

## PROTOCOL

As per Art. 67 para 2 of the RIPPL

(Rules for Implementation of the Public Procurement Law)

of the work of a committee appointed by order № PPL (Public Procurement Law) -47/05.08.2019, amended by orders № PPL-70/13.08.2020 and № PPL-1/05.01.2021 for selection of candidates and participants, consideration and evaluation of tenders and negotiations for public procurement, by type of negotiation with publication of a contract notice, with subject: "Service of gas turbine engine type "ASTAZOU IV M1" - Framework agreement", opened by decision № 41/15.05.2019 of the Minister of Defense (ASSIGNOR), amended by decision № 67/09.07.2019, and decision № 109/30.09.2019 for the results of the preliminary selection made.

On 10.02.2020 starting at 15.30 at Directorate "Public Defense Procurements" with address: Sofia 1092, 12 Ivan Vazov Str., A committee appointed by order № PPL-47 / 05.08.2019, on the Minister of Defense with members:

Chairman: Nevelin Neshev Petrov - Chief Expert in the "Public Defense Procurement Directorate" and members:

1) Prof. II rank Vasil Lyudmilov Zahariev - Chief Expert in the Armaments and Equipment Sector in the Logistics Department in Military Formation 34400 - Varna (reserve member);

2) Diana Stefanova Nedyalkova - Senior Expert in the Legal Provision of Public Procurement Department in the Legal Defense Directorate;

3) Gergana Yakova Stefanova - state expert in the Planning, Programming and Budget Directorate - MoD (reserve member);

4) Blagomir Dimitrov Zahariev - Chief Expert at the Institute of Defense "Professor Tsvetan Lazarov" - MoD,

all gathered to hold a public meeting to open an initial bid for participation in a public procurement with subject: "Service of a gas turbine engine type" ASTAZOU IV M1 "- Framework Agreement", of the only invited candidate "STORK TURBO SERVICE" BV "- Kingdom of the Netherlands.

Representatives of the media were not present at the meeting. The offer of the company was sent in letter reg. № 21-39-51/27.12.2019 on behalf of the Minister of Defense - until 17.30 on 17.01.2020.

The committee began its work by checking the documents referred to in item V of the invitation to submit a tender by the Minister of Defense, with registration № 21-39-51/03.12.2019.

After checking the submitted documents, the committee found that they correspond to the attached inventory and could proceed to their investigation and

negotiations with the candidate. The list of submitted documents contained in the company's offer was signed by the Executive Director of STORK TURBO SERVICE B.V. Mr. Paulus Leonardus Gijsbertus de Boer, with the company's seal. A copy of the power of attorney is attached.

As can be seen from the information provided, Stork Turbo Service B.V is controlled indirectly by Stork Technical Services Holding, and the printout provided by the Commercial Register states that the company is also a member of the Board of Directors of Stork Turbo Service B.V.

Negotiations with representatives of "STORK TURBO SERVICE B.V." began on 11.02.2020. These were attended by the company the following persons:

- Mr Gerwin Gal - Sales Manager, and
- Mr. Jan Kroet - Project Manager.

The representatives of the company informed the members of the committee that given their current commitments and commitments, at the current stage of the negotiations they are seconded for only one day, and the schedule of their next business trips in Bulgaria will be further agreed with the committee.

The chairman informs the representatives of "STORK TURBO SERVICE BV" about the obligations and powers of the committee by order № PPL-47 / 05.08.2019 and the negotiation according to section III, item 8 of the approved documentation for participation in the procedure, namely:

1. During the negotiations with the invited candidate, the following will be specified / improved upon:

- The prices of the services / repairs subject of the order offered by the candidate. The agreed prices will be considered constant and will not be changed for the entire duration of the framework agreement;
- The rights and obligations of the parties under Section VI of the draft framework agreement.

2. The parameters set by the ASSIGNOR in the technical specification TS M96.2605.17 - UVO, as well as the subject of the framework agreement, will not be subject to negotiations.

3. The agreements reached will be recorded in the minutes of the negotiations with the candidate and reflected in the relevant clauses of the draft framework agreement.

4. In the event that the proposals made by the candidate during the negotiations for changes in the clauses of the draft framework agreement, which are subject to negotiation, are not accepted by the committee, the clauses of the draft framework agreement attached to this documentation shall remain valid.

The parties continued their work by reviewing the documents submitted by STORK TURBO SERVICE B.V.

This concludes the bilateral meeting on 11.02.2020.

The representatives of STORK TURBO SERVICE B.V. pointed out that the date of the next bilateral meeting would be further agreed depending on the results of the review of the documents and the possibilities for secondment.

In connection with the measures imposed against the spread of the coronavirus pandemic "COVID-19", on 13.03.2020 a state of emergency was

declared in Bulgaria. This lasted until 13.05.2020. Subsequently, this was replaced by a state of epidemiologic emergency.

During this period, visits of outsiders to the Ministry of Defense were minimized, as were committee sessions requiring physical attendance. No bilateral meetings took place. In view of this and by order of the Minister of Defense № PPL-38 / 30.03.2020 the term for completion of the committee's work changed, as of 60 (sixty) working days from the date of opening the technical and price proposals.

During the state of emergency, continuing as of the date of signing of the bilateral protocol between the sides, no bilateral meetings requiring physical attendance took place.

By letter (MO entry Reg. № 21-39-51/24.06.2020), the company "STORK TURBO SERVICE BV" noted the restrictions imposed by the Dutch government against the spread of the pandemic in the country concerning restrictions on travel abroad, including working from home and working with reduced staff. This has led to delays in the work and communications of the company as a whole. During the work of the committee, deadlines were set for the candidate to provide explanations and additional information about the technical and price proposal, and the latest documents were submitted to Public Defense Procurement Directorate on 20.07.2020.

By e-mail dated 30.07.2020 to the chairman of the committee, the company informed that the first possible period for a visit to Bulgaria to conclude negotiations and sign the bilateral protocol was from September 8 to September 10, 2020.

In this regard, the need to extend the term of office of the committee, as well as personnel changes in the Directorate "Planning, Programming and Budget" were proposed. Change in the composition of the committee for candidate selection was proposed. There was a proposal to transform the reserve member of the committee into a permanent one. There was a proposal to appoint another expert from the staff of the directorate as a reserve member.

In view of this, by order of the Minister of Defense № PPL-70 / 13.08.2020 the committee members changed and the term for work was extended until 14.10.2020.

By letter with incoming no. reg. № 12-00-921/27.08.2020 to the chairman of the committee from "STORK TURBO SERVICE BV", the company informed about the growing restrictions imposed by the government of the Netherlands in respect of the Republic of Bulgaria, consisting of the switch of our country to the list with code "orange" from the list with code "yellow" in relation to the spread of the pandemic.

In this regard, the company suggested cancelling the negotiations planned from September 8 to 10, 2020 in the MoD and to work remotely by organizing online meetings through "Skype for Business" and to correspond by e-mail, and to update the agreements reached accordingly.

According to this suggestion, the company requested an opinion on acceptability from the Legal Defense Directorate - MoD, which was in favor (Reg. № 21-39-51/18.09.2020).

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In light of the company's proposal, the parties continued to cooperate by exchanging information by e-mail.

**In the course of the committee's work and negotiations with the company "STORK TURBO SERVICE B.V." the following issues were commented, negotiated and clarified:**

**1. With regard to the technical proposal:**

A proposal for execution of the procurement has been prepared according to the template annex № 15 of the documentation for participation and meets those requirements. The same was signed by the Executive Director of STORK TURBO SERVICE B.V., Mr. Paulus Leonardus Gijsbertus de Boer. A copy of the power of attorney is attached;

- There will be no subCONTRACTORS in the execution of the contract.

**2. With regard to the price proposal:**

The price proposal was prepared in accordance with template № 16 of the documentation for participation and signed by the Executive Director of STORK TURBO SERVICE B.V., Mr. Paulus Leonardus Gijsbertus de Boer. A copy of the power of attorney is attached.

- The proposed price per unit for 2020 to perform "Service of gas turbine engine type" ASTAZOU IV M1 "is 179,433.52 euros (one hundred seventy-nine thousand four hundred thirty-three euros and fifty-two euro cents), excluding VAT;

- The proposed annual price increase in percentages for each subsequent year of the term of the framework agreement 2021 - 2024 is 5%;

Two annexes are attached to the price proposal, as follows:

Annex № 1: List of activities that are included in the price proposal of the candidate in the public procurement procedure for "Service of a gas turbine engine type" ASTAZOU IV M1 ";

Annex № 2: List of activities included in the draft framework agreement with subject "Service of a gas turbine engine type ASTAZOU IV M1".

**During the negotiation, the proposed unit price and the proposed annual percentage increase in the price were confirmed by the candidate.**

**3. Under the draft framework agreement:**

- The candidate declares he will not use bonds for advance payment and performance in the form of insurance. The advance payment bond will be in the form of an irrevocable and unconditional bank guarantee for advance payment, and the performance bond will be in the form of a bank guarantee, notified or confirmed by a bank on the territory of the Republic of Bulgaria.

**3.1 With regard to the rights and obligations of the parties under Section VI of the draft framework agreement:**

- In connection with the text in Section VI, item 9 of the draft framework agreement, which states that the CONTRACTOR will provide the ASSIGNOR with an annual updated catalog and price list of spare parts for gas turbine engine "ASTAZOU IV M1" by STORK TURBO SERVICE B.V., the clarification was made that the engine manufacturer (the original manufacturer, SAFRAN HELICOPTER ENGINES SUPPORT NETWORK (OEM), no longer issued such

catalogs, and accordingly this requirement cannot be accepted as an obligation by STORK TURBO SERVICE BV). Spare parts will be provided when preparing an "expert report" on the execution of a specific contract;

- On the suggestion of the expert with Navy Command and Control, a member of the committee, the following was accepted as an obligation of the CONTRACTOR:

The CONTRACTOR is to provide the ASSIGNOR with an updated "expert report" containing the respective value on an annual basis by February 15<sup>th</sup> each year for the duration of the Framework Agreement, in case the ASSIGNOR has not entered into a contract (requested a service) regarding performance of activities under the respective "expert report" during the preceding year / years.

The proposal was accepted by the candidate (tenderer) with the following addition: "In cases where the respective value depends on the tender (offer) submitted by the original equipment manufacturer (OEM) the CONTRACTOR will inform the ASSIGNOR upon obtaining that value from the OEM."

The Parties agreed on the following wording of Section VI, Item 9 of the draft Framework Agreement:

The price of the required spare parts will be provided by the CONTRACTOR by means of an "expert report" upon provisions in the drafts of specific Contracts. The CONTRACTOR is to provide the ASSIGNOR with an updated "expert report" containing the respective value on an annual basis by February 15<sup>th</sup> each year for the duration of the Framework Agreement, in case the ASSIGNOR has not entered into a contract (requested a service) regarding performance of activities under the respective "expert report" during the preceding year / years. In cases where the respective value depends on the tender (offer) submitted by the original equipment manufacturer (OEM) the CONTRACTOR will inform the ASSIGNOR upon obtaining that value from the OEM.

The Parties continued the negotiations on the "Penalties" Section from the Framework Agreement, considering that pursuant to the terms and conditions laid down by the ASSIGNOR in Section III, Item 8 of the Documentation the only provisions of the Framework Agreement which may not be subject to negotiation are those pertaining to the parameters laid down by the ASSIGNOR in the Technical Specification M96.2605.17 – UVO, as well as the subject-matter of the Framework Agreement. Additionally, in accordance with the Documentation terms and conditions regarding Section III, the Commission is mandated to negotiate the content of the overall tender (offer) proposed by the CONTRACTOR. By submitting its tender (offer) the participant STORK TURBO SERVICE B.V. has agreed to all provisions of the draft Framework Agreement. In this context, the provisions of the Framework Agreement are subject to negotiation and refinement at the discretion of the two Parties, with the only exception of the Section pertaining to the subject-matter of the Framework Agreement and the provisions relating to the terms and conditions of the Technical Specification of the procurement to be awarded. That is, the latter are

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*[Signature]*

the only provisions of the Framework Agreement with regard to which negotiation is explicitly prohibited, which means that the Parties are free to improve and refine the content of the tender (offer) at the discretion of both and by negotiating Section XI "Penalties" of the Framework Agreement. All members of the Public Procurement Award Commission agreed on the above.

In addition, the representative of the Legal Defence Directorate established that the Section "Penalties" was intrinsically linked to the Section "Rights and Obligations of the Parties", namely the provision incorporated in Article 15, Item 1 thereof, which states that after the conclusion of the Framework Agreement, the CONTRACTOR shall undertake to perform the servicing of the engines under the terms of the agreement, including those related to the CONTRACTOR's liability in case of non-performance. The Section "Rights and Obligations of the Parties" is also subject to specification according to the terms of the ASSIGNOR in this procedure.

Due to these circumstances, the Commission continued the negotiations on Section XI "Penalties" of the Framework Agreement.

- 3.2 Under Section XI "Penalties" Article 28, of the draft framework agreement, STORK TURBO SERVICE B.V. made the following proposals:

The candidate stated that the parameters specified in the draft framework agreement were not acceptable to the company and proposed the following changes:

(1) In case of delayed fulfillment of the obligations under a specific contract to the Agreement, the CONTRACTOR owes the ASSIGNOR a penalty for delay in the amount of 0.2% (zero point two percent) of the value of the delayed part without VAT for each week of delay (instead of each day), but not more than 5% (five percent) (instead of 20%) of the contract value excluding VAT.

(2) In case of delayed payment under a specific contract to the Agreement, the ASSIGNOR owes the CONTRACTOR a penalty for delay in the amount of 0.2% (zero point two percent) of the value of the delayed payment without VAT for each week of delay, but not more than 5% (five percent) of the value of the late payment without VAT.

(3) In case of delayed fulfillment of the warranty obligations related to settling claims under a specific contract, the CONTRACTOR shall owe the ASSIGNOR a penalty for delay in the amount of 0.2% (zero point two percent) of the value of the claims without VAT for each week of delay (instead of each day) after the deadline for settlement of the claim, but not more than 5% (five percent) (instead of 20%) of the price of the contract without VAT.

(4) In case of partial or complete non-performance of a specific contract to the Agreement, lasting more than 200 (two hundred) (instead of 100) days, the ASSIGNOR has the right to unilaterally terminate the contract, seek compensation for damages and claim a penalty of 5% (five percent) (instead of 20%) of the value of the outstanding part excluding VAT.

(5) The penalties as quoted in art. 28, paragraphs 1 and 3, may not be claimed if the delay is owed to reasons beyond the control of the CONTRACTOR and in this case the ASSIGNOR cannot invoke paragraph 4 of Art. 28 of Section

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XI. It is expressly agreed that the non-availability or untimely provision of spare parts and services by the Original Manufacturer (OEM) will be considered irrelevant to the CONTRACTOR.

(6) The payment of a penalty is the only means of protection of the ASSIGNOR in case of delays, for which the CONTRACTOR is at fault.

The candidate motivates his proposals with the applied principle of pricing, laid down in his price proposal. He also makes reference to the successfully implemented framework agreement with the Ministry of Defense № UD-03-14 / 02.04.2013, according to which the maximum percentage of penalties due was respectively 3%.

However, given that the candidate's proposal concerning the non-availability or untimely provision of spare parts and services by the Original Manufacturer (OEM) does not lead to liability for the CONTRACTOR and the application of penalty clauses, the Committee informs the candidate that this case falls within the scope of section XII "Force majeure" of the draft framework agreement. As it is already covered by the Framework Agreement, it is not necessary to explicitly record it in Section XI "Penalties" of the Framework Agreement.

In light of the discussions, the parties agreed that the penalty withholding clauses should not be applied in cases beyond the control of STORK TURBO SERVICE B.V., such as lack of or untimely provision of spare parts and services by the Original Manufacturer (OEM), for which appropriate evidence must be provided.

On Wednesday December 16<sup>th</sup> and Friday December 18<sup>th</sup>, 2020 the parties have commenced a skype meeting to discuss the last open remaining point being the Section XI "Penalties" to come to an agreement.

In light of the discussions the parties have reached an agreement that the sub clauses 1 thru 4 under this section would be adapted to the following;

(1) In case of delayed fulfillment of the obligations under a specific contract to the Agreement, the CONTRACTOR owes the ASSIGNOR a penalty for delay in the amount of 0.5% (zero point five percent) of the value of the delayed part without VAT for each week of delay, but not more than 7% (seven percent) of the contract value excluding VAT.

(2) In case of delayed payment under a specific contract to the Agreement, the ASSIGNOR owes the CONTRACTOR a penalty for delay in the amount of 0.5% (zero point five percent) of the value of the delayed payment without VAT for each week of delay, but not more than 7% (seven percent) of the value of the late payment without VAT.

(3) In case of delayed fulfillment of the warranty obligations related to settling claims under a specific contract, the CONTRACTOR shall owe the ASSIGNOR a penalty for delay in the amount of 0.5% (zero point five percent) of the value of the claims without VAT for each week of delay after the deadline for settlement of the claim, but not more than 7% (seven percent) of the price of the contract without VAT.

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(4) In case of partial or complete non-performance of a specific contract to the Agreement, lasting more than 200 (two hundred), the ASSIGNOR has the right to unilaterally terminate the contract, seek compensation for damages and claim a penalty of 7% (seven percent) of the value of the outstanding part excluding VAT.

It has been agreed that in case of force majeure Section XI sub-clause 4 cannot be applied.

With respect to the agreed percentage of the penalty, the representative of Public Procurement Defence Directorate, expressed the opinion that the agreed percentage is on a reciprocal basis and is sufficient to guarantee the interests of the ASSIGNOR in the public procurement.

The parties agreed to include in the Section VI of the Framework Agreement project „RIGHTS AND OBLIGATIONS OF THE PARTIES“ the following provisions, namely:

- The penalties as cited in Article 28, Paragraphs 1 and 3, may not be claimed if the delay is due to reasons beyond the control of the CONTRACTOR or representing force majeure, so in this case the ASSIGNOR cannot activate Paragraph 4 of Article 28 of Section XI of the Framework Agreement. Failure on the part of the CONTRACTOR to deliver spare parts and services to be supplied by the Original Equipment Manufacturer (OEM), or failure to deliver the said spare parts and services on time, shall be considered a reason beyond the control of the CONTRACTOR, and provided the CONTRACTOR has furnished sufficient relevant proof thereof.

- It has been agreed the “Delivery date” will be the date that the TAG is ready for testing. In case during testing discrepancies will be found Stork will agree with the MOD a new delivery date.

The Parties agreed that the inclusion of provisions in the drafts of specific Contracts shall be allowed, but only insofar as they do not contradict of the provisions incorporated in the Framework Agreement in accordance with Article 82, Paragraph 9 of the Public Procurement Act.

The arrangements set out in this Protocol were accepted by both Parties.

**In light of the above, the negotiations between the parties ended and the parties agreed with the conclusions reached in this protocol, which was signed on the basis of Art. 67 para 2 of the RIPPL on. 29.01.2021.**

**Annexes:**

1. Letter with inc. reg. № 21-39-51 / 24.06.2020
2. Letter with inc. Reg. № 21-39-51 / 18.09.2020
3. Draft framework agreement with subject "Service of a gas turbine engine type" ASTAZOU IV M1".



**Chairman:**

..... / Nevelin Petrov /

**Members:**

1. Capt. II rank ..... / Vasil Zahariev /

2. .... / Diana Nedyalkova /

3. .... / Gergana Stefanova /

4. .... / Blagomir Zahariev /

**On behalf of: STORK TURBO SERVICE B.V.**

..... 29-01-2021 Richard van Essen  
2. .... 29-01-2021 Gerwin Gal  
3. .... 29-01-2021 Jan Kroet

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**Подписите са заличени на основание чл. 4, т.1, във връзка с чл.5, т.1, буква „в“ от регламент 2016/679/ЕС.**