

## **SPECIAL CONDITIONS OF TENDER**

### **Ocean Heat Flux**

#### **INTRODUCTION**

For the purposes of this Invitation to Tender (“**the ITT**”), the Agency’s “General Conditions of Tender for ESA Contracts” (“**the GCT**”) shall apply as specified, amended or supplemented by these Special Conditions of Tender (“**the SCTs**”). In the event of conflict between the GCT and the SCTs, the SCTs shall prevail.

The GCT are set out at Annex IV to the ESA Procurement Regulations ESA/REG/001, rev 3 and are also available as a separate document on <http://emits.sso.esa.int> under "Reference Documentation" ---> "Administrative Documents" --> “General Conditions of Tender for ESA Contracts (ESA/REG/001, rev. 3, Annex IV)”.

The GCT are composed of the following parts, and this format is followed in the SCTs:

- Part 1 : General Conditions for Participating in a Tender
- Part 2 : General Conditions for the Presentation and Submission of Tenders
- Part 3 : General Conditions for the Contents of a Tender

#### **Part 1 : GENERAL CONDITIONS FOR PARTICIPATING IN A TENDER**

**Part 1 of the GCT applies in full and shall be strictly complied with.**

Part 1 of the GCT stems directly from ESA’s Procurement Regulations (ESA/REG/001, rev.3) and describes the eligibility requirements for economic operators wishing to respond to an ESA ITT, and the need to satisfy certain information and registration requirements.

#### **Part 2 : GENERAL CONDITIONS FOR THE PRESENTATION AND SUBMISSION OF TENDERS**

Part 2 of the GCT shall apply, subject to the amendments and additions below. The numbering follows the numbering used in Part 2 of the GCT.

##### **A. General standards of presentation**

Part 2A of the GCT shall apply, with the following amendment:

##### **2. Language of Tender**

The tender and all correspondence relating to it shall be written in English.

##### **B. Formal conditions, commitments, undertakings**

Part 2(B) of the GCT applies, with the following amendments:

##### **12. Responsiveness of the Tender**

This section of the GCT is replaced by the following notice to Tenderers:

The Agency has identified ‘**Key Acceptance Factors**’ with which a Tenderer must explicitly state its compliance, in order for its tender to be admitted for evaluation. These Key Acceptance Factors are listed in **Form A** and **Form B** which are set out at Annex 2 below.

**Tenderers MUST complete Forms A and B in full and attach a signed copy to the cover letter of their tender. Failure to complete Forms A and B in full and attach a signed copy to the cover letter will result in the Tenderer’s tender NOT BEING ADMITTED FOR EVALUATION.**

- Form A

Form A contains the statements of mandatory compliance with the Key Acceptance Factors.

**Failure to accept any of the statements contained in Form A will result in the Tenderer's tender NOT BEING ADMITTED FOR EVALUATION.**

- Form B

The Tenderer shall use the statements in Form B to confirm that the contents of its tender are compliant with the ITT requirements. If a Tenderer cannot accept one of the statements listed in Form B, because its tender is non-compliant or only partially compliant in respect of one of the requirements, the Tenderer must strike out the relevant statement and state clearly in its cover letter which part of its tender is non-compliant and where in its tender it has explained and justified the non-compliance.

**Failure to state compliance or to justify any non-compliance will result in the tender NOT BEING ADMITTED FOR EVALUATION.**

If, at any time in the course of evaluating the tender, the Agency discovers that the contents of the tender contradicts the compulsory compliance statements under Form A, or considers that the justification(s) provided for non-compliance(s) under Form B are not satisfactory, the Agency shall eliminate the tender from any further evaluation.

### 13. Use of Test Facilities

This section does not apply.

#### **C. Conditions relating to intellectual property rights (IPR)**

Part 2(C) of the GCT is replaced by Section 6.2 below.

#### **D. Conditions relating to Export/Import licences/authorisations and related documentation**

Part 2(D) of the GCT applies in full.

#### **E. Conditions relating to subcontracts**

Part 2(E) of the GCT applies, with the following amendment:

For the purpose of this ITT, the Tenderer is not required to place subcontracts on a competitive basis. The Agency does not intend to participate in subcontractor evaluation.

#### **F. Amendments to documents and communications**

Part 2(F) of the GCT applies in full.

#### **G. Dispatch and receipt conditions**

Part 2(G) of the GCT applies, with the following amendment:

Tenders shall be dispatched in double envelope:

- The outer envelope must be marked "COMMERCIAL-IN-CONFIDENCE TO BE OPENED BY THE TENDER OPENING BOARD ONLY". It shall also show the number and title of the Invitation to Tender and shall contain the original of the signed cover letter.  
This outer envelope shall be opened by the Tender Opening Board, which will check that the applicable "Key Acceptance Factors" have been complied with. In case of negative assessment, the tender will not be admitted for evaluation and the inner envelope containing the tender shall remain unopened and be returned to tenderer.
- The inner envelope shall be sealed and shall be without indication of origin but marked with the ITT name and the reference number of the ITT.

A copy of the cover letter shall also be included in each of the individual copies of the tender.

Tenderers are asked to submit the digital version of the proposal in one PDF containing all sections of the proposal, including the PSS forms.

**H. Non benefits requirements**

Part 2(H) of the GCT applies in full.

**I. Conditions relating to security screening of tenderers personnel**

Part 2(I) of the GCT does not apply to this ITT because the resulting contract will not involve the provision of on-site personnel on ESA establishments, sites or stations.

**Part 3 : GENERAL CONDITIONS FOR THE CONTENTS OF A TENDER**

**Part 3 of the GCT is replaced in full by the sections below.** While the Tenderer is invited to consult Part 3 to the GCT for background information (only), the following section sets out the complete set of requirements to be addressed in each part of the Tenderer’s proposal.

**1- COVER LETTER**

**1.1 Forms A and B**

**PLEASE NOTE NEW REQUIREMENT: The Tenderer MUST attach to its cover letter its completed and signed Forms A and B (see Part 2(B)(12) above and Annex 2 below). Failure to attach the completed and signed Forms A and B will result in the tender NOT BEING ADMITTED FOR EVALUATION.**

Tenderers are also reminded that any compliance statement made in Forms A and B which is contradicted by the content of the tender may result in the subsequent elimination of the tender by the Agency’s Tender Evaluation Board.

**1.2 Cover Letter Tables**

The cover letter of your tender must contain, as a minimum, the following information:

**TABLE i) - Bidding Team**

Full legal name	Registered Office Address	SME (Y/N)	esa-p Tenderer Code <sup>1</sup> (in the format 6xxxxxxxxx)	esa-p Vendor Code (in the format 1xxxxxxxxx)	Country	Amount allocated from the FFP (Euro)
<b>Prime</b>						
<b>Sub 1</b>						
<b>Sub 2</b>						
<b>TOTAL</b>						

<sup>1</sup> For the purpose of invoicing under a resulting Contract, the Tenderer will be expected to use the Agency’s esa-p system. For those Tenderers who have **already** entered into contracts with the Agency, the esa-p Bidder and Vendor Codes can be obtained from [IDHelp@esa.int](mailto:IDHelp@esa.int) or +39 06 94180700, option 2. For Tenderers who have not yet entered into a contract with the Agency, an ESA-P Vendor Code will not be available at the time of finalising the contract and the Agency will provide the esa-p Vendor Code at Contract signature.



**TABLE ii) – Geographical Distribution Table**

	<b>Country</b>	<b>Amount (EURO)</b>
<b>Contractor</b>		
<b>Sub 1</b>		
<b>Sub 2 etc</b>		
	<b>Total FFP</b>	

**TABLE iii) – Prime Contractor’s Contact Details and Representatives**

<b>Contact person</b> to whom all communication related to the bid should be addressed	Name: Telephone: Fax: Email address: Postal address:	
Person who will be responsible for the <b>Technical management</b> of any resulting contract, and who would be nominated as such in the contract:	Name: Telephone: Fax: Email address: Postal address:	
Person who will be responsible for the <b>Contractual management</b> of any resulting contract, and who would be nominated as such in the contract:	Name: Telephone: Fax: Email address: Postal address:	
Person who will <b>sign</b> any resulting contract	Name: Job Title:	

**2- EXECUTIVE SUMMARY**

This Chapter of the proposal shall contain:

- 2.1 A description of the team composition and organisation proposed, in terms of names of the participants, competences, roles and complementarities. The Tenderer shall explain the legal framework under which it has organised/will organise its consortium (i.e. the type of legal relationship such as subcontracts, partnerships or agreements which it has already entered into or the plans which it has to finalise the subcontracts).
- 2.2 A brief overview of the programme of work and of the approach taken to address the main requirements of the Agency's Statement of Work 'Ocean Heat Flux', ref. EOP-SA/0261/PPM-ppm, issue 1, rev. 10, dated 7 November 2013 (**the SoW**).
- 2.3 An explanation of the contents and layout of the tender and the traceability of the tender to ESA's ITT.
- 2.4 A description of the major critical areas perceived, be they technical, management and/or contractual.
- 2.5 A list of the assumptions which the Tenderer has made when writing its proposal.
- 2.6 A list of all used acronyms and abbreviations used in the Proposal.
- 2.7 A table summarising the input data and output products (with time span, resolution, sampling).
- 2.8 A Table of Contents list, which lists the information provided in each section of the proposal.

**3- TECHNICAL PROPOSAL**

- 3.1 The Tenderer must demonstrate its understanding of the technical requirements. It shall analyse the background to the project, and explain what the project seeks to achieve and why.
- 3.2 The Tenderer is encouraged to expand on the requirements of the SoW, where it feels this is appropriate, and discuss in depth any further difficulties which it will need to overcome to achieve the project requirements.
- 3.3 The Tenderer shall elaborate on the scientific challenges to be faced, the limitations of current methods and products, and the methodological approach it proposes to tackle these issues.
- 3.4 The Tenderer must explain clearly the methodology it will use to generate the fluxes (including the ensemble, and uncertainty estimate), validate them and evaluate their quality and suitability.
- 3.5 For each task, the Tenderer must explain exactly how it proposes to fulfil the SoW requirements, providing a step-by-step description for each task.
- 3.6 The Tenderer shall describe its approach for ensuring the sustainability of the web portal.
- 3.7 The Tenderer shall include a short preliminary draft of the requirement baseline document.
- 3.8 The Tenderer shall include a synthetic Data Provisioning Plan, in which it shall list of all the tests, verification, validation and demonstration datasets, which it intends to use during the project (in particular for the reference data set), and identify the sources, availability and cost of that information.
- 3.9 The Tenderer shall describe briefly its understanding of past and on-going activities which have possible implications on the project. The Tenderer shall provide a plan for effective collaboration with relevant existing external activities. The proposal will inter alia be judged on its effectiveness to build on such existing activities. Duplication of existing activities is not acceptable. Any potential overlap between the work performed under any related projects shall be avoided and - if not avoidable - duly identified and justified in the proposal.
- 3.10 The Technical Proposal shall be supported by the following annexes:
  - a) A first iteration of a Risk Management Plan. The document shall include an initial Risk Register, in which the Tenderer shall identify any potential risks which may affect the project during the lifetime of the Contract. The Tenderer shall fully discuss the solutions it proposes to deal with those risks, should they materialise during the project lifetime.
  - b) A Traceability and Compliance Matrix, in which the Tenderer shall cross-reference to the applicable numbered section of the proposal all ESA requirements and task activities to be performed and shall explain its compliance with each.

If the Tenderer proposes deviations from or non-conformances to the Agency's technical requirements, it must explain the following:

- the requirement which is subject to challenge;
- the consequence of the proposed deviation/non-conformance;
- the planning consequences, including at least the effect on nominated milestones and delivery dates, at each hierarchical level affected; and
- the price consequence of the proposed deviation/non-conformance, at each hierarchical level affected.

The Tenderer is required to explain in detail and justify any non-compliance or deviation. Any deviation shall be subject to negotiation and the Agency is not obliged to accept a deviation or non-compliance.

#### 4- MANAGEMENT PROPOSAL

The Tenderer shall submit a Management Proposal in which it shall demonstrate how it would manage the activities and maintain sufficient resources to fulfil the service requirements. The Management Proposal shall address, in particular, the following points:

##### 4.1 Background Experience of the Company(ies)

The Tenderer shall describe in detail the relevant experience which it and its subcontractors have for providing the service. **The Tenderer's consortium must include, as a minimum, strong and proven expertise the following areas:**

- Oceanography, with particular interest in air-sea interactions;
- Ocean heat flux quantification, validation, and evaluation;
- EO data processing, uncertainty characterisation, ensemble approach, and data stewardship.

If expertise from non-European states is required, the Tenderer may include such expertise as external services, up to a limit of 10% of the overall budget.

##### Key Personnel

The Tenderer shall identify each member of Key Personnel who, because of their individual qualifications, experience and current positions, are proposed for the work. All Key Personnel must be directly employed (i.e. employment contract) by the Tenderer or its subcontractors.

The Tenderer must nominate the following Key Personnel, as a minimum:

- The Project Manager;
- Science Leader;
- each Work Package Manager.

The consortium shall be led by a Science Leader, who shall be the main interface to ESA. The Science Leader shall be a scientist with expertise in coordinating international research projects. S/he will be assisted by a Project Manager, who will be in charge of the overall management and administrative side of the project, ensuring that all tasks are executed in a consistent and efficient manner, and within schedule and budget. The Project Manager shall have a proven track record on managing international projects. The Project Manager and the Science Leader must not be the same person.

For each member of Key Personnel the Tenderer shall:

- Describe in detail the role and respective responsibilities which that Key Person shall perform.
- Explain why, in terms of the individual's qualifications, relevant experience and current positions, she/he has been proposed for the work allocated to her/him.
- Provide a full curriculum vitae (**CV**), which shall demonstrate clearly the relevant experience of the Key Person and the Key Person's ability to carry out the tasks allocated to her/him. The CV should also contain a brief description of the Key Person's present job and responsibilities. All of the CVs shall be provided in an annex to the Management Proposal.
- State the proportion of the Key Person's working time she/he will commit to the project.
- Provide a table showing the role each Key Person will play in each Work Package and the proportion of the Key Person's working time which she/he will devote to each Work Package.

#### 4.2 Project Management Plan

The Tenderer shall include in the Management Proposal a draft Project Management Plan (PMP). The PMP shall set out the information and processes which will assist the Project Manager in keeping the project on schedule, and shall be updated as and when necessary during the project lifetime. The PMP shall include the following information, as a minimum:

- a project directory including a full contact list for each member of the consortium, identifying clearly the role of each person in the project, their address, telephone no., Fax no. and email address.
- a description of the project management approach, lines of communication and supervision, both within each organisation and within the consortium as whole.
- a description of the work logic and a Work Breakdown Structure (**WBS**), showing how the project activities will be arranged into and managed under individual Work Packages (**WPs**). The Tenderer shall describe each WP in a Work Package Description (**WPD**). Each WPD shall show the inputs and outputs for the WP, the name of the WP Manager, the number of manhours allocated, per consortium partner, to the WP, the start and end dates of the WP, and a summary of the WP activities.
- a project schedule, which shall be presented to a level of detail consistent with the WBS. The schedule shall be linked to the achievement of milestones, which shall be defined in accordance with the requirements of the SoW. The schedule shall show how the WPs interrelate and any dependencies between them which may affect project planning.
- a list of deliverables, showing the scheduled date of delivery and the method of delivery.
- a travel and meeting plan including proposed actual dates, meeting locations and a travel budget.
- a description of the procedure to be followed when disputes arise within the consortium. The procedure must provide for a final and binding decision to be taken within the consortium, at the end of the process.
- a proposed document review cycle.
- an analysis of management risk factors and mitigation strategies.
- any other information relevant to the overall management of the project.

The Tenderer will be required to submit an updated version of the PMP and an electronic version of the proposed project schedule at project kick-off.

#### 4.3 External Services

The procurement of external services, or tools which may be required during the project shall be listed and quoted, and the name of the service provider must be given.

A definition of 'External Services' is given at point 3.7 of the 'Instructions for Completing the Company Price Breakdown Form PSSA2', and reads:

*"External Services are defined as services to be rendered by a third party, such as hire of facilities, computing/analysis services, manpower services including consultancies, foundries (ASICs, MMICs, etc), plating of parts, services for procurement of HIREL parts etc. Participating companies supplying such items are not Work Package responsible."*

If the Tenderer includes an external services provider in its proposal(s), the Tenderer must show the budget allocated to the external services provider in the PSS forms for the consortium partner which is managing the Task/Work Package to which the external services provider is contributing (this can be either the Prime Contractor or a subcontractor). The Tenderer must also state the nationality of the source of the external services.

**The Tenderer is advised that the budget allocated to an external services provider will count towards the geographical distribution figures for the national country of the consortium partner which pays for the external services provider.**



4.4 Facilities and resources

The Tenderer shall submit a brief description of all facilities and resources which it proposes using for the project. The Tenderer shall describe what means of access it has to information resources, such as software libraries, data sources etc.

5- **FINANCIAL PROPOSAL**

5.1 Price Types

The resulting contract shall be a Firm Fixed Price Contract. A “Firm Fixed Price Contract” is defined at Annex II: Section 2.1 of the ‘General Clauses and Conditions for ESA Contracts’ (ESA/REG/002, rev.1) (**the GCCs**), which will apply to the resulting contract. The GCCs are available on <http://emits.sso.esa.int>, following the links “Reference Documentation”/“Administrative Documents”.

5.2 Price Conditions

The detailed price conditions which will apply for this service are set out at Article 3.1 of the Draft Contract.

The Agency has earmarked for this activity a total maximum budget of **€500.000**.

**Only proposals which cover the full scope of the SoW , and quote a Firm Fixed Price which does not exceed €500.000 will be considered for evaluation.**

**For the purposes of this ITT, compliance with this price requirement is a Key Acceptance Factor. Tenderers MUST confirm their compliance, by accepting the corresponding statement in Form A “Declarations on Key Acceptance Factors”.**

Tenderers shall show how the FFP is broken down per consortium partner, by completing the following table:

	<b>Esa-p Vendor Code</b>	<b>Country</b>	<b>Amount (EURO)</b>
<b>Contractor</b>			
<b>Sub 1</b>			
<b>Sub 2 etc</b>			
<b>Total FFP</b>			

Licence Costs

The Tenderer shall include in the prices the cost of any licences which will be required during the project. The Tenderer shall explain any such cost in Exhibit A to the relevant PSS-A2 form(s).

Travel and Subsistence Plan

Tenderers shall submit a brief description of the missions which the prime contractor and its subcontractors will need to carry out in order to provide the service covered under the initial 2-yr FFP. **Tenderers are asked to travel by train, if the travel time by train is no more than 3 hours.**

Tenderers shall present the cost information for these missions in Exhibit B to **each** PSS A-2 form submitted, i.e. for the overall project commitment and for each consortium partner’s contribution.

5.3 Payments

The Tenderer shall propose a Milestone Payment Plan (MPP), which shall be presented in the form shown at Appendix 1 of the Draft Contract. The MPP shall cover the entire duration of the project and shall show how each payment, for each consortium partner, would be linked to the Agency’s acceptance of clearly identifiable work and tangible deliverables, which shall be submitted on the achievement of scheduled milestones. The Tenderer shall describe each milestone, which shall constitute a significant event in the programme, and shall provide a check point for progress in the work performed. Examples of such milestones are the satisfactory completion of reviews, the Agency’s acceptance of deliverables, and closure of the contract.

When proposing the MPP, the Tenderer must comply with the following rules:

- the value of each progress payment must be equivalent to the value of the deliverables being submitted for acceptance at the related milestone and/or the technical achievement reached at that milestone;
- if an advance payment is requested, it shall not be more than 15% of the FFP; and
- the final payment shall not be less than 20% of the FFP.

The Tenderer shall not propose more than 2 payments per year, unless it can provide satisfactory justification for it in its tender.

If subcontractors are proposed, the MPP shall also show, for information purposes only, how the payments are broken down by sub-contractor. **For this contract, ESA does not offer to pay the subcontractors directly.**

#### 5.4 Detailed Price Breakdown

##### 5.4.1 PSS Forms

The Tenderer must complete the following PSS forms both for itself and for each subcontractor proposed. The PSS forms can be downloaded from <http://emits.sso.esa.int/>, following the links "Reference Documentation"/"Administrative Documents"/"PSS Forms".

- o PSS-A2, Issue no. 5

The Tenderer shall supply the following PSS A2 forms:

- o One overall PSSA2 to show the cost breakdown for the entire contract value;
- o a separate PSS A2 per member of the consortium to show the cost breakdown for each entity within the FFP.

**Each PSSA-2 form must be accompanied by Exhibit A and B, to explain and justify all miscellaneous, external expenditure and mission costs.**

- o PSS-A8, Issue no. 5

The Tenderer shall supply the following PSS A8 forms:

- o One overall PSSA8 to show the cost breakdown for the entire contract value;
- o a separate PSS A8 per member of the consortium to show the cost breakdown for each entity within the FFP.

**The Tenderer shall ensure that each PSS A8 shows the effort allocated for each WP and sub-WP, so that the costs of each WP in the WBS are fully explained, for each consortium partner.**

Except where prevented by standard formal requirements (which must be justified as being the case), the Tenderer shall ensure that price data are clearly available, i.e. that overhead, profit, etc. are clearly identified and included in the total, in accordance with the requirements of the PSS forms to be submitted.

##### 5.4.2 Profit

The fee (profit) shall not exceed eight (8) per cent of the base cost of the FFP. **Profit shall not be applied to overheads or handling fees for any cost items which are inserted at lines 3.1 - 3.10, and 5 - 7 of the PSS-A2 form.**

##### 5.4.3 Currency and conversion rates:

It is a binding requirement that tenders be presented in EURO.

The Agency will NOT enter into negotiations which are aimed at adjusting the prices proposed in order to account for fluctuations in exchange rates for companies in countries not participating in the EURO.

Should the countries to which the Tenderer or proposed subcontractors belong adopt the EURO following submission of the tender, the applicable conversion rates shall be those adopted then by the appropriate European Authorities.

For any Tenderer or proposed subcontractor located in non-EURO countries, the exchange rate shall be stated on the PSS forms and shall be clearly explained in Exhibit A to the PSS-A2 form. Any other factors (e.g. hedging costs, forward buying rates, etc.) used for the purpose of the price conversion calculation shall also be explained.

#### 5.4.4 Quotations free of taxes and customs duties

Prices shall be quoted free of taxes and customs duties. In cases where the Tenderer considers that it will remain subject to the payment of taxes or customs duties, it shall indicate separately the applicable rates, the corresponding estimated total tax or customs duty amount, and the reason why the Tenderer believes exemption from tax or customs duties cannot be obtained. Attention is drawn to the provisions of Chapter VII the GCCs.

**The Tenderer is reminded that if a Prime is entitled to a VAT exemption form from ESA, it is only the Prime which will have the benefit of the VAT exemption, and not the subcontractors. All subcontractor invoices should be addressed to the Prime and must include VAT or any other taxes or duties required by the relevant national rules for the companies involved. Any VAT costs which are payable under such subcontracts shall not be included in the price charged to ESA.**

## 6- CONTRACTUAL PROPOSAL

### 6.1 Compliance with contract conditions

The Draft Contract which forms part of the ITT package shall be the basis for any resulting contract between the Agency and the selected Tenderer.

Tenderers shall confirm that they accept the contract conditions set out in the Draft Contract, by making one of the following two statements with respect to the terms and conditions:

- “All provisions of the Agency’s Draft Contract are accepted, and our own sales conditions do not apply.”  
or
- “All provisions of the Agency’s Draft Contract are accepted, and our own sales conditions do not apply. However, the following amendments are proposed for the Agency’s consideration:...”.

**If the Tenderer makes the second statement and wishes to amend any of the contract conditions, it must specify clearly which conditions it wishes to amend, state the alternative wording it wishes to propose, and justify its proposals.**

If the Agency accepts a proposal in which the Tenderer suggests amendments/supplements to the contract terms, the Agency’s acceptance of the proposal shall not indicate acceptance of those amendments/supplements. Any proposed amendments/supplements to the contract terms shall either be rejected by the Agency or shall be subject to negotiation prior to award of contract.

### 6.2 Discussion of ITT requirements concerning Intellectual Property Rights

The Tenderer is required to discuss all Intellectual Property (IP) issues which are raised by the project requirements. The Tenderer’s attention is drawn to the obligations to which it will subscribe under Clauses 37, 41, and 43 of the GCCs, as supplemented and amended at Article 4 of the Draft Contract.

The Tenderer shall demonstrate that it has read and can comply with the supplementary licence requirement at Article 4, Clause 41 of the Draft Contract. The Tenderer **must** explicitly acknowledge this licence requirement and discuss its ability to grant the licence, in light of the Tenderer's authorship of the project deliverables, the inclusion of any of the Tenderer's previous work in the project deliverables, or the inclusion of anybody else's work in the project deliverables. The Agency will not penalise the Tenderer for raising justified concerns about the Article 4, Clause 41 supplementary licence requirement, or proposing fully-worded alternative provisions. The Agency will, however, penalise the Tenderer (under Criterion 5), if the Tenderer proposes restrictions on the Agency's use of the project deliverables which are not consistent with the project's aims (free and public distribution of all project deliverables and all data products, algorithms, methods developed and validation analysis reports used during and developed under the Contract) and/or which are not satisfactorily justified.

**The Agency will not accept reservations made subsequent to the closing date of the ITT.**

The Tenderer must also describe all pre-existing work (such as algorithms and satellite images) which it intends to use during the project, and the conditions on which it and ESA will be entitled to use the work both during the project and after the project's conclusion. The Tenderer must provide this information for any pre-existing work which it owns and any pre-existing work which a third party (i.e. a subcontractor or any person not involved in the project) owns. Pre-existing work is any work which already exists at the date the contract starts and which will not be created under the Contract. Pre-existing work is referred to in the Contract as either Background Intellectual Property Rights (**BIPR**) or Intellectual Property Rights (IPR), according to the definition of those terms contained in Annex IV of the GCCs.

If the Tenderer does not have any concerns regarding IP and the Agency's intended use of the project deliverables, the Tenderer must explain why, to demonstrate that it has considered the issue.

**6.3 Insurance waiver**

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

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

**6.4 Statement relating to Export/Import licences/authorisations and related documentation**

The Tenderer shall set out in the Contract Proposal all information it is required to give under Part 2(D) of the GCT, and any further information regarding export/import restrictions/licences/authorisations which the Tenderer is relevant to the proposal.

**ANNEX 1: Evaluation Criteria and Weighting Factors**

Each proposal will be evaluated against the following criteria:

No.	Evaluation Criterion	Weighting Factor %
1	Level and relevance of the team’s background and experience.	30
2	Quality and completeness of the analysis of the project requirements, and the discussion of the scientific challenges raised by the project.	20
3	Quality and suitability of the programme of work and the proposed scientific methodological approach; the discussion of the problems which might surface during the project and the proposed solutions to those problems.	25
4	Quality and suitability of the management and planning proposals; transparency and credibility of the costing	15
5	Compliance with tender conditions and demonstrated acceptance of contract conditions	10

After having evaluated each of the proposals against the above criteria, the Agency shall make an overall assessment of the offers. In making the overall assessment of the offers, the Agency shall take into account the weighted marks, the prices offered and compliance with geographical return requirements, to ensure that the Agency achieves the most economic and effective employment of its resources. The proposals which offer the most economic and effective employment of the Agency’s resources shall be those which offer the best combination of the total weighted mark, price and compliance with geographical return requirements.

**ANNEX 2: Forms A and B to be attached to Tenderer’s Cover Letter**

**Form A: Declarations on Key Acceptance Factors**

ITT Reference: .....

Subject: .....

By submitting this Form A as an annex to the cover letter of the tender reference [*insert reference of your tender.....*], I/we, the undersigned, herewith officially declare that the tender fulfils the following Key Acceptance Factors:

<b><u>KEY ACCEPTANCE FACTOR</u></b>	<b><i>Please tick each box to confirm the statement</i></b>
The Tenderer confirms, on its own behalf and on behalf of its subcontractors, that it and its subcontractor(s) satisfy/ies the qualification requirements established under Part 1A “Eligibility requirements” of the GCT paragraphs (b) to (i) (see Part 2(B)1 of the GCT).	
The Tenderer confirms, on its own behalf and on behalf of its subcontractors, that it and its subcontractor(s) is/are compliant with the requirements listed in the “Certification of Free Competition” (see Part 2(B)3 of the GCT).	
The Tenderer confirms, on its own behalf and on behalf of its subcontractors, that it and its subcontractor(s) is/are compliant with the requirements listed in the “Certification of non-benefit” (see Part 2(H) of the GCT)	
The Tenderer confirms, on its own behalf and on behalf of its subcontractors, acceptance of the conditions listed in the “Non commitment of the Agency” (see Part 2(B)11 of the GCT)	
The Firm Fixed Price (FFP) quoted in the tender is binding, covers the full scope of the Agency’s Statement of Work and is equal to or less than €500.000.	
<p>The Tenderer confirms that the validity period of the tender is 4 months from the closing date for receipt of tenders and that:</p> <ul style="list-style-type: none"> <li>• Where negotiations have been entered into between the Agency and a Tenderer(s) and, due to their complexity, go beyond the validity period of the tenders, the validity period of such tenders shall be considered implicitly extended until such time the negotiations are finalised and a contract is placed; and/or</li> <li>• Where, in application of the Agency’s regulatory procedures, a submission for approval by internal committees is foreseen which will take place beyond the validity period of the tenders, the validity period of such tenders shall be considered implicitly extended until such time the submission has taken place and a contract is placed.</li> </ul>	
The tender contains a technical proposal.	
The Tenderer confirms that it does not have its registered office address in Greece or Spain and neither does any of its subcontractors.	
The tender cover letter <u>and its annexes (Forms A and B)</u> are signed by an authorised representative(s) of the Tenderer.	

**It is understood that :**

- **failure to provide this Form A, as an annex to the tender cover letter, fully completed and signed, will result in the tender not being admitted for evaluation.**
- **if the analysis of the full tender reveals that the offer is not in line with any of the declarations given in this Form A, the tender will be excluded from further evaluation.**

**Name:**

**Current position in the Tenderer's organisation :**

**Signature:**

**Date:**



**Form B: Declarations on Compliances**

ITT Reference: .....

Subject: .....

By submitting this Form B as an annex to the cover letter of the tender reference [*insert reference of your tender*], I/we, the undersigned, herewith officially declare that the tender is compliant with the following requirements as listed here:

	<p>Indicate : <b>“Compliant”</b> or <b>“Partially Compliant”</b> or <b>“Non Compliant”</b></p> <p><i>(in the last 2 cases give a reference in the cover letter to the specific section of the proposal which contains detailed information about the partial or non-compliance, and relevant cross references to the applicable parts of the offer)</i></p>
The information provided to ESA for registration as potential supplier (individually for all entities involved in the tender) has been updated in the last 12 months	
With regard to the technical requirements of the ITT, the tender is:	
With regard to the managerial requirements of the ITT, the tender is:	
With regard to the financial requirements of the ITT, the tender is:	
With regard to the contract conditions of the ITT, the tender is:	
With regard to the IPR requirements of the ITT (see Part 3: Section 6.2 above and Article 4: Clauses 37-43 (inclusive) of the Draft Contract), the tender is:	
With regard to the export/import requirements of Part2(D) of the GCT, the tender is:	
With regard to the Agency’s Right of Audit (see GCT Part 2(B)7), the tender is:	

**It is understood that the absence of a Form B, as an Annex to the tender cover letter, fully completed and signed, or any compliance statement or justification for partial compliance referred to in Form B that would be contradicted by the detailed content of the tender, may result in the subsequent elimination of the tender from the evaluation process.**

**Name:**

**Current position in the Tenderer’s organisation :**

**Signature:**



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**Date:**