

FRAMEWORK CONTRACT SERVICES FOR EU'S EXTERNAL ACTION 2023 (FWC SEA 2023)

Publication Reference: INTPA/2022/EA-OP/0102

MAIN CONDITIONS

The European Union ('the Union'), represented by the European Commission, Directorate General International Partnerships on behalf of and for the account of the beneficiary countries of the External Actions and pre-accession assistance of the Union,

represented for the purposes of signing this Framework Contract by the authorised representative indicated in the respective field under "Signatures" below,

(‘the Framework Contracting Authority’),

of the one part,

and

<Full official name of the contractor>

[<Legal status/title>]¹

[<Official registration number>]²

<Full official address>

[<VAT number>],³

appointed as leader of the group by the members of the group that submitted the joint tender,

(‘the Framework Contractor’)

of the other part,

have agreed as follows:

(1) Subject

The title of this Framework Contract (FWC) is: ***Services for EU's External Action (FWC SEA 2023)***.

The terms and conditions applying to this Framework Contract are laid down hereafter and in the special and general conditions and their annexes. They shall be deemed to form and be read and construed as an integral part of this Framework Contract in the order described in the special conditions.

The Framework Contracting Authority appoints the Framework Contractor for a multiple Framework Contract with reopening of competition.

The Framework Contract does not confer on the contractor any exclusive right to provide the services subject of this Framework Contract.

The Framework Contractor shall execute the tasks assigned to him in accordance with the Global Terms of Reference annexed to the contract (Annex II).

(2) Contract value

The maximum amount covering all purchases under lot <lot number> of this Framework Contract including all renewals, is EUR <amount>.

¹ Where the contracting party is an individual.

² Where applicable. For individuals, mention their ID card, passport or equivalent document number.

³ Except where the contracting party is not VAT registered.

(3) Entry into force and duration

This Framework Contract enters into force on the date on which the last party signs it.

For lots 1 to 16:

The initial duration of this Framework Contract is 24 months from the date notified by the contracting authority with at least 7 days notice and in any case no sooner than the date of entry into force and no later than 3 months after the signature of this Framework contract.

The FWC is renewed automatically one time for 24 months, unless one of the parties receives formal notification to the contrary at least 3 months before the end of the ongoing duration. Renewal does not change or postpone any existing obligations.

For lot 17:

The initial duration of this Framework Contract is 24 months from the date notified by the contracting authority with at least 7 days notice and in any case no sooner than the date of entry into force and no later than 16 months after the signature of this Framework contract.

The FWC is renewed automatically one time for maximum duration of 10 months, unless one of the parties receives formal notification to the contrary at least 3 months before the end of the ongoing duration. Renewal does not change or postpone any existing obligations.

(4) Bank account

Payments shall be made in accordance with the special conditions into the following bank account:

Name of bank: [insert bank name]

Exact denomination of account holder: [full name of account holder]

Bank account number: [insert bank account number].

(5) Order of precedence of contract documents

The following documents shall be deemed to form and be read and construed as part of this Framework Contract, in the following order of precedence:

- The main conditions
- Special conditions
- The general conditions (Annex I)
- the Global Terms of Reference and the Detailed Description of the lots including clarifications and corrigenda issued by the Framework Contracting Authority during the submission phase (Annex II)
- The Global Organisation and Methodology [including clarifications from the tenderer provided during tender evaluation] (Annex III)
- Management Team and Quality Support Team list and CVs (Annex IV)
- Global financial offer (Annex V)
- Forms and other supporting documents (Annexes VI -a to -f)
- Specific contract templates (Annexes VII-1 to VII-17)

The various documents making up the Framework Contract shall be deemed to be mutually explanatory; in cases of ambiguity or divergence, they shall prevail in the order in which they appear above.

In case of a conflict, the provisions set out in the Framework Contract and its annexes take precedence over those in the specific contracts and their annexes.

Addenda shall have the order of precedence of the document they are amending.

The templates included in the Tender Dossier as Annexes B-I to B-VII become Annex I to VII of the Framework Contract.

The Specific contract templates (B-VII) may be unilaterally amended by the Framework Contracting Authority without the need to conclude a formal addendum to the Framework Contract. Some of these templates are provided for reference only as the encoding of the information will be done directly in the Electronic Exchange System (EES).

(6) Language of the Framework Contract

The language of the Framework Contract and of all written communications between the Framework Contractor and the Framework Contracting Authority is English.

For specific contracts, the working and reporting language as well as the communications with the Specific Contracting Authority may be additionally in French, Spanish or Portuguese as specified in the specific terms of reference of each specific contract.

Done in English in two originals, one original for the European Commission and one original for the Framework Contractor.

For the Framework Contractor

For the Framework Contracting Authority

Name:

Name:

Title:

Title:

Signature:

Signature:

Date:

Date:

SPECIAL CONDITIONS

These special conditions amplify and supplement the general conditions governing the Framework Contract. Unless the special conditions provide otherwise, the general conditions remain fully applicable. The numbering of the Articles of the special conditions is not consecutive but follows the numbering of the general conditions. Exceptionally, and with the approval of the competent European Commission departments, other clauses can be indicated to cover particular situations.

Article 2 Communications

An electronic exchange system (EES) will be used by the Contracting Authorities and the Framework Contractor for all stages of implementation including, inter alia, management of the contracts (amendments and administrative orders), reporting (including reporting on results) and payments. The Framework Contractor will be required to register in and use the appropriate electronic exchange system to allow for the e-management of the contracts. With regard to interim and final reports, if they are required according to Article 26 of the special conditions or to the terms of reference, the Framework Contractor will be expected to use the forms in the electronic exchange system for encoding and submitting the reports.

When the Framework Contract has been signed through the EU Funding & Tenders Portal (the Portal), communications related to the implementation of this Framework Contract will be made by electronic means through the Portal, in accordance with the Portal terms and conditions and using the forms and templates provided there (except if communication via the Portal is hindered by factors beyond the control of the parties).

The Portal can be accessed via the following URL: <https://ec.europa.eu/info/funding-tenders/opportunities/portal/>.

Communications by the Framework Contractor through the Portal must be made by persons authorised according to the Portal terms and conditions. For naming the authorised persons to use the Portal, each Framework Contractor must have designated - before the signature of this Framework Contract - a 'Legal Entity Appointed Representative (LEAR)'. The role and tasks of the LEAR are stipulated in their appointment letter (see Portal terms and conditions).

In case of discrepancy between the clauses of the Portal terms and conditions and the clauses of this Framework Contract, including its special and general conditions and annexes, the clauses of this Framework Contract shall prevail.

If the communications via the Portal are hindered by factors beyond the control of one party, article 2.2 below applies.

If the Framework Contract has not been signed through the Portal, or communications through the Portal have not been activated or a certain type of communication is not yet supported by the Portal, communications as per Article 2 of the general conditions will be sent to the Framework Contracting Authority via email, or, exceptionally, on paper via mail services, to the following addresses⁴:

Framework Contracting Authority:

European Commission
Directorate-General for International Partnerships
Directorate D – Sustainable Development Policy and Coordination
Unit D4 - [Quality and Results, Evaluation, Knowledge management](#).1049 – Brussels
Email: INTPA-FWC@ec.europa.eu

Framework Contractor (or leader in the case of a joint tender):

[Full name]
[Function]

⁴ until communication via the Portal are activated in accordance with article 2.2.1 of these special conditions.

[Company name]
[Full official address]
Email: [complete]

The contact details of the Framework Contract General Manager are kept up-to-date on the dedicated website. For each individual assignment, the Specific Contracting Authority and its Specific Contract Manager will be determined in the specific contract.

Each party will promptly notify the other of any change in the contact details. No amendment of the framework contract is required in case of updates of the contact details of the Framework Contractor or the Framework Contracting Authority.

2.1 Form and means of communication

Any notifications, communication of information or exchange of documents under the Framework Contract must be made in writing, in the language of the contract and must clearly identify the Framework Contract number and specific contract number, if applicable.

Communication between the parties can take place:

- by electronic means, via electronic exchange system, in accordance with the provisions of Article 2.2,
- by electronic means, via email, in accordance with the provisions of Article 2.3,
- on paper, via mail - by courier service with proof of delivery or by registered post with proof of delivery, in accordance with the provisions of Article 2.4.

In the cases where this Framework Contract mandates the use of formal notifications, those formal communications are considered to have been made with their receipt by the receiving party. The specific rules when formal notifications are considered to have been received are provided in Sections 2.2.2, 2.3.2 and 2.4.2 below.

Communication details to be used for all communication between the parties are indicated in Article 2 of the special conditions.

2.2 Communication **via electronic exchange system** (EES)

The Contracting Authority may use the EES for all exchanges with the Framework Contractor during the implementation of the contracts.

If communication via the EES is hindered by factors beyond the control of one party, it must notify the other party immediately and the parties must take the necessary measures to restore this communication via the EES. Upon such notification, the parties shall use alternative means of communication until communication via electronic exchange system is restored. The provisions applicable to alternative means of communication are described in Articles 2.3 and 2.4 below.

If the EES is temporarily unavailable, the sending party cannot be considered in breach of its obligation to send a communication within a specified deadline. In any event, for reasons linked to business continuity, the Contracting Authorities reserve the right to use alternative means of communication at any moment.

2.2.1 *Activation of the use of EES*

For the cases when the use of the EES has not been activated since the beginning for all or part of the communications, the Framework Contracting Authority may formally notify in writing the contractor at any time during the course of the FWC that certain type or all communications will be made by electronic means through the EU Funding & Tenders Portal (the Portal), in accordance with the Portal Terms and Conditions and using the forms and templates provided there. The Portal can be accessed via the Europa website.

The notification shall indicate whether all or only certain communications under the FWC will take place through the Portal. The notification shall have full legal effect from the date specified therein, which shall allow a reasonable period of time for the contractor to complete all necessary steps to

have access to the Portal. The activation of the use of the Portal shall be at no additional cost for the Contracting Authority.

2.2.2 Date of communication via electronic exchange system for other than formal notifications

Notifications through the EES are generally considered to have been made when they are sent by the sending party (i.e. on the date and time they are sent through the EES) as indicated by the time logs.

2.2.3 Date of communication via electronic exchange system for formal notifications

The receiving date for formal notifications made through the EES will be the date and time the communication is accessed, as indicated by the time logs. Formal notifications that have not been accessed within 10 days after sending, will be considered to have been accessed.

2.3 Communication via email

When communicating via email, the parties should send their messages to the email addresses indicated in Article 2 of the special conditions.

2.3.1 Date of communication via email for other than formal notifications

Without prejudice to Point 31.3 of Annex I “Procurement” to the EU Financial Regulation, notifications via email are generally considered to have been made and the email is deemed to have been received by the receiving party on the date of dispatch of that e-mail, if it is sent to the email address indicated in Article 2 and does not have characteristics that could reasonably prevent its proper delivery (such as sending extremely voluminous emails that can be blocked for their size or emails containing elements that the majority of the spam filers would block). The sending party must be able to prove the date of dispatch. If the sending party sends the email to the email address indicated in Article 2 and receives a non-delivery report, it must make every reasonable effort to ensure that the other party receives the communication.

2.3.2 Date of communication via email for formal notifications

Formal notifications by email are considered to have been received on the date of dispatch of a return email expressly or impliedly acknowledging receipt. In case no such email is received by the party who sent the formal notification within a reasonable period, the formal notification should be re-sent via courier service with proof of delivery or registered post (see Article 2.4.2 below).

2.4 Communication via mail

As a rule, mail is used by way of exception for formal notifications and as alternative means of communication when the other means are not available.

When communicating via mail, the parties should send their letters to the postal addresses indicated in Article 2 of the special conditions.

2.4.1 Date of communication via mail for other than formal notifications

Without prejudice to Article 116 of the EU Financial Regulation, notifications via mail are generally considered to have been made at the date of receipt by the receiving party.

Payment requests sent to the Specific Contracting Authority via mail are deemed to be received on the date when they are registered by the authorised department of the responsible authorizing officer.

2.4.2 Date of communication via mail for formal notifications

Formal notifications by courier service with proof of delivery are considered to have been received on the date indicated in the proof of delivery. Formal notifications by registered post with proof of delivery are considered to have been received either on the delivery date registered by the postal service or the deadline for collection at the post office.

Article 4 Subcontracting

Subcontracting of the Management and Quality Support Team services to be provided at the level of the Framework Contract is not allowed.

For other services to be provided at the level of the Framework Contract, subcontracting is permitted with firms that have not been contracted for the same lot.

For services to be provided at the level of the specific contract, subcontracting is permitted on condition that no subcontract is given to another Framework Contractor of the same lot.

For each individual assignment, the subcontractors explicitly identified as such in the Framework Contractor's specific offer are considered authorised in the sense of article 4 of the general conditions, through the signature of the specific contract.

The Framework Contractor cannot use another Framework Contractor of the same lot as service provider for reimbursable costs under incidental expenditure during implementation of specific contracts.

Article 7 General obligations

7.8 Specific activities to be put in place by the Framework Contractor to comply with its obligations towards visibility (in compliance with the Communication and Visibility Requirements for European Union External Actions published by the European Commission) will be laid down in the specific terms of reference for each assignment.

Article 13 - Insurance

13.2 b) By derogation from Article 13.2, b), paragraph 1 of the general conditions, only if requested by the Specific Contracting Authority the Framework Contractor shall provide the Contracting Authority with all cover notes and/or insurance certificates showing that the contractor's obligations relating to insurance are fully respected.

Article 16 - Personnel

16.3 The place of performance of an expert for a specific contract is indicated in article 4 of part B of the specific terms of reference.

Article 19 - Implementation of the tasks and delays

19.1 The main conditions fix the date on which implementation of framework contract is to commence.

The multiple FWC is implemented as follows: the contracting authority orders services by sending a request for specific contract to contractors, which will then present competing specific tenders, and the tender offering the best value for money will be selected as the basis for the specific contract. The parties must sign any specific contract before the FWC expires or is terminated. The FWC continues to apply to such specific contracts after its expiry or termination.

The services relating to such specific contracts must be performed no later than two years after the expiry or termination of the FWC. At the end of this period, all remaining specific contracts are automatically terminated.

19.2 The implementation of the Framework Contract cannot start before its entry into force.

19.6 All other conditions for implementation of the specific contracts are detailed in section 8 of the Global Terms of Reference.

Article 20. Amendment to the contract

20.1 By derogation from Article 20.1 of the general conditions, the replacement of an agreed staff - the Curriculum Vitae of which is part of the contract - by someone with at least equivalent

qualifications and experience shall not be formalised by means of an addendum but by means of an administrative order.

Article 26 Interim and final reports

26.1 The Framework Contractor shall submit reports regarding the Framework Contract as specified in the Global Terms of Reference. The specific terms of reference of each specific contract will indicate the reporting obligations concerning the individual assignments.

Article 27 Approval of reports and documents

27.1 Together with the approval of the final output(s) the Specific Contracting Authority shall forward to the Framework Contractor the specific contract's performance assessment. The Framework Contractor has the opportunity to make observations vis-à-vis that evaluation. The Framework Contractor undertakes to communicate to the experts the part of the evaluation which concerns their performance and, if considered relevant, add the experts' observations to its own.

Article 28 Expenditure verification

28.2 By derogation from Article 28.2 of the general conditions, no expenditure verification report is required for a fee-based specific contract of an amount below 1 million EUR unless indicated otherwise in the specific terms of reference and the specific contract.

Article 29 Payment and interest on late payment

29.1 Payments shall be made in accordance with Option 1 for fee-based specific contracts and Option 2 for global price specific contracts as indicated in the general conditions.

Specific Contracts under Lots 1 to 15 can be concluded as fee-based or global price. Specific Contracts under Lots 16 and 17 can be concluded only as global price.

By derogation from art 29.1 of the general conditions, the first payment of pre-financing for both fee-based and global price specific contracts shall not be subject to the receipt, by the Specific Contracting Authority, of an invoice. The first payment of pre-financing shall be made within 30 days of the signature of the specific contract by both parties and, if applicable, of receipt of a financial guarantee by the Specific Contracting Authority, if requested in accordance with article 30 of the general conditions.

For fee-based specific contracts, the actual amounts payable after the pre-financing payment will vary. They shall be based on the Framework Contractor's invoice accompanied by an interim progress report and (when applicable) an expenditure verification report, and are subject to approval of the reports in accordance with Article 27 of the general conditions.

Article 30 Financial guarantee

30.1 When the pre-financing requested is equal to or below EUR 300,000 and subject to a positive risk assessment by the Specific Contracting Authority, by derogation from Article 30 of the general conditions, no pre-financing guarantee is required.

When the pre-financing requested for a specific contract is above EUR 300,000, a pre-financing guarantee is required.

Article 40 Settlement of disputes

40.4 Any disputes arising out of or relating to the Framework Contract or a specific contract which cannot be settled amicably shall be referred to the exclusive jurisdiction of the courts of Brussels, Belgium.

Article 42 Data Protection

(a) for personal data processed in the context of the management of the framework contract, the data controller is the European Commission, Directorate General for International Partnerships, Unit.R3 and can be contacted using the communication details mentioned under Article 2 above. The data protection notice is available at: https://ec.europa.eu/info/data-protection-public-procurement-procedures_en.

(b) for personal data processed in the context of the management of the specific contract, the data controller will be specified in the specific contract. The data protection notices are available at: https://ec.europa.eu/info/data-protection-public-procurement-procedures_en.

Article 43 Further additional clauses

43.1 Approval of the experts by the Partner Country at specific contract level

The contract between the Framework Contractor and its experts, or the third party making available the experts, shall contain a provision stating that experts are subject to the approval of the partner country and a dispute resolution clause.

43.2 Maximum amount

The maximum amount covering all purchases under this Framework Contract, including all renewals is indicated in Article 2 of the main conditions. However, this does not bind the contracting authority to purchase for the maximum amount.

The maximum awarded amount of the Framework Contract, under the previous paragraph (the Framework Contract's ceiling) may be increased by way of an amendment signed by both parties.

To do so, the contracting authority shall, after consulting with all the contractors under the Framework Contract, formulate a proposal about the Framework Contract's ceiling increase and formally notify it to the contractor. The contractor has 30 days following the date of receipt to accept or reject the proposal in writing.

If the contractor rejects the proposal in writing within the deadline, or if the contractor fails to reply within the deadline, the Framework Contract, will be terminated from the date when the initial Framework Contract's ceiling (or a subsequent Framework Contract's ceiling for which an earlier amendment has entered into force between the parties) has been fully consumed. The contracting authority will inform the contractor about the exact termination date and will stop signing new specific contracts. The specific contracts signed before the termination date will remain in force and shall be performed by the parties. In case of specific contracts erroneously signed after the consumption of the Framework Contract's ceiling previously applicable to the contractor, the parties will take steps to terminate those specific contracts and agree in good faith on the consequences of the termination in accordance with the provision of Article 37 of the General Conditions.

43.3 Specific security rules for the contractor's⁵ personnel having access to the European Commission⁶ premises

1. For the purpose of this clause, the following definition apply:

'Personnel': natural persons employed directly or indirectly or contracted by the Framework Contractor to implement the direct contract or Framework Contract.

⁵ The notion of contractors used in this clause has the same meaning as the notion of external contractors used in the screening Memorandum of Understanding (Annex B-VII-16)

⁶ Or to the EU Delegations premises

2. Pursuant to Articles 3, 7 and 8 of Commission Decision (EU, Euratom) 2015/443 of 13.3.2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41), background checks can be carried out on personnel in order to prevent and control risks to the security of European Commission staff, assets and information. In addition and pursuant to the Belgian Act of 11.12.1998 on classification and security clearances, security certificates and security advices (Belgian Official Gazette of 7.5.1999, p. 15.752), as further amended, access rights for personnel to the premises or IT assets (equipment and networks) of the Contracting Authority, may be conditional on a positive security advice to be delivered by the Belgian Authorities.

For personnel residing in Belgium who is granted access rights to the Contracting Authority premises in Belgium and/or IT assets for a short or long term period, when necessary for executing a specific contract, on the basis of an individual consent, the Belgian National Security Authority will provide a security advice. The Contracting Authority will have discretionary power to decide on granting access rights based on the advice received.

For personnel residing in other EU countries and using Commission IT assets and/or connecting to the European Commission's internal network via the remote access service for European Commission staff, the Belgian National Security Authority will perform a limited screening using their available international data sources.

3. To allow the Belgian Authorities to give a security advice, the Framework Contractor will submit to the relevant personnel the Consent Form. The duly completed and signed Security Consent Form (Annex B-VII-17)⁷ and the acknowledgment of the privacy statements together with an up-to-date electronic list of relevant personal data as listed in the Security Screening template (Annex B-VII-15)⁸ will be sent to the address EC-SECURITY-SCREENING@ec.europa.eu at least 30 days before the start date of a new specific contract.

4. Failure or refusal to complete the Consent Form results in refusal of access rights to European Commission buildings and IT assets for the concerned personnel.

5. Retribution fee⁹ is to be paid by the Framework Contractor of the natural person for whom a security verification is requested.

6. The Contracting Authority acknowledges that in exceptional cases it may not be possible for the Framework Contractor to, at short notice, provide personnel having received a positive security advice. Nevertheless, the contractor undertakes to provide at all times only personnel having received a positive security advice for the following Commission buildings: Berlaymont, Breydel, Charlemagne, Centre Albert Borschette, Luxembourg 46, Montoyer 59 and Madou. This list can be subject to modification upon request from the Commission Department of Security. In such case, the Contracting Authority will duly notify the contractor of such modification. The Contracting Authority may terminate the specific contract if the Framework Contractor is unable to provide at all times only personnel having received a positive security advice for the listed European Commission buildings.

7. If access rights for personnel are granted by means of a European Commission access card, this card remains the property of the European Commission. It must be returned within 10 calendar days to the Service Card Office or to the guards at the reception of any European Commission building upon request, expiry or where the access conditions are no longer met and in particular where the personnel no longer benefits from a positive security advice.

8. If the European Commission access card is not returned, the Contracting Authority may claim liquidated damages of EUR 100 from the Framework Contractor for each day of delay up to a

⁷ The Consent Form attached requires: full official name and forenames; function or occupation; nationality; national Belgian registry number; passport or ID number, place of birth; date of birth; official complete address (including house or flat number and postal code); company and number of company.

⁸ The compulsory template of the electronic list summarises the information provided by the proposed personnel in the Consent Form. It is transferred to the Belgian Authorities.

⁹ Currently EUR 50 in Belgium.

maximum of EUR 1,000. This represents a reasonable estimate of fair compensation for the damage incurred.

9. The security screening, as described under paragraphs 1-8 above, may be extended at any time to other participants of the Screening Memorandum of Understanding (MoU) in any of their places of work.

10. The European Commission or other participants of the Screening Memorandum of Understanding, that decides to extend the procedure as provided for above, shall notify the Framework Contractor of the practical modalities for its implementation. This notification shall have full legal effect under the specific contract or Framework Contract as from the date indicated in the notification.

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