

## **SPECIAL CONDITIONS OF TENDER**

### **A. INTRODUCTION**

The following documents are available on <http://emits.esa.int/emits/owa/emits.main> under "Reference Documentation" --> "Administrative Documents":

- ESA Procurement Regulations (ESA/REG/001)
- General Clauses and Conditions of ESA Contracts (ESA/REG/002)
- Implementing Instruction Concerning the ESA Tender Evaluation Manual (ESA/REG/001, Rev 1, Annex III)
- General Conditions of Tender for ESA Contracts

The Agency's General Conditions of Tender for ESA Contracts shall apply for the purpose of this Invitation to Tender, as specified, amended or supplemented by these Special Tender Conditions. In the event of conflict between the General and the Special Conditions, the Special Conditions shall prevail.

The new ESA Procurement Regulations were published in June 2010. A revised set of General Conditions of Tender (GTC) is currently in preparation and is expected to be published shortly. Until the entry into force of the revised GTC the following adaptations apply:

- Section C, paragraph 6, quotation free of taxes and customs duties: Prices shall be quoted free of taxes and customs duties. In cases where the tenderer considers that he will remain subject to the payment of taxes and customs duties, he shall indicate separately the applicable rates, the corresponding estimated total tax or customs duty amount, and the reason why he believes exemption from tax or customs duties cannot be obtained. Attention is drawn to the provisions of Clause 29 of ESA/REG/002
- Section C, paragraph 7, Advance and Progress payments: Tenderers shall state acceptance of any payment scheme given in the ITT. They may also, unless specified to the contrary, propose an alternative payments plan which reflects the foreseen expenditure. Progress payments shall be linked to the completion of well defined milestones (work packages, tasks, phases etc.) or may, in the case of cost reimbursement contracts be made at regular intervals. Proposed advance and progress payments may not exceed the limits stated in Clause 28.3.1.c and 28.3.2.c (Fixed Price Contracts or Sub- clause 28.4.2.b (Cost Reimbursement Contracts) of ESA/REG/002

### **B. LENGTH OF PROPOSAL**

The tender should be precise and concise. It should be borne in mind that the quality of the tender is not improved by unnecessary length, or by needlessly detailed descriptions and repetition. A rough guideline is that the total number of pages, depending on the extent of the proposed activity, should not exceed:

<u>MAX N. OF PAGES</u>	<u>CONTRACTUAL PRICE</u>
50	below 200 K
75	200-500 K
100	Above 500K

The quoted number of pages does not include standard company information or brochures which the tenderer wishes to append to demonstrate its background and experience.

### **C. LANGUAGE OF THE PROPOSAL**

Tenderers shall deliver their entire proposal in the English language.

#### **D. PACKAGING OF THE PROPOSAL**

The proposal shall be submitted as follows:

- The signed cover letter, in a separate envelope marked “TO BE OPENED BY THE TENDER OPENING BOARD ONLY” and bearing the number and title of the Invitation to Tender
- The proposal itself in one separate box(es) or envelope(s) bearing the reference of the ITT and the mention “Proposal”.
- Each copy of the proposal shall include a copy of the signed cover letter.

Each copy of the proposal shall include a **full set of signed PSS Forms**.

#### **E. CONTENTS OF THE PROPOSAL**

##### **1. COVER LETTER**

The signed cover letter shall bear the number and title of the Invitation to Tender and shall be submitted in a separate envelope marked “TO BE OPENED BY THE TENDER OPENING BOARD ONLY”

The cover letter shall contain the following:

- Price and Bidding Team
  - a. The total price of the proposal, the price type and the price breakdown between the Prime Contractor and its sub-contractors.
  - b. The ESA bidder Codes of the Prime and all subcontractors, and to the extent that they are available, the ESA-P bidder codes and vendor codes for each company.
  - c. The name, address, telephone / fax numbers of each sub-contractor proposed.

The price breakdown information and bidding team details shall be presented in the format of a table as follows:

Economic Operator Name and legal nature <sup>1</sup>	Address and contact details	SME (indicate with YES or NO)	Large space integrator (indicate with YES or NO)	EMITS Bidder Code	ESA-P <sup>2</sup> Bidder Code if known	ESA-P Vendor Code if known	Country	Price
<b>Prime Contractor</b>								

<sup>1</sup> Specify here the type of business entity to which the company belongs (e.g Limited Company, Société Anonyme, AG etc)

<sup>2</sup> For the purpose of invoicing under a resulting Contract, the tenderer will be expected to use the ESA-P system of the Agency. For those tenderers who have already entered into contracts with the Agency this tool is known and the ESA-P bidder and vendor numbers are in principle known. For tenderers who have not yet entered into a contract with the Agency, an ESA-P Vendor Number is not available and will only be provided at the time of finalisation of the resulting contract.

<b>Subcontractor 1</b>								
<b>Subcontractor 2.....</b>								
<b>TOTAL</b>								

- Formal Statements
  - a. A clear statement of the validity period of the tender, of a minimum of 4 months from the closing date for receipt of tenders.
  - b. A clear statement that each Economic Operator forming part of the bidding team (whether as prime or subcontractor) complies with Article 18.1 of the Procurement Regulations
  - c. The confirmation that each economic operator forming part of the bidding team (whether as prime or subcontractor) has submitted or updated its bidder questionnaire on <http://emits.esa.int/emits/owa/emits.main> within the last twelve months preceding the submission of the present proposal.
  
- Contact and contract signatory information
  - a. The names, telephone / fax numbers and e-mail address of the persons who will be responsible for the technical and contractual management of any resulting contract and who would be nominated as such in the contract.
  - b. Name of the legal representative that will sign the Contract.
  - c. The name, address, telephone / fax number and e-mail address of the tenderer's contact person to whom all communications relating to the ITT should be addressed.
  - d. The name(s) of the author(s) of the proposal.

**2. CONTENTS OF THE TECHNICAL PROPOSAL**

- 2.1 The tenderer shall provide an introduction showing his understanding of the technical requirements and shall outline the main problems and his proposed solutions to solve them. Comments on the work activities as specified are invited. The tenderer shall submit, in the form of a matrix, a critical review of the ESA technical requirements, clearly stating its compliance or indicating eventual deviations with the relevant justification.
  
- 2.2 The tenderer shall submit a detailed first elaboration, as far as practicable, of the activities described in the Statement of Work, including if possible the selection of a preferred concept, together with the technical evidence of its validity in terms of feasibility and development risk. Mere repetition of the Agency's requirements should be avoided.
  
- 2.3 The tenderer shall submit a study plan, in the form of a flow chart, showing the logic of the envisaged work to be undertaken.
  
- 2.4 The tenderer shall submit a statement of compliance to the ESA Work Statement, clearly defining any proposed deviation with the relevant justification in matrix form.

- 2.5 If the tenderer intends to make use of Background Intellectual Property<sup>3</sup> or Third Party Products/Rights, the tenderer shall explain the rationale for this choice in technical terms. The impact of this approach on the technical activities and resulting products - as well as their usage – shall be indicated.  
See also the Financial and Legal aspects of the same topic in Part 3.14.4 (Acceptance of Contract Conditions) below.

### **3. CONTENTS OF THE FINANCIAL, MANAGEMENT AND ADMINISTRATIVE PROPOSAL (including costing, planning, WBS, etc. and contractual response)**

#### **3.1 BACKGROUND EXPERIENCE OF THE COMPANY (IES)**

The tenderer shall describe the relevant experience that he and his subcontractors (if any) have for the performance of the work which is subject of the present ITT.

In particular, the tenderer shall provide information about himself and any subcontractors on:

- legal nature of the company and distribution of ownership per country
- size in terms of turnover and number of staff
- record of relevant experience

#### **3.2 ORGANISATION AND MANAGEMENT**

##### 3.2.1 The tenderer shall present

- the structure of the industrial group which will carry out the project. The structure of the group and of the individual companies shall be shown by means of a project organigramme, which clearly show the tasks, position, authority, and name of its personnel, including the Key Personnel dedicated to this activity, and in particular the study/project manager and the contracts officer.
- The structure of each of the companies in the industrial group, also by means of companies organigrammes
- Lines of communication and reporting, and means for settling disagreements shall be described.

##### 3.2.2 The tenderer shall present his management plans, policies and procedures for this activity including a discussion of the project organization, the procedures that will be used to exercise control over the project and the proposed subcontracting control (if applicable).

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<sup>3</sup> Background Intellectual Property is defined in the General Clauses and Conditions for ESA Contracts as all Intellectual Property Rights not developed under contract with the Agency either prior to or during execution of the Contract, which are used by the Contractor and/or the Agency to complete the Contract or required for the use of any product, application or result of the Contract.

- 3.2.3 The tenderer shall submit a statement of compliance to the management requirements of the draft contract as amended by the Statement of Work, clearly defining any proposed deviation with the relevant justification.

### 3.3 FACILITIES

The tenderer shall submit a brief description of all facilities which are proposed to be used for the work offered, including those facilities which are still to be developed/built and/or purchased, (with a statement whether the costs of developing/building/ purchasing the facility are to be directly or indirectly charged to the contract). Modifications to existing facilities are also to be described. For the purposes of this provision facilities include hardware/computer software/manufacturing and test equipment/ computers, etc.

The tenderer shall also describe what means of access to information resources, such as libraries, databases etc. he has, if these are required for the work proposed.

### 3.4 KEY PERSONNEL

Key personnel are defined as persons who, because of their individual qualifications and positions are proposed for the work and indicated as such in the tenderer's organigramme. As a minimum, each person assigned as Work Package Manager shall be nominated as Key Personnel. Key personnel should be proposed to one level below the study/project manager, both for the main contractor and any sub-contractors. As concerns the replacement of key personnel during the contract execution, the provisions of Clause 9 of the ESA General Clauses and Conditions for ESA Contracts as amended in the Draft Contract shall apply.

For each key person identified, the tenderer shall:

1. Provide a comprehensive curriculum vitae, giving in particular the work experience of the person concerned, a brief description of the person's present job and responsibilities and the precise assignment of the person to the present activity;
2. Indicate his position in the tenderer's organisation and his role in the project;
3. Provide the average percentage of his/her total working time the key personnel will dedicate to the present activity;
4. Provide the number of manhours dedicated by each key personnel broken down per Work Package.

### 3.5 LIST OF DELIVERABLE ITEMS

The bid shall contain a List of Deliverables items that are to be delivered under a resulting contract. The List of Deliverable, items shall be grouped in Hardware, Software, and Documentation, indicating how many copies or units will be delivered of each item. For software, the offer shall indicate in which format it will be delivered and if any licenses/third party licenses will be delivered to ESA.

### 3.6 WORK BREAKDOWN STRUCTURE

- 3.6.1 The tenderer shall submit a Work Breakdown Structure in accordance with paragraphs 1, 2, 3(c), and 4 of Annex 5(1) to the General Conditions of Tender. Work Package Descriptions shall comply with the layout of the standard PSS-A20 form. The Work Breakdown Structure shall report, for every Work Package, its title and its number as per Work Packages Description and Gantt Chart.
- 3.6.2 With respect to the standard requirements for management, reporting, meetings and deliverables, the tenderer shall include a Work Package for Management and Reporting in his proposal. All management tasks, such as meetings, progress reporting and preparation of final documentation shall be carried out under this Work Package.

### 3.7 PLANNING

The expected total duration of the contract is 12 months.

The tenderer shall submit his planning proposal in accordance with paragraphs 1, 5.2, 6 and 7 of Annex 5(2) to the General Conditions of Tender, in the form of a Gantt chart. The Gantt chart shall duly reflect the relevant Work Package title and number as per Work Breakdown Structure and Work Packages Description

In establishing his planning, the tenderer shall take account of the need of the Agency to review and/or approve intermediate deliverables and shall include sufficient time for the Agency to do this.

### 3.8 COST PRICE DATA

#### 3.8.1 Costing Forms

The following PSS-A documents, included in the General Conditions of Tender as Annex 5(3) shall be completed and signed for the Prime Contractor and for each Sub-Contractor proposed, if applicable:

- PSS-A1, issue no. 2  
Company Cost Element Data Sheet (unless already supplied – in which case the earlier submission should be clearly referred to in the Cost Price Data Section of the proposal – see Annex 5/3 of General Tender Conditions).
- PSS-A2, issue no. 4  
Company Price Breakdown Form, including Exhibit A to PSS-A2, issue no. 4
- PSS-A8, issue no. 4  
Manpower and Price Summary at Work Package Level
- PSS-A15.1  
Price Projection by Contractor versus Payment Plan in Euro – WBS Level 1

The price in National Currency with the EURO conversion rate is applicable only for companies and organisations residing outside the EURO zone. The price of companies and organisations residing within the EURO zone shall be given directly in EURO.

The above costing forms shall be provided for each phase and for the total study/development programme.

- 3.8.2 The Agency has earmarked for this activity a maximum budget of €1,000,000. Your attention is drawn to the relevant paragraph of the cover letter of this activity. In preparing his price proposal the tenderer shall take into account the provisions of the Draft Contract on VAT Exemptions (Article 3 of the Draft Contract).
- 3.8.3 The tenderer shall indicate whether licences of Intellectual Property Rights owned by any Third Party are to be purchased for the execution of the activity. The fees of these licences shall be included in the total price of the Contractor's financial proposal and itemised in Exhibit A to the PSS-A2 form.

The tenderer shall indicate whether any licenses acquired within the study are expected to be required for the use of the deliverables and in this case whether licenses purchased during the study can be transferred to the Agency at the end of the activity or licenses must be purchased. The proposal shall contain an optional binding price for such licenses. The price of licenses shall be supported by a copy of the supplier's proposal in this respect.

### 3.9 TYPE OF PRICE

Confirmation of compliance with the price type defined in the Draft Contract (Appendix 2 to this ITT) shall be provided.

### 3.10 PROFIT

The fee (profit) shall not exceed eight (8) per cent of the base cost, defined in item ten (10) of the Company Price Breakdown Form PSS A2, issue no. 4.

### 3.11 CONVERSION RATES

For the purpose of currency conversions, tenderers are required to clearly indicate the exchange rate(s) and other factors on which their calculations are based.





### 3.14 ACCEPTANCE OF THE ESA CONTRACT CONDITIONS

#### **3.14.1 Statement of Acceptance of the ESA Draft Contract**

The tenderer shall state that the conditions of the Draft Contract are read, understood and accepted and that any sales conditions of the tenderer do not apply.

#### **3.14.2 Insurance waiver**

Tenderers are encouraged to discuss with their insurance company to obtain a waiver of subrogation rights from the insurers (foreseen in Clause 18.1.3 of the GCC). This waiver will be available on the side of ESA in case of reciprocity. Failure to present such a waiver at a potential contract signature will result in a hold harmless agreement between the parties in accordance with Clause 18.1.6 of the ESA GCC.

The Tenderer shall state whether such a waiver will be available at a potential contract signature.

#### **3.14.3 Conditions relating to Export/Import licences/authorizations and related Documentation**

The Tenderer (and/or his subcontractors) shall indicate any export or import restrictions he is subject to, in accordance with national legislation, at the time of the submission of his tender and state the necessary licences, authorisations or preliminary authorisations and related Documentation:

- he (or his subcontractors) has obtained in order to submit a tender; and/or
- he (or his subcontractors) has or will need to obtain prior to placing of the Contract; and/or,
- he (or his subcontractors) has or will need to obtain for the implementation of the Contract.

#### **3.14.4 Background Intellectual Property**

If the tenderer intends to use background intellectual property<sup>4</sup> in the present activity, the proposal shall provide a comprehensive list of such background intellectual property (including the name of the owner, reference numbers of registered property rights, if applicable). Note: Besides the contractual/legal aspects addressed here, the tenderer is reminded that the impact of using the background intellectual property shall also be described from the technical point of view (see Technical Proposal) and from the price point of view (see Financial Proposal).

The tenderer shall clearly explain his (sub-) licensing conditions for use of such pre-existing background intellectual property both:

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<sup>4</sup> Background Intellectual Property is defined in the General Clauses and Conditions for ESA Contracts as all Intellectual Property Rights not developed under contract with the Agency either prior to or during execution of the Contract, which are used by the Contractor and/or the Agency to complete the Contract or required for the use of any product, application or result of the Contract.

- (1) during the activity and
- (2) after the completion of the contract (e.g. for use in future ESA activities/programmes).

The tenderer shall clearly indicate which deliverables of the resulting contract will incorporate this background intellectual property.

Failing such advance notification, Clause 43.1 of the General Clauses and Conditions for ESA Contracts shall apply (as complemented by Article 4, Clause 43.1 bis of the Contract).

#### **3.14.5 Third Party Intellectual Property**

If the tenderer intends to use third party intellectual property in the present activity, the proposal shall provide a comprehensive list of such third party intellectual property (including the name of the owner, reference numbers of registered property rights, if applicable). Note: Besides the contractual/legal aspects addressed here, the tenderer is reminded that the impact of using the third party intellectual property shall also be described from the technical point of view (see Technical Proposal) and from the price point of view (see Financial Proposal).

The tenderer shall clearly indicate which deliverables will incorporate or require the use of the third party intellectual property.

The tenderer shall clearly explain his (sub-) licensing conditions for use of such third party intellectual property 1) during the activity and 2) after the completion of the contract (e.g. for use in future ESA activities/programmes).

**ANNEX 1 – EVALUATION CRITERIA**

In evaluating the proposal(s) ESA will use the following criteria:

No.	Evaluation Criterion	Weighting Factor
1.	Background and experience (general and related to all fields described in the SOW) of the economic operator(s) and staff (including adequacy of proposed facilities)	20%
2.	Adequacy of the team composition for the execution of the work and added value of each team member; relevant participation of Sub-Saharan Africa stakeholders	20%
3.	Understanding of the requirements and objectives and discussion of problem areas	20%
4.	Quality and suitability of proposed programme of work including first elaboration	20%
5.	Adequacy of management, costing and planning for the execution of the work	10%
6.	Compliance with administrative tender conditions and acceptance of contract conditions	10%

**ANNEX 2 – ACKNOWLEDGEMENT OF RECEIPT**

REF: AO/1-7331/12/NL/AD – Satellite enhanced Telemedicine and eHealth for Sub-Saharan Africa (eHSA) Programme – Study on sustainability, liability and business aspects

TO: Ms A. Dean (PFL-PNT) Fax no. +31 71 565 5773

We confirm that we have received the above-mentioned AO with all attachments and we state the following (\*):

0 We intend to submit an offer

0 We have not yet decided whether to submit an offer but will advise you within 14 days of date of publication of the ITT/despatch of the RFQ

0 We do not intend to submit an offer:

- Time / resources not available YES/NO

- Subject matter outside our scope of activities YES/NO

COMPANY NAME.

ADDRESS.

TELEPHONE NO

TELEFAX NO.

NAME AND FUNCTION OF PERSON TO CONTACT:

DATE

SIGNATURE

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(\*) Please delete or complete, as appropriate

N.B. Tenderers are requested to complete and return this form by fax as well as to express their interest in this tender action on the EMITS website. Failure to comply with this may result in necessary subsequent information not being received by invitees to tender.