



OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET
(TRADE MARKS AND DESIGNS)

INVITATION TO TENDER No AO/004/15

Provision of services for the Production of animated videos for the Office for Harmonization in the Internal Market (OHIM) for Trade Marks and Designs

ANNEX III

DRAFT / MODEL SERVICE FRAMEWORK CONTRACT

Framework Contract 4020XXXXXX

The Office for the Harmonization in the Internal Market (Trade Marks and Designs) (hereinafter referred to as "the Office"), with tax identification number V-03965324, and with its seat at Avenida de Europa, 4, E-03008 Alicante, Spain, which is represented for the purposes of the signature of this Framework Contract by Mr, Director of,

and

[Official name in full] 1

[Official legal form] 1

[Statutory registration number] 1

[Official address in full] 1

VAT registration number

(hereinafter referred to as "the Contractor"), represented for the purposes of the signature of this Framework Contract by Mr/Ms full name and function 1,

HAVE AGREED

the **Special Conditions (Part 1)**, the **General Conditions (Part 2)** and the **Signatures (Part 3)** below and the following Annexes:

Annex I – Tender Specifications (Invitation to Tender No AO/004/15 of).

Annex II – Contractor's Tender (No [complete] of [complete]).

Annex III – Specific contracts – Models.

Annex IV – Power of Attorney.

Annex V – Financial Identification form.

which form an integral part of this Framework Contract (hereinafter referred to as “the Contract”).

- The terms set out in the special conditions shall take precedence over those in the other parts of the framework contract.
- The terms set out in the general conditions shall take precedence over those in the model purchase order and model specific contract
- The terms set out in the purchase order form and model specific contract shall take precedence over those in the other annexes.
- The terms set out in the tender specifications (Annex I) shall take precedence over those in the tender (Annex II).
- The terms set out in the framework contract shall take precedence over those in the order forms and specific contracts.
- The terms set out in the specific contracts shall take precedence over those in the requests for services.
- The terms set out in the requests for services shall take precedence over those in the specific tenders.

Subject to the above, the several instruments forming part of this Contract are to be taken as mutually explanatory. Ambiguities or discrepancies within or between such parts shall be explained or rectified by a written instruction issued by the Office; subject to the rights of the Contractor under Article 6 of the General Conditions (Part 2) should the Contractor dispute any such instruction.

PREAMBLE

On , the Office published, in the Official Journal of the European Union, an invitation to tender under reference , for the provision of services for the Production of animated videos.

The Contractor, at the conclusion of the evaluation process, on the basis of its tender submitted on .../.../20.. in response to the invitation to tender is :

..... with contract No

This Framework Contract contains all the conditions for concluding and executing Specific contracts. Please note that reference to Specific Contracts in the different parts of the Framework Contract may be understood, where relevant, as references to Purchase Orders.

1 SPECIAL CONDITIONS

1.1 SUBJECT

1.1.1 The subject of the Contract is:

- the provision of services for the Production of animated videos, as set out in the Tender Specifications (Annex I).

The Products and Services covered by this Contract are listed in Annex I.

1.1.2 Upon implementation of the Contract, the Contractor shall execute the tasks in accordance with the Tender Specifications in Annex I and his specific Tender in Annex II.

1.1.3 The Contract does not confer on the Contractor any exclusive right to supply the goods or to provide services referred to in the above paragraph.

1.1.4 Signature of the Contract imposes no obligation on the Office to purchase. Only the implementation of the Contract through Purchase Orders and Specific contracts is binding on the Office.

1.1.5 All Specific contracts and Purchase Orders implementing the Contract shall conform to the terms set out therein.

1.2 ENTRY INTO FORCE AND DURATION

1.2.1 The Contract shall enter into force on the date on which it is signed by the last party.

1.2.2 Under no circumstances may performance commence before the date on which the Contract enters into force. Execution of tasks may under no circumstances begin before the date on which the specific contract enters into force.

1.2.3 The Contract is concluded for a period of one (1) year with effect from the date on which it enters into force. This contractual period and all other periods specified in the Contract are calculated in calendar days unless otherwise indicated.

1.2.4 Specific contracts shall be signed by both parties before the contract expires.
The Contract shall continue to apply to such Specific contracts after its expiry. They shall be executed no later than six (6) months after its expiry.

1.2.5 The framework contract shall be renewed automatically up to three times, each time for a period of one (1) year and on the same conditions, unless written notification to the contrary is sent by one of the parties and received by the other three months before expiry of the period indicated in Article 1.2.3. Renewal does not imply any modification or deferment of existing obligations. The overall duration of the framework contract may in no event exceed four (4) years.

1.3 PRICES

- 1.3.1** The prices of this contract shall be as listed in Annex II. However, this must in no way be construed as a commitment on the Office to purchase for the maximum amount.
- 1.3.2** Prices shall be expressed in euro.
- 1.3.3** Prices shall be fixed and not subject to revision for Specific contracts placed during the first year of performance of the Contract or Amendment. The prices or fees may be subject to revision on the basis of indexation.
- 1.3.4** At the beginning of the second and every following year of the Contract, each price may be revised upwards or downwards, if such revision is requested by one of the parties in writing no later than three months before the anniversary of the date on which it was signed. The other party shall acknowledge receipt within 15 days of reception of the request. The new prices shall be communicated as soon as the final index is available. The Office shall purchase on the basis of the prices in force on the date on which order forms or specific contracts are signed by both parties. Such prices shall not be subject to revision. Specific contracts shall be placed on the basis of the prices in force on the date on which they are signed. Such prices shall not be subject to revision.
- 1.3.5** This revision shall be determined by the trend in the harmonised indices of consumer prices (HICP-MUICP) published for the first time by [the Eurostat monthly 'Data in Focus' publication at <http://www.ec.europa.eu/eurostat/>].
- 1.3.6** Revision shall be calculated in accordance with the following formula:

$$Pr = Po \times (Ir/Io)$$

where:

- Pr = revised price;
- Po = price in the original tender or of the last revision;
- Io = index for the month corresponding to the final date for submission of tenders or of the last revision;
- Ir = index for the month corresponding to the date of receipt of the request to revise prices.

1.4 IMPLEMENTATION OF THE CONTRACT

- 1.4.1** As and when required, the Office shall communicate to the Contractor specific orders which shall be covered by this framework contract. These specific orders may take the form of a Purchase Order or a Specific contract in accordance with the model forms attached as Annex III.
- 1.4.2** Article not applicable.
- 1.4.3** Within fifteen working days of a Purchase Order being sent by the Office, the Contractor shall return it, duly signed and dated. Should the Contractor be unavailable, he shall give reasons for refusal within the same period. In the event of failure to observe this deadline, the Contractor shall be considered unavailable. The period allowed for the execution of the tasks shall start to

run on the date the Contractor returns the Purchase Order, unless a different date is indicated on the form.

- 1.4.4** Within fifteen working days of a request for Services being sent by the Office, the Contractor shall return an estimate of the resources to be allocated for its execution, with particulars in support. Should the Contractor be unavailable, he shall give reasons for refusal within the same period. In the event of failure to observe this deadline or disagreement on the allocation of resources, the Contractor shall be considered unavailable.
- 1.4.5** Within fifteen working days of a Specific contract being sent by the Office, the Contractor shall return it, duly signed and dated. In the event of failure to observe this deadline, the Contractor shall be considered unavailable.

1.5 PAYMENT PERIODS

Payments under the Contract shall be made in accordance with Article 20 of the General Terms and Conditions. Payments shall be executed only if the Contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted.

1.5.1 Pre-financing

Not applicable.

1.5.2 Interim payment

The contractor shall submit an invoice for an interim payment, according to the prices and payments referred to in the relevant specific contract.
The Office shall make the payment within 30 days from receipt of the invoice.

1.5.3 Payment of the balance

The contractor shall submit an invoice for payment of the balance.
The Office shall make the payment within 30 days from receipt of the invoice.

1.6 PERFORMANCE GUARANTEE

The current Contract is not subject to the submission of a performance bank guarantee.

1.7 BANK ACCOUNT

Payments shall be made to the Contractor's bank account denominated in euro, stated in the Contractor's identification form set out in Annex V.

Name of the bank:

Full account number including bank codes:

IBAN code: [complete]

1.8 GENERAL ADMINISTRATIVE PROVISIONS

Any communication relating to the Contract shall be made in writing and shall bear the Contract and Specific contract numbers. Ordinary mail shall be

deemed to have been received by the Office on the date on which it is registered by the department responsible. Correspondence should be sent to the following addresses:

Office:

Mr/Ms Full Name

Office for Harmonization in the Internal Market (Trade Marks and Designs)

Avenida de Europa, 4

E-03008 Alicante

Spain

Contractor:

Mr/Ms Full Name

[Function]

[Company name]

[Contact address in full]

1.9 DATA PROTECTION

1.9.1 Any personal data contained in the present contract or used within the context of performance thereof shall be processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Union institutions and bodies and on the free movement of such data. The data will be processed only for the purposes of the performance, management and follow-up of the Contract by the Office without prejudice to a possible transmission to the bodies in charge of a monitoring or inspection task in conformity with Union law. The Contractor may, upon request, obtain the communication of his personal data and rectify any inaccurate or incomplete personal data. Any request of this type shall be addressed to Data Controller responsible for the Call for tenders (Procurement.DataProtectionController@oami.europa.eu). The Contractor also has a right of recourse at any time to the European Data Protection Supervisor concerning the processing of such data.

1.9.2 When processing personal data on behalf of the Office in the performance of the Contract the Contractor:

- (a) shall act only on instructions from the Office;
- (b) shall comply with the obligations set out in Articles 21 and 22 of Regulation (EC) No 45/2001 on the confidentiality and the security of processing unless, by virtue of Article 16 or Article 17(3), second indent, of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, the Contractor is already subject to obligations with regard to confidentiality and security laid down in the national law of one of the Member States.

Appropriate technical and organisational measures will be taken by the Contractor for security of the processing in accordance with Article 22 of Regulation (EC) No 45/2001 and will have to be agreed between the Contractor and the Office in writing or in another equivalent form.

1.10 TERMINATION BY EITHER CONTRACTING PARTY

Either contracting party may, of its own volition and without being required to pay compensation, terminate the Contract by serving three months' formal prior notice. Should the Office terminate the Contract, the Contractor shall only be entitled to payment corresponding to the goods and/or services ordered before the termination date. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required by the Special Conditions for the goods delivered and services rendered up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

1.11 PROCEDURES FOR PERFORMING THE CONTRACT

Sending of the Specific contract

Whenever the Office wishes services to be provided or goods to be supplied pursuant to the Contract, it shall send a Specific contract to the Contractor, in duplicate, specifying the terms of the provision of services or supply of the goods, such as quantity, designation, quality, price, place of delivery and time allowed for delivery, in accordance with the conditions laid down in the Contract.

Acknowledgment of the Specific contract by the Contractor

Within the period indicated in Article 1.4, the Contractor shall return one original of the Specific contract, duly signed and dated, thereby acknowledging receipt of the Specific contract and acceptance of the terms.

1.12 BENCHMARKING

1.12.1 Definitions

"Benchmarking":

Assessment process carried out by the Office which : tests, evaluates and measures the performance of the Contractor by comparison with similar Services or Products provided by other companies; and/or analyses the evolution of the relation between the prices laid down in the Framework contract and the market prices for similar Products or Services.

"Quality indicators":

Measurable targets serving as a reference for evaluating the quality of the Services to be provided by the Contractor, and determined in the Service level agreement.

1.12.2 Benchmarking

OHIM may undertake a Benchmarking of the levels and the charges of the Services/Supplies provided under this framework contract by comparison with similar services and supplies provided by similar other companies. The results of such Benchmarking shall be available in identical form to both OHIM and the Contractor.

In order to guarantee that a valid comparison is made, OHIM will ensure that:

- the scope of the Services/Supplies being provided by the Contractor is taken into consideration;
- the comparison group consists of at least four enterprises to ensure statistical significance;
- the relevant comparison data must be guaranteed.

The Benchmarking shall not exceed four (4) months

OHIM and the Contractor shall set aside sufficient time and resources for each stage of the Benchmarking, such as:

- identification and location of Benchmarking data,
- performing the Benchmarking, and
- implementation of the conclusions.

OHIM and the Contractor will be free to suggest changes in Benchmarking parameters, as regard to the Services/Supplies that are the subject of the present framework contract, which evolve over the period of implementation of this framework contract.

The Benchmarking shall treat as confidential, in accordance with Article 11 of the General Conditions, all data provided by the Office and the Contractor, and will return all material and media once the Benchmarking is completed.

If a Benchmarking reveals that the level of the Services/Supplies contracted under this framework contract does not reach the comparison group's service levels, the Contractor shall immediately prepare an action plan, which will specify all actions necessary to rectify the deviations. The full and measurable implementation of the action plan shall in no circumstances exceed one (1) year. If the Contractor fails to fully implement the action plan, OHIM may claim damages in pursuance of Article 17 of the General Conditions.

The Contractor undertakes to reduce its charges down to the comparison group level in the event the results of the Benchmarking reveal that its charges are higher than that group, with effect from the date on which the results of the Benchmarking are delivered to the Parties.

- 1.12.3** In the event of force majeure, notified in accordance with Article 16 of the General Conditions, either contracting party may terminate the Contract, where performance thereof cannot be ensured for a quantity of goods corresponding to at least one fifth of the quantity of goods ordered or where performance thereof cannot be ensured for a period corresponding to at least one fifth of the period laid down in Article 1.2.3.

1.12.4 Prior to termination under point e), h) or k) of Article 19 of the General Conditions, the Contractor shall be given the opportunity to submit his observations. Termination shall take effect on the date on which a registered letter with acknowledgment of receipt terminating the Contract is received by the Contractor, or on any other date indicated in the letter of termination.

1.12.5 Consequences of termination

In the event of the Office terminating the Contract in accordance with this Article and without prejudice to any other measures provided for in the Contract, the Contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required by the Special Conditions for the goods supplied and / or services rendered up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

The Office may claim compensation for any damage suffered and recover any sums paid to the Contractor under the Contract.

On termination the Office may engage any other contractor to supply the goods and/ or to execute or complete the services. The Office shall be entitled to claim from the Contractor all extra costs incurred in doing so, without prejudice to any other rights or guarantees it has under the Contract.

1.13 USE OF EXISTING SOFTWARE

If the Contractor uses software of which he/she is the proprietor or which is owned by a third party, or if the software provided incorporates software of which the Contractor is the proprietor or which is owned by a third party, the Contractor shall:

- mention this software explicitly in the tender submitted in response to the invitation to tender;
- indicate whether the use thereof by the Office gives rise to the payment of development or user licences, and provide an estimate of the cost;
- specify whether the use thereof by third parties (for example, the Member States or other institutions) would give rise to the payment of development or user licences.

The Office shall give its agreement in writing to the use of such software within the framework of the Specific contract on software development.

The Office reserves the right to disseminate and/or distribute the results of any software development to third parties, even where this includes existing software, subject to compliance with licensing rights as regards any software owned by the Contractor or a third party mentioned in the tender submitted in response to the invitation to tender.

1.14 USER MANUALS AND DOCUMENTATION

The Contractor shall draw up the manuals and documentation necessary for the satisfactory and proper operation of the software and shall place these at the disposal of the Office. In drawing up these documents, the Contractor shall comply with the norms and standards in force.

In general, these documents shall include:

- an installation manual;
- an administration manual;
- a user manual;
- installation documentation.

The Contractor shall, as necessary, update and replace the user manuals.

1.15 PROVISION OF REFERENCE MATERIAL

In accordance with Article 28 of the General Terms and Conditions Applicable to Contracts with the Office, the Office shall be the sole proprietor of any documentation specifically developed for the Office.

The provision of reference material shall be subject to the obtaining of a collective use licence, the terms of which shall be appropriate to the nature and subject of the training concerned.

1.16 ENVIRONMENT POLICY

The Office runs an environmental management system (EMAS) and aims to minimise the environmental impact of all its activities, including those carried out under contracts. The successful tenderer will, therefore, be requested to consider the Office's environmental guidelines in their work, in particular those relating to paper and energy consumption (see OHIM environment policy document annexed to the tender documentation). In accordance with its policy, the Office recommends to apply as much as possible the Regulation (EC) no 1221/2009 of the European Parliament and of the Council of 25 November 2009 allowing voluntary participation by organisations in a Union eco-management and audit scheme for all goods and services requested by the Office.

2 GENERAL TERMS AND CONDITIONS

3 SIGNATURES

For the Contractor,
[Company name/forename/surname/function]

signature[s]: _____
Done at, on the in duplicate in English.

For the Office,
....
.....
signature[s]: _____
Done at Alicante, on the in duplicate in English.