

Denmark-Kastrup: IT services: consulting, software development, Internet and support
OJ S 114/2021 15/06/2021
Contract award notice
Services

Legal Basis:

Directive 2014/24/EU

Section I: Contracting authority

I.1. Name and addresses

Official name: Naviair and COOPANS members as specified in II.1.4

National registration number: 26059763

Postal address: Naviair Allé 1

Town: Kastrup

NUTS code: DK01 Hovedstaden

Postal code: 2770

Country: Denmark

Contact person: Mona H. Møller

E-mail: mhm@naviair.dk

Telephone: +45 30310386

Internet address(es):

Main address: <https://www.naviair.dk/>

I.1. Name and addresses

Official name: Irish Aviation Authority

Postal address: The Times Building, 11-12 D'Olier Street

Town: Dublin

NUTS code: IE Éire / Ireland

Postal code: Dublin 2

Country: Ireland

Contact person: Ewan Murtagh

E-mail: ewan.murtagh@iaa.ie

Internet address(es):

Main address: <http://www.iaa.ie>

I.1. Name and addresses

Official name: Luftfartsverket

National registration number: 202100-0795

Postal address: Hospitalsgatan 30

Town: Norrköping

NUTS code: SE Sverige

Postal code: 601 79

Country: Sweden

Contact person: Izabella Lukacs

E-mail: izabella.lukacs@lfv.se

Internet address(es):

Main address: <http://www.lfv.se>

I.1.

Name and addresses

Official name: Austro Control GmbH
Postal address: Wagramer Straße 19
Town: Vienna
NUTS code: AT Österreich
Postal code: A-1220
Country: Austria
Contact person: Christoph Gottstein
E-mail: christoph.gottstein@austrocontrol.at
Internet address(es):
Main address: www.austrocontrol.at

I.1. Name and addresses

Official name: Croatia Control
Postal address: Rudolfa Fizira 2
Town: Velika Gorica
NUTS code: HR Hrvatska
Postal code: 10410
Country: Croatia
Contact person: Barbara Kalmar
E-mail: barbara.kalmar@crocontrol.hr
Internet address(es):
Main address: www.crocontrol.hr

I.1. Name and addresses

Official name: Navegação Aérea de Portugal — NAV Portugal, E.P.E
Postal address: Rua D, Edifício 121
Town: Lisbon
NUTS code: PT Portugal
Postal code: 1700-008
Country: Portugal
Contact person: Mariana Carvalheira
E-mail: ComunicacaoNAV@nav.pt
Internet address(es):
Main address: <http://www.nav.pt>

I.2. Information about joint procurement

The contract involves joint procurement
In the case of joint procurement involving different countries, state applicable national procurement law:
Danish public procurement law.

I.4. Type of the contracting authority

Body governed by public law

I.5. Main activity

Other activity: Air Navigation Services

Section II: Object

II.1. Scope of the procurement

II.1.1. Title

Agreed and Re-negotiated COOPANS Framework Agreement II (ARCFA II)

II.1.2. Main CPV code

72000000 IT services: consulting, software development, Internet and support

II.1.3. Type of contract

Services

II.1.4. Short description

This notice is published by Navair on behalf of the members of COOPANS, which also includes the following contracting entities/authorities:

- 1) Irish Aviation Authority, The Times Building, 11-12 D'Olier Street, Dublin 2, Ireland (IE);
- 2) Luftfartsverket, Hospitalsgatan 30, S-601 79 Norrköping, Sweden (SE);
- 3) Austro Control GmbH, Wagramer Straße 19, A-1220, Vienna, Austria (AT);
- 4) Croatia Control, Rudolfa Fizira 2, 10410 Velika Gorica, Croatia (HR);
- 5) Navegação Aérea de Portugal — NAV Portugal, E.P.E., Rua D — Edifício 121, 1700-008, Lisbon (PT).

The COOPANS members intend to enter a framework agreement and contract (8 and 10 years, respectively) with Thales LAS France S.A.S, the Agreed and Re-negotiated COOPANS Framework Agreement II (ARCFA II). Previously an Amended and restated Framework Agreement (ARCFA) on the maintenance and development of the COOPANS TopSky-ATC was in force between the parties.

II.1.6. Information about lots

This contract is divided into lots: no

II.1.7. Total value of the procurement

Value excluding VAT: 110 000 000,00 EUR

II.2. Description

II.2.2. Additional CPV code(s)

48800000 Information systems and servers, 72100000 Hardware consultancy services, 72200000 Software programming and consultancy services, 72220000 Systems and technical consultancy services, 72222000 Information systems or technology strategic review and planning services, 72222300 Information technology services, 72240000 Systems analysis and programming services, 72250000 System and support services, 72263000 Software implementation services, 72265000 Software configuration services, 72267000 Software maintenance and repair services, 72300000 Data services, 72311000 Computer tabulation services, 72317000 Data storage services, 72320000 Database services, 72500000 Computer-related services, 72600000 Computer support and consultancy services

II.2.3. Place of performance

NUTS code: AT Österreich

NUTS code: DK Danmark

NUTS code: HR Hrvatska

NUTS code: IE Éire / Ireland

NUTS code: PT Portugal

NUTS code: SE Sverige

II.2.4. Description of the procurement

All COOPANS members are currently using Thales TopSky-ATC, and as part of the continuation of safe operations, builds to the extent required by legislation and for safe operations the COOPANS members intend to enter ARCFA II with Thales. The COOPANS members' overall need is thus to ensure continued operation and maintenance and to refine the COOPANS TopSky ATC operating capability and incorporate the expected European wide requirements, coming from e.g. PCP Regulation and European standards. No major principle changes to the operating model are foreseen within this ARCFA II. The ARCFA II will ensure the maintenance operation and to a certain extent updates of the TopSky ATM systems used by the COOPANS members.

The purpose of ARCFA II is to establish a framework agreement for services that

- (i) for technical and/or intellectual property reasons can only be provided by Thales; and
- (ii) are strictly necessary to maintain efficient operations or compliance with regulatory requirements.

To this end the ARCFA II sets out:

- (a) the scope, charging-model and other terms and conditions of services as per order (8 years) that COOPANS Member(s) may call for from time to time and that Thales shall provide upon such call; and
- (b) the scope, the charges and other terms and conditions of ongoing services (10 years) to be provided by Thales to the COOPANS Members by virtue of ARCFA II.

The services as per order comprise of:

- (a) system changes which consist of functional or other developments based on the work of the harmonisation and build definition services or other needs. Functional and/or technical requirements will be packaged into system changes;
- (b) other services: COOPANS Member(s) may order services from Thales on an ad-hoc basis for the provision of engineering expertise, consultancy or minor product evolutions.

System changes and other services may be bought as:

- (a) COOPANS system changes upon all COOPANS Members joint request;
- (b) local system changes upon one or several of the COOPANS Member(s) request; and/or
- (c) other services upon one, several or all of the COOPANS Member(s)' request.

The ongoing services comprise of:

- (a) support and maintenance services, including security and safety related activities and deliverables. These services are essential to the safe operational performance of the COOPANS TopSky-ATC;
- (b) harmonisation and build definition services (HBD), The overall purpose of these services is to define and structure the scope and scale of potential new system changes, based on the operational and technical requirements.

The main body of the ARFCA II foresees certain 'General activities and requirements' e.g. on testing, documentation, reporting and other activities. These activities will not be ordered separately but shall be rendered in the course of ongoing services and/or services as per order.

The services provided under ARCFA II will be limited as follows: COOPANS members will only order services that

- (i) for technical and/or intellectual property reasons can only be provided by Thales; and
- (ii) that are strictly necessary to maintain efficient operations or compliance with regulatory requirements during the term of ARCFA II.

With external assistance COOPANS has produced a roadmap with a proposed way of maintaining, operating and further develop the TopSky ATM system, and ARCFA II includes Roadmap items that only Thales can supply due to technical and intellectual property reasons.

II.2.5. Award criteria

Price

II.2.11. Information about options

Options: no

II.2.13. Information about European Union funds

The procurement is related to a project and/or programme financed by European Union funds:
no

II.2.14. Additional information

The COOPANS members have entered a Joint Public Procurement Agreement in accordance with Art. 39(4) of Dir. 2014/24/EU and art. 57(4) of Dir. 2014/25 and have designated Naviair as responsible for finalising the ARCFA II, publishing notices in TED and other procurement related matters. The COOPANS members have chosen Danish public procurement law as applicable to all matters relating to ARCFA II.

Section IV: Procedure

IV.1. Description

IV.1.1. Type of procedure

Award of a contract without prior publication of a call for competition in the Official Journal of the European Union in the cases listed below

- The works, supplies or services can be provided only by a particular economic operator for the following reason:
 - absence of competition for technical reasons

Explanation:

ARCFA II can only be entered into with Thales, because:

(i) ARCFA II is required to maintain and operate ATM legacy system: the ATM system is the core IT system on which the COOPANS partners are heavily dependent in providing their main service; that is safeguarding air traffic management free of any frictions and problems. The COOPANS partners are not in the position to jeopardise their service and are required to uphold a safety standard at the utmost possible. The COOPANS partners therefore have to endeavor to maintain and operate the ATM legacy system. The COOPANS partners run the TopSky ATM system in the configuration following the deliveries under the earlier ARCFA and the original agreements for procuring the system as part of their ATM systems. The purpose of ARCFA II is to be able to maintain and operate the existing system, both in terms of necessary ongoing services that Thales is the only possible provider of, but also in terms of the services per order, which are meant to ensure a number of improvements of the existing system, including against the background of changing regulatory requirements that necessitate changes;

(ii) Thales is technically and due to intellectual property rights the only supplier: From a technical point of view, the items included in the scope of ARCFA II are such that only Thales is a relevant supplier. The main reasons for this are that the scope includes specific work on the existing system which consists of numerous interlink functions. The work will include not only working and upgrading specific functions, but due to the technical interoperation between different functions, upgrading one function may trigger a need to implement changes in other functions in order to ensure that the entire system can work and 'speak the same language'. Furthermore, Thales holds intellectual property rights to the TopSky ATM system;

- (iii) the scope of ARCFA II has been defined to cover a number of specific items as listed in point 2 above, and those items are all subject to the technical constraint that only Thales can deliver those;
- (iv) better possibilities for opening up competition: ARCFA II includes mechanisms that provide COOPANS with enhanced possibilities of ordering integration services that can allow for integration of systems, solutions and functionalities provided by third party suppliers into TopSky-ATC, thereby underscoring that ARCFA II and its scope is confined to items for which Thales for technical reasons would be the only supplier;
- (v) ongoing reassurance of technical impossibility: once ARCFA II has become effective, COOPANS will ensure that when ordering services, it will be reassessed that at the given point in time, Thales remains the only supplier for technical or IPR related issues.

IV.1.3. Information about a framework agreement or a dynamic purchasing system

The procurement involves the establishment of a framework agreement

IV.1.8. Information about the Government Procurement Agreement (GPA)

The procurement is covered by the Government Procurement Agreement: yes

IV.2. Administrative information

IV.2.1. Previous publication concerning this procedure

Notice number in the OJ S: [2021/S 099-262223](#)

IV.2.8. Information about termination of dynamic purchasing system

IV.2.9. Information about termination of call for competition in the form of a prior information notice

Section V: Award of contract

A contract/lot is awarded: yes

V.2. Award of contract

V.2.1. Date of conclusion of the contract

07/06/2021

V.2.2. Information about tenders

Number of tenders received: 1

The contract has been awarded to a group of economic operators: no

V.2.3. Name and address of the contractor

Official name: Thales LAS France S.A.S

National registration number: 319 159 877 00111

Postal address: 2 Avenue Gay Lussac

Town: Elancourt

NUTS code: FR France

Postal code: 78990

Country: France

Internet address: <https://www.thalesgroup.com/en>

The contractor is an SME: no

V.2.4. Information on value of the contract/lot

Initial estimated total value of the contract/lot: 110 000 000,00 EUR

Total value of the contract/lot: 110 000 000,00 EUR

V.2.5. Information about subcontracting

Section VI: Complementary information

VI.3. Additional information

VI.4. Procedures for review

VI.4.1. Review body

Official name: The Danish Complaints Board for Public Procurement

Postal address: Nævnenes Hus, Toldboden 2

Town: Viborg

Postal code: 8800

Country: Denmark

E-mail: kfu@naevneneshus.dk

Telephone: +45 72405600

Internet address: <https://naevneneshus.dk/start-din-klage/klagenaevnet-for-udbud/>

VI.4.3. Review procedure

Precise information on deadline(s) for review procedures:

Pursuant to Section 7(3) of Executive Order No 593 of 2 June 2016 (Executive Order on the Danish Complaints Board for Public Procurement), a complaint arguing that the contracting authority has entered into a contract without prior publication of a contract notice in the Official Journal of the European Union, in case the contracting authority followed the procedure in Section 4 of Executive Order No 593 of 2 June 2016 (Executive Order on the Danish Complaints Board for Public Procurement), must be filed within 30 calendar days from the day after the day on which the contracting authority published a notice in the Official Journal of the European Union that the contracting authority had entered into the contract, provided that the notice contains the reasons for the contracting authority's decisions to enter into a contract without prior publication of a contract notice in the Official Journal of the European Union. Pursuant to Section 6(4) of Executive Order No 593 of 2 June 2016 (Executive Order on the Danish Complaints Board for Public Procurement) the complainant must, at the latest at the same time as a complaint is submitted to the Danish Complaints Board for Public Procurement, notify the contracting authority in writing that the complaint has been submitted to the Danish Complaints Board for Public Procurement, and whether the complaint has been submitted during the period of 10 calendar days as stipulated in Section 4(1)(2) in Executive Order No 593 of 2 June 2016 (Executive Order on the Danish Complaints Board for Public Procurement).

VI.4.4. Service from which information about the review procedure may be obtained

Official name: Konkurrence- og Forbrugerstyrelsen

Postal address: Carl Jacobsens Vej 35

Town: Valby

Postal code: 2500

Country: Denmark

E-mail: kfst@kfst.dk

Telephone: +45 41715000

Internet address: <http://www.kfst.dk>

VI.5.

Date of dispatch of this notice

10/06/2021