

CONTRACT NO. PD/C0473/99

BETWEEN THE
UNITED NATIONS
AND
IHC SERVICES.

FOR THE PROVISION OF PORTABLE
GENERATING SETS FOR THE UNITED
NATIONS MISSIONS.

This Contract is made between the UNITED NATIONS (the "UN"), an international, inter-governmental organization having its Headquarters in New York, New York 10017, U.S.A., and IHC SERVICES (the "Vendor"), having its principal office located at 14-09 110th Street College Point, NY , 11356 USA. The UN and the Vendor are hereinafter jointly referred to as the "Parties".

WITNESSETH

1.0 PURPOSE

1.1 The purpose of this Contract is the provision by the Vendor of the portable generating sets as indicated in Annex B (the "Genset(s)") to UN Peace-Keeping Missions, (each such Mission a "Mission") in accordance with the terms and conditions hereinafter specified. Each Genset shall conform to the specifications relating thereto in the Bid (as defined below).

1.2 The Vendor represents that it has the necessary financing and infrastructure, and is qualified, ready, willing and able to accept and perform the obligations stipulated herein.

2.0 CONTRACT DOCUMENTS


2.1 The contract between the Parties (the "Contract" or this "Contract") consists of the following documents (the "Contract Documents"):

- (a) This document and the United Nations General Conditions of Contract (Annex A);
- (b) The List of Gensets and Prices (Annex B) and Form of Supply Order (Annex C);
- (c) The United Nations Invitation to Bid dated 22 June 1999 (the "ITB") excluding the references made in the ITB to the United Nations General Conditions for Contracts for Purchase of Goods, and,
- (d) The Vendor's Bid dated 8 July 1999 (the "Bid").



- 2.2 The Contract Documents are complementary of one another. However, in the event of any conflict among them, they shall prevail in the order of their enumeration in subsection 2.1 of this Article.
- 2.3 The terms and conditions in any document or receipt issued in connection with this Contract shall be consistent with the terms and conditions of this Contract and in case of inconsistency, the terms and conditions of this Contract shall prevail, except that the terms of any particular Supply Order (as defined below) shall take precedence over this Contract. Notwithstanding the foregoing, the General Conditions on the reverse of the Supply Order shall not apply.
- 2.4 This Contract embodies the entire agreement between the Parties with respect to the subject matter hereof. No promises, understandings, obligations or agreements, verbal or otherwise, exist between the Parties except as herein expressly set forth.
- 3.0 RESPONSIBILITIES OF THE VENDOR
- 3.1 The Vendor agrees to supply Gensets to each Mission, in accordance with the ITB, the Supply Order, and the Bid as they relate to each Mission. The Vendor hereby represents and warrants that the information contained in the Bid relating to the Gensets is true and correct and covenants that all Gensets shall conform to such information.
- 3.2 The Vendor shall deliver the Gensets, FOT Factory, France (INCOTERMS 1990), in accordance with the terms and conditions of this Contract (including the delivery times specified in the Bid), and with the other instructions specified in each Supply Order. The Vendor shall acknowledge receipt of each Supply Order by confirmed facsimile transmission to the UN.
- 3.3 The Vendor shall make delivery of Gensets ordered under this Contract within 4-5 weeks of receipt of the Supply Order. This delivery schedule is subject to confirmation by the Vendor on a "case by case" basis. The Vendor, however, will always attempt to comply with the above delivery times and to improve them where possible.
- 3.4 Upon request by the UN or the Mission, the Vendor shall promptly provide the UN with information on the status of each Supply Order, including the date of receipt thereof, a detailed description of delivery status, and payments made or pending.
- 3.5 Except as otherwise specified herein, the Vendor shall be responsible at its cost for making all arrangements necessary for the performance of its obligations under this Contract.
- 3.6 Prior to each shipment of Gensets, the Vendor shall notify the UN in writing of such shipment at the following address, which notification shall provide the UN with the UN Contract number and the Supply Order number. The Vendor shall obtain, and follow, the specific instructions in respect of each such shipment from the UN's authorized representative at the following address.

UN Freight Forwarding Unit
Room FF-251
New York, New York 10017, USA




Fax: (212) 963-9866

- 3.7 All correspondence by the Vendor to the UN shall be in the English language.
- 3.8 The Vendor shall mark each shipment as indicated in the Supply Order. The Vendor shall ensure that all markings on bills of lading, airway bills, or other transportation waybill conform exactly to the markings on the packages and/or containers and clearly state the weight and volume (cubic measurements) of each package and/or container.
- 3.9 The Vendor shall provide the Forwarding Agent, nominated in advance by the UN and notified to the Vendor, with a copy of all packing lists and all other documents necessary to make shipping arrangements and to clear customs.
- 3.10 The Vendor shall clearly indicate on each package and/or container used to ship Gensets, the contents, quantity, unit number(s), UN Contract number, and Supply Order number relating to such package and/or container. The Vendor shall ensure that all Gensets are properly packed for the method of shipment to be used and all items to be shipped as part of the consignment are strapped to withstand rough handling.
- 3.11 Upon request by the UN, the Vendor shall provide cost quotations for shipment of Gensets to their destination and, if the UN specifically so requests in writing, shall undertake such shipment on behalf of the UN.

4.0 RESPONSIBILITIES OF THE UN

- 4.1 The UN does not guarantee the order of any minimum quantity of Gensets from the Vendor under this Contract.
- 4.2 The UN shall issue to the Vendor, from time to time during the term of this Contract, Supply Orders setting out the quantities of Gensets required and other instructions for the delivery of Gensets (each, a "Supply Order"), in the form set out at Annex C hereto.
- 4.3 The UN shall use good faith efforts to consolidate its orders under this Contract and to submit Supply Orders on a monthly basis. The UN may change or cancel a Supply Order, provided that written notice is given by the UN to the Vendor by confirmed facsimile within one (1) week from the time of receipt by the Vendor of the Supply Order.
- 4.4 No Supply Order shall be valid unless authorized by the Chief, Procurement Division or his/her authorized representative. Each Supply Order shall, at a minimum, make reference to this Contract, indicate the quantity and type of Gensets ordered, destination and the method of shipment (air or surface). Supply Order (by mail), will be addressed to the Vendor, as follows:

IHC Services
14-09 110th Street



College Point, NY 11356
Tel. No.: (718) 460-8800
Fax No.: (718) 460-7510

Attn. Mr. E. Testa President and CEO

The Vendor shall acknowledge each Supply Order by promptly returning to the UN a signed copy thereof.

- 4.5 In the event that a Supply Order does not contain all information required to fulfill an order, the Vendor shall promptly contact the UN for clarification by facsimile as indicated below:

United Nations
304 East 45th Street
Room FF-281
New York, New York 10017, USA
Attn: Chief, Procurement Division

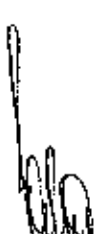
(Ref: Supply of Gensets)

Fax: (212) 963-3746

5.0 CONTRACT PRICES: INVOICES

- 5.1 The price of the Gensets, as set forth in Annex B hereto, shall be valid for the initial 12 months of the contract, starting from the date of signing. Prices for each year after the above date shall be negotiated by the Parties in good faith on an annual basis. The Parties agree that the net change of Consumer Price Index (CPI) of France for the commodity group the Gensets fall under, will be used as a basis for price negotiations.
- 5.2 Payment for any Gensets pursuant to this Contract shall not be deemed an acceptance of the Gensets.
- 5.3 Upon release of the Gensets to the UN freight forwarding agent, the Vendor shall submit its invoices to the UN in conformity with the terms of this Contract and the relevant Supply Order and, in triplicate, in EUROS. All invoices submitted by the Vendor shall include all supporting documentation in its possession which are necessary to evidence that the UN has received delivery of the Gensets as per specifications and in the quantities invoiced. The inspection reports certified by the Mission shall be provided by the Vendor to the UN in due course. The Vendor shall send all invoices in respect of Supply Orders, together with any supporting documentation, to the following address:

United Nations
Accounts Division
304 E 45th Street
New York, NY 10017



USA
Attn: Accounts Payable Unit
Room FF 331

Fax: (212) 963-3625

- 5.4 Unless otherwise authorized by the UN, a separate invoice must be submitted in respect of each shipment of Gensets under this Contract, and each invoice must make reference to this Contract and the relevant Supply Order or Service Order number. Packing and freight charges, if any, shall be separately indicated on each invoice.
- 5.5 The Vendor's invoices shall be paid as follows:
- (a) Provided that invoices and supporting documentation are submitted by the Vendor in accordance with this Contract, and provided that the Vendor has satisfactorily performed its obligations under this Contract, the UN shall make payments to the Vendor within thirty (30) days of receipt of an invoice and related documentation, unless the UN disputes the invoice or a portion thereof. All payments shall be made in EUROs. Except as provided in Article 16 of the United Nations General Conditions of Contract (annex A), the UN will not pay any charge for late payments, and the UN shall not be required to make advance payments or establish letters of credit under this Contract.
 - (b) With respect to disputes concerning only a portion of the invoice, the UN shall pay the Vendor the undisputed portion within thirty (30) days. Once a dispute regarding an invoice or portion thereof has been resolved, the UN shall pay the Vendor within thirty (30) days of the resolution of such dispute. Without prejudice to the rights held by the UN under this Article, the UN shall notify the Vendor within ten (10) days of receipt if the UN intends to dispute the invoice or any portion thereof; and shall give a reasonable explanation of the reasons therefor. The UN and the Vendor shall consult in good faith to promptly resolve outstanding issues with respect to the disputed invoice.
 - (c) Each invoice paid by the UN shall be subject to a post-payment audit by UN auditors or the UN's authorized agents. At any time during the term of this Contract and for a period of two (2) years thereafter, the UN shall be entitled to a refund from the Vendor of any payments to the Vendor which have been determined by the auditors to have been unauthorized or not in accordance with this Contract.
- 5.6 Payments made in accordance with this Article shall constitute a complete discharge of the UN's obligations with respect to the relevant invoices or portions thereof.
- 6.0 CONTRACT TERM
- 6.1 This Contract shall take effect on the date of signature and shall remain in effect for 12 months, unless terminated in accordance with Article 15.0 of the United Nations General Conditions of Contract (Annex A). The UN shall have the right to extend this Contract at its own discretion on the same terms and conditions as set forth herein.



7.0 LIQUIDATED DAMAGES

7.1 In the case of delayed delivery or performance, regardless of whether such delay is remedied in accordance with the provisions hereof, the Vendor shall be required to pay the UN liquidated damages at the rate of one percent (1%) per week of delay (pro-rated for part thereof), up to a maximum amount of ten percent (10%) of the price of goods ordered. Said amounts shall be payable by the sole fact of delay, without the need for any previous notice or any legal proceedings or proof of damage, which shall in all cases be considered as ascertained. Without prejudice to any other method of recovery, the UN may deduct the amount of the liquidated damages from any payments due to the Vendor. The payment or deduction of such damages shall not relieve the Vendor from its obligation to complete the performance of this Contract.

8.0 NOTICES

8.1 Unless otherwise specified in this Contract, all notices and other communications required or contemplated under this Contract shall be in writing and in the English language and shall be delivered either by: (i) personal delivery against signed receipt; (ii) recognized overnight delivery service; (iii) postage prepaid, return receipt requested, certified mail; (iv) confirmed facsimile transmission; or (v) telegram, addressed to the Party for whom intended at the address shown below or such other address as the intended recipient shall have designated by written notice previously given pursuant to this Contract:

(a) If to the Vendor:

IHC Services
14-09 110th Street
College Point NY, 11356
Tel. No.: (718) 460-8800
Fax No.: (718) 460-7510


Attn: Mr. E. Testa, President and CEO

(b) If to the UN:

United Nations
Procurement Division
304 East 45th Street, Room FF-281
New York, NY 10017
USA
(Ref: Supply of Gensets)

Attn: Chief, Procurement Division
Fax: (212) 963-3746


8.2 Notice by certified mail or recognized overnight delivery service shall be effective on the date it



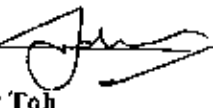
is officially recorded as delivered to the intended recipient by return receipt or equivalent. All notices and other communications required or contemplated by this Contract delivered in person, by facsimile, or by telegram shall be deemed to have been delivered to and received by the addressee and shall be effective on the date of actual receipt.

IN WITNESS THEREOF, the Parties have signed this Contract:

IHC SERVICES

Signature: 
Name: ERIC TEBITA
Title: PRESIDENT & CEO
Date: SEPTEMBER 28, 1999

THE UNITED NATIONS

Signature: 
Name: Andrew Toh
Title: Chief, Procurement Division
Date: OCT 18, 1999