

CONTRACT

FOR THE SUPPLY OF THE START UP SYSTEM DEL SW DI CONTROLLO ON SITE DELL'ASTRI MINI-ARRAY E COMPONENTI DEL SISTEMA SCADA, PER IL PROGETTO ASTRI MINI ARRAY - CIG: 87709229CC

Gara U-Buy n. G00337

Codice Identificativo di Gara: 8638015B78

BETWEEN

The INAF-Osservatorio Astronomico di Brera as contracting Institution (hereinafter called "INAF-OAB"), located at: Via Brera 28- 20121 Milano- Italy Codice Fiscale 97220210583, Partita IVA 06895721006 represented by the Director Dr. Roberto Della Ceca, born in Macerata on May 28, 1963, Fiscal Code: DLLRRT63E28E783U, appointed with INAF Decree n. 14/2020 on 30 December 2020,

AND

XY (hereafter "XY") with its registered office in.....,, Fiscal Code.....VAT number, represented by the Chairman and CEO Mr.

WHEREAS

1. the tender procedure for the procurement of the START UP SYSTEM DEL SW DI CONTROLLO ON SITE DELL'ASTRI MINI-ARRAY E COMPONENTI DEL SISTEMA SCADA, per il progetto ASTRI Mini Array -CIG: 87709229CC CUP: C72F16000020005;
2. the Statement of Work annexed to the tender, which is integral part of the present contract together with the Applicable documents and Reference documents;
3. the quotation of XY..... received onreferenced as-Commercial Proposal and the XY..... Technical Proposal named.....;
4. the INAF-OAB award decree n.of June(issued after having carried out the controls required by the Italian Law 50/2016) that assigned to XY..... the execution of this supply.

FOR GOOD AND VALUABLE CONSIDERATION, THE PARTIES HEREBY AGREE AS FOLLOWS

ART. 1 - SCOPE OF SUPPLY

The scope of this supply is the procurement of the START UP SYSTEM DEL SW DI CONTROLLO ON SITE DELL'ASTRI MINI-ARRAY E COMPONENTI DEL SISTEMA SCADA, per il progetto ASTRI Mini Array.

ART. 2 - CONTRACT STARTING DATE and DURATION

This contract will start at its signature and will end at the delivery of all the items defined above, which is foreseen within 36 months from the Kick-Off-Meeting (KOM).

ART. 3 - WARRANTIES

XY declares: (i) that the deliverables will be compliant with requirements and specs reported in the applicable documents; (ii) that the supply activities will be performed in an efficient, cost effective, competent and professional manner, in compliance with the terms of this contract; (iii) that the Contractor is fully qualified and competent to provide deliverables compliant to the requirements and specs; and (iv) that has all necessary legal authority and authorizations to enter into this contract and to perform the project activities foreseen in it.

ART. 4 - PRICE

The CONTRACT lump sum price, based on the scope of supply specified in ART. 1 amounts toEuros, excluding any applicable taxes (total net price).

ART. 5 – RUP- SOLE RESPONSIBLE of the PROCEDURE

Dr. Giovanni Pareschi (permanent staff member of INAF - Osservatorio Astronomico di Brera) is the Sole Responsible of the Procedure (RUP for *Responsabile Unico della Procedura*), as per Art. 31 of the Italian Law D.Lgs. 50/2016, appointed with Decree of the INAF- OAB Director n.issued on(protocol N.....).

ART. 6 -DEC- DIRECTOR of the EXECUTION of the CONTRACT

In accordance with the Italian Law Decreto Ministeriale n. 49/2018, Dr. Andrea Bulgarelli (permanent staff member of INAF – Osservatorio di Astrofisica e Scienza dello Spazio di Bologna), has been identified as the Direttore Esecuzione del Contratto “hereafter DEC” (i.e. manager of the execution and performance of this contract), and he was appointed to this role with Decree of the INAF- OAB Director n.of.....

ART. 7 - OTHER INAF STAFF MEMBER APPOINTED

The INAF team in charge to support the RUP and DEC (as per INAF-OABRERA Directorial Resolution n 40/2021 of 19/04/2021 recorded with protocol N. 700 of 19/04/2021) includes:

- Vito Conforti (INAF OAS-Bologna) support to the DEC for the activities of verification and conformity tests of the software produced by XY;
- Salvatore Scuderi (INAF IASF-Milano) for the matters related to programmatic and technical interfaces with the ASTRI mini array project;
- Nicola La Palombara (INAF-IASFMi) , Quality Control Manager;
- Rachele Millul (INAF-OABrera) to support the RUP activities for the administrative management of the procedure.

ARTICLE 8 - PERSONNEL OF THE COMPANY IN CHARGE OF THE SERVICES

XY declares that the contact persons in charge of performing the services of this contract are:

Dr., professional qualification:

Dr., professional qualification:

Dr., professional qualification:

In the event that one or more persons in charge should change for any reason, XY will immediately notify the Client by promptly providing the name and qualification of the substitute.

ART. 9 - TERMS OF PAYMENT and PAYMENT PLAN

The payment will be performed after each Milestone Achievement. All payments will be made net, excluding any applicable taxes, by wire transfer and within 30 days from the date in which INAF –OAB receives the invoice. The development in phases of the project including the Milestone Payment schedule is defined in the following table:

Milestone	DESCRIPTION	Date	EURO	%
Down Payment/Advance Payment**				20
KOM	Kich Off Meeting	T0		
PDR	Preliminary design review	T0+3		
CDR	Critical Design Review	T0+6		
RA_3	Riunione Intermedia (alpha release)	T0+12		
RA_4	Riunione Intermedia (beta release)	T0+20		
RA_5	Riunione Intermedia (finale release)	T0+28		
(FAR)	Final Operational Readiness Review	T0+36		
TOTALE		T0+36		100

**see Art 10

The amount in the authorization to issue the invoice of each payment will be 0.5% lower than reported in the milestone table above to reflect the "guarantee withholding" required by the Article 30 paragraph 5 bis of the Italian Public Contracts Code DL 50/2016. These withholdings will be released in the settlement phase of the balance.

Payments shall be made by INAF-OAB in EURO to the account as specified by the Contractor/XY:

Bank:

IBAN:

BIC:

XY Business Information and registration numbers

Company type:

VAT number

Legal representative

Invoices will be issued to: INAF-Osservatorio Astronomico di Brera- Via Brera 28- 20121 Milano- Italy

VAT NUMBER (Partita IVA) 06895721006

PERSON IN CHARGE: dr. Roberto Moncalvi

e-mail: roberto.moncalvi@inaf.it

XY shall send the electronic copy of the invoices to the address reported above.

Payment is due 30 days from the date of the receipt of the invoice.

ART 10- DOWN PAYMENT/ANTICIPATED PAYMENT

The down payment is 20% of the total amount ofEuros and it is subject to the issue of a bank payment guarantee, before the signature of the contract by both Parties, for the same amount of the down payment (plus the legal interest rate applied to the period necessary to recover the same amount of money from the schedule of the activities) as per Art 35 paragraph 18 of the Italian Law DL50/2016).

ART 11- SCHEDULE MILESTONE and DELIVERABLES:

The schedule of the activities are:

Milestone	Descrizione attività	Da	delivery
KOM	Kich Off Meeting		T0
PDR	Fase preliminare di progettazione	T0	T0+3
CDR	Critical Design Review	T0+3	T0+6
RA_3 intermedia	Versione Alpha inclusa la distribuzione in loco, acceptance test review e operational readiness review.	T0+6	T0+12
RA_4 intermedia	Versioni incrementali successive concordate, fino al sistema software ASTRI MA completo, inclusa la distribuzione in loco, acceptance test review e operational readiness review intermedie.	T0+12	T0+28
RA_5	Supporto per la messa in servizio, incluso il miglioramento del sistema.	T0+28	T0+36
FAR	Final Operational Readiness review		T0+36

The delivery is expected in 36 months, and is to be made directly on the machines of the onsite data center located at the Teide observation site in Izaña -Tenerife-Canary Islands-E.

The deliverables produced by the Contractor at the conclusion of each work life-cycle phase are listed in the following table:

Deliverables	Review
<ul style="list-style-type: none">- Software Requirement Specification (SRS) and Use Case Document (UCD)- Interface Control Documents (ICDs) between Contractor subsystems and INAF SCADA subsystems and software.- Preliminary Software Design Document (including architecture)- Preliminary Data Model, including data dictionary- Software Quality Plan- Software Development Plan, including Configuration Management- Software FMEA and risk analysis- Software Verification Plan- Software Validation Plan- Software Integration, Delivery and Deployment Plan	Preliminary Design Review (PDR)
<ul style="list-style-type: none">- Software Design Document (including architecture)- Data Model, including data dictionary- Interface Control Documents (ICDs)- Eventuale aggiornamento dei documenti della PDR	Critical Design Review (CDR)

<ul style="list-style-type: none"> - Acceptance Test plan - Test procedures 	
<ul style="list-style-type: none"> - Source Code (on INAF GitLab + a copy on CD-ROM) - Code Quality Report - Test reports (unit, integration, verification, validation, acceptance) - Software User Manual - Software Release Document - Training material - Software configuration file - Operational Test plan - Installation report - Eventuale aggiornamento dei documenti della CDR - Test Procedures. 	Acceptance Test Review
<ul style="list-style-type: none"> - Operational Test reports (validation) - Maintenance Plan - Training material - Installation report - Aggiornamenti e versione finale dei documenti e source code 	Operational Readiness Review

ART. 12 - VERIFICATION of the PERFORMANCE and COMPLIANCE

At the achievement of each milestone, XY has to formally inform the RUP (Dr. G. Pareschi) who, in collaboration with the DEC (Dr. A.Bulgarelli) and, if necessary, with other INAF personnel, verifies the documentation and the deliverables of that specific milestone at the XY premises, if requested by INAF. The DEC therefore will issue a conformity certificate in order to state that the delivered documentation and products have been realized conforming to all contractual aspects, in terms of technical requirements, quality of the product, goals and prices. This evaluation shall be finalized within 10 working days from the transmission of the documentation related to each milestone by XY and the notification that the products are ready for inspection.

At the positive outcome of the compliance certificate, the RUP will inform the INAF-OAB Director (Dr. R. Della Ceca) who will authorize XY to issue the invoice. XY shall be entitled to issue the related invoices if this procedure is delayed for any reason beyond its control.

ART. 13 – MODIFICATIONS of the EXPECTED ACTIVITIES or OUTCOME

In case the INAF-OAB, acting by means of the RUP, would ask XY-any modifications with respect to the activities listed in this contract (as foreseen by Art 106 of Italian Law 50/ 2016), these shall be previously agreed and approved.

The cost of these modifications will be determined together by INAF-OAB and XY on the basis of the additional activities to be carried out and in accordance to the Italian laws.

ART. 14 - PENALTIES

In case of partial or total non-compliance of the performance of the activities stated in this contract, INAF-OAB could apply a penalty that will be between 3‰ and 10‰ for each week of delay without motive if it is

not attributable to / if it is not responsibility of INAF-OAB. The total amount of the penalty cannot exceed 10% of the amount of this contract. INAF-OAB retains the right specified in ART 108 point 4 of DL 50/2016 to ask for compensation for major damage caused by the delay.

ART. 15 – DISINVESTMENT OR LEGAL COMPANY STATUS CHANGING

Before a possible transfer/assignment of the field of activity or before any change in the company legal status, XY shall formally inform INAF-OAB, at least 30 days before.

INAF-OAB may, at its discretion, decide to continue the contract with the new legal subject.

In the absence of such notification, INAF-OAB may terminate this contract.

ART. 16 - CONTRACTOR'S PERSONNEL

XY hereby assumes all legal responsibility as the employer or principal of the individual representatives, employees, associates, servants (collectively “**Personnel**”) contributing to its performance for the deliverables, including responsibility for payment of wages and other compensation due to its Personnel, compliance with all applicable state and local tax requirements, including withholding of taxes.

ART. 17- GUARANTEE DEPOSIT

XY is a solid and highly specialized Company, as proven by its Product assurance certificate: ISO

(certification available at.....).Therefore pursuant to art. 103 of the Public Contracts Code, XY has open a retention money guarantee before the signature of the contract, equal to 5% of the total amount by virtue of the 50% reduction, pursuant to article 93, paragraph 7 of the Italian Public Contracts DL 50/2016. (otherwise the guarantee should have been equal to 10% of the total amount).

ART. 18 – CONFIDENTIALITY, INTELLECTUAL PROPERTY and PUBLICATIONS

XY ensures that the drawings, know how, documents, source code, projects and everything necessary to the execution of this contract do not violate any licence or right owned by a third Part and commits itself to keep INAF-OAB undamaged by any loss, payment, compensation, deriving from any violation of licences, rights owned by others.

Articles, monographs or other notes/works realized by XY in the contest of this contract shall be published after the written authorization of INAF-OAB. XY commits itself to cite INAF-OAB in the publications.

This contract cannot be mentioned for advertisement purposes without prior INAF-OAB written authorization.

All documents provided by INAF-OAB in tender procedure and for the execution of this contract are and will remain property of INAF-OAB.

All documents and products resulting from the activities of this contract are INAF property, as well as the Intellectual Property of the code developed in the contract activities.

ART. 19 - TRANSFER OF TITLE AND RISK

The transfer of title to INAF will start at the final acceptance after the verification of the entire system.

Delivery of each part of the software shall not be interpreted as acceptance or statement of satisfaction from INAF-OAB.

ART. 20- Expenses related to the Contract, Obligations of Publications, Stamp Duty and Contract Registration

All these costs will be paid by XY by bank wire transfer to INAF. All the preparatory costs, connected and consequent to the signing of this contract, will be in charge of XY.

This contract is stipulated in the form of a private agreement pursuant to art. 32, paragraph 14 of the Italian Law DL 50/2016. The stamp duty for the contract and the attachments amounts to 16 euros for every four sides. The aforementioned tax will be paid by INAF through Authorization number 37422 of 13 May 2016 issued by the Revenue Agency - General Directorate of Lazio.

XY is required to reimburse, by bank wire transfer, the total amount of the stamp duty, as well as any other expenses related to the signing of this contract. Pursuant to the Presidential Decree number 131 of 26 April 1986, this contract is subject to registration only in case of use.

ART. 21- TERMINATION

Either party may terminate the contract for “good cause” motivation. In particular:

- either party may terminate the contract for good cause in case of a serious or repeated breach of the CONTRACT, but only after having granted a period of one (1) month to the other Part to repair or to find alternatives.
- INAF-OAB may terminate the contract for good cause if the total damages is considered high by INAF-OAB;
- INAF-OAB may terminate the contract for good cause if Contractor or its Personnel is engaged in any acts of fraud, embezzlement, misappropriation. Confidential Information or any other misconduct.
- Contractor may terminate the contract for good cause if INAF-OAB is late with payments by more than three (3) weeks.

The termination for good cause must be in writing. In the case of such termination, the parties shall meet and discuss in good faith how to minimize any disruption of the business of the parties. The parties have a right to claim damages as a result of such termination. Contractor agrees that at the time of termination or expiration of the contract, will return any and all items of INAF-OAB property, in their possession or control (including, but not limited to, written documents, materials and files provided to or generated by Contractor or its Personnel in connection with performing supply hereunder).

ART. 22 - LIMITATION OF LIABILITY

The maximum contractual liability of each Party under this Contract regardless of the legal theory upon which it is based, including - but not limited to - liability in contract, in tort (including negligence and strict liability), under warranty, indemnity or otherwise resulting from any act, failure or omission shall not in aggregate exceed a hundred percent (100 %) of the Contract Price as per ART. 4.

The limitation of liability provided in the present clause is subject to the applicable Law.

Neither INAF-OAB nor the Contractor shall be liable to the other in excess of the limitation of liability provided herein by way of indemnity or by reason of any breach of the Contract or by reason of tort (including negligence or otherwise) for any special, consequential, or punitive damages or indirect costs or expenses or loss of profit, loss of production, loss of contracts, data, interest payments, costs of replacement power, downtime, or claims from third parties for any of the foregoing losses or for any indirect or consequential loss whatsoever that may be suffered by the other, whether such liability arises in contract, breach, tort (including negligence and strict liability) or otherwise.

ART. 23- DATA PROCESSING

The processing of personal data is aimed solely at the stipulation of the contract and the management of the related contractual relationship and will be carried out by the staff and collaborators of the National Institute of Astrophysics, as authorized subjects, in accordance with the provisions of the article 6, paragraph 1, lett. c) and e), of Regulation (EU) 2016/679 "General Data Protection Regulation".

Data processing will be carried out through the use of special procedures, including computerized ones, in the ways and within the limits necessary to pursue the purposes specified above, even in the event of any communication to third parties.

The data will be kept for the time strictly necessary for the execution of the contract, as well as to comply with legal, contractual and archiving obligations, in compliance with the specific sector regulations.

Interested parties are entitled to the rights referred to in Articles 15 and following of Regulation (EU) 2016/679, which can be exercised by submitting a specific request to the National Institute of Astrophysics, based in Rome, Viale del Parco Mellini n. 84, 00136.

The Data Protection Officer of the National Institute of Astrophysics can be contacted at the following addresses: Viale del Parco Mellini, 84 - 00136 Rome; email: rpd@inaf.it; PEC: rpd-inaf@legalmail.it.

Art 24-NOTICES

Any notices or requests to be given or made hereunder by either Party shall be in writing via e-mail, as follows:

If to Contractor:

XY

To:

.....

If to INAF:

INAF-Osservatorio Astronomico di Brera
Via Bianchi 46-23807 Merate - Italy

To: Giovanni Pareschi

pareschi_brera@pec.it

giovanni.pareschi@inaf.it

ART. 25 - AMENDMENTS

No modification or amendment of this Agreement shall be effective unless in writing and signed by both Parties and specifically referencing this Agreement.

ART. 26- ALTERNATIVE DISPUTE RESOLUTION

The Parties will attempt in good faith to resolve any claim or controversy arising from or relating to this

contract by negotiation in the ordinary course of business. In the event the Parties fail to resolve a dispute after thirty (30) days of good faith negotiations, the aggrieved Party may pursue all legal actions. Notwithstanding the foregoing, either Party may seek a preliminary injunction or other relief prior to such time if such action is necessary to avoid irreparable damage, preserve the status quo, or prevent running of an applicable statute of limitations.

ART. 27 - CHOICE OF LAW AND VENUE

The validity, interpretation, and performance of this Contract shall be governed by the laws of Italy. Any dispute and proceedings arising out of or in connection with this Contract will be treated by the courts of Milan (Italy).

IN WITNESS WHEREOF, digitally signed by each Party as of the effective date set forth above.

On:

On:

For INAF-OABrera

The Director -Dr. Roberto DELLA CECA

For XY

The CEO -Dr.
