

**PART B: AGREEMENT – SPECIAL CONDITIONS OF  
CONTRACT**

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## **PART B: AGREEMENT – SPECIAL CONDITIONS OF CONTRACT**

### **PREAMBLE**

**Cyprus Energy Regulatory Authority**,, having its headquarters in **Ag. Paraskevis 20, Strovolos, 2002, Nicosia** (hereinafter “Contracting Authority”)

of the one part,

and

**<Business Name or Name and Surname of Contractor>**, having its registered office in **<postal address>**, **<name of town/city>** (hereinafter “Contractor”), legally represented by **<name and surname, capacity>**

of the other part,

following a tender procedure no. **01/2022** for the award of the Contract for **Consultancy Services for Establishing the Wholesale Electricity Market Monitoring procedures, the related Hardware & Software Needs and Supervision Services during the Implementation process of the agreed procedures** which was awarded pursuant to award decision no. **<award decision number>**,

have agreed as follows.

### **1. STRUCTURE OF THE CONTRACT**

1. It is explicitly agreed that the Contract consists of the following documents, which form integral parts of it:
  - a. The present Agreement.
  - b. Annex II. TERMS OF REFERENCE – TECHNICAL SPECIFICATIONS
  - c. Annex I. GENERAL CONDITIONS FOR SERVICE CONTRACTS
  - d. Annex III. *Non-Disclosure Agreement*
  - e. *Annex IV. DATA PROCESSING AGREEMENT*
  - f. The Contractor’s Tender as submitted on **<date of submission of tender>** and any correspondence relating thereto between the Contracting Authority and the Contractor.

In the case of differences between the above parts, their provisions shall be applied according to the above order of precedence.

### **2. CONTRACT SCOPE**

1. By the present Contract, the Contractor undertakes to provide **Consultancy Services for Establishing the Wholesale Electricity Market Monitoring procedures, the related Hardware & Software Needs and Supervision Services during the Implementation**

**process of the agreed procedures** in accordance with the terms and conditions laid down in the Contract.

### **3. CONTRACT VALUE**

1. The Contract Value amounts to .....Euro. The amount is exclusive of VAT.
2. The Contract Value, which the Contractor deems legitimate, reasonable and adequate consideration for the performance of the Contract Scope, is inclusive of all types of costs which the Contractor shall or may require in order to meet its obligations, and of the Contractor's expenses and profit, including any fees of third parties, without any further charge whatsoever to the Contracting Authority.

### **4. ORGANISATION AND ADMINISTRATION OF CONTRACT IMPLEMENTATION**

1. The Contractor shall be fully responsible for the execution of the Contract Scope.
2. The Contracting Authority shall have the key responsibility of supervising and controlling the progress in the performance of the Contract Scope and the quality and completeness of the Deliverables of the Contract.
3. Cooperation between the Contracting Authority and the Contractor in all stages of performance of the Contract Scope and until its final acceptance, shall be an obligation of both parties.
4. The Project Manager on behalf of the Contracting Authority is **Andreas Frixou**.

### **5. DATE OF COMMENCEMENT AND PERIOD OF IMPLEMENTATION**

1. The present Contract shall enter into effect as of the time of its signature.
2. The date of commencement of the performance of the Contract Scope shall be determined by an administrative order to be issued by the Project Manager after entry of the Contract into effect, and shall be the same of such entry into effect.
3. The period of implementation of the Contract Scope shall be as stated **in paragraph 2.23, in 'Part A'**, and the periods for implementation of the individual Deliverables and their delivery times shall be as stated in the Tender and in Annex II.
4. Implementation of the individual activities, as required in each case, and delivery of the individual Deliverable of the Contract may be varied in time in accordance with the procedures in force, following mutual agreement and on condition that the overall period of implementation of the Contract does not change.
5. The present Contract shall cease to be in effect upon the final acceptance of all services and activities included in the Contract Scope or at an earlier time, should the Contractor perform and the Contracting Authority accept the aforementioned services and activities at an earlier time, or if the need arises to apply the articles on termination of the Contract of Annex I.

## 6. REPORTS

The Contractor is obliged to draw up and submit the Reports specified in Annex II.

## 7. CONDITIONS AND PROCEDURE FOR PAYMENT

1. Payments shall be made in **EURO** into the bank account notified by the Contractor to the Contracting Authority in accordance with article 16.1 of Annex I.
2. The payments shall be made in accordance with the following schedule, subject to the provisions of articles 16 and 17 of Annex I:
  - a. **In the case that the proposal of deliverable 2 does not dictate the provision of a relevant software used by CERA (please refer to Ch. 4 of Annex II for details of the deliverables):**

- An advance payment equal to **five percent (5%)** of the Contract Value, after signature of the Contract and against submission by the Contractor of an Advance Payment Guarantee for the same amount, drawn up in accordance with the relevant Template (Form 13).

The Guarantee shall be issued by financial institutions or other legal persons lawfully operating in Cyprus or in other countries of the European Union (EU) or of the European Economic Area (EEA) or in third countries who have signed and ratified the International Government Procurement Agreement (GPA) or in other countries who have signed and ratified association agreements or bilateral agreements with the EU or with the Republic of Cyprus, and having the right to issue such guarantees in accordance with the legislation of these countries.

- 1<sup>st</sup> instalment equal to **thirty percent (30%)** of the Contract Value, after approval of the **Deliverable 1**, provided that all content which according to the implementation schedule are due for submission prior to the specific Deliverable shall have been already accepted-
  - 2<sup>nd</sup> instalment equal to **sixty five percent (65%)** of the Contract Value, after approval of the **Deliverable 2**, provided that all content which according to the implementation schedule are due for submission prior to the specific Deliverable shall have been already accepted.
- b. **In the case that the proposal of deliverable 2 dictates the provision of relevant software to be used by CERA (Please refer to Ch. 4 of Annex II for details of the deliverables) :**
    - An advance payment equal to **five percent (5%)** of the Contract Value, after signature of the Contract and against submission by the Contractor of an Advance Payment Guarantee for the same amount, drawn up in accordance with the relevant Template (Form 13).

The Guarantee shall be issued by financial institutions or other legal persons lawfully operating in Cyprus or in other countries of the European Union (EU) or of the European Economic Area (EEA) or in third countries who have signed and ratified the International Government Procurement Agreement (GPA) or in other countries who have signed and ratified association agreements or bilateral agreements with the EU or with the Republic of Cyprus, and having the right to issue such guarantees in accordance with the legislation of these countries.

- 1<sup>st</sup> instalment equal to **twenty percent (20%)** of the Contract Value, after approval of the **Deliverable 1**, provided that all content which according to the implementation schedule are due for submission prior to the specific Deliverable shall have been already accepted-
- 2<sup>nd</sup> instalment equal to **forty five percent (45%)** of the Contract Value, after approval of the **Deliverable 2**, provided that all content which according to the implementation schedule are due for submission prior to the specific Deliverable shall have been already accepted.
- 3<sup>rd</sup> instalment equal to **fifteen percent (15%)** of the Contract Value, after approval of the **Deliverable 3**, provided that all content which according to the implementation schedule are due for submission prior to the specific Deliverable shall have been already accepted.
- Final instalment equal to **fifteen percent (15%)** of the Contract Value, after approval of the **Deliverable 4**, provided that all content which according to the implementation schedule are due for submission prior to the specific Deliverable shall have been already accepted.

## 8. PENALTIES FOR DELAY

1. In the event of a delay in the performance of work or in the submission of a Deliverable under the Contract for which the Contractor is responsible, a Penalty for Delivery Delay shall be imposed.
2. Such penalty shall amount to a per cent rate of 0.05% of the Contract Value, for every day of delay of delivery.
3. Any penalties imposed by the Contracting Authority in accordance with the above paragraphs shall be withheld from the next payment to the Contractor or, if such payment is insufficient, shall be collected through forfeiture of an equivalent amount of the Performance Guarantee and/or Advance Payment Guarantee.
4. In the event that the delivery periods set have been exceeded and the penalties for delay imposed in connection therewith have reached in total **five percent (5%)** of the Contract Value, the Contracting Authority may declare the Contractor in default and terminate the Contract, the specific provisions of Annex I applying.

## **9. PERFORMANCE GUARANTEE**

1. The Contractor shall furnish a Performance Guarantee. This guarantee must remain in effect one month after the completion of the contract scope.
2. The Performance Guarantee for the Contract shall be returned to the Contractor after the final qualitative and quantitative acceptance of the Contract Scope has taken place and after the claims, if any, of both parties have been settled, while it shall be automatically forfeited in favour of the Contracting Authority in the event of failure by the Contractor to fulfil its obligations, as these derive from the Contract.

## **10. REPLACEMENT OF PERSONNEL**

1. The Contractor shall not make changes to the personnel agreed under the terms of the Contract without notifying the Contracting Authority, which may oppose such a change on the basis of the Contract.
2. The Contractor must on its own initiative propose the replacement of Project Team members in the following cases:
  - (a) In the event of death, illness or accident of a Project Team member.
  - (b) If it becomes necessary to replace a Project Team member for any other reasons beyond the Contractor's control (resignation etc.).
3. Moreover, in the course of the execution of the Contract and on the basis of a written and justified request, the Contracting Authority may request a replacement if it considers that a Project Team member is inefficient or does not perform its duties under the Contract.
4. Where a Project Team member must be replaced, the replacement must meet the minimum qualification criteria as set in the tender documents. In cases where the evaluation process involved the marking of the project team, the replacement should meet at least the marks granted by the member to be replaced. Where the Contractor is unable to provide such a replacement, the Contracting Authority may either decide to terminate the Contract, if the due execution thereof is jeopardised, or, if it considers that this is not the case, accept the replacement, it being understood that an amendment of the Contract shall follow to reduce accordingly the Contract Value.
5. Any expenses which may be necessary due to the replacement of personnel are the responsibility of the Contractor. Where the Project Team member is not replaced immediately and sometime elapses before the new member assumes its duties, the Contracting Authority may request the Contractor to assign temporarily to the project another person pending the arrival of the new member, or to take other measures to compensate for such temporary absence.
6. The Contracting Authority, additional to any other matters that are regulated independently, may deduct an amount, according to each case, for the Project Team member that is replaced as a setoff for the period that it will be required for the new member to adjust to and get acquainted with the Contract Scope, but also for the Administrative Cost that the Contracting Authority will incur following this replacement.

## 11. TAX AND CUSTOMS ARRANGEMENTS

The Contract shall not be exempted from duties and taxes, including also VAT.

## 12. SETTLEMENT OF DISPUTES

The dispute settlement procedure of article 25 of Annex I shall apply.

## 13. LAW AND LANGUAGE OF THE CONTRACT

1. All matters not covered by the Contract shall be governed by the legislation of the Republic of Cyprus.
2. The language of the Contract and of all written communications between the Contractor and the Contracting Authority shall be the English or Greek language.

## 14. COMMUNICATION BETWEEN THE PARTIES

Any written communication relating to the present Contract is addressed as follows:

- a. by the Contractor to the Contracting Authority, to the postal address **20 Ayias Paraskevis Street, Strovolos, 2002, Nicosia** or to the electronic mail address **regulator.cy@cera.org.cy** or, if sent by facsimile, to 00357 **22 667763**
- b. by the Contracting Authority to the Contractor, to the postal address **<postal address>** or to the electronic mail address **<electronic mail address>** or, if sent by facsimile, to **<facsimile number>**.

## 15. OTHER ARRANGEMENTS

The following modifications or additions to the General Conditions shall apply:

- An additional article is added regarding COVID-19 (Article 26) Written notice of a Party's failure or delay in performance due to COVID-19 must be given to the other party no later than five (5) business days following the event commencing, which notice shall describe the event and the actions taken to minimize the impact thereof. More specifically, the following terms shall apply per case:
  - Deliverable submission

Submission date of all due Deliverables under this Agreement that become affected by the event, shall be postponed for the duration of the event. The Parties hereby agree, when feasible, not to cancel but reschedule the pertinent obligations and Deliverables for mutually agreed dates as soon as practicable after event ceases to exist.
  - Personnel



Pertaining to Contractor's personnel affected or quarantined due to COVID-19, all terms of Clause 10 – Replacement of Personnel shall be applied.

Drafted in three originals, where two originals are intended for the Contracting Authority and one for the Contractor, and signed on **<day>**, **<XX/XX/20XX>**.

**For and on behalf of the Contracting Authority:**

Witnesses:

Signature: .....

1. Signature: .....

Title: .....

Name: .....

Name: .....

2. Signature: .....

Name: .....

**For and on behalf of the Contractor:**

Witnesses:

Signature: .....

1. Signature: .....

Title: .....

Name: .....

Name: .....

2. Signature: .....

Name: .....