GENERAL CONDITIONS OF CONTRACT APPLICABLE TO PUBLIC CONTRACTS IN INFORMATION AND COMMUNICATIONS TECHNOLOGIES (GCC-ICT)

CALL FOR TENDER

COPERNICUS MARINE ENVIRONMENT MONITORING SERVICE

DEVELOPMENT AND PROMOTION OF DEMONSTRATIONS OF CMEMS DOWNSTRAM SERVICES CONTRIBUTING TO THE IMPLEMENTATION OF THE EU MARINE STRATEGY FRAMEWORK DIRECTIVE

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PREAMBLE

It is up to the contracting authority who wishes to make reference to general conditions of contract (GCC) to choose the version that is most suited to the services provided for in the contract and to make express reference to this GCC version in the specific contract documents.

This GCC version is applicable to contracts covering the information and communications technologies field (ICT). In particular it can concern contracts for:

- supplying IT or telecommunications hardware;
- supplying commercial software;
- studying and developing dedicated software and products to meet the specific needs of a public purchaser;
- developing information systems;
- providing services of maintenance, application management or Facilities Management (FM).

Any one contract can only refer to a single GCC. If certain secondary services have to be governed by stipulations in a GCC other than that designated in the contract, the latter must, in the special conditions of contract, reproduce the stipulations chosen, without reference to the GCC from which they stem.

A contract in the information and communications technologies field may include a significant proportion of studies and be liable to give rise to intellectual property rights. To cover this case, the GCC-ICT includes a chapter 7 "Use of results", dedicated to managing intellectual property rights relating to information and communications technologies. This chapter comprises two options: A "granting" or B "transfer". The contracting authority selects the option which is best suited to its contract (if no choice is made, option A applies by default) and tailors it to its need in the specific contract documents.

It should, however, be pointed out that contracts covering the supply of IT hardware that has been specially manufactured in line with the public purchaser's specifications come more under the scope of application of the GCC – Industrial Contracts (ICs).

CHAPTER 1

GENERAL

ARTICLE 1

SCOPE OF APPLICATION

The stipulations herein apply to contracts to which express reference is made.

These contracts may make provisions for waiving these stipulations.

Such waivers must be included in the specific conditions of contract (SCC) and are featured in a consolidated list of the GCC articles from which waiver has been made.

ARTICLE 2

DEFINITIONS

Within the meaning of this document:

— the "contracting authority" is the person entering into the contract with the contractor. When the contract is entered into by a contracting entity, the provisions applicable to the contracting authority apply to the contracting entity;

— the "contractor" is the economic operator entering into the contract with the contracting authority. In the event of a consortium of economic operators, the "contractor" designates the members of the consortium, represented, if needs be, by its authorised representative;

— "notification" is the action which consists in bringing an item of information or a decision to the knowledge of (the) contracting party(-ies) by any material or dematerialised means which enables the date of reception to be determined with certainty. The date of reception, which may be mentioned on a receipt, is considered as the date of notification;

— depending on the object of the contract, "services" designates supplies or services, in particular in the IT or telecommunications field;

— "service order" is the decision of the contracting authority stipulating the manner of performance of the services for which provision is made in the contract;

— "acceptance" is the decision, taken after verifications, whereby the contracting authority recognises that the services comply with contractual stipulations. The acceptance decision certifies that service has been provided and constitutes the starting point for the term of warranty;

— "adjournment" is the decision taken by the contracting authority who feels that services could be accepted if corrections were to be carried out by the contractor;

— "reduction" is the decision made by the contracting authority to reduce the amount to be paid to the contractor for the services, when these do not entirely meet contractual requirements, but can be accepted as they stand;

— "rejection" is the decision taken by the contracting authority who feels that the services provided cannot be accepted even after adjournment or reduction;

— "software" is a work made up of a set of programmes, procedures and rules, relating to the operation of a data processing ensemble and corresponding literature. The term software used on its own in this document designates both standard software and dedicated software;

— "standard software" is software designed by the contractor or third party publisher to be supplied to several users with a view to performing the same function;

— "dedicated software" is software which is specially developed by the contractor to provide a tailored solution to the contracting authority's own needs. This could be an original work created ex nihilo, or, via specific developments, the adaptation of existing works (standard or dedicated software);

— "application" is a set of software required to perform a given task.

ARTICLE 3

GENERAL OBLIGATIONS OF THE PARTIES

3.1 Form of notifications and information

Notification to the contractor of decisions made by or information from the contracting authority, from which a time limit is calculated, is made:

— either directly to the contractor or his duly authorised representative against receipt;

— or by dematerialised exchanges or electronic media. The conditions of use of dematerialised means or electronic media are determined in the specific contract documents;

— or by any other means which makes it possible for the date of reception of the decision or item of information to be certified.

Such notification may be made to the contractor's address mentioned in the specific contract documents or, by default, to its registered offices, unless such documents require domicile in another place.

In the case of a consortium, notification is made to the authorised representative of the whole consortium.

Comments:

Dematerialised documents exchanged do not need to be signed, except for invoices.

3.2. Calculating time-limits for carrying out service provisions

3.2.1. Any time-limit mentioned in the contract begins at 00.00 hour the day following the occurrence of the event which serves as a starting point for the said time-limit.

The dates and times applicable are those used by the specific contract documents for deliveries or performance of services.

3.2.2. When the time-limit is determined in days, these are calendar days and it expires at midnight, on the final day of the time-limit.

Comments

The time zone used is that of the delivery or performance of the service. A time-limit determined in calendar days includes Saturdays, Sundays and bank holidays.

3.2.3. When the time-limit is determined in months, it is calculated from day-of-the-month to day-of-the-month. If there is no corresponding day in the month when the deadline occurs, the time-limit is the last day of that month, at midnight.

3.2.4. When the last day of the time-limit is a Saturday, Sunday or bank holiday, the deadline is extended to the end of the first following working day, at midnight.

3.2.5. When the time-limit is determined in working days, this is exclusive of Saturdays, Sundays and bank holidays.

3.2.6. The time-limit applied to the contractor does not include the timeframe for the contracting authority to carry out its verification operations and take its decision in line with chapter 5.

3.3 Representatives of the contracting authority

As soon as the contract has been notified, the contracting authority designates one or several natural persons, authorised to represent it vis-à-vis the contractor, for the needs of performing the contract. Other natural persons may be authorised by the contracting authority during the performance of the contract.

This or these representative(s) are deemed to have sufficient powers, as soon as their names have been notified to the contractor within the timeframe required or stipulated in the contract, to take the necessary decisions which bind the contracting authority.

3.4 Representatives of the contractor

3.4.1. As soon as the contract has been notified, the contractor designates one or several natural persons, authorised to represent it vis-à-vis the contracting authority, for the needs of performing the contract. Other natural persons may be authorised by the contractor during the performance of the contract.

This or these representative(s) are deemed to have sufficient powers, as soon as their names have been notified to the contracting authority within the timeframe required or stipulated in the contract, to take the necessary decisions which bind the contractor.

3.4.2. The contractor is bound to notify the contracting authority immediately of modifications during the course of the performance of the contract which concern:

- persons with power to bind it;
- the legal form under which it carries out its business;
- its business or trading name;
- its address or registered offices;
- information it has supplied for acceptance of a subcontractor and approval of terms of payment,

and, generally speaking, all significant changes in corporate operation liable to affect the performance of the contract.

Comments

Provision may be made in the SCC for sections concerning the allocation of capital, persons or groups who control the company, as well as consortiums to which it belongs, in particular for certain defence contracts for which there are restrictive provisions where the operation of foreign companies is concerned or those held by foreign groups.

3.5. Co-contracting

Comments

Rules concerning co-contracting are determined by articles 51, 102 and 106 of the public contracts code.

In the eventuality of the consortium's representative defaulting, the consortium's members shall designate a replacement. Failing this, and after a period of eight days as from official notification by the contracting authority to carry this out, the co-contractor stipulated in second place in the deed of commitment becomes the consortium's new authorised representative.

3.6. Subcontracting service contracts

3.6.1. The service contractor who wishes to sub-contract part of the contract requests the contracting authority to accept each subcontractor and approve its terms of payment.

3.6.2. As soon as the special instrument is signed setting out acceptance of the subcontractor and approving its terms of payment, the contracting authority notifies rightful copy of the special instrument to the contractor and each of the subcontractors. On receipt of this notification, the contractor informs the contracting authority of the name of the natural person authorised to represent the subcontractor.

3.6.3. The contractor shall forward the subcontracting contract and any riders to the contracting authority on the latter's request. Should the contractor fail to produce such within a timeframe of fifteen days as from reception of official notification to do so by the contracting authority, it incurs a penalty equal to 1/3000 of the exclusive-of-tax amount of the contract or the phase concerned, possibly modified by a rider, or, failing this, the amount of the purchase order in question. This penalty is applied for each late day.

Comments

Rules relating to subcontracting are mentioned in articles 51, 87, 98, 107 and 112 to 117 of the public contracts code, in application of Act #75-1334 of 31 December 1975 amended with regard to subcontracting.

3.7. Purchase orders

3.7.1. Purchase orders are notified by the contracting authority to the contractor.

3.7.2. If the contractor feels that the requirements of a purchase order with which it has been notified call for comments, it must notify such to the signatory of the purchase order in question within fifteen days as from the date of reception of the purchase order, under penalty of foreclosure.

3.7.3. The contractor complies with the purchase orders with which it has been notified, whether or not these led to comments.

3.7.4. In the case of co-contracting, purchase orders are sent to the consortium's representative who is alone competent to formulate any comments to the contracting authority.

3.7.5. If, after completion of a purchase order contract, the total of orders issued by the contracting authority has not reached the minimum fixed by the contract, in value or volume, the contractor is entitled to compensation, equal to the profit margin it would have achieved on the services which remained to be carried out in order to reach this minimum.

In addition, the contractor is entitled to receive compensation for the portion of expenditure and investments which it may have undertaken for the contract and strictly necessary to the performance thereof, which has not been taken into account in the services for which payment has been made. It is up to the contractor to provide the contracting authority with all justifications necessary to determine this portion of compensation within fifteen days following notification of the contract's termination.

3.8. Service orders

3.8.1. Service orders are notified by the contracting authority to the contractor.

3.8.2. If the contractor feels that the requirements of a service order with which it has been notified call for comments, it must notify such to the signatory of the service order in question within fifteen days as from the date of reception of the service order, under penalty of foreclosure.

3.8.3. The contractor complies with the service orders with which it has been notified, whether or not these led to comments.

Nevertheless, except if the contract provides for the beginning of services to be ordered within a timeframe in excess of six months as from notification of the contract, the contractor may refuse to carry out this order, if it is notified thereof more than six months after notification of the contract. In this case, the contractor has fifteen days, as from the date its decision or refusal was sent to the contracting authority, to propose a new date for beginning the provision of services. If, after this time, it has proposed no other date, it must carry out the services on the date requested. If the contracting authority refuses the new date proposed, the contractor may request that the contract be terminated under the conditions mentioned in article 41.2. Such termination may not be refused.

3.8.4. In the case of co-contracting, service orders are sent to the consortium's representative who is alone competent to formulate any comments to the contracting authority.

ARTICLE 4

CONTRACTUAL DOCUMENTS

4.1. Order of priority

In the eventuality of contradiction between the stipulations of contractual documents, the order of priority is as follows:

- the deed of commitment and any appendices, in the version resulting from any latest modifications via riders;

- the specific conditions of contract (SCC) and any appendices;
- the specific technical conditions of contract (STCC) and any appendices;
- the general conditions of contract (GCC) applicable to services, within the scope of the contract, if this concerns such conditions;
- the general technical conditions of contract (GTCC) applicable to services within the scope of the contract, if this concerns such conditions;
- special subcontracting instruments and their riders, after notification of the contract;
- the contractor's technical and financial bid.

4.2. Documents to be remitted to the contractor. — Assignment or pledge of receivables

4.2.1. Notification of the contract comprises a copy, delivered free of charge by the contracting authority to the contractor, of the deed of commitment and other consultative documents of the contract, with the exception of the GCC, GTCCs and, generally speaking, any documents that have been officially published.

4.2.2. The contracting authority also remits to the contractor, free of charge, the sole copy or certificate of tradability necessary to assign or pledge the contract.

Comments

Rules covering assignment or pledge are fixed by articles 106 *et seq.* of the public contracts code.

Rules covering holdback, first demand guarantee and personal and joint surety are in particular determined by articles 101 to 103 of the public contracts code.

ARTICLE 5

CONFIDENTIALITY — SECURITY MEASURES

5.1. Obligation of confidentiality

5.1.1 The contractor and contracting authority who, when performing the contract, have knowledge of information or receive documents or items of any nature, notified as being of a confidential character and relating, in particular, to means to be implemented for the performance thereof, to the operation of the contractor's or contracting authority's services, shall take all necessary steps to prevent such information, documents or items from being disclosed to a third party who has no need to know anything about them. A party may not request that information, documents or items be confidential if it has itself made them public.

5.1.2. The contractor must inform its subcontractors of the obligations of confidentiality and security measures by which it has to abide when performing the contract. It must ensure that its subcontractors respect such obligations.

5.1.3. Information, documents or items already accessible to the public when they are brought to the knowledge of the contracting parties are not covered by this obligation of confidentiality.

5.2 Protecting data of a personal character

5.2.1 Each contracting party is bound to respect rules relating to the protection data of a personal nature, to which it has access in order to perform the contract.

5.2.2 If there is any change in legislation concerning the protection of data of a personal nature during performance of the contract, any amendments requested by the contracting authority with a view to complying with such new rules shall be signed in the form of a rider by contracting parties.

5.2.3 In order to ensure this protection, it is up to the contracting authority to carry out declarations and obtain the administrative authorisations needed to provide the services for which provision is made in specific contract documents.

5.3 Security measures

If services are to be provided in a place where security measures are applied, in particular in areas which are protected as a result of legislative or regulatory provisions made to protect national defence secrets, such specific provisions must be indicated by the contracting authority in the consultative documents. The contractor is bound to respect them.

On this count, the contractor may not claim any extension of the time-limit for performance, nor any compensation or additional charge, unless information was only communicated to it after its bid was made and if it can establish that the obligations that are consequently imposed on it require an additional timeframe to provide the services scheduled under the contract or make performance of the contract more difficult or more costly.

5.4 The contractor informs its subcontractors that the obligations stipulated in this article are applicable to them and remains responsible for seeing that they are respected.

Comments

A protected area is one created by ministerial order to which entry is prohibited without authorisation, sanctioned as a criminal offence under articles 413-7 and R. 413-1 to R. 413-5 of the criminal code.

ARTICLE 6

PROTECTING LABOUR AND WORKING CONDITIONS

6.1. The obligations which the contractor has to respect are those for which provision is made by laws and regulations relating to the protection of labour and working conditions in the country where such labour is employed. The contractor is also bound to respect the provisions of the eight fundamental conventions of the International Labour Organisation if these are not included in laws and regulations in the country where such labour is employed. During the performance of the contract and period of service warranty, it must be able to justify such at the contracting authority's simple request. The terms of application of these texts are provided for by the SCC.

6.2. If there is any change in legislation concerning protection of labour and working conditions during performance of the contract, any amendments requested by the contracting authority with a view to complying with such new rules shall be signed in the form of a rider by contracting parties.

6.3. The contractor may, as a result of specific conditions of performing the contract, request the contracting authority to transmit, with its opinion, requests for waiver for which provision is made by abovementioned laws and regulations.

Comments

The ILO's eight fundamental conventions, ratified by France, are as follows:

- the Freedom of Association and Protection to Organise Convention (C87, 1948);
- the Right to Organise and Collective Bargaining Convention (C98, 1949);
- the Forced Labour Convention (C29, 1930);
- the Abolition of Forced Labour Convention (C105, 1957);
- the Equal Remuneration Convention (C100, 1951);
- the Discrimination (Employment and Occupation) Convention (C111, 1958);
- the Minimum Age Convention (C138, 1973);
- the Worst Forms of Child Labour Convention (C182, 1999).

6.4 The contractor informs its subcontractors that the obligations stipulated in this article are applicable to them and remains responsible for seeing that they are respected.

ARTICLE 7

PROTECTING THE ENVIRONMENT

7.1. The contractor sees that the services it provides comply with current legal and regulatory requirements with regard to the environment, safety and health of people and preservation of the neighbourhood. during the performance of the contract and period of service warranty, it must be able to justify such at the contracting authority's simple request.

7.2. If there is any change in legislation concerning protection of the environment during performance of the contract, any modifications requested by the contracting authority with a view to complying with such new rules shall be signed in the form of a rider by contracting parties.

ARTICLE 8

COMPENSATING FOR DAMAGES

8.1. Damages of any nature caused to the contracting authority's staff or property by the contractor, as a result of performance of the contract, shall be compensated by the contractor.

Damages of any nature caused to the contractor's staff or property by the contracting authority, as a result of performance of the contract, shall be compensated by the contracting authority.

8.2. For as long as supplies remain the contractor's property, the latter is, except in the event of fault on the part of the contracting authority, alone liable for damages to such supplies for whatsoever reason other than exposure to artificial radioactivity or natural catastrophes recognised as such. This stipulation is not applicable in the event of addition of equipment supplied by the contracting authority to the contractor's material and causing damage thereto.

8.3. The contractor guarantees the contracting authority against incidents caused by the equipment it supplies or by actions of its staff affecting the premises where such equipment is operated, including against claims by neighbours.

Comments

In the event of risk which is out of proportion with the value of the contract, specific provisions must be made in the SCC to cap any guarantees.

ARTICLE 9

INSURANCE

9.1. The contractor must take out insurance guaranteeing its liability with regard to the contracting authority and third parties, victims of accidents or damages caused as a result of carrying out services.

9.2. The contractor must, within fifteen days as from notification of the contract and before the beginning of performance thereof justify that it is an insurance policyholder for these types of guarantee, via a certificate establishing the extent of the liability guaranteed.

At any time during the performance of the contract, the contractor must be able to produce this certificate, at the request of the contracting authority and within fifteen days of receiving such request.

CHAPTER 2

PRICES AND SETTLEMENT

ARTICLE 10

PRICES

10.1. General rules

10.1.1. Prices are deemed to be firm.

10.1.2. If firm prices are updateable, the updating coefficient is rounded up to the thousandth.

Comments

Certain contracts have to provide for an updating formula. These are detailed in article 18 of the public contracts code.

10.1.3. Prices are deemed to include all tax or other charges which necessarily affect services, costs connected with packaging, storage, packing, insurance and transport to the place of delivery, costs resulting from application of article 17.1.2, as well as all other expenses required to carry out services, margins for risk and profit margins.

Nevertheless, costs resulting from the contractor's failure to request administrative travel documents or any delay on its part in submitting such request shall be met by the contractor.

Handling and transport costs arising from adjournment or rejection of services shall be met by the contractor.

10.1.4. Contracts comprising maintenance services

The contractor's remuneration for maintenance covers in particular the value of parts or items, tools or necessary ingredients, as well as costs of labour concerned, including travel expenses and expenses required for modifications mentioned in article 32.

Remuneration for maintenance does not cover the following services which are met by the contracting authority:

- delivery or exchange of consumable supplies or accessories, painting and external cleaning of equipment;
- modifications requested by the contracting authority to equipment specifications for which provision was made under the contract;
- repair of operational malfunctions due to the fault of the contracting authority or caused by use of equipment which does not comply with the rules stipulated in the documents supplied by the contractor;
- repair of operational malfunctions caused by defective installation by the contracting party;
- repair of operational malfunctions caused by the addition of equipment of another origin, by a person other than the contractor or a person appointed by it to carry out such addition.

10.2. Determining settlement prices

10.2.1. If the contract provides for the prices to be paid as the result of application of a regulatory provision, scale, tariff, rate, market price list, index or any other element established outside the contract, without stipulating the date, the element to be taken into consideration is that which is in force:

- on the day of delivery or the completion of performance of services, if these are carried out within the time-limit scheduled by the contracting authority or if the latter did not fix any time-limit;
- on the final date scheduled by the contracting authority for delivery or completion of performance of services if the time-limit is exceeded.

10.2.2. If the contract makes provision to revise prices, these are revised at the date or in accordance with the periodicity provided for by the contract's specific documents.

If, however, the price includes a significant percentage of raw products or products directly affected by fluctuating world prices, prices are revised at least every three months as from the date of notification of the market. Conditions for revising prices are fixed by the contract's specific documents.

Prices to be paid are those applicable on the date of delivery or on completion of the performance of services.

10.2.3. If prices are subject to revision, the revision coefficient is rounded up to the thousandth.

Comments

Certain contracts have to make provision for a revision formula. These are detailed in article 18 of the public contracts code.

ARTICLE 11

DETAILS CONCERNING TERMS OF SETTLEMENT

11.1. Advances

Comments

Rules relating to advances are determined by articles 87 to 90, and 112 to 117 of the public contracts code.

Request for payment of an advance to the approved subcontractor is made by the latter to the contracting authority. With the request, the subcontractor encloses a certificate from the contractor, indicating the amount of the services that the subcontractor has to carry out, during the twelve months following their start date.

11.2. Payments on account

Comments

Rules relating to payments on account are determined by article 91 of the public contracts code.

If the contract just determines the periodicity of payments on account, the amount of each of them is determined by the contracting authority, on the basis of the description of services carried out and the amount thereof, produced by the contractor. Each payment on account is covered by a request for payment.

11.3. When the contractor remits a request for payment to the contracting authority, it encloses the necessary documents to justify such payment.

11.4. Content of the request for payment

11.4.1 The request for payment is dated. It mentions the references of the contract as well as, according to the case:

- the amount of services received, drawn up in line with the contractual stipulations, exclusive of VAT and, possibly, reduced by reductions determined in accordance with the provisions of article 28.3;
- breakdown of lump sum prices and details of unit prices, if indicating these details is provided for in the specific contract documents or if, with regard to contractual requirements, the services have not been carried out completely or in conformity;
- if a payment is scheduled after certain phases of the performance of the contract, the amount corresponding to the period concerned;
- in the event of a joint-liability-only consortium, for each economic operator, the amount of services carried out by the economic operator;
- in the event of subcontracting, the nature of services carried out by the subcontractor, the exclusive-of-tax amount, the inclusive-of-tax amount, as well as, if such is the case, variations of exclusive- and inclusive-of-tax prices;
- any compensation, bonuses and retentions, other than holdbacks, established in line with contractual stipulations.

11.4.2. In the event of services being carried out at the expense and risk of the defaulting contractor, the additional cost met by the contracting authority, corresponding to the price which it should have paid the contractor for carrying out services and the price actually paid to carry out such services in place of the defaulting contractor, is deducted from the amounts due to the contractor for services received.

11.4.3. The request for payment sets out details of items liable to VAT, distinguishing them in accordance with the applicable rate.

11.4.4. Unit prices may be split to take into account services currently being carried out.

11.4.5. Lump sum prices may be split, if the service or part of the service covered by the price is not completed. In this case, a fraction of the price is counted which is pro rata the performance of the service. In order to determine this percentage, if the contracting authority so requests, price breakdown as per article 11.4.1 is applied.

11.4.6. The contractor makes out its request for payment in accordance with the model or terms determined by the specific contract documents.

11.5. Calculation of the amount due by the contracting authority for services rendered:

11.5.1. The amount due may be established on the basis of jointly-agreed statements if the SCC makes provision for such.

11.5.2. If the contract makes provision for payments on account, after completion of certain phases of the performance of services, and if it indicates the portion of the price to be paid on completion of each of such phases, the request for payment comprises:

- for each part of the contract performed, the corresponding portion;

- for each part of the contract undertaken, after agreement with the contracting authority, a fraction of the corresponding portion, equal to the percentage of services performed of the part in question.

11.6. Remitting the request for payment

11.6.1. The request for payment is remitted

- either at the dates provided for under the contract;

- or after acceptance of services, in line with contractual stipulations;

- or at the beginning of each month for services carried out the previous month, in the case of services which are carried out continuously. In this case, the contractor notifies a monthly request for payment to the contracting authority setting out the total, drawn up at the end of the previous month, of the amounts to which it might be entitled as a result of performance of the contract from the beginning thereof;
- or at the dates scheduled for payments of account.

11.6.2. The request for payment may indicate the supplies which, in application of the contractual stipulations or in common agreement between the parties, are paid, whereas they remain in storage on the contractor's premises.

11.7. Acceptance of the request for payment by the contracting authority

The contracting authority accepts or rectifies the request for payment. If needs be, it completes this by indicating the advances to be paid back, as well as the bonuses and reductions imposed.

It draws up a statement of the sum to be paid and, if this is different from the amount in the request for payment, notifies it as drawn up in the statement to the contractor.

Comments

The rules relating to the global timeframe for payment are those determined by current regulations applicable to the contracting authority.

Rules concerning payment by means of bills of exchange have been repealed.

11.8. Final payment and definitive partial settlements

11.8.1. The request for payment is forwarded to the contracting authority after the acceptance decision.

The request for payment may, also, give rise to a definitive partial settlement of services carried out, if the contract's specific documents made provision for payments after certain parts of the contractually scheduled services have been carried out.

11.8.2. If, after formal notice to do so, the contractor does not produce its request for payment within a timeframe of forty-five days as from acceptance of the services, the contracting authority may automatically proceed with liquidation, on the basis of a breakdown which it has drawn up. This breakdown is notified to the contractor.

11.8.3. In the event of dispute over the amount due, the contracting authority settles the sums which it has recognised. After the disagreement has been resolved, if needs be, it makes payment of an additional sum, increased, where applicable, by interest on arrears, applicable as from the date of the request submitted by the contractor.

Comments

The rules relating to definitive partial settlements are determined by article 92 of the public contracts code.

ARTICLE 12

REGULATION CONCERNING CO-CONTRACTING OR SUBCONTRACTING

12.1. Provisions concerning co-contracting

12.1.1. In the case of a joint-liability-only consortium, each consortium member directly receives the amounts relating to the performance of its own services.

12.1.2 In the case of a joint-and-several-liability consortium, payment is made to a single account opened in the name of the members or the consortium or the authorised representative, except if the contract makes provision for distribution of payments between consortium members and indicates how such distribution is constituted.

12.1.3. Regardless of the form of the consortium, the representative is alone authorised to present the request for payment to the contracting authority. In the case of a joint-liability-only consortium, the request for payment presented by the representative is broken down into as many parts as there are consortium members to be paid separately. Each part indicates the information needed to pay the economic operator concerned.

12.1.4. The representative is alone authorised to formulate or transmit consortium member claims.

12.2. Provisions concerning subcontracting

Services carried out by subcontractors, whose terms of payment have been approved by the contracting authority, are paid under the financial conditions scheduled by the contract or via special instrument.

Comments

Rules concerning payment by means of bills of exchange have been repealed.

Rules relating to interest on arrears are determined by articles 98, 99 and 103 of the public contracts code and provisions of decree #2002-232 of 21 February 2002 amended regarding implementation of the minimum timeframe for payment where public contracts are concerned.

Provision for liquidation of accounts in case of termination is made in Chapter VIII "Termination".

CHAPTER 3

TIMEFRAMES

ARTICLE 13

COMPLETION TIME

13.1. Beginning of completion time

13.1.1. The contract completion time begins as from the date such contract is notified.

13.1.2. The purchase order completion time begins as from the date such purchase order is notified.

13.1.3. The completion time of a conditional phase begins as from the date the consolidation decision is notified.

13.2 . Expiry of completion time

13.2.1. In the event of delivery or performance of services on the contracting authority's premises, the expiry date of completion time is the date of delivery or completion of services.

13.2.2. If provision has been made in the contract for acceptance to be made on the service provider's premises, the expiry date of completion time is that scheduled for acceptance.

13.2.3. In the event of study services, the expiry date of completion time is the date that studies are presented to the contracting authority, with a view to undertaking verification operations.

13.2.4. In the event of services not being completed by the time-limit date for contract validity, the completion time for services expires on the time-limit date, with the exception of purchase orders issued during the period of contract validity.

Comments

All timeframes in the contract for identified sub-parts thereof are governed by the same rule.

13.3. Extending completion time

13.3.1. If the contractor is unable to respect completion times, for reasons arising from the contracting authority or an event of a *force majeure* type, the contracting authority extends the completion time. The extended completion time has the same effects as the contractual timeframe.

13.3.2. In order to benefit from such extension, the contractor indicates to the contracting authority the causes preventing the contract from being performed within the contractual timeframe. To this end, it has fifteen days as from the date when the causes arose or a timeframe going up to the end of the contract, if such contract reaches its term in a period of less than fifteen days. By the same request, it indicates to the contracting authority the length of extension requested.

13.3.3. The contracting party has fifteen days, as from the date the request is received, to notify it of its decision, provided the contract does not reach its term before the end of such timeframe.

The extension request may not be refused if the delay is due to the service provider's intervention within the scope of a requisition order.

Provided the aim of the contract itself is not to meet an imperative emergency situation resulting from unforeseeable circumstances, the extension request may not be refused either, if the delay is due to the service provider's intervention within the scope of a contract entered into as a matter of imperative emergency, resulting from unforeseeable circumstances.

The contract's performance time is extended by the time needed to complete the services carried out within the scope of a requisition or for the needs of the contract entered into as a matter of imperative emergency.

13.3.4. No extension request may be presented after expiry of the service's contractual completion time.

ARTICLE 14

PENALTIES

14.1. Penalties for delay

14.1.1. Without it being necessary to have recourse to formal notice, penalties for delay begin as from the day following that when the contractual completion time for the services expired, subject to the stipulations of articles 13.3 and 20.4.

This penalty is calculated by applying the following formula:

P = V * R/1 000

where:

P = the amount of the penalty;

V = the value of services on which the penalty is calculated, such value being equal to the basic price amount, without variations in price and without application of VAT, of the portion of services that is late or of all the services, if the delay in completion of a portion makes the whole unusable;

R = the number of days late.

14.1.2. Once the amount of penalties has been determined, the variation formula provided for in the contract is applied.

14.1.3. The contractor is exempt from penalties whose total amount does not exceed 300 euros (exclusive of tax) for the entire contract.

14.2. Penalties for unavailability

14.2.1. An item of equipment is unavailable if, regardless of the contracting party and outside the scope of preventive maintenance work, it is impossible to use it either as a result of defective operation of a unit or device or a functionality included therein, or as a result of unavailability of another item of equipment to which it is linked via connections provided and maintained by the

contractor and to which it is subject for carrying out current work at the moment the incident occurred.

14.2.2. Unavailability begins

— in the case of on-site maintenance, at the time when request for intervention reached the contractor. If access by the contractor's staff to defective equipment is delayed for reasons attributable to the contracting authority, unavailability is suspended until such time as access becomes effective;

— in the case of maintenance on the contractor's premises, at the time when the defective item is remitted to the contractor or its qualified representative, in a place for which provision is made in the contract.

14.2.3. Any software included in the contract is held to be unavailable if its use is made impossible as a result of a functional defect noted by the contracting authority. Unavailability is applied to the latest version implemented by the contracting authority.

The contractor undertakes to restore usage of the defective software to the contracting authority within twenty-four hours counted in accordance with the stipulations of article 14.2.6, or, failing this, to make a solution available with equivalent functionalities.

In the event of new defects being noted on the software in question, the contractor is bound to provide new corrections in the same conditions.

During this period, and until such time as the software may be re-used, equipment which is unable to be used by the contracting authority, as a consequence of software downtime, is deemed to be unavailable. Penalties are then calculated in line with the last subparagraph of article 14.2.6.

Remuneration for the right to use unavailable software is suspended.

14.2.4. Unavailability ends when working items are once more made available to the contracting authority. If, however, repaired items once more become unavailable, for the same causes, within eight hours of use after repair, length of unavailability is counted from the moment of initial unavailability.

14.2.5. The contractor shall inform the contracting authority of the foreseeable length of downtime, if this exceeds the thresholds stipulated in 14.2.6.

14.2.6. Except in a case of *force majeure*, when downtime exceeds the following thresholds, the contractor is liable to penalties.

These thresholds are determined as:

— eight working hours for on-site maintenance;

— fifteen consecutive days for maintenance on the contractor's premises.

The penalty is calculated by applying the following formula:

$P = (V*R)/30$;

where

P = the amount of the penalty;

V = the value of monthly remuneration paid for reasons of maintenance ;

R = the number of late days.

ARTICLE 15

Bonuses for completion of work ahead of schedule

The contract may make provisions for bonuses if work is completed ahead of schedule, either for all services, or for certain portions of services covered by specific timeframes or contractually fixed time-limits.

The bonus is paid inclusive of tax, without the contractor having to request it, with payment of the balance of the corresponding service. It is subject to the same rules of payment as those concerning the balance.

CHAPTER 4

PERFORMANCE

ARTICLE 16

PLACES OF PERFORMANCE

16.1. The contractor must inform the contracting authority, at its request, of the place where services are carried out. The contracting authority may follow performance on-site. Only the contracting authority's representatives may access places of performance.

Those people it designates to this end have free access only to the zones concerned by contractually scheduled performance of services, within the respect of the site's security and safety recommendations. They are bound by obligations of confidentiality under article 5.1.

16.2. If the contractor interferes with the exercise of the contracting authority's right of control during the performance of the contract, it is liable to sanctions under article 42.

ARTICLE 17

MEANS MADE AVAILABLE TO THE CONTRACTOR

17.1. The provisions of this article are applied if the contracting authority makes means needed for the performance of the service available to the contractor.

If such means are the contracting authority's property, they are left free of charge at the contractor's disposal for the performance of the contract.

17.1.1. A jointly-agreed statement is drawn up to determinate the state of such means when they are made available to the contractor. This statement is signed by both parties and mentions the value of such means.

The effective date for making available is that of the jointly-agreed statement.

17.1.2. The contractor is responsible for preserving, maintaining and using any means with which it has been entrusted, as from such time as they are effectively made available. It may only use such means within the terms and aim of the contract.

Any documents and training which may be required to use such means entrusted to the contractor are supplied on making available by the contracting authority.

17.1.3. During the period of performance or after termination of the contract, or after the term fixed therein, the means made available are returned to the contracting authority. A jointly-agreed statement is drawn up when these means are returned to the contracting authority. If need arises, any expenses relating to such return shall be met by the contractor.

17.1.4. If any item made available is damaged, destroyed or lost, the contractor shall repair or replace it, or reimburse the residual value at the date of disappearance or the incident.

17.1.5. If the contractor does not respect the obligations under the foregoing points 2 to 4, the contracting authority may suspend payment of amounts due under the terms of the contract, up to the amount of the estimated prejudice, until such time as these obligations are fulfilled.

17.2. The contractor shall, at its own expense, prior to their being made available and for as long as it disposes thereof, have the means with which it has been entrusted insured, and be at any moment during the performance of the contract able to justify that it has fulfilled such obligation to insure. If the contractor contravenes these requirements, the contracting authority may, in its place, five days after an ineffective formal notice, take out the necessary insurance policy(-ies). The amount of insurance premiums is then deducted from the sums due to the contractor within the terms of the contract.

17.3. Regardless of abovementioned sanctions, the contract may be terminated under the terms of article 42, if the contractor does not present the means made available to it, or if it makes poor or abusive use of them.

ARTICLE 18

FITTING OUT PREMISES WHERE EQUIPMENT COVERED BY THE CONTRACT IS TO BE INSTALLED

The contracting authority fits out, at its expense, premises where equipment is to be installed and, if needs be, after consulting with the contractor, sees to maintenance thereof and supply of fluids.

The contracting party informs the contractor when the premises are available. This information must be communicated at least fifteen days before equipment is delivered.

Fitting out must be completed before the scheduled delivery date.

ARTICLE 19

STORAGE, PACKAGING AND TRANSPORT

19.1. Storage

19.1.1. If documents specific to the contract make provision for an obligation of storage on the contractor's premises, the latter assumes depository responsibility for a period stipulated in the documents specific to the market as from the date of their acceptance.

19.1.2. If storage is on the contracting authority's premises, the latter assumes depository responsibility up to the acceptance decision.

19.2. Packaging

19.2.1. Packaging quality must be suitable for the terms and conditions of transport for which provision is made by the documents specific to the contract. This is the contractor's responsibility.

19.2.2. Packaging remains the contractor's property.

19.3. Transport

Transport is carried out under the contractor's responsibility up to the place of delivery. Packaging, loading, stowage and unloading are carried out under its responsibility.

ARTICLE 20

DELIVERY

20.1. Any delivery carried out by the contractor is accompanied by a delivery note or bill, made out distinctly for each consignee and in particular comprising:

— the date of shipment;

— the reference to the purchase order or contract;

— the contractor's identification;

— identification of the contents of delivery and, when necessary, how parcels are divided up;

— the number of (the) production batch(es) if regulations require this where labelling is concerned.

Each parcel must clearly show its order number, as stipulated on the delivery note or bill. Content inventory is inside.

20.2. Delivery is recorded via a receipt remitted to the contractor or by signature of the delivery note or bill, of which each party retains a copy. If delivery is not possible, this should be mentioned on one of these documents.

20.3. If the layout of the designated premises leads to exceptional handling difficulties, for which provision is not made in the specific contract documents, consequent additional delivery costs shall be met separately. These handling services give rise to the drafting of a rider.

20.4. Suspension of delivery may be granted to the contractor if, excluding cases for which provision is made to extend the timeframe in article 13, a cause which is not attributable to the contractor hinders performance of the contract within the contractual timeframe.

Suspension of delivery may also be granted to the contractor if it justifies specific measures and precautions to reduce environmental impacts linked to transport and modes of delivery.

Suspension of delivery suspends the application of penalties for late delivery for a time equal to the length of suspension.

Formalities for granting suspension of delivery are identical to those for extending completion time mentioned in article 13.3.

No suspension of delivery may be requested by the contractor for events that occurred after the expiry of the time-limit for performing the contract, which may already be extended.

ARTICLE 21

SOFTWARE UPDATES AND NEW VERSIONS — TECHNICAL LITERATURE

21.1. Software updates and new versions

If services comprise delivery of standard or dedicated software, they also comprise, throughout the term of the contract, delivery of updates and new versions.

The price of such updates or new versions is included in the contract price.

21.2. Technical literature

With each hardware or software, the contractor delivers technical literature in French indicating how it is implemented. Such is also the case for delivery of each software update or new version.

The price of this technical literature is included in the contract price.

The technical literature sets out hardware or software composition and specifications, as well as current procedures for use. It must be forwarded at the latest when hardware, software, each update or any new version is delivered.

ARTICLE 22

FACTORY SUPERVISION

22.1. If specific contract documents make provision for factory supervision of the performance of services, the contractor shall comply with the provisions of this article.

It must inform the contracting authority of the plants or workshops where the various phases of performance of services take place. It undertakes to obtain free access to these plants or workshops for the contracting authority and make the means available free of charge that are necessary for carrying out its mission.

22.2. The contractor must, in good time, inform the contracting authority of all operations at which the latter declared that it wanted to be present; failing this, the contracting authority may either require such operations to be begun again or refuse the services subject to these operations, beyond its control.

The contracting authority must be immediately informed of any event liable to change the scheduled

22.3. During the performance of services, the contracting authority indicates to the contractor any element of the service which is not satisfactory.

22.4. Exercising supervision does not affect the contractor’s responsibility and does not limit the contracting authority’s right to refuse the services recognised as being defective at the time of verification.

22.5. The contracting authority's officers and duly authorised persons who, as a result of their functions, are informed of the means of manufacture or any other item of information regarding the contractor are bound by the obligation of confidentiality mentioned in article 5.1.

Incurred within the framework of these supervision operations, their travelling expenses and settlement must be met in totality by the contracting authority.

Comments

For ethical reasons, the contracting authority must not appoint a competitor of the contractor to audit the latter within the scope of this article.

CHAPTER 5

FORMAL RECORD OF PERFORMANCE OF SERVICES — WARRANTY

ARTICLE 23

INSTALLATION AND SET-UP

Installation and set-up of hardware and software are carried out by the contractor.

To this end, it has one month as from the contractual date of delivery to carry out set-up. It remits a set-up report to the contracting authority and indicates if it will be present at the verification operations.

The time-limit initially provided for the set-up may be suspended or extended within the conditions stipulated in article 13.3.

ARTICLE 24

VERIFICATION OPERATIONS

24.1. Starting point for verification operations timeframe

For verifications carried out on the contractor's premises, the starting point for the timeframe is the date of written notification informing the contracting authority that services are ready for verification.

For verifications carried out on the contracting authority's premises, the starting point for the timeframe is the date of notification, by the contractor, of the set-up report to the contracting authority.

24.2. Verification costs

24.2.1. Regardless of the results of verifications, costs involved shall be met by the contracting authority for operations which, in accordance with contractual stipulations, have to be carried out on its own premises. They shall be met by the contractor in other cases.

If, however, one of the parties has accepted to carry out on its own premises tests which, according to specific contract documents, should have been carried out on the other party's premises, the corresponding costs shall be met by the latter.

24.2.2. The contractor informs the contracting authority of the date from when the services can be presented for verifications.

24.3. Presence of the contractor

The contracting authority informs the contractor of the days and hours fixed for verifications, so as to enable it to attend or be represented.

Absence of the duly informed contractor or its representative does not affect the procedure or validity of verification operations.

24.4. Tests and testbenching

Hardware and software required for tests or testbenching may be taken by the contracting authority from supplies delivered within the scope of the contract, to check, for example, that tests or testbenching carried out during the selection of bids have been carried out on the same supplies and those actually delivered.

ARTICLE 25

QUANTITATIVE VERIFICATIONS

The aim of quantitative verification operations is to check compliancy between the delivered quantity or the work done and the quantity or work ordered by the contracting authority.

ARTICLE 26

QUALITATIVE VERIFICATIONS

26.1. The aim of qualitative verification operations is to enable the contracting authority to check in particular that the contractor:

- has implemented the means defined in the contract, in compliancy with requirements fixed therein;
- has met the requirements defined in the contract as being under its responsibility, in accordance with contractual provisions.

Where hardware and software are concerned, the contracting authority checks that the services comply with contractual stipulations and testbenching if the contracting authority has chosen to have recourse to such.

26.2. Qualitative verification operations comprise two stages: aptitude verification and regular verification in service.

26.2.1. Aptitude Verification (AV).

Aptitude verification intervenes after set-up. Its aim is to determine whether services, delivered or performed, have the technical characteristics that make them apt to fulfil the functions stipulated in the specific contract documents.

This record may also stem from the performance, in conditions fixed by the contract, of one or several programmes or testbenchings.

The contracting authority takes its decision in accordance with terms set out in article 27.2 below. If the aptitude verification decision is positive, the regular verification in service begins.

26.2.2. Regular Verification in Service (RVS).

The aim of the regular verification in service is to note that the services provided can ensure regular service in the normal operating conditions for which provision is made in the specific contract documents.

Service regularity is carried for one month, as from the day of the positive aptitude verification decision by the contracting authority.

The service is deemed regular if cumulative duration, over the month, of downtime attributable to each item of equipment is no more than 2% of the length of actual use from 8 am to 6 pm, from Mondays to Fridays, exclusive of bank holidays.

The contracting authority takes its decision in accordance with terms set out in article 27.2 below.

ARTICLE 27

POST-VERIFICATION DECISIONS

In the case of a contract featuring distinct services, delivery of each service comprises distinct verifications and decisions.

27.1. After quantitative verifications

After quantitative verification operations, if the quantity supplied or performance of services do not comply with contractual stipulations, the contracting authority may decide to accept them as they stand or serve formal notice on the contractor within a required time-limit:

— either to take back excess supplies;

— or to complete delivery or service.

Making services compliant from a quantitative point of view does not affect performance of qualitative verification operations.

27.2. After qualitative verifications

27.2.1. After aptitude verification

The timeframe for the contracting authority to carry out aptitude verification and notify its decision is one month as from the date of written notification via which the contractor informs the contracting authority that the services are ready to be checked or, failing this, the date of notification by the contractor of the set-up report to the contracting authority.

If the contracting authority is not in a position to take a positive aptitude verification decision, it takes an adjournment or rejection decision, in accordance with terms fixed in article 28 below.

In the case of adjournment, a new set-up may be carried out at the request of the contracting authority.

27.2.2. After regular verification in service

The contracting authority has a maximum timeframe of seven days to notify the contractor in writing of its regular verification in service decision.

If the result of regular verification in service is positive, the contracting authority takes a decision to accept the services.

Acceptance may be limited solely to the items whose regularity in service has been checked, provided they allow use in conditions deemed acceptable by the contracting authority.

If the result of regular verification in service is negative, the contracting authority takes a written decision which it notifies to the contractor, either:

— to adjourn with regular verification in service for a maximum extra period of one month;

— to accept with reduction;

— to reject.

If the contracting authority does not notify its decision within the seven days mentioned in the first subparagraph of article 27.2.2, the result of the regular verification in service is considered to be positive and the services deemed accepted.

ARTICLE 28

ACCEPTANCE, ADJOURNMENT, REDUCTION AND REJECTION

28.1. Acceptance

The contracting authority pronounces acceptance of services, if they meet contractual stipulations. Acceptance takes effect from the date of notification to the contractor of the acceptance decision. In case of tacit acceptance, acceptance takes effect at the end of the timeframe of seven days mentioned in the first subparagraph of article 27.2.2.

28.2. Adjournment

28.2.1. If the contracting authority considers that services can only be accepted if certain reviews are carried out, it can decide to adjourn acceptance of services via a motivated decision. This decision invites the contractor to present the reviewed services again to the contracting authority, within fifteen days.

The contractor must make its acceptance known within ten days, as from notification of the adjournment decision. In the event of the contractor's refusal or silence during the said timeframe, the contracting authority has the choice of pronouncing acceptance of services with reduction or rejecting them, in the conditions fixed in subparagraphs 3 and 4 of this article, within fifteen days as from notification of the contractor's refusal or expiry of the abovementioned timeframe of ten days.

Silence of the contracting authority beyond this timeframe of fifteen days constitutes a decision to reject such services.

28.2.2. If, after decision to adjourn the services, the contractor once more presents the reviewed services, the contracting authority again has the whole of the scheduled timeframe to carry out verifications of services, as from their renewed presentation by the contractor.

28.2.3. If verification operations have been carried out on the contracting authority's premises, the contractor has fifteen days, as from notification of the decision to adjourn, to remove the services covered by the adjournment decision.

After such time, the verified services may be removed or destroyed by the contracting authority, at the contractor's expense.

Adjourned services, which, if kept on the contracting authority's premises, constitute a danger or an unbearable nuisance, may be immediately removed or destroyed, at the contractor's expense, after the latter has been informed thereof.

28.3. Reduction

If the contracting authority considers that, despite not being entirely compliant with contractual stipulations, services may nevertheless be accepted as they stand, it can accept them with reduction in price *pro rata* to the extent of the recorded imperfections. Such a decision must be motivated. It can only be notified to the contractor after the latter has been invited to express its comments.

If the contractor does not express any comments within fifteen days following the acceptance decision with reduction, it is considered to have accepted such decision. If the contractor formulates comments within this timeframe, the contracting party then has fifteen days to notify a new decision. If no new notification is made, the contracting authority is considered as having accepted the contractor's comments.

28.4. Rejection

28.4.1. If the contracting authority considers that services are not compliant with contractual stipulations and cannot be accepted as they stand, it rejects them partially or totally.

The decision to reject must be motivated. It can only be taken after the contractor has been invited to express its comments.

28.4.2. In the event of rejection, the contractor shall once more perform the services for which provision is made in the contract.

28.4.3. The contractor has one month as from notification of the decision to reject to remove the rejected services. After this timeframe, they may be destroyed or removed by the contracting authority, at the contractor's expense.

Rejected services, which, if kept on the contracting authority's premises constitute a danger or an unbearable nuisance, may be immediately removed or destroyed, at the contractor's expense, after the latter has been informed thereof.

28.5. If the poor quality or malfunction of supplies or equipment supplied by the contracting authority, within the framework of services, is the cause of lack of conformity of the services with contractual stipulations, the contracting authority cannot take a decision to adjourn, reduce or reject:

— if the contractor has, within fifteen days of the date when it was able to note such, informed the contracting authority of the defective supplies or equipment remitted, with reservations concerning hidden defects which could not be detected with the means at hand;

— and if the contracting authority decided that supplies or equipment should nevertheless be used and notified its decision to the contractor.

ARTICLE 29

TRANSFER OF OWNERSHIP

Acceptance of supplies or equipment acquired by the contracting authority results in transfer of ownership thereof.

Transfer of ownership of services subject to intellectual property rights is carried out, where relevant, in application of article 38.

ARTICLE 30

WARRANTY

30.1. Services are covered by a minimum warranty of one year. The starting point for the term of the warranty is the date of notification of the acceptance decision.

30.2. Under the terms of this warranty, the contractor undertakes to repair or replace at its expense the part of the services recognised as being defective, with the exception of the case where malfunction may be attributed to the contracting authority.

This warranty also covers expenses related to staff travelling, packaging and transport of equipment required to repair or replace, whether such operations are carried out at the place where the services are used or whether the contractor has negotiated for the supply to be returned to its premises for such end.

If, during repair, downtime results in prejudice to the contracting authority, the latter may demand equivalent replacement equipment.

The term of warranty is extended by the period of downtime.

30.3. The time the contractor has to carry out a revision or repair requested is fixed by the specific contract documents or, by default, by the contracting authority's decision after consulting the contractor.

30.4. During the term of the warranty, the contractor must carry out the repairs required by the contracting authority. It may request payment thereof if it can justify that there are no grounds for applying the warranty.

Comments

At the end of the warranty term, any securities that may have been set up are freed in the conditions for which provision is made by article 103 of the public contracts code.

30.5. Extension of the term of warranty

If, after expiry of the term of warranty, the contractor has not carried out the required repairs, this term is extended until such repairs have been completely made.

Comments

The foregoing stipulations do not preclude specific contract documents from defining specific guarantees, where certain categories of services are concerned. In this case, the contract fixes the terms, conditions and effects of such guarantees on the parties' respective obligations.

30.6. Guarantee of conformity of standard software

in the specific contract documents.

As such, during the term of the warranty, the owner corrects any operating anomaly of its software with regard to contractual specifications free of charge.

If the anomaly is noted on standard software of which the contractor is not the publisher, the contractor implements the guarantee clauses provided for by the standard software publisher in question, of which the contracting authority was previously made aware. Correction is carried out free of charge.

With regard to application of this article 30.6, the contracting authority drafts a written report of such anomalies and provides all necessary elements for them to be identified by the contractor. This report must be brought to the knowledge of the contractor as soon as the anomaly is noted by the contracting authority.

30.7. Free software

Free software is used as it stands.

The contractor is not liable for damages which might occur as a result of use, by the contracting authority, of free software of which it is not the publisher.

CHAPTER 6

DEDICATED PROVISIONS REGARDING MAINTENANCE, APPLICATION MANAGEMENT AND FACILITIES MANAGEMENT

ARTICLE 31

DEFINITIONS

31.1. Maintenance and application maintenance

"Maintenance" designates services enabling equipment to be maintained in operational condition, preventively or correctively.

"Application maintenance" designates services which consist in preserving an IT programme in a state which enables it to fulfil its function. Such services for maintaining equipment in operational condition are carried out preventively or correctively. They may also concern software upgrade services.

These services may be provided on the contracting authority's site or remotely on the contractor's premises.

Hardware maintenance services may be included in an application maintenance contract.

"Preventive" means maintenance measures carried out to prevent the occurrence of anomalies.

"Corrective" means measures which consist in correcting anomalies.

"Upgrade" means maintenance measures aimed at updating or adapting one of several applications, with a view to integrating new functions, enhancing operation or taking into account new legislative or regulatory provisions.

31.2. Facilities Management.

31.2.1. "Facilities Management (FM)" designates outsourcing of management or operational services of all or part of the contracting authority's IT system.

FM may cover application maintenance services or hosting of infrastructures.

"Remote Facilities Management" means all services carried out on the contractor's premises.

"On-site Facilities Management" means all services carried out by the contractor on the contracting authority's site.

The specific contract documents define:

- the levels of services, i.e. the agreed levels for quality indicators with regard to services which the contractor undertakes to achieve;
- the means implemented to this end, the conditions of performance and the means enabling the achieved service level to be measured;
- the sanctions applicable if scheduled levels are not respected.

31.2.2. An FM service may be global or partial.

Global FM service concerns comprehensive responsibility for the following functions:

- development or operation of all or part of the applications;

- operation of IT processing centres.

Partial FM service may concern IT operation or application management.

Comments

There are two forms of Facilities Maintenance (FM):

Operational FM which consists in the contractor's being totally or partially responsible for the contracting authority's "IT operation" function. In this case, the specific contract documents specify whether the contractor assumes hosting, administration or updating:

- of the micro-computer base;
- of the server base;
- of operating software;
- of the network.

Application FM which consists in the contractor's being totally or partially responsible for operations and upgrading (and possibly for development) of one or several of the contracting authority's applications. This is also known as Information System Application FM.

31.3. The transition period.

The transition period is the time during which the contracting authority carries out transfer of technical responsibility of the functions it performs or which are performed by a third party service provider whose contract is due to end, to the contractor of the new FM contract.

The maximum duration for the transition period is six months. This period begins on the date of notification of the contract. During the transition period, the contractor sees to the migration of services currently being performed by or for the contracting authority to services performed by the contractor.

31.4. "Reversibility" designates the operation whereby technical responsibility is returned and the contracting authority resumes the services with which it had entrusted the contractor of the FM contract whose end was due.

"Transferability" designates the operation of transfer of technical responsibility, by which the contracting authority has a new contractor take over the services with which it had entrusted the contractor of the FM contract whose end was due.

The period of reversibility or transferability is the time covering the previously-defined return or transfer of technical responsibility.

The "reversibility or transferability plan" is the document appendixed to the specific conditions of contract which describes the duration and conditions for implementing reversibility or transferability.

ARTICLE 32

MAINTENANCE OF SERVICES

32.1. Conditions of maintenance.

If specific contract documents make provision for maintenance of services delivered, these include operations requested by the contracting authority, in case of malfunction of any one item within the terms of the contract, as well as preventive maintenance.

Maintenance also covers modifications made to services delivered at the contractor's initiative. The contracting authority is informed of such modifications upstream; it can oppose them.

The contracting authority can only have contractually unscheduled maintenance operations carried out once the contractor agrees to such.

32.2. Access to the contracting authority's premises for maintenance operations.

32.2.1. If maintenance is carried out on the contracting authority's premises, operations are completed within a mentioned time-slot called the intervention period.

The countdown of the period during which the contractor has to meet a request for intervention only runs from the intervention period defined in the specific contract documents.

The intervention period goes from 8 am to 6 pm, from Mondays to Fridays, exclusive of bank holidays.

32.2.2. The contracting authority ensures that the contractor's agents tasked with maintenance and approved by the contracting authority have access to its premises.

It may withdraw its approval via a motivated decision of which it informs the contractor. During the time they are present on the contracting authority's premises, the contractor's agents are subject to the access and security rules drawn up and communicated to the contractor by the contracting authority.

ARTICLE 33

STOPPING PERFORMANCE OF SERVICES

At the end of the transition period, the contracting authority may decide to stop performance of services, either on its own initiative, or at the contractor's request, on condition that the service covering the transition period be stipulated in the specific contract documents and for which an amount has been fixed.

Stopping performance of services implies termination without compensation for the contract in application of article 41.3.

ARTICLE 34

REVERSIBILITY AND TRANSFERABILITY

During the period that reversibility or transferability is implemented, the contractor of the contract due to end, depending on the case and needs, provides the contracting authority or the new contractor with access to hardware and software, provided that such access does not affect the aptitude of the contractor holding the contract whose end is due from providing the services required by the terms thereof.

CHAPTER 7

USE OF RESULTS

ARTICLE 35

DEFINITION OF RESULTS

In the meaning of this chapter:

35.1. "Results" designates all elements, regardless of form, nature and medium, resulting from the performance of services covered by the terms of the contract, such as, in particular, works, software, updating or new versions thereof, databases, distinctive signs, domain names, information, websites, reports, studies, brands, designs or models, inventions, patentable or not in the meaning of the intellectual property code, and, generally speaking, all items, protected or not by intellectual property rights or by any other form of protection, such as expertise, business secrets or image rights with regard to property or people.

35.2. "Expertise" is a group of practical, unpatented information, resulting from experience and tested, which is:

1° Secret, i.e. not generally known or easily accessible;

2° Substantial, i.e. important and useful for producing results;

3° Identified, i.e. described in a sufficiently complete way as to make it possible to check that it fulfils the conditions of secrecy and substantiality.

Comments

The definition of expertise is taken from European Commission regulation # 772/2004 "Technology Transfer Agreements".

35.3. "Prior knowledge" designates all elements, regardless of form, nature and medium, which do not result from the performance of services covered by the terms of the contract, such as, in particular, works, software, updating or new versions thereof, databases, distinctive signs, domain names, information, websites, reports, studies, brands, designs or models, inventions, patentable or not in the meaning of the intellectual property code, and, generally speaking, all items, protected or not by intellectual property rights or by any other form of protection, such as expertise, business secrets or image rights with regard to property or people and which, on the day of notification of the contract, belong to the contractor or third parties or which are assigned to them under license.

Prior knowledge is stipulated in the specific contract documents.

35.4. "Third parties designated in the contract" covers people stipulated in the specific contract documents who enjoy the same rights and who are subject to the same obligations as the contracting authority for the use of results.

The list of these designated third parties is set out in the specific contract documents.

ARTICLE 36

PRIOR KNOWLEDGE REGIME

36.1. Entering into the contract does not imply transfer of intellectual property rights or rights of any other nature relating to prior knowledge. The contracting authority, contractor and third parties designated in the contract remain holders, each insofar as it is concerned, of intellectual property rights or rights of any other nature relating to prior knowledge.

36.2. If the contractor includes prior knowledge in the results or uses prior knowledge available under a regime of free license, or if prior knowledge, without being included in the results, is strictly necessary for the results to be implemented, the contractor grants the contracting authority and third parties designated in the contract, on a non-exclusive basis, the right to permanently or temporarily use, totally or partially, by any means and in any form, such prior knowledge as is strictly necessary to use the results which were the aim of the contract. This right includes the right to reproduce, duplicate, load, display, store, perform and represent prior knowledge for the use of results.

Granting rights on prior knowledge is included in the contract price. The rights are granted for the same length of time as rights for the use of results.

Rights to modify, adapt and translate are exercised if the need arises under in the conditions for which provision is made in the specific contract documents.

36.3. During the course of performance of the contract, the contractor may not, without the contracting authority's prior consent, use or include prior knowledge necessary to carry out the aim of the contract that would be such as to limit or increase the cost of exercising results-related rights.

ARTICLE 37

INTELLECTUAL PROPERTY RIGHTS REGIME RELATING TO STANDARD SOFTWARE

37.1. Extent of assigned rights.

The contractor grants the contracting authority and third parties designated in the contract, on a non-exclusive basis, for France and for the legal duration of copyright, the right to use or have used in the meaning of article L. 122-6 (1°) of the intellectual property rights code, standard software(s) and related literature for needs arising from the aim of the contract, within the limit of any restrictive conditions for which provision was made and which were accepted by the contracting authority in the specific contract documents. In the event of publication on Internet, rights are granted for the whole world.

Comments

Restrictive conditions may make reference to the contractor's standard licenses conditions.

The contractor may not reserve the exclusive right to carry out corrections necessary to use (the) standard software(s) in compliancy with their aim.

The contractor authorises the contracting party to freely extract and exploit databases which may be included in results, in particular with a view to making public information available to be re-used free of charge or against payment.

37.2. Availability of source codes.

Source codes are accessible in the conditions for which provision is made in the specific contract documents.

Comments

The opportunity to make provisions in the SCC, for a clause providing for the supply of source codes must be assessed on a case-by-case basis, depending on (the) software(s) used within the scope of the contract. The technical possibility, for the contractor, to supply source codes may in fact depend on the conditions laid down by the publisher of the software in question. Consequently, the public purchaser is invited to adapt SCC requirement level with the technical offer available on the economic market.

37.3. Other dispositions

37.3.1. In the event of assigning a contract for whatsoever reason, the contracting authority and third party designated in the contract remain the licensees of all rights of use regarding results and prior knowledge, necessary for the needs arising from the aim of the contract.

37.3.2. The contracting authority and third parties designated in the contract may sub-license or sub-contract implementation of results for their own account, within the limits of the aim of the contract.

37.3.3. For a period of two years, the contractor shall, at the request of the contracting authority and third parties designated in the contract, provide assistance essential to exercising assigned rights.

In particular, the contractor must:

a) Remit within a maximum period of two months as from receipt of request all designs, plans, documents, templates and models required for implementing the results. This period may be extended by the contracting authority, at the contractor's request, for those items which cannot be made available without significant additional work;

b) Assist the contracting authority and third parties designated in the contract by its technical advice and temporary help of its specialised staff, as well as by communicating all manufacturing processes and expertise which it might have used to carry out services and which would be required to use the results in line with the needs arising from the aim of the contract.

The specific contract documents set out the technical and financial terms for providing such assistance.

37.3.4. Guaranteeing rights.

1. The contractor guarantees the contracting authority and third parties designated in the contract full and complete enjoyment, free from any encumbrance, of rights assigned within the terms of the contract. As such, it guarantees:

— that it is holder or has assigned rights regarding results and prior knowledge;

— that it compensates the contracting authority and third parties designated in the contract, in the absence of a fault that may be directly attributable to them, without benefit of division and discussion, against any proceedings, claim or opposition from any person invoking a right which use of results and prior knowledge in accordance with the provisions of articles 36 and 37 might have adversely affected.

If the contracting authority or third parties designated in the contract are sued for infringement, unfair competition or parasitism without any fault on their part, as a consequence of the use of results and prior knowledge in accordance with the provisions of articles 36 and 37, they shall immediately inform the contractor thereof who can then intervene in the legal proceedings;

— that it undertakes, in such eventualities, to provide the contracting authority and third parties designated in the contract with all the necessary assistance at its own cost;

— that it undertakes, according to its own choice, (i) to modify or replace items which are the subject of the dispute, in such a way that they are no longer affected by the claim, while at the same time remaining compliant with contractual specifications, (ii) to take such steps to ensure that the contracting authority and any third party designated in the contract may use the items in dispute without limitation or additional cost, or, (iii) in the event of one of these solutions not being able to be reasonably implemented, reimburse the contracting authority and third parties designated in the contract for payments made for items which are the subject of dispute and compensate them for the damage suffered.

In these events, the contractor meets all damages to which the contracting authority and any third party designated in the contract, in the absence of a fault that may be directly attributable to them, to which they would be sentenced on grounds of infringement, unfair competition or parasitism, as a consequence of the use of results and prior knowledge in accordance with the provisions of articles 36 and 37, from the moment that the sentence pronouncing such becomes enforceable.

The contractor guarantees the assigned rights relating to results or prior knowledge for the contracting authority and third parties designated in the contract, for any transfer or assignment of rights relating to results or prior knowledge.

2. The contractor's liability is not engaged for any allegation concerning:

— prior knowledge which the contracting authority and third parties designated in the contract supplied to the contractor for performing the contract;

— items included in the results at the express request of the contracting authority and third parties designated in the contract;

— modifications or adaptations of results, if the cause of the allegation has its grounds in a modification or adaptation made by the contracting authority or third parties designated in the contract or at their express request.

ARTICLE 38

REGIME OF INTELLECTUAL PROPERTY RIGHTS OR RIGHTS OF ANY OTHER NATURE RELATING TO RESULTS, EXCLUDING STANDARD SOFTWARE

This article comprises two alternative options: A and B.

The specific contract documents stipulate the chosen option; if such is not the case, option A is applied.

OPTION A. — Garanting of rights to use results

Article A.38. — The contractor grants, on a non-exclusive basis, to the contracting authority and third parties designated in the contract, the right to use results or have them used, as they stand or modified, permanently or temporarily, totally or partially, by any means and in any form. Such assignment is only valid for the needs arising from the aim of the contract and for France. In the event of publication on Internet, rights are granted for the whole world.

Such granting of rights covers the results, as from the moment they are delivered and under the resolutory condition that services are accepted.

The right to use results does not cover commercial exploitation thereof.

The contracting authority and third parties designated in the contract do not, as a result of the contract, become right-holders with regard to results, the ownership of whose inventions arose out of, were developed or were used for the performance of the contract.

The price of such assignment is a lump sum included in the amount of the contract.

Comments

The aim of the contract must be clearly drafted in such as way as the various modes envisaged for exploiting the results are identified or identifiable. Rights relating to results are in effect granted for the sole needs arising from the aim of the contract.

In the case of licenses or software, the specific contract documents need to define the number of copies or users of software as well as future updating of the number for the contracting authority. If it is not possible to define *a priori* the conditions of software use for these future needs, option B which makes provision for assigning rights may be envisaged.

During competitive procedures, the contracting authority may authorise a variant inviting candidates to submit their bid with the option not selected *a priori*.

A.38.1. Rights of the contracting authority and third parties designated in the specific contract documents.

A.38.1.1. Results protected by a right of literary and artistic property.

1. The contractor grants, on a non-exclusive basis, to the contracting authority and third parties designated in the contract, economic rights of copyright or related rights with regard to results, for needs arising from the aim of the contract.

Such granting of rights covers the results, as from the moment they are delivered and under the resolutory condition that services are accepted, for France and for the legal duration of copyright and related rights.

These rights include all economic rights of reproduction and representation and in particular rights to duplicate, load, display, store, perform, adapt, arrange, correct, translate, incorporate, as well as the right to communicate to third parties the results for non-commercial ends, in particular for information and promotion.

2. Rights relating to results in the form of software comprise, in addition, the right to evaluate, observe, test, analyse, decompile, for needs arising from the aim of the contract, in compliance with

the provisions of the intellectual property code.

3. Source codes of software and dedicated software and the documentation necessary for implementing rights with regard to results are delivered simultaneously with the object code. Source codes and documentation are confidential.

A.38.1.2. Results protected by a right of industrial property.

1. If results give rise to filing a request for industrial property, such as, in particular, brands, patents, utility certificates, additional protection certificates, semi-conductor topographies, designs and models, the contractor grants the contracting authority and third parties designated in the contract a non-exclusive license for use of intellectual property rights regarding results, for needs arising from the aim of the contract.

Such assignment of rights covers the results, as from the moment they are delivered and under the resolutory condition that services are accepted, for France and for the legal duration of copyright and related rights.

2. The price of this license is included in the amount of the contract for titles or requests for titles which have been filed after notification of the contract, and for those covered by filing during the period between the initial written consultation of the contracting authority and notification of the contract. The same goes for assignment of rights of use pertaining to results which are not protected by industrial property titles or requests for titles.

3. The contractor completes all the formalities required to render the operating license effective against third parties, in all territories where rights are granted. The cost of such formalities in included in the amount of the contract.

A.38.1.3. Results falling under other protection regimes.

1. The contractor authorises the contracting authority and third parties designated in the contract to implement the necessary expertise for using results or using the results covered by expertise and business secrets, provided that confidentiality is preserved.

2. The contractor authorises the contracting authority and third parties designated in the contract to freely extract and re-use databases included in results, in particular with a view to making public information available to be re-used free of charge or against payment.

3. The contractor authorises the contracting authority and third parties designated in the contract to use domain names which are part of results, as well as images of property and people included in the results.

A.38.2. Joint provisions

A.38.2.1. Generally speaking, the contractor may not oppose its rights, intellectual property titles or rights of any other nature to the use of results, if such is in line with needs arising from the aim of the contract.

In particular, the contractor may oppose no right concerning graphic appearance, menu sequences and titles or commands which would be such as to limit the needs for upgrading, adaptation, translation or including results, in particular with an end to interoperability with other systems and software.

A.38.2.2. In the event of transferring a contract for whatsoever reason, the contracting authority and third parties designated in the contract remain the licensees of all rights of use regarding results and prior knowledge, necessary for the needs arising from the aim of the contract.

A.38.2.3. The contracting authority and third parties designated in the contract may sub-license or sub-contract implementation of results for their own account, within the limits of the aim of the contract.

A.38.2.4. The contracting authority and third parties designated in the contract may freely publish results after informing the contractor thereof, subject to any obligations of confidentiality fixed by specific contract documents and provided that such publication does not constitute disclosure in the meaning of the intellectual property code.

The existence of restrictions to the right to publish results does not prevent publication of general information regarding the existence of the contract and the nature of results.

Limits to the ability to publish cannot be opposed to the possibility, for the contracting authority and third parties designated in the contract, to implement their rights, communicate such results to third parties, totally or partially, in respect of article 5.1.

Any publication must mention the name of the contractor and authors.

A.38.2.5. Parties mutually inform each other of modifications they wish to carry out on results with a view to collecting useful comments from the other party. They grant each other free disposal of minor modifications and corrections made to results.

A.38.2.6. For a period of two years, the contractor shall, at the request of the contracting authority and third parties designated in the contract, provide assistance essential to exercising assigned rights.

In particular, the contractor must:

a) Remit within a maximum period of two months as from receipt of request all designs, plans, documents, templates and models required for implementing the results. This period may be extended by the contracting authority, at the contractor's request, for those items which cannot be made available without significant additional work;

b) Assist the contracting authority and third parties designated in the contract by its technical advice and temporary help of its specialised staff, as well as by communicating all manufacturing processes and expertise which it might have used to carry out services and which would be required to use the results in line with the needs of the aim of the contract.

The specific contract documents set out the technical and financial terms for providing such assistance.

A.38.3. Guaranteeing rights

A.38.3.1. The contractor guarantees the contracting authority and third parties designated in the contract full and complete enjoyment, free from any encumbrance, of rights assigned within the terms of the contract. As such, it guarantees:

— that it is the holder or has assigned rights regarding results and prior knowledge;

— that it compensates the contracting authority and third parties designated in the contract, in the absence of a fault that may be directly attributable to them, without benefit of division and discussion,

against any proceedings, claim or opposition from any person invoking a right which use of results and prior knowledge in accordance with the provisions of articles 36 and A.38 might have adversely affected. If the contracting authority or third parties designated in the contract are sued for infringement, unfair competition or parasitism without any fault on their part, as a consequence of the use of results and the contractor's prior knowledge in accordance with the provisions of articles 36 and A.38, they shall immediately inform the contractor thereof who can then intervene in the legal proceedings;

— that it undertakes, in such eventualities, to provide the contracting authority and third parties designated in the contract with all the necessary assistance at its own cost;

— that it undertakes, according to its own choice, (i) to modify or replace items which are the subject of the dispute, in such a way that they are no longer affected by the claim, while at the same time remaining compliant with contractual specifications, (ii) to take such steps to ensure that the contracting authority and any third party designated in the contract may use the items in dispute without limitation or additional cost, or, (iii) in the event of one of these solutions not being able to be reasonably implemented, reimburse the contracting authority and third parties designated in the contract for payments for items which are the subject of dispute and compensate them for the damage suffered.

In these events, the contractor meets all damages to which the contracting authority and any third party designated in the contract, in the absence of a fault that may be directly attributable to them, to which they would be sentenced on grounds of infringement, unfair competition or parasitism, as a consequence of the use of results and prior knowledge in accordance with the provisions of articles 36 and A.38, from the moment that the sentence pronouncing such becomes enforceable.

The contractor guarantees the assigned rights regarding results or prior knowledge for the contracting authority and third parties designated in the contract, for any transfer or assignment of rights relating to results or prior knowledge.

A.38.3.2. The contractor's liability is not engaged for any allegation concerning:

— prior knowledge which the contracting authority and third parties designated in the contract supplied to the contractor for performing the contract;

— items included in the results at the express request of the contracting authority and third parties designated in the contract;

— modifications or adaptations of results, if the cause of the allegation has its grounds in a modification or adaptation made by the contracting authority or third parties designated in the contract or at their express request.

A.38.4. Contractor's rights

A.38.4.1. The contractor has property of rights and titles concerning results.

The contractor may exploit, including commercially, the results created within the framework of the contract, subject to the agreement of the contracting authority or third parties designated in the contract for prior knowledge made available to it by the latter for performance of the contract.

A.38.4.2. The contractor undertakes that exploiting results does not jeopardise the rights or image of the contracting authority or third parties designated in the contract.

A.38.4.3. The contractor may publish results provided obligations of confidentiality fixed in article 5 are respected, possibly completed by specific contract documents, and that the contracting authority or third parties designated in the contract give their agreement if results include prior knowledge made available to it by the latter for performance of the contract.

Publication must mention that the results were financed by the contracting authority.

A.38.5. Fees

A.38.5.1. The contractor pays a fee to the contracting authority, in the event of commercial exploitation of all or part of the results, whether these be separate or incorporated in products or services, or in the case of total or partial assignment of rights of use regarding results.

The fee is calculated on the basis of 30% of the exclusive of tax amounts received by the contractor, after deduction of manufacturing and marketing costs. These costs may be taken into account on a lump sum basis, possibly as a percentage of amounts received. In any case, when manufactured products incorporating results are marketed, the fee may not be less than 2% of the exclusive-of-tax amounts received, ex-works, exclusive of packaging.

The amount of the fee is equal to the product of this basis multiplied by a weighting coefficient representing the portion, in the total cost of development of the products or services marketed by the contractor, of amounts financed by the contracting authority and third parties designated in the contract and prior knowledge made available by the latter.

A.38.5.2. The fee is, however, determined as a lump sum in the following cases:

— the basis for calculating the proportional participation cannot be determined in any practical manner;

— there are no means to check application of participation;

— the costs of calculating and checking operations would be out of proportion with the results to be achieved;

— in case of transfer of rights regarding software in accordance with the provisions of article L. 131-4 of the intellectual property code.

A.38.5.3. The specific contract documents determine how the fee is calculated.

A.38.5.4. The contractor pays the fee for the length of time all or part of the results are used.

A.38.5.5. In case of sale, hire or concession contract, the contractor must inform the contracting authority within one month, as from the conclusion of the relevant contract. It must then send to the contracting authority, in the month following the end of each calendar half-year, a statement of sales, hire or concession contracts entered into during the half-year and a statement of amounts to be taken into account during this period for calculating payments.

These payments must be made by the contractor within thirty days as from reception of a payment order notified by the contracting authority. Beyond this time, due amounts shall include interest on arrears. The contractor shall ensure that the contracting authority has the means to check the accuracy of statements provided. Specific contract documents determine how the contracting authority carries out its checks.

A.38.5.6. When the amount of fees paid by the contractor is equal, at constant economic conditions, to the exclusive-of-tax amounts paid by the contracting authority within the scope of the contract, no further payment needs to be made.

The amounts taken into account to note such equality are those, at constant economic conditions, by reference to the consumer price index published by the *Institut national de la statistique et des études économiques* (INSEE).

A.38.6. Commercial use of results made by the contracting authority or third parties designated in the contract.

The provisions of this article are only applied if express provision is made in the specific contract documents for commercial use.

A.38.6.1. As a complement to articles A.38.1, A.38.2, A.38.3, A.38.4 and A.38.5, the contractor authorises the contracting authority and third parties designated in the contract to make commercial use of the results for the duration, territory, modes of exploitation and fee defined in the specific contract documents.

The contractor relieves the contracting authority and third parties designated in the contract from any legal or treaty-based obligation with regard to the contractor's employees or principals.

A.38.6.2. In compensation for this commercial use, the contracting authority pays the contractor a fee, if the amount of revenue from commercial use of results exceeds the amount paid by the contracting authority. This fee is calculated in accordance with the terms of article A.38.5, within the limit of an amount equal to that of the contract, at constant economic conditions.

OPTION B. — Exclusive transfer of the contractor's rights to the contracting authority

Article B 38. — The contractor assigns, on an exclusive basis, all rights or titles of any nature regarding results, enabling the contracting authority to exploit them freely, including for commercial ends, for purposes set out in the specific contract documents.

The specific contract documents may provide for the contracting authority benefiting from the assignment to be able to re-assign or grant the contractor on a non-exclusive basis certain rights of use.

The territory, duration, modes of exploitation of rights granted and the price are defined in the specific contract documents.

The contractor remains solely responsible with regard to its employees and third parties operating on its behalf.

Comments

The rights of use relating to results are granted solely to the contracting authority. The contracting authority may grant certain rights to third parties.

The amount of the fee due by the contractor, within the scope of commercial exploitations in particular which partial transfer or non-exclusive assignment might authorise it to carry out, must be determined in the specific contract conditions.

B.38.1. The contracting authority's rights.

B.38.1.1. Results protected by a right of literary and artistic property.

1. The contractor grants to the contracting authority economic rights of copyright and related rights regarding results, for the territory(-ies), duration, modes of exploitation of the rights granted and the price stipulated in the specific contract documents.

Such transfer of rights covers the results once disclosed, as from the moment they are delivered and provided that services are accepted.

These rights include all economic rights of reproduction and representation and in particular rights to adapt, arrange, correct, translate and incorporate with regard to results, as well as the right to distribute results for commercial ends for modes of exploitation for which provision is made in the specific contract documents.

2. For modes of exploitation provided for in the specific contract documents, the right to reproduce comprises, if needs be, the right to reproduce results, without being limited in number, totally or partially, as they stand or modified, by any process and on any medium, including media which are not foreseeable or are unknown when the contract is signed, with a view to exploitation, in particular for commercial purposes, subject to remuneration to be agreed for future modes of exploitation, unknown on the day the contract was signed.

3. For modes of exploitation provided for in the specific contract documents, the right to represent and distribute comprises, if needs be, the right to communicate results to the public and make them available to the public, totally or partially, as they stand or modified, by any means, modes and processes, including those that are not foreseeable or are unknown when the contract is signed, with a view to exploitation, in particular for commercial purposes, subject to remuneration to be agreed for future modes of exploitation, unknown on the day the contract was signed.

Source codes and documentation required for implementing rights with regard to results are delivered, on a machine-readable medium, at the same time as the object code. Source codes are confidential.

B.38.1.2. Results protected by a right of industrial property.

1. The contractor informs the contracting authority of any result which has been identified as being reasonably liable to be protected by an industrial property title.

2. The contractor authorises the contracting party to file any request or industrial property title to protect the results, in the name and at the expense of the contracting authority. The contractor acts with due diligence to enable the contracting authority to file industrial property titles. With this end in view, it communicates to the contracting authority any information and authorisations required to obtain industrial property rights relating to results.

3. In the event of registration of titles, the contractor grants the contracting authority (i) full and complete ownership of industrial property titles and requests for titles relating to results which it has filed, (ii) convention priority right possibly attached to industrial property titles and requests for titles, (iii) the right to instigate proceedings for any act of infringement, unfair competition or parasitism prior or subsequent to the date when the contract was signed.

B.38.1.3. Results falling under other protection regimes.

1. The contractor transfers, exclusively, definitively and irrevocably to the contracting authority the right to use the results covered by expertise or business secrets.

2. The contractor transfers to the contracting authority the right to use databases which may be included in the results.

3. The contractor transfers, exclusively, the domain names that have been filed.

B.38.2. Joint provisions

B.38.2.1. Generally speaking, the contractor may not oppose its rights, intellectual property titles or rights of any other nature to the use of results.

B.38.2.2. In the event of transferring a contract for whatsoever reason, the contracting authority remains the transferee of all rights of use regarding results.

B.38.2.3. The contractor may publish the results, subject to the stipulations of article 5 and the prior agreement of the contracting authority.

The existence of restrictions to the right to publish results does not prevent publication of general information regarding the existence of the contract and the nature of results.

Such publication must mention that the results were financed by the contracting authority.

B.38.2.4. For a period of two years, the contractor shall, at the request of the contracting authority, provide assistance essential to exercising rights required to exploit results.

In particular, the contractor must:

a) Remit within a maximum period of two months as from receipt of request all designs, plans, documents, templates and models required for implementing the results. This period may, at the contractor's request, be extended by the contracting authority, at the contractor's request, for those items which cannot be made available without significant additional work;

b) Assist the contracting authority by its technical advice and temporary help of its specialised staff, as well as by communicating all manufacturing processes and expertise which would be required to use the results.

The specific contract documents set out the technical and financial terms for providing such assistance.

B.38.3. Guaranteeing rights

B.38.3.1. The contractor guarantees the contracting authority full and complete enjoyment, free from any encumbrance, of intellectual property rights or rights of any nature relating to results transferred under the terms of the contract.

The contractor guarantees:

— that it is holder of intellectual property rights for the requests for title and titles it transfers;

— that it is holder of or has the assigned rights regarding prior knowledge;

— that, with regard to results, titles and requests for titles, it has granted no license, pledge, security nor any other right for the benefit of a third party;

— that no dispute exists, currently or imminently, and that it has not been informed of any dispute

liable to give rise to proceedings with regard to the rights transferred;

— that it compensates the contracting authority, in the absence of a fault that may be directly attributable to it, without benefit of division and discussion, against any proceedings, claim or opposition from any person invoking a right which use of results and the contractor's prior knowledge in accordance with the provisions of articles 36 and B.38 might have adversely affected. If the contracting authority is sued for infringement, unfair competition or parasitism without any fault on its part, as a consequence of the use of results and the contractor's prior knowledge in accordance with the provisions of articles 36 and B.38, it shall immediately inform the contractor thereof who can then intervene in the legal proceedings;

— in these eventualities, it provides the contracting authority with all the necessary assistance at its own cost;

— that it undertakes, according to its own choice, (i) to modify or replace items which are the subject of the dispute, in such a way that they are no longer affected by the claim, while at the same time remaining compliant with the contractual specifications, (ii) to take such steps to ensure that the contracting authority may use the items in dispute without limitation or additional cost, or, (iii) in the event of one of these solutions not being able to be reasonably implemented, reimburse the contracting authority for payments for items which are the subject of dispute and compensate it for the damage suffered.

In these events, the contractor meets all damages to which the contracting authority, in the absence of a fault that may be directly attributable to it, would be sentenced on grounds of infringement, unfair competition or parasitism, as a consequence of the use of results and the contractor's prior knowledge in accordance with the provisions of articles 36 and B.38, from the moment that the sentence pronouncing such becomes enforceable.

B.32.3.2. The contractor's liability is not engaged for any allegation concerning:

— prior knowledge which the contracting authority supplied to the contractor for performing the contract;

— items included in the results at the express request of the contracting authority;

— modifications or adaptations of results, if the cause of the allegation has its grounds in a modification or adaptation made by the contracting authority or at its express request.

B.38.4. Contractor's rights

B.38.4.1. The contractor undertakes, as from the date of transfer of rights, not to grant any license, nor use or exploit the results transferred in any way whatsoever.

B.38.4.2. The contractor conserves its own rights, including those of exploitation, regarding prior knowledge included in the results, in accordance with the provisions of article 36.

The contractor may use the results, including for commercial purposes, with the prior and written consent of the contracting authority in the conditions provided for by the specific contract documents.

CHAPTER 8

TERMINATION

ARTICLE 39

GENERAL PRINCIPLES

The contracting authority may terminate the performance of services within the scope of the contract before these have been completed either at the contractor's request in conditions provided for in article 41, or for the contractor's misconduct in conditions provided for in article 42, or in the case of specific circumstances mentioned in article 40.

The contracting authority may, at any time, also terminate the performance of services on grounds of general interest. In this case, the contractor is entitled to be compensated for the damage suffered as a result of such decision, in accordance with terms provided for in article 43.

The decision to terminate the contract is notified to the contractor. Subject to the specific provisions mentioned below, termination takes effect at the date fixed in the decision for termination or, by default, at the date of notification thereof.

ARTICLE 40

TERMINATION FOR EVENTS OUTSIDE THE CONTRACT

40.1. Demise or civil incapacity of the contractor

In the event of the contractor's demise or civil incapacity, the contracting authority may terminate the contract or accept its continuation by the right-holders or administrator. A transfer rider is drawn up to this end.

If declared, termination takes effect from the date of demise or civil incapacity. It does not give rise to entitlement to any compensation for the contractor or its right-holders.

40.2. Judicial reorganisation or winding-up by the court

In the event of judicial reorganisation, the contract is terminated if, after formal notice from the receiver, in the conditions provided for in article L. 622-13 of the commercial code, the latter indicates that it is not taking over the contractor's obligations.

In the event of the contractor being wound up by the court, the contract is terminated if, after formal notice from the receiver, in the conditions provided for in article L. 622-13 of the commercial code, the latter indicates that it is not taking over the contractor's obligations.

If declared, termination takes effect from the date of the event. It does not give rise to entitlement to any compensation for the contractor.

40.3. The contractor's physical disability

In the event of the contractor's clear and lasting physical disability which jeopardises the smooth completion of the contract, the contracting authority may terminate the contract.

Terminating the contract does not give rise to entitlement to any compensation for the contractor.

ARTICLE 41

TERMINATION FOR EVENTS LINKED TO THE CONTRACT

41.1. Difficulty in carrying out the contract

If, during the course of carrying out the services, the contractor encounters particular technical difficulties, to solve which would require implementing means out of proportion with the amount of the contract, the contracting authority may terminate the contract on its own initiative or at the contractor's request.

If it is impossible for the contractor to carry out the contract as a result of an event which has the character of *force majeure*, the contracting authority may terminate the contract.

41.2. Late service order

If termination is declared at the contractor's request in line with article 3.8.3, the latter is compensated with regard to its expenses and investments undertaken for the contract and strictly necessary for the performance thereof.

41.3. Stopping the performance of services

If stopping the performance of services is pronounced in line with article 33, the contracting authority terminates the contract.

Terminating the contract does not give rise to entitlement to any compensation for the contractor.

ARTICLE 42

TERMINATION FOR MISCONDUCT BY THE CONTRACTOR

42.1. The contracting authority may terminate the contract for misconduct by the contractor in the following cases:

a) The contractor contravenes legal or regulatory obligations relating to work or protection of the environment.

b) Means were placed at the contractor's disposal, and the latter found itself in one of the cases for which provision is made in article 17.

c) The contractor did not fulfil its obligations within the contractual time-limit.

d) The contractor stood in the way of a control being carried out by the contracting authority within the scope of articles 16 and 22.

e) The contractor subcontracted in contravention of legal and regulatory provisions relating to

subcontracting, or it did not respect obligations relating to subcontractors mentioned in article 3.6.

f) The contractor did not produce insurance certificates in the conditions provided for under article 9.

g) Regardless of cases for which provision is made in article 40.1, the contractor declares that it is unable to perform its commitments.

h) The contractor did not communicate the modifications mentioned in article 3.4.2 and these modifications are such that they jeopardise the smooth performance of the contract.

i) During the performance of the contract, the contractor engaged in fraudulent acts.

j) The contractor or the subcontractor does not respect obligations of confidentiality, protection of personal data and security, in line with article 5.

k) In the case of maintenance services, downtime lasted for thirty consecutive days.

l) Use of the results by the contracting authority is seriously compromised, as a result of delays by the contractor in the performance of the contract.

m) After signing the contract, the contractor was banned from exercising any industrial or commercial profession.

n) After signature of the contract, information or documents produced by the contractor in support of its candidature or required prior to attribution of the contract proved to be inaccurate.

42.2. Except in cases for which provision is made in §§i, m and of 42.1 above, formal notice with a time-limit for performance must have been previously notified to the contractor and have remained vain.

Within the scope of formal notice, the contracting authority informs the contractor of the sanction envisaged and invites it to formulate its comments.

42.3. Terminating the contract does not preclude the exercise of civil or criminal proceedings which might be instigated against the contractor.

ARTICLE 43

TERMINATION ON GROUNDS OF GENERAL INTEREST

If the contracting authority terminates the contract on grounds of general interest, the contractor is entitled to termination compensation, calculated by applying to the initial exclusive-of-tax amount of the contract, reduced by the unrevised exclusive-of-tax amount of services received, a percentage fixed by specific contract documents or, failing this, 5%.

In addition, the contractor must be compensated for the portion of expenses and investments which may have been made for the contract and which are strictly necessary for its performance, which would not have been taken into account in the amount paid for services. It is up to the contractor to provide all justifications necessary to determine this portion of compensation within fifteen days of notification of the termination of the contract.

These compensations are entered in the termination account, without the contractor having to

formulate any specific request thereto.

ARTICLE 44

TERMINATION ACCOUNT

44.1. Termination is covered by a termination account, drawn up by the contracting authority and notified to the contractor.

44.2. The liquidation account following on from a decision to terminate taken in line with articles 41 and 43 comprises:

44.2.1. To the contractor's debit

- the amounts paid as advances, payments on account, definitive partial settlement and balance;

- fixed by the contract and any riders, the value of means entrusted to the contractor which it cannot return, as well as the value of taking back means which the contracting authority amicably assigns to the contractor;

- the amount of penalties.

44.2.2. To the contractor's credit

44.2.2.1. The value of services provided to the contracting authority, namely:

- the contractual value of services received, including if necessary any interests on arrears;

- the value of any services provided at the contracting authority's request such as storage of supplies;

44.2.2.2. Expenses engaged by the contractor with a view to performing services that were not provided to the contracting authority, insofar as such expenses have not previously been amortized or cannot be so subsequently, namely:

- he cost of items supplied with a view to performing the contract;

- the cost of installations, equipment and tooling with a view to performing the contract;

- other expenses of the contractor directly related to performance of the contract;

44.2.2.3. Staff expenditure for which the contractor provides proof that they are directly and necessarily caused by the contract's termination.

44.2.2.4. If the termination is made in application of article 43, a lump sum calculated by applying a percentage to the difference between the contract's unrevised exclusive-of-tax amount and the unrevised exclusive-of-tax amount of services accepted. Where no provision is made in the contract, this percentage is 5%. The amount thus calculated will be revised on the date the termination comes into effect in line with the contract's provisions.

44.2.2.5. More generally speaking, any damage suffered as a result of termination by the contractor

and any of its subcontractors or suppliers.

44.3. The liquidation account following on from a decision to terminate taken in line with article 42 comprises:

44.3.1. To the contractor's debit

- the amounts paid as advances, payments on account, definitive partial settlement and balance;

- fixed by the contract and any riders, the value of means entrusted to the contractor which it cannot return, as well as the value of taking back means which the contracting authority amicably assigns to the contractor;

- the amount of penalties.

- any additional expenses resulting from the awarding of a contract at the contractor's expenses and risks in conditions fixed in article 46.

44.3.2. To the contractor's credit

- the contractual value of services received, including any interests on arrears;

- the value of any services provided at the contracting authority's request such as storage of supplies;

44.4. The liquidation account following on from a decision to terminate in line with article 40 or following a request from the contractor comprises:

44.4.1. To the contractor's debit

- the amounts paid as advances, payments on account, definitive partial settlement and balance;

- fixed by the contract and any riders, the value of means entrusted to the contractor which it cannot return, as well as the value of taking back means which the contracting authority amicably assigns to the contractor;

- the amount of penalties.

44.4.2. To the contractor's credit

- the contractual value of services received, including any interests on arrears;

- the value of any services provided at the contracting authority's request such as storage of supplies;

44.5. Notification of the account by the contracting authority must be made at the latest two months after the date the contract's termination comes into effect.

Any late penalties are applied up to the day before the date termination comes into effect.

ARTICLE 45

HAND-OVER OF SERVICES AND MATERIAL MEANS FOR PERFORMING CONTRACTS

In the event of termination, the contracting authority may require the contractor to:

— hand over services currently being carried out as well as items retained with a view to performing the contract;

— hand over material performance means dedicated to the contract;

— take provisional measures, in particular operations of storage or caretaking.

The contracting authority informs the contractor or its right-holders thereof when notifying termination indicating the time-limit for the contractor to hand over such items and the conditions in which they are kept prior to hand-over.

In the event of termination for reasons of contractor misconduct, this article is applied at the contractor's expense.

ARTICLE 46

PERFORMING THE SERVICE AT THE CONTRACTOR'S EXPENSE AND RISK

46.1. Provided the specific contract documents make provision for such and the decision to terminate mentions it expressly, the contracting authority may have a third party perform the services provided for under the contract, at the contractor's expense and risk, either if the latter has not completed a service the nature of which excludes delay, or if the contract is terminated as a result of the contractor's fault.

46.2. If it is not possible for the contracting authority to obtain, in acceptable conditions, services that are exactly compliant with those for which performance is provided in the specific contract documents, it may substitute equivalent services.

46.3. The contractor of the terminated contract is not allowed to take part, either directly or indirectly, in performing services carried out at its expense and risk. It must, however, supply all information collected and all means implemented within the scope of performance of the initial contract and which would be necessary for having this contract performed by the third party designated by the contracting authority.

46.4. Increase in costs, as against the contract prices, resulting from services being provided at the contractor's expense and risk, shall be met by the contractor. It shall not benefit from any reduction in costs.

CHAPTER 9

DISPUTES AND LITIGATION

ARTICLE 47

DISPUTES BETWEEN THE PARTIES

47.1. The contracting authority and contractor shall attempt to settle amicably any dispute arising from interpretation of the contract stipulations or performance of services within the scope of the contract.

47.2. Any dispute between the contractor and the contracting authority must be covered, by the contractor, by a letter of complaint setting out the grounds for its disagreement and indicating, if needs be, the amounts claimed. This letter must be forwarded to the contracting authority within two months as from the day when the dispute arose, under penalty of foreclosure.

47.3. The contracting authority has a period of two months, as from the date of reception of the letter of complaint, to notify its decision. If there is no decision within this timeframe, this means that the claim is rejected.

Comments

The contracting authority or contractor may submit any dispute opposing them to a consultative committee for settling litigation amicably, in the conditions mentioned in article 127 of the public contracts code.