

NATO UNCLASSIFIED
RELEASABLE FOR INTERNET TRANSMISSION

**INTEGRATED AIR AND MISSILE DEFENCE
CENTRE OF EXCELLENCE**



IFB FINCON 22-11

Study Report

“Analysis of the related Physical Phenomena and Aerodynamic Performance of Hypersonic Vehicle(s) and possible ways of exploiting those data in order to improve Surveillance Capabilities”

PART II

GENERAL PROVISIONS - TERMS & CONDITIONS

December 2022

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1.1 The services which are requested in accordance with the current IFB may not require all clauses of the IAMD COE General Provisions. However, all clauses have been incorporated and are valid, unless explicitly declared not applicable, to face any possible scenario that may arise during the execution of the Contract following this IFB.

2. Applicable Law

2.1 This IFB is governed, interpreted and construed according to the provisions of the IAMD COE Financial Administrative Procedures in conjunction with Hellenic law No 4412/2016.

3. Security

3.1 The Contractor shall comply with all security requirements prescribed by the IAMD COE.

3.2 The Contractor shall be responsible for the safeguarding of NATO or/and IAMD COE classified and unclassified information, entrusted to him or generated by him in connection with the performance of the contract.

4. Inspection

4.1 In case of defective item or otherwise not in conformity with the requirements of the contract, the IAMD COE has the right: a. to reject it; b. to require its correction; c. to accept it against reduction in price which is equitable under the circumstances.

4.2 If any inspection is made by the IAMD COE, the Contractor without additional charge shall provide all reasonable assistance to the IAMD COE representative.

4.3 The inspection of the deliverables by the IAMD COE does not relieve the Contractor from any responsibility regarding the fulfilment of the contract requirements.

5. IAMD COE provided Space/Facilities

5.1 The IAMD COE will provide the necessary office space and facilities to allow the Contractor's personnel/employees to perform any services required to deliver the requested projects at the IAMD COE premises (if required e.g. cooperation with the Centre's subject matter experts etc.).

6. Notice of Deliveries

6.1 For any delivery, the Contractor should inform the Support BH at least two (2) days before.

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7.1 The Contractor warrants that the prices set forth in the Contract are as favourable as those extended to any Government, Agency, Company, Organization or individual purchasing the equipment covered by Contract under similar conditions. In the event that prior to deliver the equipment the Contractor offers any of such items in substantially similar qualities to any customer at prices lower than those set forth herein, the Contractor shall so notify the IAMD COE and the prices of such services shall be correspondingly reduced.

8. Prices

8.1 All prices and allowances offered by the Contractor, are firm and fixed for the duration of the Contract.

8.2 In case of a different pricing policy of the Contractor that may affect the Contract, this will be concluded pursuant to below par. 28 hereof and, a new Contract award procedure (after a new bidding procedure) may take place at the discretion of the Centre.

9. Taxes and Customs Charges

9.1 The Contractor assumes responsibility for and agrees to pay any and all taxes and/or duties that normally be levied or imposed by Greece upon services.

9.2 The deliveries and purchases into the European Union and the rendering of the services for official use which have IAMD COE as consignee, such as the services provided by the Contractor herein, are exempt from Value Added Taxes (VAT), taking into account the status of the Centre under the Paris Protocol and the respective Greek legislation (Hellenic Law 2826, dated on 16 March 2000).

10. Invoicing and Invoices

10.1 The projects satisfactorily delivered under the terms of the Contract shall be invoiced after satisfactory completion by the Contractor (as below par. 11.4).

10.2 Invoices shall be prepared, submitted and shall contain:

10.2.1 The name and the full information of the company (Contractor) issuing them;

10.2.2 Unit prices (per service provided distinctly);

10.2.3 The respective extended totals.

10.3 All hardcopy invoices shall be addressed to the IAMD COE. Electronic invoices, including cases of invoices which are printed, scanned and sent to the IAMD COE by electronic means (for example via e-mail), will be transmitted as .pdf documents to the FINCON after consultation and relevant indication by him (guidance to upload invoices through application "sourceONE", etc.), as required. Hardcopies must not be sent in parallel with electronic invoices.

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11.1 The term payment is used for services ordered by the IAMD COE and described in the respective Contract. No payment shall be made with respect to services which are not purchased / rendered under the Contract.

11.2 Services rendered by the Contractor to the IAMD COE personnel regarding needs which are not described herein will be paid by themselves. The IAMD COE assumes no responsibility for the payment of these services.

11.3 Payments for services provided by the Contractor under the terms of the Contract shall be made in Euro within five (5) calendar days after the date of the receipt of properly supported and acceptable respective invoices submitted upon completion of delivery, inspection and acceptance (as par. 11.4) of the services covered herein, together with the following documents (in case there is any exemption for the Contractor, the respective legal provisions should be notified):

11.3.1 Certificate or statement of the representative of the Contractor that he (Contractor) has not been the subject of a conviction by final judgement for the reasons referred in par. 1 of the Article 57 of the Directive 2014/24/EU (such as participation in a criminal organization, corruption, fraud, terrorist offences or offences linked to terrorist activities). This also applies where the person convicted by final judgment is a member of the administrative, management or supervisory body of that economic operator or has powers of representation, decision or control therein;

11.3.2 Valid Insurance Clearance Certificate (for money collecting);

11.3.3 Valid Tax Clearance Certificate (Public Sector Entities - Bodies) (for money collecting).

11.4 Deliverables shall be submitted to a competent Committee of the IAMD COE, which will accept or reject them within a period of ten (10) days. Acceptance of the deliverables will be made through the issue of a certificate of acceptance by the aforementioned Committee. In case of rejection of the deliverables, this Committee will call a meeting with the Contractor and submit him a written list of deficiencies. The Contractor will have ten (10) working days to rectify them.

11.5 The IAMD COE will pay the net invoice amount and support the charges of its bank. All other charges will be for the Contractor.

11.6 Payments will be made by electronic bank transfer to the bank account number (IBAN) specified by the Contractor. For this reason, a documented confirmation of the bank account details shall be provided by the Contractor to the FINCON.

12. Service Warranty

12.1 Notwithstanding inspection and acceptance by the IAMD COE of services furnished under the Contract, the Contractor warrants that all the services will promptly delivered.

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12.2 In a case of circumstances affecting the Contractor's obligations (e.g. last minute emergency illness) or/and force majeure, the Contractor shall promptly be in contact with the IAMD COE in order to find the most efficient and effective option for the delivery of the supplies/services required to be provided and take all reasonable steps to mitigate or recover any delay, in accordance with the Contract.

13. Contractor Notice Regarding Late Delivery

13.1 In the event the Contractor encounters difficulty in meeting performance requirements, or when he anticipates difficulty in complying with the Contract delivery schedule or date, or the time limits specified for any delivery, he shall immediately notify the FINCON in writing, giving pertinent details; provided, however, that this data shall be informational only in character and that this provision shall not be construed as a waiver by the IAMD COE of any delivery schedule or date, or of any rights or remedies provided by law or under the Contract.

14. Liquidated Damages - Force Majeure

14.1 If the Contractor fails to deliver within the time specified in the award decision, he may pay the IAMD COE (at the discretion of the Centre and after a documented decision of its Director) liquidated damages at the rate of one (1) % for each full week of such delay, but not more than a total of ten (10) % of the total price and/or total cost of the respective services.

14.2 Without prejudice to the final decision regarding the liquidated damages, the IAMD COE 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 the IAMD COE pursuant to this clause will be considered as full and final satisfaction of all claims received out of late delivery of any service.

14.3 During a period of one year after delivery and acceptance of the equipment purchased - services performed, the IAMD COE shall have the right to claim liquidated damages even if such right is not reserved at the time when delivery is accepted.

14.4 The liquidated damages will not apply if the Contractor's failure to perform is due to causes beyond his control and without his fault or negligence. 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 & pandemics, 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 / forms, he 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.

14.5 The Contractor shall inform the IAMD COE for such events within fifteen (15) days from its occurrence and within fifteen (15) days from its ending. In addition, the Contractor is obliged to make every reasonable effort in order to avoid, remove or rectify, if possible, such cases of delay and in any case to proceed to the fulfilment at his obligations when such events continue to exist. In such cases, a corresponding extension will be granted by the IAMD COE.

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14.6 The foregoing provisions of this part apply only to delinquencies in deliveries and do not prejudice IAMD COE's rights under the provisions of the clause entitled "Default", as below par. 28.

15. Quality Assurance

15.1 The Contractor is responsible for maintaining effective control of the quality of the services (as Part III, par. 7).

16. Indemnity and Insurance

16.1 The Contractor shall indemnify and keep indemnified the IAMD COE, against cases of injury (including death) to any persons or loss of or damage to any property which may arise out of the act, default or negligence of the Contractor, a Sub-Contractor, their employees or agents in consequence of the Contractor's obligations under the Contract and against all claims, demands, proceedings damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto. The Contractor agrees that he has complete freedom of choice of means and capabilities to comply with the obligations of the Contract.

16.2 Without thereby limiting his responsibilities in par.16.1 above, the Contractor may take insurance (at his discretion) with an insurance company against all loss of and damage to property and injury to persons (including death) arising out of or in consequence of his obligations under the Contract and against all actions, claims, demands, costs and expenses in respect thereof. The IAMD COE will not assume any responsibility for the foregoing insurance and its corresponding payments.

17. Safety Prevention

17.1 The Contractor is responsible for and must strictly comply with the safety and environmental provisions in accordance with the applicable law.

18. Confidentiality

18.1 The Contractor shall keep confidential any information obtained under or in connection with the Contract and shall not divulge the same to any third party without the consent in writing of the IAMD COE.

18.2 The Contractor shall divulge confidential information only to those employees who are directly involved in the Contract and shall ensure that such employees are aware of and comply with these obligations as to confidentiality.

18.3 The Contractor shall ensure that his sub-Contractors are bound by the requirements of this paragraph.

18.4 The provisions of this paragraph shall remain in force after the completion of the Contract, notwithstanding its any termination.

19. Materials, Equipment and Data supplied/provided by the IAMD COE

19.1 All material, equipment, information or other relevant data, wherein the term data means all recorded information, regardless of form or media, and includes technical data and software, and wherein software means any computer program,

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computer database, and software associated documentation supplied/provided by the IAMD COE for use in the Contract shall be kept by the Contractor strictly for the use of the Contract and shall not be reallocated to any other work whatsoever without the prior consent in writing of the IAMD COE.

19.2 All foregoing material, equipment, information or data so supplied/provided shall remain the property of the IAMD COE and the Contractor shall at all times and places until its return to the Centre, keep and maintain such material and equipment under proper conditions and with all due and reasonable care subject in the case of equipment to fair wear and tear.

19.3 The Contractor shall be liable for all loss or damage however caused to such material, equipment or data throughout the whole of the period during which they are in his custody.

20. Sub-contractors

20.1 For the purpose of this clause, sub-contracts mean orders to sub-contractors for the supplies/services required in the performance of the Contract.

20.2 The Contractor is solely responsible for the performance of the Contract. Consent or approval by the IAMD COE of any sub-contract or any provisions thereof shall not 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.

20.3 The Contractor shall not enter into any sub-contract with firms located outside NATO nations or having their legal residence outside NATO nations. Only in exceptional cases would the IAMD COE consider such approval.

20.4 Any sub-contractor shall flow down the relevant requirements of the Contract i.e. those for which the Contractor has an obligation towards the IAMD COE.

20.5 Par. 20.2 and 20.3 above are critical elements in the performance under the Contract and therefore, non-compliance with these may result in the Contract being terminated under the terms of par. 28 entitled "Default".

21. Authorisation to Perform

The Contractor shall warrant that:

21.1 He and his (occasional or not) sub-contractors have been duly authorised to operate and do business in the country or countries in which the Contract is to be performed;

21.2 He and his (occasional or not) sub-contractors have obtained all necessary licenses and permissions required in connection with the Contract;

21.3 He and his (occasional or not) sub-contractors will fully comply with all the

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laws, decrees, labour standards and regulations of such country or countries during the performance of the Contract;

21.4 No claim for additional credits with respect to any authorisations to perform will be made upon IAMD COE.

22. Intellectual Property Rights, Royalties and License Rights

22.1 The Contractor guarantees that he is in possession of all the necessary intellectual property rights in force in the countries where the services will be performed under the Contract and in other countries where the intellectual property rights may be in force. The Contractor possesses any licenses necessary for the performance of the Contract and made any other arrangements required to protect the IAMD COE from any liability for intellectual property rights infringement in aforementioned countries. The Contractor will at his expense hold the IAMD COE harmless and fully indemnify it 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.

22.2 The Contractor confirms that no payments of royalties or fees for intellectual property rights will be claimed by any third party for the services performed and / or materiel provided under the Contract. In the event that such fees are claimed, the Contractor will bear any and all responsibility.

23. Transition of Supplies/Services

Before the expiration or termination of the Contract the Contractor shall, at no cost to the IAMD COE:

23.1 Ensure an uninterrupted continuation of the contracted supplies/services after said expiration or termination by enabling the IAMD COE, or an IAMD COE appointed contractor, to perform these services;

23.2 If the Contractor has subcontracted any part of the supplies/services he shall equally ensure such transfer from his sub-contractor(s).

24. Notification of Changes

24.1 If at any time during the performance of the Contract, the Contractor considers that he has been directed to change or deviate from, in any way, the terms and conditions and/or the scope of the Contract, he shall notify the FINCON immediately. This notification shall as a minimum contain a cost breakdown of the additional costs to be incurred by the Contractor, if he would implement the change/deviation and the related impacts on the schedule. This information must be provided to such level of detail to allow the FINCON to provide a comprehensive response within fourteen (14) days after receipt of the notification from the Contractor.

24.2 Following the submission of this notification, the Contractor shall diligently continue performance of the Contract to the maximum extent possible in accordance with its terms and conditions as originally agreed.

24.3 The IAMD COE shall not bear any responsibility for supplies/services pro-

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vided/performed by the Contractor outside the Contract scope and shall not also compensate the Contractor in either time or money for such services not specifically authorized or requested by the IAMD COE in writing and subsequently included in the Contract through a supplemental agreement.

24.4 Consequently, the Contractor cannot claim additional money and/or time for services performed during the performance of the Contract which has not been identified as part of its scope.

25. Publicity and Public Relations

25.1 The Contractor shall not make any press release or public statement concerning the Contract without the prior written approval of the Support BH.

25.2 The Contractor shall not use the name or the emblem of the IAMD COE or any abbreviation of the name of the Centre in connection with its business or otherwise, unless prior authorized in writing by the Support BH.

26. Assignment of Claim

26.1 The Contractor will make no assignment of claim against the IAMD COE without prior written information to the FINCON and proper benevolent negotiation.

27. Termination for Convenience of the IAMD COE

27.1 With a Director's decision, the IAMD COE may terminate the performance of work under the Contract in accordance with this clause in whole, or in part, whenever it is determined that such termination is in the best interest of the Centre. Any such termination shall be effected by delivery to the Contractor of a "Notice of Termination" specifying the extent to which performance of work under the Contract is terminated and the date upon which such termination becomes effective.

27.2 After receipt of a Notice of Termination, the Contractor shall:

27.2.1 Stop work under the Contract on the date and to the extent specified in the Notice of Termination;

27.2.2 Place no further orders for supplies, except as may be necessary for completion of such portion of the work under the Contract as is not terminated;

27.2.3 Terminate all orders to the extent that they relate to the performance of work terminated by the Notice of Termination;

27.2.4 Settle all liabilities and all claims arising out of such termination of orders, with the approval or ratification of the FINCON, to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;

27.2.5 Complete performance of such part of the work as shall not have been terminated by the Notice of Termination.

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27.3 After receipt of a Notice of Termination, the Contractor shall submit to the FINCON his termination claim, in the form and with certification prescribed by the last one mentioned (FINCON). Such claim shall be submitted promptly but in no event later than three months from the effective date of termination. Upon failure of the Contractor to submit his termination claim within the time allowed, the FINCON may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay the Contractor the amount so determined.

28. Default

28.1 The IAMD COE may terminate, by written notice of default to the Contractor, the whole or any part of the Contract if the Contractor fails to perform the provisions specified in the Contract.

29. Order of Precedence

29.1 In the event of any inconsistency in the Contract, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:

29.1.1 The Special Provisions and Technical Specifications (Statement of Work) (Part III);

29.1.2 The General Provisions - Terms & Conditions (Part II);

29.1.3 The relevant legislation and customary practices.

29.2 The bid offered by the Contractor is considered as an integral part of the Contract and will be also taken into account, after the provisions of the Technical Specifications and the General Provisions - Terms & Conditions, in any case of inconsistency.

30. Inconsistency between English Version and Translation of Contract

30.1 In the event of inconsistency between any terms of the Contract and any translation thereof into another language, the English language meaning shall prevail.

31. Authority

31.1 Any modifications, including changes, additions or deletions under the Contract shall not be binding unless issued in writing by both the Director and the Contractor.

31.2 Any instructions - clarifications regarding the Contract shall not be binding unless issued in writing by the FINCON.

32. Settlement of Disputes

32.1 Any dispute regarding the interpretation, application, or implementation of

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the Contract, will be amicably settled, in principle, by consultation among the FINCON and the Contractor, based on good faith, reasonableness and the principle of fair dealing in contractual transactions. If this is not possible, the unsolved dispute shall be settled by arbitration. The party instituting the arbitration proceedings shall advise the other party by a registered letter, with official notice of delivery, of his desire to have recourse to arbitration. Within a period of thirty (30) days from the date of receipt of this letter, the parties shall jointly appoint an arbitrator.

32.2 In case of failure to come to a settlement of the dispute, this will be settled in the competent judicial Greek authorities of Chania (Crete), unless otherwise specified in the Contract.

33. Integrity / No Bribe

33.1 The IAMD COE draws the Contractor's attention to the fact that it is strictly forbidden to offer gifts or other advantages to the Centre staff members. This also includes any so-called end-of-year gifts which cannot be considered to be advertising presents.

33.2 If the Centre establishes that this ban has been disregarded, may terminate the Contract at no cost to the IAMD COE and the Contractor's firm may be removed from the Centre's source file in accordance with the relevant law.

34. Contract Effective Date

34.1 The effective date of the Contract will be the date of the last signature between the IAMD COE and the Contractor.

35. Validity of the Contract

35.1 The Contract shall be effective for the period commencing with its effective date and up to the delivery of the projects requested or the termination of the Contract in accordance with the provisions of this Part.

36. Amendments

36.1 All amendments to the Contract shall be in writing in the form of supplementary agreements, and signed by both the Parties to the Contract.

37. Contract Administration and Communications

37.1 All notices and communications between the Contractor and the IAMD COE regarding the provisions of the Contract shall be written in English.

37.2 All document correspondence pertaining to Contract administration shall be sent to the following address: Integrated Air and Missile Defence Centre of Excellence (IAMD COE), Souda Air Base, Chania 73100, Crete, Greece.

37.3 Any communication will be made through the application "sourceONE" based on the instructions provided by the IAMD COE.