



European Organisation
for Astronomical
Research in the
Southern Hemisphere

Organisation Européenne
pour des Recherches
Astronomiques
dans l'Hémisphère Austral

Europäische Organisation
für astronomische
Forschung in der
südlichen Hemisphäre

Annex 3

DRAFT AGREEMENT

No. 00000/ESO/INS/08/19554/JSC

For the Advanced Conceptual Design of the post-focal
Laser Tomography Adaptive Optics (LTAO) module
for the European Extremely Large Telescope (E-ELT)
at a firm fixed price of € 150.000

BETWEEN

the **European Organisation for Astronomical Research in the Southern Hemisphere**,
hereafter referred to as **ESO**, having its Headquarters at Karl-Schwarzschild-Straße 2, D-85748
Garching bei München (Germany),

on the one hand,

AND

The.....

having its Headquarters at

on the other hand,

representing the **as Bidder/Consortium¹** hereafter referred to as the
Bidder/Consortium, consisting of:

-
-
-
-

¹ If applicable



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IT IS AGREED AS FOLLOWS:

ARTICLE 1. SCOPE OF THE AGREEMENT

ESO entrusts to the Bidder/Consortium and the Bidder/Consortium agrees to supply the **“Advanced Conceptual Design of the post-focal Laser Tomography Adaptive Optics (LTAO) module for the European Extremely Large Telescope (E-ELT) at a firm fixed price of €150.000”** in accordance with the following documents:

- 1.1 the provisions of the present Agreement;
- 1.2 the REVISED Statement of Work, Doc. No. E-SOW-ESO-528-0125 v2, dated 30 June 2008 (Annex 1);
- 1.3 the REVISED Technical Specifications and Requirements, Doc. E-SPE-ESO-528-0126, Issue 2.0, dated 01 July 2008 (Annex 2);
- 1.4 the *“Conditions Governing Calls for Proposals and Contracts for the VLT Instrumentation, Munich, May 2007 in complement to the General Conditions Governing Invitations to Tender and Tenders, Munich, May 2007 and to the General Conditions of ESO Contracts, Munich, May 2007”* (Annex 3);
- 1.5 the *“General Conditions of ESO Contracts, Munich, May 2007”* (Annex 4);

ARTICLE 2. PRICE

- 2.1. The total price to be paid by ESO for the performance of the scope of the Agreement specified in Article 1 is

EUR 150.000

(in words: one hundred fifty thousand Euros)

- 2.2. This price is firm, fixed, free of taxes and customs duties and not subject to revision.



ARTICLE 3. SCHEDULE AND MILESTONE PAYMENT PLAN

3.1 The study extends over a period of 32 (thirty two) months from Kick-Off to Final Acceptance (Item 3.1.5 and Article 4.1 hereafter). ESO shall pay to the Bidder/Consortium the price as specified in Article 2 above according to the following project schedule and milestone payment plan:

Item	Milestone	Time of Completion	Payment (% of the total amount)	Payment Amount in €
3.1.1	Milestone 0: Kick-off	T ₀ %
3.1.2	Milestone 1: PHASE 1 review	T ₀ + 7 months %
3.1.3	Milestone 2: Mid term assessment	T ₀ + 12 months %
3.1.4	Milestone 3: PHASE 2 review (Advanced conceptual design review), Provisional Acceptance	T ₀ + 16 months %
3.1.5	Final Acceptance	T ₀ + 28 months	0 %	0
3.1.6	TOTAL FIRM FIXED PRICE		100 %	150.000,00

3.2 Payments as stated in Items 3.1.1 through 3.1.4 above will be made against presentation of the corresponding invoices from the [.....Institute] (representing the Bidder/Consortium) and, where applicable, acceptance of documents and payment within 30 days net after receipt, in accordance with the project schedule and milestone payment plan specified in Article 3.1 above.

3.3 The Bidder/Consortium guarantees that all payments made by ESO under this Agreement shall be solely used for the purpose of the proper fulfillment of the Agreement, and that all unused funds paid by ESO will be refunded to ESO.



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ARTICLE 4. PROVISIONAL AND FINAL ACCEPTANCE

(cf. Arts. 15 and 17 of the General Conditions of ESO Contracts, Annex 4)

- 4.1. Provisional Acceptance shall be granted by ESO after all deliverables have been provided to ESO and successfully reviewed and accepted by ESO.
- 4.2. Final Acceptance shall be granted with effect from the expiry of the guarantee period, provided that the Consortium has met all his obligations.

ARTICLE 5. GUARANTEE

Article 16.1 of the General Conditions of ESO Contracts is amended as follows:

The Bidder/Consortium guarantees that the documents and reports are made by qualified experts in accordance with the standards as customary for research and development studies and industrial methodology. Within a period of 12 months after Provisional Acceptance obvious faults shall be corrected and respective documents shall be replaced, as appropriate.

ARTICLE 6. INTELLECTUAL PROPERTY OF THE SUPPLIES

The terms and conditions stipulated in Art. 23 of the General Conditions of ESO Contracts, Munich, May 2007 (Annex 4) are applicable without restriction or limitation, whereby it is understood as follows:

- 6.1 All supplies specified in this Agreement shall become the property of ESO following the granting of Provisional Acceptance. ESO has the irrevocable and unrestricted right, free of any charge, to use the results of the study for the further definition of the E-ELT instrumentation Plan and its implementation.
- 6.2 Notwithstanding the transfer of ownership of the supplies to ESO, the Bidder/Consortium retains the rights of use and exploitation of the scientific, technical and commercial results of the study, including the right to claim patents for inventions or to protect other exclusive rights and to publish scientific results.
- 6.3 In the first two years following the conclusion of this study, ESO might distribute the technical documentation to a third party by agreement of both the Principal Investigator and Deputy Principal Investigator. For the agreement required for such distribution, a reply shall be provided within two weeks, after which, no reply will be considered as approval.



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- 6.4 When disseminating technical documentation and deliverables ESO will ensure that they are used only for its own purposes and that third parties do not disseminate them without securing written undertakings in advance that the data will be protected against any unauthorized use or further dissemination.

ARTICLE 7. AMENDMENTS TO THIS AGREEMENT

Any additions to or modifications of the content of this Agreement must be mutually agreed upon by the Bidder/Consortium and ESO and be confirmed in the form of a written amendment to this Agreement.

ARTICLE 8. CANCELLATION OF THIS AGREEMENT

The provisions of Article 34 of the “*Conditions Governing Calls for Proposals and Contracts for the VLT Instrumentation – Munich, May 2007, in complement to the General Conditions Governing Invitations to Tender and Tenders and to the General Conditions of ESO Contracts – Munich May 2007*” shall apply. In this context, failure to pass any of the major project reviews foreseen in this Agreement shall be considered by ESO as an ‘important reason’ for cancelling the Agreement.

ARTICLE 9. LANGUAGE

Any communication and correspondence between ESO and the Contractor shall be in the English language.

ARTICLE 10. CONTRACT MANAGEMENT, REPRESENTATION AND ADDRESSES FOR CORRESPONDENCE

FOR ESO

In accordance with Article 7 of the “*General Conditions of ESO Contracts*” the accredited representatives in charge of the follow-up of the performance of the Agreement are:

Managerial, Scientific and Technical Matters

Mr. Jérôme Paufigue, Study Responsible at ESO
European Organisation for Astronomical Research in the Southern Hemisphere -ESO-
Karl-Schwarzschild-Strasse 2
D-85748 Garching bei München, Germany
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Contractual Matters

Johannes Schimpelsberger, Contract Officer

ESO, as above

Phone: +49.89.32.00.6381

Fax: +49.89.32.00.6456

E-mail: jschimpe@eso.org

FOR AND ON BEHALF OF THE BIDDER/CONSORTIUM

Principal Investigator

.....[Institute]

.....[Contact Person]

.....[Address]

Phone:

Fax:

E-mail:

Study Manager

.....[Institute]

.....[Contact Person]

Phone:

Fax:

E-mail:

ARTICLE 11. DISPUTES – STATUS – APPLICABLE LAW

- 11.1 In case of disputes arising from this Agreement, the parties agree to enter into negotiations with the aim of reaching an amicable settlement. Failing such an amicable settlement of any dispute, the Bidder/Consortium and ESO shall resort to arbitration under the conditions described in Chapter IX, paragraph 33 of the “General Conditions of ESO Contracts, Munich, May 2007”.
- 11.2 The status of ESO and the law applicable to ESO are described in Chapter IX, paragraph 34 and 35 of the “General Conditions of ESO Contracts, Munich, May 2007”.



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ARTICLE 12. GENERAL CONDITIONS OF ESO CONTRACTS

Except when they have been modified under the above Articles; the *“Conditions Governing Calls for Proposals and Contracts for the VLT Instrumentation – Munich, May 2007, in complement to the General Conditions Governing Invitations to Tender and Tenders and to the General Conditions of ESO Contracts - Munich, May 2007”* shall apply to this Agreement.

LIST OF ATTACHMENTS:

- ANNEX 1: REVISED Statement of Work, Doc. No. E-SOW-ESO-528-0125 v2, dated 30 June 2008;
- ANNEX 2: REVISED Technical Specifications and Requirements, Doc. E-SPE-ESO-528-0126, Issue 2.0, dated 01 July 2008;
- ANNEX 3: Conditions Governing Calls for Proposals and Contracts for the VLT Instrumentation - Munich May 2007, in complement to the “General Conditions Governing Invitations to Tender and Tenders” and to the “General Conditions of ESO Contracts” - Munich, May, 2007;
- ANNEX 4: General Conditions of ESO Contracts, Munich, May 2007.



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Done in [No.] originals.

Done at Garching, on

European Organisation for Astronomical Research in the Southern
Hemisphere – ESO:

.....
*Prof. Dr. Tim de Zeeuw,
Director General ESO*

Done at, on

for the Bidder/Consortium:

.....
*[Responsible Person for Representation of the Bidder / Consortium]
[Position]*