

# ECMWF Copernicus Procurement

## Invitation to Tender



## Copernicus Programme

### Provision of audit services to ECMWF for Copernicus contracts

### Volume III: Terms and Conditions of Contract

Ref: COP_031
ISSUED BY: ECMWF Administration Department Procurement Section
Date: 1 November 2017
Version: Final



ECMWF



## **CONTRACT FOR PROCUREMENT OF AUDIT SERVICES FOR COPERNICUS**

APPLICABLE TO INVITATION TO TENDER NUMBER  
ECMWF/COPERNICUS/2017/COP\_031



Funded by the European Union

Implemented by



The Contract concerns the provision of audit services to ECMWF in relation to Copernicus third party contracts.

ANNEX 1: ECMWF's Terms and Conditions of Procurement of Services for Copernicus

ANNEX 2: the Contractor's Tender and

ANNEX 3: ECMWF/COPERNICUS/2017/COP\_031 for the provision of audit services to ECMWF for Copernicus third party contracts.

[ANNEX 4: ECMWF's Acceptance Letter - if applicable]

In the event of any conflict between these Annexes the order of precedence shall be:

- 1) ANNEX 1: ECMWF's Terms and Conditions of Procurement - Services for Copernicus
- 2) ANNEX 3: ECMWF's ITT
- 3) [ANNEX 4: ECMWF's Acceptance Letter - if applicable]
- 4) ANNEX 2: The Contractor's Tender.

This Contract is made and entered into this [ ] day of [month year]

by and between

the European Centre for Medium-Range Weather Forecasts (ECMWF), governed by its Convention and associated Protocol on Privileges and Immunities which came into force on 1 November 1975 and was amended on 6 June 2010,

and

[Contractor, Contractor's address], registered in [State; City; Institution] no. [registration number] (the Contractor),

ECMWF agrees to acquire and the Contractor agrees to provide the products and services described in this Contract on the terms and conditions provided herein and for a maximum price of EUR [xxxx].

IN WITNESS WHEREOF this Contract has been duly executed as of the date set forth above.

Signed for and on behalf of ECMWF

Signed for and on behalf of the Contractor

By Juan Garces de Marcilla

by [name]

Its Director of Copernicus Services

Its [title or post]

Addresses for contract notices:

For ECMWF

Director of Copernicus Services

ECMWF

Shinfield Park

READING

Berkshire

RG2 9AX

United Kingdom

For the Contractor

[Title]

[Contractor's Address]

# ANNEX 1 - TERMS AND CONDITIONS OF PROCUREMENT OF AUDIT SERVICES FOR COPERNICUS

## 1 INTRODUCTION AND DEFINITIONS

- 1.1 These Terms and Conditions (“T&C”) shall apply to the procurement of any intangible beneficial function (e.g. advice, consultancy or some form of specialist activity) which is not ancillary to the supply of goods. These T&C shall also apply to any tangible items (e.g. documents, datasets and other materials) which are provided by the supplier or its agents, contractors or employees, as part of or in association with the function (“Deliverables”). In these T&C, the function and the Deliverables shall be referred to collectively as the “Services”.
- 1.2 These T&C shall apply to the procurement of Services by ECMWF related to the European Union’s Copernicus Program (“Copernicus”). ECMWF serves as an Entrusted Entity vis-à-vis the European Commission (“EC”), assisting to implement Copernicus. Accordingly, ECMWF assumed contractual obligations which it is required to pass on to its contractors. Subject to termination, any Contract under these T&C will expire on 31 December 2021 at the latest, unless agreed otherwise in writing.
- 1.3 ECMWF and the person or entity whose offer is accepted by ECMWF (“Contractor”) are “Parties” to these T&C. No third party is entitled to claim any rights under these T&C.
- 1.4 The Contract contains the entire agreement between the Parties relating to the acquisition of Services.
- 1.5 No variation of these T&C shall be valid unless it is confirmed in writing by authorised signatories of both Parties.

## 2 SUPPLY OF SERVICES

- 2.1 The Contractor shall from the date set in the ITT or any other date agreed upon by the Parties in writing (“Commencement Date”) and for the duration of the Contract provide the Services to ECMWF in accordance with the terms of the Contract.
- 2.2 The Contractor shall meet any performance dates requested by ECMWF.
- 2.3 In providing the Services, the Contractor shall
  - co-operate with ECMWF and comply with all instructions of ECMWF;
  - perform the Services with care, skill, diligence in accordance with best practice in Contractor’s industry, profession or trade;
  - ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the ITT, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Contractor by ECMWF;
  - acquire for itself and at its own expense, all equipment, tools, vehicles and such other items as are required to provide the Services;
  - use high quality goods, materials, standards and techniques, and ensure that the Deliverables will be free from defects in workmanship, installation and design;
  - obtain and at all times maintain all necessary licences and consents, and comply with all laws applicable to the Contractor;
  - comply with all relevant rules and regulations in force at ECMWF premises;
  - hold all materials and data supplied by ECMWF to the Contractor in safe custody at its own risk and return them in good condition, unless agreed otherwise by ECMWF.

## 2.4 ECMWF shall

- provide the Contractor with reasonable access at reasonable times to ECMWF's premises and other facilities for the purpose of providing the Services;
- provide such information to the Contractor as the Contractor may reasonably request and ECMWF considers reasonably necessary for the purpose of providing the Services.

## 3 CALL-OFF CONTRACT/SEPARATE ORDERS AND SERVICE CONTRACTS

- 3.1 ECMWF has the option to require the Contractor to supply ECMWF with the Services in accordance with these terms and at the price/price rates set out in the final and agreed version of the Contractor's Tender (Annex 2), under one or more temporary Service Contracts, each of which will be signed on behalf of the Contractor and ECMWF.
- 3.2 For the purpose of each Service Contract, ECMWF shall send the Contractor an order, which shall describe the work to be undertaken and shall indicate the end date for the work. The Contractor shall not be allowed to expend effort beyond this end date without the written authorisation by ECMWF.
- 3.3 Each order shall be transmitted to the Contractor's representative identified in Annex 2 (Contractor's Tender).
- 3.4 The Contractor shall formally accept each new order. The description of work in the relevant order shall, upon acceptance by the Contractor, become the basis for the Service Contract.
- 3.5 The award of this call-off Contract and any related Service Contract does in no way limit ECMWF's right to invite, contract with or send orders to third parties for the same or similar Services.
- 3.6 The benefits of this call-off Contract and each Service Contract shall be for use by ECMWF and the European Commission, in accordance with the Copernicus Regulation.
- 3.7 Any amendment to this call-off Contract, which is agreed in writing by ECMWF and the Contractor shall apply to any Service Contract which is current at the date of such amendment and to all Service Contracts entered into after the date of such amendment.
- 3.8 The Contractor accepts that the EU financial envelope for implementation of the current Copernicus Program ends on 31 December 2020 and that, at the date of this call-off Contract, ECMWF cannot give any assurance that there will be funding or a requirement for the Services in 2021 or beyond.

## 4 PRICE, CURRENCY, VAT AND OTHER TAXES

- 4.1 The contract price or price rates and the maximum price for a given package of Services shall all be set out in the final and agreed version of the Contractor's Tender (Annex 2) or in the Contractor's acceptance of an order under this Contract.
- 4.2 Unless otherwise agreed the items referred to in Clause 4.1 shall remain fixed for the duration of the Contract or order and shall not be subject to any adjustment on the basis of the Contractor's cost experience in performing the Contractor order.
- 4.3 The price or price rates referred to in Clause 4.1 shall be inclusive of all the Contractor's charges, disbursements, fees and ancillary costs. The said price or price rates shall also be inclusive of all direct and indirect taxes, duties, pension, medical or social security contributions which may be payable in relation to the provision of the relevant Services by or in respect of the Contractor, its agents, employees or other personnel.

- 4.4 Should the Contractor and ECMWF agree a daily price for the Services, such price shall include the price for work undertaken inside and outside the Contractor's normal working hours. ECMWF will not pay for overtime, undertaken by the Contractor or its personnel.
- 4.5 If it transpires that, without fault of the Contractor, an agreed package of Services cannot be performed within the pre-agreed maximum price, the Contractor shall not be obliged to perform work entailing cost beyond the pre-agreed maximum price.
- 4.6 The currency of the ITT shall be in EUR. The Contractor's price or price rates shall be quoted in EUR. The Contractor's invoices shall be submitted in EUR. Payments by ECMWF to the Contractor shall be made in EUR.
- 4.7 Where the Contractor keeps its accounts in EUR, it shall convert costs incurred in another currency into EUR according to its usual accounting practices.
- 4.8 As a rule, ECMWF is exempt from all taxes and duties, including VAT, pursuant to the provisions of Article 4 of its Protocol on Privileges and Immunities, available at <http://www.ecmwf.int/en/about/who-we-are/official-documents> ECMWF does not undertake "economic activities". Therefore it is not a taxable person under Article 9 of Directive 2006/112/EC. Consequently, it does not have a VAT number.
- 4.9 In accordance with Article 151 of Directive 2006/112/EC and by way of a letter, dated 3 March 2016, reference number: VAT INT/DP/39/2016, the Government of ECMWF's host member state has given ECMWF authority to issue certificates of exemption from VAT in respect of all purchases of goods and services for ECMWF's official use.
- 4.10 Accordingly, if the Contractor is located outside the UK it shall take all necessary steps to facilitate ECMWF's exemption from VAT which might otherwise be payable in relation to the Services. For these purposes, it shall request the necessary instructions from ECMWF and provide in due time the information which ECMWF requires.
- 4.11 ECMWF will not pay any other taxes or duties relating to the Contract or the Services.

## 5 INVOICING AND PAYMENT

Save where different payment terms have been specified in the ITT, ECMWF shall pay all invoices within 30 days of receipt, provided the Contractor has complied with its obligations under the Contract, particularly with Clause 2 of these T&C. The invoice must be correct, stating the applicable Services, the price, the Contractor's VAT number and any purchase order number provided by ECMWF. It must be sent electronically to **finance@ecmwf.int**.

## 6 CONSULTANTS AND OTHER PERSONNEL

- 6.1 If ECMWF chooses to define key personnel in the ITT, such personnel shall not be released or replaced by the Contractor without prior written consent by ECMWF. ECMWF's consent shall not be withheld unreasonably. Replacements shall be of at least equal status or of equivalent experience and skills to the key personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 6.2 Any personnel, including key personnel, shall be exchanged at ECMWF's request subject to four weeks written notice, unless extraordinary circumstances require a shorter notice period. In that case, ECMWF has to provide the Contractor with a written statement of grounds.
- 6.3 Personnel other than key personnel, may be exchanged at the Contractor's discretion subject to four weeks written notice, unless extraordinary circumstances require a shorter notice period. In that case, the Contractor has to provide ECMWF with a written statement of grounds.

## 7 WARRANTY REMEDIES; TERMINATION

- 7.1 If the Services are not performed in accordance with Clause 2.3 and the Contractor fails to correct any breach in due time, ECMWF shall be entitled to avail itself of any one or more of the following remedies at its discretion: (a) to rescind or suspend the Contract with immediate effect; (b) to refuse to accept any further Service performance and to source alternatives without any liability to ECMWF; (c) to carry out at the Contractor's expense any work necessary to make the Services comply with the Contract; and (d) to claim such damages as may have been sustained in consequence of the Contractor's breach of Contract; and (e) to reclaim any advance payments ECMWF may have made; and (f) to offset any such claims for damages or refunds against any outstanding portion of the price.
- 7.2 ECMWF may resort to any one or more of the remedies stipulated in Clause 7.1, *mutatis mutandis* and with immediate effect upon written notification, if it comes to the conclusion:
- That the Contractor has committed errors, irregularities, fraud or breaches of other obligations under the Contract; or
  - That the Contractor is involved in any legal proceedings concerning its solvency, or ceases trading, or commits an act of bankruptcy or is adjudicated bankrupt, or enters into liquidation whether compulsory or voluntary (other than for the purposes of an amalgamation or reconstruction) or makes an arrangement with its creditors or the Contractor is placed into administration or has an administrator, receiver or manager appointed over all or any part of its assets or generally becomes unable to pay its debts; or is acquired by or merged with any third party.

It is left to the Contractor to provide evidence to rebut ECMWF's conclusions. ECMWF may take timely rebuttals into account, reconsider the remedies, or enter into negotiations with the Contractor.

- 7.3 ECMWF reserves the right to terminate any Contract at thirty (30) days' notice, without limiting its other rights and remedies. The Contractor has the right to terminate any Contract at sixty (60) days' notice without limiting its other rights and remedies.

## 8 CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason, the Contractor shall immediately deliver to ECMWF all Deliverables whether or not then complete, and return all material and data supplied by ECMWF. Upon inspection of the Deliverables, ECMWF may choose to keep and pay for incomplete Deliverables proportionately or otherwise return them to the Contractor and not make any payment for incomplete Deliverables.

## 9 FORCE MAJEURE

Neither party shall be liable to the other party for any delay in or failure to perform its obligations as a result of any cause beyond its reasonable control ("Force Majeure") provided the affected party notifies the other party as soon as reasonably practicable. If any Force Majeure event continues for at least 90 days, either party shall be entitled to terminate the Contract with immediate effect by notice in writing to the other party.

## 10 INTELLECTUAL PROPERTY RIGHTS

- 10.1 ECMWF shall own the Deliverables and all intellectual property rights in the Deliverables.
- 10.2 Clause 10.1 does not apply to the Contractor's pre-existing intellectual property rights or rights that the Contractor may have developed or acquired independently of the performance of his

obligations under these T&C. In such cases, the Contractor grants ECMWF a free, non-exclusive, irrevocable, worldwide, transferable, sub-licensable and time unlimited licence to use all such intellectual property rights as are necessary for the use of the Services and in particular the Deliverables within Copernicus, including for their maintenance, modification, and replacement by or on behalf of ECMWF. The Contractor warrants to be entitled to grant such a licence.

- 10.3 Ownership of the Deliverables shall be fully and irrevocably acquired by ECMWF under the Contract from the moment they are accepted by ECMWF as being in compliance with the Contractor's obligations under the Contract, particularly with Clause 2 of these T&C. ECMWF shall notify the Contractor in due time if it does not accept the Deliverables. If so, it shall notify the Contractor and, if necessary, return the Deliverables immediately.

## 11 INDEMNITIES

- 11.1 The Contractor hereby agrees to indemnify ECMWF against any claim for actual or alleged infringement of a third party's intellectual property rights, brought against ECMWF arising out of, or in connection with ECMWF's receipt or use of the Services, to the extent that the claim is attributable to the acts or omissions of the Contractor or any of its personnel, agents or subcontractors.
- 11.2 The Contractor hereby agrees to indemnify ECMWF against any claim by any of the Contractor's personnel, which alleges or which is predicated upon an allegation of employment status with ECMWF and which relates to provision of the Services.
- 11.3 This Clause 11 shall survive termination of the Contract.

## 12 PUBLICITY & CONFIDENTIALITY

- 12.1 The Contractor may not use ECMWF's name for advertisement, reference or publicity purposes without ECMWF's prior written consent.
- 12.2 If either party learns of confidential or proprietary information of the other party, it may not disclose such information without prior written consent of the other party. This obligation will survive the expiry or termination of the Contract for a period of five (5) years or until such earlier time as the confidential information concerned reaches the public domain other than through the receiving party's own default.
- 12.3 Either Party shall keep all of the other Party's confidential technical or commercial know-how, specifications, inventions, processes, or trade secrets ("Confidential Information") in strict confidence, unless otherwise required by law or any regulatory authority. This obligation applies to the Parties' affiliates or Member States, their employees, agents, or sub-contractors. Each Party shall only disclose such Confidential Information to those EC or affiliates' or Member States' employees, agents, or sub-contractors who need to know it for the purpose of discharging the disclosing Party's obligations under the Contract. Each Party must assure that all such recipients of Confidential Information comply with the obligations set out in this Clause. This Clause 12.3 shall survive the termination of the Contract.

## 13 INSURANCE

The Contractor shall carry general, professional liability, automobile and employer's liability insurance (or equivalent cover or contingency arrangements) for all liabilities that may arise out of or in connection with the Contractor's performance or non-performance of its obligations under the Contract. Upon request, the Contractor shall provide evidence of such insurances or such other cover or contingency arrangements as the Contractor maintains, to the satisfaction of ECMWF.



## 14 PERSONAL DATA

- 14.1 Where the work under the Contract requires the processing of personal data by a Contractor, the personal data shall be processed by the Contractor in accordance with the national data protection legislation (or other equivalent law or regulation) to which the Contractor is subject or, if the Contractor will process personal data outside the European Economic Area, it shall be processed by the Contractor in a manner which adequately satisfies European Union personal data protection concerns. For this purpose, the Contractor shall designate a responsible member of Contractor Personnel as its data controller and supply the ID and contact details of its data controller to ECMWF, within one month of the Effective Date. ECMWF will publish that information through the Copernicus Services Websites for use by the subjects of the personal data, which the Contractor processes.
- 14.2 Subjects of personal data shall have the right of access to their personal data and the right to rectify any such data. Should they have any queries concerning the processing of their personal data, they shall address them to the relevant data controller.
- 14.3 Subjects of personal data processed by Contractors shall have the right of recourse at any time to the authority designated under relevant national legislation (or equivalent law or regulation) to receive complaints on personal data protection.
- 14.4 The Contractor consents to ECMWF publishing annually on its website the name and locality of a Contractor as well as the nature and purpose and the amount of any one or more Contracts awarded to him under the Copernicus Programme with a total value over the term equal to or higher than EUR 15,000. 'Locality' shall refer to the address when the Contractor is a legal person or otherwise to the region or the equivalent to the region at NUTS 2 level. ECMWF may waive its right to publication if fundamental rights might otherwise be violated.

## 15 RECOVERY

ECMWF reserves a right to recover from the Contractor any amounts that have been paid to the Contractor but which are not due. When ECMWF identifies such amounts and notifies the Contractor of its intention to recover such amounts, they shall be treated by both parties as debts and shall be payable by the Contractor immediately. If applicable, ECMWF may choose to set off such amounts in full against any outstanding claim the Contractor may have against ECMWF.

## 16 REPORTS

ECMWF has contractual obligations to provide the EC with regular reports concerning the procurement of services. The Contractor pledges to supply ECMWF with all requested information in due time.

## 17 CHECKS AND CONTROLS

- 17.1 ECMWF reserves the right to carry out all controls, including on-site checks, necessary to ensure that transactions under these T&C are legal, regular, effective, and correct.
- 17.2 ECMWF has contractual obligations to allow the EU Commission, including the European Anti-fraud Office and the Court of Auditors, to carry out checks and audits, including on-site checks, at any time up to five (5) years after the termination of the ECMWF-EU agreement. These EC prerogatives extend to any site where the ECMWF-EC agreement is performed. ECMWF therefore hereby reserves corresponding rights to on-site checks and audits at the Contractor on the implementation of the Contractor's work carried out. The Contractor pledges to fully

cooperate and will allow access to all necessary information, including digital information. In the context of the EC's demands, reasonable notice will be given.

- 17.3 The Contractor shall keep all original documents, especially accounting and tax records stored on any appropriate medium, including digitalised originals when they are authorised by its national law and under the conditions laid down therein, for a period of five (5) years after termination of the Contract. This period shall be longer if there are on-going audits, appeals, litigation or claims concerning the Contract. In such cases, the Contractor shall keep the documents until such audits, appeals, litigation or claims are closed.

## 18 GOVERNING LAW AND DISPUTE RESOLUTION

- 18.1 The parties shall attempt to settle any dispute between them in an amicable manner and, if unsuccessful, first refer the dispute to proceedings under the International Chamber of Commerce's (ICC) Mediation Rules. If the dispute has not been settled pursuant to the said Rules within 45 days following the filing of a request for mediation or within such other period as the Parties may agree in writing, such dispute shall thereafter be finally settled under the ICC Rules of Arbitration by one (1) arbitrator appointed in accordance with the said Rules of Arbitration. The Place of Mediation and Arbitration shall be London, England. The proceedings shall be in the English language.
- 18.2 Recourse to regular courts of law, also in cases of injunctive relief, is excluded.
- 18.3 It is the intention of the Parties that these T&C shall comprehensively govern the legal relations between the Parties, without interference or contradiction by any unspecified law. Without prejudice to ECMWF's status as an Intergovernmental Organization, reference shall be made to the substantive Laws of England and Wales where:
- A matter is not specifically covered by these T&C; or
  - A provision of these T&C is ambiguous or unclear.

## 19 MISCELLANEOUS

- 19.1 The Contractor may not sub-contract or assign any of its obligations under the Contract except with ECMWF's express written permission and upon the basis of specific terms, provided by ECMWF, to apply as between the Contractor and its sub-contractor or assignee.
- 19.2 No forbearance or delay by either party in enforcing its rights shall prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms shall be deemed to be a waiver of any other right or of any later breach.
- 19.3 In the event of any inconsistency between any terms of these T&C, or a contract incorporating the former, and any translation thereof into another language, the English language meaning shall prevail.
- 19.4 If any provisions of these T&C are or subsequently become invalid for any reason, the remaining provisions shall remain in full force and effect.