

NATIONAL AUTHORITY FOR MANAGEMENT AND REGULATION IN COMMUNICATIONS (ANCOM)

Documentation for the awarding of the public acquisition contract subject to the provision of software programming services for the development and implementation of the project "Online application for comparing the communications offers intended for the end-users" (CPV code: 72212000-4)

Disclaimer: This is a Romanian to English translation meant to facilitate the understanding of this section. Should differences appear between the Romanian version and the English version, following translation, the Romanian version shall prevail.

SECTION 3: MANDATORY AND IMPERATIVE CONTRACTUAL PROVISIONS

- The services and equipment and software solutions provided under the Contract shall abide by the standards, technical regulations and any other such requirements stipulated in the Terms of Reference - Annex 1 and in the Technical Proposal - Annex 2, which, in any circumstance, shall abide at least by the standards or other legal regulations in force. As well, they shall observe the standards imposed by the SOP IEC financing contract no. 290/321, SMIS 14183 of 23.03.2011 for the implementation of the project "Online application for comparing the communications offers intended for the end-users."

- The Provider has the obligation to notify the Buyer upon the finalisation of each task and subtask, as well as upon the finalisation of the implementation of the application, as specified in the Terms of Reference. During the implementation, partial acceptance minutes shall be signed, without entitling the Provider to receive payment. The final acceptance document shall be drafted based on the partial acceptance minutes and after the final testing of the application, in accordance with the Terms of Reference and the Technical Proposal.

- The assessments and/or tests shall be done in accordance with the standards and conditions required by the Terms of Reference and offered within the Technical Proposal.

- Should the assessments and/or tests indicate that the application in its entirety and/or the results of the services pertaining to the tasks or subtasks or the entire application and/or the delivered hardware or software do not comply with the requirements within the Terms of Reference and the Technical Proposal, the Buyer has the right to refuse signing the partial acceptance minutes and/or the final acceptance document, and the Provider has the obligation to remedy the nonconformities reported without any modifications to the total price of the Contract and within the contractual deadline:

- a) by the replacement of the refused hardware and/or software; and/or
- b) by the provision of the appropriate services; and/or
- c) by making any such modifications that are necessary in order for the delivered services/provided equipment and/or software pertaining to the application/the application in its entirety to comply with the required specifications.

- By signing without objections the final acceptance minute for the application, the Buyer certifies the fact that all the development and implementation services pertaining to the application comply with the specifications within the Terms of Reference and the Technical Proposal, including, but not limited to, the design of the application, its installation and correct functioning (including the equipment and software), the training of the personnel, as well as the reception of the source code and all the corresponding materials.

- The deadline for the design and implementation of the application by the provision of all the services and the delivery of all the equipment and software required is that proposed by the Provider and it cannot exceed 200 calendar days from the signing of the Contract by both parties. The Provider has the obligation to respect all the tasks and subtasks provided within the Terms of Reference – that belong to the application which is the object of the Contract.

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The deadline for the design and implementation of the application is considered to be respected if the final acceptance document has been signed without objections by the respective date.

- Should the application require the use of licensed software, the Provider has the obligation to guarantee the Buyer the fact that the provided software licences ensure the latter the perpetual, unlimited and non-transferable right to use all of the software products provided, as required by the Terms of Reference.

- the Provider has the obligation to deliver to the Buyer the source code pertaining to the application, as well as all the materials and documentations required by the Terms of Reference. The final acceptance minute shall attest to the fulfilment of this obligation.

- The Provider shall issue and communicate the invoice/invoices after the signing without objections of the final acceptance minute.

- The invoices shall be delivered to the headquarters of the Buyer in 2 Delea Noua Street, Sector 3, 030925 Bucharest, Romania.

- Payment of the invoice/invoices received and accepted by the Buyer shall be made, by payment order, into the Provider's treasury account, within maximum 15 (fifteen) working days from their reception.

- no payment in advance or partial payment is acceptable;

- Payment is considered made on the date the Buyer's account is debited;

- The total price agreed for the fulfilment of the Contract obligations includes all the costs, direct and indirect, incurred by the Provider in connection with the signing and execution of the Contract, providing all the services and delivering all the necessary hardware and software.

- **The total price of the Contract** shall not be changed and cannot undergo modifications throughout the entire time that the Contract is executed;

- any transport expenses incurred while delivering the hardware shall be covered by the Provider;

- **the delay penalties amount to:**

- 0.15% of the total price of the contract, without VAT, per day or hour of delay;

- 0.15% of the remaining amount, without VAT, for the Buyer's failure to pay the due price;

- the ownership rights, including all copyrights

- The ownership right, including all the patrimony intellectual property rights over the application (hardware and software, without including the commercial platforms embedded in the system), as well as the risk of the Contract shall be transferred to the Buyer, together with all the afferent unlimited licences at the time when the final acceptance minute is signed without any objections.

- The Provider has to obligation to set up the performance bond of the Contract, in accordance with the requirements under the Awarding Documentation;

- The products supplied based on the Contract shall be accompanied by the documents, licences, kits etc. specifically provided for in the Terms of Reference.

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- The guarantee period for the application is the one tendered by the Provider, may not be smaller than 2 (two) years, and flows from the date of signing without objections the final acceptance minute. The guarantee period for the equipment embedded in the application is the one tendered by the Provider, may not be smaller than 3 (three) years and flows from the date of signing without objections the final acceptance minute for the application. Where certain equipment of the application have guarantee period longer than the one provided above, the Provider commits to ensure the compliance with the obligations relating to the guarantee provided for in the guarantee certificates granted by the manufacturer for each of these equipment items. The guarantee period for all basic software (operating system, database system, web system etc.) is the standard one provided by the manufacturer of the respective software.
- During the aforementioned guarantee periods, the Provider commits to conduct, free of charge for the Buyer, all the operations necessary for the application to operate within the parameters specified in the Terms of Reference and in the Technical Proposal, with the observance of the terms and conditions imposed in the present annexes.
- The Provider commits to ensure the maintenance of the application upon the expiry of the guarantee period, based on a distinct contract concluded in keeping with the legal provisions in the field of public acquisitions, according to the Terms of Reference.
- at the conclusion of the contract, the **contract model in Annex no.17** of Section 4 shall be considered. The Tenderers have the obligation to submit, **in original**, a statement of acceptance of the contractual conditions, in accordance with the form under Annex no.16 in Section 4 - Forms. In the event of objections to the provisions under the contract template, other than the mandatory and imperative ones mentioned before herein, the Tenderer must specify them in the formulated tender, and these shall be analysed by the Tender Evaluation Commission. The tenders containing proposals regarding the contractual provisions that are clearly disadvantageous for the contracting authority shall be deemed noncompliant, in accordance with the provisions of art.36(2) letter b) of the Government Decision no.925/2006.