



THE NORWEGIAN ARMED FORCES
The Norwegian Defence Logistics Organisation

DRAFT CONTRACT

460000XXXX – Fast Rescue Crafts for the Norwegian Coastguard

Contract provisions

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1 Introduction

1.1 General

This contract ('the Contract') is entered into by and between

The Norwegian Defence Logistics Organisation ('the Purchaser'), org.no 988 517 860, on the one side

and

<name of the contractor> (the "Contractor") on the other side.

1.2 Users of the Contract

The Norwegian Defence Logistics Organisation enters into the Contract on behalf of the Norwegian Armed Forces.

The Norwegian Defence Logistics Organisation and the Norwegian Armed Forces are jointly referred to as the "Purchaser".

The Purchaser and the Contractor are jointly referred to as the "Parties" and individually as the "Party".

1.3 Document Overview

The Contract consists of the following documents:

- Form 5101 (front page of the contract with signatures)
- Contract Provisions (this document)
- Annexes specified in clause 1.4.

1.4 Annexes to the Contract

The following annexes are a part of the Contract:

Annex	
Annex B	System Segment Specification (SSS)
Annex C	Price and payment terms
Annex C-1	Payment plan
Annex D	Price Sheet
Annex E	Terms of delivery
Annex E1	Statement of delivery time
Annex F	Administrative provisions
Annex G	Contractor's social responsibility
Annex G-1	Ethical requirements (Difi (Agency for Public Management and eGovernment) and IEH (Ethical Trading Initiative Norway))
Annex H	Options

1.5 Precedence of Documents

In the event of any conflict between the provisions of the contract documents, they shall be given priority in the following order:

1. Form 5101 (front page of the contract with signatures)
2. Contract Provisions (this document)
3. Annex B – System Segment Specification
4. Annex D – Price Sheet
5. Other annexes pursuant to the documents' order

Amendment Agreements pursuant to clause 3 below shall have precedence over the other documents.

1.6 Purpose of the Contract

The purpose of this Contract is to meet the Purchaser's demand for new Fast Rescue Crafts (FRC) for Nornen-class Coastguard.

1.7 Scope of Delivery

The Contractor shall deliver the Scope of Delivery as defined in Annex B System Segment Specification.

The Scope of Delivery primarily comprises:

- Seven (7) FRCs.
- One (1) Maintenance course for up to 10 persons.
- Documentation

- Any options exercised in accordance with Annex H Options

1.8 Test and verification

In order to verify that the requirements of Annex B System Segment Specification are met, the Contractor shall carry out verification in accordance with the verification procedures set out in Annex B System Segment Specification.

The Contractor remains fully liable for the fulfilment of all his obligations under this Contract regardless of whether the Purchaser has provided support in connection with or participated in the Contractor's performance of the Contract. This means, among other things, that any support or participation on the part of the Purchaser in the form of approval, acceptance or similar confirmation during the design, manufacture, testing, verification and delivery does not relieve the Contractor of any of its obligations. Any progress payments made do not entail acceptance of the basis for the invoice or the size of the amount.

1.9 Parts Identification Form (PIF)

The Contractor shall fill out and deliver a Parts Identification Form (PIF) in accordance with Annex B4.

1.10 Terms of Delivery

The delivery shall meet all the requirements set out in the Contract at the time of delivery. All deliveries shall be new, and, where relevant, cleaned, and equipped with all necessary certificates.

All deliveries shall be free of encumbrances or claims of any kind at the time of delivery.

The Contractor shall deliver the Scope of the Delivery in accordance with the times and terms of delivery defined in Annex E Terms of Delivery.

1.11 Points of contact

Each of the Parties shall provide a contact person authorised to act on behalf of the Party in all matters relating to the completion of the Contract. Each of the parties' contact person is stated in Annex F – Administrative provisions.

The Contractor may not negotiate with one or more users regarding issues relating to the Contract without notifying the Purchaser in advance.

The Parties shall respond to any enquiries from the other Party without undue delay.

2 Changes to the Contract

Changes to the Contract shall be agreed in writing between the Parties by using standard forms issued by the Norwegian Armed Forces. The Norwegian Armed Forces standard forms may be issued when required or upon request.

A change shall remain invalid until both Parties have signed the relevant agreement for change. The agreement for change shall specify any consequences to price. The Parties may not invoke any consequences of the change not included in the agreement for change.

Request for change shall be responded to by the other Party without undue delay after the request for change. The Contractor's request for change or reply to the Purchaser's request for change shall describe all consequences the change will have on price/contract value, delivery time and any other of the Parties' obligations pursuant to the Contract.

The Contractor shall register changes as they occur and upon the Purchaser's request present an updated copy of such register.

3 The Contractor's obligations

3.1 General

The Contractor shall fulfil its obligations under the Contract with the professional expertise that may be expected from an acknowledged contractor in its line of operations and profession or from similar business sectors and professions. The scope of delivery shall be in accordance with the requirements of the Contract and otherwise of good quality and in accordance with its purpose.

The Contractor shall on the Contractor's own initiative inform the Purchaser in writing if a change of the scope of delivery may entail lower costs or improvements to the Contract.

The Contractor shall upon the Purchaser's request document that the Contractor has all necessary permits and approvals in relation to the delivery.

If the Contract designates key personnel from the Contractor, changes to such personnel may only be made on a justifiable basis and when approved by the Purchaser. The Contractor's need for reemployment of key personnel to another assignment is not considered justifiable basis. The Contractor must bear the costs of training new personnel.

3.2 The Contractor's social responsibility

The Contractor shall comply with the basic requirements to social liability as defined in Annex G – Contractor's social responsibility and Annex G-1 – Ethical requirements.

3.3 The Contractor's bank

The Contractor's choice of bank must be approved by the Purchaser.

3.4 Subcontractors

3.4.1 The Contractor's right to use subcontractors

The Contractor may use subcontractors to fulfil its obligations under the Contract.

3.4.2 Requirements for subcontractor

The Contractor shall ensure that all contracts with subcontractors provide the Purchaser with the same rights as the Contract and that any requirement under the Contract applies to the subcontractors' fulfilment of the contractual obligations.

The Contractor may not assign subcontractors that do not accept these terms and conditions, unless approved in writing by the Purchaser.

The Contractors shall, upon request, provide the Purchaser with information on how the above mentioned requirements are met in any subcontract used to fulfil the Contract.

3.4.3 Subcontractor's obligations

If the Contractor is unable to fulfil its obligations under the Contract, the Purchaser may request that the subcontractor continues its fulfilment of the agreement with the Contractor. In such cases the Purchaser guarantees for the Contractor's obligations pursuant to the contract between the Contractor and the subcontractor. The Contractor undertakes to ensure this in the contract with the subcontractor(s). This provision does not exempt the Contractor as a contracting party, from its contractual obligations under the Contract

3.4.4 Status of subcontractors

The Contractor shall remain fully liable for the fulfilment of all its obligations under the Contract, whether the Contractor has subcontracted all or parts of the fulfilment of the agreement.

3.5 Transparency

The Contractor shall give the Purchaser's authorised representative access to all information, documents etc. which the representative might find relevant to the Contractor's performance of assignments under the Contract. This may include, but is not limited to access to the Contractor's quality control, contractor analyses, cost control, transaction overview as well as security.

Furthermore, the Contractor shall give the Purchaser's representatives physical access to all properties and facilities when required in order for such representatives to fulfil their assignments.

3.6 Confidentiality

Information that becomes known to the Contractor in connection with this agreement and the completion of the agreement shall be kept confidential. This does not apply to information that is already publicly known or the publishing of which is required for the fulfilment of the Contract. When such information must be made known to a third party in order to ensure fulfilment of the Contract, the Contractor shall obtain a declaration of confidentiality from such third party.

The Contractor shall obtain prior authorisation from the Purchaser if information about the Contract is to be made known to the public for advertising purposes or otherwise.

The duty of confidentiality shall continue to apply throughout the term of agreement as well as after the expiry of the Contract, unless otherwise agreed in writing with the Purchaser or governed by law or regulations.

3.7 Transfer of claim

The Contractor may not transfer outstanding claims under the Contract to a third party without prior written consent from the Purchaser.

The Contractor remains liable for all its contractual obligations even if such consent has been issued by the Purchaser.

3.8 Obligation to inform of insolvency

The Contractor shall without undue delay inform the Purchaser in writing if the Contractor is insolvent.

The Contractor is insolvent if it is not able to fulfil its obligations as they fall due, unless the insolvency must be considered temporary. The Contractor may not be considered insolvent if the Contractor's assets and income in total fulfil the Contractor's obligations. This applies even if fulfilment of these obligations are delayed due to the sale of the Contractor's assets.

4 Contractor's breach of contract

4.1 Defect

The scope of delivery is considered defective if the scope of delivery does not comply with the requirements to kind, quantity, quality other properties or packaging which are provided by the Contract.

The scope of delivery is also considered defective if the scope of delivery does not fit the purpose of the procurement, violates any third party rights or if the scope of delivery deviates from the Contract in relation to warranties etc.

If a fault or defect relating to the scope of delivery becomes evident before the expiry of the complaints period, and there is reason to believe that the fault or defect affects several parts or systems delivered, a systemic defect is deemed to exist.

The scope of delivery may not be considered defective if the Contractor can establish that the breach is due to the Purchaser or circumstances for which the Purchaser is responsible.

4.2 Purchaser's complaint

The Purchaser shall submit a written complaint within reasonable time after a breach of contract has been discovered.

The Purchaser may in no event make complaints later than 24 months after actual time of delivery.

The same time limit applies in respect of any replaced or repaired parts, calculated from the time when the replacement or repair took place. The period allowed for complaint does not commence as long as rectification work or other required activity is carried out in order to comply with the requirements of the Contract.

The periods allowed for complaint do not apply if the Contractor has acted with gross negligence, dishonesty or in bad faith. The claims period does not apply if the Contractor has assumed liability through a warranty or other agreement for defects for a longer period.

4.3 Delay

If the scope of delivery or parts of the scope of delivery is not delivered or delivered later than at the agreed time and this is not due to the Purchaser or circumstances for which the Purchaser is responsible, this shall constitute a delay.

4.3.1 Extended delivery period

If the Contractor finds that the delivery will be delayed, the Contractor may request an extended delivery period. Any such extended delivery period must be approved by the Purchaser in order to apply. During the extended delivery period the Purchaser may not invoke cancellation, daily penalty or request compensation.

An extended delivery period does not affect the Purchaser's right to cancel, issue daily penalty or compensation accrued prior to the implementation of the extended delivery period.

4.4 Contractor's obligation to inform of breach of contract

Should the Contractor be prevented from fulfilling its obligations, the Contractor shall notify the Purchaser without undue delay of this and the effects thereof to the fulfilment of the scope of delivery.

The Contractor shall do what is reasonably required in order to solve the problem. The Contractor shall keep the Purchaser informed of the measures taken to ensure the fulfilment of the Contract.

The Purchaser shall take necessary measures to prevent and limit the effects of the Contractor's breach. Such measures will not limit the Contractor's liability.

5 Purchaser's remedy for breach of contract

5.1 Daily penalty at delay

Delays caused by the Contractor may result in daily penalty.

The Daily Penalty amounts to 0.2 % of the total payment of the value of the contract ex. VAT per calendar day calculated from the day the delay occurred. The Daily Penalty may be issued for no more than 90 calendar days. The Daily Penalty will start automatically.

The Daily Penalty may be deducted from the final invoice. The Purchaser shall send a statement of penalties to the Contractor.

5.2 Remedy

Upon receipt of complaint from the Purchaser, the Contractor shall remedy the breach without undue delay. Such remedy may include rectification, delivery of substitute goods, additional delivery or any other remedy that ensures that the scope of delivery is in compliance with the Contract, both in terms of quality as well as extent. The Contractor may not request to remedy the breach if such remedy constitutes a major inconvenience to the Purchaser.

The Contractor is liable for all costs related to the remedy, including costs related to transportation of the scope of delivery between the Purchaser and the Contractor. Remedy may be performed on the Contractor's premises if this has been agreed between the Purchaser and the Contractor.

If the Contractor fails to remedy the defect within reasonable time or within an agreed time period, or if Purchaser is entitled to cancellation, the Contractor shall cover the Purchaser's costs related to remedy by any third party or to their own remedy of the defect. The Purchaser may not remedy the defect themselves or via any third party before the expiration of any additional time period. The Purchaser shall inform the Contractor in writing before such remedy is initiated.

The Contractor undertakes to provide all necessary information and rights to the use of such information to the Purchaser or third parties when required in order to remedy the defect.

The Purchaser may require modification of or new verification tests and/or procedures to re-approve the scope of delivery after remedy. Such new tests are to be performed at the Contractor's expense and shall ensure the fulfilment of the specifications and requirements under the Contract.

The Contractor's, a third party's or the Purchaser's remedy does not deprive the Purchaser of its right to compensation due to delayed fulfilment of the contract or non-conformities to the scope of delivery.

In case of a systemic defect, the Purchaser shall present to the Contractor all information that forms the basis for the Purchaser's conclusion.

Unless the Contractor can substantiate that the fault or defect is probably an isolated occurrence, the Contractor shall rectify all delivered parts or systems, including parts or systems for which the warranty period has expired, regardless of whether the faults or defects have manifested themselves.

5.3 The Purchaser's right to reject defective scope of delivery

In the event of defect the Purchaser may reject the parts of the scope of delivery that are defective as well as any part of the scope of delivery affected by the defect. The rejection shall be confirmed in writing without undue delay. Any rejected scope of delivery is considered not delivered and the provisions regarding delay will apply.

5.4 Price reduction

Should the Contractor fail to rectify a defect without undue delay, or if they do not succeed in rectifying such defect after two attempts, the Purchaser may claim a proportionate price reduction.

The price reduction is a compensation for the reduced value of the delivery due to the defect and applies in addition to any other compensation and/or daily penalty.

5.5 Retention of payment

In case of the Contractor's breach of contract, the Purchaser may withhold payment until it has been documented that the breach has been remedied. The Purchaser may only withhold such sum which is required in order to ensure the Purchaser's claim due to the breach.

5.6 Termination

5.6.1 Termination of the Contract

If the Contractor is in material breach of the Contract, the Purchaser may, following a prior written notification to the Contractor as well as a reasonable time period for remedy, terminate all or parts of the Contract with immediate effect.

5.6.2 Termination in the event of criminal acts

The Purchaser may terminate the Contract with immediate effect if the Contractor is subject of conviction by final judgment for participation in a criminal organisation, corruption, fraud, money laundering, financing of terror or found guilty of criminal acts related to professional conduct.

5.6.3 Termination in the event of bankruptcy etc.

The Purchaser may, unless otherwise is determined by invariable law, terminate the Contract with immediate effect if any of the following occur in relation to the Contractor's operations; debt settlement proceedings are initiated, voluntary debt settlement is agreed, bankruptcy or any other form of creditor control are initiated, or if the Contractor's operations are liquidated, discontinued or are in any similar process pursuant to applicable law.

5.6.4 Consequences of termination

Upon receiving notice of termination, both Parties shall immediately suspend their performance of the Contract and instruct all their subcontractors to do the same. However, the Parties and their subcontractors shall complete or secure work as necessary in order to avoid damage to property or injury to personnel.

5.7 Anticipatory breach of contract

The Purchaser may suspend the performance of its obligations if it becomes apparent from the Contractor's conduct or from a serious deficiency in the Contractor's creditworthiness or in the Contractor's ability to perform that it will not perform a substantial part of its contractual obligations.

6 Purchaser's undertakings

6.1 Participation

The Purchaser shall furnish such assistance as may reasonably be expected of him in order for the Contractor to fulfil its obligations under the Contract.

6.2 Confidentiality

The Purchaser undertakes to comply with the provisions regarding confidentiality in act of 10 February 1967 relating to procedure in cases concerning the public administration (Public Administration Act) during the entire agreement period and after its expiry.

7 The Purchaser's breach of contract

7.1 Breach of contract

Should the Purchaser fail to fulfil its obligations under the Contract and this is not due to circumstances for which the Contractor is responsible, this shall constitute a breach of contract.

7.2 Purchaser's notification obligation in the event of breach of contract

Should the Purchaser be prevented from fulfilling its contractual obligations within the agreed time, it shall notify the Contractor without undue delay of the cause to the delay and any effect it may have on its ability to fulfil its obligations.

8 Contractor's remedy for breach of contract

8.1 Retention

The Contractor may withhold its performances under the Contract in the event of the Purchaser's breach of contract if the breach is major.

8.2 Interest on overdue payment

In the event that the Purchaser does not fulfil its payment obligations, the Contractor is entitled to interest pursuant to act of 17 December 1976 relating to interest on overdue payment etc.

8.3 Cancellation

In the event of default the Contractor may terminate the Contract if the Purchaser fails to fulfil its payment obligations within 60 calendar days after the Purchaser has received written notification of payment from the Contractor.

In the event of other breach of contract, the Contractor may notify the Purchaser in writing that the Contract will be cancelled unless the breach is remedied within 60 calendar days after the Purchaser received the notice. The Contractor may not terminate the Contract if the Purchaser rectifies the breach within the deadline.

9 Compensation

Subject to the limitations stated in the Contract, each of the Parties may claim compensation for direct loss due to the other party's breach of contract.

Direct loss is defined as reasonable additional costs related to purchase of substitute goods, costs related to the performance of a new procurement as well as any increased costs related to change of contractor. No compensation may be claimed for indirect loss unless the Party in breach of contract or any for whom the Contractor is liable has acted with gross negligence or intent. Regarding what may be considered direct loss and indirect loss, reference is made to act of 13 May 1988 no. 27 relating to purchase, cf. section 67 first, second and third paragraph.

Each of the Parties undertakes to mitigate its losses and may not claim compensation for losses that the Party should and could have avoided.

The Contractor is liable pursuant to general rules relating to compensation for damage caused by the Contractor in relation to the fulfilment of the scope of delivery, cf. section 2-1 of the act of 13 June 1969 relating to compensation in certain circumstances (Damages Act).

10 Rights

10.1 Right of ownership to goods etc.

Goods, equipment and other materials delivered under the Contract are considered the property of the Purchaser at the time of delivery. Transfer of ownership rights entails that the Purchaser has full and actual legal rights to the materiel.

10.2 Contractor's rights

The Contractor shall keep its intellectual property rights to its products, including products that are specifically developed for the Purchaser, unless otherwise specifically agreed or is a natural consequence of the purpose of the scope of delivery.

10.3 Purchaser's rights

The Purchaser is granted a perpetual, free of charge and non-exclusive right to utilise the various parts of the scope of delivery/product (expanded right of disposal), included in the contractor's ownership rights that are a part of the scope of delivery. The Expanded right of disposal comprises a right to use, copy, modify or develop the various parts of the scope of delivery, either on its own or with the assistance of a third party. The Purchaser is entitled to confer its expanded right of disposal on another public body, unless otherwise specifically agreed.

11 Defect in title

The Contractor shall have the right to make use of all its input factors, including any solutions to which a third party has the rights, and that other parties' rights are not violated at the fulfilment of the Contract.

12 Indemnification

The Contractor shall indemnify the Purchaser in the event of the following circumstances:

- Damage to the Contractor's personnel or property arising from the fulfilment of the Contract, unless the damage is due to the Purchaser's or any for whom the Purchaser is liable negligent or gross negligent acts.
- Claims from third parties arising from the Contractor's possible violations of third parties' rights.
- Claims from third parties for damages for which the Contractor is responsible. For purchase of materiel/items, this provision shall only apply until time of delivery.

- Claims from third parties for pollution or other environmental damages for which the Contractor is responsible. For purchase of materiel/items, this provision shall only apply until time of delivery.

The Purchaser undertakes to indemnify the Contractor of any claim from a third party which is due to use of the Purchaser's drawings, specifications, licenses, etc.

If claim for damages pursuant to this clause is made by a third party against either of the Parties, said Party shall immediately notify the other Party in writing.

13 Force Majeure

Neither of the Parties shall be considered to be in breach of their obligations under the Contract if fulfilment of the obligation has been prevented by Force Majeure.

Force Majeure means an occurrence beyond the control of the Party affected, which the Party should not and could not reasonably have foreseen at the time of entering into of the Contract, and which could not reasonably have been avoided or overcome.

The obligations of the Party affected are suspended for the duration of the Force Majeure. The relevant obligations of the other Party shall be suspended for the same amount of time.

Due to the Purchaser's specific requirements to delivery during crisis and emergency situations, force majeure may not be invoked unconditionally by any Party in such situations. Knowledge of war, crisis or conflict in itself does not constitute a force majeure situation. However a force majeure situation will arise if a situation arises that actually prevents the Party from fulfilling its obligations under the Contract.

If a Party deems a Force Majeure situation to have occurred, the Party shall immediately notify the other Party in writing specifying the expected delay caused by the Force Majeure situation.

Each Party shall cover its own costs resulting from the Force Majeure situation and Force Majeure shall not affect the agreed price.

If a Force Majeure situation persists without interruption for more than 90 calendar days, or the Party invoking Force Majeure can establish that it will do so, either Party may cancel the Contract in full or in part after written notification stating a time period of 15 calendar days, relating to those parts of the Contract which are affected by the Force Majeure situation.

14 Labelling of the Purchaser's property

If the Contractor is in possession of any items that are the property of the Purchaser, such items must be clearly labelled "property of the Norwegian Armed Forces". The Purchaser's property shall be kept separate and easily identifiable.

15 Other provisions

15.1 Visiting routines

The Contractor undertakes to follow the Purchaser's prevailing visiting routines while visiting the Purchaser's facilities. Foreign citizens shall complete the form «Request for Visit» pursuant to «Guide for clearance of foreign citizens visiting Norway». The Purchaser will communicate such documents to the Contractor when required.

15.2 Re-use of information

Subject to confidentiality, the Purchaser is entitled to use the information made known to the Purchaser under the Contract for other purposes, including transmitting such information to third parties.

15.3 Marketing and media

Any publishing or communication of information regarding the agreement and the customer relation is subject to the Purchaser's prior approval, cf. Annex F – Administrative provisions.

The above mentioned does not apply to brief summary of information regarding the character and extent of the agreement as well as names of reference persons, when this information is given in relation to a public procurement.

15.4 Licenses

The Contractor is responsible for obtaining all necessary export and import licenses and any other necessary licenses unless otherwise specified in the Contract.

16 Disputes

The Parties' rights and obligations under the Contract are governed by Norwegian law. Should a dispute arise between the Parties relating to the interpretation or the legal effects of the agreement, the Parties shall first seek to resolve the dispute through negotiations.

The Contractor may not suspend or reduce its performances under the Contract due to disputes related to the Contract/the scope of delivery. Such suspension or reduction may only be made based on and must be pursuant to agreement between the Parties or after the dispute is resolved with binding effects for both Parties.

If a dispute related to the Contract is not resolved through negotiations, the Parties may seek to resolve the dispute by mediation.

The parties may base the mediations on rules relating to mediation by the Norwegian Bar Association, adjusted accordingly. It is assumed that the Parties agree on a mediator having the necessary requirements to resolve the dispute. The detailed approach to mediation shall be determined by the mediator, in consultation with the Parties.

If a dispute is not resolved through negotiations or mediation, either Parties may request the dispute resolved with final effect before a Norwegian Court of Law. Oslo District Court is the correct venue.