

# **NCB-ACT-SACT-20-68**



**NORTH ATLANTIC TREATY ORGANIZATION**  
HEADQUARTERS, SUPREME ALLIED COMMANDER TRANSFORMATION  
7857 BLANDY ROAD, SUITE 100  
NORFOLK, VIRGINIA 23551-2490

## **CONTRACTOR SUPPORT FOR NATO HQ SACT SOLAR POWER SYSTEM INSTALLATION AND LED LIGHTING CONVERSION FOR HEADQUARTERS SUPREME ALLIED COMMAND TRANSFORMATION**

### **NATIONAL COMPETITIVE BIDDING (NCB)**

**NCB-ACT-SACT-20-68**

### **Part 1 Bidding Instructions**

#### **Amendment # 1**

**(All changes identified by red text)**

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## PART 1 BIDDING INSTRUCTIONS

### 1. General.

This is a **firm fixed price procurement contract** for the installation of solar power system and LED lighting conversion for HQ SACT, Norfolk, Virginia.

### 2. Classification.

This NCB is an UNCLASSIFIED document.

### 3. Definitions

- a) The “Prospective Bidder”, shall refer to the entity that has completed and returned the Enclosure of the transmittal letter of this NCB, and has indicated thereon its intention without commitment, to participate in this NCB.
- b) The term “Bidder”, shall refer to the bidding entity that has completed a bid in response to this NCB.
- c) The term Contractor shall refer to the bidding entity to which the contract is awarded.
- d) The term “Contracting Officer” designates the official who executes this NCB on behalf of HQ SACT.
- e) “Contracting Officer’s Technical Representative” or “COTR” is the official who is appointed for the purpose of determining compliance of the successful bid, per the technical specifications.
- f) The term “HQ SACT” shall refer to Supreme Headquarters Allied Commander Transformation.
- g) The term “ACT” shall refer to Allied Commander Transformation.
- h) The term “NATO”, shall refer to the North Atlantic Treaty Organisation.
- i) The term “days” as used in this NCB shall, unless otherwise stated, be interpreted as meaning calendar days.

### 4. Eligibility.

This NCB is open to companies:

- (a) Established in a North Atlantic Treaty Organization Alliance member nation – US only.

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(b) Working as licensed general contractors in the required field and legally authorised to operate in the United States of America, at the time of bidding, including all regulatory requirements prescribed by the Commonwealth of Virginia (Board of Contractors, local city requirements, etc.) on work of this type.

(c) That have performed the desired past performance including size, cost and scope, as described in this NCB.

### 5. Duration of Contract

(a) The contract awarded shall be effective upon date of award, from 1 October 2020 to 31 December 2020.

### 6. Exemption of taxes.

(a) In accordance with the agreements (Article VIII of the Paris Protocol dated, Paris Protocol dated 25 August 1952) goods and services under this contract are exempt from taxes, duties and similar charges.

### 7. Amendment or Cancellation.

(a) HQ SACT reserves the right to amend or delete any one or more of the terms, conditions or provisions of the NCB prior to the date set for bid closing. A solicitation amendment or amendments shall announce such action.

(b) HQ SACT reserves the right to cancel, at any time, this NCB either partially or in its entirety. No legal liability on the part of HQ SACT shall be considered for recovery of costs in connection to bid preparation. All efforts undertaken by any bidder shall be done considering and accepting, that no costs shall be recovered from HQ SACT. If this NCB is cancelled any/all received bids shall be returned unopened, per the bidder's request.

### 8. Clarifications.

(a) Prospective Bidders should seek clarification at their earliest convenience. Any explanation regarding the meaning or interpretation of this NCB, terms, clause, provision or specifications, shall be requested in writing, from the Contracting Officer. The Contracting Officer must receive such requests for clarification no later than 4 calendar days prior to the bid closing date.

(b) Information in response to a request for clarification to a prospective bidder shall be furnished to all prospective bidders as a Question and Answer amendment. All

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such amendments shall be incorporated into this NCB. Oral Interpretations shall not be binding.

### 9. Bid closing date.

(a) Bids shall be received at HQ SACT, Purchasing and Contracting Office, no later than 25 Sep 2020 at **3:00pm EDT Eastern Daylight Time**, Norfolk, Virginia, U.S.A. No bids shall be accepted after this time and date.

### 10. Bid Validity.

(a) Bids shall remain valid for a period of one hundred and twenty days (120) from the applicable closing date set forth within this NCB. HQ SACT reserves the right to request an extension of validity. Bidder shall be entitled to either grant or deny this extension of validity; HQ SACT shall automatically consider a denial to extend the validity as a withdrawal of the bid.

### 11. Contents of Proposal.

The proposal shall consist of electronic copies only, A) emailed as one single PDF file version for the **technical proposal** and B) e-mailed as one single PDF file version for the **price proposal**. Both the technical and price proposal are required no later than 25 September 2020, **3:00pm, Eastern Daylight Time**, Norfolk, Virginia, USA.

NO PAPER COPY PROPOSALS ARE REQUIRED!

A table of contents for the entire proposal (Checklist provided as Enclosure #1)

- (a) The bidder's full name address, Point of Contacts, Telephone, Fax number and Internet site, (See Enclosure #2);
- (b) Compliance statement (See Enclosure #3);
- (c) Provision of administrative and technical volumes
- (d) Compliance criteria, (See Annex A to Statement of Work).
- (e) Minimum of 2 or 3 past performances (See Enclosure #4)
- (f) Company price proposal (Enclosure #5)

### 12. Proposal Submission.

- (a) Proposals shall be submitted via two separate e-mails, one containing a no more than 5 PDF Technical volume and one containing a single PDF Price

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volume. The e-mail title shall clearly cite the NCB Solicitation reference number and identify if it is Technical or Pricing. E-mails should be sent to the identified Contracting Officers and internal company personnel ONLY.

- (b) **Price proposals shall be in U.S. Dollar currency.** Contractor may request payment post award in alternate currency based on agreed conversion rate.
- (c) Prices shall be on a **Firm Fixed Price Basis** and include any relevant discount schedule.
- (d) It is the sole responsibility of the interested company to review any Q & A that may be issued in support of this solicitation, prior to bid submission at [www.act.nato.int/contracting](http://www.act.nato.int/contracting)
- (e) No oral bids or oral modifications or telephonic bids shall be considered.
- (f) It is the ultimate responsibility prior to submission that all proposal submissions are reviewed to ensure they meet the technical and administrative specifications and that offers meet the limitations and expressed conditions. The contractor is ultimately responsible for ensuring and verifying that the ACT Contracting Officer receives the proposals.

### 12. Late Proposals.

(a) It is solely the bidder's responsibility that every effort is made to ensure that the proposal reaches HQ SACT prior to the established closing date and time. All late bids shall be returned to the offering company unopened. Only if it can be unequivocally demonstrated that the late arrival of the bid package was the result of NATO staff negligence (mishandling) shall the bid be considered.

(b) A delay in a commercial courier service does not constitute a delay by NATO or government channels.

### 13. Bid Withdrawal.

(a) A bidder may withdraw their bid up to the date and time specified for bid closing. Such a withdrawal must be completed in writing or facsimile, with attention to the HQ SACT Contracting Officer. The proposal shall be returned unopened, at the expense of the company.

### 14. Bid Evaluation.

(a) The evaluation of bids and determination as to the responsiveness and technical adequacy or technical compliance, of the products or services requested, shall be the responsibility of HQ SACT. Contract award shall be based upon the Lowest Priced, Technically Compliant bid. Such determinations shall be consistent with the

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evaluation criteria specified in the RFQ. HQ SACT is not responsible for any content that is not clearly identified in any proposal package.

(b) Proposals shall be evaluated taking into consideration of the following factors;

- Successful administrative submission of bid packages and requested Enclosures 1-5, as listed in this NCB (Pass/Fail).
- Successful determination of Technical compliance in accordance with Annex A of the SOW. (Pass/Fail).
- Successful cost price criteria. (Lowest Price Technically Compliant Offer).
- Upon determination that the technical volume is responsive and technically compliant, such offers shall be approved to the next phase (price) of the Contract Award Committee two-step process.
- Contract Award Committee (CAC) shall open and record the price proposals of the Technically Compliant offers.

**Important Note:** Award may be made from initial offers without discussions.

NATO will collect information from references provided by the Offeror in regard to its past performance. The Offeror must provide the information requested for performance risk evaluation, or affirmatively state that it possesses no directly related or similar past performance. Firms lacking relevant past performance shall receive an “unknown” evaluation for performance risk.

### 15. Clarifications.

(a) During the entire evaluation process HQ SACT reserves the right to discuss any bid with the order to clarify what is offered and interpretation of language within the bid, to resolve in potential areas of non-compliance.

### 16. Award.

- (a) HQ SACT contemplates to award to a single source.
- (b) HQ SACT Contract Awards Committee shall award the contract to the Bidder whose conforming proposal represents the Lowest Priced Technically Acceptable offer(s). Partial Awards will be considered within the identified categories: Solar Panels / LED Conversion.
- (c) HQ SACT reserves the right to negotiate minor deviations to the listed Special and General Terms and Conditions to this NCB.

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(d) Contract Award date is anticipated 1 October 2020.

### 17. Communications.

(a) All communication related to this NCB, between a prospective bidder and HQ SACT shall be only being through the nominated HQ SACT Contracting Officer. Designated contracting staff shall assist the HQ SACT Contracting Officer in the administrative process. There shall be no contact with other HQ SACT personnel in regards to this NCB. Such adherence shall ensure Fair and Open Competition with equal consideration and competitive footing leverage to all interested parties.

### 18. Point of contact is;

LT Mark Macsule, HQ SACT Contracting Officer 757-747-3612  
[Mark.macsule@act.nato.int](mailto:Mark.macsule@act.nato.int)

And

Ms. Kellie Hagen, Assistant Contracting, 757-747-4180  
[Kellie.hagen@act.nato.int](mailto:Kellie.hagen@act.nato.int)

(a) All correspondence shall be forward to:

Purchasing & Contracting,  
BUDFIN Branch,  
NCB-ACT-SACT-20-68,  
7857 Blandy Road, Suite 100,  
Norfolk, VA, U.S.A.



**PROPOSAL CONTENT / CHECKLIST**

Table of Contents

- ☐ Bidder`s name, address, POC, Contact numbers, email address.
- ☐ Mailing label.
- ☐ Compliance Statement.
- ☐ Past performance (including References).
- ☐ List of Key personnel.
- ☐ Technical Proposal.
- ☐ Price Proposal.

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## **Enclosure 2**

(The label below is to be completed by the bidder and affixed to the exterior envelope; parcel or package mailed or deliver to ACT)

### **SEALED BID TO NCB-ACT-SACT-20-68**

**(To be opened by Contract Awards Committee (CAC) Only)**

**Sender:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Supreme Allied Commander Transformation**

**Chairman, Contracts Award Committee**

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**Attn: LT Mark Macsule**

**7857 Blandy Road, Suite 100,**

**Norfolk, VA 23551-2490**

**U.S.A**

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Enclosure 3

## COMPLIANCE STATEMENT TO SEALED BID NCB-ACT-SACT-20-68

It is hereby stated that our company has read and understands all documentation issued as part of NCB-ACT-SACT-20-68. Our company proposal submitted in response to the referenced solicitation is fully compliant with the provisions of NCB-ACT-SACT-20-68, and the intended contract with the following exception(s); such exemptions are considered non substantial to the HQ SACT solicitation provisions issued.

Clause

Description of Minor Deviation.

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(If applicable, add another page)

Company: \_\_\_\_\_

Signature: \_\_\_\_\_

Name & Title: \_\_\_\_\_

Date: \_\_\_\_\_

Company Bid Reference: \_\_\_\_\_

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Bidder's proposal must be based on full compliance with the terms, conditions and requirements of the RFP and all future clarifications and/or amendments. The bidder may offer variations in specific implementation and operational details provided that the functional and performance requirements are fully satisfied. In case of conflict between the compliance statement and the detailed evidence or explanation furnished, the detailed evidence/comments shall take precedence/priority for the actual determination of compliance. Minor or non substantial deviations may be accepted. Substantial changes shall be considered non responsive.

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## Enclosure 4

## PAST PERFORMANCE INFORMATION FORM

## PAST PERFORMANCE DATA

**(a) Contracting Agency:**

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**(b) Contract No:**

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**(c) Type of Contract (Firm Fixed Price, IDIQ, Requirements):**

**(d) Title of Contract:**

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**(e) Description of Work Performance and Relevance to Current Acquisition (Type of facility, capacity, estimated patronage, summary of staff used):**

[illegible]

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**(f) Contract Dollar Amount:**

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**(g) Period of Performance:**

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**(h) Name, Address, Fax and Telephone No. of Reference:**

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**(i) Indicate Whether Reference Acted as Prime or Sub-contractor:**

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**(j) Comments regarding compliance with contract terms and conditions, which should include the predicted solar/LED system performance and the actual system performance achieved by the system post-install:**

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**(k) Complete Contact Information for client:**

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**(l) Permission to contact client for reference: Yes/ No**

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**Name/Signature of Authorized Company Official**

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Enclosure 5

### ***NCB-ACT-SACT-20-68 SEALED BID PRICE PROPOSAL***

*COMPANY NAME: ABC, Inc*

*ADDRESS: Street,  
City, Post code*

*TO: Chairman of Supreme Allied Commander Transformation, (HQ SACT)*

*Contracts Award Committee.*

*ATTN: LT Mark Macsule*

*7857 Blandy Road, Suite 100*

*Norfolk, VA 23551*

**SUBJECT: NCB-ACT-SACT-20-68 Sealed Bid Price Proposal**

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Please find on behalf of **Insert: Company Name** to provide HQ SACT with services (collectively referred as “ITEMS”), subject to the provisions, terms and conditions stated in NCB- ACT-SACT-20-68 and the “**Insert : Company Name** Technical proposal”, submitted in accordance with solicitation provisions.

Price category	<b>Proposal</b>	<b>Sub total</b>
Solar Power (\$/W)	Price per Watt \$	Solar: \$
LED Conversion (\$/sqft)	Price per Sqft \$	LED: \$

Grand Total Contract Price \$\_\_\_\_\_

Please verify and acknowledge propriety of above, by duly completing signatures below.

Authorizing Company Official:

Printed Name: \_\_\_\_\_

Position: \_\_\_\_\_

Title: \_\_\_\_\_

Authorizing Company (Signature): \_\_\_\_\_, Date: \_\_\_\_\_.



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***Company name*** Witness Official:

Printed Name: \_\_\_\_\_

Position: \_\_\_\_\_

Title: \_\_\_\_\_

Witness Signature: \_\_\_\_\_, Date \_\_\_\_\_

**STATEMENT OF WORK**

**1.0 Introduction**

The Base Support Office under the Resources and Management Directorate (R&M) at the Headquarters Supreme Allied Commander Transformation (HQ SACT) in Norfolk, VA, is expected to complete a Minor Work Package for installing photovoltaic (PV) solar panel system and converting all lighting in the HQ building to Light Emitting Diodes (LED). Installation is expected to commence in 2020. HQ SACT is seeking Contractor Support to complete this project.

**2.0 Background and scope of work**

HQ SACT is implementing a “spend to save” measure. This measure includes installation of solar panels on the roof of the HQ building and installation of LED lighting in the building. See DRAWING 1 for a notional layout of solar panels on the roof of the HQ building. LED lighting would be required throughout the approximate 165,000 square foot building.

A table of 2018-2019 electricity costs are contained in DRAWING 2. The solar system and LED lighting conversion is required to have an aggregate savings of no less than 30% overall.

For split award the solar system is required to achieve at least 10% savings. The LED lighting conversion is required to achieve at least 20% savings.

The only authorized area to install solar panels in on the roof, no solar panel footprint can exist on the ground level. Panels cannot be visible on the roof from the ground level.

Contractors shall provide technical services, labour and materials required to support the NATO Building, NH-31, PV Solar Energy System installation and LED lighting conversion. The anticipated scope of work for this project will include;

2.4.1. Site evaluation for PV Solar Energy System layout and interconnection.

2.4.2. Site evaluation will include LED light/fixture count/survey for the conversion.

2.4.3. Perform pre-construction engineering – structural engineering, utility conditional approval.

2.4.4. Provide final contract if any changes have occurred during pre-construction engineering phase.

2.4.5. Contractor will obtain all required permits.

2.4.6. Contractor will order and furnish all materials.

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2.4.7. Contractor will apply manufacturer recommended pre-requisite roof coating (if applicable).

2.4.8 Contractor will procure all material and perform installation

2.4.8.1. Solar panel layout

2.4.8.1.1. Install ballast pans

2.4.8.1.2. Install pavers (if needed)

2.4.8.1.3. Install racking

2.4.8.1.4. Install wire runs

2.4.8.1.5. Install conduit runs

2.4.8.1.6. Install combiner boxes

2.4.8.1.7. Install solar panels

2.4.8.2. Main conduit runs from combiner boxes to inverters

2.4.8.3. Electrical tie-in from solar inverters to main electrical connection to the HQ.

2.4.9. Contractor will submit for final inspection, authority to operate, and facilitate a non-binding Net Metering agreement between the HQ and Dominion Power informing Dominion Power that the building has a self-generating electrical capability.

### 3.0 Type of Contract and Period of Performance

3.1 This is a **firm fixed price deliverables contract**.

***3.2. Period of performance for the design and installation is from 01 October 2020 to 31 December 2020.***

### 4.0 Tasking and deliverables:

**4.1 In coordination with NATO HQ SACT, the Contractor will provide a proposal for solar system installation and LED lighting conversion.**

**4.2 The work shall include, but not be limited to:**

4.2.1. Participate in pre-performance conference to answer questions with details regarding scope of design and construction/installation at NATO HQ SACT. Additional planning meetings will be held if required.

4.2.2. Production of full scope of work to include discussion of items contained in paragraph 2.4, as appropriate. Drawings should provide

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visualization of final solar panel configuration and associated cost saving estimates given the solar system and LED lighting conversion.

4.2.3. Estimated cost/price proposal is U.S. Dollar currency.

4.2.4. Contractors will follow HQ SACT published guidance (to be provided) on COVID-19 mitigation measures applicable to HQ SACT staff members. Failure to follow procedures may result in exclusion of a contractor from the HQ SACT premises and other contractual remedies, including a finding of breach and contract termination for cause.

<b>Deliverables</b>	<b>Acceptance Criteria</b>
Solar power and panel calculations based on the peak sunlight hours for Norfolk, Virginia, to include but not limited to; layout, capacity, and detailed scope of work, estimated time for construction start and project completion.	Drawings shall contain near scale representation of final layout, content will be consistent with products provided for similar projects consistent with industry standards. Computer Aided Design (CAD) and Building Information Modelling (BIM) software may be used. Scope of work should be as detailed as possible such that it would make sense to someone unfamiliar with the project.
LED lighting conversion detailed scope of work to include but not limited to; Professional lighting grid survey, as-built drawings, estimated time for construction start and project completion for lighting conversion.	Scope of work should be as detailed as possible such that it would make sense to someone unfamiliar with the project.
Recommended schedule of work activities.	Detailed recommendation for the schedule of activities for the installation of solar panels and conversion of all lighting to LED. Schedule should be in the form of a critical path project management tool, an equivalent, or suitable alternative recommended by the contractor. Provide supplementary information regarding mandatory sequencing as needed
Pre-construction engineering	Pre-construction engineering for roof and solar installation shall be in compliance with the requirements of DOD Unified Facilities Criteria (UFC) 3-110-03.

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	(Roofing) and UFC 3-440-01 Facility-Scale Renewable Energy Systems (Solar).
Detailed quote of all costs associated with procurement and installation of all necessary equipment in support of both solar system and LED lighting conversion.	Itemized listing of major construction components and associated cost.
Solar system installed and connected to electrical grid. LED lighting installed and conversion complete.	Total system energy savings of no less than 30%. If split award, the solar system is required to provide at least 10% savings and the LED is required to provide at least 20% savings.

### 5.0 Site Survey

5.1. Three mandatory site survey periods will be held on 10, 15, and 17 September 2020 to allow for examination of the work sites. The site survey periods will take place at HQ SACT, 7857 Blandy Road, Suite 100, Norfolk, VA 23551-2490. PROSPECTIVE BIDDERS MUST ATTEND ONE OF THREE AVAILABLE SITE SURVEYS. ATTENDANCE AT ONE OF THE SITE SURVEYS IS ADMINISTRATIVELY COMPLIANT. Please pre-register by completing the base access form and submit electronically to the two points of contacts listed in paragraph 20 below no later than 7 days prior to the desired site visit date. No submissions will be accepted outside of the 7 working days. Companies are limited to a maximum of 2 employees in attendance at a site survey to ensure social distancing can be maintained. Please refer Base Access Request Form and Instructions.

5.2. Site survey of HQ SACT where construction is intended to take place is required prior to NATO HQ SACT acceptance of technical and cost/price proposals and contract award. Participation in layout and scope of work discussion with the NATO HQ SACT team includes open dialogue with NATO HQ SACT regarding the statement of work. Site surveys will include tours of the roof, electrical systems, and all spaces of the building needed to verify existing lighting conditions/capability in order to ensure bidding contractors cost/price proposals are as accurate as possible.

5.3 Electrical schematics will be provided upon request and are classified NATO UNCLASSIFIED, which requires the companies that receive them to maintain them internally and not distribute to any other company or party without permission from Allied Command Transportation Security Office.

## **6.0 Qualifications**

Prospective bidders should, have a

- 1** Contractor must be a fully licensed Class “A” Contractor by the State of Virginia and this license must remain valid through the term of this agreement. Bidders shall be a registered, bonded, electrical contractor, licensed by the State of Virginia. The bidder shall submit a copy of their license with their response, along with copies of any other regulatory certifications required by the Commonwealth of Virginia or the City of Norfolk.
- 2** The selected firm shall employ a minimum of two licensed professional engineers by the State of Virginia to consult on complex engineering related inquiries.
- 3** Have the ability to provide 24/7 -365 day service and repair.
- 4** Employ a full-time Certified Safety Director in order to provide an Occupational Safety and Health (OSHA) compliant safety plan.
- 5** Proof of experience completing projects of similar complexity and magnitude described in this statement of work. Proof should consist of photographs of completed projects and at least 2 references from past clients/projects of similar complexity and magnitude within the last 5 years. Information regarding past projects should include the projected system efficiencies quoted versus the actual system efficiencies achieved by the system post-install.
- 6** Bidders must use only staff which are trained and qualified to work with Solar power and equipment specific to the installation of solar power and LED lighting. The staff used must be directly employed and/or supervised by the bidder. The bidder will provide, as part of his bid, the name, qualifications and certifications of each person who will be assigned to this contract service agreement. Qualifications shall include a listing of technical training, schools or apprenticeships for each employee.
- 7** Bidder shall have an office within 50 miles from the site location of HQ SACT, Norfolk, Virginia, 7857 Blandy Rd., Suite 100, Norfolk, Virginia 23551-2490.

## **7.0 Experience**

The contractor company will have a minimum of 5 years of experience in the field of solar panel and/or LED installation, and the project lead will have at least 2 years of experience in either or both fields. If the contractor company substitutes the portion of the work pertaining to solar panel installation or LED installation, the subcontracted company shall also have a minimum of 5 years of experience in its respective field, and shall also employ a project sub-lead

with at least 2 years of experience in the field relevant to the work being subcontracted.

### 8.0 Implementation Plan

The Contractor shall submit a detailed plan for work, schedule of work activities, estimated time for construction start and project completion.

### 9.0 Points of contact

- **Contracting Officer: LT Mark Macsule, *mark.macsule@act.nato.int*, 757-747-3612**
- **Contracting Officer Asst: Ms Kellie Hagen, *kellie.hagen@act.nato.int*, 757-747-4180**

### 10.0 Furnished materials

Contractor shall furnish all tools and materials necessary to complete the deliverables outlined in the Statement of Work.

### 11.0 Cancellation rights

Force Majeure. Neither party shall be liable for any failure of or delay in the performance of this agreement for the period that such failure or delay is due to causes beyond its reasonable control, including but not limited to acts of God, destructive weather, wildfire, flood, war or other military operations, strikes or labour disputes, embargoes, government orders or any other force majeure event. This includes total or partial cancellation of the event under this Agreement.

Upon completion of the deliverables, HQ SACT will pay 90% of the total contract price and hold back 10% of the full payment for a period of up to 210 days prior to final acceptance, unless the parties agree to a longer period. During the first 90-day period after installation, HQ SACT will conduct an internal review of electricity usage/consumption rates and compare them with historical empirical data to determine whether or not the efficiency (energy savings) of the combined solar system and LED conversion meets the standards agreed upon by the contract.

If the system meets the standards agreed in the contract for energy savings, HQ SACT will evaluate the contractor's performance for final acceptance and release the 10% holdback upon acceptance.

If the system does not meet the standards agreed in the contract for energy savings, HQ SACT will afford the contractor company 30 days, unless the parties mutually agree to a longer period, to cure. HQ SACT will then evaluate the system for 90 more days. If, after the contractor company cures the defect causing

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system underperformance, HQ SACT will evaluate the contractor's performance for final acceptance and release the 10% holdback upon acceptance. If the contractor is unable to cure the system underperformance, the contractor forfeits the 10% holdback.

<b>Installation completion (IC)</b>	<b>HQ SACT pays 90% of full contract price</b>
<b>IC plus 90 days</b>	<b>HQ SACT evaluates system performance against contract standards</b>
<b>IC plus 90 days if system meets standards and HQ SACT finally accepts deliverable</b>	<b>HQ SACT pays 10% holdback upon final acceptance</b>
<b>IC plus 120 days (or otherwise agreed)</b>	<b>Contractor company cures defects causing underperformance</b>
<b>IC plus 210 days (or otherwise agreed)</b>	<b>HQ SACT reevaluates system performance against contract standards</b>
<b>IC plus 210 days (or otherwise agreed) if system meets standards and HQ SACT finally accepts deliverable</b>	<b>HQ SACT pays 10% holdback upon final acceptance</b>
<b>IC plus 210 days (or otherwise agreed) if system still does not meet standards</b>	<b>HQ SACT finally accepts underperforming system and company forfeits 10% holdback</b>



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## DRAWING 1



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## DRAWING 2

BYM	Oct-18	Nov-18	Dec-18	Jan-19	Feb-19	Mar-19	Apr-19	May-19	Jun-19	Jul-19	Aug-19	Sep-19	Total
BLDG #	NSA-NH31	NSA-NH31	NSA-NH31	NSA-NH31	NSA-NH31	NSA-NH31	NSA-NH31	NSA-NH31	NSA-NH31	NSA-NH31	NSA-NH31	NSA-NH31	
CONSUMPTION (MWH)	378.3	258.6	276.9	260.1	242.2	209.5	254.3	274.6	298.8	324.2	362.3	352.5	
RATE (\$/MWH)	\$ 100.57	\$ 100.57	\$ 100.57	\$ 100.57	\$ 100.57	\$ 100.57	\$ 100.57	\$ 100.57	\$ 100.57	\$ 100.57	\$ 100.57	\$ 100.57	
COST	\$ 38,045.63	\$ 26,007.40	\$ 27,847.83	\$ 26,158.26	\$ 24,358.05	\$ 21,069.42	\$ 25,574.95	\$ 27,616.52	\$ 30,050.32	\$ 32,604.79	\$ 36,436.51	\$ 35,450.93	\$ 351,220.61

## **Annex “A”, Technical Evaluation Matrix**

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### **Annex A: Evaluation Matrix**

**Need some criteria to evaluate the proposals, i.e. years of experience etc.**

The bids will be evaluated against the following levels:

Compliant (C) = Meets the criterion  
Minor Shortfall (M) = marginally meets the criterion  
Serious shortfall (S) = Proposal will be deemed non-compliant

#	Criteria	Evaluation  (C/M/S)	Comments  (Contractor should complete each section below outlining how compliance is achieved and concisely demonstrate by direct reference to technical proposal that unequivocally demonstrates compliance)
	<b>Installation of solar system and LED lighting conversion at the Headquarters Supreme Allied Command Transformation located in building NH-31, Naval Support Activity Hampton Roads, Norfolk, VA.</b>		
a.	<b><u>Company/ Personnel Requirements</u></b>		

## **Annex “A”, Technical Evaluation Matrix**

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1	Contractor must be a fully licensed Class “A” Contractor by the State of Virginia and this license must remain valid through the term of this agreement. The bidder shall submit a copy with their response.		
2	The selected firm shall employ at a minimum of two licensed professional engineers by the State of Virginia.		
3	Have the ability to provide 24/7 -365 day service and repair.		
4	Employ a full-time Certified Safety Director in order to provide an Occupational Safety and Health (OSHA) compliant safety plan		
5	Proof of experience completing projects of similar complexity and magnitude described in this statement of work. Proof should consist of photographs of completed projects and at least 2 references from past clients/projects of similar complexity and magnitude within the last 5 years. Information regarding past projects should include the projected system efficiencies quoted versus the actual system efficiencies achieved by the system post-install.		
6	Bidders must use only staff which are trained and qualified to work with Solar power and equipment specific to the installation of solar power and		

## **Annex “A”, Technical Evaluation Matrix**

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	LED lighting. The staff used must be directly employed and/or supervised by the bidder. The bidder will provide, as part of his bid, the name, qualifications and certifications of each person who will be assigned to this contract service agreement. Qualifications shall include a listing of technical training, schools or apprenticeships for each employee.		
7	Bidders shall be a registered, bonded, electrical contractor, licensed by the State of Virginia. A copy of the license and this card shall be included with the bid.		
8	Bidder shall have an office within 50 miles from the site location of HQ SACT, Norfolk, Virginia, 7857 Blandy Rd., Suite 100, Norfolk, Virginia 23551-2490.		
9	Attend one of the three site surveys to develop proposal.		
10	Solar power and panel calculations based on the peak sunlight hours for Norfolk, Virginia, to include but not limited to; layout, capacity, and detailed scope of work, estimated time for construction start and project completion.		
11	LED lighting conversion detailed scope of work to include but not limited to; Professional lighting grid survey, as-built drawings, estimated time for construction start and project		

## **Annex “A”, Technical Evaluation Matrix**

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	completion for lighting conversion,.		
12	Recommended schedule of work activities.		
13	Pre-construction engineering for roof and solar installation shall be in compliance with the requirements of UFC 3-110-03 (Roofing) and UFC 3-440-01 Facility-Scale Renewable Energy Systems (Solar).		
14	Detailed quote of all costs associated with procurement and installation of all necessary equipment in support of both solar system and LED lighting conversion.		

## Annex “A”, Technical Evaluation Matrix

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b.	<b><u>Special Requirements</u></b>		
15	Design, construction and installation are in compliance with National Electrical Code (NEC), Occupational Safety and Health (OSHA) and National Fire Protection Association (NFPA) standards.		
16	25 year comprehensive warranty on solar panels and associated components.		
17	Solar system has capability of remote monitoring system performance.		
18	Portions of the solar system need to be easily moved/relocated by building’s maintenance staff to access portions of the roof for periodic inspections/maintenance.		
19	At least 1 year warranty on installation and associated components/hardware		
20	Certification of adequate storage for material awaiting installation.		
21	Required Conferences and Meetings - The Contractor may be required to attend conferences and meetings to include, but not limited to, regularly scheduled staff meetings,		

## Annex “A”, Technical Evaluation Matrix

	administrative/coordination meetings, inspections and site investigations, and as otherwise requested by the Contracting Officer.		
22	Protection of Government Property - During execution of the work, the Contractor shall protect HQ SACT property. The Contractor shall return areas damaged as a result of negligence under this contract to their original condition at no cost to the HQ SACT.		
23	Service Interruptions - If any utilities or other services must be discontinued (even temporarily) due to scheduled contract work, the Contractor shall notify the COTR, affected tenants, and customers of the scheduled outage at least ten (10) workdays in advance. If the discontinued service is due to an emergency breakdown the Contractor shall notify the COTR, affected tenants and customers as soon as practicable.		
24	Quality Management (QM) Plan - Within 15 calendar days after award of the contract, the Contractor shall submit to the		



## Annex “A”, Technical Evaluation Matrix

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	Contracting Officer (KO)/COTR a QM Plan. The QM Plan shall describe the QM methodology and approaches used under this contract. Within seven calendar days of any change during period of performance, submit to the KO a revised QM Plan for acceptance.		
25	Quality Inspection and Surveillance - The Contractor shall establish and maintain an inspection plan in accordance with agreed QM plan, to ensure that the work performed conforms to the contract requirements. The Contractor shall document and maintain a file of all scheduled and performed inspections and surveillances, inspection and surveillance results, and dates and details of corrective and preventive actions. The quality inspection and surveillance file shall be the property of HQ SACT and made available during the HQ SACT's regular working hours. The file shall be turned over to the Contracting Officer/COTR within five calendar days of termination of the contract or as otherwise		

## Annex “A”, Technical Evaluation Matrix

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	requested by the Contracting Officer.		
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# **NCB-ACT-SACT-20-68**

## **HQ SACT General Contract Terms and Conditions**

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# NCB-ACT-SACT-20-68

**1. Definitions.** As used throughout this contract, the following terms shall have meanings as set forth below:

a. "HQ SACT" means the Supreme Headquarters Allied Command Transformation, located at 7857, Blandy Road, Suite 100, Norfolk, Virginia, United States of America.

b. Contracting Officer means the person executing and managing this contract on behalf of HQ SACT.

c. Inspector means a person appointed by the Contracting Officer for the purpose of determining compliance with the technical requirements of the contract.

d. The North Atlantic Treaty Organization is hereafter referred to as "NATO".

e. The term "days" shall be interpreted as meaning calendar days

**2. Applicable law.** Except as otherwise provided in this contract, this contract shall be governed, interpreted and construed with the laws of the commonwealth of Virginia of the United States of America.

**3. Assignment.** This agreement is not assignable by the Contractor either in whole or in part unless agreed in writing by HQ SACT Contracting Officer in accordance with;

a. Any modifications, including changes, additions or deletions and instructions under this contract shall not be binding unless issued in writing by the Contracting Officer

b. Sub-contractors shall be limited to citizens or legal entities of member nations of NATO, unless specifically authorized by the Contracting Officer.

c. The Contractor shall determine that any sub-contractor proposed by him for the furnishing of supplies or services which shall involve access to classified information in the Contractor's custody has been granted an appropriate facility security clearance by the sub-contractor's national authorities, which is still in effect, prior to being given access to such classified information.

## **4. Acceptance**

a. Acceptance or rejection of the supplies shall be made as promptly as practicable after delivery, except as otherwise provided in this contract.

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 SACT acknowledges that the Contractor has fully demonstrated that the deliveries are complete and operational. The formal acceptance will take place when the following requirements have been met:

- Availability at final destination of all deliverables.

## NCB-ACT-SACT-20-68

- Successful completion of acceptance testing.
- Verification of the inventory.
- Satisfactory completion of all training or other services, if any, required by that date.
- Agreement between the Contracting Officer and the Contractor on a discrepancy list (if necessary) and corresponding clearance dates.

c. 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.

**5. Service and Parts Availability.** Unless as specified otherwise in the Technical Specifications, the Contractor and his subcontractors will maintain and furnish a source of an adequate supply of services, components, spare parts and sub-assemblies to properly maintain the supplies for a period of minimum five (5) years from Contract Effective Date.

### **6. Preferred Customer**

a. The Contractor warrants that the prices set forth in this contract are as favorable as those extended to any Government, Agency, Company, Organization or individual purchasing like quantities covered by the contract under similar conditions. In the event that prior to complete delivery under this contract the Contractor offers any of such items in substantially similar quantities to any customer at prices lower than those set forth herein, the Contractor shall so notify HQ SACT and the prices of such items shall be correspondingly reduced by a supplement to this contract.

b. Prices in this sense means "Base Price" prior to applying any bonuses.

### **7. Notice of Shipment**

a. At the time of delivery of any supplies to a carrier for transportation, the Contractor shall give notice of shipment to the Contracting Officer and to such other persons or installations as are designated by the Contracting Officer. If such instructions have not been received by the Contractor at least one working day prior to such delivery to a carrier, the Contractor shall request instructions from the Contracting Officer concerning notice of shipment to be given.

b. The following information shall be included in such notification:

- (1) Contract Number
- (2) Shipping address

From: (Name and complete address of consignor)

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To: (Name and complete address of consignee)

- (3) Listing of supplies by Contract Items(s)
- (4) Number of and marking on packages(s)
- (5) Weight and dimensions of packages(s)
- (6) Name and address of Carrier, mode and date of shipment with waybill number,
- (7) Customs documents required by Contractor (if applicable).

### 8. Security

a. The Contractor shall comply with all security requirements prescribed by HQ SACT and the National Security Authority or designated security agency of each NATO country in which the contract is performed.

b. The Contractor shall be responsible for the safeguarding of NATO classified information, material and equipment entrusted to him or generated by him in connection with the performance of the contract.

c. Any known or suspected breaches of security or other matters of security significance shall be reported by the Contractor to the Contracting Officer and to the National Security Authority or designated security agency.

d. The Contractor shall apply to the Contracting Officer for approval before sub-contracting any part of the work, if the sub-contract would involve the sub-contractor in access to classified information. The Contractor shall place the sub-contractor under security obligations no less stringent than those applied to his own contract

### 9. Inspection

a. Unless otherwise specifically provided for in the specifications, all equipment, materials and articles incorporated in the work covered by this contract are to be new and of the most suitable grade of their respective kinds for the purposes intended. All workmanship shall be first class.

b. All supplies (which terms throughout this clause includes without limitation raw materials, components, intermediate assemblies, and end products) shall be subject to inspection and test by HQ SACT, to the extent practicable at all times and places including the period of manufacture, and in any event prior to acceptance.

c. In case any supplies are defective in material or workmanship or otherwise not in conformity with the requirements of this contract, HQ SACT shall have the right either to reject them (with or without instructions as to their disposition) or to require their correction or to accept them against reduction in price which is equitable under the

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circumstances.

d. If any inspection or test is made by HQ SACT on the premises of the Contractor or sub-contractor, the Contractor without additional charge shall provide all reasonable facilities and assistance to inspectors in the performance of their duties. If HQ SACT inspection or test is made at a point other than the premises of the Contractor or a sub-contractor, it shall be at the expense of HQ SACT except as otherwise provided in this contract. In case of rejection HQ SACT shall not be liable for any reduction in value of samples used in connection with such inspection or test. HQ SACT reserves the right to charge to the Contractor any additional cost of HQ SACT inspection and test when supplies are not ready at the time such inspection, when test is requested by Contractor or when reinspection or retest is necessitated by prior rejection. Failure to inspect supplies shall neither relieve the Contractor from responsibility for such supplies as are not in accordance with the contract requirements nor impose liability on HQ SACT therefore.

e. The inspection and test by HQ SACT 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. Except as otherwise provided in the contract, acceptance shall be conclusive except as regards latent defects, hidden deficiencies, fraud, or such gross mistakes as amount to fraud.

**10. Title.** Unless specified elsewhere in this contract, title to supplies furnished under this contract shall pass to HQ SACT upon acceptance, regardless of when or where HQ SACT takes physical possession.

### **11. Supply Warranty**

a. Notwithstanding inspection and acceptance by HQ SACT of supplies furnished under the contract or any provision of this contract concerning the conclusiveness thereof, the Contractor warrants that for a period of twelve (12) months following the date of acceptance:

- (1) All supplies furnished under this contract will be free from defects in material or workmanship and will conform with the specifications and all other requirements of this contract; and
- (2) The preservation, packaging, packing and marking and the preparation for and method of shipment of such supplies will conform with the requirements of this contract.

b. The Contracting Officer shall give written notice to the Contractor of any breach of the warranties in paragraph a. of this clause within thirty (30) days after discovery of any defect.

c. Within a reasonable time after such notice, the Contracting Officer may either:

- (1) By written notice require the prompt correction or replacement of any supplies or part thereof (including preservation, packaging, packing and marking) that do not conform with requirements of this contract within the meaning of

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Paragraph a. of this clause; or

- (2) Retain such supplies, whereupon the contract price thereof shall be reduced by an amount equitable under the circumstances and the Contractor shall promptly make appropriate payment.

d. When return, correction or replacement is required, the Contracting Officer shall return the supplies and transportation charges and responsibility for such supplies while in transit shall be borne by the Contractor. However, the Contractor's liability for such transportation charges shall not exceed an amount equal to the cost of transportation by the usual commercial method of shipment between the designated destination point under this contract and the Contractor's plant and return.

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 the written request issued by the Contracting Officer per paragraph c to correct or replace the defective or nonconforming supplies. In the event it is later determined that such supplies were not defective or nonconforming within the provisions of this clause, the contract price will be equitably adjusted. Failure to agree to such an equitable adjustment of price shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Dispute".

f. Any supplies or parts thereof furnished in replacement pursuant to this clause shall also be subject to all the provisions of this clause to the same extent 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 received back at the user's location.

g. In case of a provisional acceptance the warranty period starts at the date of provisional acceptance and ends twelve (12) months after the date of provisional acceptance.

h. 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 "Disputes" clause of this contract.

i. The word "supplies" as used herein includes related services.

j. The rights and remedies of HQ SACT provided in this clause are in addition to and do not limit any rights afforded to HQ SACT by any other clause of the contract.

### 12. Invoices

a. The contractor shall submit an original invoice and three (3) copies (or electronic invoice, if authorized) to the address designated in the contract to received invoices. All invoices shall be submitted no later than 30 days upon completion of work or services performed. An invoice must include: 1) Name and address of the Contractor; 2) Invoice date; 3) Purchase Order number and Purchase Order or Contract line item number; 4) Description, quantity, unit of measure, unit price and extended price of the items delivered; 5) Shipping number and date of shipment including the bill of lading number and weight of shipment if shipped on a bill of lading; 6) Terms of any prompt payment discount offered; 7) Name and address of official to whom



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payment is to be sent: and 8) Name, title, and phone number of person to be notified in event of defective invoice. All invoices shall be certified by the signature of a duly authorized company representative. Invoices for Contractor Travel shall include: 1) Contractor name; 2) Date of Travel; 3) Number of days; 4) Destinations. All invoices shall be submitted to:

HQ SACT  
Accounts Payable  
7857 Blandy Road  
Suite 100, SR-82,  
Norfolk, VA 23551-2490

b. Electronic Fund Transfer is the prescribed method of payment for HQ SACT. Contractors are requested to submit copies of banking information available at (<http://www.act.nato.int/budfin/budfinmain.htm>). Such information shall be submitted to HQ SACT 14 days prior to any contract award.

**13. Payment.** Payment shall be made for items accepted by HQ SACT that have been delivered to the delivery destinations set forth in this contract. Payments under this contract may be made by HQ SACT by electronic funds transfer payments or (check in exceptional cases) and shall submit this designation to the contracting officer as directed. In the event the Contractor, during the performance of this contract, elects to designate a different financial institution for receipt of any payment made using electronic funds transfer procedures, notification of such change and the required information must be obtained by HQ SACT thirty (30) days prior to the date such change is to become effective. The documents furnishing the information required in this clause must be dated and contain the signature, title, and telephone number of the Contractor official authorized to provide it, as well as the Contractor's name and Purchase Order number. Contractor failure to properly designate a financial institution or to provide appropriate payee bank account information may delay payments of amounts otherwise properly due. Discount time will be computed from date of delivery at place of acceptance or from receipt of correct invoice at the office specified by HQ SACT, whichever is later. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

**14. Taxes.** The contract excludes all applicable Federal, State, and local taxes and duties. HQ SACT is a tax-exempt organization.

**15. Excusable Delays.** The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of HQ SACT in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the contracting Officer in writing as soon as is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**16. Indemnity.** The contractor shall indemnify HQ SACT and its officers, employees and agents against liability, including costs for actual or alleged direct or contributory infringement of

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or inducement to infringe, any United States or foreign patent, trademark, copyright, or other intellectual property right, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

**17. Disputes.** Except as otherwise provided, during the period of performance, any dispute between the parties arising out of the performance of this contract which is not disposed of by agreement shall be decided by the HQ SACT Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of HQ SACT shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to HQ SACT a written appeal. In connection with any appeal of HQ SACT decision under this paragraph, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. A decision shall be rendered within thirty (30) days of receipt of appeal. HQ SACT FC decision is final.

**18. Termination for Convenience.** HQ SACT reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of HQ SACT using its standard record keeping system have resulted from the termination. In the event of the failure of the Contractor and the Contracting Officer to agree as provided in paragraph d. upon the whole amount to be paid to Contractor by reason of the termination of work pursuant to this clause, the Contracting Officer shall pay to the Contractor the amounts determined by the Contracting Officer. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give SACT any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

### **19. Termination for Default**

a. HQ SACT may, subject to the provisions or paragraph c. below, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances:

- (1) If the Contractor fails to make delivery of the supplies or to perform the Services within the time specified herein or any extension thereof; or
- (2) If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms and in either of these two circumstances does not cure such failure within a period of ten days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

b. In the event HQ SACT terminates this contract in whole or in part as provided in paragraph a. of this clause, HQ SACT may procure supplies or services similar to those so terminated and the Contractor shall be liable to HQ SACT for any excess costs for

## NCB-ACT-SACT-20-68

such similar supplies or services. The Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

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. If this contract is terminated as provided in paragraph a. of this clause, HQ SACT, in addition to any other rights provided in the clause, may require the Contractor to transfer title and deliver to HQ SACT in the manner and to the extent directed by the Contracting Officer:

- (1) Any completed supplies and
- (2) Such partially completed supplies and materials, parts, tools, die, jigs, Fixtures, plans, drawings, information and contract rights (hereinafter called "Manufacturing materials") as the Contractor has specifically produced or Specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon direction of the Contracting Officer, protect and preserve property in the possession of the Contractor in which HQ SACT has an interest. Payment for completed supplies delivered to and accepted by HQ SACT shall be at the contract price. Payment for manufacturing materials delivered to and accepted by HQ SACT and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and Contracting Officer; failure to agree such amount shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Dispute". HQ SACT may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sum as the Contracting Officer determines to be necessary to protect HQ SACT against loss because of outstanding liens or claims of former lien holders.

e. If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of HQ SACT, be the same as if the notice of termination had been issued pursuant to such clause. If, after such notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, and if this contract does not contain a clause providing for termination for convenience of HQ SACT the contract shall be equitably adjusted to compensate for such termination and the contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled

## NCB-ACT-SACT-20-68

"Disputes".

f. 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 place where the contract is to be carried out and to the Type of Trade to which the contract relates.

**20. Limitation of Liability.** Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to HQ SACT for consequential damages resulting from any defects or deficiencies in accepted items

**21. Export Control.** Contractor warrants that, if applicable all necessary technical assistance agreements (TAA), export control or other associated arrangements shall be valid prior to contract award. Should a Contractor require export pre-approval HQ SACT legal staff will be provided a preview of said companies request PRIOR to the companies submission to a Government entity. Upon validation of request by HQ SACT Legal staff, subject agreement or request may be submitted to appropriate authority. (Please note: There are no specified time delays regarding TAA, aor export control request being processed. However, experience has shown request can take anywhere from 30 days to 90 days depending on complexity of request, and administrative preparedness).

**22. Risk of Loss.** Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to HQ SACT upon: 1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or 2) Delivery of the supplies to HQ SACT at the destination specified in the contract, if transportation is f.o.b. destination.

**23. Authorization to Perform.** The Contractor warrants that he and his sub-contractors have been duly authorized to operate and do business in the country or countries in which this contract is to be performed; that he and his sub-contractors have obtained all necessary licenses and permits required in connection with the contract; that he and the sub-contractors will fully comply with all the laws, decrees, labor standards and regulations of such country or countries during the performance of this contract; and that no claim for additional moneys with respect to any authorizations to perform will be made upon HQ SACT.

**24. Performance.** Candidates/contractors who accept HQ SACT issued contracts, shall, at a minimum, serve in a designated capacity for no less than 180 calendar days from commencement of contract period of performance. Contracts' with performance periods having less than 180 days in totality shall require contractors to serve a minimum of 50% of estimated performance period. Should a candidate vacate the contract in less time than described, HQ SACT reserves the right to cancel the contract in whole or part. Replacement candidates, if acceptable to HQ SACT, shall be reviewed by HQ SACT for compliance, and, or technical acceptance per the original Statement of Work and final acceptance by HQ SACT Contracting Officer.

**25. Travel.** In accordance with AFM Section 24, Contractor Travel, travel by contractors in support of the HQ SACT mission will only be performed when a member of the approved International HQ SACT Peacetime Establishment is unable to perform the mission.

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Once contractor travel has been established under a contract and a contractor is tasked to travel, the HQ SACT Contractor Travel Request form must be filled out and approved prior to any travel being conducted. This form may be found at:

<http://www.act.nato.int/budfin/contractortravel.htm>

The in-house Travel Agency will set the Transport Ceiling Cost and at that time the contractor may elect to book their transportation with the in-house travel agency. (Please refer to Clause Number 7 above).

Transport tickets purchased through the in-house travel agency will be reimbursed by the HQ SACT entity directly to the in-house travel agency, and the applicable travel line of the contract will be charged. These costs will not be invoiced by, or paid to, the contractor company. When transport tickets are purchased through another source only the ceiling cost allocated by the in-house travel agency will be reimbursed to the contractor company.

Per Diem is based on the NATO Group One subsistence allowance, which covers meals, lodging, incidental expenses and any applicable overhead and/or fees. Per Diem Reimbursement will only be made at these rate amounts. NATO Group III daily subsistence allowances are posted on HQ SACT website at

<http://www.act.nato.int/budfin/contractortravel.htm>.

**26. Proposed Candidates.** No proposals shall be accepted or considered for candidates already assigned to an existing contract with HQ SACT, without the prior permission of the Contracting Officer.

**27. Partial awards** will be allowed when determined in the best interests of NATO. The Contracting Awards Board and the Contracting Officer, when deemed prudent and necessary have the authority to make this determination. Partial bidding shall be consistent with released solicitation.

**28. Competition.** HQ SACT reserves the right to engage in Full and Open Competition after exclusion of sources.

**29. Contractor Notice Regarding Delay.** 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, he shall immediately notify the Contracting Officer 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 HQ SACT of any delivery schedule or date, or of any rights or remedies provided by law or under this contract.

### **30. Notice and Assistance regarding Patent and Copyright Infringement**

a. The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

b. In the event of any claim or suit against HQ SACT on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the

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Contractor shall furnish to HQ SACT, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of HQ SACT except where the Contractor has agreed to indemnify HQ SACT.

c. This clause shall be included in all sub-contracts.

**31. Health, Safety and Accident Prevention.** If the Contracting Officer notifies the Contractor in writing of any non-compliance in the performance of this contract, with safety and health rules and requirements prescribed on the date of this contract by applicable national or local laws, ordinances and codes, and the Contractor fails to take immediate corrective action, the Contracting Officer may order the Contractor to stop all or part of the work until satisfactory corrective action has been taken. Such an order to stop work shall not entitle the Contractor to an adjustment of his contract price or other reimbursement for resulting increased costs, or to an adjustment of the delivery or performance schedule.

**32. Patent Indemnity.** If the amount of this contract is in excess of \$1,000,000 , the Contractor shall indemnify HQ SACT and its officers, agents and employees against liability, including costs, for infringement of any letters patent (except letters patent issued upon an application which is now or may hereafter be kept secret or otherwise withheld from issue by order of the government which issued the letters patent) arising out of the manufacture or delivery of supplies under this contract, or out of the use or disposal by or for the account of HQ SACT of such supplies. The foregoing indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by HQ SACT of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof; and further, such indemnity shall not apply to:

a. An infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used or directing a manner of performance of the Contract not normally used by the Contractor;

b. An infringement resulting from an addition to, or change in, such supplies or components furnished which addition or change was made subsequent to delivery or performance by the Contractor; or

c. A claimed infringement which is settled without the consent of the Contractor, unless required by a court of competent jurisdiction.

### **33. Rights in Technical Data and Computer Software**

a. HQ SACT shall have unlimited rights in:

(1) All technical data and computer software, to include source code, resulting from performance of experimental, developmental, integration, testing, or research work which was specified as an element of performance in this contract.

(2) Plans, drawings, manuals or instructional materials prepared or required to be delivered under this contract for implementation management, installation,

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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 SACT.

### **34. Software Releases and Updates.**

a. All software implemented on or delivered with the supplies shall be at the start of acceptance, the most recent versions or releases as available.

b. The Contractor shall for a duration of minimum five (5) years after acceptance, and upon their availability, offer to HQ SACT all software changes, fixes and new releases. These shall be offered at no cost when they are offered free of charge on the commercial market.

**35. Inconsistency between English Version and Translation of Contract.** In the event of inconsistency between any terms of this contract and any translation thereof into another language, the English language meaning shall control

**36. Contract Effective Date (CED).** The effective date of the contract is the date of last signature by the contracting parties, or a specific date set forth in the Contract.

**37. Enforcement.** Failure by either party to enforce any provision of this contract will not be deemed a waiver of future enforcement of that or any other provision. The invalidity or unenforceability of any provision of this contract shall not affect the other provisions hereof, and this contract shall be construed in all respects if such invalid or unenforceable provisions were omitted

**38. Order of Precedence.** Any inconsistencies in the solicitation or contract shall be resolved by giving precedence in the following order: (1) Special Terms and Conditions; (2) General Terms and Conditions and Purchase Order terms; (3) solicitation provisions if this is a solicitation; (4) the specification/statement of work; (5) other HQ SACT documents, exhibits and attachments; (6) addenda to this solicitation or contract, including any license agreements for computer software, or other Contract agreements.

**39. Entire Agreement.** This contract sets for the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior agreements or representations, oral or written, regarding such subject matter. HQ SACT shall not be bound by, and specifically objects to any term, condition, or other provision inconsistent with or in addition to any provision of this contract that is submitted by Contractor in any correspondence or any document unless HQ SACT specifically agrees to such provision in a written instrument signed by an authorized representative of HQ SACT.