

EUSPA/OP/20/21

"LEGAL ADVICE AND SUPPORT TO EUSPA"

Annex I to Invitation to Tender

"General tender specifications"

(Applicable to Lots 1/2/3)

Ref: EUSPA/OP/20/21

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1 Overview

The present 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: European Union Agency for the Space Programme and the European Union Space Programme

The European **Union Agency for the Space Programme** (hereinafter referred to as 'EUSPA, 'the Agency' or 'the Contracting Authority') is an agency formed by the European Union to accomplish specific tasks related to the European Union Space Programme components (Galileo, EGNOS, Copernicus, European Union Governmental Satellite Communications (GOVSATCOM) and SSA (Space Situational Awareness)).

Further information can be found on the EUSPA's web site (<https://www.euspa.europa.eu/>) This website contains also information about

- European Union Space Programme (<https://www.euspa.europa.eu/european-space/eu-space-programme>)
- Legal framework applicable to the EUSPA (<https://www.euspa.europa.eu/about/about-euspa#regulatoryframework>)

1.2 Outline of the tender

Name: EUSPA/OP/20/21 "Legal Advice and Support to EUSPA"

Procedure: **Open procedure** in accordance with the Article 164(1)(a) of the Financial Regulation ¹ for the procurement of services in 3 **(three)** lots.

1.3 Principles

- Tenderers are required to accept all the terms and conditions set out in the invitation to tender, general tender specifications and draft contract. Tenderers are required to waive their own general or specific terms and conditions. The terms and conditions set out in the invitation to tender, general tender specifications and draft contract shall be binding on the tenderer to whom the contract is awarded for the duration of the contract.
- Any attempt by a tenderer to obtain confidential information, enter into unlawful agreements with competitors or influence the evaluation committee or the EUSPA during the process of examining, clarifying, evaluating and comparing tenders will lead to rejection of his tender and may result in administrative penalties.

¹ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012

- 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 Contracting Authority's contractual relationship commences only upon signature of the contract with the successful tenderer.
- 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 of the tenderers.

1.4 Purpose of the Invitation to Tender

The objective of this invitation to tender is to establish 3 single supplier framework contracts (FWC) (one per lot) having duration of up to 4 years for provision of legal advice and support to EUSPA's activities.

Taking into account the different nature and objectives of the activities to be performed, the procurement is divided into 3 (three) lots. The activities (tasks) to be performed under each lot are detailed in the specific technical terms of reference for each lot.

The procurement is divided into following lots :

- **Lot 1: Legal advice and support related to the European Union Space Programme**
- **Lot 2: Legal advice and support related to security**
- **Lot 3: Legal advice and support related to administration**

Tenderers may tender for one or several lots, but must make a separate offer for each lot, as lots will be evaluated separately.

Where the reference is made to the FWC in these tender specifications, it should be assumed that any such reference is also meant to cover any specific contracts concluded on a basis of the FWC, in particular when there is a reference covering any obligation of the tenderers.

1.5 Change of incumbent contractor

Tenderers are informed that activities/services constituting the subject matter of this tender are currently be performed by an incumbent Contractor. In case of a change of Contractor as a result of the present tender, the tenderers shall assess the applicability of the Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as implemented in the relevant national legislation(s). Any risk or impact stemming from

the application of the above-mentioned legislation shall be entirely allocated to the Contractor and shall be taken into consideration in the formulation of the offer.

1.6 Applicable legal acts and rules

It is the Contractor's responsibility to comply with applicable laws in the execution of the awarded contract.

Applicable legal acts and rules include the following:

- Financial Regulation (FR);
- EU Space Regulation²;
- 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 documents³.
- Council Decision (CFSP) 2021/698 of 30 April 2021 on the security of systems and services deployed, operated and used under the Union Space Programme which may affect the security of the Union, and repealing Decision 2014/496/CFSP
- Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission.
- Commission Decision (EU, Euratom) No. 2015/444 of 13 March 2015 on the security rules for protecting EU classified information.
- Commission Decision (EU, Euratom) 2017/46 of 10 January 2017 on the security of communication and information systems in the European Commission.
- Decision No 1104/2011/EU of the European Parliament and of the Council of 25 October 2011 on the rules for access to the public regulated service provided by the global navigation satellite system established under the Galileo programme.
- Commission Decision of 29 November 2001 amending its internal Rules of Procedure, 2001/844/EC, ECSC, Euratom, as last amended by Commission Decision 2006/548/EC, Euratom of 5 August 2006.

² 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

³ Council Regulation (EC) No 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

1.7 Procurement procedure schedule

Timetable	Date	Comments
Submission for publication of contract notice to the supplement to the Official Journal by the EUSPA.	09/12/2021	All documents of the Invitation to Tender available at: https://www.euspa.europa.eu/about/how-we-work/procurement
Deadline for requests of clarifications.	04/03/2022	Requests to be sent in writing only to: tenders@euspa.europa.eu
Last date on which clarifications are issued by EUSPA.	08/03/2022	All clarifications will be published at the EUSPA's procurement website: https://www.euspa.europa.eu/about/how-we-work/procurement Tenderers are invited to check EUSPA's procurement website on a regular basis.
(Lot 2) Deadline for submission of NDU	15/01/2022	
Deadline for submission of tenders.	14/03/2022 at 23.59 CET	According to conditions of submissions set out in section 4.7 of these specifications.
Opening session and start of evaluation session.	21/03/2022	Lot 1: 10:00 (local time) Lot 2: 12:00 (local time) Lot 3: 14:00 (local time)
Completion of evaluation and award	Estimated April	EUSPA may perform the evaluations of lots in parallel or in sequence.
Estimated planned start of implementation of the Contract The estimated date is only indicative, it may be changed	Estimated May Not earlier than 10	Estimated

and it is not binding for the EUSPA.	calendar days after electronic dispatch of notification to tenderers	
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2 Terms of reference

2.1 Terms of reference

The detailed tasks and technical activities to be performed under each lot are detailed in the Specific Terms of Reference (Annex I.1)

2.1.1 Place of performance

The tasks will be performed mainly at the contractor's premises. Under the conditions laid down in section 4.6 of the specific terms of reference, the tasks may be also performed at EUSPA premises – notably at EUSPA headquarters in Prague 7, Czech Republic, GSMC in Saint-Germain-en-Laye (France) or EGNOS liaison office in Toulouse (France).

Experience for the proposed team in the technical proposal shall be demonstrated by curriculum vitae of advisers which shall be submitted in English, preferably according to the Europass format (available at: <http://europass.cedefop.europa.eu/en/documents/curriculum-vitae/templates-instructions>). The proposed team's experience has to address the proposed staff profiles as listed in Annex I.F for each Lot.

The curriculum vitae of the proposed staff should indicate his/her experience relevant to the specific tasks that he/she will cover.

2.1.2 Resource availability and change of consultants

The contractor shall endeavour to provide consistency in the personnel assigned to the tasks under the specific contracts (consultants) and to reduce turnover of this personnel, subject to ensuring avoidance of any professional conflicting interests. Should the contractor not be able to comply with this requirement, it must:

- provide a justification,
- provide personnel sufficiently knowledgeable in the domain covering the tasks defined in specific terms of reference for each of the lots, and

- define measures to be applied to ensure that the quality of the services to EUSPA is not affected.

EUSPA may request additional consultants or request additional tasks within the scope and the total amount of every specific contract. Similarly, EUSPA may decide to reprioritise, cancel or suspend any task depending on its needs. The Contractor may invoice only tasks which were effectively performed in agreement with EUSPA.

EUSPA may also request the change of consultants if the quality of their performance is not satisfactory or it is not in line with other requirements of the Contract.

The Contractor may request change of consultants in duly justified circumstances (e.g. resignation of the personnel). Any change must be approved by an exchange of letters between the project officer of the Contractor and project officer of EUSPA.

2.1.3 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.
- Reliable and efficient document management.
- Transparent reporting: 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.
- Monthly or quarterly reporting as requested by EUSPA. To this end, and unless otherwise agreed, regular meetings may be organised via teleconference or at EUSPA's premises.
- Capacity of the contractor to react quickly to replace advisers deemed to be providing an unsatisfactory output (in principle within one month from notification of EUSPA's request).

2.1.4 File management

The contractor shall ensure soft and hard copy management of files attributed to the contractor and ensure periodic (no less than once a month) transfer of this data to EUSPA.

Access to EUSPA's internal databases and software (such as an intranet, internal functional mailboxes) is not planned to be granted to the contractor's personnel. However, EUSPA keeps at its discretion the possibility to grant such an access and it may require that the consultants use these tools.

The contractor's personnel shall be able to use any tool that EUSPA is using for file management.

2.2 Legal and contractual terms of reference

2.2.1 Participation conditions

2.2.1.1 Lot 3

Participation to the procurement is open on equal terms to all natural and legal persons under the conditions set out in Article 176 FR.

2.2.1.2 Lots 1 and 2

In accordance with Article 24(1) of Regulation (EU) 2021/696, in order to preserve the security, integrity and resilience of the operational Union systems, taking into account the objective to promote the Union's strategic autonomy, in particular in terms of technology across key technologies and value chains, while preserving an open economy, the participation to this tender is open to economic operators compliant with the three cumulative conditions laid down in Article 24(2) of Regulation (EU) 2021/696, and specified here:

- a) economic operators established in an EU Member State with their executive management structures established in that EU Member State.
 - Economic operators are considered to be 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 EU Member States; and
- c) economic operators not being subject to control by a third country or third country entity. For the purpose of this provision '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 will be evaluated and shall be met at the moment of submission of the Tender on each step of the procurement and throughout the whole duration of the resulting contract by:

- prime contractors
- core team members involved in security relevant activities;
- subcontractors involved in security relevant activities

and will be checked by the contracting authority at the moment of 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 have been laid out in Annex I.J (Parts 1, 2 and 3), including a dedicated Annex I.J - Part 2 to be filled in by the candidates.

The document entitled “criteria for assessment of participating conditions” available in Annex I.J – Part 1 describes the information to be provided by the candidates (including (i) prime contractors and (ii) core team members and subcontractors involved in security relevant activities) which will be used to assess the criteria a), b) and c) above. Please note that for the assessment of control the filling, signature and submission of the Declaration of Ownership and Control in Annex I.J - Part 2 is required. **Additional guidelines on the criteria which will be applied and the circumstance which will be taken into account by the contracting authority and the competent tender evaluation boards to assess the situation of dominant influence are contained in Annex I.J – Part 3.**

Candidates (including the prime contractor, core team and subcontractors) who have formally submitted the information/documents/supporting evidence requested in the Annex I.J 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 area still valid at that date. In this case, Candidates 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 the 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.

Given the nature of the task and the exposure of the Contractor to Agency’s European Space Programme’s sensitive non-classified and proprietary information that may have security relevance, the Agency will not waive any of the conditions laid down under points a), b) and c) of paragraph 2.2.1.2 above with regard to any entity, which applies as a (prime) contractor, Core Team member or a subcontractor.

2.2.2 Volume of the contract

The indicative ceilings estimated for the maximum duration of the FWCs are:

- Lot 1: 4.000.000 €
- Lot 2: 2.000.000 €
- Lot 3: 2.000.000 €

including extensions of the initial yearly duration of the FWCs **up to** four (4) years. This budget is only indicative; it will be subject to budget allocations given to the EUSPA.

The amount includes extensions of the initial twelve months' durations of the FWCs to up to 4 (four) years. This budget is not binding for the Contracting Authority and it will be subject to budget availability.

The Contracting Authority reserve the right to launch an exceptional negotiated procedure for new services with the same Contractor in case of need, as foreseen in Article 164(5)(f) in connection with point 11.1(e) of Annex I of FR. The maximum additional value of new services would be 50% of the initial value of the Contract.

2.2.3 Duration

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

2.2.4 Compliance with internal rules, professional conflicting interest, security requirements and confidentiality

2.2.4.1 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 EUSPA. 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.

2.2.4.2 Professional Conflicting interest

2.2.4.2.1 At the time of submission of the tender and during the term of the FWC, the contractor shall not be in any situation that could compromise the impartial and objective performance of the FWC and the specific contracts. For this purpose, tenderers at the time of the tender shall:

- i. either confirm their absence of professional conflicting interest in the Declaration of Honour in Annex I.B, or
- ii. substantiate the potential, perceived or actual professional conflicting interest which may negatively affect the performance of the Contract.

For either (i) or (ii) point above, the Tenderers must provide a comprehensive analysis and justification, with at least the following information:

- a) 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;
- b) respect of rules on conflict of interest regulating the legal profession, including the professional ethics rules applicable to the tenderer;
- c) respect EUSPA's policy on the prevention and management of conflicts of interest (Annex I.I);

- d) description of operational structure and mechanisms for monitoring, preventing and resolving conflicting interests during the execution of the FWC which mitigate or eliminate the potential, perceived or actual professional conflicting 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 EU Space Programme projects.

2.2.4.2.2 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. 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.

2.2.4.3 Security Requirements

The personnel of the Contractor providing the services shall follow any security rules as may be set by the Agency for anyone entering into or staying in the premises of EUSPA. Such rules will be provided to the Contractor.

2.2.4.3.1 Activities under Lot 2

Activities under the Lot 2 contract may entail handling and production of documents classified up to RESTREINT UE/EU RESTRICTED. To this end, neither the facility security clearance nor the personnel clearance are required for eligibility purposes in the present tender.

However, the applicable security rules – notably Commission Decision 2015/444/EC – shall govern the execution of such tasks.

Further, any classified information must be treated according to instructions set out in the security aspects letter (referred to as “SAL” – **Annex II.VI** to the draft framework contract).

Further, the Contractor under the Lot 2 must be compliant with the security requirements detailed in the Security Aspect Letter (Annex I. Annex II.VI to the draft FWC). The tenderer must confirm its compliance to the SAL in the Declaration of Honour (Annex I.B) submitted with the offer or submit a statement of applicability regarding requirements of the SAL (Annex I.H) with a concise explanation on non-applicability for the Contracting Authority’s assessment.

Before signature of the Contract, the successful tenderer will receive a copy of the applicable document AD1 [European GNSS Programme Security Instructions (PSI)] mentioned in the Security Aspects Letter (Annex II.VI). Should a potential tenderer deem it necessary to have access to this document already during the procurement procedure, it may request access to it at the latest 3

weeks before the deadline for submission of tenders in line with the Non-Disclosure Undertaking (hereafter 'NDU') signature procedure outlined below.

The NDU must be signed only by the prime Tenderer/Candidate 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 Contractor's consortium and any of the subcontractors and any personnel it may draw on for the preparation of the tender.

Before the deadline indicated above in section 1.7, the prime Tenderer/Candidate or the consortium coordinator may request access to proprietary information which is relevant for drafting the tender. For this purpose, they shall each submit:

1. NDU using the form attached in Annex I.G.;
2. completed and signed Legal Entity Form in the form available at https://ec.europa.eu/info/publications/legal-entities_en and a supporting evidence that the economic operator is authorised to perform the contract under the national law and has a capability to perform the contract, such as an inclusion in the trade register or equivalent, and
3. proof that the person signing the NDU is authorised to represent the Tenderer/subcontractor;
4. Signed declaration of full compliance to the Security Aspect Letter (Annex II.VI);
- b. Proof of appointment of Local Security Officer (LSO).

The latter two are needed for accessing the *RESTREINT UE/EU RESTRICTED* Information.

All documentation shall be sent to the following address unless signed electronically (with a valid electronic signature) as per Section 4.6:

European Union Agency for the Space Programme
Procurement and Legal Department
Non-Disclosure Undertaking under procurement procedure EUSPA/OP/20/21/Lot 2
Janovskeho 438/2
170 00 Prague 7 Holesovice,
Czech Republic

In parallel, the prime Tenderer/Candidate shall send the documents mentioned under number 1. to 3. above to tenders@euspa.europa.eu to allow a faster treatment of the request.

Only entities which, according to the submitted LEF and supporting documents, are established in a Member State of the European Union are eligible to receive proprietary information including any classified information. This does not prejudice the verification of the specific participation conditions subject to section 2.2.1 to be performed separately against the tenderers. In addition, the proprietary and/or classified information are only available to potential tenderers or subcontractors. EUSPA reserves the right to refuse the access to the proprietary and/or classified information to entities which cannot provide sufficient evidence of capability to perform the contract(s).

Without prejudice to further legal measures, exchange of any proprietary and/or classified information subject to NDU with any person who has not previously signed the relevant NDU may lead to exclusion from the procurement procedure under EUSPA's discretion.

Agreements previously signed by economic operators for access to the proprietary and/or classified information not related to this procurement are not regarded as fulfilling the present NDU's requirements.

Potential Tenderers that decided not to submit a tender must return all classified information within 15 (fifteen) working days from the deadline for submission of tenders (see table in section 1.7). Likewise, an unsuccessful Tenderer is required to return all classified information within 15 (fifteen) working days after publication of the relevant contract award notice in the Official Journal of the European Union.

2.2.4.4 Confidentiality Requirements

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

2.2.5 Organisation of tenderer

Candidates are required to present their organisation and, in particular their Core Team (i.e. the prime contractor, including, where relevant, all consortium members, and those subcontractors which are essential in order for the tenderer to meet the selection criteria under section 3.2).

The description shall include the role and responsibilities of the respective entities for the purpose of this procurement .

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);
- Subcontractor Letter of Intent (Annex I.D) on the part of every entity on whose resources it relies in order to fulfil the selection criteria, confirming the latter's irrevocable undertaking to make such resources available to the tender in case of being awarded the Contract.

The Contractor shall not change the composition of the Core Team without prior authorisation by EUSPA.

2.2.6 Subcontracting

2.2.6.1 General principles

The contractor may call on subcontractors to provide specific know-how. However, the contractor will remain the sole entity legally and financially responsible vis-à-vis the EUSPA.

The tenderer must indicate clearly which parts of the work will be sub-contracted and to what extent (percentage of the value of the services to be assigned over the full duration of the framework contract are expected to be subcontracted).

Sub-contractors must satisfy the eligibility criteria (i.e. participation conditions, selection criteria, exclusion criteria, minimum requirements) applicable to the award of the contract. Supporting evidence shall be submitted together with the offer for any subcontractor to which at least 10% of the value of the services to be assigned over the full duration of the framework contract are expected to be subcontracted.

EUSPA reserves the right to require further supporting documents that the subcontractor in question satisfies the exclusion and selection criteria set out in 3.1 and 3.2.

If the identity of the intended sub-contractor(s) is already known at the time of submitting the tender, the tenderer must identify the subcontractor in the tender. If the identity of the sub-contractor(s) is not known at the time of submitting the tender, the tenderer who is awarded the contract will have to seek EUSPA's prior written authorisation before entering into a sub-contract. Where no sub-contracting is indicated in the tender the work will be assumed to be carried out directly by the tenderer.

The Contractor shall not change any sub-contractor without prior authorisation by EUSPA.

2.2.7 Participation of consortia

Consortia may submit a 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 service provider or person heading the project (the leader). All members of the consortium must sign a power of attorney authorising this service provider or person to submit a tender on behalf of the consortium and to represent the consortium for any contract execution issue, including amendments of FWC. The template of this power of attorney is provided in Annex I.C.

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

Each member of the consortium must provide the required evidence for the exclusion and selection criteria (see sections 3.1 and 3.2 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 person will result in the automatic exclusion of that person. If that ineligible person belongs to a consortium, the whole consortium may be excluded.

2.2.8 Intellectual property rights

Applicable terms and conditions on intellectual property rights are defined in the draft contract (Annex II of the Invitation to Tender).

2.2.9 Terms of payment

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

2.2.10 Liability

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

2.2.11 Language of the FWC

English shall be the working language of the FWC including all correspondence with EUSPA. Therefore, all proposed personnel should have an excellent level of English as detailed in Minimum Requirements (see relevant criteria in each lot's 'Technical Terms of Reference').

EUSPA reserves the right to request certificates issued by an officially recognised institution or equivalent proof of knowledge of English.

2.2.12 Working conditions of the contractor's personnel

Working conditions of the contractor's personnel are defined in the draft FWC contract (Annex II to the Invitation to Tender).

3 Assessment of tenders

Tenderers may participate in one or more lots, but shall submit a separate offer for each lot, as the lots will be evaluated separately. The general exclusion and selection criteria common for all the lots are specified in these tender specifications while specific selection criteria applicable only for a specific lot are set out in the Annex I.1. The tenderer will be assessed based on both the criteria below and selection criteria depending on the lot(s) the tenderer is participating in.

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. Selection of tenderers on the basis of **selection criteria**;
3. Verification of compliance with the **minimum requirements**;
4. Evaluation of tenders on the basis of the **award criteria**.

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

The Contract will be concluded following the result of the evaluation of admissible tenders.

In order to demonstrate compliance with exclusion criteria, selection criteria and minimum requirements, the tenderers must sign the declaration of honour duly completed, signed and dated

(Annexes I.A **Annex I.B** to this document). In case of consortia or subcontracting, each member of the consortium and/or each subcontractor must provide a declaration of honour and submit documentary evidence.

3.1 Exclusion criteria

The tenderer shall not be in any exclusion situation described in the declaration of honour included in **Annex I.B**. Supporting evidence requested shall be submitted together with the offer.

3.1.1 EU Restrictive Measures Exclusion criteria

The Candidate/Tenderer shall provide a statement in the Cover Letter of their Tender (on his behalf and on behalf of his subcontractors, Core Team or not) guaranteeing that the Tenderer, and his subcontractors and respective relevant persons⁴ are not being a Restricted Person and do not fall under the scope of EU Restrictive Measures in the list published at www.sanctionsmap.eu. In case of discrepancies between 'sancitonsmap.eu' and the restrictive measures published in Official Journal of the EU, the latter prevails.

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 of Honour (Annex I.B) hereto (see section 4 applicable and to be provided completed and duly signed by to all Candidate/Tenderer and Subcontractors – Core Team or not).

3.2 Selection criteria

Tenderers must have the capacity below to perform the tasks.

In accordance with point 18.6 of Annex I FR, the candidate may, where appropriate, rely on the capacities of other entities. In such case, the candidate 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.D) 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 candidate must comply with all the conditions laid down in point 18.6 of Annex I 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 evidence, which must be provided in the tender, are indicated in the column "to be evidenced by" in the tables below.

3.2.1 Legal and regulatory capacity

⁴ Respective relevant persons are meant the natural or legal persons indicated in section 4 of the Declaration of Honour (Annex I.B)

Ref. #	Legal and regulatory capacity criteria	To be evidenced by:	Applicable to:
L1. All Lots	General requirement The tenderer must be authorized to perform the Contract under national law.	A duly filled in and signed Legal Entity Form⁵ alongside a copy of the trade or professional register excerpt of the entity and the supporting documents required in the form, i.e. copy of the value added tax (VAT) registration document .	All entities (Core Team and all non Core Team subcontractors)
L2. Lot 3	Participation conditions requirement Please refer to the section 2.2.1.1 of this Tender Specifications	Submission of a proof provided for under criterion L1; Additional supporting documents may be requested from the Tenderer.	All entities (Core Team and all non Core Team subcontractors).
L2. Lot 1 and 2	Participation conditions requirement Please refer to the section 2.2.1.2. of this Tender Specifications	1 Submission of a proof provided for under criterion L1 2 Filled in a dedicated section in the declaration of honour (Annex I.B) 3. a duly completed declaration of Ownership and Control in Annex I.J – Part 2 signed by an authorised representative and all evidence required in Annex I.J Parts 1 to and 32. Additional supporting documents may be requested from the Tenderer.	All entities (Core Team and all non Core Team subcontractors).
L3. All Lots	Professional conflicting interest that may negatively	a) As evidenced by specific, appropriate and conclusive means	All entities (Core Team and all non Core Team subcontractors)

⁵ For download: https://ec.europa.eu/info/publications/legal-entities_en

	impact the performance of the Contract	following section 2.2.4.2 to be provided with the proposal.	If a single tenderer submits tenders for more lots, specific attention will be paid to the demonstration that no professional conflicting interests exist between the execution of multiple lots.
L4. Lot 2	Appointed Local Security Officer	<p>Submission of a proof of appointment of the tenderer's respective LSO.</p> <p>There is no specific format or template for proof of appointment of the LSO. A signed declaration of the duly authorised representative of the concerned entity will be sufficient.</p> <p>The tenderer shall clearly list which entity (in case of consortium and subcontracting) will be handling classified information RESTREINT UE/EU RESTRICTED or above.</p>	<p>Core Team and all non Core Team subcontractors.</p> <p>With respect to subcontractors, the requirement applies only to those who will handle classified information RESTREINT UE/EU RESTRICTED or above.</p>
L5. Lot 2	Full compliance or acceptable deviations from applicability of the Security Aspects Letter (SAL) – Annex II.VI	<p>Statement of compliance in in the dedicated section of the Declaration of Honour (Annex I.B).</p> <p>Unless the Tenderer states full compliance with the SAL in the Annex I.B, it must provide a statement of applicability regarding requirements</p>	<p>Core Team and all non Core Team subcon-tractors.</p> <p>With respect to subcontractors, the requirement applies only to those who will handle classified information RESTREINT UE/EU RESTRICTED.</p>

		of the SAL (Annex I.H) with concise explanation on non-applicability of specific requirements to individual entities. The Contracting Authority reserves the right to assess the provided justification in order to establish compliance with the present selection criterion.	
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3.2.2 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	A stable financial capacity to sustain its business.	<p>Duly filled in Financial Statements relating to the Selection Stage in Annex I.E.</p> <p>Submitting a full copy of the tenderer's annual accounts (balance sheet, profit and loss account, notes on the accounts and auditors' remarks when applicable (with reference to Annex I.E)</p> <p>If, for some exceptional reason which the EUSPA considers justified, the tenderer is unable to provide the requested documents, the tenderer may prove its capacity by other documents which the 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</p>	Tenderer, including its consortium members.

		the right to request any other document enabling it to verify the tenderer's economic and financial capacity.	
F2.	<p>The tenderer must have a minimum yearly turnover (in EUR) of:</p> <p>200,000 (two hundred thousand) euro in the preceding the year of launch of the present tender procedure.</p> <p>If the tenderer does not have this turnover, it may submit, within its tender, any other elements demonstrating the financial and economic capacity to perform the contract.</p>	<p>Duly filled in Financial Statements relating to the Selection Stage in Annex I.E</p> <p>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>If, for some exceptional reason which the EUSPA considers justified, the tenderer is unable to provide the requested documents, the tenderer may prove its capacity by other documents which the 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.</p>	<p>Tenderer (all members of consortium cumulatively).</p> <p>The tenderer may also include the financial capacity of subcontractors in order to reach the required capacity level.</p>

3.2.3 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:

Ref #	Technical and professional capacity criteria	To be evidenced by:	Applicable to:
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T1.	Tenderers shall describe as part of their technical proposal all prior experience in the area of provision of legal services and judicial assistance.	Tenderer's technical proposal	Core Team and all non Core Team subcontractors.
T2	Proposed advisers must be registered with a Bar in an EU Member State or be otherwise qualified to practice law in this Member State	A signed declaration of the duly authorised representative of the concerned entity will be sufficient.	Core Team and all non Core Team subcontractors.

3.3 Minimum requirements

Tenderers must submit the information below with the tender. Failure to comply with minimum requirements at the submission time of the tender will lead to exclusion of the tenderer from the tender procedure.

Tenderers and/or consortia must state compliance with the minimum requirements below in the Declaration of Honour (Annex I.B) .

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 Annex X of Directive 2014/24/EU.	Corresponding statements of compliance in the declaration of honour – Annex I.B	Tenderer (all members of consortium and proposed subcontractors cumulatively)
M2	The tenderer must be able to communicate with the EUSPA in English (EUSPA internal working language). All proposed advisers shall be proficient, both orally and in writing, in English.	Corresponding statements of compliance in the declaration of honour – Annex I.B EUSPA reserves the right to request supporting evidence during the tendering procedure.	Tenderer (all members of consortium and proposed subcontractors cumulatively)

The failure to comply with minimum requirements will lead to exclusion of the tenderer from the tender procedure.

As regards M1, the tenderers are required to duly fill in for each lot the related template for technical answer provided in Annex I.E and provide the requested supporting documents.

As regards M2, it is sufficient for the tenderer to state compliance with the requirements in the Declaration of Honour (Annex I.B). EUSPA reserves the right to request supporting evidence during the tendering procedure.

3.4 Award stage

For the tender to be evaluated in award stage, the tenderer must have passed the exclusion and selection stages and fulfil the minimum requirements.

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

The tender will be evaluated separately for each lot.

Each qualitative award criterion will be scored out of one hundred as per reference table below and then weighted.

Scale	Score %
Not satisfactory / acceptable	0-49
Satisfactory	50-59
Good	60-70
Very Good	71-85
Excellent	86-95
Perfect	96-100

3.4.1 Qualitative award criteria

The evaluation of technical quality will be based on the award criteria, , as described in these tender specifications and in the Annex I.1 specific terms of reference per lot. To this end, the information in the technical proposal must be consistent with this document and the respective technical terms

of reference per lot. The technical proposal shall contain all necessary information to allow evaluation of the tender according to the technical criteria specified in the respective technical terms of reference per lot, including in particular the evidences indicated for each criterion. The quality of technical offers reaching this stage will be evaluated against the qualitative award criteria presented in the respective technical terms of reference per lot.

The qualitative award criteria will be scored out of one hundred and five (100). Tenders scoring **less than 50 points** (of a maximum of 100 points) against the technical award criteria or **less 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 as follows:

No	Award criteria	Subcriteria	Points
Q1	Quality and relevance of methodology	All Lots	Maximum points: 1020
		a) Adequacy of analysis of tasks to be performed;	Minimum points: 510
		(for lots 1 and 2)	
		b) Awareness of specificities, challenges and risks of public procurement procedures and of contract management for high tech and high-value contracts with specific focus on the subject matter of the concerned lot (European Union Space Programme, security); awareness of challenges and risks of high tech and high-value grant procedures with specific focus on the subject-matter of the concerned lot	Maximum points: 10 Minimum points: 5
		(for lot 3)	
		b) Awareness of specificities of public procurement procedures and of contract management for contracts in the field of administration (IT, human resources, outsourcing and logistics)	Maximum points: 10 Minimum points: 5

No	Award criteria	Subcriteria	Points
Q2	Quality and adequacy of the team proposed	All Lots Quality of the proposed advisers with specific reference to the delivery of the tasks under the concerned lot.	Maximum points: 30 (Minimum score required: 15 points)
Q3	Quality and adequacy of organisation to deliver the proposed scope of work	All Lots Quality and adequacy, completeness and suitability of proposed organisation and applied processes to fulfil tasks, including allocation of tasks, responsibilities and coordination between team members and proposed approach to ensure effective file management, review and administrative support.	Maximum points: 20 Minimum points: 10
Q4	Quality of processes for monitoring and mitigating conflict of interests during execution of the contract	All Lots Adequacy, completeness and suitability of the proposed measures for detecting, preventing and resolving any potential and/or emerged conflicts of interests during the contract execution including the description of operational structure and mechanisms for monitoring, preventing and resolving conflicting interests which mitigate or eliminate the potential, perceived or actual professional conflicting interests. 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;	Maximum points: 20 (Minimum score required: 10)
Total			Max: 100 (Minimum score required: 50)

3.4.2 Financial Award Criteria

3.4.2.1 General

Following the assessment of the qualitative award criteria, the tenders will be evaluated with regard to their financial proposals which shall be submitted in the form provided in Annex I.F [Lot No.].

In order to allow for a comparison of the offers, tenderers are requested to submit Financial Proposal following the financial offer (Annex I.F – Lot No.) which shall be duly filled in, stamped, initialed, 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.

Financial tables in Annex I.F for each lot shall be considered as a basis for the evaluation and award of the Framework contract. Specific contracts will be awarded according to Agency's needs and the provision of the draft contract.

The tenderer shall indicate the prices for man days. Rules on use and calculation of the man days and hourly rates are set out in Article I.5.3 of FWC (Annex II).

In this respect, quantity estimates in Annex I.F for each Lot are in no way binding. Upon signature of the framework contract, only man day rates provided by the tenderers shall apply.

Prices given by the tenderer shall include any and all costs related to the performance of the FWC, with the exception of travel and subsistence costs (Article I.5.2 of FWC).

Prices presented shall be firm and fixed and binding for the tenderer/contractor throughout the duration of the FWC and shall be used as a basis for calculation of prices of specific contracts to be executed under the FWC.

3.4.2.2 Calculation of financial score of the tender

The financial score will be calculated as follows: the basis for the calculation of financial score will be the total price of tender as set out in Annex I.F. The tender offering the least expensive Total Price of the Tender in (X) will receive 100 points. The other tenders will receive points according to the ratio between the least expensive Total Evaluation Price and their one, and then multiplied by 100, as shown in the formula below:

$$\text{Financial Evaluation Score of Tender X} = \left(\frac{\text{cheapest total price received}}{\text{total price of tender X}} \right) \times 100$$

3.4.3 Calculation of final score and ranking of tenders

The Contract will be awarded to the tenderer having passed the 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 **70/30** basis and will be calculated using the following formula:

SCORE FOR TENDER= 70% of Qualitative Evaluation score + 30% of Financial Evaluation score
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A ranking list of all tenderers will be established based on the 'score for tender' formula above. The Framework contract for each lot will be awarded to the tenderer which will be ranked the highest (the best price-quality ratio).

4 Conditions of submission of tenders

4.1 Disclaimers

Please note disclaimers referred to in the invitation to tender.

4.2 Visits to premises or briefing

Visits to EUSPA's premises or briefings during the tendering process are not foreseen.

4.3 Variants

Variants are not permitted under this procurement procedure.

4.4 Preparation costs of tenders

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

4.5 Presentation of the tender

4.5.1 Language

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

4.5.2 Outer envelopes

Each Tender must be presented in one (1) outer envelope or parcel, which should be sealed with adhesive tape, signed across the seal. Tender for each lot must be submitted in a separate envelope or parcel.

Each outer envelope shall carry the following information:

- the reference number of the Invitation to Tender **EUSPA/OP/20/21/Lot [insert 1 to 3]**, the project title "LEGAL ADVICE AND SUPPORT TO EUSPA"
- the lot number for which the envelope is submitted & title of the lot
- **the name of the tenderer**
- the indication "***Tender - Not to be opened by the internal mail service***"
- **the address for submission of tenders** (as indicated in **section 4.7**)
- **the date of posting** (if applicable) should be legible on the outer envelope.

4.5.3 Inner envelopes

Each outer envelope shall contain **three (3) inner envelopes**, namely, **Envelope 1, 2 and 3** stating the content of each:

- Envelope 1: "ADMINISTRATIVE DOCUMENTS and DOCUMENTS RELATING TO EXCLUSION and FINANCIAL AND ECONOMIC SELECTION CRITERIA", with the name and stamp of the tenderer and the reference number of the Invitation to Tender "**EUSPA/OP/20/21**", lot number;

- Envelope 2: “TECHNICAL OFFER”, with the name and stamp of the tenderer and the reference number of the Invitation to Tender “ **EUSPA/OP/20/21**”, lot number;
- Envelope 3: “FINANCIAL OFFER”, with the name and stamp of the tenderer and the reference number of the Invitation to Tender “ **EUSPA/OP/20/21**”, lot number.

Each inner envelope shall contain **one (1) ORIGINAL and one (1) COPY in electronic format**. The original tender shall be marked “**ORIGINAL**”.

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.

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

4.6 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. bound or stapled or organised in files).

The documents which must be signed according to the tender specification may 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://webgate.ec.europa.eu/tl-browser/#/>).

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

4.6.1 Administrative file (ENVELOPE 1)

Each tender shall include an administrative file, containing:

Ref. #	ENVELOPE 1 – ADMINISTRATIVE DOCUMENTS and DOCUMENTS RELATING TO EXCLUSION and LEGAL AND FINANCIAL/ECONOMIC SELECTION CRITERIA (one (1) ORIGINAL, one (1) ELECTRONIC COPY per envelope)
(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 requirements in this Invitation to Tender; • The tenderer's undertaking to provide the services; • A list of all the documentation included/enclosed in the tender; • A list of the legal entities involved, specifying each entity's role and qualifications; • Tenderer's contact details. <p>If the tender is submitted by a consortium or grouping:</p> <p>specify each member's role and qualifications, include a letter signed by each member undertaking to participate as detailed.</p> <p>In case of 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 Annex I.A (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: http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm and any supporting documents required in this template.</p> <p>Please take into consideration the instructions from this link before filling in the documents: http://ec.europa.eu/budget/library/contracts_grants/info_contracts/instructions_fich_le_en.pdf.</p>
(4)	<p>A duly signed and dated statement of authorization/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 on behalf of the organization, should it be awarded it.</p>

(5)	<p>The duly filled in, signed and dated Financial Identification Form using the template available at: http://ec.europa.eu/budget/contracts_grants/info_contracts/financial_id/financial_id_e_n.cfm</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> <p>Please pay attention to the supporting documents that should be submitted together with duly filled in financial identification form.</p>
(6)	<p>The duly filled in, signed and dated Declaration(s) of Honour relating to exclusion criteria and selection criteria using the template in Annex I.B- one per economic operator (i.e. tenderer, all consortium members, all subcontractor(s), if any).</p>
(7)	<p>The duly filled in, signed and dated Financial Statement relating to the selection stage using the template in Annex I.E, complemented by the full financial statements for the last three financial years and a statement of turnover relating to the relevant services for this tender for the last three financial years as requested in section 3.2.2 of these tender specifications.</p>
(8)	<ul style="list-style-type: none"> - All evidence relating to the selection criteria in section 3.2.1 above relating to legal and regulatory capacity criteria, and - All evidence relating to the selection criteria of a respective lots relating to technical and professional in section 3.2.3 - All evidence to the exclusion criteria in section 3.1
(9)	<p>All evidence relating to the minimum requirements in section 3.3</p>
(10)	<p><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 an tender on behalf of the consortium, sign and manage the Contracts, using the template in Annex I.C.</p>
(11)	<p><u>For the proposed subcontractors part of the Core Team</u>, duly filled in, signed and dated subcontractor Letter of Intent using the template in Annex I.D</p>
(12)	<p>Description and measures ensuring compliance with the subcontracting requirements under section 2.2.6</p>
(13) Lot 1 and 2	<p>The duly filled in, signed and dated declaration of Ownership and Control using the template in Annex I.J – Part 2 (one per tenderer including all economic operators involved in the consortium and subcontractors)</p>
(14)	<p>An electronic copy of each document submitted in the administrative envelope on CD-ROM, DVD or USB flash drive with the full set of documents in machine readable format (MS Office 2003 or later, or Adobe Reader Version 8.0 or later), strictly identical in full to the original tender</p>

4.6.2 Technical proposal (ENVELOPE 2)

Each tender shall include an technical proposal, containing:

	ENVELOPE 2 – TECHNICAL OFFER (one (1) ORIGINAL, one (1) ELECTRONIC COPY)
(1)	<p>Technical Proposal, in accordance with the requirements of the present Tender Specifications</p> <p>divided into following sections with headings:</p> <ul style="list-style-type: none"> • Executive Summary (2 pages maximum) • Lot 2 - The tenderer must (i) confirm its full compliance with Security Aspects Letter (Annex II.VI) in the Declaration of Honour (Annex I.B) or (ii) define in Annex I.H its partial or non-compliance to the requirements and tasks described in this document and its technical annexes. Any non-compliance or partial compliance must be explained and the level of compliance committed to be reached shall be indicated. • One section per each award criterion, subdivided into subsections per subcriteria. Each of these sections and subsections shall include the complete approach related to the respective award criteria and subcriteria. <p>Tenderers (whether being sole contractor or part of a consortium/grouping) are requested to demonstrate how their proposed methodology/strategy/organisation will guarantee the most efficient implementation and management of the requested tasks. In particular, the tenderers must include into the technical proposal description of proposed approach as regards:</p> <ul style="list-style-type: none"> - methodology, as defined under award criterion Q1; - team proposed for the delivery of services, as defined under award criterion Q2; The Tenderers are requested to provide the profiles of the consultants with a view to the categories of seniority required in Annex I.F for the respective Lot and describe their professional and technical experience, justifying the suitability of the candidates for the delivery of the scope of the tender; - Experience for the proposed team in the technical proposal shall be demonstrated by curriculum vitae of advisers which shall be submitted in English, preferably according to the Europass format (available at: http://europass.cedefop.europa.eu/en/documents/curriculum-vitae/templates-instructions). The proposed team's experience has to address the proposed staff profiles as listed in Annex I.F for each Lot.

	<ul style="list-style-type: none"> - organisation to deliver the proposed scope of work, as defined under award criterion Q3; - monitoring and mitigation of conflict of interests during execution of the contract, as defined under award criterion Q4; <p>EUSPA reserves the right to evaluate the award criterion and subcriteria only in respect of information provided in the such sections and subsections and not to take into account information provided in other parts of the tender, unless clear references are made to them.</p> <ul style="list-style-type: none"> • Justification note on absence of conflict of interests in any of the cases described in the declaration of honour, including but not limited to the case of involvement (previous or current) in any activities which may as a result impact impartial and objective performance of the present FWC, and/or in the European Space Programme components (i.e. Galileo/EGNOS programmes, Copernicus, GOVSATCOM, SSA).
(3)	An electronic copy of each document submitted in the technical envelope on CD-ROM, DVD or USB flash drive with the full set of documents in machine readable format (MS Office 2003 or later, or Adobe Reader Version 8.0 or later), strictly identical in full to the original tender.

4.6.1 Financial proposal (ENVELOPE 3)

4.6.1.1 Content

Each tender shall include a financial offer, containing

	ENVELOPE 3 – FINANCIAL OFFER (one (1) ORIGINAL and one (1) ELECTRONIC COPY per envelope).
(1)	Duly signed and dated financial proposal using the template in Annex I.F for the respective Lot
(2)	An electronic copy of each document submitted in the financial envelope on CD-ROM, DVD or USB flash drive with the full set of documents in machine readable format (MS Office 2003 or later, or Adobe Reader Version 8.0 or later), strictly identical in full to the original tender

The financial offer must respect the following conditions:

4.6.1.2 Unit prices and total price

Unit prices quoted in **Annex I.F**, must be firm and fixed and are not subject to revision. The unit prices in the financial offer will constitute the price list for the duration of the Contract⁶, and shall include all costs and expenses which are necessary for performance of the tasks, with the exception of travel costs, daily subsistence allowance and accommodation incurred for the performance of tasks on Mission⁷. Mission costs shall be paid in addition according to Article I.5.2 of the FWC.

These costs and expenses are indicatively: effort for all the tasks (including drawing up quotations and reports) necessary for their performance, including all costs other than the daily allowance, accommodation and travel costs incurred in connection with Missions (e.g. management of the project, administrative support and any support resource, coordination, quality control or currency conversion fees).

4.6.1.3 VAT exemption

As EUSPA 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.

4.6.1.4 Currency and exchange rates

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

4.7 Submission

Tenders may be submitted by post mail, express mail, commercial courier or hand-delivered and are to be submitted not later than the relevant date and time specified in section 1.7 above to the following address:

EU Agency for the Space Programme
Procurement and Legal Department
Tender ref: EUSPA/OP/20/21 , Lot [number] & [title]
Janovskeho 438/2
170 00 Prague 7
Holesovice, Czech Republic

Tenders sent by post mail, express mail and commercial courier shall be addressed to this address not later than 23:59 (local time) of date indicated in section 1.7. In this case, a receipt must be obtained as proof of submission.

⁶ Price grid quantities estimates are provided by the EUSPA in Annex I.F for each Lot. Such estimates will only be used by the 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.F for each lot shall be binding.

⁷ As defined in Article II.1 of FWC

In case the tender is hand-delivered, a receipt must be obtained as proof of delivery, signed and dated by the desk officer of the EUSPA reception. The reception is open from 08.00 to 17.00 Monday to Thursday, and from 8.00 to 16.00 on Fridays. It is closed on Saturdays, Sundays, European Commission holidays and some Czech national holidays. The hand-delivery of tenders outside the indicated business hours cannot be guaranteed and it will be usually not possible due to absence of the desk officer of the EUSPA reception.

Upon submission of tenders by post mail, express mail, commercial courier or hand-delivery, tenderers shall send an email of notification of submission to tenders@euspa.europa.eu. The subject of the email shall be: “ EUSPA/OP/20/21 Lot [number and Title]: submission of tender by [insert name of legal entity / consortium]” and it shall contain as attachment the relevant proof of submission.

Tenderer may submit the tender on paper or only on electronic media. If it is submitted on electronic media, it shall contain 3 (three) CD-ROM, DVD or USB sticks with the full set of documents. The documents on these media must be identical and they shall be in machine-readable format (MS Office 2003 or later, or Adobe Reader Version 8.0 or later). These media must be inserted in the outer envelope as described in the tender specifications. They shall contain the folders described above.

The electronic versions of the tender are considered as originals.

The tenderers must ensure that the electronic medias and files are readable. In particular, they must take all the necessary measures to protect them during the transport to avoid any damage to them.

The tenderers are advised to:

- use, and include into the outer envelope, different types of media (e.g. DVD and different types of USB sticks) in order to eliminate the risk of non-readable media and files.
- create hashes of submitted files (in the form of algorithm MD5, SHA-256 or higher) and insert them, preferably as a paper printout, into the outer envelope, together with the media.
- ensure that the data on these media cannot be altered.

If the submitted media and files are not readable, the tender will have the possibility to re-submit the media upon condition that:

- hashes of the original files have been created;
- hashes of the re-submitted files are created and such hashes are strictly identical to the hashes of the original files inserted into the original outer envelope.

If the submitted media and files are not readable and the Tenderer does not resubmit media and files which are strictly identical to the original ones and related hashes, within a reasonable delay upon notification by the Contracting Authority that the files submitted cannot be read, the tender will be rejected.

The documents which must be signed according to the tender specification may 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://webgate.ec.europa.eu/tl-browser/#/>).

4.8 Public opening of the tenders

The tenders will be opened on the date and time specified in section 1.7 above, in the offices of the EUSPA, Janovskeho 438/2, Prague 7, Czech Republic.

This opening session will be public. One representative of each tenderer may attend the opening of the tenders. At the end of the opening session, the Chairman of the opening committee will disclose the name of the tenderers and the decision concerning the admissibility of each offer received. The prices indicated in each tender received will not be communicated.

Tenderers who wish to attend are invited to send a request (at least 5 (five) calendar days before the date of the opening) to the following e-mail address: tenders@euspa.europa.eu, specifying the name of the attending person and the tenderer (s)he represents. The subject of the email shall be: "EUSPA/OP/20/21 Lot [x]: request from *[insert name of legal entity / consortium]* to participate to the opening session"

The opening session may be organised via videoconference. Tenderers who expressed interest in participating in the opening session will receive contract details for participation in the videoconference.

The opening session may be recorded. In such a case the participants will be informed about the recording at the beginning of the session.

Maximum one representative of each tenderer may attend the videoconference. At the beginning of the session, the representatives of the tenderers will be asked to point the camera at their ID card or passport and expressly declare their identity.

4.9 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.

4.10 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 to tenders@euspa.europa.eu. The subject line of the e-mail has to quote the reference of the procurement procedure: EUSPA/OP/20/21.
- Requests for additional information received after deadline specified in section 1.7 above cannot be processed.
- The 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.

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.

4.11 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.

4.12 Data protection

Any personal data that may be included in the tenders received during the present procedure will be processed in accordance with (1) the applicable rules on the protection of natural persons with regard to the processing of personal data by the EU institutions, bodies, offices and agencies (currently Regulation (EU) 2018/1725) and (2) the modalities of the following privacy statement:

Identity of the controller and Data Protection Officer:

1. For what concerns the processing purposes 1 and 2 below:

- **Controller for all lots:** EU Agency for the Space Programme (EUSPA), Head of Legal and Procurement Department (the Delegated Controllers), tenders@euspa.europa.eu.
- **Data Protection Officer:** EUSPA Data Protection Officer, Janovskeho 438/2 170 00 Prague 7, Czech Republic, dpo@euspa.europa.eu.

2. For what concerns the processing purpose 3 below:

- **Join Controllers:** (1) EU Agency for the Space Programme (EUSPA), Head of Legal and Procurement Department (the Delegated Controllers), Janovskeho 438/2 170 00 Prague 7, Czech Republic, tenders@euspa.europa.eu and (2) European Commission, Directorate-General for Budget of the European Commission ('DG Budget'), DG Budget's Data Controller BUDG-FICHIER-TIERS@ec.europa.eu
- **Data Protection Officers:** (1) EUSPA Data Protection Officer, Janovskeho 438/2 170 00 Prague 7, Czech Republic, dpo@euspa.europa.eu and (2) DG Budget Data Protection Coordinator BUDG-DATA-PROTECTION-COORDINATOR@ec.europa.eu

Purpose of the processing:

1. the management and administration of the tender procedure;
2. the preparation of the contract, only with regard to the personal data of the awarded tenderer(s);
3. only with regard to the personal data of the awarded tenderer(s):
 - the registration of the necessary "legal entities" and "bank account" files in the Commission Financial System ABAC (Accrual Based Accounting)
 - the execution of payments towards the registered entities
 - the registration of the related financial transactions

Data concerned:

- Contact information of tenderers, e.g. name and last name of authorised representatives, email address, postal address, telephone numbers, company/agency/body and department, country of establishment, position
- Financial information of tenderers if relating to a natural person, e.g. bank account number, IBAN and BIC codes, address of respective bank branch, name of bank account holder
- Information that may be included in CVs of experts proposed by tenderers: name and last name of proposed experts, educational background, professional experience including details on current and past employment, technical skills and languages etc.
- Data related to criminal convictions and offences of: (1) members of the administrative, management or supervisory body of tenderers, (2) natural persons who have powers of representation, decision or control of the tenderer, (3) owners of the tenderers as defined in Article 3(6) of Directive (EU) 2015/849, (4) natural persons assuming unlimited liability for the debts of the tenderers, (5) natural persons who are essential for the award or the implementation of the contract; such data are collected through the submission of the declaration of honour.

It is specifically noted that:

- the abovementioned processing operations will not entail the processing of any special categories of personal data other than the data related to criminal convictions and offences mentioned above. If, however, a tenderer submits such data at its own volition and without any

specific request, it is implied that the data subject has given its consent to the processing of such data.

- the provision of personal data by the tenderers is a requirement necessary to enter into the FWC

Legal bases: Article 5(1)(a), 5(1)(c), 10(2)(a) and 11 of Regulation (EU) 2018/1725

Lawfulness of the processing:

- Article 5(1)(a): the processing is necessary for the performance of a task carried out in the public interest, specifically the management and functioning of the EUSPA through the launching of tender procedures.
- Article 5(1)(c): the processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract; the EUSPA processes the personal data of the tenderers at their request (through the submission of their tenders) in order to take the necessary steps prior to enter into the contract with the awarded tenderer(s).
- Article 11: the processing of personal data relating to criminal convictions and offences shall be carried out only when authorised by Union law; such processing, in the form of an extract from the judicial record or declaration of honour, is explicitly foreseen in the Financial Regulation⁸ (Articles 136-140)
- Article 10(2)(a): as explained above, in case any tenderer submits special categories of data at its own volition and without any specific request, it is implied that the data subject has given its consent to their processing

Recipients of the data processed:

- a limited number of staff of the EUSPA managing this tender procedure
- data processors:
 - a limited number of staff of EUSPA Contractors assisting EUSPA staff in the management of this tender procedure
 - a limited number of staff of EUSPA Contractors in charge of the provision of hosting services for the EUSPA's servers
 - a limited number of staff of the Directorate-General for Budget of the European Commission ('DG Budget')
- bodies charged with a monitoring or inspection task in application of Union law (e.g. internal audits, Financial Irregularities Panel, European Anti-fraud Office – OLAF)

⁸ Regulation (EU, Euratom) 2018/1046

- members of the public: the winning entities will be announced to the public, which may also entail the announcement of the personal data of the representatives of such entities (e.g. name, last name)

Information on the retention period and storage locations of personal data:

- any information pertaining to this tender procedure shall be kept for up to 7 years following the end of the year when the contract(s) has been awarded as a result of the tender procedure; files may also have to be retained until the end of a possible audit if one started before the end of the above period;
 - all collected data may be stored:
 - electronically on EUSPA servers with access control measures (i.e. one or two factor authentication) hosted by EUSPA contractors which are located in the EU and abiding by the necessary security provisions
 - physically in secure storage cupboards in the EUSPA HQ in Prague
- electronically and physically on the servers/cupboards of the processors identified above (all of which are established in an EU Member State)

Transfer of personal data to third countries:

In case the awarded tenderer(s) is/are established in countries outside the territory of the European Union or the European Economic Area ("third countries"), certain personal data which are necessary for the execution of payments related to the implementation of the awarded contract (i.e. name of bank account holder, bank account number) may be transferred to the third countries where the concerned tenderer(s) is/are established.

In case such transfer is made to third countries for which (1) no adequacy decision has been taken by the Commission in accordance with Article 47 of Regulation (EU) 2018/1725 and (2) no appropriate safeguards as foreseen under Article 48 of Regulation (EU) 2018/1725 exist, the legal basis for the transfer shall be considered to be Article 50(1)(b); specifically, the transfer is necessary for the performance of the contract between the awarded tenderer(s) and the EUSPA.

The data subjects' rights:

- Data subjects have the right of access, rectification and erasure of their personal data or restriction of processing at any time, provided that there are grounds for the exercise of this right, as per the applicable rules
- Data subjects have the right to object, on grounds relating to his or her particular situation, at any time to the processing of personal data concerning him or her. Requests shall be addressed to the EUSPA Legal and Procurement Department at tenders@euspa.europa.eu by describing the request explicitly. It is noted that pursuant to such a request, the Controller shall no longer process the personal data unless the Controller demonstrates compelling legitimate grounds for

the processing which override the interests, rights and freedoms of the data subject or for the establishment, exercise or defence of legal claims

- Data subjects may obtain their personal data, submitted to the EUSPA, in a structured, commonly used and machine-readable format and transmit them to another controller, provided that there are grounds for the exercise of this right, as per the applicable rules
- Data subjects are entitled to lodge a complaint at any time with the European Data Protection Supervisor (<http://www.edps.europa.eu>; EDPS@edps.europa.eu) if they consider that their rights under the applicable rules on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data have been infringed as a result of the processing of their personal data by the EUSPA
- Only in cases where the data subjects' consent is used as the legal basis for the processing of personal data (i.e. in case they have submitted special categories of data at their own volition and without any specific request), they can withdraw their consent at any time, without affecting the lawfulness of the processing before the withdrawal

Any request for the exercise of any of the abovementioned rights shall be addressed to the EUSPA Legal and Procurement Department at tenders@euspa.europa.eu; data subjects are kindly requested to describe their requests explicitly.

4.13 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.

5 Acronyms and Definitions

Acronym	
EUSPA	European Union Agency for the Space Programme
FWC	Framework Service Contract
FR	Financial Regulation
GSMC	Galileo Security Monitoring Centre
LEF	Legal Entity Form
NDU	Non-Disclosure Undertaking
PIC	Participant Identification Code
SAL	Security Aspects Letter
SC	Specific Contract
SME	Small and medium enterprise

6 List of tender specifications annexes

These tender specifications have the following annexes:

Annex	Title
Annex I.1	Technical terms of reference
Annexes I.A- I.B-I.C-I.D (Administrative Annexes)	Template Identification Sheet of the Tenderer - Template Declaration of Honour - Power of Attorney - Subcontractor Letter of Intent
Annex I.E	Template financial statements relating to the selection stage
Annex I.F [for each Lot]	Template Financial Offer
Annex I.G (only Lot 2)	Non-Disclosure Undertaking
Annex I.H (only Lot 2)	Statement of applicability regarding requirements of the SAL
Annex I.I	EUSPA Policy on the prevention and management of conflicts of interest
Annex I.J – Part 1 (only Lots 1 and 2)	Criteria for assessment of participating conditions
Annex I.J – Part 2 (only Lots 1 and 2)	Criteria for assessment of participating conditions
Annex I.J – Part 3 (only Lots 1 and 2)	Additional information regarding the assessment of participating conditions

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