

FRAMEWORK CONTRACT (IT)
CONTRACT NUMBER –20XX/EMSA/RES/01/2017

The European Maritime Safety Agency (hereinafter referred to as "EMSA"), with its seat at Praça Europa 4, 1249-206 Lisbon, Portugal, VAT registration no.: 507 685 326, represented by Markku Mylly, Executive Director,

on the one part, and

[full official name]

[official legal form]

[statutory registration number]

[official address in full]

[VAT registration number]

[appointed as the leader of the group by the members of the group that submitted the joint tender]

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

on the other part,

HAVE AGREED

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

Annex I	General Conditions
Annex II	General Terms and Conditions for Information Technologies Contracts
Annex III	Specific Contract – Template – <i>Order Form</i> – Template
Annex IV	Tender Specifications (Invitation to Tender No [complete] of [complete])
Annex V	Contractor's Tender (No [complete] of [complete])
Annex VI	Service Level Agreement
Annex VII	IPR Identification form

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

- The terms set out in the Special Conditions and in the Service Level Agreement shall take precedence over those in the other parts of the Contract.
- The terms set out in the General Conditions shall take precedence over those in the General Terms and Conditions for Information Technologies Contracts.
- The terms set out in the General Terms and Conditions for Information Technologies Contracts shall take precedence over those in the Annexes of the Contract (except for the Service Level Agreement).
- The terms set out in the Framework Contract shall take precedence over those in the Specific Contracts and *Order Forms*.
- 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:

- the provision to EMSA of informatics and /or telecommunication services related to H24 ICT operational support, as set out in Annex IV,
- the development and assignment of the rights on the Software Products (monitoring platform, checks and procedures) as set out in the Annex V and the provision of the corresponding maintenance and documentation.
- the assurance by the Contractor of the coherence and correct functioning of the Software Products and its integration into the informatics architecture of EMSA.

The following systems and services in the areas of Service Operations, Transition, and Continuous improvement are in the scope of the contract:

- Monitoring platform management, operations, development (Nagios based)
- 24x7 Event management;
- 24x7 Incident management;
- 24x7 IT Service Continuity management;
- 24x7 IT Security incident management;
- Coordination, reporting, support to Problem management and Continuous Improvement;

Other services

- operations support of a ticketing tool system, including its initial configuration;
- extra coverage on night shifts.

The Services covered by this Contract are listed in Annex V.

- 1.2 Upon implementation of the Contract, the Contractor shall provide the *Services* in accordance with Annexes IV, V and VI.
- 1.3 The Contract does not confer on the Contractor any exclusive right 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 Specific Contracts and *Order Forms* is binding on EMSA.

- 1.5 All Specific Contracts and *Order Forms* implementing the Contract shall be in conformity with the terms set out therein.

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. Specific Contracts and *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 4 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 Specific Contracts and *Order Forms* pursuant to the Contract shall be signed before the Contract which it refers expires. The Contract shall continue to apply to Specific Contracts and *Order Forms* executed after the Contract expires. Such Specific Contracts and *Order Forms* shall be executed no later than six (6) months after expiry of the Contract.
- 2.5 The Contract shall be renewed automatically up to 4 times, each time for a period of execution of tasks of 12 months, starting from the date of the previous period, unless written notification to the contrary is sent by one of the contracting parties and received by the other at least 3 months before anniversary of the contract. 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.
- 3.2 The maximum amount covering all purchases under this Contract including all renewals is EUR [*amount in figures and in words*]. However, this does not bind the contracting authority to purchase for the maximum amount.
- 3.3 Prices shall be expressed in Euro.
- 3.4 Prices are fixed and not subject to revision during the first four (4) years of the Contract.

Price revision is determined by the formula set out below and using the trend in the harmonised indices of consumer prices (HICP) MUICP published for the first time in Eurostat's monthly 'Data in Focus' publication available on the website: <http://www.ec.europa.eu/eurostat/>

At the beginning of the fifth and every following year of the framework contract, each price may be revised upwards or downwards at the request of one of the parties.

A party may request a price revision in writing no later than three months before the anniversary date of entry into force of the Contract. The other party must acknowledge the request within 14 days of receipt.

At the anniversary date EMSA must communicate the final index for the month in which the request was received, or failing that, the last provisional index available for that month. The contractor establishes the new price on this basis and communicates it as soon as possible to the contracting authority for verification.

EMSA purchases on the basis of the prices in force at the date on which the Specific Contract or *Order Form* enters into force.

The price revision is calculated using the following formula:

$$Pr = Po \times \left(\frac{Ir}{Io} \right)$$

where: Pr = revised price;

Po = price in the tender;

Io = index for the month in which the Framework contract enters into force;

Ir = index for the month in which the request to revise prices is received.

ARTICLE 4 –PERFORMANCE OF THE CONTRACT

For the services under the fixed fee (Event Management, Incident Management and Coordination and Reporting - Core services)

- 4.1** Within 10 working days after request of an *Order Form* being sent by EMSA, the Contractor shall return it, duly signed. The period allowed for the execution of the tasks shall start to run on the date of the signature of *Order Form*, unless a different date is indicated on *Order Form*.

For the time and means services (Monitoring platform development, Other Requests - Core services)

- 4.2** Within 10 working days of a request for Services being sent by EMSA, the Contractor shall return an estimate of the resources to be allocated for its execution, with particulars in support.

Within 10 working days an *Order Form* or Specific Contract being sent by EMSA, the Contractor shall return it, duly signed. The period allowed for the execution of the tasks shall start to run on the date of the signature of *Order Form* or Specific Contract, unless a different date is indicated on *Order Form* or Specific Contract.

For the time and means services (for operations support of a ticketing tool system, including its initial configuration)

- 4.3** Within 10 working days of a request for Services being sent by EMSA, the Contractor shall return an estimate of the resources to be allocated for its execution, with particulars in support.

Within 10 working days an *Order Form* or Specific Contract being sent by EMSA, the Contractor shall return it, duly signed. The period allowed for the execution of the tasks shall start to run on the date of the signature of *Order Form* or Specific Contract, unless a different date is indicated on *Order Form* or Specific Contract.

For the time and means services (extra coverage on night shifts)

- 4.4** Within 10 working days of a request for Services being sent by EMSA, the Contractor shall return an estimate of the resources to be allocated for its execution, with particulars in support.

Within 10 working days an *Order Form* or Specific Contract being sent by EMSA, the Contractor shall return it, duly signed. The period allowed for the execution of the tasks shall start to run on the date of the signature of *Order Form* or Specific Contract, unless a different date is indicated on *Order Form* or Specific Contract.

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.

All invoices shall indicate both the contractor's and EMSA's VAT number.

5.1 For the services under the fixed fee (Event Management, Incident Management and Coordination and Reporting - Core services)

5.1.1 Interim payment (s)

The contractor shall submit an invoice for an interim payment. The contractor shall submit an

invoice every three months for an interim payment equal to the fixed price for services for the three months referred to in the relevant *Order Form*.

Invoices for interim payment shall be accompanied by a monthly service report for each month in the referenced period. EMSA shall make the payment within 60 days from receipt of the invoice. The contractor shall have 10 days in which to submit additional information or corrections, a new monthly report or other documents if it is required by EMSA.

5.1.2 Payment of the balance

The contractor shall submit an invoice for payment of the balance.

The invoice shall be accompanied by monthly service report for each month in the referenced period. EMSA shall make the payment within 60 days from receipt of the invoice. The contractor shall have 10 days in which to submit additional information or corrections, a new monthly report or other documents if it is required by EMSA.

5.2 For the time and means services (Monitoring platform development, Other Requests - Core services)

5.2.1 In case Specific Contract has been signed, the payment scheme will be defined in the Specific Contract.

5.2.2 In case *Order Form* has been signed, the contractor shall submit an invoice for payment of the balance. The invoice shall be accompanied by service report or any other document in accordance with the relevant *Order Form*. EMSA shall make the payment within 60 days from receipt of the invoice. The contractor shall have 15 days in which to submit additional information or corrections, a new service report or other documents if it is required by the contracting authority.

5.3 For the time and means services (operations support of a ticketing tool system, including its initial configuration)

5.3.1 In case Specific Contract has been signed, the payment scheme will be defined in the Specific Contract.

5.3.2 In case *Order Form* has been signed, the contractor shall submit an invoice for payment of the balance. The invoice shall be accompanied by service report or any other document in accordance with the relevant *Order Form*. EMSA shall make the payment within 60 days from receipt of the invoice. The contractor shall have 15 days in which to submit additional information or corrections, a new service report or other documents if it is required by the contracting authority.

5.4 For the time and means services (extra coverage on night shifts)

5.4.1 In case Specific Contract has been signed, the payment scheme will be defined in the

Specific Contract.

- 5.4.2** In case *Order Form* has been signed, the contractor shall submit an invoice for payment of the balance. The invoice shall be accompanied by service report or any other document in accordance with the relevant *Order Form*. EMSA shall make the payment within 60 days from receipt of the invoice. The contractor shall have 15 days in which to submit additional information or corrections, a new service report or other documents if it is required by the contracting authority.

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* or Specific Contract numbers. 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
Markku Mylly
Executive Director
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 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 the Head of Unit A.3 – 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 – INTELLECTUAL PROPERTY RIGHTS

10.1 Ownership of the results

The ownership of the results as defined in the tender specifications (Annex V) shall be fully and irrevocably transferred by the contractor to EMSA in accordance with Article I.18.2.

10.2 Licence or transfer of pre-existing rights

All pre-existing rights incorporated in the results, if any, are licensed to EMSA as set out in Article I.18.3.

10.3 Intellectual property rights identification

The contractor must provide EMSA with an exhaustive list of intellectual property rights applicable to the results and of pre-existing rights, including incorporated trade secrets and third parties' rights, as set out in Article II.18.5, together with the invoice for payment of the balance at the latest. To that effect, Annex VII - IPR Identification Form - shall be duly completed and signed by the contractor.

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 Specific Contract(s) and *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 – E-PROCUREMENT

The execution of the contract between EMSA and the contractor may be automated by the use of one or more of the following applications: e-Request, e-Catalogue, e-Ordering and e-Fulfilment and e-Invoicing.

At the request of EMSA, the use of the above applications may be mandatory during the lifetime of the contract.

ARTICLE 13 – VPN REMOTE ACCESS

Should the contractor be granted remote access, the Condition of Use shall be signed between the contractor and EMSA.

ARTICLE 14 – SPECIFIC QUALITY STANDARDS

14.1 Service Level Agreement

Specific quality requirements will be stated in a Service Level Agreement which will form an integral part of the Special Conditions of the Framework contract.

14.2 Trial period

In conformity with Article II.2.1.6 of the General Terms and Conditions for Information Technologies Contracts, the Contractor shall undertake a trial period of three (3) months in order to proof full compliance with the quality standards provided in the Framework contract, and notably in relation with the Service Level Agreement. As provided in Article II.2.1.6 of the General Terms and Conditions for Information Technologies Contracts, the Framework contract may be terminated where the overall quality of performance is substandard.

SIGNATURES

For the contractor,

For EMSA

[*Company name/forename/surname/function*]

Markku Mylly
Executive Director

signature: _____

signature: _____

Done at:

Done at Lisbon

Date:

Date:

in duplicate in English.

