



EUROPEAN COMMISSION  
Executive Agency for Small and Medium-sized Enterprises  
(EASME)

Department A - COSME, H2020 SME and EMFF  
Unit A3 - EMFF

## MEMORANDUM OF UNDERSTANDING

related to procurement procedure EASME/EMFF/2016/1.3.1.11 for a call for tender for Inter-institutional service Framework Contract for Maritime Security and Surveillance Expertise in three lots: Lot 1 - General support and implementation of the EUMSS, Lot 2 - Information exchange and data analysis and Lot 3 – Capacity building, research and innovation

The Executive Agency for Small and Medium-sized Enterprises (EASME)

Hereinafter referred to as the Leading Contracting Authority (LCA)

and

The European Defence Agency (EDA)

Hereinafter referred to as the Participating Contracting Authority (PCA)

Agree on the following:

### 1. Legal basis and scope of application

The contracting authorities commit to apply the Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union (FR), as lastly amended and the Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (RAP) as lastly amended.

### 2. Purpose and scope

The Memorandum of Understanding sets out detailed provisions on each contracting authority's role and responsibilities for the conduct of the procedure and the management and implementation of the resulting framework contracts.

By signing the Memorandum of Understanding, the PCA gives power of attorney to the LCA for including it in the procedure and signing the resulting framework contracts on its behalf.



### **3. Preparation and organisation before launching the call for tenders**

#### **3.1 Confirmation of participation**

The LCA sent to the PCA an invitation to participate in the procedure together with a description of the subject matter of the contract, the schedule of the procedure and the draft Memorandum of Understanding.

The PCA confirms its participation in the procedure by signing this Memorandum of Understanding which becomes effective for the PCA and will be applicable until the end of execution of the last specific contract under the framework contracts.

The PCA commits to use the results of the procedure, inter alia in order to meet the legitimate expectations of prospective tenderers.

The PCA commits not to launch its own procedure for services covered by the contract of the LCA which it has joined.

#### **3.2 Estimation of needs**

The PCA must provide the LCA with the estimation of its needs at the latest upon signature of the Memorandum of Understanding. On the basis of this estimation, a quota will be allocated to the CPA for its use of the framework contracts.

The global ceiling amount will be set in the award decision and in the framework contracts. The LCA may adjust the individual quota allocated to the PCA in view of its actual consumption but a quota increase may not be automatically granted.

#### **3.3 Preparation of the procurement documents**

The LCA and the PCA commit to ensure confidentiality of all documents exchanged in preparation of the procedure and during the procedure.

The LCA will draft all necessary documents necessary for carrying out the procedure and will make the draft procurement documents available to the PCA.

The PCA may propose changes to the procurement documents, notably in relation to the technical specifications. The LCA reserves the right to refuse such requests, in particular if they substantially change the scope of the contract.

The LCA will provide feedback to the PCA on its proposed changes with specific comments on their inclusion or not and send the final procurement documents to the PCA.

Should the PCA not agree with the final version of the procurement documents, it may withdraw from the procedure.

### **4. Procurement Procedure**

The LCA:

- Acts as a single contact point throughout the procedure for all economic operators and participating contracting authorities.
- Ensures the publication of the notices in the OJ (pre-information notice if any, contract notice, any necessary corrigendum and contract award notice).
- Sets and manages the timetable for the procedure.



#### **4.1 Launching of the procedure and contacts during the submission period**

The LCA:

- Ensures publication of the contract notice and direct access to the procurement documents.
- Informs the PCA that the procedure has been launched and provides the electronic link to the contract notice and the procurement documents.
- Takes measures for ensuring the receipt of tenders and processing of their personal data.
- Manages requests from economic operators (questions and answers, translation).
- Provides clarification or correction of the procurement documents and, where necessary, publishes corrigendum of the contract notice possibly including extension of the deadline for submission.

#### **4.2 Opening, evaluation and award**

The LCA:

- Nominates the members of the opening and the evaluation committees, ensuring that the committees reflect, as far as possible, the inter-institutional character of the procedure. The LCA will take into account the wishes of the PCA on the one hand, and the practicalities of the procedure on the other hand. The PCA is invited to propose member(s) for the opening and the evaluation committees. Upon request, the PCA will make available staff with relevant expertise for the evaluation committee.
- Organises and coordinates the opening and evaluation sessions and the drafting of the opening and evaluation reports by the committees.
- Takes the award (or non-award) decision, mentioning the ceiling amount for the framework contracts over their whole duration as well as the maximum amount allocated to the PCA.
- Notifies the tenderers of the award decision and manages requests for additional information from tenderers.
- Provides the PCA with a copy of the evaluation report and the award decision, so that the PCA can document the procedure for its internal audit trail.

#### **4.3 Signature of the contract and award notice**

The LCA:

- Signs the inter-institutional framework contracts on behalf of the PCA.
- Provides the PCA with a copy of the full signed contracts, including all the annexes.
- Ensures the publication of the contract award notice in the OJ.



## **5. Contract management**

### **5.1 Management of the framework contract by the LCA**

The LCA manages the framework contracts on behalf of the PCA and is the sole contact point for the contractor in particular concerning amendments to the framework contracts.

The LCA informs the PCA of any changes to the framework contracts or contract issue.

The overall management of the framework contracts by the LCA covers:

- Update of contractor's information following merger, takeover, etc.
- Renewal(s) according to the terms on contract duration.
- Price revisions.
- Follow-up of the consumption of the contract in order to anticipate the necessary procedure for increasing the ceiling amount or re-tendering.
- Adjustment of maximum amounts allocated to each PCA through amendment of the award decision while remaining within the global ceiling amount.
- Use of negotiated procedures, in particular the procedure under Article 134(1)(e) RAP provided its conditions are fulfilled.
- Modification of the contract without procurement procedure pursuant to Article 114a (3) FR.
- Quality control by regular consultation of the PCA regarding the quality of the services provided by the contractors at the level of specific contracts.
- Any necessary legal steps having an impact on the contract (e.g. suspension or litigation, termination, EDES).

### **5.2 Management of specific contracts by the PCA**

Once the framework contracts are signed, their implementation is carried out in a decentralised manner through specific contracts or order forms concluded between the PCA and the contractors.

The PCA remains responsible for the award and management of specific contracts stemming from the use of the framework contracts.

The responsibility of the PCA authorising officer covers:

- Respecting the terms of the framework contracts when implementing it with specific contracts.
- Settling in due course any situation which may hinder the correct implementation of the framework contracts, such the existence of other contracts with overlapping subjects.
- Undertaking not to place any order where the corresponding amount would imply exceeding the quota allocated without the LCA's prior authorisation.
- Reporting to the LCA on the quality of the services provided by email to the contact point indicated in section 6.
- Reporting to the LCA on the framework contracts consumption by email to the contact point indicated in section 6.
- Evaluating the specific tenders, taking the award decision and notifying it to the contractors.
- Making individual budgetary commitments.
- Issuing order forms or specific contracts.



- Ensuring follow-up of order forms and management of specific contracts.
- Meeting payment deadline obligations.
- Managing the contractual relations stemming from specific contracts.
- Amending specific contracts in so far as the modification has no impact on the framework contracts (including modification without procurement procedure pursuant to Article 114a (3) FR).
- Respecting the ex-post publicity obligations in coordination with the LCA by publishing on its website the information relating to the value and contractors of specific contracts based on the framework contracts no later than 30th June following the end of the financial year.
- Dealing individually with the claims filed by the contractors, so that claims related to its use of the framework contracts do not affect the implementation of the framework contracts by other PCA or by the LCA.

## 6. Communication between the LCA and the CPA

Any exchange of information should be addressed to:

For the LCA                      Name: [REDACTED]  
   Unit: EASME A.3  
   E-mail: EASME-EMFF-CONTRACTS@ec.europa.eu  
   Address: [REDACTED]  
   Telephone: [REDACTED]

For the PCA                      Name: [REDACTED] S  
   Unit: CSD/Contracting  
   E-mail: [REDACTED]  
   Address: [REDACTED]  
   Telephone: [REDACTED]

The LCA and the PCA must immediately inform of a change of contact persons.

## Signatures

For the Executive Agency for Small and Medium-sized Enterprises,

For the European Defence Agency,

Marco MALACARNE  
Acting Director, [REDACTED]

Jorge DOMEQ  
Chief Executive, [REDACTED]

Signature: [REDACTED]

Signature: [REDACTED]

Done at Brussels, 05 JAN. 2017

Done at Brussels, 16<sup>th</sup> Dec 2016

In duplicate in English.



