S_o: applicable index for the month of 20__ (Contractor to provide)

S: applicable index as defined for S_o above, as published for 20__ and of subsequent years of the contract duration (Contractor to provide)

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.

Part 3 - Pricing Warrant

NOT USED

Part 4 - Point of Delivery and Passage of Title
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1. The Contractor will deliver the materiel: INCOTERM 2020 (DDP). The final delivery point shall be as detailed in the statement of work.

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2. Title to the materiel will pass to NSPA at the point of delivery. Claims based on latent defects, fraud, gross negligence, or such gross mistakes to amount to fraud, shall not be prejudiced thereby nor shall the guarantees applicable to the materiel or issuance of discrepancy reports be affected by the said passage of title or acceptance of the materiel.

Part 5 - Contractor Notice Regarding Late Delivery

In the event that the Contractor encounters difficulty in meeting the time limits specified for any materiel, it shall immediately notify NSPA in writing, 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 Purchase Order.

Part 6 - Invoicing and Payment

1. The materiel delivered against this purchase order shall be invoiced within 45 days after delivery.
2. One original invoice shall be submitted to the following address :

As PDF-document to:

CIMO@nspa.nato.int

OR as Hardcopy to :

NSPA
CIMO OFFICE
11 rue de la Gare
L-8302 CAPELLEN

accompanied by the NSPA MISR duly completed as contractually called for and an evidence of delivery. Each invoice submitted and the attached MISR shall bear the purchase order reference number, and shall refer to the line items delivered. Faxed invoices will not be accepted for payment.

3. If the Contractor ships the materiel to the final destination, the only acceptable evidence of delivery shall be a document bearing proof of the transportation charges paid by the Contractor. If not shipped by the Contractor, the only acceptable evidence of delivery shall be a receipt document signed by the authorized Shipping Agent or his duly designated representative. The receipt document must clearly indicate the authorized Shipping Agent's name and address, the printed name of the Shipping Agent's Representative and its signature for the receipt of the materiel. In the event the Contractor incurs any transportation charges from the point of delivery to the place indicated by the NSPA Shipping Agent, the charges are to be billed directly to NSPA, duly supported by a price voucher covering the amount paid.
4. The following certificate shall be affixed to each invoice submitted:

"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."

5. Payment

- a. Payment will be made within (...) days with .. % prompt payment discount or (...) days net **will be completed at the time of contract award** following receipt by NSPA of the Contractor's original invoice drawn for payment in the currency in which the contract is established, and containing the following information: contract number and item number, purchase order number and item number, description of the item, unit of issue, quantity, unit price and total price.
- b. NSPA will pay the net invoice amount and support the charges of its bank. All other charges will be for the Contractor.
- c. 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:
 - i. Full name and address of banker(s)
 - ii. 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 7 - Liquidated Damages

1. If the Contractor fails to deliver within the time specified in the purchase order, he shall pay NSPA liquidated damages at the rate of 1 % for each full week of such delay but not more than a total of 10 % of the total price of the materiel 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 item.
3. During a period of one year after delivery and acceptance of the items, NSPA shall have the right to claim liquidated damages even if such right is not reserved at the time when delivery is accepted.

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4. The liquidated damages will not apply if the Contractor's failure to perform is due to causes beyond its control and without his fault or negligence.
 5. Such causes may include but are not limited to: Acts of God or of the public enemy, acts of Government in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and failure of subcontractors to perform due to such causes. 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.
 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 Purchase Orders (Materiel).

Part 8 - Quality Assurance Requirements

1. The Contractor is responsible for maintaining effective control of the quality of materiel. If the Contractor himself is not the manufacturer of the contracted materiel, he shall impose these quality requirements upon his subcontractor.
2. In case where an AQAP is specified, the Contractor shall meet its requirements. The Contractor must provide a CoC. In case he is not the manufacturer, he shall provide a copy of the CoC received from the original manufacturer.
3. The MISR shall not be used in lieu of a CoC.

Part 9 - Completion and Distribution of the NSPA Materiel Inspection Shipping Report (MISR)

1. Completion.
 - 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).
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.

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3. If the Contractor is requested to use the services of a NSPA Shipping Agent, he shall provide the NSPA Shipping Agent with three (3) copies of the MISR.

Part 10 - Item Identification

1. Whenever circumstances require the substitution of an item or part thereof ordered under this purchase order, the Contractor must refer the proposed substitute to NSPA for approval, together with the NATO Stock Number (if available), Part Number of the proposed substitute, and if applicable, drawing built standard for the part number, including revision details and all major and minor waivers and deviations incorporated
2. When both NATO Stock Number and Part Number identify an item, the NATO Stock Number will govern.

Part 11 - Marking for Shipment

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.

Part 12 - Preservation, Packaging and Packing, Destination and Shipping Instructions

1. Unless otherwise indicated in the Military Specifications of an item (if applicable) or by special request, preservation, packaging and packing shall be performed in accordance with the best commercial practice, and be such to assure safe arrival at the final destination, and shall be capable to withstanding extended storage for at least one year under normal, unheated, inside storage conditions. Depending on the weight, volume and nature, the items should normally be delivered on euro pallet(s) at no cost to NSPA. The exterior container will show the number of this purchase order and be provided with a shipping label bearing the full shipping address as indicated in this purchase order. It is imperative that the production serial numbers, when assigned, be clearly marked not only on the item itself, but also on accompanying shipping documentation and the MISR.
2. If materiel to be supplied under this purchase order constitutes hazardous or potentially hazardous cargo, the materiel and related shipping and commercial documentation must be processed (this includes but is not necessarily limited to packaging, packing, marking, notices of availability, documentation, emergency response information, etc. etc.), in accordance with applicable national and international transportation rules and regulations pertaining to hazardous or potentially hazardous cargo. A Safety Data Sheet (SDS) must accompany each

exterior container (one copy attached outside and one copy inside). One copy of the SDS must also be enclosed with the Dangerous Goods declaration. The Contractor shall be liable for any loss or damage that might occur arising from an incident or accident due to the absence of a correctly completed SDS.

Depending on the type of materiel and mode of transport to be engaged the following are some examples of documentary requirements: Shippers Declaration for Dangerous Goods; Dangerous Goods Transport Document; Safety Data Sheet; Dangerous Goods Declaration; Transport Emergency Card (TREM Card) - European Road Transport, etc.

The following are examples of the various regulations in force: International Air Transport Association (IATA) Regulations; International Maritime Dangerous Goods Code (IMDG); International Regulations concerning rail transport (Europe); Accord Européen relatif au transport international des marchandises dangereuses par route (Europe); Transportation of Dangerous Goods Regulations (Canada).

3. Shipping notification

When the materiel is ready for shipment, the Contractor shall use the form attached for this purpose to this purchase order to submit a shipping notification to NSPA, indicating the following information:

- per shipment: contractor's shipment notification number, expected date of delivery of shipment at destination;
- per materiel of the shipment: purchase order number, purchase order line item number, delivered quantity and, in case of partial delivery, the text "partial delivery".

Part 13 - Warranty

1. Clause 8 of the NSPA General Provisions for Fixed Price Contracts (Materiel) is supplemented to include the following:
 - a. The Contractor grants a warranty of two (2) years starting from the date of passage of title of the materiel to NSPA.
 - b. 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.

Part 14 - 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 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.

Part 15 - Termination for Convenience of NSPA
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The provisions applicable to "Termination for Convenience of NSPA" are available in the Internet.

Part 16 - Notification of Changes
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1. If at any time during the performance of this purchase order, 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 purchase order, 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 purchase order 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 purchase order 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 purchase order through a Supplemental Agreement.
4. Consequently, the Contractor cannot claim additional money and/or time for work performed during the performance of the purchase order, which has not been identified as part of the scope of this purchase order.

Part 17 - Performance of the Contractor in Time of Alert or War
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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 purchase order in time of alert or war.

Part 18 - Correspondence

1. The Contractor will return a signed copy of the purchase order without delay to the address indicated below.
2. All **correspondence** except invoices should be addressed to:

NSPA
Attn:
L - 8302 CAPELLEN
GR. D. Luxembourg

Contact point :
Tel : +352 3063 Ext :
Fax: +352 3063 4300
email:@NSPA.nato.int

(To be inserted on award)

3. Deliveries of materiel to NSPA installations on Friday afternoon, weekends and national holidays cannot be accepted without prior agreement.

Part 19 - 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 20 - NSPA Supplier Code of Conduct
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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 purchase order 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 21 - Information Technology- Cyber Security

1. 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.
2. 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 to the points of contact identified in paragraph 5 below.
3. The Contractor shall use its best endeavour 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.
4. 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 effect 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.
5. This Contractor notification shall occur immediately after discovery of the suspicion as a warning notification to the points of contact identified at [Part 18](#) and the NSPA Cyber Team via email at security-notifications@nspa.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.

6. NSPA will endeavour 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 22 - Ordering Procedure for Optional Items

NSPA reserves the right to order those requirements marked in the Statement of Work as Optional items during the Contract term within the exercise by dates agreed.

Note: Exercise dates to be inserted on award.

Part 23 - Intellectual Property Rights (IPR) – Vesting in NATO

All Foreground Information shall vest in and be the property of NATO 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.

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 in Information conceived out of the technical requirements of the Contract if these have been first enabled in the performance of work under the Contract.