

**FRAMEWORK CONTRACT FOR CONSULTANCY SERVICES FOR  
A CONTENT MANAGEMENT SYSTEM**

NUMBER — PS/SRV/CMS/010/2022

1. The Transport Community, represented by the Permanent Secretariat ('the contracting authority'), represented for the purposes of signing this framework contract by Mr. Matej Zakonjšek, Director,

of the one part and

2. [Contractor]

(hereinafter "the contractor"), represented for the purposes of the signature of this contract by [],

HAVE AGREED

to the **special conditions**, the **general conditions for service contracts** and the following annexes:

Annex I – Tender specifications reference []

Annex II – Contractor's tender reference []

which form an integral part of this contract ('the contract').

This contract sets out the obligations of the parties during and after the duration of this contract.

All documents issued by the contractor (end-user agreements, general terms and conditions, etc.) except its tender are held inapplicable, unless explicitly mentioned in the special conditions of this contract. In all circumstances, in the event of contradiction between this contract and documents issued by the contractor, this contract prevails, regardless of any provision to the contrary in the contractor's documents.

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## **I. SPECIAL CONDITIONS**

### **I.1. ORDER OF PRIORITY OF PROVISIONS**

If there is any conflict between different provisions in this FWC, the following rules must be applied:

The provisions set out in the special conditions take precedence over those in the other parts of the FWC.

The provisions set out in the general conditions take precedence over those in the specific contract (Annex III)

The provisions set out in the specific contract (Annex III) take precedence over those in the other annexes.

The provisions set out in the tender specifications (Annex I) take precedence over those in the tender (Annex II).

The provisions set out in the FWC take precedence over those in the specific contracts.

### **I.2. SUBJECT MATTER**

The subject matter of the FWC is provision of the following services – Support services for SAP Business One (Lot 1) and, Consulting/Technical services for SAP Business One, as listed in the Tender Specifications with reference PS/SRV/SAP/004/2022 dated 14 September 2022.

### **I.3. ENTRY INTO FORCE AND DURATION OF THE FWC**

**I.3.1** The FWC enters into force on the date on which the last party signs it and lasts 12 months since the date on which the last party signs it, pending availability of funding. The availability of funding for the whole duration of the contract shall be subject to approval of yearly budget of the Contracting Authority.

**I.3.2** The *implementation of the FWC* cannot start before its entry into force.

**I.3.3** The parties must sign any specific contract before the FWC expires.

The FWC continues to apply to such specific contracts after its expiry implementation of the FWC.

#### **I.3.1. Period of provision of the services**

The period for the provision of the services starts to run from the date on which the specific contract is signed by the last party and lasts for 12 months from that date.

#### **I.3.2. Implementation of single FWC**

a. The contracting authority orders services by sending the contractor a specific contract in paper format.

Within 5 working days, the contractor must either:

- send the specific contract back to the contracting authority signed and dated; or
- send an explanation of why it cannot accept the order.

If the contractor repeatedly refuses to sign the specific contracts or repeatedly fails to send them back on time, the contractor may be considered in breach of its obligations under this FWC as set out in Article II.17.1 (c).

### **I.3.3. Delivery**

The delivery shall take place at the main premises of contracting authority, Beogradjanka building, Masarikova 5/8, Belgrade.

The delivery shall be done by ways of:

- On site
- Remote assistance
- Telephone
- E-mail

## **I.4. PRICES**

### **I.4.1. Maximum amount of the FWC and maximum prices**

The maximum amount covering all purchases under this FWC, is for LOT 1:  EUR and for LOT 2:  EUR. However, this does not bind the contracting authority to purchase for the maximum amount.

### **I.4.2. Price revision index**

Price revision is not applicable to this contract.

## **I.5. PAYMENT ARRANGEMENTS**

### **I.5.1. Pre-financing**

Pre-financing is not applicable to this FWC.

### **I.5.2. Payments**

1. The contractor shall issue the Invoice to the contracting authority upon delivery and receipt of its order.

The contractor must send an invoice in EUR in paper format for payment due under a specific contract, as provided for in the tender specifications.

The invoice must contain: information about quantity and description of delivered services, as indicated in the tender specification.

2. The contracting authority must approve any submitted documents or supplies and pay within 30 days from receipt of the invoice.

3. If the contracting authority has observations to make, it must send them to the contractor (or leader in the case of a joint tender) and suspend the time limit for payment in accordance with Article II.20.7.

The contractor has 7 days to submit additional information or corrections if the contracting authority requires it.

4. The contracting authority must give its approval and pay within the remainder of the time-limit indicated in point (2.) unless it rejects partially or fully the submitted documents or supplies.

### **I.5.3. Performance guarantee**

Performance guarantee is not applicable to this FWC.

### **I.5.4. Retention money guarantee**

Retention money guarantee is not applicable to this FWC.

## **I.6. BANK ACCOUNT**

Payments must be made to the contractor's (or leader's in the case of a joint tender) bank account denominated in EUR, identified as follows:

Name of bank:

Full address of branch:

Exact denomination of account holder:

Full account number including bank codes:

IBAN:

SWIFT:

## **I.7. COMMUNICATION DETAILS**

For the purpose of this FWC, communications must be sent to the following addresses:

### **Contracting authority:**

The Permanent Secretariat of Transport Community  
Masarikova 5/8 (Beogradjanka building)

11000 Belgrade  
Email: [finance@transport-community.org](mailto:finance@transport-community.org)

**Contractor:**

[info]

By derogation from this Article, different contact details for the contracting authority or the contractor may be provided in specific contracts.

**I.8. DATA CONTROLLER**

For the purpose of Article II.9, the data controller is the Director of Permanent Secretariat of the Transport Community.

**I.9. TERMINATION BY EITHER PARTY**

Either party may terminate the FWC and/or the FWC and specific contracts by sending *formal notification* to the other party with three months written notice.

If the FWC or a specific contract is terminated:

- (a) neither party is entitled to compensation;
- (b) the contractor is entitled to payment only for the services delivered before termination takes effect.

The second, third and fourth paragraphs of Article II.17.4 apply.

**I.10. APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

**I.11.1** The FWC is governed by Union law, complemented, where necessary, by the law of the Republic of Serbia.

**I.11.2** The courts of Belgrade have exclusive jurisdiction over any dispute regarding the interpretation, application or validity of the FWC.

**SIGNATURES**

For the contractor,

For the contracting authority,

Mr. Matej Zakonjšek Director of Permanent Secretariat of the Transport Community

Signature: \_\_\_\_\_

Done in \_\_\_\_\_, \_\_\_\_\_

Signature: \_\_\_\_\_

Done in Belgrade, \_\_\_\_\_

In duplicate in English.



## II. GENERAL CONDITIONS FOR THE FRAMEWORK CONTRACT

### II.1. DEFINITIONS

For the purpose of this FWC, the following definitions (indicated in *italics* in the text) apply:

**‘Back office’**: the internal system(s) used by the parties to process electronic invoices;

**‘Confidential information or document’**: any information or document received by either party from the other or accessed by either party in the context of the *implementation of the FWC*, that any of the parties has identified in writing as confidential. It may not include information that is publicly available;

**‘Conflict of interest’**: a situation where the impartial and objective *implementation of the FWC* by the contractor is compromised for reasons involving family, emotional life, political or national affinity, economic interest, or any other shared interest with the contracting authority or any third party related to the subject matter of the FWC;

**‘Force majeure’**: any unforeseeable, exceptional situation or event beyond the control of the parties that prevents either of them from fulfilling any of their obligations under the FWC. The situation or event must not be attributable to error or negligence on the part of the parties or on the part of the subcontractors and must prove to be inevitable despite their exercising due diligence. Defaults, defects in equipment or material or delays in making them available, labour disputes, strikes and financial difficulties may not be invoked as *force majeure*, unless they stem directly from a relevant case of *force majeure*;

**‘Formal notification’** (or ‘formally notify’): form of communication between the parties made in writing by mail or email, which provides the sender with compelling evidence that the message was delivered to the specified recipient;

**‘Fraud’**: any intentional act or omission affecting the Transport Community’s financial interests relating to the use or presentation of false, incorrect or incomplete statements or documents or to non-disclosure of information in violation of a specific obligation;

**‘Implementation of the FWC’**: the purchase of services envisaged in the FWC through the signature and *performance of specific contracts*;

**‘Interface control document’**: the guideline document which lays down the technical specifications, message standards, security standards, checks of syntax and semantics, etc. to facilitate machine-to-machine connection. This document is updated on a regular basis;

**‘Irregularity’**: any infringement of a provision of the law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the Transport Community’s budget.

**‘Notification’** (or ‘notify’): form of communication between the parties made in writing including by electronic means;

**‘Order form’**: a simplified form of specific contract by which the contracting authority orders services under this FWC;

**‘Performance of a specific contract’:** the execution of tasks and delivery of the purchased services by the contractor to the contracting authority;

**‘Personnel’:** persons employed directly or indirectly or contracted by the contractor to implement the FWC;

**‘Professional conflicting interest’:** a situation in which the contractor’s previous or ongoing professional activities affect its capacity to implement the FWC or to perform a specific contract to an appropriate quality standard.

**‘Related person’:** any person who has the power to represent the contractor or to take decisions on its behalf;

**‘Request for services’:** a document from the contracting authority requesting that the contractors in a multiple FWC provide a specific tender for services whose terms are not entirely defined under the FWC;

**‘Specific contract’:** a contract implementing the FWC and specifying details of a supply to be provided;

**‘Substantial error’:** any infringement of a contract provision resulting from an act or omission, which causes or might cause a loss to the Transport Community’s budget.

## **II.2. ROLES AND RESPONSIBILITIES IN THE EVENT OF A JOINT TENDER**

In the event of a joint tender submitted by a group of economic operators and where the group does not have legal personality or legal capacity, one member of the group is appointed as leader of the group.

## **II.3. SEVERABILITY**

Each provision of this FWC is severable and distinct from the others. If a provision is or becomes illegal, invalid or unenforceable to any extent, it must be severed from the remainder of the FWC. This does not affect the legality, validity or enforceability of any other provisions of the FWC, which continue in full force and effect. The illegal, invalid or unenforceable provision must be replaced by a legal, valid and enforceable substitute provision which corresponds as closely as possible with the actual intent of the parties under the illegal, invalid or unenforceable provision. The replacement of such a provision must be made in accordance with Article II.11. The FWC must be interpreted as if it had contained the substitute provision as from its entry into force.

## **II.4. DELIVERY OF SERVICES**

**II.4.1** Signature of the FWC does not guarantee any actual purchase. The contracting authority is bound only by specific contracts implementing the FWC.

**II.4.2** The contractor must comply with the minimum requirements provided for in the tender specifications. This includes compliance with applicable obligations under environmental, social and labour law established by national law and collective

agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU<sup>1</sup>.

**II.4.3** All periods specified in the FWC are calculated in calendar days, unless otherwise specified.

**II.4.4** The contractor must not present itself as a representative of the contracting authority and must inform third parties that it is not part of the Transport Community.

**II.4.5** The contractor is responsible for the *personnel* who perform the contract and exercises its authority over its *personnel* without interference by the contracting authority. The contractor must inform its *personnel* that:

- (a) they may not accept any direct instructions from the contracting authority; and
- (b) their participation in providing the supplies and services does not result in any employment or contractual relationship with the contracting authority.

**II.4.6** The contractor must ensure that the *personnel* implementing the FWC and any future replacement personnel possess the professional qualifications and experience required to provide the services, as the case may be on the basis of the selection criteria set out in the tender specifications.

**II.4.7** At the contracting authority's reasoned request, the contractor must replace any member of *personnel* who:

- (a) does not have the expertise required to provide the services; or
- (b) has caused disruption at the premises of the contracting authority.

The contractor bears the cost of replacing its *personnel* and is responsible for any delay in providing the services resulting from the replacement of *personnel*.

**II.4.8** The contractor must record and report to the contracting authority any problem that affects its ability to deliver the services. The report must describe the problem, state when it started and what action the contractor is taking to resolve it.

#### **II.4.9 Delivery**

- (a) Time allowed for delivery

The time allowed for delivery is calculated in accordance with Article I.3.3.

#### **II.4.10 Conformity of the services delivered with the FWC**

The services delivered by the contractor to the contracting authority must be in conformity in quantity, quality, and price with the FWC and the relevant specific contract.

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<sup>1</sup> OJ L 94 of 28.03.2014, p. 65

The services delivered/provided must:

- (a) correspond to the description given in the tender specifications and possess the characteristics of the services provided by the contractor to the contracting authority as a sample or model;
- (b) be fit for any specific purpose required of them by the contracting authority and made known to the contractor at the time of conclusion of this FWC and accepted by the contractor;

## **II.5. COMMUNICATION BETWEEN THE PARTIES**

### **II.5.1. Form and means of communication**

Any communication of information, notices or documents under the FWC must:

- (a) be made in writing in paper or electronic format in the language of the contract;
- (b) bear the FWC number and, if applicable, the specific contract number;
- (c) be made using the relevant communication details set out in Article I.7; and
- (d) be sent by mail, email or, for the documents specified in the special conditions.

If a party requests written confirmation of an e-mail within a reasonable time, the other party must provide an original signed paper version of the communication as soon as possible.

The parties agree that any communication made by email has full legal effect and is admissible as evidence in judicial proceedings.

### **II.5.2. Date of communications by mail and email**

Any communication is deemed to have been made when the receiving party receives it, unless this FWC contract refers to the date when the communication was sent.

E-mail is deemed to have been received by the receiving party on the day of dispatch of that e-mail, provided that it is sent to the e-mail address indicated in Article I.7. The sending party must be able to prove the date of dispatch. In the event that the sending party receives a non-delivery report, it must make every effort to ensure that the other party actually receives the communication by email or mail. In such a case, the sending party is not held in breach of its obligation to send such communication within a specified deadline.

Mail sent to the contracting authority is deemed to have been received by the contracting authority on the date on which the department responsible referred to in Article I.7 registers it.

*Formal notifications* are considered to have been received by the receiving party on the date of receipt indicated in the proof received by the sending party that the message was delivered to the specified recipient.

## **II.6. LIABILITY**

**II.6.1** The contracting authority is not liable for any damage or loss caused by the contractor, including any damage or loss to third parties during or as a consequence of implementation of the FWC.

**II.6.2** If required by the relevant applicable legislation, the contractor must take out an insurance policy against risks and damage or loss relating to the implementation of the FWC. It must also take out supplementary insurance as reasonably required by standard practice in the industry. Upon request, the contractor must provide evidence of insurance coverage to the contracting authority.

**II.6.3** The contractor is liable for any loss or damage caused to the contracting authority during or as a consequence of implementation of the FWC, including in the event of subcontracting, but only to an amount not exceeding three times the total amount of the relevant specific contract. However, if the damage or loss is caused by the gross negligence or wilful misconduct of the contractor or of its *personnel* or subcontractors, the contractor is liable for the whole amount of the damage or loss.

**II.6.4** If a third party brings any action against the contracting authority in connection with the *implementation of the FWC*, the contractor must assist the contracting authority in the legal proceedings, including by intervening in support of the contracting authority upon request.

If the contracting authority's liability towards the third party is established and that such liability is caused by the contractor during or as a consequence of the *implementation of the FWC*, Article II.6.3 applies.

**II.6.5** If the contractor is composed of two or more economic operators (i.e. who submitted a joint tender), they are all jointly and severally liable to the contracting authority for the *implementation of the FWC*.

**II.6.6** The contracting authority is not liable for any loss or damage caused to the contractor during or as a consequence of *implementation of the FWC*, unless the loss or damage was caused by wilful misconduct or gross negligence of the contracting authority.

## **II.7. CONFLICT OF INTEREST AND PROFESSIONAL CONFLICTING INTERESTS**

**II.7.1** The contractor must take all the necessary measures to prevent any situation of *conflict of interest or professional conflicting interest*.

**II.7.2** The contractor must *notify* the contracting authority in writing as soon as possible of any situation that could constitute a *conflict of interest* or a *professional conflicting interest* during the *implementation of the FWC*. The contractor must immediately take action to rectify the situation.

The contracting authority may do any of the following:

- (a) verify that the contractor's action is appropriate;
- (b) require the contractor to take further action within a specified deadline;
- (c) decide not to award a specific contract to the contractor.

**II.7.3** The contractor must pass on all the relevant obligations in writing to:

- (a) its personnel;
- (b) any natural person with the power to represent it or take decisions on its behalf;
- (c) third parties involved in the *implementation of the FWC*, including subcontractors.

The contractor must also ensure that the persons referred to above are not placed in a situation which could give rise to conflicts of interest.

## **II.8. CONFIDENTIALITY**

**II.8.1.** The contracting authority and the contractor must treat with confidentiality any information or documents, in any format, disclosed in writing or orally relating to the *implementation of the FWC* and identified in writing as confidential.

**II.8.2.** Each party must:

- (a) not use *confidential information or documents* for any purpose other than to perform its obligations under the FWC or a specific contract without the prior written agreement of the other party;
- (b) ensure the protection of such *confidential information or documents* with the same level of protection as its own *confidential information or documents*, and in any case with due diligence;
- (c) not disclose directly or indirectly, *confidential information or documents* to third parties without the prior written agreement of the other party.

**II.8.3** The confidentiality obligation set out in this Article are binding on the contracting authority and the contractor during the *implementation of the FWC* and for as long as the information or documents remain confidential unless:

- (a) the disclosing party agrees to release the receiving party from the confidentiality obligation earlier;
- (b) the *confidential information or documents* become public through other means than a breach of the confidentiality obligation,
- (c) the applicable law requires the disclosure of the *confidential information or documents*.

**II.8.4** The contractor must obtain from any natural person with the power to represent it or take decisions on its behalf, as well as from third parties involved in the *implementation of the FWC* a commitment that they will comply with this Article. At the request of the contracting authority, the contractor must provide a document providing evidence of this commitment.

## **II.9. PROCESSING OF PERSONAL DATA**

**II.9.1** Any personal data included in the FWC must be processed in accordance with the Data Protection Law of the Republic of Serbia. Such data must be processed by the data controller solely for the purposes of the implementation, management and monitoring of the FWC. This does not affect its possible transmission to the bodies entrusted with monitoring or inspection tasks in application of Union law.

**II.9.2** The contractor has the right to access its personal data and the right to rectify any such data. The contractor should address any queries concerning the processing of its personal data to the data controller.

**II.9.3** If the FWC requires the contractor to process any personal data, the contractor may act only under the supervision of the data controller, in particular with regard to the

purposes of the processing, the categories of data that may be processed, the recipients of the data and the means by which the data subject may exercise its rights.

**II.9.4** The contractor must grant *personnel* access to the data to the extent strictly necessary for the implementation, management and monitoring of the FWC.

**II.9.5** The contractor must adopt appropriate technical and organisational security measures giving due regard to the risks inherent in the processing and to the nature of the personal data concerned, in order to:

- (a) prevent any unauthorised person from gaining access to computer systems processing personal data, and especially:
  - (i) unauthorised reading, copying, alteration or removal of storage media;
  - (ii) unauthorised data inputting, as well as any unauthorised disclosure, alteration or erasure of stored personal data;
  - (iii) unauthorised use of data processing systems by means of data transmission facilities;
- (b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;
- (c) record which personal data have been communicated, when and to whom;
- (d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the contracting authority;
- (e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
- (f) design its organisational structure in such a way that it meets data protection requirements.

## **II.10. SUBCONTRACTING**

**II.10.1** The contractor must not subcontract and have the FWC implemented by third parties beyond the third parties already mentioned in its tender without prior written authorisation from the contracting authority.

**II.10.2** Even if the contracting authority authorises subcontracting, the contractor remains bound by its contractual obligations and is solely responsible for the *implementation of the FWC*.

**II.10.3** The contractor must ensure that the subcontract does not affect the rights of the contracting authority under this FWC, particularly those under Articles II.8 and II.22.

**II.10.4** The contracting authority may request the contractor to replace a subcontractor found to be in a situation provided for in points (d) and (e) of Article II.17.1.

## **II.11. AMENDMENTS**

**II.11.1** Any amendment to the FWC or a specific contract must be made in writing before all contractual obligations have been fulfilled. A specific contract does not constitute an amendment to the FWC.

**II.11.2** Any amendment must not make changes to the FWC or a specific contract that might alter the initial conditions of the procurement procedure or result in unequal treatment of tenderers or contractors.

## **II.12. ASSIGNMENT**

**II.12.1** The contractor must not assign any of the rights and obligations arising from the FWC, including claims for payments or factoring, without prior written authorisation from the contracting authority. In such cases, the contractor must provide the contracting authority with the identity of the intended assignee.

**II.12.2** Any right or obligation assigned by the contractor without authorisation is not enforceable against the contracting authority.

## **II.13. FORCE MAJEURE**

**II.13.1** If a party is affected by *force majeure*, it must immediately *notify* the other party, stating the nature of the circumstances, their likely duration and foreseeable effects.

**II.13.2** A party is not liable for any delay or failure to perform its obligations under the FWC if that delay or failure is a result of *force majeure*. If the contractor is unable to fulfil its contractual obligations owing to *force majeure*, it has the right to remuneration only for the services actually delivered and which obtain a certificate of conformity.

**II.13.3** The parties must take all necessary measures to limit any damage due to *force majeure*.

## **II.14. LIQUIDATED DAMAGES**

### **II.14.1. Delay in delivery**

If the contractor fails to perform its contractual obligations within the applicable time limits set out in this FWC, the contracting authority may claim liquidated damages for each day of delay using the following formula:

$$0.3 \times (V/d)$$

where:

*V* is the price of the relevant purchase or supply;

*d* is the duration specified in the relevant specific contract for delivery of the relevant purchase or supply expressed in days.

Liquidated damages may be imposed together with a reduction in price under the conditions laid down in Article II.15.

### **II.14.2. Procedure**

The contracting authority must *formally notify* the contractor of its intention to apply liquidated damages and the corresponding calculated amount.



The contractor has 30 days following the date of receipt to submit observations. Failing that, the decision becomes enforceable the day after the time limit for submitting observations has elapsed.

If the contractor submits observations, the contracting authority, taking into account the relevant observations, must *notify* the contractor:

- (a) of the withdrawal of its intention to apply liquidated damages; or
- (b) of its final decision to apply liquidated damages and the corresponding amount.

### **II.14.3. Nature of liquidated damages**

The parties expressly acknowledge and agree that any amount payable under this Article is not a penalty and represents a reasonable estimate of fair compensation for the damage incurred due to failure to provide the services within the applicable time limits set out in this FWC.

### **II.14.4. Claims and liability**

Any claim for liquidated damages does not affect the contractor's actual or potential liability or the contracting authority's rights under Article II.17.

## **II.15. REDUCTION IN PRICE**

### **II.15.1. Quality standards**

If the contractor fails to deliver the supply in accordance with the FWC or a specific contract ('unperformed obligations') or if it fails to deliver the supply in accordance with the expected quality levels specified in the tender specifications ('low quality delivery'), the contracting authority may reduce or recover payments proportionally to the seriousness of the unperformed obligations or low quality delivery. This includes in particular cases where the contracting authority cannot approve a document or deliver a certificate of conformity for supply as defined in Article I.6 after the contractor has submitted the required additional information, correction or new supply.

A reduction in price may be imposed together with liquidated damages under the conditions of Article II.14.

### **II.15.2. Procedure**

The contracting authority must *formally notify* the contractor of its intention to reduce payment and the corresponding calculated amount.

The contractor has 30 days following the date of receipt to submit observations. Failing that, the decision becomes enforceable the day after the time limit for submitting observations has elapsed.

If the contractor submits observations, the contracting authority, taking into account the relevant observations, must *notify* the contractor:

- (a) of the withdrawal of its intention to reduce payment; or

(b) of its final decision to reduce payment and the corresponding amount.

### **II.15.3. Claims and liability**

Any reduction in price does not affect the contractor's actual or potential liability or the contracting authority's rights under Article II.17.

## **II.16. SUSPENSION OF THE IMPLEMENTATION OF THE FWC**

### **II.16.1. Suspension by the contractor**

If the contractor is affected by *force majeure*, it may suspend the performance of a specific contract.

The contractor must immediately *notify* the contracting authority of the suspension. The notification must include a description of the *force majeure* and state when the contractor expects to resume the performance of the contract.

The contractor must *notify* the contracting authority as soon as it is able to resume *performance of the specific contract*, unless the contracting authority has already terminated the FWC or the specific contract.

### **II.16.2. Suspension by the contracting authority**

The contracting authority may suspend the *implementation of the FWC* or *performance of a specific contract* or any part of it:

- (a) if the procedure for awarding the FWC or a specific contract or the *implementation of the FWC* proves to have been subject to *substantial errors, irregularities or fraud*;
- (b) in order to verify whether the presumed *substantial errors, irregularities or fraud* actually occurred.

The contracting authority must *formally notify* the contractor of the suspension. Suspension takes effect on the date of *formal notification*, or at a later date if the *formal notification* so provides.

The contracting authority must *notify* the contractor as soon as possible whether:

- (a) it is lifting the suspension; or
- (b) it intends to terminate the FWC or a specific contract under Article II.17.1(f) or (j).

The contractor is not entitled to compensation for suspension of any part of the FWC or a specific contract.

## **II.17. TERMINATION OF THE FWC**

### **II.17.1. Grounds for termination by the contracting authority**

The contracting authority may terminate the FWC or a specific contract in the following circumstances:

- (a) if provision of the services under a pending specific contract has not actually started within 15 days of the scheduled date and the contracting authority considers the new date proposed, if any, unacceptable, taking into account Article II.11.2;
- (b) if the contractor is unable, through its own fault, to obtain any permit or licence required for *implementation of the FWC*;
- (c) if the contractor does not implement the FWC or perform the specific contract in accordance with the tender specifications or *request for services* or is in breach of another substantial contractual obligation or repeatedly refuses to sign specific contracts. Termination of three or more specific contracts in these circumstances also constitutes grounds for termination of the FWC;
- (d) if the contractor or any person that assumes unlimited liability for the debts of the contractor is in one of the situations provided for in points (a) and (b) of Article 136(1) of the Financial Regulation<sup>2</sup>;
- (e) if the contractor or any *related person* is subject to any of the situations provided for in points (c) to (f) of Article 136(1) or to Article 136(2) of the Financial Regulation.
- (f) if the procedure for awarding the FWC or the *implementation of the FWC* prove to have been subject to *substantial errors, irregularities or fraud*;
- (g) if the contractor does not comply with applicable obligations under environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU;
- (h) if the contractor is in a situation that could constitute a *conflict of interest* or a *professional conflicting interest* as referred to in Article II.7;
- (i) if a change to the contractor's legal, financial, technical, organisational or ownership situation is likely to substantially affect the *implementation of the FWC* or substantially modify the conditions under which the FWC was initially awarded;
- (j) in the event of *force majeure*, where either resuming implementation is impossible or the necessary ensuing amendments to the FWC or a specific contract would mean that the tender specifications are no longer fulfilled or result in unequal treatment of tenderers or contractors;
- (k) if the needs of the contracting authority change and it no longer require services under the FWC; in such cases ongoing specific contracts remain unaffected;
- (l) if the termination of the FWC with one or more of the contractors means that the multiple FWC with reopening of competition no longer has the minimum required level of competition.
- (m) If the amounts approved for this purpose in the annual budget of the contracting authority make the performance of the contract impossible.

### **II.17.2. Grounds for termination by the contractor**

The contractor may terminate the FWC or a specific contract if:

- (a) it has evidence that the contracting authority has committed *substantial errors, irregularities or fraud* in the procedure for awarding the FWC or the *implementation of the FWC*;

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<sup>2</sup> Regulation (EU, EURATOM) No 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, repealing Regulation (EU, Euratom) No 966/2012 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2018:193:TOC>

- (b) the contracting authority fails to comply with its obligations, in particular the obligation to provide the information needed for the contractor to implement the FWC or to perform a specific contract as provided for in the tender specifications.

### **II.17.3. Procedure for termination**

A party must *formally notify* the other party of its intention to terminate the FWC or a specific contract and the grounds for termination.

The other party has 30 days following the date of receipt to submit observations, including the measures it has taken to continue fulfilling its contractual obligations. Failing that, the decision to terminate becomes enforceable the day after the time limit for submitting observations has elapsed.

If the other party submits observations, the party intending to terminate must *formally notify* it either of the withdrawal of its intention to terminate or of its final decision to terminate.

In the cases referred to in points (a) to (d), (g) to (i), (k) and (l) of Article II.17.1 and in Article II.17.2, the date on which the termination takes effect must be specified in the *formal notification*.

In the cases referred to in points (e), (f) and (j) of Article II.17.1, the termination takes effect on the day following the date on which the contractor receives *notification* of termination.

In addition, at the request of the contracting authority and regardless of the grounds for termination, the contractor must provide all necessary assistance, including information, documents and files, to allow the contracting authority to complete, continue or transfer the delivery of the services to a new contractor or internally, without interruption or adverse effect on the quality or continuity of delivery of the services. The parties may agree to draw up a transition plan detailing the contractor's assistance unless such plan is already detailed in other contractual documents or in the tender specifications. The contractor must provide such assistance at no additional cost, except if it can demonstrate that it requires substantial additional resources or means, in which case it must provide an estimate of the costs involved and the parties will negotiate an arrangement in good faith.

### **II.17.4. Effects of termination**

The contractor is liable for damage incurred by the contracting authority as a result of the termination of the FWC or a specific contract including the cost of appointing another contractor to provide or complete the services, unless the damage was caused by the situation specified in Article II.17.1(j), (k) or (l) or in Article II.17.2. The contracting authority may claim compensation for such damage.

The contractor is not entitled to compensation for any loss resulting from the termination of the FWC or a specific contract, including loss of anticipated profits, unless the loss was caused by the situation specified in Article II.17.2.

The contractor must take all appropriate measures to minimise costs, prevent damage and cancel or reduce its commitments.

Within 60 days of the date of termination, the contractor must submit any report and any invoice required for services that were provided before the date of termination.

In the case of joint tenders, the contracting authority may terminate the FWC or a specific contract with each member of the group separately on the basis of points (d), (e) or (g) of Article II.17.1, under the conditions set out in Article II.11.2.

## **II.18. INVOICES, VALUE ADDED TAX AND E-INVOICING**

### **II.18.1. Invoices and value added tax**

Invoices must contain the contractor's (or leader's in the case of a joint tender) identification data, the amount, the currency and the date, as well as the FWC reference and reference to the specific contract.

Invoices must indicate the place of taxation of the contractor (or leader in the case of a joint tender) for value added tax (VAT) purposes and must specify separately amounts not including VAT and amounts including VAT.

The contracting authority is exempt from all taxes and duties, including VAT, in accordance with Article 10 of the Agreement between the Republic of Serbia and the Transport Community regarding the seat of the Secretariat.

The contractor (or leader in the case of a joint tender) must complete the necessary formalities with the relevant authorities to ensure that the services required for *implementation of the FWC* are exempt from taxes and duties, including VAT.

## **II.19. PRICE REVISION**

Price revision is not applicable to this contract.

## **II.20. PAYMENTS AND GUARANTEES**

### **II.20.1. Date of payment**

Payments are deemed to be effected on the date when they are debited to the contracting authority's account.

### **II.20.2. Currency**

Payments are made in euros or in the currency provided for in Article I.5.

### **II.20.3. Conversion**

The contracting authority makes any conversion between the euro and another currency at the monthly euro exchange rate published in the Official Journal of the European Union.

The contractor makes any conversion between the euro and another currency at the monthly accounting exchange rate, established by the Commission and published on the website indicated below, applicable on the date of the invoice.

[http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/inforeuro/inforeuro\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm)

#### **II.20.4. Costs of transfer**

The costs of the transfer are borne as follows:

- (a) the contracting authority bears the costs of dispatch charged by its bank;
- (b) the contractor bears the costs of receipt charged by its bank;
- (c) the party causing repetition of the transfer bears the costs for repeated transfer.

#### **II.20.5. Pre-financing, performance and money retention guarantees**

If, as provided for in Article I.5, a financial guarantee is required for the payment of pre-financing, as performance guarantee or as money retention guarantee, it must fulfil the following conditions:

- (a) the financial guarantee is provided by a bank or a financial institution approved by the contracting authority or, at the request of the contractor and with the agreement of the contracting authority, by a third party;
- (b) the guarantor stands as first-call guarantor and does not require the contracting authority to have recourse against the principal debtor (the contractor).

The contractor bears the cost of providing such guarantee.

Pre-financing guarantees must remain in force until the pre-financing is cleared against interim payments or payment of the balance. Where the payment of the balance takes the form of a debit note, the pre-financing guarantee must remain in force for three months after the debit note is sent to the contractor. The contracting authority must release the guarantee within the following month.

Performance guarantees cover compliance with substantial contractual obligations until the contracting authority has given its final approval for the supply. The performance guarantee must not exceed 10 % of the total price of the specific contract. The contracting authority must release the guarantee fully after final certificate of conformity of the supply has been delivered, as provided for in the specific contract.

Retention money guarantees cover full delivery of the services in accordance with the specific contract including during the contract liability period and until their final certificate of conformity has been delivered by the contracting authority. The retention money guarantee must not exceed 10 % of the total price of the specific contract. The contracting authority must release the guarantee after the expiry of the contract liability period as provided for in the specific contract.

The contracting authority must not request a retention money guarantee for a specific contract where it has requested a performance guarantee.

#### **II.20.6. Interim payments and payment of the balance**

The contractor (or leader in the case of a joint tender) must send an invoice for interim payment, as provided for in Article I.5 or in the tender specifications or in the specific contract.

The contractor (or leader in the case of a joint tender) must send an invoice for payment of the balance within 60 days of the end of the period of provision of the services, as provided for in Article I.5, in the tender specifications or in the specific contract.

Payment of the invoice and approval of documents does not imply recognition of the regularity, authenticity, completeness and correctness of the declarations and information they contain.

Payment of the balance may take the form of recovery.

#### **II.20.7. Suspension of the time allowed for payment**

The contracting authority may suspend the payment periods specified in Article I.5 at any time by *notifying* the contractor (or leader in the case of a joint tender) that its invoice cannot be processed. The reasons the contracting authority may cite for not being able to process an invoice are:

- (a) because it does not comply with the FWC;
- (b) because the contractor has not produced the appropriate services or documents; or
- (c) because the contracting authority has observations on the services or documents submitted with the invoice.

The contracting authority must *notify* the contractor (or leader in the case of a joint tender) as soon as possible of any such suspension, giving the reasons for it.

Suspension takes effect on the date the contracting authority sends the *notification*. The remaining payment period resumes from the date on which the requested information or revised documents are received or the necessary further verification, including on-the-spot checks, is carried out. Where the suspension period exceeds two months, the contractor (or leader in the case of a joint tender) may request the contracting authority to justify the continued suspension.

Where the payment periods have been suspended following rejection of a document referred to in the first paragraph of this Article and the new document produced is also rejected, the contracting authority reserves the right to terminate the specific contract in accordance with Article II.17.1(c).

#### **II.20.8. Interest on late payment**

On expiry of the payment periods specified in Article I.5, the contractor (or leader in the case of a joint tender) is entitled to interest on late payment at the rate applied by the European Central Bank for its main refinancing operations in euros (the reference rate) plus eight points. The reference rate is the rate in force, as published in the C series of the *Official Journal of the European Union*, on the first day of the month in which the payment period ends.

Suspension of the payment period as provided for in Article II.20.7 is not considered as giving rise to late payment.

Interest on late payment covers the period running from the day following the due date for payment up to and including the date of payment as defined in Article II.20.1.

However, when the calculated interest is EUR 200 or less, it must be paid to the contractor (or leader in the case of a joint tender) only if it requests it within two months of receiving late payment.

## **II.21. RECOVERY**

**II.21.1** If an amount is to be recovered under the terms of the FWC, the contractor must repay the contracting authority the amount in question.

### **II.21.2 Recovery procedure**

Before recovery, the contracting authority must *formally notify* the contractor of its intention to recover the amount it claims, specifying the amount due and the reasons for recovery and inviting the contractor to make any observations within 30 days of receipt.

If no observations have been submitted or if, despite the observations submitted, the contracting authority decides to pursue the recovery procedure, it must confirm recovery by *formally notifying* a debit note to the contractor, specifying the date of payment. The contractor must pay in accordance with the provisions specified in the debit note.

If the contractor does not pay by the due date, the contracting authority may, after informing the contractor in writing, recover the amounts due:

- (a) by offsetting them against any amounts owed to the contractor by the Transport Community;
- (b) by calling in a financial guarantee if the contractor has submitted one to the contracting authority;
- (c) by taking legal action.

### **II.21.3 Interest on late payment**

If the contractor does not honour the obligation to pay the amount due by the date set by the contracting authority in the debit note, the amount due bears interest at the rate indicated in Article II.20.8. Interest on late payments will cover the period starting on the day after the due date for payment and ending on the date when the contracting authority receives the full amount owed.

Any partial payment is first entered against charges and interest on late payment and then against the principal amount.

### **II.21.4 Recovery rules in the case of joint tender**

If the contract is signed by a group (joint tender), the group is jointly and severally liable under the conditions set out in Article II.6 (liability). The contracting authority first claims the full amount to the leader of the group.

If the leader does not pay by the due date and if the amount cannot be offset in accordance with Article II.21.2 (a), the contracting authority may claim the full amount to any other member of the group by *notifying* the debit note already sent to the leader under Article II.21.2.



## **II.22. CHECKS AND AUDITS**

**II.22.1** The contracting authority and the European Anti-Fraud Office may check or require an audit on the *implementation of the FWC*. This may be carried out either by OLAF's own staff or by any outside body authorised to do so on its behalf.

Such checks and audits may be initiated at any moment during the provision of the services and up to five years starting from the payment of the balance of the last specific contract issued under this FWC.

The audit procedure is initiated on the date of receipt of the relevant letter sent by the contracting authority. Audits are carried out on a confidential basis.

**II.22.2** The contractor must keep all original documents stored on any appropriate medium, including digitised originals if authorised under national law, for a period of five years starting from the payment of the balance of the last specific contract issued under this FWC.

**II.22.3** The contractor must grant the contracting authority's staff and outside personnel authorised by the contracting authority the appropriate right of access to sites and premises where the FWC is implemented and to all the information, including information in electronic format, needed to conduct such checks and audits. The contractor must ensure that the information is readily available at the moment of the check or audit and, if so requested, that information is handed over in an appropriate format.

**II.22.4** On the basis of the findings made during the audit, a provisional report is drawn up. The contracting authority or its authorised representative must send it to the contractor, who has 30 days following the date of receipt to submit observations. The contractor must receive the final report within 60 days following the expiry of the deadline to submit observations.

On the basis of the final audit findings, the contracting authority may recover all or part of the payments made in accordance with Article II.21 and may take any other measures which it considers necessary.

**II.22.5** In accordance with Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspection carried out by the Commission in order to protect the European Communities' financial interests against *fraud* and other *irregularities* and Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office, the European Anti-Fraud Office may carry out investigations, including on the spot checks and inspections, to establish whether there has been *fraud*, corruption or any other illegal activity under the contract affecting the financial interests of the Union. Findings arising from an investigation may lead to criminal prosecution under national law.

The investigations may be carried out at any moment during the performance of the contract and up to five years starting from the payment of the balance of the last specific contract issued under this FWC.

**II.22.6** The Court of Auditors has the same rights as the contracting authority, particularly right of access, for the purpose of checks and audit

## ANNEX III