

PART II

HQ MNC NE GENERAL PROVISIONS



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1. DEFINITIONS

As used throughout this part II of the Bidding Information, the following terms shall have meanings as set forth below:

- a. "HQ MNC NE" means the Headquarters Multinational Corps North East, located at Baltic Barracks, Ul. Łukasińskiego 33, 71-215 SZCZECIN
- b. The North Atlantic Treaty Organisation is hereafter referred to as "NATO".
- c. "Contracting Officer" means the person executing and managing this contract on behalf of HQ MNC NE.
- d. "Contracting Officer Technical Representative" (COTR) means a person appointed by the Contracting Officer for the purpose of determining compliance with the technical requirements of the contract.
- e. The term "days" shall be interpreted as meaning calendar days.
- f. The masculine includes the feminine.
- g. The term "prospective bidder" shall refer to the entity that has completed and returned enclosure 1 to Part I, and has indicated thereon, without commitment, its intention to participate in the bidding.
- h. The term "bidder" shall refer to the bidding entity that has submitted a bid in response to this IFB.
- i. The term "contractor" shall refer to the bidder to whom a contract is awarded.

2. APPLICABLE LAW

Except if otherwise provided, any contract signed based on this bidding shall be governed, interpreted and construed in accordance with the European Union and Polish law.

3. TITLE TO PROPERTY AND RISK OF LOSS

- a. Title to property of the supplies covered by this contract shall pass to HQ MNC NE upon formal acceptance.
- b. Risk of loss or of damage to supplies covered by a contract shall remain with the Contractor until, and shall pass to HQ MNC NE upon reception inspection (see para 4 below) and acceptance by HQ MNC NE.

4. INSPECTION

- a. All equipment and articles incorporated in the delivery must be new and of the most suitable grade of their respective kinds for the purposes intended.
- b. In case any supplies are defective or otherwise not in conformity with the requirements mentioned in IFB Part 3, HQ MNC NE shall have the right either to reject them or to require their correction without any additional costs to HQ MNC NE.
- c. All supplies shall be subject to inspection and test by HQ MNC NE Inspector prior to acceptance.
- d. The inspection and test by HQ MNC NE Inspector of any supplies does not relieve the Contractor from any responsibility regarding defects or other failures to

meet the contract requirements which may be discovered prior to acceptance.

e. Failure to inspect supplies shall neither relieve the Contractor from responsibility for such supplies and works as are not in accordance with the contract requirements nor impose liability on HQ MNC NE therefore.

5. ACCEPTANCE

a. Acceptance (or rejection) of the delivery shall be made as promptly as practicable after inspection of the delivered items.

b. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or otherwise stated in the Contract. It is the action by which HQ MNC NE acknowledges that the Contractor has fully demonstrated that the deliveries are complete and operational.

c. The formal acceptance will take place when the following requirements have been met

- Delivering at HQ MNC NE – or other agreed location - of all items.
- Successful completion of acceptance testing.
- Agreement between HQ MNC NE and the Contractor on a discrepancy list (if necessary) and corresponding clearance dates.

d. When discrepancies exist and if these do not prevent satisfactory use or operation of the supplies, the Contracting Officer may declare the acceptance provisional. In this case he will withhold from payment an amount commensurate with the importance of the discrepancies but in any case not less than ten (10) percent of the total contract value and this until all discrepancies have been cleared; at that time the acceptance becomes final.

6. DEFAULT

a. HQ MNC NE may, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances:
- If the Contractor fails to make delivery of the supplies specified within the time specified and

b. - does not cure such failure within a period of ten days (or such longer period as the Contracting Officer may authorise in writing) after receipt of notice from the Contracting Officer specifying any failure.

c. Except with respect to defaults of sub-contractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the contractor. If the failure to perform is caused by the default of a sub-contractor, and if such default arises out of causes beyond the control of both the Contractor and sub-contractor, without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform unless the supplies or services to be furnished by the sub-contractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

d. Both parties are under duty of good faith. The contract includes not only the specific terms, but also law and customary practice applicable in the Republic of

Poland and to the Type of Trade to which the contract relates.

7. DISPUTES

- a. All disputes arising out of the performance of this contract will be settled through amicable settlement between the Contracting Officer and the Contractor.
- b. Should the Contracting Officer and the Contractor fail to come to an amiable Settlement of the dispute, the dispute will be settled by the competent Court of Poland.

8. PRICE

All prices are firm and fixed; the bidder must attempt to secure any transportation and associated insurance costs when submitting his offer.

9. TAXES AND CUSTOMS CHARGES

The contract price, including the prices in any sub-contracts, does not include any customs charges, taxes, value added tax (VAT) or other charges levied by the member nations of NATO.

10. AUTHORISATION TO PERFORM

The Contractor warrants that he and possible sub-contractors have been duly authorised to operate and do business in the Republic of Poland; that he and possible sub-contractors have obtained all necessary licenses and permits required in connection with the contract.

11. INVOICES

- a. All invoices shall be addressed to HQ MNC NE, Łukasińskiego 33, 71-215 Szczecin, Poland. The invoice must be signed by a duly authorised company official.
- b. Invoices shall contain:
Contract number, Purchase Order number, description of supplies, sizes, quantities, unit prices and extended totals.

12. RIGHTS IN TECHNICAL DATA

- a. HQ MNC NE shall have unlimited rights in:
 - All technical data which was specified as an element of performance in the contract.
 - Plans, drawings, manuals or instructional materials prepared or required to be delivered under the contract for implementation management, installation, operation, maintenance and training purposes.

b. Technical data and software delivered under this contract shall be marked with the number of this contract, name of Contractor and the rights transferred to HQ MNC NE.

13. SUPPLY AND SERVICE PARTS AVAILABILITY AND WARRANTY

The Contractor warrants that for a period of thirty six (36) months following the date of acceptance:

a. The Contractor (and possible subcontractors) will maintain and furnish a source of an adequate supply of services, components, spare parts and sub-assemblies to properly maintain the supplies.

b. All supplies furnished will be free from defects in material or workmanship and will conform to the specifications and all other requirements of this contract.

c. The warranty period starts at the date of delivery of the last item bought (delivery receipt signed by HQ MNC NE) and ends thirty six (36) months after the date of delivery.

d. Any supplies or parts thereof furnished in replacement shall be subject to the same warranty as supplies initially delivered. Corrected parts will be warranted for a period not less than six (6) months starting at the time the part is installed and functioning at HQ MNC NE.

e. If the Contractor does not agree as to his responsibility to correct or replace the supplies delivered, he shall nevertheless proceed in accordance with a written request issued by the Contracting Officer to correct or replace the defective or non-conforming supplies. In the event it is later determined that such supplies were not defective or non-conforming within the provisions of this clause, the contract price will be equitably adjusted.

f. Failure to agree upon any determination to be made under this clause shall be a dispute concerning a question of fact within the meaning of the "Dispute" clause of this contract (see para 8).

g. For rented or leased equipment, the above mentioned rules will apply for the duration of the renting or leasing period. For leased/rented materials, which is afterwards purchased by HQ MNC NE, the warranty period will begin on the first day of the leasing period.

14. LIQUIDATED DAMAGES

In case of actual damage the Contractor shall pay to HQ MNC NE as fixed, agreed, and liquidated damages for each calendar day of delay, 0.1% of the total contract price, less handling, transportation and taxes, to a maximum of 10% of the contract price. Alternatively, HQ MNC NE may terminate the contract in whole or in part as provided in the Default Clause (see para 6). In that event the Contractor shall be

liable, in addition to the excess costs mentioned in the Default Clause, for such liquidated damages accruing until such time as HQ MNC NE may reasonably obtain delivery or performance of similar supplies or services.

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 the Default clause and in such event, subject to the Dispute clause. The Contracting Officer 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

15. PAYMENTS

Payment for all supplies and services shall be made within 30 (thirty) calendar days after receipt of properly supported and acceptable invoices submitted upon completion of delivery, inspection and acceptance of the items of supply covered herein.