

CUSTOMER CONTRACT REQUIREMENTS
NATO AWACS IFF Mode 5/EHS and Interim IP Chat/AIS Integrated Retrofit
CUSTOMER CONTRACT 41-198

CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this contract to the extent indicated below. If this contract is for the procurement of commercial items under a Government prime contract, as defined in FAR Part 2.101, see Section 3 below.

1. Prime Contract Special Provisions The following prime contract special provisions apply to this purchase order

DEFINITIONS:

Intellectual Property: Property developed from creations of the mind e.g. inventions, literary and artistic works etc. Intellectual property rights include any or all of the following: patent, trademark, copyright, trade secret, trade name, service mark etc.

MMOU: the Multilateral Memorandum of Understanding on the NATO E-3A Cooperative Programme originally signed on 06 December 1978 by the Ministers of Defence of the participating nations, as currently amended;

NAPMA: NATO AEW&C Programme Management Agency, the executive management agency for NAPMO. Hereinafter "Purchaser" or "Buyer's Customer";

NAPMO: NATO AEW&C Programme Management Organization;

Ottawa Agreement: the Agreement on the Status of the North Atlantic Treaty Organisation, National Representatives and International Staff signed in Ottawa on 20 September 1951;

Proprietary Data: Data owned by Seller that is not publicly available and which may only be used with the permission of the owner.

1. MOST FAVOURED CUSTOMER

a. Seller warrants that the prices quoted under this Contract will be no less favourable than prices previously established with the USG (on active contracts), after accounting for all relevant circumstances including but not limited to quantities, specifications, aggregate terms and conditions for the sale, date of the sale, escalation (inflation or deflation as applicable), updating expired supplier quotes or converting to these factors.

2. IMMUNITY OF PURCHASER PROPERTY

a. Seller is aware that according to the Ottawa Agreement dated 20 September 1951, (SUST 1087, TIAS 3092, 200 UNTS 3), any Purchaser documentation, information, data of whatever kind, any other Purchaser assets used or to be used in the performance of the Contract, in the possession of Seller and/or his subcontractors and by whomsoever held, wherever located, is immune from search, requisition, confiscation, expropriation or any other form of interference.

b. Seller agrees that in cases of any such interferences:

i. Seller will take all reasonable actions necessary to prevent above mentioned Purchaser property and assets becoming subject of such interference, and if the interference has taken place, to take all necessary actions provided for under national or international law to prevent Purchaser losing its rights (for this purpose Seller is authorised to act on behalf of the Purchaser until the time the Purchaser is in the position to pursue his rights himself or by authorized responsibility);

ii. Seller will inform the Purchaser by the quickest means available; and

iii. Seller will include in its Contracts with any of its subcontractors, clauses which reflect the responsibilities outlined at paragraphs a. and b. above.

3. TAXES AND DUTIES

- a. The Purchaser, by virtue of his status under the terms of Article IX and X of the Ottawa Agreement, is exempt from all direct taxes (incl. VAT) and all customs duties on merchandise imported or exported and is exempted by the Netherlands from all taxes on services provided. Seller, therefore, certifies that the prices stipulated under this Contract do not include amounts to cover such direct taxes or customs duties.
- b. Seller shall be responsible for ensuring that his respective subcontractors are aware that the Purchaser is exempt from taxes and customs duties. Seller (and his respective subcontractors) shall be responsible for complying with all applicable national and local legal and administrative procedures to ensure that authorities do not attempt to assess taxes and customs duties on goods and property imported or exported through NATO member nation frontiers under this Contract nor assess direct taxation (VAT) on goods sold to the Purchaser under this Contract.
- c. If, after complying with all national and local legal and administrative procedures, the authorities persist in attempting to impose taxes or duties on goods provided under this Contract, Seller shall inform Buyer, providing the particulars of the situation, the procedures which have been followed and the point of contact at the national authority which is attempting to impose taxation or duty. Buyer and Buyer's Customer will examine the situation and attempt to clarify the legal and administrative basis of the difficulty. If Buyer's Customer, through Buyer, so directs, Seller shall pay the required taxes and duties and file for reimbursement or rebate from the national authorities in accordance with national legislative and administrative procedures.
- d. In the event that the petition for reimbursement or rebate is denied by the national authorities concerned and providing that Seller and/or his subcontractor have complied with the national legislative and administrative procedures, Buyer shall reimburse the full amount of the payment(s) upon receipt of Seller's invoice indicating such tax or duty as a separate item of cost and fully identified by reference to any governmental law, regulation and/or instruction pursuant to which such tax or duty is enforced. Seller shall offer assistance and execute any such document that may be useful or required to ensure that Purchaser obtains the reimbursement of any tax or duty retained by a national authority.
- e. In the event of Seller and/or subcontractor not complying with national legislative or administrative procedures, taxes and duties paid by Seller and/or subcontractors shall not be reimbursed by Buyer.
- f. Following payment by Buyer of the taxes and/or duties pursuant to this Clause, should Seller subsequently receive a rebate of any amount paid by Buyer, Seller shall immediately notify Buyer and the amount of such rebate shall be credited or reimbursed to Buyer, as directed. Seller shall be responsible for taking any and all action that could reasonably be required in order to obtain such rebate.
- g. Seller shall be liable for all other taxes, assessments, fees, licences, administrative charges or other government assessments or charges which are applicable to the performance of this Contract. It is Seller's responsibility to inform himself of his liability in each country where such liability may arise.

4. SECURITY

- a. Seller is required to comply with NATO security regulations as implemented by the National Security Authority (NSA) or Delegated Security Authority (DSA) of the nation in which the work is performed. Particularly, Seller shall be responsible for the safeguarding of classified information, documentation, material and equipment entrusted to him or generated by him in connection with the performance of the Contract
- b. Prior to any Seller's subcontractor being given access to any classified information, Seller shall ensure that any subcontractor that has a need to access classified information for the performance of any part of this Contract has been granted the appropriate Facility and Personnel Security Clearances (FSC/PSC) by its NSA/DSA and that such security clearances are in effect at the time the information is disclosed and remains in effect throughout the performance of the work to be carried out under the concerned subcontract.
- c. Access to Purchaser's premises is subject to the NATO International Visit Control Procedures (IVCPs). For all types of visits, and at least 5 working days prior to every visit, Seller shall submit the standard request for visit (RFV) form to Buyer, who will then submit the form to the NAPMA Security Office to obtain all necessary passes/access badges for persons who will request access to the Purchaser's facilities. In case the required RFV has not been submitted in due time, visitor(s) might not be granted access to the facilities. Buyer will not accept liability for any costs for periods during which Seller personnel were not allowed access due to Seller/Seller's subcontractor personnel failure by omission or negligence.
- d. Seller agrees that assigned personnel will be responsible to abide by all regulations, procedures, and standards of conduct in place at

the Purchaser's facilities. Failure to do so will result in corresponding penalties being imposed.

e. Any breach on the part of the assigned personnel will be regarded as a breach by Seller which could lead to termination of all or part of the Contract.

f. Seller and Seller's subcontractors are required to provide for all assigned personnel a copy of each individual's National Security Clearances "Secret" (with additional briefing for NATO) which should be valid for the duration of the Contract together with a signed copy of any applicable Non-Disclosure Agreements.

5. EXPORT LICENSING

a. Seller is aware that according to the Multinational Memorandum of Understanding (MMOU) on the NATO E-3A Cooperative Program all participating governments have agreed to arrange for the grant of any export licenses necessary for the Programme. In implementation of this program principle, it shall be Seller's responsibility to obtain any export license(s) as may be required under this Contract.

b. Seller shall prepare technical data in accordance with the Statements of Work of this Contract and such technical data may be subject to export restrictions. Delivery of such data to foreign addressees is contingent upon release authorization by the respective government agency.

c. In the event any government does not approve an export license application, necessary to perform this Contract, an equitable adjustment shall be negotiated. Failure to reach agreement will constitute a dispute as laid down in the Disputes clause of this Contract.

6. RIGHTS IN TECHNICAL DATA

a. All technical data and deliverables, software, developed and funded under this Contract shall be the legal and absolute property of Buyer's Customer.

b. Buyer and NAPMO shall have the right to use, duplicate, or disclose Technical Data provided under this Contract, in whole or in part, for NATO purposes. This includes, but is not limited to maintenance, repair and support within the NATO AWACS program by NAPMO Nations' Industry.

c. All data delivered or disclosed under this Contract, but not originally developed under this Contract, and validated as Proprietary to Seller or Seller's subcontractor shall be clearly marked with the appropriate proprietary legend(s). The below data markings apply to this Contract:

Proprietary Data:

ALL CONTENT CONTAINED HEREIN IS PROPRIETARY TO AND BELONGS TO [Insert Seller's Name]. NEITHER THE DOCUMENT NOR ANY INFORMATION OR DATA CONTAINED IN IT, SHALL BE USED, DUPLICATED, OR DISCLOSED, IN WHOLE OR IN PART, OUTSIDE OF NATO ORGANIZATIONS, PARTICIPATING NAPMO NATIONS AND INDUSTRIES IN SUPPORT OF THE NATO AIRBORNE EARLY WARNING AND CONTROL PROGRAMME WITHOUT THE PRIOR WRITTEN AUTHORIZATION OF [Insert Seller's Name] AS IN EACH INSTANCE.

7. LIABILITY AND INDEMNITY

a. Seller shall in advance waive all claims he could have with regard to NAPMO, NATO and NATO personnel or personnel under NATO command, or personnel controlled by NAPMO (hereinafter referred to as "NATO" purely for the purposes of this Clause) for any damage, death or injury caused in any connection with the performance and work provided, unless the damage, death or injury are caused by intent or gross negligence of NATO.

b. Seller shall indemnify and hold harmless NATO against the financial consequences of claims whosoever could have against them on account of damage, death or injury caused in any connection with the performance of the work provided, unless the damage, death or injury are caused by intent or gross negligence of NATO.

c. In the case that NAPMO property is damaged by Seller personnel, then such event shall be reported to Buyer without delay. Seller shall be responsible to reimburse to NATO (through Buyer) for all costs associated with damage to any item of property that occurs during performance hereunder where such damage is attributable to any fault or negligence on the part of Seller and his personnel. Such costs shall include, but are not limited to, the cost to repair the property, the depreciated value of any property that is damaged beyond

economic repair, costs to repair any other involved item of property and/or third Party items or property, recovery costs.

d. The Purchaser shall in no way be responsible for any accident or disease occurring to Seller personnel during performance of work or travel under this Contract, except where such accident or disease is the result of a willful act or gross negligence on the part of the Purchaser or if responsibility is mandatory by law.

8. DISPUTES

a. The Purchaser is an integral part of the North Atlantic Treaty Organisation (NATO). The Purchaser shares in the international personality of NATO as well as in the juridical personality possessed by NATO by virtue of Article 4 of the Ottawa Agreement. The juridical personality of the Purchaser is subsumed in that of NATO and cannot be distinguished from it. Rights and privileges that apply to NATO and that are specifically addressed in Article 4 to 11 and 24 of the Ottawa Agreement apply to the Purchaser.

9. EXAMINATION OF RECORDS

a. This Clause is applicable to this Contract only if:

i. The price, or any of the prices, to be paid for the work to be furnished hereunder is/are other than a firm fixed price(s), or

ii. If this Contract is terminated by Buyer, in whole or in part, and Seller submits a termination claim as a result thereof.

b. In addition to the Financial Records and Audit article in the General Provisions of this Contract, Seller agrees that authorized representatives of its national government only shall, until the expiration of three (3) years after final payment under this Contract, have access to and the right to examine any pertinent books, documents, papers and records of Seller involving transactions related to this Contract. Notwithstanding any other provision of this Contract, the examination and audit of Seller's financial books and records shall be limited to authorized representatives of its national government or Seller or Seller's subcontractor's national auditing services.

c. The period of access and examination described above for records which relate to litigation, or the settlement of claims arising out of the performance of this Contract, shall continue until such appeals, litigation or claims have been disposed of.