

RFP-ACT-SACT-23-88 QUESTION & ANSWER #1
7 AUGUST 2023

		RFP-ACT-SACT-23-88	Q&A #1
Subject	Reference	Question	Response
Applicable law	HQ SACT General Contract Terms and Conditions	The "HQ SACT General Contract Terms and Conditions" states " 2. <i>Applicable law.</i> 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. " A non-US small to medium enterprise cannot afford the unlikely, but potential risk of needing an expert for the laws of the commonwealth of Virginia of the United States of America for individual contracts with the HQ SACT. Would it be possible to mutually agree on either (1) Belgian law or (2) Swiss law or (3) German law for a service contract based on RFP-ACT-SACT-23-88?	Bid evaluations are conditioned upon (the interested vendor accepting) HQ SACT General Terms and Conditions, while providing an opportunity for negotiation of minor deviations, if so proposed by the company. Bidders should indicate if its proposal is contingent upon HQ SACT acceptance of the bidder's proposed terms or if the bidder is open to negotiation.
Export Control	HQ SACT General Contract Terms and Conditions	"21. Export Control. Contractor warrants that, if applicable all necessary technical assistance agreements (TAA), export control or other associated arrangements <u>shall be valid prior to contract award.</u> [...]" In compliance with the Export Control Procedures of at least one NATO country, any export control arrangements can only be initiated and will only be approved 1) after contract signature and 2) including a HQ SACT signed End User Certificate. Therefore the prospective bidder will not be able to state full compliance with the provisions of RFP-ACT-SACT-23-88 as required per Enclosure 1 "Compliance Statement to Sealed Bid RFP-ACT-SACT-23-88" Will this automatically lead to a non-compliant bid, and if not, is it	Yes, this may be listed and considered a minor deviation. I have confirmed with our Legal office that they review and comment on draft TAAs once contracts are let, as presented by the contracting company (or companies, subcontractors) to which the contract has been awarded. The HQ's LEGADs understand that these agreements are time sensitive and endeavour to provide comments, upon request, soonest, typically within 3-5 business days, after which the contracting company's representative forwards the TAA to the US Department of State for review and approval. Upon conclusion of that process, the TAA is then returned to HQ SACT

		<p>acceptable if this specific export control issue is listed as "minor deviation" in Enclosure 1?</p>	<p>(to Purchasing and Contracting) and signed by the HQ's authorised representative.</p>
<p>Rights in Technical Data and Computer Software</p>	<p>HQ SACT General Contract Terms and Conditions</p>	<p>"36. Rights in Technical Data and Computer Software</p> <p>According to the prospective bidder's understanding, "Work made for Hire (WFH)" is a doctrine created by U.S. Copyright Law. The HQ SACT intention to own and protect any proceeds and results that were generated by the contractor (i.e. so-called foreground IP) is understood and fully supported.</p> <p>However, for a Non-US entity, the legal implications of the above paragraph in combination with the Applicable Law may pose an unbearable risk for the protection of Background and third-party IP.</p> <p>Therefore the prospective bidder would not be able to state full compliance with the provisions of RFP-ACT-SACT-23-88 as required per Enclosure 1 "Compliance Statement to Sealed Bid RFP-ACT-SACT-23-88"</p> <p>Will this automatically lead to a non-compliant bid, and if not, is it acceptable if this specific IPR issue is addressed as follows:</p> <ol style="list-style-type: none"> 1) non-compliance will be listed as "minor deviation" in Enclosure 1 2) If applicable, the bidder will include an initial list with background IP in the proposal that can be amended during contract execution as required, provided that this occurs prior to the the actual processing/use and with previous approval of HQ SACT. 3) should the bid be successful, the contractual clauses relating to IPR will be negotiated 	<p>Please refer to the response in the "Applicable Law" section above.</p> <p>Bid evaluations are conditioned upon (the interested vendor accepting) HQ SACT General Terms and Conditions, while providing an opportunity for negotiation of minor deviations, if so proposed by the company.</p> <p>Issues of background and foreground IP are important to both the Contractor and NATO; therefore, if concerns remain, they should be included with with proposed language (as applicable). Bidders should indicate if a proposal is contingent upon HQ SACT acceptance of the bidder's proposed terms/deviations or if the bidder is open to negotiation.</p>

Rights in Technical Data and Computer Software	HQ SACT General Contract Terms and Conditions	36. Rights in Technical Data and Computer Software a. Ownership of Work Product In how far does the "Work Product" equate the deliverables of RFP-ACT-SACT-23-88? Does "Work Product" include any further products or information which are not part of the deliverables of RFP-ACT-SACT-23-88?	No. The work product in the scope of this contract is the deliverables.
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