

FRAMEWORK CONTRACT (IT)

CONTRACT NUMBER – 20XX/EMSA/OP/18/2017

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

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

Annex I	General Conditions
Annex II	General Terms and Conditions for Information Technologies Contracts
Annex III	Specific Contract – Template – Order Form – Template
Annex IV	Tender Specifications (Invitation to Tender No [complete] of [complete])
Annex V	Contractor's Tender (No [complete] of [complete])
Annex VI	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
- 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 Multiple Framework Contract with re-opening of competition 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.

PREAMBLE

The Contractor was selected, as one of the contractors of a multiple framework contract with reopening of competition, at the conclusion of the evaluation process, on the basis of its bid submitted on *[insert date]* in response to the invitation to tender.

SPECIAL CONDITIONS

ARTICLE 1 - SUBJECT

- 1.1** The subject of the Contract is to establish acquisition channel for data centre equipment, software and associated services. This includes servers; storage; network; security technologies; virtualisation software; base operating systems; cloud-based services. This will enable EMSA to acquire new equipment (in the form of new purchases, upgrades, and upgrades with trade-in of old technology); extend maintenance on its existing equipment; procure cloud-based resources and support services, as well as consultancy and operational services relating to the setup, configuration and support of this equipment.
- 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 and *Documentation*,
 - b) the user right granted to EMSA of non-exclusive and non-transferable licences of one or more *Software Products* as set out in the Annex, and the provision of maintenance and *Documentation*,
 - c) the development and assignment of the rights on the *Software Products* as set out in the Annex and the provision of the corresponding maintenance and *Documentation*.
 - d) the assurance by the Contractor of the coherence and correct functioning of the System and its integration into the informatics architecture of EMSA.

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

- 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 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 to 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. The purchase of the products or the provision of services related to network, security, storage and systems etc. will be initiated only when the budget available under

the current EMSA Framework Contract EMSA/OP/09/2014 will be exhausted. The purchase of the products or the provision of the services related to APC data-center equipment will be initiated from 17/07/2018 on which is the end date of the current EMSA Framework Contract EMSA/OP/04/2014.

- 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 six (6) 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.

ARTICLE 3 - PRICES

- 3.1 The prices of this contract shall be as listed in Annex IV and Annex V.
- 3.2 The maximum amount of this Framework Contract shall be [complete]
- 3.3 Prices shall be expressed in Euro.

ARTICLE 4 –PERFORMANCE OF THE CONTRACT

For supplies and maintenance, services with fixed price

- 4.1 Within ten working days of a "Request for offer with re-opening of competition" being sent by EMSA, the Contractor shall send a complete and duly signed specific offer addressing the request. The specific offer shall be assessed in line with the set Award criteria and conditions stipulated in Annex IV. The best offer shall be awarded the resulting Specific Contract or Order Form.

Within ten working days of a demand for conclusion of a Specific Contract or Order Form being sent by EMSA, the Contractor shall return it, duly signed and dated.

In the event of failure to observe the above deadlines, the Contractor shall be considered unavailable.

4.2 Delivery

The supplies shall be delivered to EMSA's premises in Lisbon or to EMSA's Business Continuity Facility (BCF) currently located in Madrid and according to Incoterm DPP.

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

ARTICLE 5 – PAYMENT ARRANGEMENTS

- 5.1** 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 Order Forms or Specific Contracts have not been executed as a result of default or negligence on the part of the Contractor.

5.2 Payment of the balance

The contractor shall submit an invoice for payment of the balance. All invoices shall indicate both the contractor's and EMSA's VAT number.

For Order Forms

The contracting authority shall make the payment within 30 days from receipt of the invoice.

For Specific Contracts and complex Order Forms (e.g. purchase of the hardware, the software and the maintenance services)

The invoice shall be accompanied by the final progress report or any other document in accordance with the relevant Specific Contract or Order Form or the instructions laid down in Annex IV. When payment is linked to acceptance, a copy of the Certificate of conformity or where applicable the Consignment note and/or the relevant documents indicated in the Specific Contract or Order Form, shall be attached to the invoice. 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 final progress 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
Praça Europa 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 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 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 IV) 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 VI - 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.

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.

