

FRAMEWORK CONTRACT (IT)

CONTRACT NUMBER – 2016/EMSA/OP/15/2016

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*,
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.1	Specific Contract (FDT) – Template
Annex III.2	Specific Contract (Times & Means) – Template
Annex IV	Tender Specifications (Invitation to Tender No EMSA/OP/15/2016 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 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 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 services for the the design, implementation, configuration, maintenance, improvement and enhancement of the New European Marine Casualty Information Platform (NEW EMCIP).
- 1.2** Upon implementation of the Contract, the Contractor shall provide the Services in accordance with Annexes IV and Annex V.
- 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 is binding on EMSA.
- 1.5** All Specific Contracts 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.
- 2.2** Under no circumstances implementation may take place before the date on which the Contract enters into force. Specific Contracts may under no circumstances be placed before the date on which the Contract enters into force.
- 2.3** For the Services stated in Art 1.1 the Contract is concluded for a period of 48 months, 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 pursuant to the Contract shall be signed before the Contract which it refers expires. The Contract shall continue to apply to Specific Contracts executed after the Contract expires. Such Specific Contracts shall be executed no later than six (6) months after expiry of the Contract.
- 2.5** For the Services stated in Art 1.1 the Contract may be renewed once for a period of one 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.
- 3.2** The maximum amount of this Framework Contract shall be [complete].
- 3.3** Prices shall be expressed in Euro.

Type of prices

- 3.4** Prices shall be fixed and not subject to revision

ARTICLE 4 – PERFORMANCE OF THE CONTRACT

Performance of the Contract for Module 1 – Design, development, configuration and integration of Core Application functionalities

- 4.1** Within 10 (ten) working days after a Specific Contract being sent by EMSA, the Contractor shall return it, 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 Specific Contract, unless a different date is indicated on the Specific Contract.

Performance of the Contract for Module 2 – Design, development, configuration and integration of Enhanced Application functionalities

- 4.2** Within 15 (fifteen) working days after 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 (ten) working days of a demand for conclusion of a Specific Contract being sent by EMSA, the Contractor shall return the Specific Contract, 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 Specific Contract, unless a different date is indicated on the Specific Contract.

Performance of the Contract for Module 3 – Corrective Maintenance and Operational Support

- 4.3** Within 10 (ten) working days after request of a Specific Contract being sent by EMSA, the Contractor shall return it, 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 Specific Contract, unless a different date is indicated on the 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.

Interim or balance payments will only be made after the complete site acceptance of the software release and all deliverables (including documentation and source code) have been provided to EMSA. In exceptional circumstances, EMSA may authorise the payment of interim payments on the basis of a partial site acceptance or delivery.

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

5.1 - Payment modality for Module 1 – Design, development, configuration and integration of Core Application functionalities

5.1.1 - Interim payments

Various interim payments shall be executed, upon acceptance of the services delivered. Each payment will correspond to the value agreed for a specific set of requirements defined in each Specific Contract

The Contractor shall submit to EMSA an invoice, accompanied by a Module 1 interim report corresponding to the software services delivered. EMSA shall make the payment within 60 (sixty) days from receipt of the invoice. The contractor shall have 20 (twenty) days in which to submit additional information or corrections, a new interim 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 the final report or any other document in accordance with the relevant specific contract. EMSA shall make the payment within 60 (sixty) days from receipt of the invoice. The contractor shall have 20 (twenty) days in which to submit additional information or corrections, a new final report or other documents if it is required by the contracting authority.

5.2 - Payment modality for Module 2– Design, development, configuration and integration of Enhanced Application functionalities

The payment modalities will be determined in the relevant specific contract(s).

5.3 - Payment modality for Module 3 - Corrective Maintenance and Operational Support

5.3.1 Interim payments

After six-months from the entry into force of the relevant specific contract, the contractor shall submit an invoice for an interim payment equal to 50% (fifty) of the total price referred to in the relevant specific contract. Invoices for interim payments shall be accompanied by bi-annual maintenance progress reports (refer to Appendix F, REQ-13) or any other document, in accordance with the relevant Specific Contract. EMSA shall make the payment within 30 (thirty) days from receipt of the invoice. The contractor shall have 20 (twenty) days in which to submit additional information or corrections, a new maintenance progress report or other documents if it is required by EMSA.

5.3.2 Payment of the balance

Upon completion of the services, and subject to the relevant Specific Contract, the contractor shall submit an invoice for payment of the balance.

The invoice shall be accompanied by the final maintenance report or any other document in accordance with the relevant specific contract. EMSA shall make the payment within 30 (thirty) days from receipt of the invoice. The contractor shall have 20 (twenty) days in which to submit additional information or corrections, a new final maintenance report or other documents if it is required by EMSA.

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 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 Michael Hunter, Head of Unit Ship Safety, 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 and the pre-existing rights

The ownership of the results as defined in the tender specifications (Annex IV), and of all pre-existing rights defined in the IPR Identification Form in accordance with Article 10.2 shall be fully and irrevocably transferred by the contractor to EMSA in accordance with Article I.18.2 of the General Conditions.

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 contractor shall also warrant that any creators and/or other right holders have agreed except when a creator or other right holder refuses the intended modification expressly on the grounds that it may harm his honour, reputation or distort integrity of the work only.

10.2 - Intellectual property rights identification

The contractor shall provide to EMSA at the same time with the delivery of the results (and pre-existing rights) a duly completed and signed Annex VI – IPR Identification Form, with an exhaustive list of intellectual property rights applicable to the results and pre-existing rights, including incorporated trade secrets and third parties' rights as provided for in Article I.18.5 of the General Conditions.

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). 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 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 – OTHER SPECIAL CONDITIONS - REDUCTION OF PAYMENT FOR SERVICE NONCOMPLIANCE

According to the terms included in the Contract the following price reductions shall be applied in case of service non-compliance, for service provided under a corrective maintenance and help-desk services contract (Module 3 – Refer to Appendix F to Tender Specifications, REQ-8):

- For non-compliances related to “Urgent” issues: A reduction to the contracted value equivalent to (for each day of breaching the SLA) the price of two person days of a Senior Programmer rate, up to a maximum 10% reduction to the contractual value;
- For non-compliances related to “Critical” issues: A reduction to the contracted value equivalent to (for each day of breaching the SLA) the price of one person day of a Senior Programmer rate, up to a maximum a 7% reduction to the contractual value;
- For non-compliances related to “Standard” issues: A 5% reduction to the contracted value if, during the course of the contract, at least 10 breaches of the SLA for “Standard” issues are recorded.

ARTICLE 14 VPN REMOTE ACCESS

Should the contractor be granted remote access, the Condition of Use shall be signed between the contractor and EMSA, using the template provided under Appendix B.1 to the Tender Specifications..

SIGNATURES

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

For EMSA,
[forename/surname/function]

signature: _____

signature: _____

Done at:

Done at Lisbon

Date:

Date:

In duplicate in English.