

Framework Agreement for pre-commercial procurement of innovation

EduApp4Syria

"Mobile literacy and psychosocial wellbeing tool for children affected by the Syrian conflict"

between

The Norwegian Agency for Development Cooperation (Norad or the Client)

and

.....

(Supplier)

Organisation number.

1 Purpose and background

This Framework Agreement sets forth the terms and conditions of the cooperation between the Client/Norad and the Supplier with regard to the Project. The Project is further outlined in the tender documents and is coordinated by the Innovation Project in Norad together with the Norwegian University of Science and Technology (NTNU). The Project is funded by the Norwegian Ministry of Foreign Affairs (the MFA). The other collaboration partners for the project are All Children Reading: A Grand Challenge for Development, the Orange Group, the Inter-Agency Network for Education in Emergencies, and the Norwegian National Supplier Development Programme.

2 Definitions

In this Framework Agreement, the following definitions shall apply:

Client: The Norwegian Agency for Development Cooperation (Norad).

Collaboration group: The Norwegian Ministry of Foreign Affairs (the MFA), the Norwegian University of Science and Technology (NTNU), the All Children Reading: A Grand Challenge for Development, the Orange Group, the Inter-Agency Network for Education in Emergencies, and the Norwegian National Supplier Development Programme. Each partner in the group is described in more detail in the Invitation to Tender.

Pre-commercial procurement: Pre-Commercial Procurement (PCP) is the act of buying/supporting the research and development of a new innovative solution before it is commercially available. Pre-commercial procurement is a method recommended by the European Commission for procuring research and development services that may be carried out pursuant to Section 1-3 (2) g of the *Regulations on public procurement* (the R&D exemption clause). The EduApp4Syria pre-commercial procurement has several competitive stages, and is also referred to as a multi-phased competition or the EduApp4Syria-competition in the other tender documents.

R&D assignments: Involves entering into a contract for research and development purposes. The most likely scenario is that the Client will pay the full cost of the service. The resulting applications and content are expected to be released under open source and Creative Commons Attributions CC BY licenses and will under no circumstances be owned by the Client

Bidder: Suppliers or supplier groups that submit a proposed solution (bid) for this tender

Call-off Contract: An individual contract (order) for goods or services within the limits of the terms laid down in a previously entered framework agreement between the parties. In this Framework Agreement each of the subsequent phases that were specified in the tender documents will result in separate call-off contracts with the chosen suppliers.

Own contribution: The sum of one’s own labour (payroll expenses) and direct expenses related to materials, instruments, equipment, etc., consultancy, administrative expenses and other operating expenses.

Own labour: The number of work hours the Supplier contributes to the Project.

Product: New products, solutions, services or methods that do not exist on the market.

IPR: Abbreviation for intellectual property rights.

Supplier: A company which is responsible for development of a product/result and which is part to this Framework Agreement.

Project: An abbreviated term for the Development Project entitled “EduApp4Syria - Mobile literacy and psychosocial wellbeing resource for children affected by the Syrian conflict”.

Project manager: The person serving as the contact for the Supplier in the Project.

3 The Parties’ representatives and agreement documents

3.1 The Parties’ representatives

At the signing of this Framework Agreement, the Parties’ representatives are:

For the Client:

For the Supplier:

Name

Name

Address

Address

Telephone

Telephone

E-mail

E-mail

The Parties’ contact persons for the day-to-day activities of the collaboration:

Name

Name

Address

Address

Telephone

Telephone

E-mail

E-mail

3.2 Framework Agreement documents

Unless otherwise agreed, the Framework Agreement consists of the following documents:

- (1) Any written amendments to the Framework Agreement
- (2) The signed Framework Agreement, incl. call-off contracts
- (3) The Client's tender documents, incl. annexes
- (4) The Supplier's bid

In the event of conflicts or discrepancies between the documents comprising the Framework Agreement, they shall have precedence in the order listed above.

This Framework Agreement exists in English and Arabic. In case of any discrepancies between the two versions, the English version shall prevail.

4 The Parties' preparations and distribution of obligations

4.1 The Supplier's obligations

The Supplier shall implement the Project with the aim of achieving the objectives stated in the Client's tender documents. The Supplier shall furthermore implement the Project in accordance with the description included in the Supplier's bid and the deliverables stated in the relevant call-off contract, unless otherwise agreed. The overall timeframe for implementation of the Project is stated in the Invitation to Tender, and will be re-confirmed or updated in the call-off contracts for the respective phases. The Supplier shall comply with the timeframe stated in the Supplier's bid and the relevant call-off contract, unless otherwise agreed.

All key personnel and collaborating partners that have been designated to take part in the Project in the Supplier's bid, shall participate in the Project to the extent it is necessary. Such key personnel and partners may be replaced or supplemented if necessary, and on the condition that doing so does not negatively affect the Project's quality, progress or results as a whole. The Client shall be informed in advance of such replacements/additions, and cannot disapprove of the replacements without reasonable grounds.

The Supplier shall maintain full and irrevocable responsibility for the implementation of the Project regardless of whether parts thereof have been carried out by subcontractors, collaborating partners or other third parties.

The Supplier shall keep the Client informed about the progress of the Project and immediately inform the Client in writing about conditions that may cause delays, hamper the implementation of the Project, or otherwise be of importance for the implementation. The Supplier is responsible for costs that might have been avoided if the duty to inform the Client had been complied with.

4.2 The Client's obligations

4.2.1 Prices and payments

The Client's financing of the Project in the various phases is as follows, and will be specified in more detail in each relevant call-off contract:

- Phase 1, the Client will pay up to NOK 2,500,000 distributed evenly among up to 5 suppliers in accordance with milestones specified in the call-off contract for Phase 1. The selected suppliers will each receive NOK 150 000 out of these funds upon entering into the call-off contract, to work towards the initial deliverables.
- Phase 2, the Client will pay up to NOK 7,500,000 distributed among a maximum of 3 suppliers in accordance with milestones specified in the call-off contract for Phase 2.
- Phase 3, the Client will pay up to NOK 5,000,000 distributed among a maximum of 2 suppliers in accordance with milestones specified in the call-off contract for Phase 3.

Available total funding can therefore be between NOK 5 500 000 and 15 000 000 for a supplier that has been funded through all three phases, depending on how many other suppliers are selected.

In the exceptional circumstance of one or more suppliers using an alternative licensing model, the funds might not be distributed evenly (suppliers using an alternative licensing model will be compensated less).

The Supplier has the right to receive payment only for work directly related to this pre-commercial procurement.

The Supplier shall submit an invoice to the Client when the agreed milestones within the call-off contracts have been delivered and approved in accordance with the progress plan. The Client shall pay within 30 days following receipt of the invoice. Payment at agreed milestones in a given phase does not indicate that a supplier will be awarded a call-off contract for a subsequent phase. Except from NOK 150 000 with regard to Phase 1, all disbursements will be made in arrears.

Invoices shall not contain any order fees, invoicing charges, or similar. Invoices from any subcontractors will not be accepted. If any item or part of an invoice submitted by the supplier is contested by the Client, the Client shall give prompt notice with reasons and shall not delay payment of the remainder of the invoice.

Handling of invoices:

Non-Norwegian suppliers

The Supplier shall submit invoices pr. e-mail, sent to the contact person of the Client. The invoice shall be marked with the name and employee number of the contact person. If the supplier is Norwegian, the process below applies:

Norwegian suppliers

The Supplier shall submit electronic invoices in accordance with the standard “Elektronisk handelsformat” (EHF) that will be received through an accesspoint in PEPPOL. They shall be marked “9908: 971277882» and with the employee number of the the Client employee that shall receive the invoice. For more information on EHF, visit the webpages of the Agency for Public Management and eGovernment (Difi): <http://anskaffelser.no/e-handel/faktura/electronic-invoice>

4.3 The Parties’ joint obligations

4.3.1 Duty to inform and reply

The Parties shall inform each other of conditions that will have significance for the implementation of the Project.

Requests from the other Party shall be responded to without undue delay.

4.3.2 Confidentiality

Information that comes into the possession of the Parties in connection with the implementation of the Framework Agreement shall be kept confidential, and shall not be disclosed to any third party without the consent of the other party.

The scope of the confidentiality obligation under this provision shall not go beyond that laid down by the Norwegian Act of 10 February 1967 relating to Procedure in Cases concerning the Public Administration (the Public Administration Act) or corresponding sector-specific regulation.

The confidentiality obligation pursuant to this provision shall not prevent the disclosure of information if such disclosure is demanded pursuant to laws or regulations, including any disclosure or right of access pursuant to the Norwegian Act of 19 May 2006 relating to the Right of Access to Documents in the Public Administration (the Freedom of Information Act). The other party shall if possible, be notified prior to the disclosure of such information.

The confidentiality obligation shall not prevent the information from being used when there is no legitimate interest in keeping it confidential, for example when it is in the public domain or is accessible to the public elsewhere.

The Parties shall take all necessary precautions to prevent unauthorised persons from gaining access to, or knowledge of, confidential information.

The confidentiality obligation shall apply to the employees, subcontractors and other third parties who act on behalf of the parties in connection with the implementation of the Framework Agreement. The Parties may only transmit confidential information to such subcontractors and third parties to the extent necessary for the implementation of the Framework Agreement, provided that these are subjected to a confidentiality obligation corresponding to that stipulated in the present Clause 4.2.3.

The confidentiality obligation shall not prevent the parties from utilising experience and expertise developed in connection with the implementation of the Framework Agreement.

The confidentiality obligation shall continue to apply after the discharge of the Framework Agreement. Employees or others who resign from their positions with one of the parties shall be subjected to a confidentiality obligation following their resignation as well, as far as factors mentioned above are concerned. The confidentiality obligation shall lapse five (5) years after the delivery date, unless otherwise stipulated by an act or regulation.

4.3.3 Liability

The Parties shall act with loyalty vis-à-vis each other and not behave in a manner that could damage or have a negative impact on the other Party, – either during or following the conclusion of the Project.

The Parties are liable for loss or damage that occurs as a result of their own actions. The Parties are not liable for indirect loss/damage unless it is due to gross negligence or wilful intent. The Parties are not liable for circumstances beyond their control, e.g. strike, lock-out, fire and other force majeure.

The Supplier shall hold the Client and its employees indemnified from any liability that arises due to infringement of a third party's copyrights and patent rights in connection with implementation of the Project and use of the Supplier's solution.

5 Completion and reports

The Supplier's implementation and the Client's involvement shall be carried out in accordance with agreed deadlines. Deadlines for completion of parts or all of the Project are regarded as agreed upon when the deadlines are stated in the call-off contracts. The requirements for documentation will be specified in the call-off contracts.

The call-off contract for each phase will specify relevant reporting requirements. Following the conclusion of each phase, the Client will conduct an assessment of the Supplier's solution based on the stated allotment criteria which are given in the Rules for the Competition, and which will be further specified in each relevant call-off contract.

The Supplier shall submit a report to the Client regarding the phase results at the end of each phase. Specific deadlines for the reports will be specified in the relevant call-off contracts.

6 Changes and/or cancellation

This Framework Agreement is valid until 1 December 2017. Any delay to the scheduled progress plan in the tender documents will result in an extension to the contract amounting to a period of time equal to that of the delay.

In accordance with the tender documents and this Framework Agreement, the Client has the right, giving reasonable notice and on a unilateral basis, to cancel the Project and terminate this Framework Agreement. Such termination or cancellation does not affect the Supplier's right to payment for incurred, documented expenses in accordance with relevant call-off contracts. The Client's total obligations are limited to the amounts stated in Section 4.2.1. In addition, the Client is not liable for damages or additional costs resulting from the termination. The Supplier will not be compensated for any expenses they have incurred for the initial competition (Phase 0) in the event of a cancellation.

For each phase, a call-off contract will be entered into with a limited number of suppliers. A Supplier is not entitled to participate in further phases of the Project if the Supplier is not awarded a call-off contract.

The Supplier has the right to cancel this Framework Agreement in writing, giving at least four weeks notice. In this event the Client will only reimburse incurred, documented expenses for the last full deliverable received and approved in accordance with the relevant call-off contract. Documented expenses for incomplete deliverables will not be reimbursed.

7 Rights (IPR) etc.

The Client and the collaboration group do not have ownership interests in the technology or the technological solutions, but want to encourage maximum use and further creativity.

The apps and software developed as part of this Project will be released under BSD Software License (2-clause license also called the "Simplified BSD License"). All digital content will be released under Creative Commons Attribution CC BY. The licensing regime only applies to those who receive

economic incentives. This means that the requirements do not pertain to the concept video and simple interactive prototype to be submitted as part of the Bid in the initial competition.

From the beginning of Phase 1 and onwards all content, apps and code developed as part of this Project will be uploaded to github.com. The content, apps and code on Github will, however, not be publicly released until call-off contracts have been awarded for Phase 3.

From the beginning of Phase 1 and until the content, apps and code have been publicly released on Github at the beginning of Phase 3, the Client may, after consultation with the Supplier, use parts of the material submitted by the Supplier for communication and outreach purposes.

8 Breach of Agreement

8.1 What is deemed to constitute breach of agreement

There is a breach of agreement if one of the parties fails to perform its obligations under the Framework Agreement, and this is not caused by circumstances relating to the other party or by force majeure.

8.2 Notification obligation

If one of the parties is unable to perform its duties as agreed, such party shall give the other party written notice of this as soon as possible. The notice shall specify the reason for the problem and, to the extent possible, when performance can take place. A corresponding obligation shall apply if additional delays are to be expected subsequent to the rendering of the first notice.

8.3 Remedies for breach of agreement

8.3.1 Suspension of performance

In the case of breach of agreement on the part of the Supplier, the Client may withhold payment, although the amount withheld shall not be obviously higher than what is necessary to safeguard the Client's claim resulting from the breach of agreement. The Supplier shall not suspend any performance as the result of breach of agreement on the part of the Client, unless such breach is material.

8.3.3 Termination for breach

If there is a material breach of agreement, the other party may, after having given the defaulting party written notice and granted it a deadline for remedying the situation, terminate all or part of the Agreement for breach with immediate effect.

The following is among factors that constitute material breach:

- The Supplier repeatedly delivers late and sub-standard in relation to the progress plan and deliverables specified in the relevant call-off contract

- The Supplier files for bankruptcy

The Client shall pay for deliverables completed and approved in accordance with the relevant call-off contract prior to the date of termination for breach.

8.3.4 Claim for damages

A party may claim damages in respect of any direct loss arising from delay, defect or other breach of agreement in accordance with Clause x unless the defaulting party demonstrates that the defaulting party is not responsible for the breach of agreement or the reason for the breach of agreement.

8.3.5 Limitation of damages

No damages may be claimed in respect of indirect loss. Loss as specified in the Norwegian Sale of Goods Act § 67, second paragraph, is classified as indirect loss.

The limitations on damages mentioned above in this provision shall not apply to the cost of normal measures compensating for any delay or defects in the delivery, and the cost of measures limiting other loss than that mentioned above.

Overall damages over the term of the Agreement are limited to an amount that corresponds to the agreed consideration or an upper estimate, excluding Value Added Tax.

The said limitations shall not apply in the case of gross negligence or willful misconduct on the part of the defaulting party or anyone for whom it is responsible.

9 Social responsibility

9.1 Requirements regarding salary and working conditions

The Supplier shall ensure that employees, and any subcontractors who directly contribute to the performance of the Framework Agreement, have salary and working conditions which are in accordance with the Norwegian Regulation of 8 February 2008 no 112 on salary and working conditions in public contracts. The Regulation on salary and working conditions provides the following:

- In areas covered by the Norwegian Regulation on general application of wage agreement, salary and working conditions shall be in accordance with applicable regulations.
- In areas not covered by the Norwegian Regulation on general application of wage agreement, salary and working conditions shall be in accordance with the currently applicable nationwide wage agreement for that particular industry. In this context, salary and working conditions shall mean provisions on minimum working hours, salaries, including overtime payment, shift and rotation work premiums and inconvenience bonuses, as well as reimbursement of expenses for travel, board and lodging, to the extent that such provisions follow by the wage agreement.
- The Supplier and any subcontractors shall upon the Client's request document that requirements regarding salary and working conditions are fulfilled.

All contracts entered into by the Supplier, which involve performance of work under this Framework Agreement shall contain equivalent obligations.

If the Supplier fails to comply with the above, the Client shall be entitled to withhold parts of the contractual amount, equivalent to 2 (two) times the amount saved by the Supplier, until it has been documented that situation has been rectified.

10 Choice of law and settlement of disputes

The Framework Agreement shall be governed and construed in accordance with Norwegian law.

If any dispute arises relating to the implementation or interpretation of the Framework Agreement, the Parties shall seek to reach an amicable solution.

Any dispute arising out of or in connection with the Framework Agreement that cannot be resolved amicably, shall exclusively be settled before the Norwegian courts of law with Oslo District Court as legal venue.

11 Signature

This agreement is signed in copies. Each of the Parties will keep one copy.

Place, date

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