

SUPPLY CONTRACT of a "*TIME OF FLIGHT MASS SPECTROMETER - Project iALMA*", CUP - Codice Unico di Progetto: C52I13000140001; CIG - Codice Identificativo di Gara: 7655879735. Negotiated procedure without prior publication of a contract notice, art. 63 comma 3 letter a) Legislative decree 50/2016 (the Italian Public Procurement Regulations, "Code"). This contract is an electronically signed private agreement, pursuant art. 32 comma 14 of the Code.

Date: May 07, 2020

BETWEEN

Doctor Isabella Pagano, born in Pontedera (PI) the 23rd of April 1962, fiscal number PGNSLL62D63G843F, Director of the "Osservatorio Astrofisico di Catania" (for sake of brevity also referred as "OACT"), Catania, via Santa Sofia 78, Postal code 95123, OACT fiscal number 97220210583, VAT 06895721006,

AND

Doctor Katrin Fuhrer, born in Trubschachen (BE - Switzerland) the 22nd of February 1966, legal representative of the Company TOFWERK AG, Uttigenstrasse 22, CH-3600 Thun, VAT CHE-109.807.630 (for sake of brevity also referred as "Company")

PREAMBLE

the National Institute for Astrophysics (INAF) is a research Institution which has been established in implementation of the Legislative Decree of July 23, 1999, number 296, with headquarters in Rome, viale del Parco Mellini 84, and having Research Structures and operating offices distributed throughout the Italian territory; the Catania Astrophysical Observatory (OACT) is a

Research Structure and second level responsibility and spending center of the National Institute for Astrophysics;

- the INAF Board of Directors, Act n.03/2019 of 29 January 2019, has appointed Dr. Isabella Pagano to be Director of the Astrophysical Observatory of Catania;
- by Presidential Decree of 5 February 2019, number 12, Dr. Isabella Pagano was appointed Director of the Catania Astrophysical Observatory, starting from 18 February 2019 and for the duration of a three-year period, in accordance with the provisions of the article 18, paragraph 10, of the Statute of the "National Institute for Astrophysics";
- with Director Determination of 7 February 2019, number 21, Dr. Isabella Pagano was assigned, in accordance with article 14, paragraph 3, letter g), of the Statute of the "National Institute for Astrophysics", the role of Director of the "Catania Astrophysical Observatory";
- with the Act of the INAF Board of Directors dated 9 June 2015, no. 38/2015, the "Catania Astrophysical Observatory" has been authorized to start a negotiated procedure without prior publication of a contract notice, pursuant to art. 63 of the Code, for the acquisition, within the scope of the "iALMA" project, of scientific instrumentation necessary for the realization of a system for the analysis of materials by laser ablation, ionization and time of flight mass spectrometry which will allow to enhance the activities of the Experimental Astrophysical Laboratory (LASp);
- with the Determination of 18 October 2017, n. 145, the pro-tempore OACT's Director has ordered the start of a negotiated procedure without prior publication of a contract notice, pursuant to art. 63 paragraph 3, lett. a) of

Legislative Decree n. 50/2016 and as amended ("Public Contracts Code" or "code"), for the specific purpose of scouting the reference market, both domestic and foreign, in order to verify the presence of economic operators who are capable to supply the scientific instrumentation necessary for the realization of a system for the analysis of materials by laser ablation, ionization and time of flight mass spectrometry, which will allow to enhance the activities of the Experimental Astrophysics Laboratory, for an estimated value of the contract equal to 845000.00 euro. This has been done arranging the publication of an exploratory Notice to solicit economic Operators for the presentation of expression of interest relating to the forthcoming call for tender. Pursuant to the combined provisions of art. 5 Law 241/1990 and art. 31 of the code, Dr. Alessandro Del Bove Orlandi was appointed as General manager of the procedure (RUP);

- with Determinazione a contrarre of June 8, 2018, number 76, the Director of the OACT, acknowledging that Dr. Alessandro Del Bove Orlandi, in the meantime moved himself to another Italian research body, could not effectively play the role of RUP as from Determine 145/2017, has appointed Doctor Ignazio Porceddu as the new General manager of the procedure, replacing Doctor Alessandro Del Bove Orlandi;

- with letter prot. n. 1518 of 17 October 2018 an invitation was sent to economic operators to confirm interest in the awarding of the supply in question, by submitting an offer to be transmitted not later than 20 November 2018;

- after the expiry of the term referred to in the previous chapter, the selection board was appointed with Determina 1/2019 to evaluate the offers received;

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- at the end of the evaluation procedure, the Selection Board proposed as the winner of Lot 3, concerning the "Supply of a Time-Of-Flight mass spectrometer", the company "TOFWERK AG", for a net amount (without VAT) equal to 315000.00 (three hundred fifteen thousand/00) euro;
- with Determina number 259 of 10 December 2019 the Director of the OACT:
 - i) approved the results of the tender for the awarding of the " Supply of a Time-Of-Flight mass spectrometer"; ii) awarded the tender to the company TOFWERK AG, for a net amount equal to 315000.00 (three hundred and fifteen thousand) euro;
- the RUP has sent the Report with attachments which informs about the positive outcome of proof of the requirements pursuant to art. 80 of the code. Pursuant to art. 80 of the code, this report states that there are no grounds for exclusion under "TOFWERK AG". The RUP reports that the renewals of some certificates are ongoing;
- provided that the contract is entered into in the form of electronically signed private writing, with stamp duty paid by the Company;
- the Company has complied with the request relating to the communication of the dedicated current account pursuant to Law 136/2010 regarding the traceability of financial flows;
- the Company has complied with the payment of the stamp duty due, equal to € 80.00 (eighty / 00), by payment by bank transfer to the bank account in the name of the National Institute for Astrophysics, IBAN IT69S0100503309000000218500;

IT IS AGREED AS FOLLOWS

ARTICLE 1.

(Preamble)

Preambles are embodied within this contract.

ARTICLE 2.

(Tender Aim)

With this contract, OACT entrusts the company "TOFWERK AG", with registered office in Thun (CH), Uttigenstrasse 22, VAT number equal to CHE-109.807.630, which accepts, without reservation, the contract for the "Supply of a time-of-flight mass spectrometer", Lot 3 of the procedure identified with CUP equal to C52I13000140001 and CIG equal to 7655879735, supply defined by the tender documentation, with the conditions ameliorative present in the technical and economic offers presented by the aforementioned Company, by the documents that describe in a specific and detailed way all the aspects that contribute to defining the supply as well as the documents attached to it or, in any way, recalled by it.

ARTICLE 3.

(Applicable Regulations)

1. The parties acknowledge the goods subject of this contract must be delivered and used in the Italian national territory and, in particular, at the INAF - Astrophysical Observatory of Catania site, and, consequently, agree that, in compliance with what is expressly provided for by the "Convention on the Law Applicable to Contractual Obligations open for signature in Rome on 19 June 1980", signed in implementation of the European Community Directive number 80/934 / EEC, and by the Law 31 May 1995, number 218, which reformed the "Italian System of Private International Law", defining

"... the area of the Italian jurisdiction ...", establishing "... the criteria for identifying the applicable law ..." and regulating the "... effectiveness of foreign judgments and deeds ...", only the rules of the Italian legal system will be applied to them;

2. The supplies that are the subject of this contract, as better specified and detailed in the aforementioned documentation, must be carried out in compliance with the conditions, methods, terms and charges expressly foreseen and governed by the tender documents and in compliance with the regulatory provisions mentioned below:

- a. the Legislative Decree 18 April 2016, n. 50, containing the "implementation of directives 2014/23 / EU, 2014/24 / EU and 2014/25 / EU on the award of concession contracts, on public contracts and on the procurement procedures of the providers in the sectors of water, energy, transport and postal services, as well as for the reorganization of the regulations in force regarding public contracts relating to works, services and supplies";
- b. the Legislative Decree 9 April 2008, number 81, and subsequent amendments and additions, which constitutes "Implementation of article 1 of law 3 August 2007, n. 123, regarding the protection of health and safety in the workplace ";
- c. The Civil Code issued with Royal Decree of March 16, 1942, number 262, and subsequent amendments and additions;
- d. the INAF Regulations on "accounting" and "contractual activities", in force at the time of the stipulation of this contract;
- e. all other applicable public procurement provisions.

ARTICLE 4.

(Documents governing the contractual relationship - Order of precedence)

The following documents, listed in order of precedence, are an integral part of this contract and constitute its dossier during the execution phase:

- this Agreement/Contract;
- the tender specifications signed by the Company;
- the technical offer presented by the Company for the parts that constitute improved performance compared to the minimum requirements required by the OACT;
- the economic offer presented by the Company;
- the attached documents or, in any form, referred to in the documents listed above.

ARTICLE 5.

(Communications)

The communication activities between the Company and the OACT must take place in writing and using electronic means of communication, also through the certified email address.

ARTICLE 6.

(Duration of the contract and terms of execution)

The start date of the contract will be that of transmission of the electronic contract document from the OACT to the Company via Certified Electronic Mail, and end date coinciding with that of the Determination of the Director of the OACT with which the test documents are approved or certification of regular execution and certificate of conformity of the supply;

- the Company undertakes to carry out the supply covered by this contract,

within and no later than 12 (twelve) calendar months from the date of the electronic signature of the contract by the contracting authority, and to assume the relative charges, making use, for this purpose, of professionally qualified personnel. In the execution of the services that are the subject of this contract, the Company is bound to comply with all the standards and technical prescriptions in force regarding prevention and safety at work.

ARTICLE 7.

(Payment terms)

- This contract is understood to be stipulated in full, with the possibility of increasing the value of the contract in accordance with current legislation;
- The net contract value is set at € 315000.00 (three hundred and fifteen thousand euro). The gross expenditure is equal to € 384300.00 and is covered by the CRA 1.11 Astrophysical Observatory of Catania, Ob.Fu. 1.05.06.05.01 "iALMA Award", Chapter 2.02.01.05.001.01 "Scientific equipment";
- The payment of the contract price will be made according to what is indicated in the tender dossier and in compliance with the conditions, times and methods established by the applicable legal provisions;

ARTICLE 8.

(Payments and verification of the execution of the supply)

Payment is subject to:

- positive verification, through certification issued by the General manager in charge of the procedure regarding the regular performance of the supply and the correct fulfilment of the obligations that are the subject of this contract;
- acquisition of the certification of contributory regularity, currently valid, which certifies that the Company is in compliance with the payments and

obligations required by law in the social security, welfare and insurance matters;

- more generally, the conditions of non-existence of grounds for exclusion pursuant to art. 80 of Code.

ARTICLE 9.

(Commitments of the Company)

All general and specific charges provided by the Code for the execution of the contract are charged to the Company, in order to:

- carry out the contractual supply in accordance with the procedures set out in the tender specifications and in the Company's technical offer;
- observe and ensure proper and disciplined behaviour by its employees in relation to the managers, representatives and employees of the OACT.

ARTICLE 10.

(Safety)

The company must:

- comply with all the rules governing the prevention, safety and health of the workplace, in accordance with what is expressly provided for by Legislative Decree 9 April 2008 number 81 or their national regulations;
- adopt, as a precautionary measure, all the preventive measures and other measures necessary to guarantee the safety and security of the personnel assigned to perform the activities that are the subject of this contract.

ARTICLE 11.

(Specific obligations of the Company towards its employees)

The Company is required to observe the rules and regulations contained in collective agreements, laws and regulations regarding the protection, safety,

health, insurance and assistance of workers. In case of non-fulfilment of the obligations set out in this article, the OACT will provide for the necessary deductions on any credit accrued by the Company for the execution of the supply. The Company is obliged, for remuneration purposes, to apply all the rules contained in the national collective labour agreements and in the supplementary agreements, both territorial and business, in force in the "branch" and / or in the "sector" of reference. Pursuant to art. 30 paragraph 6 of the code, if the OACT becomes aware of a delay in paying the salaries due to staff, the General Manager in charge of the procedure invites the Company in writing to provide for it within the following 15 days. If the validity of the request has not been formally and reasonably contested within the deadline set above, the OACT will also pay the wages arrears directly to the workers, by deducting the relative amount from the sums due to the Company.

ARTICLE 12.

(Subcontracts)

This contract cannot be transferred, under penalty of nullity, pursuant to article 105, paragraph 1, of the code. The methods for assessing the quality of the supply offered do not allow subcontracting, unless specifically requested and approved by the OACT.

ARTICLE 13.

(Penalties)

General aim. The Company, which is responsible for the correct execution of the supply and guarantees the success of all the activities connected to it, for its negligence or for reasons attributable to it, will incur the application of financial penalties to the extent specified below, without prejudice in any

case, the indemnity for further damage, as specified below.

Findings. The penalties will be applied and the relative amounts will be charged upon simple written communication of the RUP.

Sanctionable events. Given that all the penalties referred to in this article are accounted for as a deduction on the occasion of the final payment:

1. Differences in the supply or deviation of the parameters compared to those offered as an improvement in performance compared to the basic requests of the OACT. The cases of non-conformity (NC) and the level of severity associated with them (materials, timing, performance, etc.) and the repercussions that these have on the final functionality of the supply will be distinguished and assessed, including the non-acceptance of the supply. In the case of NC, the Company will be subject to the application of a penalty, of an amount assessed by the RUP, ranging from 0.1% (zero point one percent) to 1% (one percent) of the award amount for any claimed dissimilarity / non-conformity, in the unquestionable judgment of the OACT. The application of the aforementioned penalty will be received following a formal request for justification of the non-compliance sent to the Company by the OACT.
2. Failure to comply with the delivery terms indicated by the OACT or offered as an improvement on the basic requirements of the OACT. The company is subject to a penalty of 0.1% (zero point one percent) of the allotment amount for each working day of delay with respect to the delivery deadline, at the discretion of the OACT. The application of the aforementioned penalty will be received following a formal request for justification of the non-compliance, sent to the Company by the OACT.

Penalties charged. All the penalties referred to in this article are accounted for

as a deduction on the occasion of the final payment.

ARTICLE 14.

(Conformity check – On site Acceptance Testing)

The verification of conformity of the supply covered by the contract will be issued as an accompanying note and authorization to pay the relevant invoice, within 60 days. Pursuant to article 102, paragraph 3, of the code, the certificate of regular performance of the contractual aim must be approved by the Director of the OACT.

ARTICLE 15.

(Traceability of financial flows - Dedicated current account)

In compliance with the provisions contained in art. 3 of Law 136 of 13 August 2010, and subsequent amendments and additions, the Company assumes the burden of respecting the obligation of traceability of the financial flows, using the dedicated current account communicated, as per se indicated:

IBAN CH9808704016100505802, SWIFT/BIC AEKTCH22XXXX, made out to TOFWERK AG. The person delegated to operate on it is Doctor Katrin Fuhrer, born in Trubschachen (BE - Switzerland) the 22nd of February 1966.

ARTICLE 16.

(Withdrawal and termination of the contract)

Without prejudice to the causes of termination expressly provided for in this contract, the OACT can exercise at any time, by registered letter with acknowledgment of receipt, the right of withdrawal, pursuant to article 109 of the code, giving at least thirty days' notice to the Company. If the Company has already started the execution that forms its object, the OACT will pay the percentage of the supply already built; relative to those not yet performed, to

the extent of one tenth of their total amount. In particular, the OACT can exercise the right of withdrawal in the following cases:

- for reasons of public interest;
- for delayed communication of the sale of the Company or of a branch of its activity or of the change of its company name;
- in case of bankruptcy of the Company;
- in the case of an arrangement with creditors and / or a state of moratorium on the Company and the adoption of seizure or attachment of its assets. The OACT may declare the contract terminated "ipso iure", that is "by right", pursuant to article 1456 of the Civil Code, and entrust the execution of the services that are the subject of the contract to another economic operator, to the detriment of the Company, in the following cases:
 - execution of the supply that are the subject of the contract not in accordance with the provisions of this contract or / and the technical offer presented;
 - ascertainment of a serious other contractual breach;
 - ascertainment of the crime of fraud in the execution of the contract;
 - ascertained non-compliance with the legislation on accident prevention, occupational safety and compulsory insurance;
 - violation of the obligations set out in the "Code of Conduct of Public Employees", issued with Presidential Decree 16 April 2013, number 62, which the Company has previously viewed. The OACT can make use of the "express termination clause" by notifying the Company by registered letter with acknowledgment of receipt, without the need for prior notice and / or judicial intervention.

In the event of termination expressly provided for and governed by this

article, the Company will be charged for any additional costs incurred by the OACT compared to those initially provided for in this contract.

ARTICLE 17.

(Arbitration clause and jurisdiction)

Any disputes that may arise between the OACT and the Company in the execution phase of the services that are the subject of the award, will be resolved, if it was not possible to resolve them by administrative means and whatever their nature (technical, administrative and / or legal) to the competent "Jurisdictional Authority".

For the resolution of the disputes referred to in the previous paragraph, the "court of jurisdiction" is, exclusively, that of Catania. The application of the "arbitration clause" is excluded.

ARTICLE 18.

(Confidentiality obligations)

The Company is obliged to keep confidential any data and information it receives and/or become aware of; not to disclose them in any way and in any form and not to use them in any capacity for purposes other than those strictly necessary for the execution of this contract. This also applies to all original or pre-arranged material in execution of this contract.

ARTICLE 19.

(Use of photos and images by the Company)

It is expressly forbidden for the Company, including its subcontractors, the use of images and / or videos, with references to the contract entrusted, for advertising purposes and / or marketing.

It is expressly forbidden, without prejudice to any obligations related to safety

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signs or other constraints imposed by regulatory provisions, to display, by way of example but not limited to, panels, banners, labels, on elements, parts, buildings, plants owned by the OACT.

If the Company wants to include in its portfolio some activities of images, or photos or videos that have as subject plants and / or buildings and / or spaces owned and / or pertaining to the OACT, they must request for the use, also downstream of the regular execution of the contract, express authorization to the OACT.

ARTICLE 20.

(Stamp duties and registration fees)

All preliminary expenses, connected and consequent to the stipulation of this contract, are charged to the Company. Upon communication by the Company, the stamp duty, equal to 80.00 (eighty) euro, was paid by bank transfer to the bank account in-tested at the National Institute of Astrophysics, IBAN IT69S0100503309000000218500, as per the substitute declaration presented and related payment receipt.

ARTICLE 21.

(Treatment of personal data)

Pursuant to and for the purposes of article 13 of EU Regulation 2016/679 relating to the protection of individuals with regard to the processing of personal data, as well as to the free movement of such data and which repeals Directive 95/46 / EC ("GDPR" - General Data Protection Regulation), the National Institute of Astrophysics informs that the processing of personal data provided is aimed only at the stipulation and execution of the contract, the fulfilment of the obligations under the law related to the contractual

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relationship, the management of the contract itself and the protection of contractual rights. The treatment will be carried out in an automated and / or manual form, with methods and tools that guarantee compliance with the security measures referred to in article 32 of the GDPR and Annex B of the Privacy Code (articles 33 to 36), by INAF employees specifically appointed, in compliance with the provisions of article 29 of the same EU Regulation 2016/679.

INAF also reports that, in compliance with the principles of correctness, lawfulness, purpose limitation and data minimization, pursuant to article 5 of the GDPR, the retention period of personal data is established for a period of time not exceeding achievement of the purposes for which the data are collected and processed and in compliance with the times prescribed by law. All data processing operations are carried out in such a way as to guarantee the integrity, confidentiality and availability of personal data.

INAF also informs that the exercise of the rights referred to in articles 15 and following of EU Regulation 2016/679 can be asserted, without any formality, by addressing a specific request to the Data Protection Officer of the Institute (Email: rpd@inaf.it). The Data Controller is the National Institute of Astrophysics with registered office in Viale del Parco Mellini, 84 - 00136 Rome, Italy.

ARTICLE 22.

(Referral rules)

For all matters not expressly provided for and governed by this contract, express reference is made to the provisions contained in the documents indicated and specified in this contract, and to all the provisions, regulatory

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and otherwise, which govern public procurement.

This contract, entered into in the form of electronically signed private writing, is composed of 22 (twenty two) articles and the premises that form an integral part of it, consists of 17 (seventeen) pages and, after careful rereading, is approved and signed by the parties with electronic signature.

On behalf of the INAF-OACT

Isabella Pagano



On behalf of TOFWERK AG

Katrin Fuhrer

