

EUSPA/OP/25/24 (EUSPA/PRG/2024/OP/0014)
"OPERATIONAL IT ASSETS FOR EUSPA SOM/GSMCs "

Annex I to Invitation to Tender

"Tender Specifications"

after Corrigendum no 1

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1. Overview

The present Tender Specifications, attached to the Invitation to Tender, complement the information contained in the Contract Notice with further information on the procurement procedure and scope.

1.1 Context of the tender

The European Union Agency for the Space Programme (hereinafter referred to as 'the EUSPA', 'the Agency' or 'the Contracting Authority') is a European Union decentralised agency whose mission is to contribute to the European Union Space Programme. EUSPA replaces and succeeds the European GNSS Agency formed by the European Union to accomplish specific tasks related to the European GNSS programmes (including Galileo and EGNOS)¹. EUSPA takes on increased responsibilities not only for Galileo and EGNOS, but also for other EU Space Programme components, including Copernicus, GOVSATCOM and Space Situational Awareness (SSA).

Further information can be found on the Agency's web site at <https://www.euspa.europa.eu/>. This website contains, for instance, information about:

- European Space programme (<https://www.euspa.europa.eu/eu-space-programme>);
- Legal framework applicable to EUSPA (<https://www.euspa.europa.eu/about/how-we-work/register-of-documents>).

The Galileo Security Monitoring Centre (GSMC) is in charge of operating secure elements of Galileo Ground Mission Segment and is an integral part of the Galileo infrastructure. The GSMC is based on two sites: in Saint-Germain-en-Laye, near Paris (France) and in San Martín de la Vega, near Madrid (Spain). The GSMC monitors and takes action regarding security threats, security alerts and the operational status of the Galileo system's components. The GSMC is also responsible for managing access to the Public Regulated Service (PRS) and ensures that sensitive information relating to the use of the PRS is properly managed and protected. The Centre also provides PRS and Galileo security expertise and analysis.

1.2 Purpose

The objective of this Invitation to Tender is to conclude a multiple framework contract with maximum 2 (two) Contractors in cascade (hereinafter referred to separately and/or individually as "the Contract", "Framework Contract", or "FWC"), with a maximum total duration of 48 months, for the provision of ICT spares and consumable assets for EUSPA SOM/GSMCs based in France and in Spain and technical – watch services, as further described in the present Tender Specifications.

Further details are provided in Section 2.1 – Technical Terms of Reference.

Where reference is made to the FWC in these Tender Specifications, it should be assumed that any such reference is also meant to cover any order forms concluded on basis of the FWC, in particular when there is a reference covering any obligation of the Tenderers.

¹ Regulation (EU) 2021/696 of the European Parliament and of the Council of 28 April 2021 establishing the Union Space Programme and the European Union Agency for the Space Programme and repealing Regulations (EU) No 912/2010, (EU) No 1285/2013 and (EU) No 377/2014 and Decision No 541/2014/EU.

1.3 Name and form of procurement procedure

Name: EUSPA/OP/25/24 (EUSPA/PRG/2024/OP/0014)– “OPERATIONAL IT ASSETS FOR EUSPA SOM/GSMCs”

Procedure: **Open procedure** for tenders with publication in the Official Journal of the European Union in accordance with Article 167(1)(a) of Regulation (EU, Euratom) 2024/2509 on the financial rules (“Financial Regulation” or “FR”)² for procurement of services.

Lots: Not applicable.

1.4 General Conditions and procedural process

- Tenderers are required to accept all the terms and conditions set out in the Invitation to Tender, Tender Specifications and Draft Contract, as well as their Annexes. Tenderers are required to waive their own general or specific terms and conditions.
- The terms and conditions set out in the Invitation to Tender, Tender Specifications and Draft Contract, as well as their Annexes, shall be binding on the tenderer to whom the contract is awarded, throughout the duration of the said Contracts.
- Any attempt by a tenderer to obtain confidential information, enter into unlawful agreements with competitors or influence the evaluation committee or the Contracting Authority during the process of examining, clarifying, evaluating and comparing tenders will lead to rejection of his tender and may result in administrative penalties.
- This document, its Annexes, the Draft Contract and any subsequent document for this activity to be issued by the Contracting Authority in the course of this procurement process are in no way binding on the Contracting Authority. The contractual relationship with the Contracting Authority commences only upon signature of the Contract with the successful Tenderer.
- Until the signature of the Contract, the Contracting Authority may either abandon the procurement or cancel the award procedure, without Tenderers being entitled to claim any compensation.
- The Contracting Authority reserves the right to supplement, vary, terminate or otherwise amend the tendering process, to the extent allowed under applicable procurement rules and without any liability for financial compensation to the Tenderers.
- By submitting a Tender, the Tenderer provides its unconditional and irrevocable consent to the Agency to use any information contained in the Tender in legal proceedings related to procurement regardless of the parties involved to the extent as necessary or appropriate for due protection of Agency’s rights. Should the Agency use the content of the Tender for this purpose, the

² Regulation (EU, Euratom) 2024/2509 of The European Parliament and of The Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (recast) repealing Regulation (EU, Euratom) 2018/1064 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union.

Tenderer waives any claim for any compensation of any kind whatsoever or any claim related to confidentiality and/or data protection.

1.5 Applicable Rules

The legal context of this procurement procedure is given for indicative and non-exhaustive purposes by the following documents:

- Financial Regulation (FR)³;
- EUSPA Financial Regulation⁴;
- EU Space Programme Regulation⁵;
- Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);
- Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC;
- Regulation on public access to documents⁶;

It shall be the contractor's duty and corresponding sole responsibility to comply and ensure full compliance with all applicable laws of any part of the performance under the contract contemplated to be awarded as a result of the current procedure.

2. Procurement procedure and timeline

2.1 Timeline

Timetable	Date	Comments
Launch of procurement process - submission for publication of	25 April 2025	All documents of the Invitation to Tender are available at:

³Regulation (EU, Euratom) 2024/2509 of The European Parliament and of The Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (recast) repealing Regulation (EU, Euratom) 2018/1064 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union.

⁴ European GNSS Agency Financial Regulation 2019 adopted by its Administrative Board on 16 August 2019.

⁵ Regulation (EU) 2021/696 of the European Parliament and of the Council of 28 April 2021 establishing the Union Space Programme and the European Union Agency for the Space Programme and repealing Regulations (EU) No 912/2010, (EU) No 1285/2013 and (EU) No 377/2014 and Decision No 541/2014/EU.

⁶ Council Regulation (EC) No 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

Contract Notice to the Supplement to the EU Official Journal		Funding & Tenders Portal https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/opportunities/tender-details/f3bf5c1d-77f0-4006-b4f4-37ede5d9c96b-CN?#anchorDocuments
Deadline for submission of signed Non-Disclosure Undertaking (the "NDU"), company register excerpts and request to access proprietary information relevant for the tender preparation	18 May 2025 (recommended)	Details for the request procedure and required documents are provided in Section 2.2, below. The economic operators are advised to abide by the deadline specified herewith in order to have enough time for preparation of their tender.
Deadline for requests of clarifications	16 June 2025	Clarification requests to be sent in writing only through the above-mentioned F&T Portal link in the "Question and answers" tab, by clicking "Create a question".
Last date on which clarifications are issued by EUSPA.	19 June 2025	All clarifications will be published at the above-mentioned F&T Portal link. Tenderers are invited to check the above-mentioned F&T Portal link on a regular basis.
Deadline for submission of tenders.	24 June 2025 at 23:59 CET	According to conditions of submissions set out in Section 6 of these Tender Specifications.
Opening session	25 June 2025 at 11:00 CET	According to Section 6.10 of these Tender Specifications.
Evaluation session	June - September 2025 (estimated)	The estimated date is only indicative, it may be changed, and it is not binding on the Contracting Authority.
Award decision	September 2025 (estimated)	The estimated date is only indicative, it may be changed, and it is not binding on the Contracting Authority.

Standstill period	According to Annex I FR, Point 36.1, 10 days from the day after the simultaneous dispatch of the notifications to successful and unsuccessful tenderers by electronic means.	
Signature of Contract	October 2025 (estimated)	The estimated date is only indicative, it may be changed, and it is not binding on the Contracting Authority
Kick-off of Contract	October 2025 (estimated)	The estimated date is only indicative, it may be changed, and it is not binding on the Contracting Authority

Table 1 – Procurement schedule

2.2 Submission of Non-Disclosure Undertaking – access to proprietary information during the tender

In anticipation of protection of the essential security interest of the Union and its Member States, in accordance with Article 24 of the Space Regulation, only entities which, according to the submitted Legal Identification Form and supporting documents, are established in a Member State of the European Union are eligible to receive Proprietary Information. This does not prejudice the verification of the specific participation conditions subject to Section ~~Error! Reference source not found~~ 4.1.1 ^{Corrig.1} **Error! Reference source not found.** to be performed separately against the Tenderers. In addition, the Proprietary Information is only available to potential Tenderers or sub-contractors.

The Tenderer (including any consortium member and subcontractor) participating in this procurement procedure shall treat with confidentiality any information and documents, disclosed in any form, in writing or orally, in relation to the procurement procedure.

The Prime Tenderer or the Consortium Coordinator may request access to the Proprietary Information [contained in Annex I.I-List of Assets and Annex I.J - List of Assets Simulation Exercise, part of the present Tender Specifications] which is relevant for drafting the Tender. Access will be granted only upon signature of a Non-Disclosure Undertaking ('NDU') and delivery of the documents identified below. EUSPA will dispatch Proprietary Information in electronical form only.

Economic operators are advised to abide by the deadline specified in Section 2.1 in order to have enough time for preparation of their Tender.

The NDU must be signed only by the Prime Tenderer or the Consortium Coordinator. The Prime Tenderer or Consortium Coordinator, with the signing of the NDU, further irrevocably and explicitly declares to ensure that the provisions under the NDU shall apply wholly and unconditionally to any members of the consortium and/or any of the sub-contractors and any personnel it may draw on for the preparation of the Tender.

For this purpose, the prime Candidate or consortium coordinator shall submit:

1. NDU using the form attached in Annex I.G;
2. Legal Entity Form (the “LEF”) and the supporting documents indicated in the LEF. The LEF and the supporting evidence shall not be older than 1 year from the time of submission of the NDU provided that no change occurred in the legal status in the meantime. If any change in the legal status occurred, up-to-date documents shall be submitted;
3. Proof that the person signing the NDU is authorised to represent the Tenderer.

If possible, the Tenderer should submit the documentation only electronically to tenders@euspa.europa.eu. In such case, the NDU must be signed electronically with a Qualified Electronic Signature (QES) of the Tenderer. This electronic signature must be provided by a provider which has a qualified status granted by a national competent authority of an EU Member State and which is listed in the national eIDAS Trusted Lists and the EU List of eIDAS Trusted Lists (LOTL) (available at [eIDAS Dashboard \(europa.eu\)](https://eidas-dashboard.europa.eu)).

In case a Tenderer prefers to submit it on paper, all documentation shall be sent to the following address:

European Union Agency for the Space Programme (EUSPA)
Procurement and Legal Department
Non-Disclosure Undertaking under procurement procedure EUSPA/OP/25/24
Janovského 438/2
170 00 Prague 7
Holešovice, Czech Republic

In such case, the Tenderer shall send the scans of the documents above to tenders@euspa.europa.eu in parallel, to allow for a faster treatment of the request, together with a proof of dispatch of the originals.

Before disclosure of Proprietary Information to their sub-contractors, the Tenderer shall ensure that such sub-contractors:

- Have proven need to know for the purpose of participation / supporting Tenderer’s offer in the present procurement procedure;
- Are bound by provisions equally onerous to those of the NDU signed by them, and
- Fulfil the conditions for Access to Procurement of the present Tender Specifications including being granted a waiver (if needed) as per Section 4.1. below.

EUSPA may further request submission of the NDU signed by the sub-contractors for verification.

Without prejudice to further legal measures, exchange of any Proprietary Information subject to NDU with any entity who has not previously signed the relevant NDU may lead to exclusion from the procurement procedure under the discretion of the Contracting Authority.

Agreements previously signed by economic operators for access to Proprietary Information not related to this procurement are not regarded as fulfilling the present requirements for the NDU.

Entities having received information under NDU as described in this Section, which decide not to submit a Tender, must, within 15 (fifteen) working days from the deadline for submission of Tenders (see table in Section 2.1), follow the obligations detailed in Article 4 of the NDU.

Likewise, an unsuccessful Tenderer is required to follow the obligations detailed in Article 4 of the NDU, within 15 (fifteen) working days after the receipt of notification stating that it has not been selected. Likewise, if the procedure is cancelled, the Tenderer is required to follow the obligations detailed in Article 4 of the NDU, within 15 (fifteen) working days after the receipt of notification of the cancellation of the procedure.

Further, the Prime Tenderer or Consortium Coordinator must use all reasonable endeavours to ensure compliance with Article 4 of the NDU by any entity that received Proprietary Information as a result of the NDU signature.

3. Envisaged Contractual Approach

The objective of this procurement is to conclude a multiple supply framework contract with maximum 2 (two) Contractors in cascade, for a maximum duration of 4 years.

3.1 Implementation of the FWC

The FWC shall be implemented through order forms (OFs) in line with the essential terms established at the FWC level.

The FWC implementation shall be based on Fixed Unit Prices (FUPs) for the spare parts / modules and Fixed Unit Prices for the Price per obsolescence tech-watch.

3.1.1 The cascade mechanism and its implementation

For the application of the cascade mechanism – see sections 3.2.4.2 and 3.2.13.

3.2 Main Contractual provisions

3.2.1 Language of the FWC

English shall be the working language of the FWC including all correspondence with EUSPA. Therefore, all proposed personnel should have a sufficient level of proficiency in English.

The Contracting Authority reserves the right to request certificates issued by an officially recognised institution or equivalent proof of knowledge of English of the proposed personnel.

3.2.2 Ceiling volume of the contract

The indicative ceiling estimated for the maximum duration of the FWCs is (VAT excluded):

6,000,000.00 EUR (6 million euros).

The amount is estimated taking into account extensions of the initial twelve months' durations of the FWCs to up to 48 (forty-eight) months. This budget is not binding for EUSPA and it will be subject to budget availability.

EUSPA reserves the right to launch an exceptional negotiated procedure for new supplies with the same contractor in case of need, as foreseen in Article 167(5)(f) in connection with point 11.1(f) of Annex I of FR. The maximum additional value of new services would be 50% of the initial value of the contract.

3.2.3 Duration

The applicable terms and conditions on duration of this FWC are defined in the draft contract (Annex II of the Invitation to Tender).

3.2.4 Technical Terms of Reference

3.2.4.1 Task 1 Supply of operational assets subject matter

Through this task, EUSPA seeks the supply of **spare IT operational assets** in the form of Commercial Off-The-Shelf products (COTS) equipment to serve as spares and consumables for GSMC operational elements. The operational assets predominantly consist of hardware; however, the procurement of **hardware-related maintenance support contracts** and an **obsolescence tech-watch** are also subject to the contract.

The **spare and consumable assets**, whose delivery is subject to this procurement procedure, are to be used in the EUSPA's Galileo Security Monitoring Centre (GSMC) for replacement of failed equipment units and to replenish the storage stock. The assets are to be shipped mainly to the two SOM's GSMC centres in France and Spain.

The operational elements in the GSMC are handling EUCI data and therefore the underlying ICT assets are pre-defined in an architecture under strict configuration management over lengthy development time with very low technology refresh rate. Equally important, the ICT assets need to be at the highest level of cyber-hygiene. Therefore, the spare/consumable parts need to correspond to the exact same models as the ones in operational architectures.

The largest amount of assets (approx. 80—85%) to be procured via this FWC implementation are consumables (e.g., HDDs, SSDs, RAM, SFPs, etc.). The remaining percentage (15-20%) are expected to be spares for core GSMC infrastructure (e.g., servers, workstations, firewalls, gateways). SECUNET hardware is out of the scope of the present FWC.

However, some assets requested by EUSPA are obsolete and new replacement items may not always be available from their respective manufacturers. In that case, the contractor must access to the market to still try to procure them as new/unused from other sources. In case the assets cannot be offered as new/unused EUSPA will search for a purchase of a refurbished spare equipment or purchase of spare equipment pieces, functionally and interface-wise equivalent to the ones that are to be replaced. For the purpose of the procurement procedure, prioritising the Programme strict configuration requirements and cyber-hygiene, three categories of replacement assets are defined as follows:

- First category (the optimal solution): new assets corresponding to the exact model/part number/technical specifications as required by EUSPA.
- Second category (second-best solution): refurbished assets of exact model/part number/technical specifications or equivalent. For such refurbished assets, the contractor shall submit sanitisation standards in the form of certificates (Common Criteria EAL 2+, DoD 5220.22-M, or equivalent). Refurbished items having been previously owned by entities from outside EU countries will not be accepted.
- Third category (third-best solution): Alternate Functional Equivalent (FE) assets. Due to the complexities of the Galileo system architecture, replacement of an asset by a FE may imply testing and requalification of sub-systems by EUSPA's industrial partners whose outcomes are a pre-condition of successful usage of the FE. The Agency shall reject the FE which are not pre-approved by the Galileo System Design authority. EUSPA shall provide to the selected contractors a list of such preapproved FEs, and shall update the list when more FE are being preapproved.

The hardware (HW) assets subject to this procurement are to be delivered without any associated software (SW). In case of HW that cannot be delivered without pre-installed SW, EUSPA will typically ensure the availability of the related SW licenses separately. In this situation the contractor shall share the list of respective SW with EUSPA.

If the SW delivery cannot be separated from the HW delivery, the SW license is to be purchased on EUSPA's name with EUSPA's prior consent. In such cases the price of the respective HW component, offered by the tenderer shall include the license fee for the inseparable SW and the licence conditions shall be provided as part of the offer.

3.2.4.2 When a need for delivery of spare assets appears, the Contracting Authority intends to approach the first contractor to submit a specific offer, covering the required asset in the first category, and if the asset cannot be offered by the contractor first in cascade, the cascade will be activated. If neither contractor can offer new assets (first category), the process will be re-run for the asset in the second category (refurbished); if the asset cannot be offered by the contractor first in cascade, the cascade will be activated. The same mechanism will then also apply to a functional equivalent (third category).

The only exception from the process explained above shall apply to the FE is for Hard-Disk Drives (HDDs), for which in case new exact models are not available, FE may be requested as the second-best option. Refurbished HDDs shall not be requested (therefore they are not part of category 2 list provided in Annex I.I and I.J).

The ability of the Contractor to offer the requested assets in the respective category will determine whether the cascade is triggered (see below **Section 3.2.13**).

The list of the spare ICT assets, subject to this procurement procedure is included in Annex I.I.

3.2.4.3 Lead time

The lead time⁷ for the delivery of the spare assets shall be:

⁷ Procurement lead time is understood as the total duration between the date of signature of a specific contract / order and the receipt of the asset at EUSPA premises.

- Up to a maximum of four calendar weeks following the placement of the order form by EUSPA for at least 90 % of the ordered items;
- up to two calendar weeks following the placement of the order form by EUSPA for up to maximum 10% of the ordered items (urgent procurement lead time).

The commitment of the tender to deliver assets within the required lead times or within shorter lead times will be assessed under the Award Criterion Q2.

For each asset and location, the procurement lead time should be defined by the Tenderer in its offer in Annex I.G and I.K.

The procurement lead times included in the in the tender will be binding for the whole duration of the framework contract.

Tenderers are requested to submit and detail their warranty and return policy including the terms and conditions of technical warranty, duration of the warranty, period within which the items can be returned, etc. **This will be assessed under the minimum requirement M2. Non-compliance to the minimum requirements shall lead to rejection of the tender.**

3.2.4.4 Task 2: Obsolescence tech-watch

Subject matter

EUSPA seeks the provision of an obsolescence analysis (“tech-watch”) by the contractor.

Based on industry information about obsolescence and on the current spare levels at GSMC (to be provided by EUSPA), the contractor shall elaborate a summary of the COTSs foreseen to become obsolete within the next foreseeable period, i.e., list of products that would become obsolete.

For each asset, the following details – as a minimum – are to be submitted, as applicable:

- end of sales deadline;
- end of support deadline;
- end of production deadline;
- last time buy deadline;
- lifetime buy deadline;
- official RAMS data by supplier (e.g., MTBF);
- available solutions by supplier (e.g., ESU, extended warranty, etc.);
- associated supplier costs, e.g., for supporting obsolete software;
- compatibility issues with related SW/HW;
- next replacement model suggested by the manufacturer;
- proof/reference for the above information.

The contractors may extend the list above of attributes to be included, leveraging their own expertise.

The analysis can typically be expected to be requested twice a year in the first and third quarter of each year throughout the duration of the FWC, or ad-hoc upon explicit request by EUSPA. The task

includes provision of an overview of the current relevant ICT assets that are going out of the commercial life cycle.

3.2.5 Deliverables

The deliverables for each order form will be defined in therein depending on the needs at the given time period. Examples of the expected deliverables are (the list is indicative, not exhaustive):

Deliverables per operational asset item (Task 1):

- The HW asset(s), delivered DDP named place of destination. The serial number must be engraved at a visible point on the individual item packing and on the item itself;
- In case of the supply of refurbished assets: sanitisation standard certificate (Common Criteria EAL 2+, DoD 5220.22-M, or equivalent);
- Certificate of warranty;
- User's guide in English and, where it already exists, in full in the language of the country of the delivery (France and/or Spain);
- An inventory list of each delivery in the EUSPA format (see Annex I.M Inventory Extract Template);
- Each delivery shall be accompanied by a consignment note (also called Delivery Note) in duplicate, duly signed and dated by the contractor or its carrier, giving the order form number and particulars of the supplies delivered, where one copy of the consignment note must be counter-signed by the contracting authority and returned to the contractor or to its carrier.

Other deliverables (Task 2):

- Obsolescence analysis "tech-watch" on industry info (typically one every six months, ad-hoc could also be requested).

For the document-type deliverables, unless otherwise specified by EUSPA, the Contractor shall deliver an electronic copy of the respective deliverable with all relevant data. EUSPA may request that the contractor also submits a paper copy of the final versions of the deliverable and annexes at no additional costs. The EUSPA may publish or release to third parties the results of the activities performed under the FWC. The intellectual property rights provisions, defined in the FWC (Annex II to the Invitation to Tender) shall apply.

3.2.6 Place of performance/Place of delivery

For each order form, the contractor will be requested to deliver the assets to one or more of the following locations:

1. EUSPA GSMC, Saint-Germain-en-Laye (France)
Postal address: Galileo Security Monitoring Centre (GSMC), 8 Avenue du President Kennedy, 78102 Saint-Germain-en-Laye, France
2. EUSPA GSMC, San Martin de la Vega (Spain)

Postal address: Galileo Security Monitoring Centre (GSMC), INTA, campus “La Marañosa”, Carretera M-301, km 10.5, 28330 San Martín de la Vega Madrid, Spain

The services of performing the tech-watch requested from the contractor shall be provided from contractor’s premises.

3.2.7 Simulation exercise

The aim of the simulation exercise is to provide the tenderers with an overview of the range of assets to be delivered and of activities they may be requested to perform under the FWC within a period of 1 (one) year, based on the tasks described above. It is further a likely common scenario for the implementation of the FWC through order forms for individual tasks. Accordingly, the simulation exercise will serve as a common scenario against which the quality and the price of the submitted tenders will be evaluated. The simulation exercise is available in Annex I.L ‘TTOR and Simulation Exercise’ and Annex I.J ‘List of Assets Simulation Exercise’.

The Tenderers will be asked to submit, with their tender, the input requested for the simulation exercise in the form of actual proofs that the assets could be supplied by the Contractor (e.g., order forms confirmed by the Contractor’s supplier). The simulation exercise has been designed to obtain the Tenderers’ offers, both in terms of category of deliverables that may be offered (first/second/third category), delivery schedule, service description (as relevant to the particular tasks) and price, based on the tasks described in the tender specifications and their respective Annexes.

Due to the nature of the Contracting Authority’s activities and its evolving character, the simulation exercise is indicative and will be used mainly for evaluation purposes. Nevertheless, should at the time of placing a specific contract the assumptions, terms and conditions according to which the simulation exercise has been developed, not be subject to changes, the Tenderer’s offer for the simulation exercise shall be considered binding and enforceable.

The first SC may follow the requirements expressed in the simulation exercise with the possibility of slight down or upward adjustments which the Contractor shall accommodate with respective corresponding adjustments of the offered price, fully supported by the increased/decreased effort and based on its quotations under **Annex I.G and I.K**, as forming part of its tender.

3.2.8 Acceptance

EUSPA will assess the completion of tasks by comparing the accuracy and completion of the deliverables against the requirements specified in the order form.

3.2.9 Quality performance assessment

Activities carried out under the FWCs shall meet the highest professional standards and include:

- Effective project management: seeking agreement on objectives, resources, timing and deliverables, adjusting them when needed.
- Compliance with the schedule of execution of deliverables.

- Transparency: any technical deviation (such as a change of resource, scope, schedule, planning) or administrative deviation (such as a change of legal representative, address, bank details, contact person, composition of consortium and/or of subcontracting) must be immediately reported to EUSPA.
- Reporting on activities when requested by EUSPA. To this end, and unless otherwise agreed, meetings may be organised via teleconference or at EUSPA premises.

3.2.10 Warranty

The operational assets that are to be delivered in the frame of Task 1 must be covered by a one-year warranty.

3.2.11 Terms of payment

Payments shall be made in accordance with the provisions specified in the Draft Contract (Annex II to the Invitation to Tender).

3.2.12 Liability

Applicable terms and conditions of Liability are defined in the Draft Contract (Annex II to the Invitation to Tender).

3.2.13 The cascade mechanism and its implementation

The notion of the multiple framework contract in cascade means that identical FWCs are concluded separately between the Contracting Authority and several Contractors to ensure that the order forms can be executed by the first ranked or the following one, should the former be unavailable or unable to perform the order form in keeping with the Contracting Authority's requirements.

The Contracting Authority will rank the tenderers in descending order and create a list of maximum 2 (two) Contractors and the sequence in which they will be offered to provide products. In case of unavailability or inability of the Contractor ranked first, for reasons which do not entail terminating the FWC, the Contracting Authority may call on the next Contractor.

The circumstances which justify signing the order form with the Contractor next in cascade, are detailed in the Draft Contract (Annex II to the Invitation to Tender).

Further information on the possible implementation modalities may be found in Section 3.2.4.

3.2.14 Working conditions of the contractor's personnel

Working conditions of the Contractor's personnel are defined in the Draft Contract (Annex II to the Invitation to Tender).

4. Legal terms of reference

4.1 Access to procurement

4.1.1 Establishing participation conditions

4.1.1.1. Participation conditions for tenderer (prime contractor, core team members and non-core-team subcontractors)

In order to protect the essential security interest of the Union and its Member States, in accordance with Article 24 of Regulation (EU) 2021/696⁸, the participation to this tender is open to economic operators fulfilling the following three cumulative conditions:

- a) legal entities established in a Member State with their executive management structures established in that Member State.
 - Economic operators are considered established in the EU when they are formed in accordance with the law of an EU Member State, and have their central administration, registered office and principal place of business in an EU Member State (if legal persons) or they are nationals of one of the EU Member States (if natural persons);
 - 'Executive management structure' means the body of the legal entity appointed in accordance with national law and which, where applicable, reports to the chief executive officer or any other person having comparable decisional power, and which is empowered to establish the legal entity's strategy, objectives and overall direction, and oversees and monitors management decision-making.
- b) economic operators committing to carry out all relevant activities in one or more Member States; and
- c) legal entities not being subject to control by a third country or third country entity. For the purpose of this paragraph 'control' means the ability to exercise a decisive influence over a legal entity directly or indirectly through one or more intermediate legal entities.

These participation conditions shall be met at the moment of submission of the request to participate and throughout the whole duration of the resulting contract if awarded, and will be checked by the Contracting Authority at the moment of request to participate/tender evaluation. In case of any changes related to the compliance with these participation conditions, the economic operator, which was awarded a contract, is obliged to inform the Contracting Authority about the changes without delay.

The criteria for the assessment of participation conditions has been laid out in Annex I.H (Parts 1, 2 and 3), including a dedicated Annex I.H -Part 2 to be filled by the tenderer. Please note that for the

⁸ Regulation (EU) 2021/696 of the European Parliament and of the Council of 28 April 2021 establishing the Union Space Programme and the European Union Agency for the Space Programme and repealing Regulations (EU) No 912/2010, (EU) No 1285/2013 and (EU) No 377/2014 and Decision No 541/2014/EU, *OJ L 170, 12.5.2021, p. 69–148*

assessment of control the filling, signature and submission of the Declaration of Ownership and Control in Annex I.H - Part 2 is required.

The document “Criteria for Assessment of Participation Conditions” has been laid out in Annex I.H – Part 1 and describes the information to be provided by the Tenderer (including prime contractor, core team and subcontractors involved in security-sensitive activities) which will be used to assess the criteria a), b) and c) above.

Additional guidelines on the criteria which will be applied and the circumstances which will be considered by the Contracting Authority and the competent evaluation boards to assess the situation of decisive influence are contained in Annex I.H – Part 3.

Tenderers/candidates (including the prime contractor, core team members and subcontractors) who have formally submitted the information/documents/supporting evidence requested in the ~~Annex I.F-Annex I.H~~ ^{Corrig.1} in another procedure of the European Commission or EUSPA (notably in the frame of the EU regulations 2018/1092, 2021/697 or 2021/696), have no obligation to repeat the exercise, if the time that has elapsed since the issuing of the information/documents/supporting evidence does not exceed one year at the time of submission of the proposal and are still valid at that date.

In this case, Tenderer shall declare on its honour that the documentary evidence has already been provided in a previous procedure as per the above, provide reference to that procedure (in Annex to the Cover letter) and confirm that there has been no change in the situation.

Upon request of the Contracting Authority, the information/documents/supporting evidence already submitted as per the above, shall be resubmitted.

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Manufacturer of Commercial Off-the-shelves products (COTS), as well as second market suppliers of COTS and COTS resellers/brokers which manufacture COTS or purchase COTS - directly or indirectly - on behalf of the prime contractor shall be considered as mere supplier and not as subcontractors. As a consequence, participation conditions pursuant to this Section shall not apply to COTS manufacturers and COTS sellers/resellers.

4.1.1.2. Participation conditions for primes, core-team members and subcontractors– Waiver

In this procurement the contracting authority may decide, upon a motivated and justified request, to waive the conditions laid down under points b) and c) of paragraph 4.1.1.1 above with regard to any entity, which applies as prime, core-team member and subcontractor.

- The contracting authority may decide to waive the conditions laid down in points b) of paragraph 4.1.1.1 above, only if no substitutes are readily available in the Member States, the legal entity is established in a country which is a member of the EEA or EFTA and which has concluded an international agreement with the Union under Article 7 of Regulation (EU) 2021/696, its executive management structures are established in that country and the activities linked to the procurement are carried out in that country or in one or more such countries, and subject to the contractor providing assurances regarding the protection of European Union Classified Information (EUCI) and the integrity, security and resilience of the Programme’s components, their operation and their services,

as laid down in Article 24 of Regulation (EU) 2021/696, as confirmed by the Competent authority of the relevant EU Member State or EEA/EFTA state.

- By way of derogation from the sub-paragraph above, the contracting authority may waive the conditions under point b) of paragraph 4.1.1.1 for a legal entity established in a third country which is not a member of the EEA or EFTA, if no substitutes are readily available in countries which are members of the EEA or EFTA, provided that the following conditions are met:
 - for specific technologies, goods or services which are needed for the activities and for which no substitutes are readily available in the Member States;
 - sufficient measures are implemented to ensure the protection of EUCI under Article 43 of the Space Regulation and the integrity, security and resilience of the Programme's components, their operation and their services.
- The contracting authority may decide, upon a motivated and justified request, to waive the condition laid down in point c) of para. 4.1.1.1, above.

The request for waiver on point c) of paragraph 4.1.1.1 shall include the assessment from a competent authority of a Member State in which the entity is established guaranteeing that:

- A. control over the entity is not exercised in a manner that restrains or restricts its ability to:
 - (i) carry out the procurement; and
 - (ii) deliver results, in particular through reporting obligations;
- B. the controlling third country or third country entity commits to refrain from exercising any controlling rights over or imposing reporting obligations on the entity in relation to the procurement; and
- C. the entity in question has taken all the necessary measures to comply with Article 34(7) of Regulation 2021/696 in particular with regards to the protection of EU classified information.

The request for waiver shall be made at the moment of the submission of the tender.

The waiver under point b) of paragraph 4.1.1.1 will not be automatically granted even if the assurances mentioned are met and the entity provides the assessment of a competent authority as regards its guarantees.

The waiver under point c) of paragraph 4.1.1.1 will not be automatically granted even if the conditions A., B. and C. above under paragraph 4.1.1.2 are met and the entity provides the assessment of a competent authority as regards its guarantees.

The decision on the waiver shall be taken having regard to the objectives laid down in Article 24 (1) of the Regulation 2021/696.

4.1.2 EU Restrictive Measures

The Tenderer shall provide a statement in the Cover Letter of its Tender (on its own behalf and on behalf of its subcontractors, Core Team or not) guaranteeing that the Tenderer, and its

subcontractors and respective relevant persons⁹ are not a Restricted Person and do not fall under the scope of subject to EU Restrictive Measures in the list published at www.sanctionsmap.eu. In case of discrepancies between 'sanctionsmap.eu' and the restrictive measures published in Official Journal of the EU, the latter prevails.

For any subcontractors not yet known at the time of the tender submission, the fulfilment of this criteria needs to be evidenced upon the Tenderer's proposal of the said subcontractor.

Funds under this procurement procedure shall not be made available, directly or indirectly, to, or for the benefit of any Restricted Person.

Please see also Declaration on Honour (Annex I.B) hereto hereto applicable and to be provided completed and duly signed by all Tenderers, Core Team members and Sub-contractors.

4.1.3 International Procurement instruments measures

The Tenderer and its Core Team members and sub-contractors shall not be subject to international procurement instruments measures pursuant to the provision of Regulation 2022/1031¹⁰ and related implementing acts.

Please see also Declaration of Honour (~~Error! Reference source not found~~ Annex I.B – Template Declaration of Honour ^{Corrig.1}) hereto applicable and to be provided completed and duly signed by all Tenderers, Core Team members and Sub-contractors.

For any sub-contractors not yet known at the time of the Tender submission, the fulfilment of this criteria needs to be evidenced upon the Tenderer's proposal of the said sub-contractor.

4.2 Core Team and Industrial organisation of tenderer

Tenderers are required to present their Core Team (i.e. prime contractor, including, where relevant, all consortium members, and those entities/subcontractors which are essential in order for the Tenderer to meet the selection criteria under Section 5.4), including the role and responsibilities of the respective entities for the purpose of this procurement as well as a description of the Group¹¹ to which they belong.

⁹ Respective relevant persons are meant the natural or legal persons indicated in the Declaration of Honor (Annex I.B).

¹⁰ REGULATION (EU) 2022/1031 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 June 2022 on the access of third-country economic operators, goods and services to the Union's public procurement and concession markets and procedures supporting negotiations on access of Union economic operators, goods and services to the public procurement and concession markets of third countries (International Procurement Instrument – IPI).

¹¹ For the purpose of this requirement the expression "Group" is meant to encompass i) the entity or the group of entities acting as a Tenderer, ii) the entity /entities to which the Tenderer or any of the members of the group acting as Tenderer is affiliated, iii) the entities affiliated to the Tenderer or to any of the members of the group acting as Tenderer. An entity shall be deemed affiliated to the Tenderer

Tenderers shall prove that they will have at their disposal the resources necessary for performance of the Contract by providing:

- Power of attorney for consortium members (Annex I.C);
- Letter of Intent (Annex I.D) on the part of every entity on whose resources they rely in order to fulfil the selection criteria, confirming the latter's irrevocable undertaking to make such resources available to the Tenderer in case of being awarded the Contract.

Tenderers are informed that no change in the composition of the Core Team will be allowed for the purposes of the present procurement process and/or subsequent contract, unless specifically authorised by EUSPA in writing.

4.3 Change in the Composition of Candidates/Tenderers/Core Team

Tenderers are informed that no change in the composition of the Tenderers/Core Team will be allowed for the purposes of the present procurement process and/or subsequent Contract, unless specifically authorised by EUSPA in writing.

No changes will be authorised after submission of the Tender and before award of the Contract, unless depending on exceptional circumstances beyond the control of the Tenderer and provided that they do not have a substantial impact on the terms and conditions of the Tender.

For changes of subcontractor please refer to Section 4.6.

4.4 Participation of consortia

Consortia may submit a joint tender on the condition that they comply with the rules of competition. A consortium may be a permanent, legally-established grouping or a grouping, which has been constituted informally for a specific tender procedure.

Such consortium must specify the company or person heading the project (the leader). All members of the consortium must sign a Power of Attorney authorising the leader to submit a tender on behalf of the consortium, as well as to act in connection with all relevant questions, clarification requests, notifications, etc. that may be received during the evaluation, award and until the contract signature, to sign the contract should the joint tender be successful and to represent the consortium for any contract execution issue, including amendments of the Contract. The template of this Power of attorney is provided in ~~Error! Reference source not found~~ Annex I.C – Template Power of Attorney (for consortia) ^{Corrig.1}.

All members of a consortium (i.e. the leader and all other members) are jointly and severally liable to the Contracting Authority for the performance of the Contract.

or any of the members of the group acting as Tenderer if their links fall within the scope of article 22 of Directive 2013/34/EU, of 26 June 2013.

Each member of the consortium must provide the required evidence for the Access to Procurement, exclusion, non-rejection and selection criteria (see Sections ~~Error! Reference source not found~~ 5.1 – 5.4 ^{Corrig.1}, below). Concerning the selection criteria “economic and financial capacity” as well as “technical and professional capacity”, the evidence provided by each member of the consortium will be assessed to ensure that the consortium, as a whole, fulfils the criteria.

The participation of an ineligible entity (entity not meeting exclusion criteria/non-rejection criteria/selection criteria/access to procurement conditions (including Participation Conditions)) will result in rejection of that entity from the procurement procedure. If that ineligible person belongs to a consortium, the whole consortium may be excluded, unless the composition of the consortium is changed as per the subsequent paragraph.

Changes in the composition of the Consortium **during the procurement procedure** (i.e., after the deadline for submission of the tender and before contract signature) are in principle not accepted.

The Contracting Authority reserves however the right to approve such changes provided the following cumulative conditions are fulfilled:

- The remaining Consortium members are not in an exclusion situation, ground for rejection, meet the selection criteria (see ~~Error! Reference source not found~~ Sections 5.1, 5.2, 5.4 ^{Corrig.1}) and comply with the Access to Procurement conditions;
- The change must not make the tender non-compliant with the procurement documents;
- The terms of the originally submitted tender are not altered substantially;
- The continuation of the participation of the remaining Consortium members in the procurement procedure does not put the other Tenderers in a competitive disadvantage;
- The remaining Consortium members undertake to implement the Contract, in case of an award, without the excluded group member.

In cases where the proposed change depends on a Consortium member who,

- is in an exclusion situation or ground for rejection or does not meet the selection criteria (see ~~Error! Reference source not found~~ Sections 5.1, 5.2, 5.4 ^{Corrig.1}) or does not comply with the Participation Conditions, or
- is relied upon by the other consortium’s members for the fulfilment of selection criteria,

the Contracting Authority, subject to the above-mentioned conditions being met, reserves the right to authorise the replacement of the Consortium member.

Changes in the composition of the Consortium, **during the procurement procedure**, due to universal succession (e.g. merger or takeover of a Consortium member) are in principle accepted, subject to the above-mentioned conditions being met and the authorisation of the Contracting Authority being granted.

Changes in the composition of the Consortium **after signature of the Contract** are governed by the provisions of the Draft Framework Contract.

4.5 Compliance with competition laws in case of joint bidding (consortia)

Consortia may submit a tender on the condition that their joint bid does not result in the restriction or elimination of competition. For detailed information regarding the applicable competition law principles, tenderers are invited to consult the Commission's Horizontal Guidelines¹² („Guidelines“).

Restriction or elimination of competition may occur when the members of the consortium are (even potentially) competing on the same market and one (or more) member(s) of the consortium would be realistically capable to carry out the contract individually, i.e. the consortium includes more members than what is strictly necessary in order to carry out the contract.¹³

For this reason, joint bidding by entities that could have otherwise competed for the procured contract may restrict or eliminate competition on the market. Joint bidding by a consortium composed of potential and/or actual competitors may still be allowed if the joint bid provides significant efficiencies compared to the potential individual bids (see below).¹⁴

In case of a joint bid, the tenderer shall therefore assess whether its bid does or does not fall within one of the situations described above, and provide a *justified* assessment in the cover letter as to the reasons why (cumulatively):

- 1) none of the consortium members could have delivered the contract individually, and
- 2) the participation of all members is necessary to deliver the contract.

Or, failing that, why the joint bid (cumulatively):¹⁵

- 3) increases efficiency (in particular offering a better value for money to the Contracting Authority) as compared to the potential individual bids (e.g. lower prices, better quality, greater choice, faster realisation), and
- 4) is indispensable, and
- 5) does not eliminate competition and/or is unlikely to produce anticompetitive effects.

EUSPA reserves the right to request additional information from the tenderer to be able to conduct an internal evaluation of the submitted assessment. EUSPA reserves the right to reject any tender that reveals not to comply with the applicable competition laws.

4.6 Subcontracting

1. The Tenderer may call on subcontractors to perform part of the contract and to fulfil selection criteria. However, subcontracting shall not relieve the eventual Contractor from its

¹² Communication from the Commission – Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uris-erv:OJ.C_.2023.259.01.0001.01.ENG

¹³ See points 352 to 357 of the Guidelines.

¹⁴ See point 358 and 359 of the Guidelines.

¹⁵ See point 358 of the Guidelines.

obligations under the FWC. In this respect, the Contractor shall remain the sole person legally and financially responsible vis-à-vis the Contracting Authority.

2. When subcontracting, Tenderers shall ensure the subcontractors' compliance with the exclusion criteria set out in the present Tender Specifications. **Tenderers shall provide the subcontractor's Declaration of Honour, as provided in Section 5.1.** Regarding the subcontractors' compliance with the selection criteria, attention is drawn to the Important Note at the end of Section 5.4.3.
3. Manufacturer of Commercial Off-the-shelves products (COTS), as well as second market suppliers of COTS and COTS resellers/brokers which manufacture COTS or resell COTS - directly or indirectly - on behalf of the prime contractor shall be considered as mere supplier and not as subcontractors.
4. Where no subcontracting is indicated in the tender, the work will be assumed to be carried out directly by the Tenderer.
5. Any change in subcontracting during the procurement procedure (i.e., after the submission deadline and before contract signature) is not permitted unless specifically authorised in writing by EUSPA as per below.
6. If the Tenderer requests that a subcontractor be removed or replaced, then the Contracting Authority must verify the following conditions:
 1. whether the new subcontractor (if any) is not in an exclusion situation
 2. whether the new subcontractor (if any) fulfils the applicable participation conditions (see Section 4.3.1);
 3. whether the Tenderer still fulfils the selection criteria with the new subcontractor, if any, (see Section 5.4) compared to the tender originally submitted and whether the new subcontractor fulfils the selection criteria applicable to it, if any;
 4. whether the new subcontractor is not subject to restrictive measures;
 5. whether the change in subcontracting does not entail a substantial change in the tender. This condition is met as long as:
 - (a) all the tasks assigned to the former subcontractor are taken over by another entity involved (a new subcontractor or a member of the Consortium or the sole tenderer itself, subject to relevant aforementioned conditions);
 - (b) the change in subcontracting does not make the tender non-compliant with the Tender Specifications;
 - (c) the change in subcontracting does not modify the evaluation of award criteria of the tender as originally submitted.
6. In the case where, during the procurement procedure, a subcontractor is affected by an exclusion situation or is rejected due to failure to compliance with selection criteria, the Authorising Officer shall:
 - a. notify the exclusion or rejection to the Tenderer;
 - b. request whether and by whom all the tasks assigned to the excluded or rejected entity are taken over (it may be a new subcontractor or a member of the Consortium or the sole tenderer itself);

- c. inform about the applicable conditions, as per above.

The Tenderer shall respond to such a request within the deadlines prescribed by the Contracting Authority. Failure to reply within such deadline may imply the rejection of the subcontractor.

The Contracting Authority must then proceed with the same verifications, as described above in the case a change in subcontracting was to be initiated at the request of the tenderer.

7. Signature of the contract entails acceptance of identified subcontractors listed in the tender, unless those have been explicitly excluded or rejected during the procedure as per the foregoing process.

Changes of subcontractors after the signature of the FWC, shall be governed by the provisions under Article II.6 of the Contract.

4.7 Supply Chain

The tenderers shall clearly indicate in its tender which part of the services it intends to sub-contract as well as its approach for implementing such sub-contracting to demonstrate compliance with the below mentioned requirements

According to Article 17 (1) of the Space Regulation, EUSPA intends to promote the widest and most open participation possible by economic operators, in particular start-ups, new entrants and SMEs. On this basis and for the purposes of Article 17 of the Space Regulation, as will be set out in the draft Contract, the contractor shall have to achieve, in the course of the execution of the contract, a **10% share of subcontracting to be awarded in competitive tendering** outside the group¹⁶ (including consortium members).

The tenderer shall provide in its offer a detailed plan on how to achieve the above-mentioned target and the relevant milestones. The quality of the plan, the target percentage and the relevant commitments will be subject to the assessment under award criterion Q4 The compliance with the plan shall be part of the contractor's obligations under the Framework Contract and its breach will entitle EUSPA to the remedies specified therein.

For the purpose of evaluation, the target share of subcontracting as referred above shall be considered in relation to total tender price calculated based on the indicative evaluation scenario (for FWC and SC to be concluded).

¹⁶ For the purpose of this requirement the expression "group" is meant to encompass i) the entity or the group of entities acting as a tenderer, ii) the entity /entities to which the tenderer or any of the members of the group acting as tenderer is affiliated, iii) the entities affiliated to the tenderer or to any of the members of the group acting as tenderer. An entity shall be deemed affiliated to the tenderer or any of the members of the group acting as tenderer if their links fall within the scope of article 22 of Directive 2013/34/EU, of 26 June 2013.

For the purpose of the contract execution, the target share of subcontracting as referred above shall be considered in relation to price of the actually requested services under the FWC and not as a percentage from the maximum nominal volume of the FWC.

During the contract implementation, given the fact that the contracting authority cannot assume and/or guarantee that the full budget available under the FWC will be consumed, the percentage of subcontracting will be calculated as the percentage from the actually requested supplies and services under the FWC and not as a percentage from the maximum nominal volume of the FWC. In order to ensure that the proposed percentage of subcontracting will be achieved, such subcontracting shall be done at the level of each individual Specific Contract concluded under the respective FWC.

Competitive tendering outside the tenderer's group is considered to have taken place when more than one offers from an entities outside the group has been requested by the tenderer. When subcontracting via competitive tendering is required as per this section, the tenderer will be responsible for organising its own competitive tender(s) aimed at finding necessary subcontracting respecting the following procurement principles:

- Fair competition & equality of treatment,
- Transparency,
- Proportionality,
- Best value for money.

The tenderers are explicitly requested to raise to the attention of EUSPA any issues they may have in fulfilling the competitive subcontracting requirement as early as possible during the tender process.

The tenderer shall clearly indicate in its Tender:

- the tasks they intend to subcontract;
- the level of subcontracting for each task;
- the SMEs involved and their place of establishment;
- the competitive tendering performed;
- the proportion for each subcontracted task (in %) in relation to the total price in order to demonstrate compliance with the above-mentioned requirements.

As a proof of competitive subcontracting, tender(s), including a thorough visibility of technical and financial offer of consulted entities outside the Group (envisaged subcontractors), shall be provided together with the tender. If the tenderer does not manage to complete the competitive tender(s) necessary to achieve the required percentage by the time of tender submission, they shall submit a signed undertaking presenting a credible tendering plan that they intend to carry out to achieve compliance.

Without prejudice to the above, EUSPA may reject the proposed Subcontractor(s) and ask for another Subcontractor(s) to be proposed as part of the Tender. Such rejection shall be justified in writing by the EUSPA and may be based only on the criteria used for selection of Tenderer for the Contracts

If the competitive tenders are completed only during contract execution, the concluded subcontracts shall not lead to a change of the FWC unless it is in favour of EUSPA.

In case where the required share of subcontracting as described above is envisaged not to be respected, the Tenderer shall submit a justification providing compelling reasoning for the non-compliance with the abovementioned requirement. Failure to provide such justification may lead to the rejection of the tender.

In case of failure to respect the requirement of subcontracting during contract execution, the Contract may be terminated for contractor's default according to the provisions of the contract.

Tenderers may at any time after tender submission or during contract execution be requested to submit supporting evidences of their application of competitive tendering for the selection of subcontractors and their compliance with the principles established above. In addition, contractors can be subject to possible auditing according to the FWC.

In the evaluation, particular attention will be paid by EUSPA to the approach proposed by the Contractor for the management of its subcontractors.

4.8 Professional Conflicting Interests

4.8.1 Professional Conflicting interest of the Contractor

The Contractor shall ensure that its personnel sign a "declaration on confidentiality and absence of professional conflicting interest" with EUSPA before commencing any service provision. The current form of such declaration is attached for information to the draft Contract (Annex II.V). The form may evolve and cover additional aspects from time to time. This shall not in any way relieve the Contractor from any of its obligations. EUSPA reserves the right to ask the Contractor or its personnel performing the services to sign a declaration regarding confidentiality, non-disclosure and/or declaration regarding precise obligations of processing of personal data. The Contractor's personnel proposed may be rejected on the basis of conflict of interest.

At the time of submission of the tender and during the term of the FWC, the economic operators involved shall not be in any situation that could compromise the impartial and objective performance of the FWC and the order forms. For this purpose, all economic operators (including subcontractors) shall at the time of the tender:

- ii. either confirm in the Cover Letter of the Administrative File their absence of professional conflicting interest, or

- iii. substantiate in the Cover Letter of the Administrative File how the potential, perceived or actual professional conflicting interest which may negatively affect the performance of the Contract is resolved, through concrete and substantiated measures.

For point (ii) above, the Tenderers must provide as supporting evidence for verification of compliance with selection criterion L2 a comprehensive analysis and justification, with at least the following information:

- statement of absence of Conflict of Interests, justified with a reference to the previous and/or current involvement in activities which may have as a result that impartial and objective performance of the present FWC may be compromised.
- presentation of the rules on conflict of interest, including the professional ethics rules to be applicable to the Tenderer for the FWC implementation;
- description of operational structure and mechanisms for monitoring, preventing and resolving conflicting interests proposed to be implemented and followed during the execution of the FWC which mitigate or eliminate the potential, perceived or actual conflicting professional interests. Under this requirement, the tenderer shall provide an effective and convincing concept to ensure that the respective entity/-ies, including the individuals belonging to it/them, are in a position to work independently in relation to its/their tasks performed in other projects.

Compliance with this requirement will be assessed under selection criterion L2 (Section 5.4.1).

4.8.2 Professional Conflicting interest of the Personnel

Furthermore, the Contractor shall ensure that its personnel sign a “declaration on confidentiality and absence of professional conflicting interest” with EUSPA before commencing any service provision and comply with it throughout contract execution. The current form of such declaration is attached for information to the draft Contract (Annex II.V). The form may evolve and cover additional aspects from time to time. This shall not in any way relieve the Contractor from any of its obligations. The Contracting Authority reserves the right to ask the Contractor or its personnel performing the services to sign a declaration regarding confidentiality, non-disclosure and/or declaration regarding precise obligations of processing of personal data. The Contractor’s personnel proposed may be rejected on the basis of conflict of interest.

4.9 Compliance with EUSPA internal rules

The Contractor shall ensure that its personnel follow any internal rules laid down by the Agency for anyone entering into or staying in the premises of the Contracting Authority. Such rules include in particular security rules and rules related to health and safety. These rules may evolve in future. Any such rules will be provided to the Contractor. They can be provided to the Tenderers during the tender procedure upon their request.

4.10 Security Requirements

The Tenderer shall pay particular attention to the clauses on “Export Control and Transfer Control” of the Draft Contract (Annex II to the Invitation to Tender).

4.11 Protection of Union Budget against breach of the principle of the rule of law in Hungary

Notice on the Council Implementing Decision (EU) 2022/2506 on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary (complementing the participating conditions):

In accordance to the Council Implementing Decision (EU) 2022/2506 adopted on 15 December 2022 on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary it's been established that, where Union budget is implemented in direct or indirect management pursuant to of Article 62(1) points (a) and (c) of FR, no legal commitments shall be entered into with any public interest trust established on the basis of the Hungarian Act IX of 2021 (or any other entity maintained by such a public interest trust).

Please see also the Declaration of Honour ([Annex I.B]) hereto applicable and to be provided completed and duly signed by each Tenderer, Core Team member and non-Core sub-contractor.

4.12 Confidentiality Requirements

The Tenderer shall pay particular attention to the clauses on confidentiality of the Draft Contract (Annex II to the Invitation to Tender) and in the NDU (Annex I.F).

4.13 Applicable Law and Jurisdiction

The procurement procedure and the subsequent Contract are governed by European Union law complemented, where necessary, by the law of Belgium.

The parties shall endeavour to settle amicably any dispute or complaint relating to the interpretation, application or validity of the procurement procedure or Contract.

With regard to the procurement procedure, any dispute which cannot be settled amicably shall be submitted to the jurisdiction of the General Court or on appeal to the Court of Justice of the European Union.

With regard to the Contract, the dispute resolution clause will be provided therein.

5. Assessment of tenders

The evaluation is based solely on the information provided in the submitted tender. It involves the following:

1. Verification of **non-exclusion** of tenderers on the basis of the exclusion criteria;
2. Verification of **non-rejection** of tenderers on the basis of the rejection criteria;
3. Verification of compliance with the **Access to procurement** conditions;

4. Verification of compliance with **selection criteria**;
5. Verification of compliance with the **minimum requirements**;
6. Evaluation of tenders on the basis of the **award criteria**.

EUSPA reserves the right to perform the evaluation in a different order.

In order to demonstrate compliance with exclusion criteria, non-rejection criteria, selection criteria, access to procurement conditions and minimum requirements, any participating entity (including consortium members and subcontractors) must sign the Declaration of Honour (DoH) duly completed, dated and signed [(Annex I.B)]. Mandatory subcontractors must provide a Declaration of Honour duly filled in and signed for what concern exclusion and non-rejection criteria.

Any failure related to the DoH will lead to exclusion from the procurement process.

Tenderers must continue to fulfil the criteria and requirements above for the entire duration of this procurement procedure and for the entire duration of the ensuing Framework Contract and specific contracts.

In case of any change in the situations regarding the above-mentioned criteria and requirements, Tenderers / Contractors shall inform the Contracting Authority without delay.

5.1. Exclusion criteria

The prime tenderers, consortium members and any proposed subcontractors (both Core Team and non-Core Team) shall not be in any exclusion situation described in the declaration of honour included in **Annex I.B**.

Supporting evidence requested as part of the Declaration of Honour shall be submitted as part of the Tender, for all Tenderers, core team members and all subcontractors, whose expected contribution exceeds the contribution level of 10% - without prejudice to the Contracting Authority's right to request supporting evidence from any participating entity). If the entity already submitted the supporting evidence for the purpose of another procedure administered by the Agency (to be identified by the entity), its issuing date is not more than one (1) year before the tender submission and it is still valid, such entity may instead of providing the evidence again declare on its honour that the documentary evidence has already been provided and confirm that no changes have occurred in its situation.

The applicable evidence in each country can be checked on the following site: <https://ec.europa.eu/tools/ecertis/#/search>.

5.2 Rejection criteria

The Tenderers, consortium members and sub-contractors shall not be in any ground for rejection described in the Declaration of Honour included in Annex I.B.

In the cover letter, the Tenderers, shall notify the Contracting Authority the foreign financial contribution received by the Tenderers, consortium members and sub-contractors in the last three years prior to such notification or, in case such contribution are not notifiable pursuant to Article 29(1) of Regulation (EU) 2022/2560 a declaration listing all foreign financial contribution received and confirming that such contribution are not notifiable in accordance with the relevant implementing acts adopted on the basis of Article 47 (1) of that Regulation.

In accordance with Article 4(3) of Regulation (EU) 2022/2560, foreign financial contributions of which the total amount per third country concerned is lower than the amount of de minimis aid as laid down in Article 3(2) of Commission Regulation (EU) 2023/2831 over the consecutive period of three years preceding the notification, shall not be listed in such declaration. Foreign financial contributions shall be notified, except otherwise provided, in accordance with the relevant implementing acts adopted on the basis of Article 47(2) of Regulation (EU) 2022/2560.

5.3 Access to procurement

Ref #	Access to procurement Criteria	To be evidenced by:	Applicable to:
A1	<p>Participation conditions</p> <p>Entity must meet the conditions listed under Section 4.1.1 above.</p>	<ol style="list-style-type: none"> 1. As evidenced by proof provided for under criterion L1. 2. Filled-in dedicated Section in the Declaration of Honour (Annex I.B) 3. Duly completed Declaration of Ownership and Control in Annex I.H – Part 2 signed by an authorised representative and all evidence required in Annex I.H – Part 1 and 2. <p>NOTA BENE: In case of request of a waiver (Section 4.1.1.2), the Tenderer must submit all necessary evidence to demonstrate and justify the request in accordance with the conditions indicated under Section 4.1.1.2.</p> <p>The Agency reserves the right to request further supporting evidence demonstrating compliance to the participation conditions if it considers this necessary, before award.</p>	<p>All economic operators, as provided in Section 4.1.1 above.</p>

Ref #	Access to procurement Criteria	To be evidenced by:	Applicable to:
A2	EU Restrictive measures Entity must meet the conditions as per Section 4.1.2 above.	1. Cover letter statement 2. Filled-in dedicated Section in the Declaration of Honour (Error! Reference source not found Annex I.B – Template Declaration of Honour ^{Corrig.1}).	All economic operators, as provided in Section 4.1.2 above. Error! Reference source not found
A.3	International procurement instruments measures as per Section 4.1.3 above.	Filled-in dedicated Section in the Declaration of Honour (Error! Reference source not found Annex I.B – Template Declaration of Honour ^{Corrig.1}).	All economic operators, as provided in Section 4.1.3 above.

5.4 Selection criteria

Tenderers must have the capacity below to perform the tasks.

In accordance with point 18.6 of Annex I of the FR, the tenderer may, where appropriate, rely on the capacities of other entities. In such case, the tenderer must prove that it has at its disposal the resources necessary for the performance of the contract by producing a commitment by those entities to that effect in the form of a Subcontractor Letter of Intent (template in Annex I.C) signed by every member of the candidate's Core Team, confirming their irrevocable undertaking to make such resources available to the candidate in case of being awarded the contract. The tenderer must comply with all the conditions laid down in point 18.6 of Annex I of the FR.

The tenderer who intends to rely on the capacities of other entities of subcontractors, must indicate the proportion that it intends to subcontract.

The supporting evidences, which must be provided in the tender, are indicated in the column "to be evidenced by" in the tables below.

5.4.1. Legal and regulatory capacity

In order to fulfil the professional activity, the Contracting Authority requires the tenderer to fulfil the below requirements.

Ref. #	Legal and regulatory capacity criteria	To be evidenced by:	Applicable to:
L1.	Legal entity authorisation requirement	1. Legal Entity File (template available at:	All economic operator participating in this procurement, i.e., primes, each

	Entity is authorised to perform the Contract under its national law.	https://ec.europa.eu/info/publications/legal-entities_en), and 2. Extract of the inclusion in a trade or professional register, or certificate, membership of a specific organisation, and 3. Express authorisation or entry in the VAT register, or equivalent.	consortium member and any proposed sub-contractors.
L2.	Management of professional conflicting interest Compliance with Section 4.8.1 above.	Statement of compliance in the dedicated section of the Declaration of Honour (Annex I.B); and submission of the evidence as required in Section 4.8.1 above.	All economic operators as provided in Section 4.8.1 above.

Table 2: Legal and regulatory capacity criteria

5.4.2 Economic and financial capacity

The tenderer (all legal entities belonging to a consortium) shall demonstrate the financial and economic capacity required for performance of the Contract as follows:

Ref #	Economic and financial capacity criteria	To be evidenced by:	Applicable to:
F1	Candidates must be in a stable financial position and have the economic and financial capacity to perform the contract.	1. Duly filled in Financial Statements relating to the Selection Stage in Annex I.G. 2. Submission of a full copy of the Tenderer's annual accounts for the last 3 (three) years approved by external auditors (balance sheet, profit and loss account, notes on the accounts and auditors' remarks when applicable).	Tenderer, including its Core Team (cumulatively) in accordance with Section 4.2 above.

F2.	<p>Minimum yearly turnover</p> <p>The tenderer must have a minimum yearly turnover (in EUR) of:</p> <p>10% of the value of the contract indicated in Section 3.2.2 above in the last three years preceding the year of launch of the present tender procedure.</p>	<p>1. Duly filled in Financial Statements relating to the Selection Stage in Annex I.G</p> <p>2. Submission of a copy of the tenderer's annual accounts (profit and loss account, notes on the accounts and auditors' remarks when applicable).</p>	<p>Tenderer, including its Core Team (cumulatively) in accordance with Section 4.2 above.</p>
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Table 3: Economic and financial capacity criteria

If, for some exceptional reason which EUSPA considers justified, the tenderer is unable to provide the requested documents, the tenderer may prove its capacity by other documents which EUSPA considers appropriate. In any case, EUSPA must, as a minimum, be notified of any exceptional reason and its justification in the tender. EUSPA reserves the right to request any other document enabling it to verify the tenderer's economic and financial capacity.

5.4.3 Technical and professional capacity

The tenderer (all legal entities belonging to a consortium) shall demonstrate the technical and professional capacity required for performance of the Contract as follows:

No	Technical and professional capacity criteria	To be evidenced by	Applicable to
T1.	<p>Relevant experience in fulfilling at least 2 (two) supply requests similar to the subject of this tender within the last 3 (three) years.</p> <p>Tenderers shall provide a description of the extent to which they are able to support the respective task and shall provide information they believe appropriate to substantiate their described capacity.</p>	<p>Submission of at least 2 (two) recent similar fulfilled requests handled during the last 3 (three) years including the following information, demonstrating the relevant experience:</p> <ul style="list-style-type: none"> - list of assets delivered; - client's name (if possible) and whether public or private; - procurement lead times; - mix of new vs. refurbished vs. FE (e.g., 85% new, 15% refurbished); 	<p>Tenderer, including its Core Team (cumulatively) in accordance with Section 4.2 above.</p>

No	Technical and professional capacity criteria	To be evidenced by	Applicable to
		<ul style="list-style-type: none"> - information on the country of provenience of the refurbished items; - list of sanitisation certificates for the refurbished items, <p>insofar as not subject to mandatory restrictions due to classification or confidentiality requirements which shall then be clearly indicated.</p>	

Table 4: Technical and professional capacity criteria

IMPORTANT NOTE: The tenderer may rely on the capacities of other entities to fulfil the technical and professional selection criteria, regardless of the legal nature of the links which it has with them. The tenderer must in that case prove to EUSPA that it will have at its disposal the resources necessary for performance of the contract, by producing a **Subcontractor Letter of Intent** (in the form provided in Annex I.D) on the part of those entities to place those resources at its disposal. Please ensure that the task for which the support will be provided is clearly indicated therein.

5.5 Minimum requirements

No	Minimum requirements	To be evidenced by	Applicable to
M1.	Compliance with applicable environmental, social and labour law obligations established by European Union law, national legislation, collective agreements or the applicable international social and environmental conventions listed in Directive 2014/24/EU.	Corresponding statements of compliance in the declaration of honour – Error! Reference source not found Annex I.B – Template Declaration of Honour ^{Corrig.} .	All economic operators participating in this procurement (i.e. Prime Tenderer, each consortium member and any proposed subcontractors).
M2	Compliance with standard industry warranty and return policy (items can be returned within 30 days of delivery;; minimum 1 year warranty)	Copy of the applicable warranty and return policy submitted with the tender	Tenderer as a whole

Table 5: Minimum requirements

IMPORTANT NOTE: Attention is drawn to the fact that minimum quality thresholds (i.e. total minimum score for all the award criteria and individual minimum score for the criteria/sub-criteria), as identified in Section 4.6.1 below, as well as the ceiling volume of the contract, as identified in Section 3.2.2 above, shall operate as minimum requirements.

5.6 Award stage

The assessment of the tenders in the award stage is carried out against the qualitative and the financial award criteria set out below.

5.6.1. Qualitative award criteria

The evaluation of technical quality will be based on the ability of the tenderer to meet the objectives of the Contract, as described in these Tender Specifications.

To this end, the information in the technical proposal must be consistent with this document and the technical terms of reference as well as the draft FWC. The technical proposal shall contain all necessary information to allow evaluation of the tender according to the technical criteria specified in this document, including in particular the evidence indicated for each criterion.

The quality of technical offers reaching this stage will be evaluated against the qualitative award criteria presented in Table 6 below.

The qualitative award criteria will be scored out of 100 (one hundred) points. Tenders scoring **fewer than 50 (fifty) points** (of a maximum of 100 points) against the technical award criteria or **fewer than the minimum points indicated for any of the criteria** will be rejected without evaluation of the financial offer.

The technical quality of the tender will be assessed on the basis of the tenderer's technical proposal for the FWC and the simulation exercise against the qualitative award criteria detailed as follows:

Ref no	Award criterion	Description of criteria	Maximum points	Minimum points
Q1.	Quality and adequacy of the proposed supply approach, including methodology & procurement process proposed to be applied for the FWC implementation.	Quality and adequacy of the steps proposed to be taken to execute an order, e.g., approach to select suppliers/transporters (with the exception from the application of competitive tendering according to Section 4.7, which is assessed in Q4), supply chain management, main steps to establish the shipment plan (including interfacing with EUSPA) as provided in the tender and in the	30	15

		Statement of Compliance to the technical Terms of Reference by virtue of the filled-in Annex I.N.		
Q2	Quality and adequacy of the simulation exercise, including the share of new/refurbished/FE items, shipment lead time and existence of concrete offers by COTS suppliers.	<p>Quality and adequacy of the Tenderer's answer to Tasks 1 of Annex I.L Annex I.K ^{Corrig.1} in terms of:</p> <ul style="list-style-type: none"> - percentage of assets from Annex I.J covered by concrete offers/quotations from suppliers (10 points max); - percentage of the assets for which the proposed shipment lead time is aligned with the requested delivery times (10 points max); - amount of new/refurbished/FE assets proposed for the 25 individual items listed in Annex I.J (25 points max). <p>Points will be allocated as follows:</p> <ol style="list-style-type: none"> 1. for each new item in the offer (category 1) the maximum number of points (1), 2. for refurbished (category 2) to be granted 0,8 points and 3. for FE (category 3) to be granted 0,5 points* <p>*sole exception for HDDs where no category 2 is granted, but FE gets 0.8 points</p>	45	22
Q3	Simulation exercise on the basis of the list of assets – quality of tech watch.	Quality of the answer to the Task 2 of Annex I.L Annex I.K ^{Corrig.1} : tech-watch quality in terms of completeness of list of identified obsolescence.	20	10
Q4	Quality and adequacy of the competitive subcontracting plan.	Quality and adequacy of the competitive subcontracting plan, i.e. of the measures ensuring compliance with the subcontracting requirements under Section 4.7	5	3
TOTAL			100	50

Table 6: Quality award criteria

Where a criterion in the table is expressly assessed under sub-criteria, the maximum points in respective columns refer to the total of points for all sub-criteria within the criterion. All sub-criteria will have the same weighting for the evaluation, unless explicitly specified differently.

5.6.2. Financial award criteria

5.6.2.1. General

Following the assessment of the qualitative award criteria, the tenders will be evaluated with regard to their financial proposals using two methods:

1. the price of the simulation exercise which shall be submitted in the form provided in Table 2 of ~~Annex I.J~~ Annex I.G ^{Corrig.1}; and
2. the average asset price offered based on the filled-in Table 1 in ~~Annex I.J~~ Annex I.G ^{Corrig.1}.

In order to allow for a comparison of the offers, tenderers are requested to submit a Financial Proposal following the financial table of answers (Annex I.G) which shall be duly filled in, dated and signed by the Tenderer, without any omission or addition with regard to the original format. **Omissions or additions with regard to the original format may lead to exclusion from the tender procedure.**

Prices are fixed and not subject to revision during the first and second year of the FWC. At the beginning of the third year and every following year of the FWC, FWC and SCs prices (e.g., FUPs) may be revised upwards or downwards at the request of one of the Parties according to the FWC (Annex II).

5.6.2.2. Calculation of financial score of the tender

The financial score will be calculated as follows:

Financial score 1: the tender offering the least expensive Simulation Exercise will receive 100 points. The other tenders will receive points according to the ratio between the least expensive Simulation Exercise and their one, as shown in the formula below.

$$\text{Financial Score 1 of Tender X} = \left(\frac{\text{cheapest simulation exercise price received}}{\text{price of simulation exercise of tender X}} \right)$$

Financial score 2: the tender offering the lowest average asset price will receive 100 points. The other tenders will receive points according to the ratio between the lowest average asset price and their one, as shown in the formula below:

$$\text{Financial Score 2 of Tender X} = \left(\frac{\text{cheapest average asset price received}}{\text{average asset price of tender X}} \right)$$

The average asset price is to be understood as the sum of all the prices in per all categories (new/re-furnished/FE) per both locations (GMSC-FR/GSMC-ES) divided by the total number of total prices proposed in Annex I.G Table 1.

The financial evaluation of the tender is made following the formula below.

$$\begin{aligned} & \text{Financial Evaluation Score of Tender X} \\ &= (\text{Financial Score 1} \times 0,5 + \text{Financial Score 2} \times 0,5) \times 100 \end{aligned}$$

5.6.2.3 Detection of abnormally low tenders

Tenderers must be aware of point 23 of Annex I of the FR on abnormally low tenders. In order to make a consistency check of each tenderer's financial offer, Tenderers are requested to provide their pricing methodology in a separate price structure document attached to the Financial Table of Answers. The price structure document must explain in detail how Tenderers establish their all-inclusive prices for the supply and delivery, including on-site delivery, of the assets in the respective location(s).

The document should demonstrate the compliance of the asset prices with the laws of the country in which the services are to be performed, for minimum levels of staff remuneration, contributions to the social security, occupational safety and health standards, and/or other applicable schemes and standards.

5.6.3 Calculation of final score and ranking of tenders

The Contract will be awarded to the tenderer having passed the rejection, exclusion and selection stage and offering the best value for money, i.e. the highest score in the final evaluation.

The final score of each tender is established by weighting technical quality against price on a **60/40** basis and will be calculated using the following formula:

$$\text{SCORE FOR TENDER} = 60\% \text{ of Qualitative Evaluation score} + 40\% \text{ of Financial Evaluation score}$$

A ranking list of all tenderers will be established based on the 'score for tender' formula above. The contract will be awarded to the tenderer which will be ranked the highest (the best price-quality ratio).

5.6.4. Award of the Contract and standstill period

The Contracting Authority will award the contract in accordance with Articles 170 and 173 of the Financial Regulation. The award decision will be notified to successful and unsuccessful Tenderers in line with Article 173 of the Financial Regulation.

The Contracting Authority shall not sign the Contract with the successful Tenderer until a standstill period of 10 (ten) calendar days have elapsed, running from the day after the simultaneous dispatch of the notifications to successful and unsuccessful Tenderers by electronic means.

6. Conditions of submission of tenders

6.1 Participant Register

Any economic operator willing to submit a request to participate/tender for this call for tenders must be registered in the [Participant Register](#) - an online register of organisations and natural persons participating in European Commission's calls for tenders or proposals (participants).

Upon registering each participant obtains a Participant Identification Code (PIC, 9-digit number) which acts as its unique identifier in the Participant Register. A participant needs to register only once – the information provided can be further updated or re-used by the participant in other European Commission's calls for tenders or calls for proposals.

Participants are required to provide information about the SME status of the participant in the Participant Register by filling in the SME Declaration section in the Participant Register. The section becomes available only when updating/modifying the details of the registered organisation.

At any moment during the procurement procedure the Research Executive Agency Validation Services (hereafter the EU Validation Services) may contact the participant and ask for supporting documents on legal existence and status and financial capacity. The requests will be made through the register's messaging system to the e-mail address of the participant's contact person indicated in the register. It is the responsibility of the participant to provide a valid e-mail address and to check it regularly. The documents that may be requested by the EU Validation Services are listed in the [EU Grants and Tenders Rules on Legal Entity Validation, LEAR appointment and Financial Capacity assessment](#).

Please note that a request for supporting documents by the EU Validation Services in no way implies that the tenderer has been successful.

6.2 Disclaimers

Please note disclaimers referred to in the invitation and in Section 1.4 above.

6.3 Variants

Variants are not permitted under this procurement procedure.

6.4 Preparation costs of tenders

Costs incurred in preparing and submitting tenders are borne by the tenderers and will not be reimbursed.

6.5 Presentation of the tender

6.5.1 Language

Tenders shall be drafted in one of the official languages of the European Union, preferably **ENGLISH**.

6.5.2 Submission of the tender

Tenders are to be submitted via the eSubmission application according to the instructions laid down in the Invitation letter and the eSubmission Quick Guide available at the link below:

https://wikis.ec.europa.eu/display/FTPPortal/Open+procedures_EN

Make sure you prepare and submit your tender in eSubmission early enough to ensure it is received within the deadline indicated under Section 5.1.12 of the Contract Notice.

EUSPA retains ownership of all tenders received under this procedure. Consequently, tenderers shall have no right to have their tenders returned to them. Tenderers are advised to submit the tender ahead of the deadline in order to avoid potential problems during the final days/hours before the closing date of tenders' submissions. The Agency cannot be held responsible for any last-minute malfunctioning of the eSubmission tool due to heavy traffic on the website.

6.6. Content of the tender to be submitted

The tender must be:

- signed by the Tenderer or his duly authorised representative;
- perfectly legible so that there can be no doubt as to words and figures;
- drawn up using all model reply forms supplied in the annexes to the Tender Specifications;
- clear and concise, with continuous page numbering, and assembled in a coherent fashion (e.g. organised in files).

The documents which must be signed according to the tender specification must be signed electronically with a qualified electronic signature (QES) of the Tenderer. This electronic signature must be provided by a provider which has a qualified status granted by a national competent authority of an EU Member State and which is listed in the national eIDAS Trusted Lists and the EU List of eIDAS Trusted Lists (LOTL) (available at <https://esignature.ec.europa.eu/efda/tl-browser/#/screen/home>). The validation check can be performed at <https://ec.europa.eu/digital-building-blocks/DSS/webapp-demo/validation>.

EUSPA reserves the right to request additional evidence in relation to the tender submitted for evaluation or verification purposes.

6.6.1 Administrative file (FOLDER 1)

Each tender shall include an administrative file, containing:

Ref.#	FOLDER 1 – ADMINISTRATIVE DOCUMENTS and DOCUMENTS RELATING TO EXCLUSION and SELECTION CRITERIA AND MINIMUM REQUIREMENTS
(1)	<p>A cover letter, dated and signed by duly authorized representative of the tender, including:</p> <ul style="list-style-type: none"> • A declaration of full acceptance of the terms and conditions of this Invitation to Tender; • A section presenting the industrial organisation of the Tenderer, describing the Tenderer and listing all the legal entities involved, specifying each entity's role and qualifications; • Tenderer's contact details; • A list of the legal entities involved, specifying each entity's role and qualifications;

	<ul style="list-style-type: none"> • The Tenderer's undertaking to provide the services; • Analysis of absence of conflicting interest, as per Section 4.8.1 above; • A list of all the documentation included/enclosed in the tender; • In case of consortia, the competition law compliance assessment made under Section 4.5 above; • A statement in line with the requirement under Section 4.1.2 above (EU Restrictive Measures). • All the Information required pursuant to Section 5.2 above (Rejection from Award procedure). <p>With regard to subcontracting:</p> <ul style="list-style-type: none"> • Indicate the elements and proportion (%) of the tender for which subcontracting is planned.
(2)	<p>The duly filled in, signed and dated identification sheet of the Tenderer using the template in Error! Reference source not found Annex I.A – Template identification Sheet of the Tenderer^{Corrig.1}. (one per Tenderer including all the legal entities involved in the consortium and subcontractors and containing, where appropriate, as many sections as legal entities involved).</p>
(3)	<p>The duly filled in, signed and dated legal entity form (one per economic operator involved) (tender, consortium member or subcontractor) using the template available at: https://ec.europa.eu/info/publications/legal-entities_en and any supporting documents required in this template.</p> <p>Please take into consideration the instructions from this link before filling in the documents: https://ec.europa.eu/info/sites/default/files/about_the_european_commission/instruction_fiche_en2020.pdf</p>
(4)	<p>A duly signed and dated statement of authorisation/power of attorney containing the name and position of the representative/signatory and official documentary evidence on the person's legal authority to validly sign the tender and the FWC (should it be awarded it) on behalf of the organisation, should it be awarded it.</p>
(5)	<p>The duly filled in, signed and dated Financial Identification Form using the template available at:</p> <p>https://ec.europa.eu/info/publications/financial-identification_en</p> <p>In case of consortia, only one financial identification form for the whole consortium should be submitted, nominating the bank account into which payments are to be made under the SCs (i.e. the account of the consortium leader) in the event that the respective tender is awarded to it.</p>

	Please pay attention to the supporting documents that should be submitted together with the duly filled in financial identification form.
(6)	The duly filled in, signed and dated Declaration(s) of Honour (including supporting evidence) relating to exclusion criteria, grounds for rejection and selection criteria using the template in Error! Reference source not found Annex I.B – Template Declaration of Honour ^{Corrig.1} , one per economic operator (i.e. Tenderer, all consortium members, all subcontractor(s), if any).
(7)	The duly filled in, signed and dated Financial Statement relating to the selection stage using the template in Annex I.G , complemented by the full financial statements for the last 3 (three) financial years and a statement of turnover relating to the relevant services for this tender for the last 3 (three) financial years as requested in table 6 of these Tender Specifications.
(8)	All evidence relating to the selection criteria in Section 5.4 above.
(9)	All evidence relating to the minimum requirement in Section 5.5 above.
(10)	<u>In case of consortia</u> , a duly signed and dated statement/declaration by each of the consortium members specifying the company or person heading the project and authorised to submit a tender on behalf of the consortium, sign and manage the Contracts, using the template in Error! Reference source not found Annex I.C - Template Power of Attorney (for consortia) ^{Corrig.1} .
(11)	<u>For the proposed subcontractors</u> , duly filled in, signed and dated subcontractor Letter of Intent using the template in Error! Reference source not found Annex I.D - Template Subcontractor Letter of Intent ^{Corrig.1} Error! Reference source not found .
(12)	<p>Tenderers are required to present their industrial organisation and, in particular their Core Team. The latter shall be composed of the Contractor, including, where relevant, all consortium members, and subcontractors, which are essential in order for the Tenderer to meet the selection criteria under Section 5.4.</p> <p>The description shall include the role and responsibilities of the respective entities for the purpose of this procurement as well as a description of the group to which they belong.</p> <p>Tenderers shall prove that they will have at their disposal the resources necessary for performance of the Contract by providing:</p> <ul style="list-style-type: none"> - Power of attorney for consortium members (Annex I.C);

	- Letter of Intent (Annex I.D) on the part of every entity on whose resources they rely in order to fulfil the selection criteria, confirming the latter's irrevocable undertaking to make such resources available to the Tenderer in case of being awarded the Contract.
(13)	Description and measures ensuring compliance with the subcontracting requirements under section 4.7 including all the elements as required therein. To be evaluated by virtue of the qualitative award criteria Q4.
(14)	The duly filled-in Declaration of Ownership and Control , using the template in Annex I.H – Part 2 , including all necessary documents required in Annex I.H for the assessment of the compliance with the participation condition (see Error! Reference source not found Sections 4.1 and 5.3 ^{Corrig.1} above).

Table 7 – Folder 1 content – administrative documents

6.6.2 Technical proposal (FOLDER 2)

Each tender shall include a technical proposal containing:

	FOLDER 2 – TECHNICAL OFFER
(1)	<p>Technical Proposal, in accordance with the requirements of the present Tender Specifications divided into following sections with headings:</p> <ul style="list-style-type: none"> - Executive Summary (2 (two) pages maximum) - Technical proposal including at least: - Framework proposal including <ul style="list-style-type: none"> o Proposed supply approach, including methodology & procurement process o Subcontracting plan and commitment for the share of the subcontracting o Indication in which sections the evidences for each award (sub) criterion may be found (e.g., in form of a matrix). - Technical offer for the simulation exercise <ul style="list-style-type: none"> o Proposed list of assets with delivery location and lead-time (Annex I.L ^{Corrig.1} Annex I.K filled in) o Indication in which sections the evidences for each award (sub) criterion may be found (e.g., in form of a matrix). - All evidence relating to the selection criteria in Section 5.4 above ('Technical and professional capacity'). - Duly written, signed and dated Statement of Compliance (Annex I.N) to the technical Terms of Reference. Tenderers are informed that their tenders will be assessed, by virtue of the qualitative criterion Q1 on the level of compliance to the

	<p>technical Terms of Reference and the credibility of the related justifications/quality and consistency of the proposed alternative wording.</p> <p>In all the cases where Tenderers are required to submit their Statement of Compliance, the following rules shall apply:</p> <p>a) The Statement of Compliance shall state the degree of compliance with the relevant provisions/requirements/documents (and related annexes) provided by the Contracting Authority as part of the Invitation to Tender.</p> <p>b) Each Statement of Compliance shall state (alternatively):</p> <ul style="list-style-type: none"> i. Full compliance ii. Non-compliance iii. Partial compliance <p>Each statement shall be duly justified:</p> <ul style="list-style-type: none"> • In general terms, within the statement of compliance itself. • By reference to the sections of the Tender where further justifications are developed. <p>c) In case full compliance is stated, Tenderers shall avoid comments, assumptions, and limitations as they will not be taken into account by the Contracting Authority for the evaluation and they shall not apply in case of award.</p> <p>d) In case partial or non-compliance is stated, in addition to the relevant justifications, Tenderers are required to elaborate alternative drafting reflecting their position in the body text of the document or of its annexes, when relevant.</p> <p>e) Acceptance of a Tender containing reservations, or proposed modifications or amendments is not to be construed as acceptance of these, unless and until such modifications or amendments are confirmed in the contract.</p>
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Table 8 – Folder 2 content – technical proposal

6.6.3 Financial proposal (FOLDER 3)

Each tender shall include a financial offer, containing:

	FOLDER 3 – FINANCIAL OFFER
(1)	Duly signed and dated financial proposal using the templates in Annex I.G. including Framework Contract Proposal and Simulation Exercise Proposal.
(2)	Pricing methodology in a separate price structure document attached to Annex I.G, as described in Section 5.6.3.

Table 9 – Envelope 3 content – financial proposal

6.7 Financial offer

The financial offer must respect the following conditions:

6.7.1 Unit prices and total price

Task 1: Supply of operational assets

The tenderer shall offer Unit Prices for the delivery of the spare assets at a condition DDP [named places of destination, as defined in Annex I.G, as per Incoterms 2020. The unit prices shall also include the unloading of the assets and their placement in a room/ office/ compartment in the named place of destination, that will be pointed out by Contracting Authority at the time of the assets arrival. The equipment necessary of the uploading, and moving to such final location shall be made available by the contractor and the costs of its use (if any) shall be included in the units price of the asset.

The Tenders shall provide in the Framework Contract Financial Proposal a price quotation for each of the 3 categories (as per section 3.2.4) for each asset listed in ~~Annex I.I~~ Annex I.J^{Corrig.1}, for delivery to each location, specified therein. Omission to provide a price for any asset of ~~Annex I.I~~ Annex I.J^{Corrig.1} ~~for~~ may lead to rejection of the Tender. The prices shall be all-inclusive, covering all expenses such as the PHST, warranty, insurance. For each asset MPN listed in ~~Annex I.I~~ Annex I.J^{Corrig.1}, nine (9) prices shall be included in the financial offer (filled in Annex I.G Financial Table of Answers).

- Price for each of the three categories (new/refurbished/functional equivalent)
- Delivered at each of the two locations (France or Spain)
- Supplement for delivery of each asset in all the above cases in urgent mode, taking into account that EUSPA shall request up to 10% of the orders to be delivered in urgent mode

The contractor can propose the same Fixed Unit Prices more than once (e.g., delivery of the asset XX as new is to Spain and to France is the same) .

The Tenders shall provide in the Simulation Exercise Financial Proposal, based on the unit prices offered in the Framework Contract Financial Proposal.

Task 2: Obsolescence tech-watch

The price proposed in the simulation exercise shall be all-inclusive for the one-time performance of the tech-watch.

Single unit prices quoted in Annex I.G, must be firm and fixed and are not subject to revision during the first and the second year of the FWC. At the beginning of the third and every following year of the FWC, FWC and SCs prices (e.g., FUPs may be revised upwards or downwards at the request of one of the Parties, according to the FWC (Annex II). The unit prices in the financial offer will constitute the price list for the duration of the Contract¹⁷, and shall include all costs and expenses which are necessary for performance of the tasks.

¹⁷ Price grid quantities estimates are provided by EUSPA in Annex I.J. Such estimates will only be used by EUSPA to simulate the cost competitiveness of tenderers against the most realistic scenario of implementation of the FWC. In this respect, quantity estimates are in no way binding. Upon signature of the contract, only the unit prices provided by the tenderers in the duly completed tables of Annex I.G shall be binding.

These costs and expenses are indicatively: necessary effort for all the tasks (including drawing up quotations and reports) necessary, including all costs (e.g. handling, storage and shipping costs to and within the different EUSPA locations, insurance, travel expenses, administrative support and any support resource, coordination, quality control or currency conversion fees).

During the contract implementation period, EUSPA may need to add a few items to the list of assets due to technology refresh to specific order forms (expected up to maximum 30% of the total amount of items). An amendment (if any) of the list of assets (Annex I.I) is to be released yearly by EUSPA to the Contractor.

6.7.2 VAT exemption

As the Contracting Authority is exempt from all taxes and dues, including value added tax (VAT), pursuant to Articles 3 and 4 of the Protocol on the privileges and immunities of the European Union, these must not be included in the price.

6.7.3 Currency and exchange rates

The price tendered must be all-inclusive and expressed in Euro without VAT.

6.8 Submission

Tenders are to be submitted via the eSubmission application according to the instructions laid down in the Invitation to tender letter and the eSubmission Quick Guide and are to be submitted not later than the relevant date and time specified in Section 2.1 above.

It is required that tenders be presented in the correct format and include all documents necessary to enable the evaluation committee to assess them. Failure to respect these requirements will constitute a formal error and may result in the rejection of the tender.

EUSPA retains ownership of all tenders received under this procedure. Consequently, tenderers shall have no right to have their tenders returned to them.

Tenderers are advised to submit the tender ahead of the deadline in order to avoid potential problems during the final days/hours before the closing date of tenders' submissions. The Agency cannot be held responsible for any last-minute malfunctioning of the eSubmission tool due to heavy traffic on the website.

6.9 Public opening of the tenders

Tenders will be opened in a virtual opening session on the date and time indicated under Section 5.1.12 of the Contract Notice. A maximum of two representatives per tender may attend.

Tenderers may request to attend the opening by sending an email to tenders@euspa.europa.eu as soon as possible and not later than three hours before the scheduled start of the opening session. The request must include the full name(s) and email address(es) of the representative(s), the name of the represented tenderer and the submission receipt generated by e-Submission. The contracting authority reserves the right to refuse access to the virtual opening session if the above information is not provided as required.

The representatives will receive an invitation by email with the meeting details and instructions how to attend the opening.

The public part of the opening session will be strictly limited to the following aspects:

- verification that each tender has been submitted in accordance with the submission requirements of the call for tenders;
- announcement of the tenders received: the names of the tenderers (all members in the case of a joint tender) will be announced;

Tenderers not present at the opening session may send an information request to tenders@euspa.europa.eu if they wish to be provided with the information announced during the public opening.

Once the contracting authority has opened the tenders, they shall become its property and will be treated confidentially.

6.10 Period of validity of the tenders

Period of validity of the tenders, during which tenderers may not modify the terms of their tenders in any respect shall be 9 (nine) months from the closing date for the submission of the tenders.

6.11 Further information

Contacts between EUSPA and tenderers are prohibited throughout the procedure save in exceptional circumstances and under the following conditions only:

Before the final date for submission of tenders:

- At the request of the tenderer, EUSPA may provide additional information solely for the purpose of clarifying the nature of the contract.
- Any requests for additional information must be made in writing only through the procedure's Funding & Tenders Portal (F&T Portal) link indicated in the Invitation to Tender in the "Questions & answers" section, by clicking "Create a question" (EU Login registration is required to be able to create and submit a question).
- Requests for additional information received after deadline specified in Section 1.6 above cannot be processed.
- EUSPA may, on its own initiative, inform interested parties of any error, inaccuracy, omission or any other clerical error in the text of the Invitation to Tender.
- Any additional information will be published on the Funding & Tenders Portal (F&T Portal) link indicated in the Invitation to Tender. It is the economic operator's responsibility to check for updates and modifications during the submission period.

After the opening of tenders:

- If, after the tenders have been opened, some clarification is required in connection with a tender, or if obvious clerical errors in the submitted tender must be corrected, EUSPA may contact the tenderer, although such contact may not lead to any substantial alteration of the terms of the submitted tender.

6.12 Information for tenderers

EUSPA will inform tenderers of decisions reached concerning the award of the contract in due course, including the grounds for any decision not to award a contract or to recommence the procedure.

If a written request is received, EUSPA will inform all rejected Tenderers of the reasons for their rejection and all tenderers submitting an admissible tender of the characteristics and relative advantages of the selected tender and the name of the successful Tenderer.

However, certain information may be withheld where its release would impede law enforcement or otherwise be contrary to the public interest, or would prejudice the legitimate commercial interests of economic operators, public or private, or might prejudice fair competition between them.

6.13 Data protection

Personal data gathered for the purpose of the present procedure will be processed pursuant to Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data. This data will be processed by EUSPA as indicated in the privacy statement published on the Agency's website (https://www.euspa.europa.eu/sites/default/files/privacy_statement_relating_to_euspa_procurement_procedures_grants_prizes_and_selection_of_experts.pdf). Any request regarding your personal data should be addressed to the data controller responsible for the call for tenders (EUSPA Head of HR, HR-Info@euspa.europa.eu). You may also contact the Agency's Data Protection officer (DPO) at DPO@euspa.europa.eu. If your request has not been responded to adequately by the data controller and/or DPO, you can lodge a complaint with the European Data Protection Supervisor at edps@edps.europa.eu.

6.14 Tenderer's consent to the use of information supplied in the tender

By submitting a reply to the invitation to tender a Tenderer provides its unconditional and irrevocable consent to the Agency to use any information contained in the tender in legal proceedings related to procurement regardless of the parties involved to the extent as necessary or appropriate for due protection of Agency's rights. Should the Agency use the content of the tender for this purpose, the Tenderer waives any claim for any compensation of any kind whatsoever or any claim related to confidentiality and/or data protection.

Acronyms and definitions

Acronym / Abbreviation / term	Complete Designation
CET	Central European Time
Contracting Authority	The European Union Agency for the Space Programme

Acronym / Abbreviation / term	Complete Designation
Contractor	The Tenderer to whom the Contract will be awarded
Controller	The EUSPA entity which determines the purposes and means of the processing of personal data
DDP	Delivery Duty Paid
EGNOS	European Geostationary Navigation Overlay Service
EU	European Union
EUCI	European Union Classified Information
EUSPA	European Union Agency for the Space Programme
FE	Functional Equivalent
FR	France or Financial Regulation, if in conjunction with reference to Articles
FWC	Framework Contract
Galileo	European satellite navigation project – one of the European GNSS
GNSS	Global Navigation Satellite System
GSC	GNSS Service centre, Torrejón de Ardoz, Spain
GSMC	Galileo Security Monitoring Centre
GSMC-FR	GSMC site, Saint-Germain-en-Laye, France
GSMC-ES	GSMC site, La Marañosa (Madrid), Spain
HR	Human Resources
HW	Hardware
ICT	Information and Communication Technology
N/A	(criteria/information/item) Not Applicable
OLAF	Office Européen de Lutte Anti-Fraude – European Anti Fraud Office
SC	Specific Contract

Acronym / Abbreviation / term	Complete Designation
SSA	Space Situational Awareness
Subcontractor	An entity acting as subcontractor to a Tenderer
SW	Software
Tenderer	The entity having submitted a tender in this procurement procedure
UE	Union Européenne
VAT	Value Added Tax

Table 10 – Acronyms and designations

7 List of tender specifications annexes

These tender specifications have the following annexes:

Annex	Title
Annexe I.A	Template Identification Sheet of the Tenderer
Annex I.B	Template Declaration of Honour
Annex I.C	Template Power of Attorney (for consortia)
Annex I.D	Template Subcontractor Letter of Intent
Annex I.E	Template Financial Identification Form
Annex I.F	Template Non-Disclosure Undertaking (NDU)
Annex I.G	Template Financial Table of Answers
Annex I.H	Criteria for assessment of participation conditions, includes three parts: <ul style="list-style-type: none"> - Part I – Criteria for Assessment of Participation Conditions - Part II – Excel Spreadsheet – Declaration of Ownership and Control - Part III – Additional Information regarding the Assessment of Participation Conditions
Annex I.I	List of Assets
Annex I.J	List of Assets Simulation Exercise
Annex I.K	Template Technical Offer Simulation Exercise
Annex I.L	TTOR and Simulation Exercise
Annex I.M	Inventory Extract Template
Annex I.N	Statement of Compliance to the technical Terms of Reference

Table 11 – Annexes to Annex I