

<p>DIREZIONE CENTRALE RISORSE UMANE E STRUMENTALI</p> <p>UFFICIO AFFARI GENERALI E CONTRATTI</p>	<p>CONTRACTUAL OBLIGATIONS OF A CONTRACT FOR THE DEVELOPMENT AND DELIVERY OF BASIC TRAINING COURSES IN COMPUTER FORENSICS FOR ANTITRUST CASE-HANDLERS, AS FORESEEN IN THE PROJECT</p> <p><i>"European Antitrust Training and Exchange Program in Forensic IT (EATEP_FIT)"</i> (ref. HOME / 2010 / ISEC / FP / C2 / 4000001438)</p>
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TENDER TO AWARD A CONTRACT FOR THE DEVELOPMENT AND DELIVERY OF BASIC TRAINING COURSES IN COMPUTER FORENSICS FOR ANTITRUST CASE-HANDLERS, AS FORESEEN IN THE PROJECT

*"European Antitrust Training and Exchange Program in Forensic IT (EATEP\_FIT)"*  
(ref HOME / 2010 / ISEC / FP / C2 / 4000001438)

- Contractual obligations -

TENDER No.:3554948 CIG No.: 3551633444

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## TABLE OF CONTENTS

<b>Article 1 – Purpose of the Contract .....</b>	<b>3</b>
<b>Article 2 – Execution of the Service .....</b>	<b>3</b>
<b>Article 3 – Stipulation of the Contract.....</b>	<b>3</b>
<b>Article 4 – Contractual Charges .....</b>	<b>3</b>
<b>Article 5 – Obligations of the Supplier Toward Its Own Staff .....</b>	<b>4</b>
<b>Article 6 – Obligatory Fifth .....</b>	<b>4</b>
<b>Article 7 – Relations with the Buyer - Start of services - Intermediate checks .....</b>	<b>4</b>
<b>Article 8 – Responsibilities of the Supplier and insurance coverage .....</b>	<b>5</b>
<b>Article 9 – Duties and obligations of the Winning Bidder .....</b>	<b>5</b>
<b>Article 10 – Method of Payment.....</b>	<b>5</b>
<b>Article 11 – Duration, expiry and withdrawal.....</b>	<b>6</b>
<b>Article 12 – Legal Domicile .....</b>	<b>6</b>
<b>Article 13 – Privacy .....</b>	<b>6</b>
<b>Article 14 – Subcontracting .....</b>	<b>7</b>
<b>Article 15 – Cancellation of the Contract.....</b>	<b>7</b>
<b>Article 16 – Penalties .....</b>	<b>8</b>
<b>Article 17 – Obligations related to the traceability of financial flows.....</b>	<b>8</b>
<b>Article 18 – Jurisdiction .....</b>	<b>9</b>
<b>Article 19 – Arbitration Clause.....</b>	<b>9</b>
<b>Article 20 – Final Provisions .....</b>	<b>9</b>

<p><b>DIREZIONE CENTRALE RISORSE UMANE E STRUMENTALI</b></p> <p><i>UFFICIO AFFARI GENERALI E CONTRATTI</i></p>	<p>CONTRACTUAL OBLIGATIONS OF A CONTRACT FOR THE DEVELOPMENT AND DELIVERY OF BASIC TRAINING COURSES IN COMPUTER FORENSICS FOR ANTITRUST CASE-HANDLERS, AS FORESEEN IN THE PROJECT</p> <p><i>"European Antitrust Training and Exchange Program in Forensic IT (EATEP_FIT)" (ref. HOME / 2010 / ISEC / FP / C2 / 4000001438)</i></p>
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## **Article 1 – Purpose of the Contract**

The purpose of the contract is the development and delivery of the basic training courses in computer forensics for antitrust case-handlers, as foreseen in the project “European Antitrust Training and Exchange Programs in Forensic IT (EATEP\_FIT)” ( ref. HOME / 2010 / ISEC / FP / C2 - 4000001438).

## **Article 2 – Execution of the Service**

The activities that constitute the service referred to in Article 1, above, are specified in the Technical Specifications and must be carried out in accordance with the procedures indicated therein. Failure to execute the services and provisions specified therein constitutes a serious breach of contract.

## **Article 3 – Stipulation of the Contract**

The winning bidder, before the service is awarded, must provide the following:

- the documents, to be presented as originals or certified copies as per Articles 18 and 19 of Presidential Decree No. 445/2000, that were the basis of the declarations made at the time application was made to participate in the bid procedure (upon request of the Authority);
- documentary evidence that a cautionary deposit, being 2% of the estimated amount of the contract, has been set up according to one of the methods provided for in Article 113 of Legislative Decree No. 163/2006.

Definitive adjudication is not equivalent to acceptance of the proposal. The winning bidder’s proposal is irrevocable for the period stipulated in Article 11(9) of Legislative Decree No. 163/2006.

The definitive letting of the contract is conditional upon positive verification that the bidder possesses the requisite qualifications.

Except for the possible exercise of the right to self-protection in those cases where the law allows it, the signing of the contract will take place thirty five days after the announcement of the winning bid in conformity with Article 79 of Legislative Decree no. 163/2006.

## **Article 4 – Contractual Charges**

The supplier shall undertake the assignment in the exclusive interest of the administration and in full accordance with any instructions it provides.

The winning bidder shall assume, without right to compensation, any and all inherent and consequential expenses related to the allocation and the subsequent contract as well as any other taxes or duties that may bear on the contracted service.

The supplier shall bear the travel and subsistence expenses for the personnel assigned to execute the contract.

<p><b>DIREZIONE CENTRALE RISORSE UMANE E STRUMENTALI</b></p> <p><i>UFFICIO AFFARI GENERALI E CONTRATTI</i></p>	<p>CONTRACTUAL OBLIGATIONS OF A CONTRACT FOR THE DEVELOPMENT AND DELIVERY OF BASIC TRAINING COURSES IN COMPUTER FORENSICS FOR ANTITRUST CASE-HANDLERS, AS FORESEEN IN THE PROJECT</p> <p><i>"European Antitrust Training and Exchange Program in Forensic IT (EATEP_FIT)" (ref. HOME / 2010 / ISEC / FP / C2 / 4000001438)</i></p>
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## **Article 5 – Obligations of the Supplier Toward Its Own Staff**

The winning bidder undertakes, with respect to its own employees working under this contract, to apply work conditions and remuneration not less favourable than those in collective and supplementary contracts applicable to this category of employee in those locations where the activities are executed, as well as any conditions resulting from subsequent modifications and additions.

The winning bidder undertakes to fulfil all obligations to its own staff deriving from current legislative and regulatory provisions regarding the workplace, including those having to do with hygiene and safety, health and accident cover, and to pay all necessary charges. In particular, the supplier undertakes during the execution of its contractual obligations to abide by the provisions of Legislative Decree No. 81 of 9 April 2008 as amended.

## **Article 6 – Obligatory Fifth**

If during the course of execution of the contract it should emerge that there is a need for an increase or a decrease in the service required, the supplier shall be obliged to execute the service upon the conditions established in the contract for variations of up to 20% of the estimated value of the contract. Beyond that limit, the supplier shall have the right, upon request, to cancel the contract but without the right to demand damages, barring the provision of article 10, last paragraph, of the present Contractual Obligations.

## **Article 7 – Relations with the Buyer - Start of services - Intermediate checks**

At the time of contract stipulation, the Buyer shall designate a Director of Execution and the Supplier shall specify an Operations Coordinator in order to facilitate the maximum fluidity and effectiveness of reciprocal communications during the execution of tendered services. Any other procedures deemed necessary shall be defined during the contract phase.

Once the contract has been stipulated, the Winning Bidder shall initiate the execution of the services defined in the Technical Specifications immediately.

The Director of Execution shall review the works conducted and related execution times, sharing his assessments with the Winning Bidder on a regular basis. Should the results be deemed unsatisfactory, the Supplier shall be obliged to make suitable improvements in accordance with the instructions of the Buyer. Should the Supplier refuse to make said improvements, the Buyer may impose penalties and proceed to engage a different company, if necessary, while charging any related costs to the Winning Bidder.

If during the course of execution of the contract the winning bidder should find it necessary to replace a teacher with another who was not included in the technical proposal, in order to obtain the Authority's necessary approval, it will communicate the name in a timely fashion and forward the relevant CV, guaranteeing in any case professional qualifications at least equal to those of the teacher being replaced.

The Buyer reserves the right at any time to request the replacement of a teacher whose professional performance, in the unchallengeable opinion of the Buyer, is not consistent with the aims and results desired.

<p><b>DIREZIONE CENTRALE RISORSE UMANE E STRUMENTALI</b></p> <p><i>UFFICIO AFFARI GENERALI E CONTRATTI</i></p>	<p>CONTRACTUAL OBLIGATIONS OF A CONTRACT FOR THE DEVELOPMENT AND DELIVERY OF BASIC TRAINING COURSES IN COMPUTER FORENSICS FOR ANTITRUST CASE-HANDLERS, AS FORESEEN IN THE PROJECT</p> <p><i>"European Antitrust Training and Exchange Program in Forensic IT (EATEP_FIT)" (ref. HOME / 2010 / ISEC / FP / C2 / 4000001438)</i></p>
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If the Authority, in its incontestable opinion, identifies any imprecisions that are serious enough to compromise the quality and/or consignment times of the works, the Authority may proceed pursuant to Article 16 of the present "Contract Obligations" (penalties).

## **Article 8 – Responsibilities of the Supplier and insurance coverage**

The Winning Bidder, for the entire time the contract is in force, takes upon itself full responsibility for any damage caused to persons or things by its employees during the course of the contracted work.

For the entire duration of the contract, the Winning Bidder shall engage an appropriate insurance company for RCT (third-party liability) and RCO (compulsory third-party liability) coverage of third parties and its own employees against service-related risks and occupational hazards with the lowest maximum coverage prescribed by law.

## **Article 9 – Duties and obligations of the Winning Bidder**

The Winning Bidder shall assume responsibility for providing the means, materials and equipment, manual labor, services and whatever else may be necessary to foster the best and most efficient execution of the requested services in compliance with the clauses in the tendering documentation and any instructions provided by the Buyer.

Personnel employed by the Winning Bidder must exhibit a demeanor appropriate to their respective work activities.

Should said personnel fail to exhibit the demeanor deemed to be most functional for the tendered service, the Buyer may ask the Winning Bidder to investigate the matter and, if necessary, dismiss and replace the individuals in question.

In addition to what has already been established, the Winning Bidder shall assume the following duties and obligations without any additional compensation:

- any expenses sustained to participate in the tender;
- any stamp expenses required while carrying out the service, starting from the day the Winning Bidder is announced and for the entire duration of the contract;
- the repetition of any contracted services that the Buyer deems to have been executed in a substandard manner in terms of industry standards;
- the expenses sustained to dismiss and replace any personnel deemed unfit by the Administration pursuant to the present Article 9;
- the obligation to provide the Buyer with immediate written notification of any circumstances or difficulties that bear an influence on the planned execution.

## **Article 10 – Method of Payment**

Payment shall be made by means of bank transfers as follows:

<p><b>DIREZIONE CENTRALE RISORSE UMANE E STRUMENTALI</b></p> <p><i>UFFICIO AFFARI GENERALI E CONTRATTI</i></p>	<p>CONTRACTUAL OBLIGATIONS OF A CONTRACT FOR THE DEVELOPMENT AND DELIVERY OF BASIC TRAINING COURSES IN COMPUTER FORENSICS FOR ANTITRUST CASE-HANDLERS, AS FORESEEN IN THE PROJECT</p> <p><i>"European Antitrust Training and Exchange Program in Forensic IT (EATEP_FIT)" (ref. HOME / 2010 / ISEC / FP / C2 / 4000001438)</i></p>
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- 20% when the Buyer receives and approves the training aids and materials (lesson plans, manuals, slides, case studies, etc.), as specified in the Technical Specifications;
- 40% upon the conclusion, contingent upon a positive assessment, of the first block of training lessons (first four sessions, as specified in the Technical Specifications);
- 40% upon conclusion of the work.

The above payments shall be deposited into a bank account in the name of the Winning Bidder. The method of payment, as well as account number and bank coordinates must be indicated on each and every invoice.

If the participation rate is too low to necessitate all of the eight course sessions foreseen in the Technical Specifications, the total payment shall be reduced in due proportion.

### **Article 11 – Duration, expiry and withdrawal**

The duration of the contract shall be 31 (thirty-one) months.

The Buyer may withdraw from the signed contract at any time. In the case of withdrawal, the Winning Bidder shall be entitled to payment for work already provided, including expenses sustained, in addition to compensation commensurate with the share of residual services not delivered, for up to 10% of the contracted amount. Payment of the above is contingent on the prior submission of documented proof of the work provided and expenses sustained, and the compensation for residual services is contingent on the prior submission of a report that details the nature and magnitude of any non-refundable program expenses along with documented proof of payment.

The procedures and times required for the processing of payments are defined in Article 10 of the present Contractual Obligations.

### **Article 12 – Legal Domicile**

The winning bidder is obliged to elect its legal domicile for the execution of the contract and this will be specified in the contract itself.

The Supplier is also obliged to advise of any change to the above domicile.

Otherwise the consequences of any delay in execution of the service resulting from late delivery of mail will be attributable to the Supplier.

### **Article 13 – Privacy**

The Supplier undertakes to ensure maximum privacy with regard to any data and information it may glean while carrying out its activities in the Authority's offices. Each of the individuals employed to provide the services defined in this contract shall sign a special declaration of commitment in this regard. Maximum confidentiality is required even after the contract itself has expired.

In regards to the protection of personal information, the Supplier undertakes:

<p><b>DIREZIONE CENTRALE RISORSE UMANE E STRUMENTALI</b></p> <p><i>UFFICIO AFFARI GENERALI E CONTRATTI</i></p>	<p>CONTRACTUAL OBLIGATIONS OF A CONTRACT FOR THE DEVELOPMENT AND DELIVERY OF BASIC TRAINING COURSES IN COMPUTER FORENSICS FOR ANTITRUST CASE-HANDLERS, AS FORESEEN IN THE PROJECT</p> <p><i>"European Antitrust Training and Exchange Program in Forensic IT (EATEP_FIT)" (ref. HOME / 2010 / ISEC / FP / C2 / 4000001438)</i></p>
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- to respect and ensure the security measures required to upgrade the worksites, stored files, documents and information to the protection levels prescribed by Legislative Decree No. 196/2003 and by the Data Protection Authority;
- to preserve and store the information and documents in a way that guarantees their integrity, confidentiality and availability;
- not to duplicate or reproduce any of the personal information in its custody during the execution of the present contract, and not to provide third parties with access to this information, except at the request of the Authority or authorized stakeholders;
- to access the data for no purposes other than the execution of this contract;
- to provide the Authority and its employees with on-site access for purposes of verifying compliance with the restrictions indicated above.

#### **Article 14 – Subcontracting**

No form of subcontracting is allowable.

#### **Article 15 – Cancellation of the Contract**

The Authority reserves the right under Article 1456 of the Civil Code to cancel the contract at any time by way of a simple communication to be sent by registered mail with return receipt, with immediate effect and without any form of compensation for the Supplier, in the case where, in the Authority's unchallengeable opinion, the arrangements made and the resources employed for the carrying out of the contracted services do not correspond with the conditions established in the call for proposals, or the service is qualitatively inadequate, or there are irregularities, fraud or negligence in general, or there are serious questions touching on the public interest.

The contract will be automatically cancelled in the case of violation of Article 13 (Privacy) or in the case where the Winning Bidder (or another economic entity participating in an RTI-Temporary Grouping of Companies or business Consortium) is no longer in possession of one of the prerequisites for admission to this bidding procedure.

In the case of contract cancellation, the Authority reserves the right to reassign the present tender contract to the second-ranked company in the tender classification.

The determination of one or more of the following situations shall constitute grounds, in any case, for express cancellation with full rights to indemnification:

1. the absence of the requirements listed in the tendering notice for purposes of tenderer pre-qualification, save and without prejudice to any damage claims by the Buyer.
2. the failure to meet the deadlines established in the working plan, except for delays directly attributable to the Buyer or to other objective circumstances;
3. the unauthorized replacement of working group members;
4. the failure to honor the prohibition on sub-contracting;

<p><b>DIREZIONE CENTRALE RISORSE UMANE E STRUMENTALI</b></p> <p><i>UFFICIO AFFARI GENERALI E CONTRATTI</i></p>	<p>CONTRACTUAL OBLIGATIONS OF A CONTRACT FOR THE DEVELOPMENT AND DELIVERY OF BASIC TRAINING COURSES IN COMPUTER FORENSICS FOR ANTITRUST CASE-HANDLERS, AS FORESEEN IN THE PROJECT</p> <p><i>"European Antitrust Training and Exchange Program in Forensic IT (EATEP_FIT)" (ref. HOME / 2010 / ISEC / FP / C2 / 4000001438)</i></p>
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5. the untruthfulness of declarations provided for purposes of participating in the tender or in the contracting phase;
6. the violation of the confidentiality requirement;
7. the absence of the minimum eligibility requirements as specified in the tendering notice, even when not discovered until after the services have been contracted;
8. fraud or serious negligence during the execution of contract obligations, terms and conditions;
9. discontinuance of the business or of the Winning Bidder's activities or its involvement in preventive bankruptcy or other insolvency procedures.

Cancellation entitles the Buyer to avail itself of any credits held by the Winning Bidder as well as the loaned guarantee/bond.

## **Article 16 – Penalties**

Should the Authority find that, for any reason, the service has not been carried out in its entirety or does not comply with the contents of the bid documentation, it will give notice to the Winning Bidder to rectify the irregularities or deficiencies observed.

If the working plan agreed upon with the Buyer experiences delays that are not imputable to the Buyer, the Winning Bidder will be subject to a penalty equal to 0.2% (2 per thousand) of the total contracted amount for each day of lateness. The Buyer shall detract the above penalty from the next scheduled payment following the determination of the breach or from the bank guarantee, save the rights of the Buyer to cancel the contract itself and to be compensated for any additional damages caused by the delays.

Breaches of contract resulting in the application of penalties as per the present article shall be communicated formally to the supplier Company, which shall be allowed 3 days from the date of notification to provide a counter response. Should said response be deemed insufficient, in the incontestable opinion of the Authority, or should no response be provided or in any case not be received within the indicated time limit, the related penalty shall come into effect and another Company may be contracted by imputing the costs to the Winning Bidder.

The penalties shall be applied to the performance bond, which the supplier must then restore, or else by presenting the supplier with a direct request for payment.

The application of penalties is without prejudice to the Authority's right to demand compensation for any greater damages and/or the right to declare the contract cancelled under Article 16 "Cancellation of the Contract".

## **Article 17 – Obligations related to the traceability of financial flows**

The contractor assumes all obligations concerning the traceability of financial flows as prescribed in Article 3 of Law No. 136 of 13 August 2010, as modified.

In addition, pursuant to Article 3(7) of Law No. 136 of 13 August 2010, the company must notify the Authority of the following :



<p><b>DIREZIONE CENTRALE RISORSE UMANE E STRUMENTALI</b></p> <p><i>UFFICIO AFFARI GENERALI E CONTRATTI</i></p>	<p>CONTRACTUAL OBLIGATIONS OF A CONTRACT FOR THE DEVELOPMENT AND DELIVERY OF BASIC TRAINING COURSES IN COMPUTER FORENSICS FOR ANTITRUST CASE-HANDLERS, AS FORESEEN IN THE PROJECT</p> <p><i>"European Antitrust Training and Exchange Program in Forensic IT (EATEP_FIT)" (ref. HOME / 2010 / ISEC / FP / C2 / 4000001438)</i></p>
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- the identification of designated bank or postal accounts along with an indication of the work/supply/service they are dedicated to;
- the personal particulars and tax identification numbers of the individuals authorized to use them;
- any updates to the submitted information.

This notification must be made within seven days of when the account is opened or (for pre-existing accounts) "the time when they are first used for financial transactions related to a public contract" (see Article 3(7) as amended by Article 7(1, letter a) of Legislative Decree No. 187/2010).

The notification in question must bear the signature of a legal representative or other subject imbued with power of attorney.

The absence, failure or incomplete notification of the information defined in Article 3(7) of Law No. 136 of 13 August 2010, shall entail the imposition of a pecuniary administrative fine of 500 to 3,000 euro (Article 6(4) of Law No. 136/2010) on the non-compliant subject.

#### **Article 18 – Jurisdiction**

For any dispute arising that cannot be settled amicably, the Italian courts, and in particular the Tribunal of Rome, shall have jurisdiction.

#### **Article 19 – Arbitration Clause**

The contract that regulates the allocation shall not contain the arbitration clause prescribed by Article 241(1 bis) of Legislative Decree No. 163/2006, governing the provisions on arbitration.

#### **Article 20 – Final Provisions**

For any matters not covered by this document or the other bid documents, see the relevant current provisions of the EU and national law, and of the regulations regarding the Authority's financial autonomy as well.