

PROCUREMENT CONTRACT no 3-9/4128-1

Procurement of online training on the HL7 FHIR standard for the partners of the Health and Welfare Information Systems Centre

The Health and Welfare Information Systems Centre (hereinafter referred to as the **contracting authority**), registration code 70009770, address Pärnu mnt 132, 11317 Tallinn, represented by the Director Margus Arm based on the Statutes, and

Firely B.V., (hereinafter **contractor**), registry code 63711605, address Westerdok 442, 1013 BH Amsterdam, The Netherlands, represented by Rien Wertheim, CEO,

hereinafter jointly or separately referred to as **party** or **parties**, have signed this procurement contract (hereinafter **contract**) as follows:

1. Purpose and subject matter of the contract

- 1.1. The purpose of the contract to be signed based on the public procurement "Procurement of online training on the HL7 FHIR standard for the partners of the Health and Welfare Information Systems Centre" (public procurement reference number 278866) organised by the contracting entity, is to purchase training (hereinafter **service**).
- 1.2. The subject matter of the contract are the acquisition of FHIR training for TEHIK's partners.
- 1.3. A more specific description of the subject matter of contract is included in the technical specification.

2. General conditions

- 2.1. All annexes and basic procurement documents, as well as the tender submitted by the contractor in the procurement procedure and written notices between the parties, which are not separately signed as annexes to the contract, shall be deemed to be integral parts thereof.
- 2.2. Contract performance is based on the call for tenders included in the procurement, and the tender.
- 2.3. The parties shall cooperate in the performance of the contract and in achieving its objectives. The parties undertake to make all necessary efforts to perform the contract in due time and as agreed.
- 2.4. If disagreements arise between the contractor and the contracting authority during the performance of the contract, the objectives of the contract are considered from the point of view of the contracting authority.
- 2.5. A party has the right to make proposals to the other party to improve the quality of performance of the contract. If a party has submitted an inquiry to the other party regarding a matter related to the performance of the contract, the party is obliged to respond to it in a substantive manner (give relevant feedback) as soon as possible, but no later than within 3 working days.

- 2.6. The contract performance language is Estonian and/or English, and it is also the language in which all working meetings, communications and documentations will take place.

3. Rights and obligations of the parties

- 3.1. The contractor undertakes to:
- 3.1.1. provide the service under the terms and to the extent agreed in the contract, including ensuring the timely commencement, provision, completion and delivery of the service to the contracting authority;
 - 3.1.2. ensure the availability of resources necessary for the performance of the contract;
 - 3.1.3. notify the contracting authority immediately of circumstances preventing the performance of the contract that interfere with providing the service and meeting deadlines or achieving the objective;
 - 3.1.4. adhere to the contracting authority's guidelines in achieving the objectives of the contract, turning to the contracting authority if necessary;
 - 3.1.5. provide the service with high quality and in accordance with good practices in the field;
 - 3.1.6. have all the necessary intellectual property rights to provide the service;
 - 3.1.7. transfer the right to use parts of the service resulting from the provision of the service (e.g. training materials) to the contracting authority;
 - 3.1.8. declare, in a form which can be reproduced in writing, any interests which may give rise to a conflict of interest in the course of performance of the contract.
- 3.2. The contractor is entitled to:
- 3.2.1. receive payment for the performance of the contract to the extent and according to the procedure agreed on;
 - 3.2.2. use subcontractors in the performance of the contract, coordinating the use of subcontractors with the contracting authority beforehand. The contractor is liable to the contracting authority for the actions and inactions of the subcontractors;
 - 3.2.3. transfer the right to submit the invoice to a third party without entering into an amendment to the contract, if they have submitted a notification to that effect to the contracting authority;
 - 3.2.4. engage additional members of the team with the consent of the contracting authority in a form reproducible in writing if the members of the team submitted in the public procurement are engaged in the performance of the service ordered. The additional team members involved must comply with the procurement requirements for the role;
 - 3.2.5. the presence and the qualifications/experience of the team members not identified in the public procurement and will provide the names of the service providers at the time of the conclusion of the contract.
- 3.3. The contracting authority undertakes to:
- 3.3.1. pay the contractor for the performance of the contract to the extent and according to the procedure agreed on;

- 3.3.2. inform the contractor of any deficiencies in the service transferred and allow reasonable additional time for eliminating the deficiencies, unless the deadline is otherwise agreed.
- 3.4. The contracting authority is entitled to:
 - 3.4.1. check at any time the performance of the contract and to give the contractor any instructions which are mandatory for that purpose;
 - 3.4.2. refuse to pay, in whole or in part, if the contractor fails to perform properly under the terms of the contract and the contractor's breach is not objectively justified.

4. Contract value

- 4.1. Based on the total value provided in the tender, the contracting authority will pay the contractor for the service 21 000,00 (twenty one) euros excluding VAT.
- 4.2. The invoice shall be submitted to the contracting authority as an e-invoice. The invoice shall indicate the title of the procurement, the number of the contract and the details of the contact person.¹
- 4.3. The contractor shall provide an invoice payment deadline of no less than 21 calendar days from invoice receipt.

5. Confidentiality

- 5.1. The parties undertake mutually to keep secret and not to disclose to third parties any information considered confidential, which has been obtained from the other party in the course of the performance of the contract or otherwise or accidentally.
- 5.2. The contractor must take organisational, physical and IT security measures to protect personal data and the contracting authority's information systems in accordance, *inter alia*, with applicable legislation.
- 5.3. In the event that the processing of personal data becomes necessary within the framework of the performance of the contract, the parties shall agree on the terms and conditions of the processing of personal data in a personal data processing contract², guided by article 28 of the GDPR.
- 5.4. Confidential information is any information (including trade secrets, personal data, contract data, information systems, security system specifications, hardware and software specifications, tenders, technologies used, specifications, etc.) obtained in connection with the performance of the contract, the disclosure of which to third parties could expose the parties to security risks or economic damage or breach the privacy of third parties (in particular the contracting authority's customers). In the event of doubt, the information shall be presumed to be confidential.
- 5.5. Confidential information is not information the disclosure of which is required by law or which the parties have agreed to disclose.
- 5.6. The contractor shall not engage in public relations in relation to the contract and shall not make any announcements to the press, electronic media, the general

¹ Foreign tenderers may submit an invoice in pdf format at rmp@tehi.ke if e-invoicing is not possible.

² Regulation (EU) 2016/679 of the European Parliament and of the Council.

public or other audiences, except with the prior written consent of the contracting authority.

- 5.7. The parties may communicate confidential information only to those persons who are involved in the performance of the contract and shall ensure that these persons are aware of the obligation of confidentiality. The parties shall require such persons to comply with this obligation unconditionally and without time limit.
- 5.8. The parties shall not use any confidential information, which has come to their knowledge in the course of the performance of the contract, for their own benefit or for any other purpose than the performance of the contract.
- 5.9. The contractor is aware that the contracts and agreements are public, except for those parts which have been designated for internal use under the Public Information Act or marked by the contractor as trade secrets.
- 5.10. In the event of a breach of confidentiality, the contractor undertakes to compensate the contracting authority or any third party for any loss or damage suffered by the contracting authority or the third party as a result of such breach, irrespective of whether the breach occurred during the term of the contract or after the termination of the contractual obligations.
- 5.11. The obligation of confidentiality shall apply indefinitely.

6. Liability

- 6.1. Each party is liable for breach of its contractual obligation, unless the breach is excusable due to *force majeure* or other objective circumstances. The burden of proof of existence of such circumstances lies on the party wishing to rely on them.
- 6.2. Each party shall be liable for any breach of its contractual obligations resulting from the actions of persons the party has involved in the performance of the contract.
- 6.3. Parties shall not be liable for any breach of their contractual obligations resulting from the breach of obligations of the other party or from the acts or omissions of third parties. If the contracting authority delays the performance of its obligations and the contractor is unable to perform its obligations in due time, the time for delivery of the goods shall be extended by the corresponding period. The burden of proof of existence of such circumstances lies on the party wishing to rely on them.
- 6.4. In the event of a breach of obligation, the other party shall be entitled to exercise all legal remedies available under the law or the contract in accordance with the Law of Obligations Act.
- 6.5. The total financial liability of the parties shall be limited to the total amount of the contract, but this limitation shall not apply in the event of a culpable breach, including a culpable breach of intellectual property or data protection obligations.
- 6.6. In the event of late payment of the fee, the contractor is entitled to claim late fees for the amount due for the specific item at the rate provided for in the Law of Obligations Act for each calendar day of late payment. The maximum rate of late fees shall be 25% of the total amount due for the specific item. The claim for late fees must be signed.
- 6.7. A breach of contract on the part of the contractor shall be deemed to be a breach of contract, in particular where the service delivered do not comply in whole or in

part with the terms of the contract or where there are other breaches of contract on the part of the contractor.

- 6.8. In the event of a breach of contract by the contractor, the contracting authority is entitled to a contractual penalty of 100 euros per calendar day of breach, but not exceeding 25% of the total value of the contract. If the purchase of the service is agreed in stages, no more than 25% of the total value of the stage.
- 6.9. If, due to delays on the part of the contractor, it is no longer feasible or necessary for the item to be put into service, the contracting authority shall be entitled to withdraw from the contract in accordance with § 116(1) of the Law of Obligations Act and the contractor shall be obliged to reimburse the contracting authority for the part already paid.
- 6.10. In the event of a fundamental breach of contract, the contracting authority shall be entitled to claim from the contractor a contractual penalty of 10,000 euros for each breach. In the event of a material breach of the contract by the contractor, the contracting authority is not required to set an additional term for performance of the contract by the contractor as referred to in § 114 of the Law of Obligations Act and the contracting authority is entitled, *inter alia*, to terminate the contract or to withdraw from the contract.
- 6.11. In addition to the provisions of the Law of Obligations Act, a fundamental breach is, *inter alia*, the following:
 - 6.11.1. not starting performance, unless there is a valid reason;
 - 6.11.2. providing false information;
 - 6.11.3. absence of the rights necessary for the performance of the contract (including authorisations, licences, intellectual property rights);
 - 6.11.4. infringement of intellectual property rights and of the conditions for their use;
 - 6.11.5. repeated replacement (at least twice) of a member of the team with a person who does not comply with the agreed requirements, or replacement of a member of the team without the prior consent of the contracting authority, given at least in a format which can be reproduced in writing;
 - 6.11.6. breach of confidentiality;
 - 6.11.7. repeated failure (at least twice) to comply with contractual obligations;
 - 6.11.8. failing to deliver the item on time, in such a way that the performance of the purpose of the contract can no longer be realistically achieved within the time limit and/or the funds earmarked for the financing of the contract can no longer be used as a result of an act or omission on the part of the contractor;
 - 6.11.9. transferring the obligations under the contract to a third party without a corresponding amendment to the contract.
- 6.12. Acceptance of the item by the contracting authority does not relieve or reduce the contractor's liability for breach of contract.
- 6.13. If the contractor fails to perform the contract correctly and based on this the implementing agency decides to reduce or recover the grant, the contracting authority shall be entitled to recover from the contractor the ineligible costs up to the amount of the claim for reimbursement.
- 6.14. The contracting authority undertakes to submit a claim for contractual penalty within a reasonable period, but not later than 3 months from the date on which the contracting authority became aware of the circumstances giving rise to the claim

for contractual penalty. Disputing a claim for contractual penalty does not release the contractor from the obligation to pay the penalty, unless a relevant judgment has entered into force.

- 6.15. The contractor is obliged to pay the contractual penalty within 14 calendar days from the date of the contracting authority's claim, unless otherwise specified in the contractual penalty claim.
- 6.16. The contracting authority shall be entitled to net the amount of contractual penalty against the payments due to the contractor for the item. In the event of netting, the obligation to pay the contractual penalty shall not apply.

7. Validity, amendment and termination

- 7.1. The contract enters into force upon conclusion.
- 7.2. The contract can only be amended by written agreement between the parties in the same format as the contract, subject to the provisions of the Public Procurement Act.
- 7.3. If any term of the contract should prove to be partially or totally invalid or unenforceable, the validity of the other terms of the contract shall not be affected and the remaining terms of the contract shall remain valid and enforceable. In such a case, the invalid or unenforceable term shall, where possible, be replaced by a legally enforceable term that is as close as possible in substance to the intentions of the parties and to the economic effect of the invalid term.
- 7.4. The contracting authority may terminate the contract at any time and for any reason by giving 30 days advance notice in a format reproducible in writing. Termination relieves the parties of performing the obligations set out in this contract.
- 7.5. The contracting authority has the right to unilaterally terminate the contract without notice if the contractor is in material breach of the contract or if the contractor has
- 7.5.1. bankruptcy proceedings initiated against them;
 - 7.5.2. bankruptcy declared against them;
 - 7.5.3. had their assets seized; or if
 - 7.5.4. in the reasonable opinion of the contracting authority, the financial situation of the contractor has deteriorated significantly, making proper performance of the contract unlikely.
- 7.6. Upon termination of the contract for any reason whatsoever, the contractor shall be obliged to hand over to the contracting authority all information and documentation relating to the contract (both digital and paper, as well as information not recorded on the above-mentioned media). The information and documentation handed over must be systematised. At the request of the contracting authority, the contractor is obliged to provide in writing exhaustive explanations on the management and use of the information described above.

8. Notices and contact persons

- 8.1. Notices will normally be sent by e-mail, subject to the provisions of the Rules of Procedure, where available. In the case of transmission by e-mail, including digitally signed documents, the notice shall be deemed to have been received at

the time of receipt indicated in the notice of receipt or at the time of sending indicated in the e-mail.

- 8.2. In cases where the transmission of a notice has important legal consequences, the notice must be transmitted in digital format by a person authorised to sign on behalf of the party. An informative notice may also be transmitted by telephone. Any notice which does not have legal effects shall be deemed to be informative.
- 8.3. A written notice shall be deemed to have been received by a party if it has been delivered against a signature or if it has been sent by the postal authority as a registered letter to the address indicated by the party and 5 calendar days have elapsed since the date of sending.
- 8.4. The contracting authority's contact person(s) is/are: Ragne Õitspuu, e-mail: ragne.oitspuu@tehik.ee or his/her substitute;
- 8.5. The contractor's contact person(s) is/are: Rien Wertheim, rien@fire.ly, CEO, cell: +31 653389590 his/her substitute;
- 8.6. The contact person(s) is/are authorised to provide the other party with the necessary information and instructions within the scope of his/her competence, to authorise the replacement of a member of the team, to verify the quality of contract performance, to deliver the item of the contract and to accept it and sign the act.
- 8.7. If a party changes their contact person, that party must inform the other party in writing without delay.

9. Final provisions

- 9.1. Disputes related to the contract, which the parties have not been able to resolve through negotiations, shall be referred to the Harju County Court.
- 9.2. The contract shall be governed by Estonian law.
- 9.3. In matters not regulated by the contract or in a situation where a provision of the contract is in conflict with the law, the applicable legislation of the Republic of Estonia shall apply.

10. Annexes (not signed)

- 10.1. Annex 1 – Technical description;
- 10.2. Annex 2 – Tender.

11. Signatures of the parties

Contracting authority:

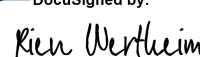
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