

**IT consultancy services for the implementation of the Agency's
REMIT Information System (ARIS) for the Agency for the
Cooperation of Energy Regulators**

MULTIPLE FRAMEWORK CONTRACT

TENDER SPECIFICATIONS

**OPEN CALL FOR TENDERS
ACER/OP/MMD/09/2013**

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1. TITLE OF THE INVITATION TO TENDER

Provision of IT consultancy services for the implementation of the Agency's REMIT Information System (ARIS) for the Agency for the Cooperation of Energy Regulators, invitation to tender no. ACER/OP/MMD/09/2013.

This tender is not divided into lots.

2. BACKGROUND INFORMATION

The Agency for the Cooperation of Energy Regulators ('the Agency') is a European Union body, legally established in 2009 by Regulation (EC) No 713/2009¹ and operational since 2010. Based in Ljubljana, the Agency plays a central role in the liberalisation and integration of the EU's electricity and natural gas markets.

The Agency works to promote a competitive, sustainable, secure and transparent Internal Energy Market in electricity and natural gas for the benefit of all EU consumers. Its overall mission is to assist national energy regulatory authorities ('NRAs') to perform their duties at the EU level and to coordinate their actions whenever necessary. The Agency works closely with NRAs, as well as with EU institutions, European stakeholder associations and market participants, especially the European Networks of Transmission System Operators (ENTSOs).

The main areas on which the Agency's activities focus are:

- supporting the European market integration: this is mainly done through the development of common network and market rules, as well as through the coordination of regional initiatives which are concrete efforts from market participants to work towards greater integration;
- advising the EU institutions on trans-European Energy infrastructure issues: the Agency issues opinions on ten-year network development plans with a view to making sure that these are in line with the priorities set at EU level. Additional tasks in this area have been assigned to the Agency by the Regulation (EU) No 347/2013² on guidelines for trans-European energy infrastructure;
- energy market monitoring: the Agency has a general mission in terms of market monitoring at the EU level and has, since the end of 2011, a very specific responsibility when it comes to monitoring wholesale energy trading under Regulation (EU) No 1227/2011³ of the European Parliament and the Council on wholesale energy market integrity and transparency ('REMIT').

According to REMIT, the Agency is responsible for monitoring wholesale energy markets to detect market abuse. Wholesale energy markets monitoring by the Agency shall be based on timely data collection of transactions executed and orders placed on wholesale energy markets in the European Union (trading data), as well on as fundamental data, that is data related to the operational conditions of the energy systems in both the electricity and gas sectors.

¹Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing the Agency for the Cooperation of Energy Regulators, OJ L 211/1, 14.8.2009.

² Regulation (EC) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009, OJ L 115, 25.04.2013, p.39.

³ Regulation (EU) No 1227/2011 of the European Parliament and the Council on wholesale energy market integrity and transparency, OJ L 326, 08.12.2011, p.1

More information on the Agency can be found on the website: www.acer.europa.eu.

Further information on the Agency's activities under REMIT can be found on the website: <http://www.acer.europa.eu/remit/Pages/default.aspx>.

3. OBJECTIVES OF THE AGENCY'S REMIT INFORMATION SYSTEM (ARIS)

The Agency is responsible for the implementation of REMIT. One of the main tasks of the Agency over the period 2012-2014 is the development of a fully functional IT system for monitoring trading activities in wholesale energy products. The Agency's monitoring activities under REMIT aim at detecting market abuse in the form of insider trading and market manipulation, including attempted market manipulation.

A first step in this direction shall be the establishment of a Centralised European Registry for Energy Market Participants ('CEREMP'), which shall gather the information regarding all the parties involved in the wholesale European energy market. CEREMP will be fed with information from the national registers, established and managed by NRAs, according to a registration format determined by the Agency in cooperation with NRAs pursuant to article 9(3) of REMIT⁴.

A second step shall be the establishment of a data collection and reporting system. Reporting formats, channels and timing need to be set by the European Commission with the Implementing Acts envisaged in article 8(2) and (5) of REMIT.

A third step shall be the establishment of a market monitoring system, which will analyse and pre-screen all the transactions and fundamental data in a way as to identify possible market abuse cases (i.e. suspicious events) and alert the Agency's experts in the Market Monitoring Department of such cases. The market monitoring system will also be used for supporting the investigations to be conducted by NRAs in coordination with the Agency.

All the components of the Agency's REMIT Information System (ARIS) - i.e. CEREMP, the data collection and reporting system, and the market monitoring tool - will be primarily web-based. According to the requirements set out in article 12 of REMIT, ARIS must be operationally reliable. In particular, the Agency shall take all the necessary measures to prevent any misuse of, and unauthorised access to, the information maintained in ARIS. In addition, in line with article 10 of REMIT, the Agency shall establish mechanisms to share the information held in ARIS with NRAs, financial regulatory authorities, national competition authorities, the European Securities and Markets Authority (ESMA) and other relevant authorities.

4. SUBJECT OF THE CONTRACT

The purpose of this tender is the provision of IT consultancy services for the implementation of ARIS, the Agency's REMIT Information System by suitably qualified service providers and/or individual experts.

The services described above will be the subject of **a multiple Framework Contract with re-opening of competition.**

⁴ See ACER Decision n. 01/2012 relating to the Registration Format pursuant to Article 9(3) of Regulation (EU) 1227/2011 available at: http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Directors%20decision/ACER%20Decision%2001-2012.pdf

4.1 Services to be rendered

This tender aims at providing the Agency with IT specialised support services in the following IT fields:

- IT security,
- IT SDLC (Software Development Life Cycle),
- IT Enterprise Architecture,
- IT Quality,
- Database, Data warehouse,
- Design and management of complex IT systems,
- Energy Trading and Risk Management Systems and platforms.

The selected contractor(s) must be able to perform, without limitation, feasibility studies, complex technical and functional analysis of hardware and software platforms and applications, training, testing of hardware and software platforms and applications, project management support, support for certification.

For more details please refer to Annex I.A (Technical Specifications) to these tender specifications.

4.2 Quality and standards

The contractor(s) shall perform the services in full knowledge and consideration of the Agency's computing environment and in accordance with technical norms, standards and procedures based on best professional practices in the information technology and/or telecommunications fields (i.e. ISO 9000 and ISO 27000 standards).

In case a software or part of it is delivered under the Framework Contract, the contractor guarantees that, whether or not it was developed in the execution of the Framework Contract, it will not fail to execute its programming instructions due to defects and poor workmanship when properly installed and used on the devices designated by the contractor. The software shall be devoid of any deliberate mechanism which leaves it under the contractor's control after supply to the Agency. It shall meet the operating requirements, specifications and characteristics detailed in the contractor's documents and/or laid down in the Framework Contract(s).

The quality of the contractor's products and services shall be measured by reference to the definitions, quality standards and procedures defined in the Framework Contract(s) and/or the specific contract(s), and the quality indicators defined in the service level agreement.

The contractor(s) shall comply with the above-mentioned quality standards. Compliance with quality standards shall be monitored by the Agency. Unless otherwise stated in a specific contract, in the event of non-compliance with one or more of the standards over a period not exceeding three (3) months, the contractor shall submit an improvement plan. In the event of non-compliance with one or more of the standards for more than three (3) months, consecutive or not, over a period non exceeding six (6) months, a specific contract for which the quality of the services has proved substandard may be terminated. In case of a substandard overall quality of services, the Agency reserves the right to terminate a specific contract, as well as the Framework Contract.

Quality standards may be revised in line with developments on the market.

4.3 Documentation and reporting

Except where the specific contracts provides for otherwise, the contractor(s) must report in English on the services rendered in performance of each specific contract. The quantity of the reports and the forms in which they shall be submitted will be specified in each specific contract.

The Agency may reproduce or use all documentation and reports in full or in part.

The contractor(s) shall provide the Agency with the following documentation and updates, and may be requested to organise and / or attend at least the following meetings:

- After the signature of a specific contract and before initiating any service:
 - project initiation request;
 - kick-off meeting at the premises of the Agency;
 - project stakeholder matrix;
 - subcontracting management plan.
- During the implementation of a specific contract:
 - meeting with the application owner(s), business experts, IT Team representatives and other relevant staff (consultants, stakeholders, etc.);
 - project charter (also known as Vision Document);
 - project work plan & resource plan which shall, if necessary and required by each specific contract, also include documents known as “Iteration Plan(s)”, “Test Iteration Plan(s)”, “Test Management Plan”, and “Training Plan”.
- At the end of a specific contract:
 - Post Project Review meeting at the premises of the Agency;
 - Post Project Review.

Annual activity report

A succinct annual activity report on all the work carried out by the contractor(s) in performance of the Framework Contract(s) must be produced. The language of the report shall be English.

The report must indicate, for the preceding twelve months, the services performed during that period, in terms of quantity and price, broken down by type.

The contractor(s) must send the Agency one copy of the report by electronic mail and 2 (two) paper copies within 30 days following the end of the reference period.

The cost of producing the above reports will be borne exclusively by the contractor(s). The Agency will not contribute in any way to the costs incurred in, inter alia, the drafting, production or distribution of the required reports.

5. PARTICIPATION IN THE CALL FOR TENDER

Participation in the Agency’s procurement procedure is open on equal terms to all natural and legal persons or groupings of such persons (consortia) falling within the scope of the Treaties. It includes all economic operators registered in the EU and all EU citizens.

Pursuant to Article 119 of the Financial Regulation, the participation is also open to all natural and legal persons from non-EU countries that have a ratified agreement with the European

Union in the field of public procurement on the conditions laid down in that agreement. The Agency can therefore accept offers from and sign contracts with tenderers from 34 countries, namely: the 28 EU Member States, 3 European Economic Area (EEA) Countries (Lichtenstein, Norway, Iceland) and 3 Stabilisation and Associations Agreements (SAA) Countries (the Former Yugoslav Republic of Macedonia, Albania and Montenegro). The Agency's procurement procedures are not open to tenderers from countries covered by the Agreement on Government Procurement (GPA).

6. VARIANTS

No variants are permitted.

7. DURATION AND SIZE OF THE CONTRACTS

Each Framework Contract shall have an initial duration of two (2) years as from date of signature and may be renewed up to two times, each time for an additional period of one (1) year. The total duration of the Framework Contract(s) shall not exceed four (4) years. The Agency reserves the right to cancel the Framework Contract(s) with any selected contractor(s) whose services are deemed to be of insufficient quality.

The total maximum value for the total duration of the Framework Contract(s) (up to four (4) years) is EUR 2,000,000.00 excluding VAT. Specific contracts will not be signed once the budget is consumed.

The estimated date for signature of the Framework Contracts is November 2013.

8. DOCUMENTS AVAILABLE TO THE TENDERER

- Contract notice published in the Official Journal of the European Union (OJ EU) S 156 on 13.08.2013.
- Call for Tender documents and annexes.
- Guidance in the application of Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency, 2nd edition, updated 22 April 2013, which can be downloaded at: [http://www.acer.europa.eu/remit/Documents/Updated%202nd%20Edition%20of%20ACER%20Guidance%20\(REMIT\)_22042013.pdf](http://www.acer.europa.eu/remit/Documents/Updated%202nd%20Edition%20of%20ACER%20Guidance%20(REMIT)_22042013.pdf)
- Recommendations to the Commission as regards the records of wholesale energy market transactions, including orders to trade, according to Article 8 of Regulation (EU) No 1227/2011 of 23 October 2012, which can be downloaded at: <http://www.acer.europa.eu/remit/Documents/Recommendations%20on%20REMIT%20Records%20of%20transactions.pdf>
- Recommendations to the Commission as regards the records of wholesale energy market transactions, including orders to trade, according to Article 8 of Regulation (EU) No 1227/2011 concerning balancing markets and transportation contracts of 26 March 2013, which can be downloaded at: <http://www.acer.europa.eu/remit/Documents/Recommendations%20on%20REMIT%20Records%20of%20transactions%20balancing%20and%20transportation.pdf>

- PPT presentation - Public workshop on REMIT implementation – Introduction (the presentation was delivered during the public workshop on REMIT implementation held in Ljubljana on 11 July 2013), which can be downloaded at:
<http://www.acer.europa.eu/remit/Documents/20130711/Public%20workshop%20on%20REMIT%20Implementation-Introduction.pdf>
- PPT presentation on the Centralised European Register for Market Participants (CEREMP) (the presentation was delivered during the public workshop on REMIT implementation held in Ljubljana on 11 July 2013), which can be downloaded at:
[http://www.acer.europa.eu/remit/Documents/20130711/Centralised%20European%20Register%20for%20Market%20Participants%20\(CEREMP\).pdf](http://www.acer.europa.eu/remit/Documents/20130711/Centralised%20European%20Register%20for%20Market%20Participants%20(CEREMP).pdf)
- PPT presentation on the REMIT Implementation Pilot Project (the presentation was delivered during the public workshop on REMIT implementation held in Ljubljana on 11 July 2013), which can be downloaded at:
<http://www.acer.europa.eu/remit/Documents/20130711/REMIT%20Implementation%20Pilot%20Project.pdf>
- Other documents, as mentioned in these tender specifications.

9. CONTRACTUAL FRAMEWORK

9.1 Type of contract

The services described above will be the subject of **a multiple Framework Contract with re-opening of competition.**

The Framework Contract(s) will lay down the legal, financial, administrative and technical conditions applicable throughout its period of validity, including price indexation.

Any limitation, amendment or denial of any of the terms and conditions set in the draft Framework Contract (Annex III to the invitation to tender) shall lead to automatic exclusion from the procurement procedure.

Framework Contract(s) do not constitute orders. Orders shall be placed through requests for services (see point 9.3 for the *modus operandi* of the Framework Contract(s)), resulting in specific contracts.

The draft Framework Contract is attached as Annex III to the invitation to tender. Signature of the Framework Contract(s) does not commit the Agency to placing orders and does not give the contractor(s) any exclusive rights regarding the services covered by the Framework Contract(s). In any case, the Agency reserves the right, at any time during the validity of the Framework Contract(s), to cease placing orders, without the contractor(s) having the right to any compensation.

9.2 Conflict of interest

A conflict of interest may arise, in particular, in case the contractor(s), his/her members (in case of consortia), or his/her subcontractors had and / or have contractual relations with stakeholders and/or companies directly involved in the programmes, projects and legislative activities, conducted or subcontracted by the Agency. The Agency may decide not to award a specific contract to contractor(s) who are subject to a conflict of interest.

A conflict of interest may also arise in those cases where the contractor(s), his/her members (in case of consortia), or his/her subcontractors or any of their staff has worked on any project(s) commissioned by the Agency and directly related to the services to be provided under this Framework Contract. In such cases, the Agency may decide not invite that contractor to submit an offer for a specific contract. The contractor shall be informed in writing of the Agency's decision.

9.3 Modus Operandi

Provided that there is a sufficient number of admissible tenders (those that satisfy the exclusion and selection criteria) that satisfy the award criteria, the Framework Contract will be awarded to a minimum of three (3) and a maximum of four (4) tenderers.

Each time the Contracting Authority will request IT consultancy services, a request for services shall be sent to all the contractor(s).

All contractor(s) will be invited to submit an offer for the services described in the invitation.

Within five (5) calendar days, the contractor(s) shall notify the Contracting Authority in writing, by post or e-mail whether he/she intends to submit the offer. Should a contractor be unavailable, he/she shall give reasons for refusal within the same period.

Within the deadline set by the Agency, which shall not be shorter than twenty (20) calendar days and shall not exceed forty (40) calendar days following the date of sending the request for services, the Contracting Authority shall receive the offers from the available contractors which shall include all the details as specified in the request for services, including the methodology, the deliveries, the composition of the team, the duration of work and the total price on the basis of the price quoted in the financial offer, Annex II to the invitation to tender (which forms an integral part of the Framework Contract).

The offers received will be evaluated according to the Agency's procurement procedures and the offers will be ranked on the basis of the best quality/price combination as described in section 20 of these tender specifications. A specific contract will be awarded to the contractor who has submitted the best ranked offer.

Performance of the tasks starts from the date on which a specific contract is signed by the last contracting party.

Offers for each specific contract shall be accompanied by a description of any contractual relations of the contractor(s), his/her members (in case of consortia), or his/her subcontractors during the preceding three (3) years with any stakeholders and/or companies directly involved in the programmes, projects and legislative activities, conducted or subcontracted by the Agency, and a statement that the contractor shall during the validity period of the specific contract declare any changes regarding the contractual relations referred to in this paragraph.

Tenderers undertake to treat in the strictest confidence and not make use of or divulge to third party any information or documents which are linked to the performance of the assignments and they shall continue to be bound by this undertaking after completion of the tasks.

In case of failure by the contractor(s) to fulfil his/her obligations, the Agency may terminate the specific contract at any time by registered letter without formal notice or payment of any compensation.

The award of a specific contract will be conditioned by the availability of sufficient funds.

If a contractor fails to notify the Contracting Authority in writing, by post or e-mail whether he intends to submit the offer and/or if a contractor completes work for one specific contract more than ten (10) calendar days later than stipulated in the specific contract or is found to have executed an order inadequately, the Agency may automatically suspend, by registered letter, the award of any further work to the contractor in question for a period of up to six months.

9.4 Changes in the team

For specific contracts, changes or additions to the team initially proposed must be notified to the Agency in writing. The Agency will have the right to object to any changes of members of the team from those initially proposed. In case the original team is no longer available, the Agency will have the right to cancel a specific contract.

9.5 Subcontracting

Special attention will be paid to the approach proposed by the contractor for managing his/her subcontractors. Tenderers will be required to indicate the kind of work which they plan to subcontract and the name of any companies to which they are intending to subcontract part of the work.

Subcontracting during the performance of the contract is permitted only with the prior written consent of the Agency. The contractor remains solely liable for the proper performance of the contract.

10. CONTRACTORS' OBLIGATIONS

The contractor(s) shall take all the necessary measures to prevent any situation that could compromise the impartial and objective performance of the Framework Contract(s). During the validity period of the Framework Contract(s), the contractor(s) shall declare any changes in their contractual relations from which a conflict of interest could arise.

10.1 Employment law applicable to transfers of undertakings

Tenderers are reminded that their offers must be established in conformity with the applicable national and European employment legislation regarding the transfer of undertakings, and specifically Directive 2001/23/EC⁵ and its national implementing measures. In particular, tenderers should take note of the provisions on safeguarding employees' rights in the event of a change of employer as a result of a legal transfer.

10.2 Copyright and other intellectual property rights

Copyright and other intellectual or industrial property rights and any other right of ownership will vest in the Agency, except where one or more of these rights already exists.

The contractor must specify any parts of the services performed that are covered by copyright or any other rights of ownership. The contractor must confirm that he has obtained the authorisation of the holder of these rights to use these parts. Any costs arising from

⁵ 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 part of undertakings or businesses, OJ L 82 of 22.03.2001, p. 16.

obtaining this authorisation will be borne by the contractor and clearly identified on his invoice.

Any results or rights thereon, including copyright and other intellectual or industrial property rights, obtained in performance of the contract, shall be owned solely by the Agency, which may use, publish, assign or transfer them as it sees fit, without geographical or other limitation, except where industrial or intellectual property rights exist prior to the Framework Contract and/or specific contract(s) being entered into.

Should the title of the copyright or intellectual property rights belong to a third party, the contractor shall guarantee that it has requested and obtained those third parties' written authorisation to grant a license or assign to the Agency their copyright or intellectual property rights to the extent necessary for performing the services subject of this invitation to tender, and to the extent where the results/works obtained under the Framework Contract are to be re-used in the context of another Agency's project/programme with another contractor(s) working under a Framework Contract or specific contracts.

This applies to all products, documentation, distribution media and methods.

If subcontractors are used, the main contractor will be required to obtain a guarantee from them on this point.

10.3 General security requirements

The selected contractor working at the Agency's premises shall conform to the Agency's internal security rules and policy. The selected contractor may be required to replace immediately and without compensation any of the contractor's staff members working at the Agency's premises considered undesirable by the Agency. In addition, all contractors' staff performing services at the Agency's premises shall comply with the requirements of the Agency's Business Continuity Plan. These requirements shall be provided to them upon their arrival at the Agency.

The selected contractor shall not move or remove any product, equipment or material whatsoever owned by the Agency or present at the Agency's premises without the Agency's express written approval. Each move or removal of a product, equipment or material whatsoever, shall be recorded in writing.

The selected contractor shall take all the necessary measures and steps to ensure that the data and the magnetic media where products are or shall be stored are safely preserved. The services and products supplied shall not contain any mechanism (e.g. viruses) which could compromise a proper operation of the product in question or any other product owned by the Agency. The cost of repairing the damage caused by such a mechanism shall be borne solely by the selected contractor(s).

The selected contractor undertakes to inform the Agency in writing as soon as it has any knowledge of defects in his/her products that might endanger the security of the configurations of which they form a part of. He shall immediately take any measures necessary to restore the security of the configurations and correct the defects. The cost of such measures and of any consequential damage caused by defects in the contractor's products shall be borne solely by the selected contractor(s).

The contractor shall ensure that all security precautions for each product and/or services are clearly spelled out in the relevant documentation supplied to the Agency.

Should the selected contractor, during the performance of the services which are the subject of the Framework Contract, need remote access to Agency's internal IT resources from the external domain, he/she shall be requested to comply with the Agency's internal rules on practical and technical security for remote intervention. For this purpose the selected contractor shall sign a specific agreement for remote intervention provided by the Agency.

The Agency may in exceptional cases, due to security reasons, ask the selected contractor that his/her staff undergoes a security clearance. This may apply to any specific contract.

The selected contractor shall impose the security obligations stemming from the Framework Contract as well as from any specific contract upon any of his/her subcontractors and their staff performing tasks in the execution of the Framework Contract.

The Agency reserves the right to conduct an external security and/or quality audit of the services that are subject of this tender.

11. PLACE OF PERFORMANCE OF THE SERVICES

11.1 Place of work

The principal place of performance of the Framework Contract(s) shall be at the contractor's premises (working inside the country - WIC).

The principal place of performance of specific contract(s) shall depend on each specific contract and shall be indicated in the relevant request for services (the place may either be at the Agency's premises in Ljubljana, Slovenia or at the contractor's premises).

In cases where the performance of a specific contract shall take place outside the country where the contractor's premises are located, this shall be considered as working outside the country – WOC.

11.2 Meetings

Meetings between the Agency's staff and the contractor shall take place at the Agency's premises in Ljubljana, Slovenia, and only exceptionally and with the agreement of the Agency, at the contractor's premises.

If deemed appropriate and at the sole discretion of the Agency, meetings between the Agency and the contractor could be organised using a video conference systems, telephone conferences and/or any other communication means.

Meetings between the Agency and third parties (NRAs, EU institutions and other stakeholders), to which the contractor may be invited, will be mainly organised in Ljubljana, Slovenia, but may take place also in other EU Member States.

All meetings will be notified to the contractor, by e-mail, in reasonable time and in any case at least five (5) calendar days prior to the meeting, or at least two (2) calendar days prior to the meeting if video/telephone conferencing systems are used. The contractor shall confirm by e-mail the attendance to the meeting.

The contractor shall prepare minutes of these meetings, indicating the participants, agenda, and main issues of discussion and action points.

Any expenses incurred by the contractor within the framework of these meetings (i.e. travel costs, subsistence allowance or any other related costs) shall not be reimbursed separately by the Agency. Quoted prices should be all inclusive.

11.3 Normal working time of the Agency

The normal working time of the Agency is between 8:00 am and 20:00 with core hours from 9:30 to 12:00 and from 14:00 to 16:00.

The Agency's public holidays are published on the Agency's website and are updated yearly. The information is available at:

http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Pages/Director's-decision.aspx).

For each specific contract, the Service Level Agreement will indicate the working hours of the contractor at the Agency's premises.

12. LANGUAGE

Working language of the Agency is English. All communication, all the required services and all documentation must be provided in English. All meetings shall be held in English.

13. PAYMENT METHODS

Except where the specific contracts provides for otherwise, provisions related to payment are laid down in the draft Framework Contract (Annex III to the Invitation to Tender). Payments will be made exclusive of VAT, as the Agency is exempt from all duties and taxes, including value added tax (VAT) under Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union. Invoice(s) presented by the contractor must specify the amount(s) exclusive of VAT.

The services will be invoiced on the basis of the services provided after full delivery and approval of progress reports and against invoice(s), in line with the payment schedule described in the relevant specific contract.

14. PRICES

- The prices should be quoted in Euro.
- Under Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union the Agency is exempt from all duties and taxes, including value added tax (VAT). VAT should be indicated separately and will not be taken into account when considering prices.
- The unit prices quoted must be firm and not subject to revision for the first year of the contract.

From the beginning of the second year prices may be revised upwards or downwards according to the harmonised indices of consumer prices (HICP) for Slovenia (MUICP index) and the method laid down in the contract.

The prices quoted shall be all inclusive and shall include all services as described in these tender specifications and its annexes, including any administrative, travel and/or subsistence expenses and/or accommodation costs as indicated.

- No expenses incurred within the framework of the preparation of the offer will be reimbursed.

15. SUBMISSION OF OFFERS

Offers must be accompanied by a **dated cover letter signed by the tenderer** and the **duly completed reference table** related to the exclusion and selection criteria (see Annex I.C of these tender specifications).

The tenderer's offer should include:

- A. The declaration on honour relating to the exclusion criteria listed under section 17 of these tender specifications (model provided in Annex I.E to these tender specifications), fully completed and signed and dated by the tenderer;
- B. All the documents relating to the selection criteria listed under section 18 of these tender specifications;
- C. The technical tender, as described at section 16 of these tender specifications;
- D. The financial offer based on the model in Annex II to the invitation to tender, signed and dated by the tenderer;

In case the offer involves subcontracting or the tender is submitted by a consortium or grouping of service providers, the tender must contain additional information as specified in sections 17 and 18 of these tender specifications.

Tenders may be drafted in any of the official languages of the European Union.

The working language of the Agency is English.

16. TECHNICAL TENDER

Tenderers should include in their offer a technical tender detailing how they intend to perform the tasks covered by the contract, in compliance with all the requirements of these tender specifications. Offers that fail to comply with this requirement will be rejected.

The technical tender should not include any of the documents referred to under the exclusion or selection criteria, nor should it refer to matters already covered by the exclusion and selection criteria.

As a part of a technical tender, the tenderer shall provide the following information:

- An outline of the range of business activities and services provided by the tenderer during the last three years which are relevant to this tender and details of at least two major contracts implemented by the tenderer during the last three years. The tenderer's references must be relevant to these tender specifications, and must indicate the subject of the contracts (i.e. SDLC tools and techniques, IT security, IT functional and technical requirement analysis, enterprise IT architecture, IT quality, Database and Data

Warehouse planning, design, tuning and management, Energy Trading and risk management systems and platforms, design and management of complex IT systems).

- Details of any certificate which prove knowledge and experience in the following domains: SDLC tools and techniques, IT security, IT functional and technical requirement analysis, enterprise IT architecture, IT quality, Database and Data Warehouse planning, design, tuning and management, design and management of complex IT systems, as well as the quality assurance accreditations that the tenderer holds. Copies of certificates must be provided.
- Details of different hardware and software technologies, methodologies, platforms and applications for which the tenderer can provide required services.

In addition, the technical tender shall include the questionnaire provided below duly filled in.
The questionnaire is divided in three (3) parts:

- A. Resource selection methodology
- B. Personnel management
- C. Account management

The document providing answers to each part of the questionnaire should not exceed 4 pages and all three documents together should not exceed 12 pages. The tenderer should quote each single question when providing the answer for the relevant question.

A. Resource selection methodology

- How does the tenderer propose to evaluate the requirements from the Agency, based on the request for services submitted to the selected contractor, in line with the profile description(s) as listed in Annex I.A to these tender specifications and the technological portfolio which must be available to the Agency?
- What database(s) or other mechanism does the tenderer use to keep track of the skills of his staff as well as find the expert(s) that best match the Agency's requirements?
- How does the tenderer select the best suited expert(s)?
- How does the tenderer propose to present the expert(s) to the Agency?
- What is the methodology for *ad hoc* timely recruitment when a request for services cannot be fulfilled from the tenderer's existing pool of potential expert and internal staff?
- What is the tenderer's policy on proactive recruitment?

B. Personnel management

- How will the tenderer ensure continued motivation of his personnel (full-time staff and freelancers) with the aim to fulfil the services that are a subject of this tender?
- How does the tenderer stay informed of the day-to-day activities, issues and concerns of his personnel (full-time staff and freelancers)?
- Which processes does the tenderer have in place to deal with issues raised by his personnel (full-time staff and freelancers)?
- What is the human resources policy of the tenderer?
- What is the tenderer's policy in dealing with freelancers (including one-person companies)?
- How does the tenderer ensure that his/her staff does not disclose confidential information it receives in the performance of his/her duties? Do confidentiality obligations, if any, apply also after the staff member has left the tenderer? How does the tenderer ensure compliance with these obligations?

C. Account management

- How does the tenderer propose to manage the account?
- What is the proposed communication model?

- How does the tenderer propose to report upon?
- Which governance structure would the tenderer put in place to manage a contract?
- What would the escalation mechanism be?

D. Risk Management

- What is the tenderer's risk management policy?
- What is the tenderer's policy as regards the protection of confidential information?
- In case of consortia or subcontracting, which measures would the tenderer adopt in order to preserve the confidentiality of information it would receive if it was awarded the contract?

17. EXCLUSION CRITERIA

Tenderers must prove that they are not in one of the situations giving rise to exclusion as described below, by providing the following information, evidence and documents with their tender.

Exclusion from participation

Tenderers will be excluded from participating in this procurement procedure if:

- a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- b) they have been convicted of an offence concerning their professional conduct by a judgment of a competent authority of a Member State which has the force of res judicata;
- c) they have been guilty of grave professional misconduct proven by any means which the Contracting authority can justify including by decisions of the European Investment Bank and international organisations;
- d) they are not in compliance with their obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established, or those of the country of the Contracting authority or those of the country where the Contract is to be performed;
- e) they have been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation, money laundering or any other illegal activity, where such activity is detrimental to the European Union's financial interests;
- f) they are a subject of an administrative penalty for being guilty of misrepresentation in supplying the information required by the Contracting Authority as a condition of participation in a procurement procedure or failing to supply this information, or having been declared to be in serious breach

Evidence

1. Tenderers shall provide a declaration on their honour, duly signed and dated, stating that they are not in one of the situations referred to above, using the form provided in Annex I.E to these tender specifications.
2. The tenderers to whom it is proposed to award the Framework Contract(s) shall furnish, within a time-limit specified by the Contracting Authority and prior to the signature of the Contract, the following evidence in support of their declarations:

The Contracting Authority will accept as satisfactory evidence that the tenderer is not in one of the situations described in points (a), (b) and (e) above, a recent extract from the judicial record (issued less than 90 days prior to the deadline for the submission of the tender) or, failing this, a recent equivalent document (issued less than 90 days prior to the deadline for the submission of the tender), issued by a judicial or administrative authority in the country of origin or provenance, showing that those requirements are satisfied. Where the tenderer is a legal person and the national legislation of the country in which the tenderer is established does not allow the provision of such documents for legal persons, the documents should be provided for natural persons, such as the company directors or any person with powers of representation, decision making or control in relation to the tenderer. The Contracting Authority will accept, as satisfactory evidence that the tenderer is not in one of the situations described in point (d) above, a recent certificate (i.e. less than 90 days old on the date of the deadline for the submission of the tender) issued by the competent authority of the state concerned. The document must provide evidence covering all taxes and social security contributions for which the tenderer is liable, including for example, VAT, income tax (natural persons only), company tax (legal persons only) and social security contributions.

Where no document or certificate of the type referred to in the paragraph above is issued in the country concerned, and for the other cases of exclusion referred to in points (c) and (f), it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in the country of origin or provenance.

If the tenderer is a legal person, information on the natural persons with power of representation, decision making or control over the legal person shall be provided only upon request by the Contracting Authority.

3. The Agency reserves the right to check the information provided by tenderers.

Exclusion from award of contracts

The Framework Contract(s) will not be awarded to tenderers who, during the procurement procedure:

(a) are subject to a conflict of interests.

The Agency must ensure that on the date on which the tender is submitted, no tenderer is subject to a conflict of interests; such conflict of interests could arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest.

Tenderers are also asked to declare:

- that they have not made and will not make any offer of any type whatsoever from which an advantage can be derived under the contract;
- that they have not granted, sought, attempted to obtain or accepted any advantage, financial or in kind, to or from any party whatsoever, constituting an illegal practice or involving corruption, either directly or indirectly, as an incentive or reward relating to the award of the contract;
- that they will inform the contracting authority without delay of any situation constituting a conflict of interests or which could give rise to a conflict of interests.

(b) are guilty of misrepresentation in supplying the information required by the awarding authority as a condition of participation in the procurement procedure, or fail to supply this information.

Evidence:

Tenderers shall provide a declaration on their honour, duly signed and dated, stating that they are not in one of the situations referred to above, using the form provided in Annex I.E to these tender specifications.

The Agency reserves the right to check the information provided by tenderers.

Tenders submitted by consortia or groups of service providers – tenders involving subcontracting:

In the case of tenders submitted by consortia or groups of service providers, each of the economic operators involved in the tender must provide a dated and signed declaration on honour, based on the model provided in Annex I.E to these tender specifications, confirming that none of the exclusion criteria for participation in or award of the Contract apply to them.

The tenderers proposed for award of the Framework Contract must furnish, within the time-limit specified by the awarding authority and prior to the signature of the Framework Contract, the evidence listed above, corroborating the declaration on their honour, in respect of each economic operator forming part of their consortium or group of service providers.

In the case of tenders involving subcontracting, the tenderer proposed for award of the Contract must furnish, within the time-limit specified by the awarding authority and prior to the signature of the Contract, the declaration on their honour and/or the evidence listed above regarding exclusion criteria for participation in or award of the Contract, in respect of each of the subcontractors in respect of whom the Agency requests such evidence.

The Agency reserves the right to check the information provided by tenderers.

18. SELECTION CRITERIA

Tenderers must demonstrate that they have the necessary economic, financial, technical and professional capacity to perform the tasks described in these tender specifications in accordance with the payment schedule specified in the draft Framework Contract at Annex III to the Invitation to Tender.

Where the tender is submitted by a consortium or group of service-providers, the economic and financial capacity must be ascertained at the level of each economic operator forming part of the consortium or group. Technical and professional capacity may be ascertained at consortium or group level, or at the level of each member of the consortium or group.

Where the tender is submitted by a tenderer who intends to subcontract part of the tasks or entrust them to another economic operator, the subcontractors or economic operators involved must demonstrate that they have the requisite economic, financial, technical and professional capacity.

An economic operator may, if necessary and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links he/she has with them. He/she must in this case prove to the awarding authority that he/she will have at his/her disposal the resources necessary for performance of the contract, for example by producing an undertaking on the part of those entities to place those resources at his/her disposal.

Tenderers must provide proof of their professional, economic, financial, and technical capacity by enclosing with their tender the following information and documents, accompanied by the reference tables shown in Annex I.C to these tender specifications:

18.1 Professional capacity

- Duly completed and signed identification form (see Annex I.D to these tender specifications);
- Duly completed and signed financial identification form (see Annex I.F to these tender specifications) – the form can be downloaded from:
http://ec.europa.eu/budget/contracts_grants/info_contracts/financial_id/financial_id_en.cfm
- Certificate of enrolment on the professional or trade register in accordance with the legislation of the Member State in which the tenderer is established;
- Duly completed and signed legal entity form (see Annex I.G to these tender specifications) – the form can be downloaded from:
http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm

18.2 Financial and economic capacity

Evidence of financial and economic capacity must be provided by means of one or more of the following documents:

- Statements from the bank indicating good financial viability or evidence of professional risk insurance covers.
- Balance sheets or extracts from balance sheets for at least the last two (2) years for which accounts have been closed, where publication of the balance sheet is required under the company law of the country in which the economic operator is established.
- A statement of overall turnover concerning the services covered by the Framework Contract during the last two (2) financial years.

In case of a consortium, audited accounts for each consortium partner shall be presented.

18.3 Technical capacity

Tenderers must provide the following documentation to enable an assessment of their technical and professional capacity. For joint applications, the capacities of all members of the joint application, including subcontractors, shall be taken into account

The tenderers must provide:

- A statement of the average annual manpower and the number of managerial staff over the last two years.
- Experience of the tenderer in the business domains, including the number of years of activity in the domain and the staff involved.

- Provision of evidence that the tenderer has provided in the years 2011 and 2012 services of the type requested in this tender for a total invoiced amount of at least **EUR 500,000.00**. The following information has to be provided: number of customers, a brief description of services rendered, total financial volume of the contracts upon initial signature, total financial volume of the contracts effectively delivered (i.e. total amount effectively invoiced to the customers) during the complete duration of the contracts.
- A declaration of any contractual relations during the last three (3) years with any stakeholders and/or companies directly involved in the programmes, projects and legislative activities, conducted or subcontracted by the Agency, to be evaluated under this invitation to tender and a statement that the tenderer shall during the validity period of the Framework Contract(s), declare any changes in their situation regarding the contractual relations referred to in this paragraph.
- A statement of the Tenderer's policy on the use of subcontractors and description of the means of ensuring quality when subcontractors are used.
- A signed sworn statement specifying whether the tenderer or any of his/her staff worked on any project(s) commissioned by the Agency and directly related to this call for tender.
- A detailed description of the human resources available for the performance of the work required, including subcontractors. The tenderer shall include Curricula Vitae (CVs) showing clearly their qualifications and professional experience within the relevant business area. The Tenderer shall provide two CVs for each profile described in Annex I.A (see section 4). One CV can be presented for maximum two profiles requested.

For those tenders including subcontracting, the tenderer must submit:

- A document stating clearly the identity, roles, activities and responsibilities of the subcontractor(s) and specifying the volume/proportion of the tasks of (each of) the subcontractor(s), as well as the description of the quality control measures he intends to apply on the tasks to be carried out by (each of) the subcontractor(s).
- A letter of intent by (each of) the subcontractor(s) stating his/her unambiguous undertaking to collaborate with the tenderer if he wins the Framework Contract and the extent of the resources that it will put at the tenderer's disposal for the performance of the Framework Contract .
- **In the absence of this**, a document stating that the tenderer does not intend to subcontract and that he will inform the Agency about any change in this situation. The Agency reserves the right to judge if such change would be acceptable.

Offers involving subcontracting will be assessed as follows:

- Where the amount of subcontracting exceeds or equals 20% of the contract, the exclusion criteria will be assessed in relation to all proposed subcontractors. The declaration of honour on exclusion criteria and absence of conflict of interest included in Annex I.E, duly signed and dated, stating that the subcontractor is not in one of the exclusion situations, must be provided by each proposed subcontractor.
- Where the tenderer relies on the economic, financial, technical and professional capacity of the subcontractor(s) to meet the selection criteria, subcontractors shall be treated as if they were partners in a consortium or a group of companies for the purposes of the evaluation of the selection criteria, and therefore, they shall provide proof of economic, financial, technical and professional capacity as well.

For those tenders submitted by a consortium or grouping of service providers, the tender must contain:

- A document stating clearly the composition and constitution of the grouping or similar entity (company/temporary association/...), or the legal form their cooperation will take, should they be awarded the contract.
- A letter signed by each member stating his/her commitment to execute the services in the tender clearly indicating his/her role, qualifications and experience.
- A document signed by all members specifying the lead of the consortium or grouping of service providers and authorising the appointed lead of the consortium or grouping of service providers to submit the offer.

Joint tenders will be assessed as follows:

- The exclusion criteria will be assessed in relation to each company individually. The declaration of honour on exclusion criteria and absence of conflict of interest included in Annex I.E, duly signed and dated, stating that the tenderer is not in one of the exclusion situations, must be provided by each member of the consortium or the group.
- The selection criteria for economic and financial capacity will be assessed in relation to each company individually. However, economic and financial criteria that shall be achieved above a certain minimum threshold (i.e. average annual turnover) will be assessed in relation to the consortium or group of companies as a whole.
- The selection criteria for technical and professional capacity will be assessed in relation to the consortium or group of companies as a whole.

Tenders which do not meet the exclusion and/or selection criteria will not be considered.

Tenderers who do not provide the documents required in these tender specifications with regard to the exclusion and/or selection criteria may be excluded. The Agency will decide whether the substantiating documents provided constitute compliance with the selection criteria.

19. AWARD CRITERIA

The Framework Contract(s) will be awarded to the tender(s) offering the best value for money on the basis of the criteria specified below.

19.1 Technical quality, with 65% weighting

Tenders scoring less than 55 overall points or less than 55% of the points awarded for each of the criteria will be excluded from further evaluation.

The technical quality criteria, their importance factor and system of scoring are presented in detail below:

No.	Technical quality criteria	Max. points available
1.	Relevance, scope and quality of the range of business activities and services provided by the tenderer during the last three years which are relevant to this tender	15
2.	Relevance and scope of quality assurance accreditations and certificates which prove knowledge and experience in the following domains: SDLC tools and techniques, IT security, IT functional and technical requirement analysis, enterprise IT architecture, IT quality, Database and Data Warehouse planning, design, tuning and management, design and management of complex IT systems.	20

3.	Relevance and variety of different hardware and software technologies, methodologies, platforms and applications for which the tenderer can provide required services.	15
4.	Technical quality criteria for the Questionnaire	
4.1.	Efficiency and effectiveness of the resource selection methodology (to propose, select and deploy personnel suitable for the profiles listed in Annex I.A to these tender specifications)	10
4.2.	Efficiency and effectiveness of the methodology for personnel management	15
4.3.	Efficiency and effectiveness of the methodology for the account management	10
4.4.	Relevance, comprehensiveness and quality of risk management and confidentiality policies.	15
	TOTAL	100

19.2 Price, with 35% weighting

In order to evaluate the offers, the Agency will calculate a total reference price, based on the financial offer submitted by the tenderer in Annex II to the invitation to tender.

Only this reference price will be taken into account when calculating the price criteria. The total reference price has no contractual value and will be used solely for the purpose of this evaluation.

The total reference price consists of the reference price for IT consultancy services for a medium size project and will be calculated as follows:

Table 1 – provision of IT consultancy services

No	Profiles (as described in Annex I.A)	Total number of estimated person-days	Price in EUR per person-day	Total number of estimated person-months per profile	Price in EUR per person-month	Total
	A	B	C	D	E	$F = B \times C + D \times E$
1.	A-level expert WIC (working inside country)	20		Not required	Not required	
2.	A-level expert WOC (working outside country)	30		1		
3.	B-level expert WIC (working inside country)	30		2		
4.	B-level expert WOC (working outside country)	40		3		
5.	C-level expert WIC (working inside country)	30		2		
6.	C-level expert WOC (working outside country)	30		2		
Total reference price in EUR = 1 + 2 + 3 + 4 + 5 + 6						

19.3 Final evaluation

The formula to calculate economically the most advantageous offer is:

$$\text{Final score for tender X} = \frac{\text{cheapest total reference price}}{\text{total reference price of tender X}} * 35 + \frac{\text{total technical quality of tenderer X}}{100} * 65$$

Tenders will be ranked according to the criterion of the economically most advantageous tender that is with the highest technical quality/price combination, obtained on the basis of the formula indicated above.

Provided that there is a sufficient number of admissible tenders (those that satisfy the exclusion and selection criteria) that satisfy the award criteria, the Framework Contract will be awarded to a minimum of three (3) tenderers and a maximum of four (4) tenderers who have obtained the highest scores.

If only one eligible tender is received the tender procedure shall be cancelled.

When the number of admissible tenders is lower than three, the Agency reserves the right not award the Framework Contract(s).

20. AWARD OF SPECIFIC CONTRACTS

Once the Framework Contract(s) have been signed with the best ranked tenderers, the Agency may, when the need arises, send a request for services for carrying out an individual assignment. The Agency will select a contractor for a specific assignment on the basis of the submitted offers.

The offers must contain:

- a) a technical part, detailing the methodology, deliverables, project milestones, resources, the composition and skills of the team, the experts and the responsible team leader for the specific assignment;
- b) a financial part, detailing the number of person-day per the expert level and/or person-month per the expert level to be multiplied by the relevant price as defined in the Framework Contract.

The specific contract will be awarded according to the criteria given below, on the basis of the most economically advantageous tender.

20.1 Technical quality, with 65% weighting

The technical quality criteria, their importance factor and system of scoring are presented in detail below⁶:

- A. Relevance, comprehensiveness and quality of the proposed methodology, taking into account the specifics of the request for services.
This criterion receives maximum 50 points.

⁶ These terms may be formulated more precisely in the relevant request for services.

- B. Quality and consistency of the proposed planning of the implementation of the specific contract with deadlines, including deliverables, project milestones, team composition, resources, etc. dedicated to the project.
This criterion receives maximum 50 points.

Only offers with a total score of at least 60 overall points or at least 60% of the points awarded for each of the single criterion will be taken into consideration for awarding a specific contract.

20.2 Price, with 35% weighting

The financial offer shall detail the number of person-day and/or person-month per expert level and shall include the price per person-day and/or person-month as defined in the Framework Contract; the price per person-day and/or person-month per the expert level can be lower than the one in the Framework Contract but it cannot exceed it.

In order to evaluate the offers, the Agency will use the total all inclusive price, based on the financial offer submitted by the tenderer.

20.3 Final evaluation

The formula to calculate economically the most advantageous offer is:

$$\text{Final score for tender X} = \frac{\text{cheapest total all inclusive price}}{\text{total all inclusive price of tender X}} * 35 + \frac{\text{total technical quality of tenderer X}}{100} * 65$$

Tenders will be ranked according to the criterion of the economically most advantageous tender that is with the highest technical quality/price combination, obtained on the basis of the formula indicated above.

The tenderer with the highest mark for the final score will be awarded the specific contract.

Specific contracts will not be awarded to contractors who, during the procurement procedure for a specific contract:

- are subject to a conflict of interest;
- are guilty of misrepresentation in supplying the information required by the Contracting Authority as a condition for participation in the procurement procedure, or fail to supply this information.