**Annex 1. Framework agreement *draft***

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| **Parties’ details** | |
| **Contracting entity** | **IT and Development Centre. Ministry of the Interior, Estonia** |
| Registry code | 70008440 |
| Address | Mäealuse 2/2, 12618 Tallinn, Republic of Estonia |
| Contracting entity’s representative |  |
| Basis of representation |  |
| Contact persons | 1. *Rein Süld, Programme Manager, 58857449, rein.syld@smit.ee* 2. *Hannes Janno, Product Owner, 58667734, hannes.janno@smit.ee* 3. *Romet Saaliste, Head of Border Services Department, 53009559, romet.saaliste@smit.ee* |
|  |  |
| **Contractor** |  |
| Registry code |  |
| Address |  |
| Contractor’s representative |  |
| Basis of representation | Articles of association / Power of attorney |
| Contact persons |  |

1. **General terms and conditions of framework agreement**

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| **1.1. Basis of award of agreement** | Procurement documents of the public procurement with open procurement procedure titled “Entry/Exit System face image capture solution in Estonian Border Control Points” (222866) carried out on the basis of subsection 48 (1) of the Public Procurement Act and the contractor’s tender of ... 2020. |
| **1.2. Object of agreement** | The object of the framework agreement (hereinafter the “object of the agreement”) is ordering a face image capture hardware and software solution which is in compliance with the EES (Entry/Exit System) requirements for Border Guard workstations in accordance with the technical specifications of the procurement (annex 2), i.e. purchasing camera(s) on a stand, licence(s) and product support. |
| **1.3. Source of financing** | State budget and/or external funds, including funds from project ISFB-33 “Implementation of EES and ETIAS” of the Internal Security Fund of the European Union and the Ministry of the Interior of the Republic of Estonia. The specific source of financing is indicated in the public contract. |
| **1.4. Maximum value of framework agreement** | 2,000,000.00 euros (excluding value added tax) |
| **1.5. Term of framework agreement** | The framework agreement is effective for 48 months or until the maximum value is reached. |
| **1.6. Annexes to agreement** | *Annex 1 – General terms and conditions of SMIT contract, ver. 3.1;*  *Annex 1.1 – Draft public contract;*  *Annex 2 – Contracting entity’s technical specifications;*  *Annex 3 – Contractor’s technical specifications;*  *Annex 4 – Contractor’s tender value table;*  *Annex 5 – ... .* |

1. **Object of framework agreement and ordering**
   1. On the basis of the public contract, the contractor sells and delivers and the contracting entity purchases and accepts the products in compliance with the specification provided for in annex 2 to the agreement.
   2. The object of the agreement is ordered based on the needs of the contracting entity during the term of the framework agreement.
   3. The agreement is performed according to the orders placed and on the basis of public contracts. A public contract means an agreement establishing mutual material rights and obligations to be awarded under the framework agreement, which specifies the object of the contract (specific cameras on a stand, licences and/or product support, incl. quantity, place of delivery, value, deadlines and other substantial terms and conditions). Public contracts are awarded by an agreement between the parties during the term of the framework agreement. The term of public contracts is not limited to the date of expiry of the framework agreement.
   4. To order the products forming the object of an order, incl. in the case of a purchase financed by external funds, the contracting entity submits an invitation to tender with the specification of the object of the public contract and the draft public contract to the contractor by e-mail or in the e-procurement environment by way of placing an order. The public contract is awarded in writing.
   5. The time limit for submission of a tender is provided each time in an invitation to tender. The contractor shall submit a tender that is in accordance with the requirements set out in the documents of the respective order.
   6. The order of the contracting entity shall include sufficient information in order to enable the contractor to prepare a tender that conforms to the agreement. The contracting entity has the right to discuss all the aspects of the order at any time prior to the submission of the order.
   7. If necessary, a preliminary analysis meeting of the order is carried out under the prior agreement of the parties in order to specify the contents of the order.
   8. If necessary, the contracting entity has the right to demand the specification of the tender submitted.
   9. The contracting entity has no obligation to order the products forming the object of the agreement to the maximum volume of the value of the agreement.
2. **General principles of performance of agreement**
   1. The contractor represents and warrants that the contractor is the authorised distributor (right of representation) and product support provider of the object of the agreement provided for in the framework agreement and the contractor is liable for the validity of the right of representation throughout the term of the agreement.
   2. The object of the agreement shall be delivered by the contractor to the use of the contracting entity in accordance with the provisions of the order placed. Unless otherwise provided for in the public contract, the contractor shall transfer the delivery in one part, no intermediate deliveries are made. The principles provided for in the general terms and conditions of SMIT contract shall apply to the transfer of the delivery.
   3. If the delivery cannot be transferred in a timely manner for reasons due to the contracting entity, the contractor has the right to request that the term of delivery be postponed proportionally. All such delays and amendments of deadlines shall be agreed in a format that can be reproduced in writing (by e-mail).
   4. The contracting entity has the right to verify the compliance of the delivery with the terms and conditions of the agreement within five working days.
   5. If the contracting entity detects any errors, defects or other non-compliances with the terms and conditions of the agreement in respect of the products forming the object of the agreement, the contracting entity has the right to notify the contractor of the non-compliance of the object of the agreement with the terms and conditions of the agreement and designate an additional term for the contractor with the duration of no more than five working days for bringing the object of the agreement into compliance with the terms and conditions of the agreement.
   6. If the contractor fails to deliver the product or service forming the object of the agreement to the contracting entity within the additional term provided for in clause 3.5 of the agreement and if the contracting entity still detects any errors, defects or other non-compliances with the terms and conditions of the agreement in respect of the object of the agreement, the contracting entity has the right to cancel the agreement due to the contractor’s fundamental breach of the agreement.
   7. If the contractor fails to perform the delivery during the term agreed in the agreement, the contracting entity has the right to apply a contractual penalty in accordance with clause 7 of the agreement. The obligation to pay a contractual penalty starts as of the day following the agreed day of performance of the delivery or, in the case of granting an additional term on the basis of clause 3.5 of the agreement, as of the day following the day of expiry of the additional term, and lasts until the contracting entity receives the delivery.
   8. If the contractor has delivered the software forming the object of the agreement within the term provided for in the agreement, but the contracting entity has refused to receive the object of the agreement due to its non-compliance with the terms and conditions of the agreement and has granted the contractor, pursuant to clause 3.5, an additional term for the liquidation of the defects, the obligation to pay a contractual penalty will start as of the day following the day of the actual delivery date and last until the delivery of the object of the agreement that is in compliance with the terms and conditions of the agreement.
   9. The contractor shall ensure the delivery of the object of the agreement and the provision of the service on the basis of the agreement and in accordance with relevant requirements and good practice established for the contractor as a professional, and to assume liability for the performance of the agreement in a manner that does not infringe the rights, incl. intellectual property rights, of third parties.
   10. The contracting entity has the right to check, at any time, the compliance of the object of the agreement with the agreement and representations and warranties of the contractor and to require the contractor to provide information about the performance of the agreement, incl. the submission of documents evidencing the right of representation.
   11. The language used upon performance of the agreement is Estonian or English.
   12. An order or public contract may provide additional requirements on the basis of the rules established with regard to the application of external funds. Upon using external funds, the contractor shall ensure that the object of the agreement is labelled in accordance with the rules established with regard to the application of external funds; more detailed requirements are established in accordance with the source of financing in a specific order and/or public contract.
   13. The contracting entity may purchase the products set out in clauses 3.14 to 3.16 both together and separately.
   14. **Terms and conditions of camera(s) on a stand:**
       1. The contractor shall deliver the product to the location specified by the contracting entity in Estonia no later than within three months of the award of the public contract. The costs of delivery shall be borne by the contractor.
       2. The product to be delivered to the contracting entity must be in compliance with the terms and conditions of the agreement, first and foremost as regards its quantity, quality and specification.
       3. The contracting entity has the right to refuse to receive the product if it appears upon the receipt thereof that the product is not in compliance with the terms and conditions of the agreement among other things when the product does not have the agreed properties, the product is not in the agreed quantity, the product cannot be used for its intended purpose, a third party has any claims for the product or other rights that it may file, or the package of the product is missing in its entirety. If the contracting entity refuses to receive the product, the contractor must deliver to the contracting entity a product that is in compliance with the requirements. The contractor is deemed to be in delay with the delivery of the product until a product in compliance with the requirements has been delivered to the contracting entity.
       4. If the product to be delivered to the contracting entity is not in compliance with the terms and conditions of the agreement, the contracting entity has the right to request that the contractor replace a non-compliant product with a product that is in compliance with the terms and conditions of the agreement. In such a case the contracting entity returns the product to be replaced to the contractor, who shall bear all the expenses related to replacing the product.
       5. In the case of any deficit in the quantity of the product, the contracting entity shall have the right to receive the product and request that the contractor deliver the missing quantity of the product to a place of destination determined by the contracting entity within the Republic of Estonia.
       6. If the contracting entity does not notify the contractor of any defects in the product within the term provided for in this agreement after having learned of the defect, the contractor shall be released from any liability for the defects of the product, except if the failure to notify of the defects was reasonably excusable.
       7. The right of ownership of the product shall transfer from the contractor to the contracting entity after receiving the goods after bilateral signing of the record of delivery and receipt. The risk of accidental destruction of and damage to the product is with the contractor until transfer of the right of ownership of the product.
   15. **Terms and conditions of licence(s):**
       1. The contractor grants the contracting entity the right to purposeful use the object of the agreement.
       2. The contracting entity is provided with purposeful use of the licence(s) after bilateral signing of the record of delivery and receipt, but no later than within three calendar days of bilateral signing of the record of delivery and receipt unless otherwise agreed in the public contract.
       3. The contact person(s) of the agreement are provided with information about the installation files and product keys of the products by e-mail.
   16. **Terms and conditions of product support:**
       1. The provision of product support takes place by telephone or e-mail through the contact persons provided for in the agreement. Notices communicated by telephone must be confirmed by e-mail.
       2. The product support will be activated as of the receipt of the cameras on a stand (signing of the record of delivery and receipt by the parties) and remain in force during the respectively indicated period. If the product support is purchased separately from cameras on a stand, the product support will be activated on the date set out in the public contract.
       3. The service hours are according to Estonian time on working days (Mo-Fri 9:00-17:00).
       4. The language used for communication is Estonian or English.
3. **Value and settlement**
   1. The maximum value of the framework agreement has been provided for in clause 1.4.
   2. The unit prices tendered in the procurement are in force until the expiry of the framework agreement. The prices provided for in annex 4 to the framework agreement include all the expenses related to the use of hardware and software – the right to use, maintenance and warranty, version updates, security patches, counselling on licensing and introduction as well as all intellectual property fees.
   3. The unit prices of the framework agreement are as follows:
      1. The total value (without value added tax) of 1 (one) camera on a stand, (a) licence(s) and three-year product support is ... euros.
         1. The value (without value added tax) of 1 (one) camera on a stand is ... euros.
         2. The value (without value added tax) of (a) licence(s) of 1 (one) camera on a stand is ... euros.
         3. The value (without value added tax) of one-year product support is ... euros.
   4. **The values specified in clause 4.3.1 remain unchanged in the indicated amount throughout the entire term of the framework agreement.**
   5. **Upon submitting a specific tender on the basis of the framework agreement, the contractor has the right to tender a more favourable price than the unit price provided in clause 4.3.1.**
   6. The price provided for in the public contract is the final price payable by the contracting entity for the corresponding object of the agreement.
   7. Invoices are submitted as follows:
      1. If the contracting entity purchases only (a) camera(s) on a stand or (a) camera(s) on a stand with licences and product support, the contractor shall submit an invoice to the contracting entity after the parties have signed the record of delivery and receipt. The invoice is subject to payment in one part.
      2. If the contracting entity purchases only product support, the contractor shall submit an invoice for the product support to the contracting entity after activation thereof.
   8. The payment term of an invoice is 21 calendar days unless otherwise provided for in the public contract.
   9. Invoices are paid as follows:
      1. If the contractor is a company registered in Estonia, the contractor shall send the contracting entity e-invoices corresponding to the Estonian e-invoice standard. An e-invoice must include, in addition to the data specified in the standard, the last name of the contracting entity’s contact person, the reference number of the public procurement and the number of the framework agreement, the reference number of the order and the number of the public contract as well as the identification of the project of external funds (if the project involves external funds). An e-invoice must be sent through the e-invoice operator Fitek AS (further information at <http://www.fitek.ee/> ). An e-invoice is deemed received as of the day Fitek AS has received it.
      2. If the contractor is not a company registered in Estonia, the contractor shall send the contracting entity an invoice in pdf to the e-mail address [arved@smit.ee](mailto:arved@smit.ee). An invoice must include the last name of the contracting entity’s contact person, the reference number of the public procurement and the number of the framework agreement, the reference number of the order and the number of the public contract as well as the identification of the project of external funds (if the project involves external funds).
4. **Intellectual property rights**
   1. The contractor grants the contracting entity the right to use the licences within the scope and at the rate provided for in the agreement.
   2. The contractor shall ensure the existence of the intellectual property rights necessary to perform the agreement and the validity thereof during the performance and after the expiry of the agreement.
   3. The contractor declares that the grant of the licences does not breach copyrights or other intellectual property rights of any third parties during the term or after the expiry of the agreement.
   4. The contractor shall assume liability if the licences offered by them breach the rights of other people. The contractor shall compensate the contracting entity for all the expenses and damage to be incurred by the contracting entity as a result of a breach of this clause by the contractor.
   5. The contractor covers all direct and indirect damage arising from the fact that a third party holds or allegedly holds rights arising from intellectual property to the object of intellectual property related to the agreement.
   6. In matters concerning copyright and not regulated by the agreement, the parties shall follow the copyright legislation in force in the Republic of Estonia.
5. **Warranty terms and conditions**
   1. The contractor shall provide the cameras on a stand with a warranty of 36 months as of the signing of the record of delivery and receipt by the parties.
   2. The contractor shall eliminate the defects covered by warranty without charge.
   3. The warranty covers all the defects that become evident in the product during the warranty period and are not related to incorrect non-purposeful handling, storage or depositing of the product.
   4. The contractor shall eliminate defects subject to warranty within 28 working days as of the moment the contracting entity sent the product to warranty repairs.
   5. The warranty period shall be suspended for the time during which the contracting entity is unable to use the product due to its non-compliance with the terms and conditions of the agreement for which the contractor is liable.
   6. The contractor shall replace, free of charge, the product with a new product that is at least equivalent or better if the same defect appears in the product for the third time during the warranty period. All the replacement expenses and possible related expenses shall be paid by the contractor.
   7. The contractor shall be released from their liability if the defect was caused by the contracting entity. If the contracting entity and the contractor fail to reach an agreement on the reasons for the defect, within the first six months the contractor shall have the obligation to certify whether it was a manufacturing fault or a fault arisen as a result of incorrect use of the product. The certification obligations shall be with the contracting entity during the remaining warranty period.
   8. The product replaced during the warranty period shall be provided with a new warranty whose duration is equal to the initial sales warranty.
   9. Other warranty terms and conditions are provided for in the general terms and conditions of SMIT contract (annex 1).
6. **Liability**
   1. The parties shall be liable for the violation of their contractual obligations.
   2. In addition to other provisions of the agreement documents, the contracting entity has the right to demand and the contractor has the obligation to pay a contractual penalty at the rate of up to 0.1% a calendar day of the total value of a specific public contract within the framework of which contractual obligations have been violated, e.g. upon violation of the terms and conditions of warranty, product support, etc.
   3. Upon a violation of the confidentiality obligation, the contracting entity has the right to demand that the contractor pay a contractual penalty in accordance with the provisions of clause 10.12.1 of the general terms and conditions.
7. **Term of agreement**
   1. The agreement shall take effect from the moment of its signing by the parties.
   2. The agreement remains in effect for 48 months from the award of the framework agreement or until the maximum value set out in clause 1.4 is reached (the earliest of the two is applied) Rights and obligations that, due to their nature, do not depend on the validity of the agreement shall remain in effect following the expiry of the agreement.
   3. The contracting entity has the right to extraordinary cancellation of the framework agreement if the contractor violates the terms and conditions of the framework agreement or a public contract to be awarded on the basis thereof, or on another basis established in the general terms and conditions of SMIT contract.
8. **Representations and warranties of contractor**
   1. The contractor shall represent and warrant the following:
      1. they have examined the agreement and the invitation to tender and fully understand the content and consequences of the obligations assumed and agree to the terms and conditions set out therein;
      2. the performance of the agreement does not damage the rights and interests of third parties and there are no circumstances that would preclude the contractor’s rights to enter into the agreement and perform it duly;
      3. they have examined the general terms and conditions of SMIT contract forming an integral part of the agreement.

*The agreement has been signed digitally or, in the case of a foreign contractor, on paper.*

**Annex 1.1 PUBLIC CONTRACT *draft***

*The clauses of the public contract may change, depending on the specific order and object of the public contract*

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| Contract number |  |

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| **Parties’ details** | |
| **Contracting entity** | **IT and Development Centre. Ministry of the Interior, Estonia** |
| Registry code | 70008440 |
| Address | Mäealuse 2/2, 12618 Tallinn, Republic of Estonia |
| Contracting entity’s representative |  |
| Basis of representation | *Statutes / power of attorney* |
| Contact persons | *1. Name, job title, e-mail, telephone.*  *2. …* |
|  |  |
| **Contractor** | ***OÜ/AS*** |
| Registry code |  |
| Address |  |
| Contractor’s representative |  |
| Basis of representation | *Articles of association / power of attorney* |
| Contact persons | *1. Name, job title, e-mail, telephone.*  *2. …* |

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| 1. **Basis of award of agreement** | On the basis of clause 93 (1) 4) of the Public Procurement Act, framework agreement no. .... awarded on ….. 2020, documents of the order placed by the contracting entity on …, and the tender submitted by the contractor on …. |
| 1. **Object of contract** |  |
| 1. **Source of financing** | State budget and/or external funds. The specific source of financing is indicated each time in the public contract. |

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| 1. **Performance of object of contract** |
| * 1. The object of the contract is the camera(s) on a stand / licence(s) / product support described in ....   2. …..   3. In matters not agreed in this public contract the provisions of the framework agreement apply. |

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| 1. **Value of public contract and procedure for settlement** |
| * 1. The total value of the object of the contract is … euros plus value added tax. The price provided for in the public contract is the final price payable by the contracting entity for the corresponding object of the contract. The value of the contract includes all the expenses related to the use of hardware and software – the right to use, maintenance and warranty, version updates, security patches, counselling on licensing and introduction as well as all intellectual property fees.   2. *If the contracting entity purchases only (a) camera(s) on a stand or (a) camera(s) on a stand with licences and product support, the contractor shall submit an invoice to the contracting entity after the parties have signed the record of delivery and receipt. The invoice is payable in one part and if the contracting entity purchases only product support, the contractor shall submit an invoice for the product support to the contracting entity after activation thereof.*   3. The payment term of the invoice is … calendar days.   4. *If the contractor is a company registered in Estonia, the contractor shall send the contracting entity e-invoices corresponding to the Estonian e-invoice standard. An e-invoice must include, in addition to the data specified in the standard, the last name of the contracting entity’s contact person, the reference number of the public procurement and the number of the framework agreement, the reference number of the order and the number of the public contract as well as the identification of the project of external funds (if the project involves external funds). An e-invoice must be sent through the e-invoice operator Fitek AS (further information at http://www.fitek.ee/ ). An e-invoice is deemed received as of the day Fitek AS has received it or if the contractor is not a company registered in Estonia, the contractor shall send the contracting entity an invoice in pdf to the e-mail address arved@smit.ee.* |

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| 1. **Term of public contract** |
| 6.1. The public contract shall take effect from the moment of its signing by the parties.  6.2. The public contract shall remain valid until the performance of the contractual obligations, but no longer than ….. |

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| **7. Annexes to contract** |
| *7.1 Annex 1 – Contracting entity’s technical specifications;*  *7.2 Annex 1.1 – Record of delivery and receipt;*  *7.3 Annex 2 – …* |

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| *The agreement has been signed digitally or, in the case of a foreign contractor, on paper.* |

**Annex 1.1 – Record of delivery and receipt**

*Tallinn*, … ……….

Basis: Contract no. …-…-…, awarded on … ……… …..

*Contracting entity’s … notice/order no. ….*

*Contractor’s … tender no. …*

………….. *(name of the company)* hereby delivers and ……. *(name of the authority)* hereby receives (hereinafter the object of the contract):

1. ………… (object of the contract) …………

1. The following documents:

……;

……

……

The value of the object of the contract to be delivered (without value added tax) is ………………. (amount in words) euros.

………………. *(name of the contractual contact person of the contractor)* represents and warrants that the object of the contract has been delivered on time according to the terms and conditions provided for in the contract.

…………….. *(name of the contractual contact person of the contracting entity)* represents and warrants that the received object of the contract is in compliance with the terms and conditions of the contract and the object of the contract has been delivered and received according to the time limit and the terms and conditions provided for in the contract.

*This record of delivery and receipt has been drawn up in Estonian or English in ... counterparts, one for each party.*

*or*

*This record of delivery and receipt has been signed digitally or, in the case of a foreign contractor, on paper.*

Contractor: Contracting entity:

…………………… ……………………

*/Name of authority/* */Name of authority/*

……………………… ……………………

*/Signature/* */Signature/*

……………………… ………………………

*/Name of signatory/* */Name of signatory/*