

FRAMEWORK CONTRACT (IT)

CONTRACT NUMBER – [complete]-EMSA/OP/04/2014

The European Maritime Safety Agency represented by Markku Mylly, Executive Director,
hereinafter referred to as "EMSA",
of the one part,

and

[full official name]
[official legal form]
[statutory registration number]
[official address in full]
[VAT registration number]

(hereinafter referred to as "the Contractor"), [represented by [name in full and function,]]

of the other part,

HAVE AGREED

the **Special Conditions**, and the following Annexes the :

Annex I	General Conditions
Annex II	General Terms and Conditions for Information Technologies Contracts
Annex III	Order Form – Template
Annex IV	Tender Specifications (Invitation to Tender No EMSA/OP/04/2014 of [complete])
Annex V	Contractor's Tender (No [complete] of [complete])
Annex VI	List of Hardware or Software products, maintenance

which form an integral part of this contract (hereinafter referred to as “the Contract”).

- The terms set out in the Special Conditions shall take precedence over those in the other parts of the Contract.
- The terms set out in the General Conditions (Annex I) shall take precedence over those in the General Terms and Conditions for Information Technologies Contracts (Annex II).
- The terms set out in the General Terms and Conditions for Information Technologies Contracts (Annex II) shall take precedence over those in the Annexes of the Contract.
- The terms set out in the Framework Contract shall take precedence over those in the Order Forms (Annex III).
- The terms set out in the Tender Specifications (Annex IV) shall take precedence over those in the Tender (Annex V).

Subject to the above, the several instruments forming part of this Contract are to be taken as mutually explanatory. Ambiguities or discrepancies within or between such parts shall be explained or rectified by a written instruction issued by EMSA; subject to the rights of the Contractor under Article 8 should he dispute any such instruction.

SPECIAL CONDITIONS

ARTICLE 1 - SUBJECT

1.1 The subject of the Contract is:

- a) the sale, rental or leasing to EMSA of complex or other than complex hardware as set out in the Annex, and the provision of maintenance,
- b) the provision to EMSA of Informatics services, as set out in the Annex, being related to the provision of Products,

The Products and Services covered by this Contract are listed in Annex IV, Annex V and Annex VI.

1.2 Upon implementation of the Contract, the Contractor shall supply the Products and shall provide the Services related to them in accordance with Annex IV and Annex V.

1.3 The Contract does not confer on the Contractor any exclusive right to supply the Products or to provide Services referred to in the above paragraph.

1.4 Signature of the Contract imposes no obligation on EMSA to purchase. Only the implementation of the Contract through Order Forms is binding on EMSA.

1.5 All Order Forms implementing the Contract shall be in conformity with to the terms set out therein.

1.6 Multiple framework contract

The contractor is selected for a multiple FWC with reopening of competition between [*complete*] contractors.

ARTICLE 2 - DURATION

2.1 The Contract shall enter into force on the date on which it is signed by the last contracting party.

2.2 Under no circumstances implementation may take place before the date on which the Contract enters into force. Order Forms may under no circumstances be placed before the date on which the Contract enters into force.

2.3 The Contract is concluded for a period of 2 years with effect from the date on which it enters into force. This contractual period and all other periods specified in the Contract are calculated in calendar days unless otherwise indicated.

- 2.4** The Order Forms pursuant to the Contract shall be signed before the Contract which it refers expires. The Contract shall continue to apply to Order Forms executed after the Contract expires. Such Order Forms shall be executed no later than six (6) months after expiry of the Contract.
- 2.5** The Contract may be renewed up to 2 times, each time for a period of 1 year, only before expiry of the Contract and with the express written agreement of the parties. Renewal does not imply any modification or deferment of existing obligations.

ARTICLE 3 - PRICES

- 3.1** The prices of this contract shall be: as listed in Annex V Annex VI.
- 3.2** The maximum amount of this Framework Contract shall be [complete]
- 3.3** Prices shall be expressed in Euro.
- 3.4** The Contractor must commit itself to updating the prices for the products stated in Article 1.1 (a) at least once every six months, and to providing models and their options and extensions at a price whose relationship to the prevailing market price for equivalent items remains constant. In updating its price list, prices may be reduced at any time, but never increased.

ARTICLE 4 –PERFORMANCE OF THE CONTRACT

For supplies and associated services (including maintenance)

- 4.1** Unless otherwise stated, within 3 working days the contractors shall acknowledge the receipt of the 'Request for offer with reopening of competition' (through email) sent by EMSA.

Unless otherwise stated, within 10 working days of a request for offers being sent by EMSA to the contractors, EMSA shall receive the specific offer back, duly signed and dated.

Regarding urgent request for offers, the contractors shall be requested to provide an offer within 5 working days.

Should the Contractor be unavailable, he shall give reasons for refusal within the same period.

The specific offer shall be rejected if EMSA established that the contractor has conflicting interests which may negatively affect performance of the Order Form.

EMSA may sign an Order Form with the contractor who has submitted the best specific offer on the basis of the award criteria set out in the tender specifications.

Unless otherwise stated, within 10 working days of an Order Form being sent by EMSA to the contractor, EMSA shall receive it back, duly signed and dated.

The period allowed for the execution of the tasks shall start to run on the

date of the signature of the Order Form, unless a different date is indicated on the Order Form.

4.2 Delivery

The supplies shall be delivered at the EMSA building in Lisbon Portugal and Incoterm.

Deliveries may be made on any working day during normal working hours, at the agreed place of delivery.

ARTICLE 5 – PAYMENT ARRANGEMENTS

Payments under the Contract shall be made in accordance with Article I.6. Payments shall be executed only if the Contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted.

Payment requests may not be made if payments for previous Orders Forms have not been executed as a result of default or negligence on the part of the Contractor.

EMSA may refuse to make payments where the award procedure or performance of the Order Form proves to have been subject to substantial errors, irregularities or fraud attributable to the contractor.

5.1 Payment of the balance:

The contractor shall submit an invoice for payment of the balance. The request for payment of the balance of the Contractor shall be admissible if accompanied by:

- a copy of the Certificate of conformity or where applicable the Consignment note and/or the relevant documents when payment is linked to acceptance. Such documents shall be attached to the invoice.
- the relevant invoice(s), indicating the reference number of the Contract and of the Order Form to which they refer.

The contacting authority shall make the payment of the balance equal to the total amount referred to in the relevant Order Form. The payment shall be made within 30 days from receipt of the invoice.

ARTICLE 6 – BANK ACCOUNT

Payments shall be made to the Contractor's bank account denominated in euro, identified as follows:

Name of bank: [complete]
Address of branch in full: [complete]
Exact designation of account holder: [complete]
Full account number including codes: [complete]
IBAN code: [complete]

ARTICLE 7 – GENERAL ADMINISTRATIVE PROVISIONS

Any communication relating to the Contract or to its implementation shall be made in writing and shall bear the Contract and order form. Ordinary mail shall

be deemed to have been received by EMSA on the date on which it is registered by the department responsible indicated below. Communications shall be sent to the following addresses:

EMSA:

European Maritime Safety Agency
Katerina Fotsi
Praça Europa nr. 4
1249-206 Lisbon
Portugal

Contractor:

Mr/Mrs/Ms [complete]
[Function]
[Company name]
[Official address in full]

Invoices shall be sent to the following address:

EMSA:

European Maritime Safety Agency
Invoice Registration (IR)
Unit A.2 – Legal and Financial Affairs
Praça Europa nr. 4
1249-206 Lisbon
Portugal

ARTICLE 8 – APPLICABLE LAW AND SETTLEMENT OF DISPUTES

- 8.1** The Contract shall be governed by Union law, complemented, where necessary, by the national substantive law of Portugal.
- 8.2** Any dispute between the parties resulting from the interpretation or application of the Contract which cannot be settled amicably shall be brought before the courts of Lisbon, Portugal.

ARTICLE 9 – DATA PROTECTION

Any personal data included in the Contract shall be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Such data shall be processed solely for the purposes of the performance, management and monitoring of the Contract by Head of Unit Operations Support acting as data controller without prejudice to possible transmission to the bodies charged with monitoring or inspection task in application of Union law.

ARTICLE 10 – EXPLOITATION OF THE RESULTS OF THE CONTRACT

10.1 Modes of exploitation

In accordance with Article I.18.2 whereby the EMSA acquires ownership of the results as defined in the tender specifications, these results may be used for any of the following purposes:

- (a) use for its own purposes:
 - (i) making available to the staff of EMSA
 - (ii) making available to the persons and entities working for EMSA or cooperating with it, including contractors, subcontractors whether legal or natural persons, Union institutions, agencies and bodies, Member States' institutions
 - (iii) installing, uploading, processing
 - (iv) arranging, compiling, combining, retrieving
 - (v) copying, reproducing in whole or in part and in unlimited number of copies
- (b) the modes of exploitation listed in article II.10.4

Where EMSA becomes aware that the scope of modifications exceeds that envisaged in the contract EMSA shall consult the contractor. Where necessary, the contractor shall in turn seek the agreement of any creator or other right holder. The contractor shall reply to EMSA within one month and shall provide its agreement including any suggestions of modifications free of charge. The creator may refuse the intended modification only when it may harm his honour, reputation or distort integrity of the work.

10.2 Pre-existing rights and transmission of rights

All pre-existing rights shall be licensed to EMSA in accordance with Article I.18.3.

The contractor shall provide to EMSA a list of pre-existing rights and third parties' rights including its personnel, creators or other right holders as provided for in Article I.18.5, and licenses (if applicable).

ARTICLE 11 – TERMINATION BY EITHER CONTRACTING PARTY

Either contracting party may, of its own volition and without being required to pay compensation, terminate the Contract by serving six (6) months formal prior notice. Should EMSA terminate the Contract, the Contractor shall only be entitled to payment corresponding to the goods and services ordered before the termination date, provided that they have duly delivered in conformity with the Contract and the relative Order Form(s) . On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required by the Special Conditions for the goods delivered and *Services* rendered up to the date on which termination takes effect, within a period not exceeding sixty (60) days from that date.

ARTICLE 12 - VPN REMOTE ACCESS

Should the Contractor be granted remote access, the *Condition of Use for Remote Access* (Appendix II to Annex II *General terms and conditions for information technologies contracts*) shall be signed between the contractor and EMSA.

ARTICLE 13 – LIQUIDATED DAMAGES

13.1 Delay in submission of an offer

For each working day of delay beyond the deadline for submission of an offer within the context of a reopening of competition, the contractor shall, upon claim by EMSA, pay liquidated damages of 1% of the total maximum amount stated in the 'Request for offer with reopening of competition'.

13.2 Delay in return of signed Order Form

For each working day of delay in the return of the signed Order Form, the contractor shall, upon claim by EMSA, pay liquidated damages of 1% of the total amount of the Order Form.

ARTICLE 14 SPECIFIC DEROGATIONS TO II GENERAL TERMS AND CONDITIONS FOR INFORMATION TECHNOLOGIES CONTRACTS

By way of derogation from II the General Terms and Conditions for Information Technology Contracts, the following articles are hereby modified as follows:

II.1.5.3 Software

One-off licence fees shall be invoiced when the relevant Consignment note, or, where applicable, the Certificate of Conformity has been signed.

Yearly licence fees and maintenance fees may be invoiced per calendar year and in advance for the whole year. The first invoice can cover the period from the date of signature of the Consignment note, or, where applicable, the Certificate of Conformity of the Software, or, as regards maintenance, from expiry of the guarantee, to the end of the current calendar year.

In exceptional cases and subject to prior approval of EMSA, the licence fees, maintenance fees or maintenance related costs as well as any associated services may be invoiced for more than one calendar year and in advance for the whole period.

SIGNATURES

For the Contractor,
[Insert name and title of the Authorising
Officer]

For EMSA,
Markku Mylly
Executive Director

signature[s]: _____

signature: _____

Done at [place], [date]
In duplicate in English

Done at Lisbon [date]