

Preliminary Authorisation to Proceed

REFERENCE

668552/54.61/PATP-IAPPrague

ENTERED INTO ON

Thursday 11 February 2021

BETWEEN

Royal Belgian Institute for Space Aeronomy, whose registered office is at AVENUE CIRCULAIRE n. 3, UCCLE, BE-Belgium, represented by Prof. Dr. Martine De Mazière, its acting Director General, a.i.

(hereinafter referred to as “BIRA-IASB” or the “Prime Contractor”),

AND

INSTITUTE OF ATMOSPHERIC PHYSICS, whose registered office is at BOCNI II n. 1401, PRAGUE 4, CZ-Czech Republic represented by Radan Huth, its Director

(hereinafter referred to as “IAP Prague” or the “Subcontractor”),

Hereinafter collectively referred to as "the Parties" or individually referred to as "a Party",

PREAMBLE

Whereas

- The European Space Agency (hereinafter referred to as the “Agency” or “ESA”) issued an Invitation to Tender, AO/1-10363/20/D/MRP (the “ITT”) and invited Tenderers to submit a proposal for the “S2P - S1-SW-02.2, S1-SW-05, S1-SW-06 - Space Weather Service Network Development and Pre-Operation Part 1”.
- In response to such ITT, BIRA-IASB has submitted a proposal reference 68385/54.61/SWESNET-BUSOC-PRO, dated 06.10.2020 (the “Proposal”).
- The Agency has performed the evaluation of the Proposal and has the intention to, subject to successful contractual negotiations, award the “S2P - S1-SW-02.2, S1-SW-05, S1-SW-06 - Space Weather Service Network Development and Pre-Operation Part 1” Contract (the “Contract”) under the reference 4000134036/21/D/MRP and covering the full scope of the activity to BIRA-IASB.
- In anticipation of the completion of the negotiations and of the placing of the Contract, subject to successful contractual negotiations, for the sake of safeguarding the schedule requirements of the pre-operational Services covered by the Contract, the Agency has decided to grant BIRA-IASB a Preliminary Authorisation to Proceed (PATP) to initiate a set of precisely defined activities as from signature of PATP reference ESA-IPL-POM-MRP-LE-2021-205, dated 16.02.2020, and within a financial limit of liability of 659,725.00 EUR, until 30th May 2021.

- **IAP Prague** is mentioned in the Proposal and will be acting as Subcontractor of the Prime Contractor BIRA-IASB under the envisaged Contract, should it be authorised.
- Prior to entering into a Subcontract with the Subcontractor, subject to successful contractual negotiations of the Contract, the Prime Contractor is now releasing a PATP with a financial limit of liability to the Subcontractor to start the activities.

The Parties hereto, in consideration of the above, agree to the following:

ARTICLE 1 – SUBJECT OF THE PATP – APPLICABLE DOCUMENTS

- 1.1 This PATP is granted in order to cover the pre-operational Services, as further described under Article 1.6 here below, which are part of the “S2P - S1-SW-02.2, S1-SW-05, S1-SW-06 - Space Weather Service Network Development and Pre-Operation Part 1” Statement of Work and which are to be performed during the period specified under Article 3 hereunder.
- 1.2 This PATP is placed on the basis of the following contractual baseline, listed in order of precedence, in case of conflict:
- a) The provisions and conditions of this PATP and the Personal Data Processing Annex of the Agency (the “PDP”) not attached hereto but known to both Parties;
 - b) The General Clauses and Conditions for ESA Contracts (hereinafter referred to as “GCC”), reference ESA/REG/002, rev. 3, not attached hereto but known to both Parties, as amended by the Contract, and applied mutatis mutandis;
 - c) The Agency’s Statement of Work, reference ESA-S2P-SWE-SOW-0003, issue 1, revision 0, dated 01.07.2020, not attached hereto but known to both Parties, in particular the Tasks listed in Section 4.5.3 and associated reporting of the Network monthly reports DD-0001P and Network Quarterly Pre-Operational Report DD-0002P listed in Section 4.5.1.2;
 - d) The Service Level Agreement, reference ESA-S2P-SWE-SLA-0001, dated 12.02.2021, not attached hereto but known to both Parties, and applicable to the Space Weather Services listed in Section 4.5.3 of the Agency’s Statement of Work;
 - e) The Subcontractor’s Price Breakdown, including the manpower and price breakdown per Work Packages, dated 06.10.2020 and duly signed by Radan Huth;
 - f) The Complementary clarification on the key negotiation points provided by the Prime Contractor to the Agency, including the Contractual Proposal v.1.2, dated 01.02.2021, the Minutes of Negotiation Meetings ref. 20210126_ESA-BU_MOM_NM3, 20210202_ESA-BU_MOM_NM4, 20210205_ESA-BU_MOM_NM5.r1;
 - g) The Prime contractor’s clarification note dated 8.02.2021 on the optional approach to convert the penalty scheme of the Service Level Agreement into incentives.
- 1.3 This PATP is released under the condition that the activities to be performed herein will be considered as having been undertaken under the envisaged Subcontract in anticipation of which this PATP is being released. Upon signature of the envisaged Subcontract, all obligations entered into, all liabilities incurred and all rights accrued under this PATP shall therefore be deemed, with retroactive effect, entered into, incurred or accrued under the terms and conditions of the Subcontract and within its Subcontract Price.

- 1.4 This PATP is released under the further condition that any payments made hereunder will be deemed to have

been made under the terms of the envisaged Subcontract in anticipation of which this PATP is being released.

- 1.5 The granting of this PATP shall not bind or prejudice the Agency's position in any way regarding the placing of the Contract, nor bind the Prime Contractor regarding the placing of the Subcontract, and does not imply agreement of the Agency or the Prime Contractor to the amounts, prices, and tasks offered in the Proposal.
- 1.6 The tasks covered by this PATP for the Pre-Operational Services of "S2P - S1-SW-02.2, S1-SW-05, S1-SW-06 - Space Weather Service Network Development and Pre-Operation Part 1", as further defined in the Agency's Statement of Work and the Prime contractor's Proposal, are listed here below:
- The tasks included in the Work Package(s) 23191;
 - The related service element(s) (none);
 - The related contribution to the reporting "DD-0001P" (network monthly report developed by the SSCC) and "DD-0002P" (network quarterly report developed by the ESCs) using the currently existing communication paths; and,
 - The provision of the associated Space Weather Products.

In case of report delivery to the Agency, a copy of the report shall be provided to the Prime Contractor in electronic form via [REDACTED]

ARTICLE 2 – LIMIT OF LIABILITY

The maximum amount to which BIRA-IASB is committed under this PATP, which shall constitute the Prime Contractor's limit of liability (the "LoL") pursuant to Section 5 of Annex II to the GCC, amounts to:

2,592.00 €
(Two Thousand Five Hundred Ninety Two EURO)

The above LoL amount shall be part of the overall Price of the envisaged Subcontract and is without prejudice to the completion of the negotiations.

The above LoL is invoiceable by the Subcontractor according to the payment plan provided in Article 4, which is formulated to allow payments to the Subcontractor in a time commensurate with the urgent activities described in Article 1.

ARTICLE 3 – DURATION

This PATP shall enter into force upon signature by both parties hereto. This PATP shall take effect from 11th February 2021 and shall remain valid until 30th May 2021 or until signature by both Parties of the Subcontract, whichever is earlier.

ARTICLE 4 – PRICE AND PAYMENT

4.1 Price

The price of this PATP amounts to:

2,592.00 €
(Two Thousand Five Hundred Ninety Two EURO)

4.1.1 The type of price is the following:

A Firm Fixed Price as defined in Section 2.1 of Annex II to the GCC.

The Prime Contractor shall make the following payments under the PATP:

Payment Type	Milestone (MS) Description	Schedule Date	Milestone Amount in Euro
Progress Payment	Upon successful completion and acceptance of Pre-operational Delivery O1	30th May 2021	2,592.00 €
Total payments under this PATP in Euro:			2,592.00 €

4.1.2 In case of termination of this PATP, the Prime Contractor shall reimburse the Subcontractor for expenditures incurred under this PATP, in Euro, on the basis of the time and material type of price as defined in Section 4.4 of Annex II to the GCC, up to the LoL set forth in Article 2, it being understood that the Agency and Prime Contractor shall not be obliged to pay the compensation foreseen in Clause 31 of the GCC. In such case, this PATP shall be amended by mutual written agreement of the Parties on the close-out procedure and agreement on the amounts to be paid by the Prime Contractor to the Subcontractor. Any amount paid by the Prime Contractor under this PATP in excess of the amount due as defined above shall be reimbursed by the Subcontractor to the Prime Contractor.

4.2 Payment

4.2.1 Payment shall be made within thirty (30) calendar days after the Prime Contractor has received the corresponding payment by the Agency and upon fulfilment of the following requirements:

- Delivery of the tasks described under Article 1.6 and upon successful completion and acceptance by the Agency of the milestone described under Article 4.1.1;
- Receipt by Prime Contractor of a correct invoice from Subcontractor.

4.2.2 All invoices shall be submitted to the Prime Contractor in electronic form via [REDACTED]

Each invoice shall contain the following information:

To: Royal Belgian Institute for Space Aeronomy
 Attn. Accounting department
 Ringlaan 3
 1180 Brussels
 Belgium

- Subcontractor's name and address
- Subcontractor's bank account details including IBAN & Swift Code
- Subcontractor VAT number if applicable


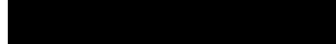
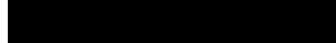
- Prime Contractor VAT number: BE 034901075
- Identification number of the PATP: PATP No. 668552/54.61/PATP-IAPPrague
- Identification of the required payment (milestone description and amount)

ARTICLE 5 – TERMINATION, AUTHORISATION, REDIRECTION, MODIFICATIONS AND REPRESENTATIONS OF THE PARTIES


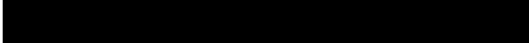
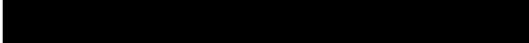
- 5.1 In case the Agency terminate the PATP with the Prime contractor, either wholly or in part, the Prime Contractor shall have the right at any time to terminate this PATP, either wholly or in part by giving written notice by registered mail to the Subcontractor (with a copy by email to the Subcontractor's representatives below). Termination as specified above shall entail no compensation being due to the Subcontractor other than those on a time and material basis as specified in Article 4.1.3 above, at the time of serving of the termination notice. In case of termination of the PATP No. 668552/54.61/PATP-IAPPrague, the Prime Contractor's intention to place a subcontract as described herein, shall of course cease.
- 5.2 Authorisations, redirections and modifications within the terms of this PATP shall require the written agreement of both Parties.
- 5.3 The Parties Representatives are as follows:


The Prime Contractor's representatives are:

- a) for technical matters:

Name: 
Telephone: 
E-mail: 


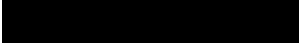
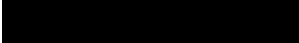
- b) for contractual and administrative matters:

Name: 
Telephone: 
E-mail: 

- c) Personal Data Protection matters shall be addressed to the Data Protection officer at the following e-mail address: 

The Subcontractor's representatives are:

- a) for technical matters:

Name: 
Telephone: 
E-mail: 

- b) for contractual and administrative matters:

Name: [REDACTED]
Telephone: [REDACTED]
E-mail: [REDACTED]

c) Personal Data Protection matters shall be addressed to the Data Protection officer at the following e-mail address: [REDACTED]

ARTICLE 6 – APPLICABLE LAW AND DISPUTE RESOLUTION

6.1 The substantive law referred to in Clause 34 GCC is the law of Belgium. The scope of its applicability is as laid down in the said Clause of the GCC.

6.2 The arbitration proceedings referred to in Clause 35 GCC shall take place in Brussels, Belgium.

The Parties agree that this PATP may be executed by digital signatures (e-signature including a digital certificate for independent identity validation) (e.g. Adobe Sign, DocuSign or similar electronic signature technology) which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature.

Done in two originals, one for each Party to this Agreement.

For:
BIRA-IASB

Date: 05/03/2021

For:
INSTITUTE OF ATMOSPHERIC PHYSICS

Date: 12/03/2021

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Martine De Mazière
General Director a.i.

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Radan Huth
Director