Draft ARBIT-2018 agreement for IWT Vessel Handling Simulator

The undersigned:

1. Stichting STC Group, located in Rotterdam, represented in this matter by the Executive Board, and for this by the chairman of the Executive Board, Mr. F.C. Gronsveld
hereinafter referred to as: Contracting authority,

and

2. <full name and legal form of contractor>, (statutorily) located in <place>, represented by <position> <name of signatory>
hereinafter referred to as: Counterparty,

Jointly referred as Parties.

Whereas:

Organization and objective of the Contracting authority

a. Contracting authority is responsible for developing maritime and logistics education, training, consultancy and uniquely applied research through the use of simulators. With more than 7,000 participants and students, STC Group is the largest trainer in the field. Some specialist courses are provided only by STC Group. The use of practical sessions, simulators and training vessels in combination with good teachers guarantees the effectiveness of our courses and training. The recognition of our graduates by companies at the top of their profession is proof of the quality of our approach. The institute is recognized worldwide as a partner for education, training and advice in the maritime, transport, logistics and industrial complex.
b. In the context of the performance of its duties, Contracting authority requires and has the intention of purchasing, installing and implementing a IWT Vessel Handling Simulator at one of the locations operated by STC Group in the Netherlands in Rotterdam.
These IWT Vessel Handling Simulators will be used during the education of students to become qualified boatmasters, in connection with which Contracting authority concludes the Agreement with Counterparty;

Course of the tender

c. In association with the above considerations listed under a and b, Contracting authority has proceeded to tender a IWT Vessel Handling Simulator utilizing a European Public Procedure;
d. notice was sent on <date> by, or on behalf of, Contracting authority to the Supplement to the Official Journal of the European Union (hereafter: Official Journal) and this notice was published under number <S-number>;
e. Counterparty has submitted the bid with the best value for money;
f. Contracting authority has awarded the contract to Counterparty on <date >;
g. In this Agreement, Parties wish to record the particulars of the accordance as concluded between Parties.

Contents

1. Terms 3
2. Subject of the Agreement 3
3. Contact person(s) and reporting 3
4. Effectuation and duration of the Agreement 3
5. Delivery and Completion 4
6. Acceptance 5
7. Remuneration 6
8. Invoicing, chargeability and payment 6
9. General and special conditions 7

Agree to the following:

1. Terms

Several concepts beginning with a capital letter are used in the Agreement. The meaning of these concepts is that given to these terms in the subsection Conditions.

2. Subject of the Agreement

2.1 Parties hereby enter into an Agreement whereby, in exchange for the remuneration described in Article 7, Counterparty commits itself to carrying out the Performance, as described in the Schedule of Requirements as part of the Descriptive Document, which consists mainly of:

- Delivery of the Product/Products:

Sequence number	Subject	Amount
A1	*Simulator consisting of <number> (#) IWT Vessel Handling bridges with one (1) instructor station to be installed in Rotterdam (hardware and software);*	*1*
A2	*Possible additional product(s)*	*1*

- Performance of the Contract/Contracts:

Sequence number	Subject	Amount
B1	*Delivery and Installation of simulator*	*1*
B2	*Training of Instructors in the use of the simulator at location in Rotterdam*	*1*
B3	*Maintenance contract for the first 2 years*	*1*

- Providing one or more Rights of Use:

Sequence number	Subject	Amount
C1	*<"unlimited Rights of Use to..." or if otherwise agreed "Notwithstanding art. 43 part 2 subsection d of ARBIT, the extent of the Rights of Use is limited to..." (for example, entitled organization (or parts thereof), number of users, locations, transactions, systems, etc.)>*	

this is in order to enable Contracting authority to make use of the Agreement.

2.2 The following documents together comprise the Agreement. Insofar as these documents contradict each other, the item named earlier shall take precedence over the latter-named:
1) This document;
2) The Summary of Additional Information, dated; <fill in>;
3) The Descriptive Document, including all appendices;
4) ARBIT 2018;
5) The quotation issued by Counterparty to Contracting authority on <date>, with number (<number>).

3. Contact person(s) and reporting

3.1 Contact person on behalf of Contracting authority for Counterparty is: <fill in>
3.2 Contact person on behalf of Counterparty for Contracting authority is: <fill in>

4. Effectuation and duration of the Agreement

4.1 The Agreement will go into effect on <June 1, 2021> for a duration of <three> (3) years.

4.2 Contracting authority can extend the Agreement per year under the same conditions up to the end of the lifespan of the delivered goods and services. If Contracting authority wishes to make use of this right, they shall notify Counterparty in writing no later than two (2) months before the end of the term referred to in article 4.1.

5. Delivery and Completion

In the case of Products

5.1 Counterparty shall ensure Delivery of the Products at the date and place indicated in the table below. The dates stated are strict deadlines.

Sequence number	Subject	Delivery address	Delivery date
A1	*Classroom consisting of <number> (#) IWT Vessel Handling Simulators with one (1) instructor station to be installed in Rotterdam (hardware and software);*	*<address> Rotterdam*	*<date>*
A2	*Possible additional product(s)*	*<address> Rotterdam*	*<date>*

In the case of Contracts or the granting of Rights of Use

5.2 Counterparty will arrange Delivery in the manner, date and place as stated in the table below. The dates stated are strict deadlines.

Sequence number	Subject	Delivery Method	Address and date
B1	*Training of Instructors in the use of the simulator at location in Rotterdam*	*Instructor? Attendance list? List of Certificates handed out?*	*Rotterdam, <date>*
B2	*Maintenance contract for the first # years*	*<…>*	*Rotterdam, <date>*
B3	Advisory services	*<…>*	*<address, date>*
B4	Development of customized software	*<available copies in Object and Source code>*	*<address, date>*
B5	Secondment	*<provision of Personnel as evidenced by the monthly submission of time sheets>*	*<address, date>*
B6	Support	*<…>*	*<address, date>*
B7	Other Contracts	*<available copies>*	*<address, date>*
C1	*<"unlimited Rights of Use to..." or if otherwise agreed "Notwithstanding art. 43 part 2 subsection d of ARBIT, the extent of the Rights of Use is limited to..." (for example, entitled organization (or parts thereof), number of users, locations, transactions, systems, etc.)>*	*<available copies>*	*<address, date>*

6. Acceptance

6.1 The Acceptance of the Performance will take place as follows:

Sequence number	Subject	Acceptance	Deadline for notice of (non-)Acceptance
A1	*Classroom consisting of <number> IWT Vessel Handling Simulators with one (1) instructor station to be installed in Rotterdam (hardware*	*Site Acceptance Test (see Acceptance Procedure in Appendix)>*	*<30 days after Delivery (11.1 ARBIT)> <OPTIONAL> divergent term as referred to in ARBIT Article 11.4>*
A2	*Possible additional product(s)*	*Site Acceptance Test (see Acceptance Procedure in Appendix)>*	<date>
B2	*Training of Instructors in the use of the simulator at location in Rotterdam*	*Signed attendance sheet?*	*<date>*

6.2 Before offering (any part of) the IWT Vessel Handling Simulator to Contracting authority for an Acceptance Test, Counterparty will have independently subjected it to an internal testing program (including integration tests, functional tests and performance tests), which will allow the Counterparty to determine for itself that (the relevant part of) the IWT Vessel Handling Simulator complies with the agreed specifications (from the Program of Requirements and Tender), both with respect to the various components and as a whole. Counterparty will record the results of the aforementioned tests in writing and make them available to Contracting authority in a timely manner before (the relevant part of) the IWT Vessel Handling Simulator is subjected to an Acceptance Test.

6.3 Contracting authority and Counterparty will jointly establish procedures with regard to the procedure for the performance of the (partial) Acceptance Test(s).

6.4 Site Acceptance Test (SAT) Concept is to verify the functionality of the delivered Simulator. The goal of the first part of SAT is the following:

- for each delivered simulator system, the Project Manager and the allocated Contracting authority Representative will check that the delivered software and hardware components match the quantity and specification as per the Scope of Supply and Contract. Visual inspection is done to confirm the hardware components. The delivered Software components are confirmed by verifying the license description files of each simulator. Any discrepancies, should such be found, would be highlighted in the SAT protocol.

The main goal of the second part of the SAT is the following:

- to verify that the functionality of the delivered components matches with the functionality given in the Contract. In order to do this efficiently, the Contracting authority representative(s) will have preliminary training on the simulation systems and their components.

6.5 During the tests, the information concerning the tests result should be recorded as following:

- If the actual test result corresponds with the Predicted Test Result, note "OK" is recorded in the "Result" column of the Check List
- If the actual test result does not correspond with the Predicted Test Result, necessary comments describing the nonconformity are placed in the "Result" column of the Check List

Result of the Inspection is recorded in the SAT Check List. Upon completion of the SAT, the result is verified and SAT protocol is signed with the following possible Status:

- System Inspection done without any discrepancies. No actions from Manufacturer are required. SAT acknowledged by Contracting authority and Manufacturer as successful.
- System inspection accomplished, however, minor discrepancies are found. The list of discrepancies is provided. The condition to correct the discrepancies and the agreed date is entered to the SAT Protocol. SAT acknowledged by Contracting authority and Manufacturer as successful.
- System inspection accomplished, however, major discrepancies are found. The list

of discrepancies is provided. The condition to correct the discrepancies and the agreed date is entered to the SAT Protocol. SAT acknowledged by Contracting authority and Manufacturer as not successful and the new SAT is scheduled.

6.6 If Contracting authority has not approved (the relevant part of) the IWT Vessel Handling Simulator after the first performance of the Acceptance Test, then the Acceptance Test will be repeated within ten (10) workdays after the date of the report referred to in Article 6.5 (or within a longer term as to be determined by Contracting authority in consultation with Counterparty). A second report will determine whether the Defects included in the first report have been rectified and - in case of rejection - whether (the relevant part of) the IWT Vessel Handling Simulator is then approved.

6.7 If (the relevant part of) the IWT Vessel Handling Simulator is again rejected by Contracting authority after the second Acceptance Test, then Contracting authority shall be entitled, without incurring any costs or liability for damages, to dissolve the Agreement out of court in whole or in part without any warning or notice of default being required. Without prejudice to the right to claim compensation, Contracting authority is also entitled to permit Counterparty to rectify the Defects at its own expense.

6.8 If Counterparty fails to meet its obligations to rectify Defects either within the periods named in this article, or after having been served notice by Contracting authority in which a reasonable period of time has been stipulated, Contracting authority is permitted, subject to prior notification and in consultation with Counterparty and without prejudice to its further rights, to have these Defects remedied at the expense of Counterparty, either by itself or by third parties. Counterparty is obliged to cooperate with this insofar as this can be reasonably demanded of Counterparty. In such a case, Counterparty is obliged to provide any necessary information upon first request.

7. Remuneration

7.1 The remuneration that Client owes to Counterparty for the Contract to be performed is described in the Quotation submitted by Counterparty, Appendix 3: price list.

7.2 The Remuneration shall remain fixed during the initial two (2) years of the agreement. After < 1 January 2021, the Remuneration may be adjusted once a year by a percentage up to a maximum set as the CBS service price index ('CBS dienstenprijsindex (DPI)'). The monthly figure for the previous month of December is to be used at each adjustment, with the index for December 2018 set at 100%. If Counterparty wishes to adjust the prices to this indexing, it shall submit a written proposal with substantiation to STC Group no later than four (4) weeks before the price increase is to be implemented. When STC Group establishes that the proposal properly corresponds to the aforementioned indexing, it shall give written approval for the rate adjustment so that it will apply to the next contract period.

7.3 If the Performance is not delivered on the agreed date as a result of an attributable failure on the part of Counterparty, an amount of 1% of the purchase price will be deducted from the Remuneration for each day that the delay in delivery continues, up to a maximum of 5% of the purchase price.

8. Invoicing, chargeability and payment

8.1 The Remuneration is due from:

Sequence number	Subject	The date of chargeability
X	*<subject of art. 7>*	*<date or moment or after Acceptance>*

8.2 An invoice must contain the following information:
- Invoice date
- Reference to the name and date of the (framework) agreement;
- Customer purchase order number;
- The following text (in Dutch) must appear for reference on quotations and invoices for delivery: <t.b.d.>
- The delivery address of the service(s)/products;
- The amount due excluding VAT;
- The amount due including VAT;
- The VAT amount.

8.3 Counterparty shall digitally send the invoices to: facturen@stc-r.nl.

8.4 For additional invoices and credit notes, the same rules will apply as for invoices. Credit notes must also include the date, number and final amount of the invoice to which the credit note refers.

8.5 If the invoice is not in accordance with the provisions in 8.1 up to and including 8.3, Contracting authority will not accept the invoice and will return it to Counterparty; should this occur, Counterparty will send a new invoice with an amended date to Contracting authority.

9. General and special conditions

9.1 ARBIT - 2018 applies to this agreement.

9.2 The applicability of Counterparty's general and special conditions, or Counterparty's engagement of third parties in carrying out the performance, is excluded.

9.3 In derogation from the provisions in ARBIT - 2018, the following shall apply:
- The penalty provision referred to in Article 17.5 is limited to a maximum amount of € 10,000 per event.
- The liability referred to in Articles 26.2 and 26.3 is limited to € 1,000,000 per event with a maximum of € 2,000,000 per year.

9.4 Notwithstanding Article 9.2 and notwithstanding the provisions of Article 2.2, Counterparty's license conditions or those of third parties engaged by Counterparty in carrying out the Performance shall also apply if and insofar as:
- Counterparty (a) has explicitly stipulated the applicability thereof (b) a copy of the relevant conditions has been added to the Quotation and (c) these are made explicitly part of said Quotation, and;
- The Agreed Use is not excluded or limited and;
- Counterparty can demonstrate that Contracting authority's rights under the Agreement are not thereby reduced, or that the obligations arising from the Agreement are not unreasonably increased.

9.5 The acceptance of general or special conditions required for the Performance, such as, for example, "shrink-wrap" and "click-wrap" licenses, shall not bind the Client. Counterparty indemnifies Contracting authority that such acceptances shall not lead to any restriction on the Agreed Use.

9.6 All disputes that may arise in connection with this Agreement shall be submitted to the competent court of the District Court of Rotterdam in Dordrecht.

Thus agreed and signed in duplicate by:

CONTRACTING AUTHORITY	COUNTERPARTY
Name: *<name>*	Name: *<name>*
Position: *<position>*	Position: *<position>*
Signature:	Signature:
Date:	Date:

Attachments (are already in your possession):
1. Summary of Additional Information (dated) <fill in>.
2. Descriptive document (dated) <fill in>
3. Counterparty tender (dated) <fill in>
4. ARBIT - 2018