

Special administrative conditions (SAC) common to all lots

Supply Contract

Supply of marine acoustic tagging and telemetry equipment

N° 261000115

PROCEDURE :

Open tender procedure in accordance with articles R.2124-1 et R.2124-2 of the French public procurement code

CONTRACTING AUTHORITY :

IFREMER

Zone industrielle de la Pointe du Diable
1625 route de Sainte Anne
29280 Plouzané

APPLICABLE GENERAL ADMINISTRATIVE CONDITIONS : CCAG/FCS (General Administrative Conditions applicable to Public Supply and Services Contracts – Decree of 30 March 2021)

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1. PURPOSE OF THE CONTRACT – GENERAL PROVISIONS

1.1. Purpose of the contract

The purpose of this Contract is the supply of marine acoustic tagging and telemetry equipment.

The detailed description of the supplies and of the technical environment is set out in the Special Technical Specifications (STS – CCTP).

1.2. Division into lots

The present contract is divided into the following lots :

Lot 1	Acoustic tags and receivers
Lot 2	Archival tags equipped with floats

1.3. Joint tendering

Economic operators may form any type of consortium permitted under Article R2142-20 of the French Public Procurement Code.

In the case of a joint consortium, the lead contractor shall be jointly and severally liable.

Irrespective of the form of the consortium, one of the members shall be designated in the Form of Tender as lead contractor. The lead contractor shall represent all members vis-à-vis the Contracting Authority and shall coordinate the performance of the services.

1.4. Subcontracting

The Contractor may subcontract under the conditions set out in Articles L2193-2 and R2193-1 et seq. of the French Public Procurement Code.

The Contractor is authorised to subcontract part of the services, which shall give rise to direct payment to the subcontractor for services exceeding EUR 600 including VAT.

The subcontractor must be formally accepted and its payment terms approved by the representative of the Contracting Authority.

Approval of a subcontractor and of its payment terms may be granted during contract performance.

Undeclared subcontracting shall expose the Contractor to termination of the Contract at its own expense and risk.

1.5. Service Orders

Service Orders shall be notified to the Contractor by the Contracting Authority or its representative. By way of derogation from Article 3.8.2 of the CCAG/FCS, where the Contractor wishes to raise observations regarding a notified Service Order, it shall notify such observations to the signatory of the Service Order within ten (10) calendar days from receipt thereof, failing which it shall be time-barred.

2. CONTRACTUEL DOCUMENTS

In the event of contradiction between contractual documents, the following order of precedence shall apply:

- The Form of Tender and its annexes, as amended by subsequent addenda;
- The Unit Price Schedule (UPS);
- The present Special Administrative Conditions and their annexes;
- The Special Technical Specifications;
- The General Administrative Conditions applicable to Public Supply and Services Contracts approved by Decree of 30 March 2021 (CCAG/FCS);
- Any subcontracting acts and amendments thereto notified after contract award;
- The Contractor's technical proposal.

The CCAG/FCS constitutes a general document which, although not physically attached, forms part of the Contract and is deemed to be known by the Contractor. It is available online at <https://www.legifrance.gouv.fr>.

By way of derogation from Article 4.2 of the CCAG/FCS, notification of the Contract shall consist solely of a copy of the Form of Tender. The original copy of each contractual document retained in the archives of the Contracting Authority shall prevail.

The Contractor is deemed to have full knowledge of all contractual documents and accepts all clauses and conditions thereof, including where they may conflict with its own general terms and conditions of sale.

3. KNOWLEDGE OF THE CONDITIONS OF PERFORMANCE

The Contractor is deemed, prior to signature of the Contract, to have accurately assessed all conditions of performance and to have fully understood their nature, scope and specific characteristics.

The Contractor acknowledges having examined all contractual documents and being fully aware of the services to be performed. Any error, omission, ambiguity or contradiction in the contractual documents must be reported prior to submission of the tender and, in any event, no later than contract signature.

During performance, the Contractor may not rely on any error or omission in the contractual documents to refuse performance or to challenge the agreed deadlines or prices.

The Contractor shall comply with all applicable laws and regulations relating to the services, even if not expressly referred to in the contractual documents.

4. DURATION

The duration of the Contract shall be four (4) years from the date of notification.

5. PERFORMANCE OF THE SERVICES

5.1. Purchase orders

The present contract constitutes a Framework Agreement with Purchase Orders within the meaning of Articles L.2125-1 and R.2162-3 of the French Public Procurement Code and as defined in Article 2 of the act of commitment of each lot.

5.2. Issuance of purchase orders

By way of derogation from Article 3.7.2 of the CCAG/FCS, where the Contractor considers that the requirements of a notified Purchase Order call for observations, it shall notify such observations within five (5) calendar days from receipt thereof, failing which it shall be time-barred.

By way of derogation from Article 3.8.3 of the CCAG/FCS, if the first Purchase Order is issued more than six (6) months after notification of the Contract, the Contractor shall nevertheless perform it and the termination provisions set out in that article shall not apply.

Purchase Orders may be issued until the last day of validity of the Contract provided that the performance period does not exceed the contract expiry date by more than three (3) months.

5.3. Content of purchase orders

Services ordered by Purchase Order are defined in the Unit Price Schedule for each lot.

5.4. Notification of purchase orders

Ifremer shall issue Purchase Orders as its needs arise and shall endeavour to consolidate its requirements into the minimum number of Purchase Orders.

6. CONTRACT MANAGEMENT

6.1. Contractor's representative

Upon notification of the Contract, the Contractor shall designate a single point of contact for the purposes of contract performance. Such representative shall be deemed to have sufficient authority to take any decisions necessary to bind the Contractor as from the notification of his or her name to the Contracting Authority within the time limits required under the Contract.

The Contractor shall promptly notify the Contracting Authority of any changes occurring during performance of the Contract, in particular any change relating to the designated representative.

More generally, the Contractor shall immediately inform the Contracting Authority of any significant change in its corporate structure or operational organisation likely to affect contract performance.

6.2. Ifremer's representative

Upon notification of the Contract, Ifremer shall designate the contract manager or managers responsible for the performance phase.

6.3. Delivery of deliverables

The Contractor undertakes to deliver the deliverables within the time limits specified in the Special Technical Specifications.

7. CONTACT PRICE

7.1. Nature of the prices

The prices set out in the Unit Price Schedule for each lot shall be unit prices.

7.2. Scope of the prices

The Contractor shall be deemed to have taken account of all elements relating to the performance of the services.

In addition to Article 10.1.3 of the CCAG/FCS, the contract prices shall be deemed to include all costs arising from performance of the Contract and compliance with the Special Administrative Conditions and the Special Technical Specifications, including but not limited to taxes and parafiscal charges, insurance, travel expenses, equipment hire where applicable, labour costs, shipping costs, transport costs, accommodation expenses, ancillary expenses, costs relating to the delivery of deliverables, and the mobilisation of additional experts where necessary.

Any costs resulting from postponement or rejection of the services shall be borne exclusively by the Contractor.

7.3. Date of establishment of prices

The reference date for price determination shall be the month in which tenders were submitted.

7.4. Price variation

7.4.1. Variation formula

The prices applicable to Purchase Orders shall be firm during the first year of contract performance and shall thereafter be subject to annual revision on each anniversary date of the Contract, at the initiative of the Contractor, in accordance with the following formula :

$$P = P_0 (0.30 (FSD3x / FSD3_0) + 0.70 (ICHTrev-TS Mx / ICHTrev-TS M_0))$$

In this formula, P represents the revised price; P_0 represents the original price; FSD3 represents the index of miscellaneous services expenses; and ICHTrev-TS M represents the index of specialised scientific and technical activities (INSEE No. 1565195).

The value identified by “x” corresponds to the most recent published index available at the time of revision. The value identified by “₀” corresponds to the index of the notification month.

7.4.2. Procedure for price variation

The Contractor shall submit by electronic mail (cellule.marche@ifremer.fr), **at least twenty-one (21) days prior to the anniversary date, the detailed calculation of the revised prices together with the updated Unit Price Schedule**. IFREMER shall have twenty-one (21) days from receipt to issue any observations. The revised prices shall enter into force upon notification, by means of a Service Order, of the revised Unit Price Schedule.

If the Contractor fails to submit revised prices within the prescribed time limit, the prices applicable during the current period shall remain unchanged for the following period.

The revision coefficient shall be rounded up to the nearest thousandth. The revised prices shall be rounded to two decimal places in accordance with standard rounding rules.

In the event of discontinuation of an index and in the absence of a substitute index designated by INSEE, a new index shall be agreed between the Parties and formalised by amendment.

7.4.3. Cut-off clause

The annual revision shall not result in **an increase exceeding three per cent (3%) of the current price of any individual item**. This cap shall apply on a per-item of the Unite price schedule (UPS) and per-year basis.

8. PAYMENT TERMS

8.1. Advance payment

An advance payment shall be granted in accordance with Articles R2191-3 et seq. of the French Public Procurement Code.

The amount of the advance shall be fixed at five per cent (5%) of the amount, excluding VAT, of each Purchase Order exceeding EUR 50,000 excluding VAT.

The advance shall be calculated on the basis of the amount of the Purchase Order less any portion subcontracted and subject to direct payment.

Where requested in the Form of Tender, the advance shall be paid within thirty (30) days following notification of the Purchase Order.

Repayment of the advance shall be deducted progressively from sums due to the Contractor and shall in all cases be completed when eighty per cent (80%) of the total amount inclusive of taxes of the Purchase Order has been performed.

8.2. Deposit

For Lots 1 and 2, deposit may be claimed from the date of notification of the first Purchase Order. Each deposit shall correspond to the value of services effectively performed and shall be supported by written evidence of progress.

Deposit are :

Deposit number	Name	Deposit	
		Amount of the deposit	Supporting document
1	Manufacturing	30% of the amount of the purchase order	Production certificate
2	Delivery	30% of the amount of the purchase order	Delivery certificate
3	Acceptance	40 % of the amount of the purchase order	Acceptance report

If the contracting authority or its representative determines that the request for an advance payment does not correspond to the actual progress of the services, the advance payment shall either be reduced or suspended until the services corresponding to that advance have been performed.

If the payment of an advance is linked to the delivery of a deliverable, the absence of the deliverable shall suspend the payment of the advance. If the deliverable does not comply with the requirements set out in the contract specifications or purchase order, the amount of the advance may be reduced or even suspended by the contracting authority or its representative.

In all cases, the contractor may consolidate the invoicing relating to several purchase orders, provided that the invoice clearly specifies and details the amount of each service that has been ordered and, where applicable, the amount of the advance relating to a given purchase order in the case of services with a duration exceeding three months.

8.3. Payment period

Invoices shall be paid within thirty (30) days from receipt.

In the event of late payment, statutory interest shall accrue at the rate applied by the European Central Bank to its most recent main refinancing operations in force on the first day of the semester in which the interest begins to run, increased by eight percentage points.

Payment shall be made solely on the basis of services actually performed and may be reduced by any contractual penalties (article 10).

8.4. Presentation of purchase orders

Each purchase order shall specify :

- the Contractor's corporate name,
- the contract number and subject matter,
- the SAP number,
- the Purchase Order number and date,
- the place of delivery,
- the description of the services,
- the performance deadline, and the nature, quantities and unit prices.

8.5. Submission of invoices

Payment to the contractor shall be made on the basis of services actually performed. The payment shall be reduced, where applicable, by the penalties provided for in Article 11 of this document.

Invoices relating to the payment of advances, partial final payments, or the balance shall mandatorily be issued on the basis of the initial contract prices. The initial prices are those in effect at the date of notification of the contract, excluding any price revision.

Invoices relating to the payment of advances, partial final payments, or the balance shall be issued in a single copy and must include, in addition to the legally required information, the following details :

DENOMINATION
Issued in the name of IFREMER
Billing address
Third-party identification
SIRET No.
Intra-Community VAT No
IBAN No.
Invoice No.
Order No. (SAP)
Description of the order (nature)
Description of the order (quantity)
Total amount excl. VAT
VAT (amount and rate)
Project reference

Invoices must be submitted electronically to the following address :

<https://chorus-pro.gouv.fr>

ou

acp.visa.depenses@ifremer.fr (This address is to be used for foreign suppliers.)

NAME : INST FR RECHERCHE POUR LEXPLOIT MER

SIRET : 330 715 368 00032

Service code : METROPOLE_DOM

Non-compliant invoices will be rejected and the overall payment period mentioned will be suspended.

9. PLACE AND TIME OF DELIVERY

For all Lots, the maximum delivery period shall be four (4) weeks from notification of the Purchase Order. All equipment listed in the UPS of each lot shall be delivered on a Delivered Duty Paid (DDP) basis.

The place of delivery shall be specified in each Purchase Order and may be any IFREMER site within mainland France.

10. SPARE PARTS

Spare parts shall be ordered on the basis of the Unit Price Schedule section dedicated to spare parts of each lot. The schedule shall specify the reference of each part, its unit price, procurement lead time, average repair time, and hourly labour rate.

11. PENALITES

By derogation from Article 14.1.1 of the CCAG/FCS, for Lots 1 and 2, failure to comply with the maximum delivery time shall give rise to a penalty of EUR 500 excluding VAT per calendar day of delay.

By derogation from Article 14.1.3 of the CCAG/FCS, penalties shall apply irrespective of whether their cumulative amount is less than EUR 300 excluding VAT.

12. INSPECTIONS AND DECISIONS FOLLOWING INSPECTION

12.1. Quantitative and qualitative verification of services

By way of derogation from Article 29 of the CCAG/FCS, Ifremer shall carry out the quantitative and qualitative inspection operations intended in particular to verify that the Contractor :

- has implemented the resources defined in the Contract in accordance with the requirements set out therein
- has performed the services assigned to it under the Contract in compliance with the contractual provisions.

Ifremer shall have a period of three (3) months in which to carry out such inspections.

12.2. Decision after verification

Upon completion of the inspection operations, the Contracting Authority shall, under the conditions set out in Article 30 of the CCAG/FCS issue either :

- a decision of acceptance of the services,
- a decision to postpone acceptance of the services, which decision shall state the reasons therefor,

- a decision of acceptance subject to a price reduction, which decision shall likewise state the reasons therefor,
- a decision of partial or total rejection of the services, which decision shall also be reasoned.

13. WARRANTY

The services shall be covered by a minimum statutory warranty of twenty four (24) months commencing on the date of notification of the acceptance decision. Where the Contractor has offered a more favourable warranty in its tender, such warranty shall prevail

14. PREVENTION OF CONFLICTS OF INTEREST AND CORRUPTION

During the performance of the Contract, the Contractor undertakes to maintain its independence of analysis and action in order to prevent any distortion of competition and to avoid any conflict that may arise between its own interests, those of the Contracting Authority, and those of other economic operators likely to participate in the performance of the Contract.

The Contractor undertakes to inform the Contracting Authority of any situation likely to give rise to a conflict of interest and to submit the measures it proposes to implement in order to remedy such situation. In this respect, the Contractor undertakes to disclose, at the simple request of the Contracting Authority, any links it may have with economic operators submitting an application or tender in another procurement procedure.

In accordance with the provisions of French Law No. 2016-1691 of 9 December 2016 relating to transparency, the fight against corruption and the modernisation of economic life, the Contractor warrants that any natural or legal person acting on its behalf in connection with the present Contract :

- shall comply with all regulations aimed at combating corruption and influence peddling,
- shall implement and maintain its own internal policies and procedures relating to ethics and anti-corruption compliance,
- shall inform the Contracting Authority of any event that could result in the obtaining of any undue advantage, whether financial or otherwise, in connection with the present Contract,
- shall provide any assistance necessary to enable the Contracting Authority to respond to a request from a duly authorised authority concerning anti-corruption matters.

15. MODIFICATION DURING PERFORMANCE

15.1. Modification by amendment limited to 10% of the initial contract amount

The Contract may be modified by amendment within ten per cent (10%) of the initial amount irrespective of the nature of the modification, provided that the applicable European thresholds are not exceeded.

The calculation of amendments shall then take into account the implementation of the price variation clause.

15.2.Modification by amendment limited to 50% of the initial contract amount

The Contract may also be modified within fifty per cent (50%) of the initial amount where such modification is made necessary by unforeseeable circumstances.

15.3.Complementary contract

Pursuant to Article R2122-7 of the French Public Procurement Code, negotiated contracts without prior publication or competitive tendering procedures may subsequently be awarded for the performance of similar services. Services shall be considered similar where they are directly related to the subject matter of the contract.

The term of such contracts may not exceed three years from the notification date of the initial public contract.

15.4.Transfert amendment

The Contract may be transferred by amendment where the original Contractor is replaced following corporate restructuring.

16. REVIEW CLAUSE

The Parties may, acting in good faith, consider the modification of the present Contract.

In any event, any such modifications shall neither alter the overall nature of the Contract nor substantially modify the technical characteristics of the tender submitted by the Contractor during the competitive procedure.

The Contractor shall not be entitled to rely on any refusal by the Contracting Authority to implement the review clauses in order to submit any financial claim whatsoever or to challenge the conditions governing the performance of the present Contract.

16.1. Amendment to the cap of the limitation clause

Pursuant to Article R. 2194-1 of the French Public Procurement Code relating to review clauses, the following modifications are permitted :

- the removal or temporary or definitive amendment of the cap established by the price-limitation clause.

The review shall be triggered by the occurrence of an unforeseeable event within the meaning of Article R. 2194-5 of the French Public Procurement Code. The Contractor shall notify the Contracting Authority, by any means capable of establishing with certainty the date of receipt, of the financial difficulties justifying the modification referred to in the first paragraph and shall provide all supporting documents necessary to substantiate its request.

The implementation of the present clause shall fall within the sole discretion of IFREMER, although it may be initiated only by the Contractor.

Any modification shall be agreed by mutual consent of the Parties and formalised by way of an amendment.

16.2. Price not initially provided in the unit price shedule

Where services not included in the Unit Price Schedule prove to be necessary, such services shall be incorporated by means of a Service Order.

The Contractor shall submit a price proposal based on conditions comparable to those of the initial Contract. The Contractor and Ifremer shall agree on the amount of these new services. Once the price has been agreed, the services shall be incorporated into the Contract.

Such new services shall only be ordered by the Contracting Authority after notification of the corresponding Service Order to the Contractor.

17. HEALTH RISK IN CASE OF PANDEMIC

In the event of a pandemic, including COVID-19, where the Contractor is prevented from performing the Contract or a Purchase Order, force majeure may be invoked subject to proof of externality, unpredictability and irresistibility.

During the period of justified impediment, contractual penalties shall not apply and the Contractor's liability shall not be engaged.

The Contractor shall submit a Business Continuity Plan detailing organisational measures and a revised schedule.

In cases of urgent necessity, the Contracting Authority may conclude a substitute contract. Suspension of the original Contract shall not give rise to penalties provided the Contractor demonstrates objective impossibility or manifestly excessive burden.

Upon resumption, the performance period shall be extended accordingly.

18. TERMINATION

In addition to Article 38 of the CCAG/FCS, termination for default by the contractor shall be carried out at the contractor's own expense and risk. In such a case, the termination decision must state that the Contracting Authority will have the services provided for under the contract performed by a third party at the contractor's expense and risk.

The termination decision, regardless of its grounds, shall give rise to the notification of a termination account statement to the contractor.

19. PERFORMANCE AT CONTRACTOR'S RISK

Apart from termination for default, where urgency so requires and the performance cannot tolerate delay, the Contracting Authority may have the services performed by a third party.

20. DISPUTE RESOLUTION

Any dispute shall fall within the jurisdiction of the Administrative Court of Rennes, France.

Tribunal administratif de Rennes
Hôtel Bizien
3 Contour de la Motte
CS 44416
35044 RENNES Cedex
tél. : 02 23 21 28 28
greffe.ta-rennes@juradm.fr

Appeals may be filed electronically or by registered mail in accordance with applicable procedural rules (<https://www.telerecours.fr/>)

21. INSURANCE AND SUPPORTING DOCUMENTS

The Contractor shall provide Ifremer, upon signature of the present Contract and every six (6) months thereafter until its expiry date, with the following documents :

- proof of registration in the relevant professional or trade register or equivalent document;
- a nominal list of foreign employees subject to work authorisation requirements;
- a valid certificate of social security compliance (attestation de vigilance);
- a valid tax compliance certificate.

Where such supporting documents have not been provided prior to contract signature, the Contractor, and where applicable its subcontractors, shall, within fifteen (15) days from notification of the Contract and prior to any commencement of performance, provide evidence that it is covered by an insurance policy in respect of civil liability arising under Articles 1240 et seq. of the French Civil Code and, where applicable, ten-year liability insurance. The Contractor shall therefore produce a certificate issued by its insurer confirming that insurance premiums are up to date and that the policy provides coverage commensurate with the scope and nature of the services.

A renewed valid insurance certificate shall be transmitted to Ifremer as soon as the certificate initially provided reaches its expiry date.

At any time during performance of the services, the Contractor shall be able to produce the above certificates upon request by the Contracting Authority or its representative and within fifteen (15) days from receipt of such request.

22. DEROGATIONS

- Article 1.5 derogates from Article 3.8.2 of the CCAG/FCS.
- Article 2 derogates from Article 4.2 of the CCAG/FCS.
- Article 5.2 derogates from Articles 3.7.2 and 3.8.3 of the CCAG/FCS.
- Article 7.2 supplements Article 10.1.3 of the CCAG/FCS.
- Article 11 derogates from Articles 14.1.1 and 14.1.3 of the CCAG/FCS.
- Article 12.1 derogates from Article 29 of the CCAG/FCS.
- Article 18 supplements Article 38 of the CCAG/FCS.