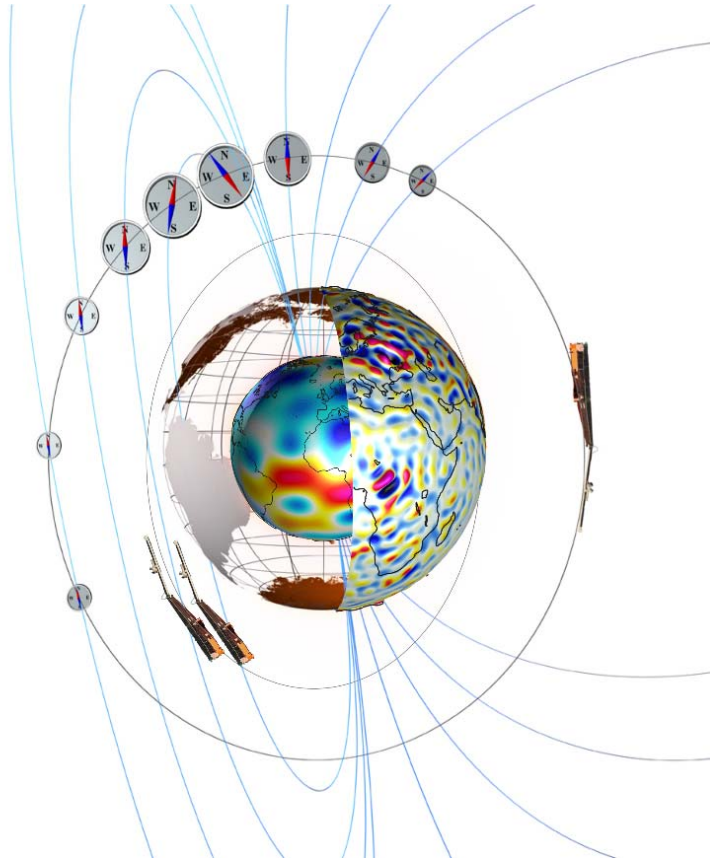




Procurement Procedure



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RIDs and internal review	Response to RIDs from the Negotiation Meeting on 7 June 2016. Updates to reflect the evolution of the definition of the organisation. Updates to ensure adherence to legal and contractual requirements.	1 dB	24 June 2016
Signature	As provided to ESA	1	25 June 2016
ESA comments	Updated to clarify the jurisdiction that applies to procurements on behalf of ESA	1A	06 July 2016
Adaptation to CCN	Updated references to governing contract	1B	13 July 2016

Table of Contents

1	Introduction.....	8
1.1	Scope and applicability.....	8
2	Applicable and Reference Documentation	8
2.1	Applicable Documents.....	8
2.2	Reference Documents	8
2.3	Abbreviations	8
3	SWARM DISC Organization for New Products & Services	10
4	Procurement Report (ITT file)	12
5	Preparation of the ITT	13
6	Publication of ITTs	14
7	Receipt and opening of tenders	15
7.1	Receipt of tenders	15
7.2	Appointment of the Tender Opening Board (TOB)	15
7.3	Duties of the Tender Opening Board	15
8	Appointment of the Tender Evaluation Board (TEB).....	16
8.1	Composition of the Tender Evaluation Board	16
8.1.1	Membership of the TEB.....	16
8.1.1.1	Principles	16
9	Distribution of admitted tenders	17
10	Responsibilities of the Tender Evaluation Board.....	18
10.1	Duties of the chairman of the Tender Evaluation Board.....	18
10.2	Proceedings of the tender evaluation board	18
10.3	Duties of the joint secretaries of the tender evaluation board	18
10.4	Duties of the tender evaluation board are as follows:.....	18
10.4.1	Duties of the TEB prior to issue of the ITT.....	18
10.4.1.1	Approval of ITT package	19
10.4.1.2	Establishing of evaluation criteria and weighting factors.	19
10.4.1.2.1	Evaluation Criteria.....	19
10.4.1.2.2	Weighting Factors	20
10.4.1.3	Establishing of schedule	20
10.4.2	Duties of the TEB subsequent to receipt of tenders	20
10.4.2.1	Preliminary assessment.....	20

10.4.2.2	Acceptance of substantive tender and contract conditions.....	20
10.4.2.3	Clarity of costing and credibility of pricing	21
10.4.2.4	Compliance with specifications	21
10.4.2.5	Discussion of findings	21
10.4.2.6	Marking of tenders	21
10.4.2.7	Assessment of results of marking.....	22
10.4.2.8	Overall assessment of tenders.....	22
10.4.2.9	Drawing-up of evaluation report	22
10.4.2.10	Closing of evaluation by TEB	23
11	Communications with tenderers	24
11.1	Briefing meetings.....	24
11.2	Communications during tender preparation period	24
11.3	Debriefing after evaluation.....	24
11.4	Negotiation with tenderers	24
12	Recommendation and decision	25
12.1	Recommendation	25
12.2	Decision	25
13	The ESA Industrial Ombudsman	26
A	Nomination and appointment of the TEB.....	27
B	Tender opening report	28
C	Declaration of secrecy and of non-conflict of interest	29
D	Minutes of first TEB meeting	30

Table of Figures

Figure 3-1 - SWARM DISC Organization for New Products & Services..... 10

Figure 3-2 - DISC Ideas selection and procurement process – approximate timelines 10

Figure 3-3 - Procurement Team: One Tender Evaluation Board per Potential Product 11

1 Introduction

The purpose of this document is to define procedures for tender actions (ITTs) performed on behalf of ESA under the SWARM Data, Innovation and Science Cluster (Swarm DISC) contract 4000109587.

1.1 Scope and applicability

This document describes the selection mechanisms, rules and procedures to be used for the procurement process for new products/activities of the Swarm DISC.

This document is publicly available on the SWARM DISC ITT publication site.

2 Applicable and Reference Documentation

2.1 Applicable Documents

The following documents are applicable to the definitions within this document.

[AD-1] ESA General Clauses and Conditions for ESA Contracts ESA/REG/002, rev. 2 (29 June 2015)

2.2 Reference Documents

The following documents contain supporting and background information to be taken into account during the activities specified within this document.

[RD-1] [Project Management Plan](#), SW-PL-DTU-GS-006

[RD-2] [Configuration and Document Management Plan](#), SW-PL-DTU-GS-007

[RD-3] ESA Code of BEST PRACTICES (IPC(2012)65, rev.2)

2.3 Abbreviations

Acronym or abbreviation	Description
CCN	Contract Change Notice
CDM	Configuration and Data Management
DTU	Technical University of Denmark, DK
ESA	European Space Agency
ESL	Swarm Expert Support Laboratories
ESRIN	European Space Research Institute, Frascati, IT
EXE	SWARM DISC Executive
NPM	New Procurements Manager
PDGS	Payload Data Ground Segment
PM	Project Manager

<i>Acronym or abbreviation</i>	<i>Description</i>
PP	Potential Project
QWG	Quality Working Group
SDBR	SWARM DISC Board of Representatives
SLA	Service Level Agreement
SVN	SVN Repository with server located at DTU.
SVT	Swarm Validation Team
SoW	Statement of Work
SW	Software
Swarm	Constellation of 3 ESA satellites, http://www.esa.int/esaLP/ESA3QZJE43D_LPswarm_0.html
TBC	To Be Confirmed
TBD	To Be Defined
TEB	Tender Evaluation Board
TOB	Tender Opening Board
WBS	Work Breakdown Structure
WPD	Work Package Descriptions

3 SWARM DISC Organization for New Products & Services

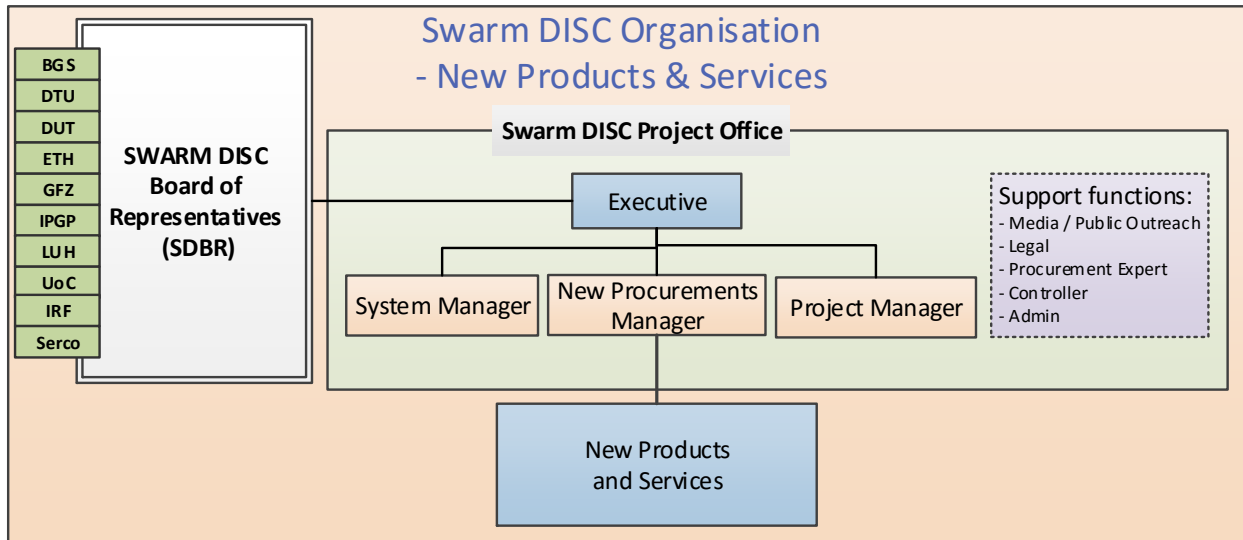


Figure 3-1 - SWARM DISC Organization for New Products & Services

Ideas for new Potential Products (PP) are collected through an open call process. The chairman of the SWARM DISC Board of Representatives (SDBR) will after consultation with proposing entities propose Activity Categories and Evaluation Criteria for the proposed ideas, and call for a meeting of the SDBR. This meeting will select a portfolio of Potential Product ideas, to be procured for this session.

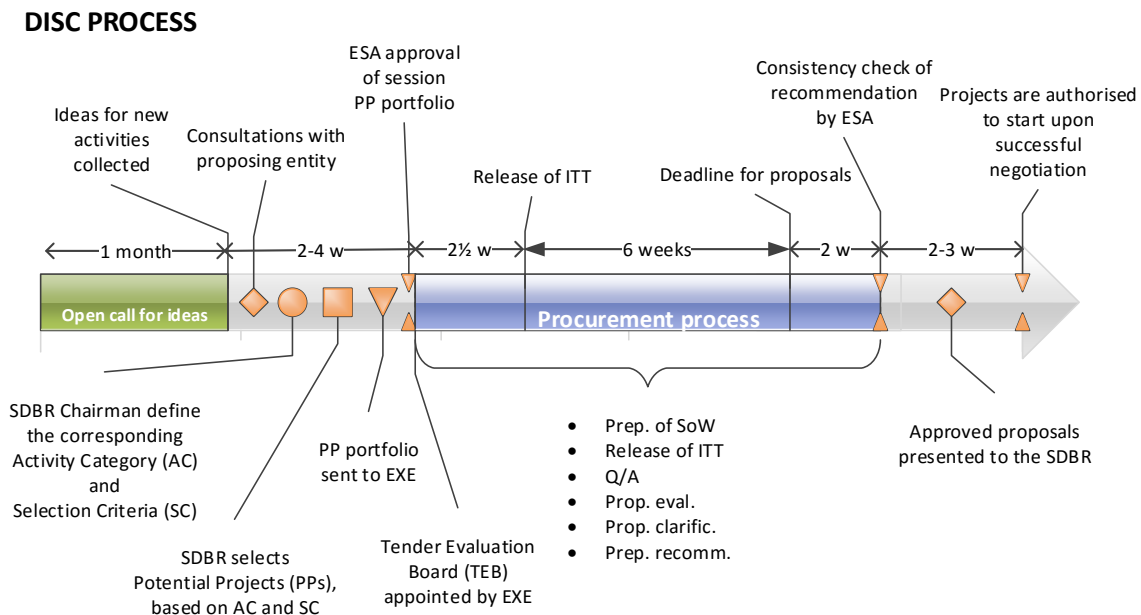


Figure 3-2 - DISC Ideas selection and procurement process – approximate timelines

The SDBR will hand over the portfolio of Potential Products (PP) for this session to the DISC Executive (EXE). Pending approval of the portfolio by the Agency, EXE will appoint a Procurement Team (PT) and initiate the procurement process. One Tender Evaluation Board (TEB) will in principle be established for each PP, however some overlap of expertise is anticipated to minimize the sum of work and travel.

ESA representatives may participate in the activities of the Procurement Team at the discretion of the Agency, without voting rights in the Tender Evaluation Boards.

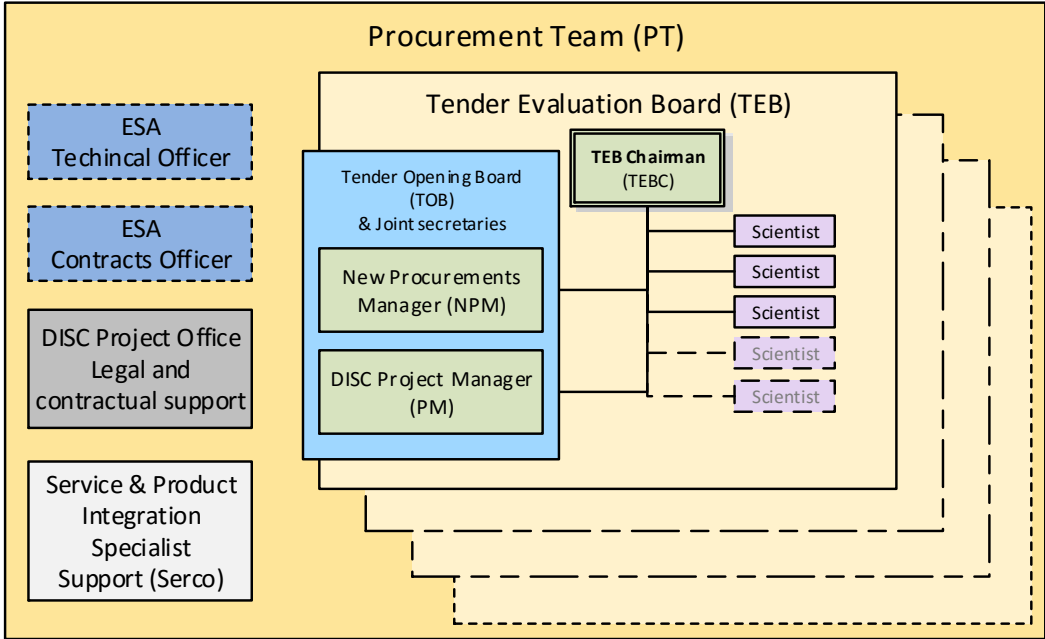


Figure 3-3 - Procurement Team: One Tender Evaluation Board per Potential Product

4 Procurement Report (ITT file)

At the initiation of each procurement session, a procurement report shall be prepared for each Proposed Product.

The report shall be a living document – a file of all activities related to this ITT - throughout the procurement process and include all information required for the documentation of the procurement until final endorsement of recommendation to grant a contract by the Agency.

As a minimum:

- List of TOB and TEB Members and other members of the Procurement Team
- Table with tick marks for members having been informed (who, when, by whom) about rules and tables with evidence for the performance of all other actions required during the procurement process
- References to ITT documents
- Log of opening procedure (each tender)
 - Tender documents list w. identification, place, date, time of reception
 - Dispatch conditions met
 - Admissibility (list of criteria, yes/no)
 - Conclusion (admitted?)
- Tender distribution list
 - Technical content
 - Cost/contract content
- Summary table of Tender evaluation(each tender)
 - Evaluation criteria
 - Evaluations by individual TEB members
 - Summarized result (all criteria with weight)

Related documents are preferably annexed or attached such as to be readily available:

- Nomination and Appointment of TEB members
- Signed declarations of Secrecy and Non-interest
- Minutes of TEB meetings
- ITT documents
- Record of exchanges with tenderers
- Tender Opening Report
- Tender Evaluation forms
- Any other document required during the procurement process

The Procurement Report and its related documents are confidential. The file will be maintained in a protected repository in the Project Office by the NPM, and is only accessible by the NPM and PM, and upon request by ESA and the relevant TEB Chairman.

5 Preparation of the ITT

Upon recommendation of the Swarm DISC Board of Representatives and approval of the PP portfolio by the Agency, an Invitation to Tender (ITT) initiation package shall be established for each new procurement action. The ITT initiation package shall comprise, as a minimum, the following documents pertaining to the evaluation procedure:

1. Tender Evaluation Board (TEB) nomination [See Annex A form for nomination and appointment of the TEB]
2. Confidentiality/no conflict declarations signed by all TEB members [see Annex C]
3. Planning of the procurement action, including closing date for the receipt of offers

As well as:

4. A summary description of the Contractor's intended Invitations To Tender (ITT) for each competitive tender action, associated with planning and fixed agreed price, to announce the future publication of the ITT on the dedicated internet site selected for that purpose (See section 6).

The EXE or the Agency may request that the ITT initiation package be reviewed by the Agency.

In a second step the nominated TEB shall prepare the full ITT package:

1. Cover Letter
2. Statement of Work
3. Draft Sub-contract
4. Conditions of Tender including Evaluation Criteria (and weighting factors)

Invitations to tender shall describe the procurement procedure being followed (this document). Cover letter shall state that the procurement action is done on behalf of ESA within the reference frame of ESA contract 4000109587/13/I-NB.

As part of the conditions of tender, potential tenderers shall be required to recognize, accept and cooperate with the ESA Ombudsman as being the sole recourse in case of complaints related to the procurement process, ref. [RD-3]. A Key Acceptance Factor shall be that bidders clearly state in their cover letter that they have read, understood, and accepted the Procurement Procedures including the result of the evaluation.

The full ITT package shall be approved by the Agency, who will check that they correspond to the requirements and procedures. Approval shall not be taken as lessening the Prime Contractor's overall responsibility.

6 Publication of ITTs

Approved ITT packages will be published and disseminated by the Contractor, via the dedicated ITT publication site: [www.space.dtu.dk/SWARM DISC ITTs](http://www.space.dtu.dk/SWARM_DISC_ITTs), with reference to this procedure document.

The publication site shall clearly indicate that procurements are made on behalf of ESA under the Swarm DISC contract, and the published ITTs shall only be open to ESA's States Participating in EOEP: (BE+DK+FR+DE+IT+NL+ES+SE+CH+UK+IE+AT+NO+FI+PT+GR+LU+CZ+CA – TO BE CONFIRMED/UPDATED by the Agency for each procurement session)

A summary description of the ITT shall be published on the ESA EMITS site, referencing the link to the site containing the full ITT package (plus related questions and answers).

Any relations with the tenderers during the tendering period will be done in writing through the formal channels indicated in the ITT, in accordance with chapter 11. A copy of the exchange shall be kept in the relevant ITT file.

Answers to questions raised by potential tenderers shall be published and disseminated through the ITT site, together with the original questions (without reference to the tenderer who put the questions forward).

The publication site should specify that clarification may be published at any time during the submission period and invite potential bidders to check regularly the site for any such information.

The Agency and partners of the Swarm DISC may further disseminate links to the ITTs on their own sites and other international networks (e.g. mailing lists of IUGG etc.).

7 Receipt and opening of tenders

7.1 Receipt of tenders

Receipt of tenders shall be via electronic means, providing a receipt of reception of the tender.

7.2 Appointment of the Tender Opening Board (TOB)

A TOB shall be appointed by EXE prior to the closing date stated in the ITT.

The TOB shall consist of at least two members (the New Procurements Manager (NPM) and the Project Manager (PM), or another person to whom EXE has delegated this authority). They are ex officio Joint Secretaries of the Tender Evaluation Board (TEB).

7.3 Duties of the Tender Opening Board

1. The TOB shall convene as soon as possible after the closing date and time. The TOB shall, first, verify that the dispatch conditions have been met. The TOB shall then open the tenders.
2. The TOB shall assess the admissibility of tenders. Tenders shall be admitted if they were received before the closing date and time and do not show prima facie evidence of a major non-compliance with the substantive tender conditions, which would impair the fairness or secrecy of the competition. Specifically, each tender must contain a technical description, a price of the type stipulated in the ITT, a delivery date and a signature validating the offer. Tenders shall be admitted if they were received after the closing date and time, provided that the tenderer has dispatched the tender in time to meet the closing date and informed the Contractor of the dispatch.
3. If a decision on admissibility cannot be taken unanimously, the TOB shall inform the chairman of the TEB and submit the matter to the Project Office Procurement Expert for decision.
4. For any tender ruled non-admissible, the Contractor will inform the tenderer stating the reason; such notification shall be kept in the ITT file.
5. The TOB shall draw up a Tender Opening Report [Annex B] showing the names of the tenderers, stating whether the tenders have been admitted or not, and, in the latter case, the reason of non-admissibility. The report shall be signed by the members of the TOB and shall be submitted to the chairman and members of the TEB. A copy shall be kept in the ITT file.

8 Appointment of the Tender Evaluation Board (TEB)

8.1 Composition of the Tender Evaluation Board

The Contractor shall appoint a TEB for each tender action taking into consideration the following boundaries.

To minimize the sum of work and travel, some overlap between the experts participating in the TEBs of each session is expected, however the TEB tasks described must be conducted and documented separately for each tender action.

The nomination and appointment of the TEB Members, including Chairman and Deputy, shall be recorded by using the form indicated in Annex A, and shall be submitted to the Agency for approval.

8.1.1 Membership of the TEB

8.1.1.1 Principles

The TEB shall be composed of experts with an overall appropriate experience and qualified in the appropriate scientific, technical and administrative disciplines as appropriate. The Agency's Technical Officer (or his nominated representative) and/or Contracts Officer may participate at their own request in the TEB, without voting rights.

It shall, normally, not include more than eight members including the chairman and secretaries (but excluding the optional designated representative(s) of the Agency, if any). Appointment to, and membership of, a TEB is personal, and cannot be delegated. All persons nominated shall be allowed to exercise their independent professional judgement independently from their hierarchy.

Two members (the NPM and PM) shall always be members and ex-officio joint secretaries of the TEB and they shall ensure the rules laid down in the present document and /or in any specific instructions issued by the Agency are followed.

The NPM and PM may provide support to the activities of the TEB but s/he shall not interfere with the definition of the SoW nor with the evaluation process. S/he shall also sign the confidentiality form.

In the event any of the DISC partners and/or their institutes wishes to bid for any task, that partner shall be excluded from the participation into that TEB, in the interest of impartiality. This shall also apply in case of companies belonging to the same industrial and/or legal organisation, or affiliated companies, meaning any form of association giving a company a vested interest in the outcome of the evaluation.

It is paramount that all tenders submitted and all documents arising from the evaluation be treated as highly confidential and that access to such documents must be limited to those persons directly involved in the evaluation. The following shall therefore apply:

Before the distribution of tenders is performed, each person participating in the evaluation shall confirm in writing that their signed "Declaration of secrecy and non interest form" is still valid. A copy of the statements shall be kept in the ITT file.

At the time of their nomination, TEB Members shall be informed by the TEB Chairman of their duty to preserve secrecy concerning the contents of any tender and the proceedings of meetings of the TEB.

9 Distribution of admitted tenders

The joint secretaries of the TEB shall distribute a complete copy of each admitted tender to each member of the TEB. Tenders shall not be distributed to any other persons until completion of the evaluation. The distribution of cost information shall be restricted to that information relevant to the aspect being evaluated by the individual concerned.

No offer shall be distributed until the recipients have confirmed that they have no conflict of interest with respect to the proposals.

10 Responsibilities of the Tender Evaluation Board

10.1 Duties of the chairman of the Tender Evaluation Board

The chairman of the TEB shall be responsible for the correct proceedings of the evaluation. He shall convene its meetings. In case of his absence, the meeting shall be chaired by a deputy, appointed under the provisions of section 8.1 above. **No meeting of the TEB may take place** without the presence of the secretaries or of the nominated Chairman/Deputy Chairman.

10.2 Proceedings of the tender evaluation board

The decisions and marking of the TEB shall be taken preferably by consensus.

The quorum of the TEB for taking decisions shall be **two thirds** of its members entitled to vote including the Joint secretaries. No member of the TEB shall be subject to the instructions of his hierarchical superiors in respect of his activities as a member of the TEB.

In case no consensus marking is possible, a note of non-consensus shall be made in the minutes, and decisions shall be taken by majority vote of members present. The chairman shall, in the case of equality of votes, have a casting vote.

Proceedings of the TEB shall be recorded in minutes as per section 10.3 hereafter. A copy of the signed minutes shall be kept in the ITT file.

10.3 Duties of the joint secretaries of the tender evaluation board

The joint secretaries of the TEB shall hold the TOB and be responsible for making the necessary arrangements for distributing copies of admitted tenders in accordance with TOB decision.

A record of distribution shall be maintained by the joint secretaries as part of the Procurement Report.

The joint secretaries of the TEB shall submit a proposal together with the initial ITT package, that include a draft contract, special tender conditions plus evaluation criteria and weighting factors for approval by the first meeting of the TEB. The joint secretaries shall be responsible for keeping the minutes of the TEB meeting(s).

The minutes shall contain the date and time of the meetings of the TEB, the names of those present, a record of any decisions taken by the TEB, specifically concerning approval of specifications, any other matters which any member may ask to have recorded in the minutes, negotiation points with tenderers and recommendation to place a contract.

10.4 Duties of the tender evaluation board are as follows:

10.4.1 Duties of the TEB prior to issue of the ITT

A first meeting of the TEB shall be held prior to the issue of the ITT.

At the beginning of this meeting, the chairman of the TEB shall remind participants that they must declare any personal interest in the subject of the ITT, and of their duty not to disclose any information concerning the evaluation to persons not involved in the evaluation including their hierarchy and to keep all evaluation documents secret.

The TEB shall then consider the ITT initiation package (ref. Section 5), and prepare the full ITT package including finalizing the Statement of Work, evaluation criteria and weighting factors, as well as establish a time schedule for the evaluation.

10.4.1.1 Approval of ITT package

The TEB shall review the ITT documents (package) and ensure that they constitute a proper basis for a competitive ITT and that they meet the requirements laid down in the applicable instructions and are in accordance with the special instructions and documentation provided by the Board of Representatives in advance of the ITT process.

- The ITT package shall be written in a neutral and unbiased way so as to ensure the fairness of the competition.
- The technical parts of the ITT shall not contain contractual aspects.

The approved ITT package shall be delivered to the Agency one week prior to the intended issue date. The Agency will review the ITT's package prepared by the TEB to ensure its "impartiality" in term of guaranteeing a fair competition, within four working days, unless justified circumstances prevent such response within that time period.

Once the documents are approved by the Agency, they shall be binding for the evaluation. No amendment of the binding ITT documents shall be made by the Prime Contractor without the prior approval in writing of the Agency. Should amendments, exceptionally, be necessary during the tender period, the TEB shall, subject to the agreement of the Agency, approve such amendments, which will be communicated simultaneously to all potential tenderers by publication on the selected site.

The members of the TEB shall be notified of any change to the closing date.

10.4.1.2 Establishing of evaluation criteria and weighting factors.

The joint secretaries of the TEB shall submit a proposal for evaluation criteria and weighting factors for the approval of the TEB.

10.4.1.2.1 Evaluation Criteria

Evaluation criteria are the norms to be applied by the TEB to determine the strengths and weaknesses of a tender by separate evaluations of its various aspects. The criteria shall be divided into technical criteria, such as understanding of and compliance with requirements, quality and suitability of proposed design, and suitability of facilities and of support programme, and management criteria, such as overall organisation and management methods, credibility of costing and planning, manpower deployment, experience and capacity of the tenderer, and compliance with substantive tender and contract conditions. The TEB shall be free to establish such criteria as it sees fit, provided that all significant parts of the ITT are covered, and no unfair advantage to one potential tenderer over another is thereby created.

While credibility of costing is a criterion (see section 10.4.2.3 hereafter), price and geographical distribution themselves shall not be criteria. (See, however, section 10.4.2.8 on the overall assessment of offers, including the price). Once approved, the evaluation criteria shall be binding for the evaluation and they shall not be further altered or sub divided. They shall be included as such in the ITT, along with the respective weighting factors.

10.4.1.2.2 *Weighting Factors*

Weighting factors are to be applied to the marks obtained for the evaluation criteria, in order to establish the relative importance of each of these elements within the total evaluation. The weighting factors shall apply to all evaluation criteria. The global total of the weighting factors shall add up to 100%.

Once approved, the weighting factors shall be binding for the evaluation and they shall not be further altered or sub divided.

10.4.1.3 *Establishing of schedule*

The joint secretaries of the TEB shall propose to the TEB a schedule for its further actions. The schedule shall take into account the validity period of the tender, any required periods for consultation with the Agency and shall allow sufficient time for the evaluators to read, understand and discuss the proposals.

10.4.2 *Duties of the TEB subsequent to receipt of tenders*

The TEB shall assess tenders, mark them, prepare a report on the results and make a recommendation as to any contract action to be taken as a result of the evaluation, in accordance with the following procedures:

10.4.2.1 *Preliminary assessment*

Prior to a qualitative assessment of the tenders, the TEB shall verify that the tenders are complete, and constitute full evaluable responses to the requirements.

Specifically, each tender must comply with the tender requirements and contain a technical description, a price, a delivery date and a signature validating the offer, the omission of which may have been not noted by the TOB.

If any of these elements, or some other element specifically required in the conditions of tender are missing, and the omission is such as to render the tender substantively incomplete, so that its further evaluation would impair fair competition, the TEB shall eliminate such tender from further evaluation.

If however the TEB is of the opinion that the omission is unintentional, and may easily be corrected and following consultation with the Agency's Contracts Officer, the joint secretaries of the TEB may consult in writing with the tenderer concerned with the aim of rectification [in such case, the TEB proceedings will be adjourned to allow for reply]. If the result of such consultation is negative, the TEB shall eliminate the tender concerned from further evaluation. Otherwise the tender shall be evaluated. In all cases a written record of such decision shall be placed in the ITT file.

10.4.2.2 *Acceptance of substantive tender and contract conditions*

The TEB shall verify whether the substantive tender and contract conditions have been accepted.

If this is not the case, the TEB shall determine into which of the following three categories the omission falls:

1. If the omission could impair fair competition, or renders the tender substantively incomplete, the TEB shall refer the matter to the Agency's Contracts Officer. If the Agency's Contracts Officer decides that the omission so warrants, she shall so inform the TEB, who shall eliminate such tender from further evaluation, and the tender shall be returned to the tenderer with a statement of rejection. Otherwise the tender shall be retained for further evaluation.
2. If the omission is sufficiently serious to render the tender unacceptable, but could be clarified or rectified without impairing fair competition, the Contractor following consultation with the

Agency's Contracts Officer shall consult, in writing, with the tenderer concerned [in such case, the TEB proceedings will be adjourned to allow for reply]. If the omission is sufficiently clarified or rectified, the rectified tender shall be retained for further evaluation. Otherwise the tender shall be eliminated from further evaluation and returned to the tenderer with a statement of rejection.

3. If the omissions are such that they do not affect the overall acceptability of the tender, they shall be taken into account in the marking of the appropriate criteria.

All decisions taken, and all communications shall be recorded in the ITT file.

10.4.2.3 Clarity of costing and credibility of pricing

The TEB shall evaluate whether the costing and pricing of the tenders is clear. This refers specifically to the correctness and adequacy of the detailed information as required by the Price Breakdown Form and any supporting costing documents as required by the conditions of tender. Credibility of costing shall be assessed with respect to activities proposed.

10.4.2.4 Compliance with specifications

Compliance shall be evaluated and recording, including compliance to work statement, management requirements, Conditions of Tender and any other requirements arising from the ITT package.

It shall identify the strengths and weaknesses of each tender in respect to the criteria. This shall be done by comparing the tender with the specification, not by comparing tenders amongst each other.

The TEB shall, also, if possible, identify whether weaknesses are readily capable of being corrected in order, if necessary, to improve the tender concerned.

If technical statement contained in a tender need clarification, the Contractor shall, on the request of the chairman of the TEB and after consultation with the Agency's Contracts Officer, consult with the tenderer concerned in writing, in order to obtain any clarification necessary for evaluation [in such case, the TEB proceedings will be adjourned to allow for reply].

The process shall be recorded in the ITT file.

The TEB shall take the outcome of such consultation into its overall assessment of the tender.

10.4.2.5 Discussion of findings

Prior to the marking of tenders by each individual member, the TEB shall discuss their findings on each aspect of a tender. The chairman shall guide the discussion in such a way that any significant differences of opinion may be reduced, or if this is not possible, that they are clearly identified and recorded.

10.4.2.6 Marking of tenders

The TEB shall award marks to the criteria.

The price shall not be marked (see section 10.4.2.8).

TEB members shall mark all criteria of which they have a general understanding and can make an assessment. They shall not restrict themselves to criteria related to their professional field of expertise, or aspects of criteria related thereto.

If a member marks one offer under a particular criterion, he shall mark all offers hereunder. The marks shall be a number between zero and one hundred for each evaluation criterion in accordance with the following scale of marking:

- Perfect 100
- Excellent 90
- Very good 75
- Good 60
- Fair 50
- Barely acceptable 40
- Worthless 0

Members shall restrict themselves to the indicated figures, although for marks above 40 increments of 5 points may be given to allow differentiation between proposals.

Any member of a TEB, who cannot agree with the consensus to the point that their mark differs so significantly from the mark given by the other members that no agreement can be reached with respect to acceptability, or who gives a mark below 40 for any criterion, shall state specifically why he disagrees or considers the tender unacceptable on that criterion, and the reason shall be recorded.

When the chairman of the TEB is satisfied that further discussion will not lead to a reduction of any discrepancies, the marks shall be officially recorded on the marking sheets. Marks once thus recorded cannot be changed.

10.4.2.7 *Assessment of results of marking*

If, as a result of the marking, one or more tenders is marked acceptable in all evaluation criteria (more than 40), then the TEB shall proceed to apply the weighting factors, make its overall assessment, prepare a final report and a recommendation.

If all of the tenders received have one or more criteria judged to be unacceptable, the TEB shall write an interim report and the provisions of section 11.4 below shall be applied.

10.4.2.8 *Overall assessment of tenders*

The TEB shall finalize the evaluation of the tenders by taking into an overall assessment the marked and weighted criteria versus the prices offered: The assessment shall be based on the best combination of technical quality and price.

The overall assessment shall, however, not be based on considerations of industrial policy and in particular geographical distribution.

10.4.2.9 *Drawing-up of evaluation report*

The TEB shall also identify areas of non-compliance and any items that would require negotiation prior to the placing of a contract.

Each TEB shall produce a report of the evaluation.

The report shall contain: reference and subject of the ITT, evaluation criteria, weighting factors, overall assessment of each tender (listed by alphabetical order), a table of marking, a conclusion listing the tenders in the order of preference, recommendation to place a contract with the tenderer having submitted the most advantageous tender with reasons, and any reservations a member of the TEB may wish to make.

The recommendations of the TEB shall be strictly based on the conditions of tender: as previously stated under section 10.4.2.8 above considerations of industrial policy or geographical distribution shall not be taken into account unless specifically mentioned in the conditions of tender.

The evaluation report shall be signed by the Chairman and all TEB members. The chairman of the TEB shall submit the evaluation report to the Contractor's and the Agency's representatives, who may exceptionally, in case of doubt as to the correctness or completeness of the evaluation, refer the matter back to the TEB for further evaluation.

They shall, however, not direct changes to evaluation criteria, weighting factors or marks.

The signed original of the report shall be kept in the ITT file.

10.4.2.10 Closing of evaluation by TEB

On finalization of the evaluation the chairman of the TEB shall remind its members again not to disclose any information concerning the evaluation to anybody until a final endorsement is made by the Agency.

The joint secretaries of the TEB shall ensure that documents no longer needed are collected and disposed of. If a tender is reissued in accordance with the provisions of section 4 above, or negotiations take place in accordance with section 7.4 below, the TEB is maintained till the final recommendation is made.

11 Communications with tenderers

Subject to the provisions of section 11.4 below (Negotiation with tenderers) communications with potential tenderers shall be formal, in writing, and restricted to what is necessary to ensure clarity of the requirements and to preserve fair competition. Any communications shall be issued through the Contractor with copy to the Agency's Contracts Officer.

11.1 Briefing meetings

Upon agreement between ESA and the Contractor, potential tenderers may, if the complexity of the ITT justifies it, be invited to a briefing meeting where the requirements are described and explained. To minimize the sum of travel, such briefings may be held as Teleconferences. All identified potential tenderers shall be invited. All questions submitted and answers given shall subsequently be distributed in writing to all potential tenderers. A briefing may be held, as appropriate, before or shortly after issue of the ITT.

11.2 Communications during tender preparation period

In accordance with the tender conditions, any questions from potential tenderers shall be submitted in writing to the Contractor. Following approval by the Agency's Contracts Officer, the Contractor may issue clarifications or amendments to the ITT.

Only questions concerning the understanding of the requirements will be answered.

Amendments, questions and the answers thereto shall be distributed via publication on the ITT site.

11.3 Debriefing after evaluation

All tenderers will be notified simultaneously by the Contractor of the decision to award / not award each specific tenderer a contract after a final decision has been endorsed by the Agency (see section 12 hereafter). Upon request of a tenderer, the Contractor shall facilitate an explanation to such tenderer the reasons why this tender has not been accepted. Such debriefing shall be made by the concerned TEB Chairman.

Explanations shall be limited to the findings of the TEB on the tender in question, and shall not cover the quality or contents of other tenders. Debriefings may be oral or in writing. A record of the explanation given shall be placed in the ITT file.

11.4 Negotiation with tenderers

Negotiations with tenderers may only be undertaken following written approval by the Agency and following a detailed negotiation procedure to be established by the Agency.

12 Recommendation and decision

12.1 Recommendation

1. The Contractor's recommendation for selection will be made on the basis of the evaluation results of the TEB.
2. No tender having obtained an overall marking below 50 shall be put forward by the Contractor to the Agency unless such recommendation specifically identifies the necessary measures which have to be taken in order to bring the recommended tender to such a level and to further optimise the best combination of technical quality and price.
3. This recommendation shall be sent to the Agency's representatives.

12.2 Decision

1. Upon receipt of the recommendation, the Agency shall decide within a period of five working days, (unless justified circumstances prevent such response) either to endorse the recommendation or not.
2. The Agency shall always have the right to request, if so desired, a new evaluation, in such case the Agency shall notify the Contractor of the reasons for its decision.

13 The ESA Industrial Ombudsman

Pursuant to Article 17 of the ESA Procurement Regulations, procurements carried out under these Procurement Procedures (with reference to ESA Code of Best Practices [RD-3]) are not subject to the right of review provided for under Part VI of the Agency's Procurement Regulations.

Nonetheless in order to guarantee the principle of fair competition and fair access to Contractor's procurements at all levels, the Agency has established an Industrial Ombudsman. In the frame of Procurement Procedures companies are required to recognise, accept and co-operate with this Industrial Ombudsman should the latter be asked to intervene.

The competence of the Ombudsman and procedures to be followed are specified in ESA CODE OF BEST PRACTICES [RD-3].

The ESA Industrial Ombudsman shall be sole recourse in case of complaints related to the procurement process.

A Nomination and appointment of the TEB

Subject:

Reference: ESA-Contract 4000109587 13/I-NB

Budget: EURO

Planned issue date:

ROLE	NAMES
Chairman:	DISC representative
Deputy Chairman:	DISC representative
Maximum 4 Members:	DISC representatives or external experts
ESA Members (optional):	Agency's Technical officer (or person nominated by him)
	Agency's Contracts Officer
Ex Officio Joint secretaries	New Procurements Manager
	Project Manager (or person nominated by him)

B Tender opening report

Subject: Contractors ITT Ref Number

Reference: ESA-Contract 4000109587 13/I-NB

Budget: EURO

Published on:

The tender opening for the above tender action took place on

The following offers were received and accepted for evaluation:

Economic Operators and country (P: Prime, S: Sub)	Price per entity and Total Price in Euro	Result of TOB Admissibility screening
P: xxxx (XX) S: xxxx (XX) S: xxxx (XX)	xxxx xxxx xxxx <hr/> Total Price xxxxx	Admissible <input type="checkbox"/> Non-admissible <input type="checkbox"/>
P: xxxx (XX) S: xxxx (XX) S: xxxx (XX)	xxxx xxxx xxxx <hr/> Total Price xxxxx	Admissible <input type="checkbox"/> Non-admissible <input type="checkbox"/>
P: xxxx (XX) S: xxxx (XX) S: xxxx (XX)	xxxx xxxx xxxx <hr/> Total Price xxxxx	Admissible <input type="checkbox"/> Non-admissible <input type="checkbox"/>

[The following tender(s) was/were regarded as unacceptable for evaluation for the following reason(s):

-

and in accordance with the **Procurement Procedure for the selection of New Product subcontractors within the Swarm DISC Project**, the chairman of the TEB has been notified and the matter submitted to the Agency's Responsible Contracts Officer.]

[number] acceptable tender(s) having been accepted for evaluation, in accordance with the **Procurement Procedure for the selection of New Product subcontractors within the Swarm DISC Project, SW-RS-DTU-GS-003**.

The matter has been referred to the Agency's Responsible Contracts Officer.

The following persons were present at the tender opening event:

Distribution of Tenders: TEB members + Agency's representatives.

C Declaration of secrecy and of non-conflict of interest

Evaluation of tender for:

Reference number:

Contract: ESA-Contract 4000109587 13/I-NB

I, hereby declare that I shall not disclose to any unauthorized person, whether an employee of(Member's Company/institute) or a staff member of ESA or not, knowledge which I acquire through my participation in the above tender evaluation.

Neither I nor any immediate member of my family have any personal interest in the outcome of the above tender action, except *)

I further declare that I have received document SW-RS-DTU-GS-003 describing the Procurement Procedure, and have read and understood my duties as a member of the Tender Evaluation Board (in particular section 10.4 - and 10.1 if nominated as Chairman or Deputy) and received any necessary clarifications - prior to signing this declaration.

Signed:

Date:

*) please insert here any exceptions, or delete if there are none.

D Minutes of first TEB meeting

Subject:

Date:

In accordance with the provisions of Section 10.4.1 of *Procurement Procedure for the selection of New Product subcontractors within the SWARM DISC Project*, the TEB members have:

Finalized and reviewed the following documents and agreed that they are a proper basis for a complete ITT package:

- Cover Letter
- Statement of Work
- Draft Sub-contract
- Conditions of Tender including Evaluation Criteria/Weighting Factors
- Closing date for the receipt of Offers

DECLARATION OF SECRECY AND OF NON-INTEREST

The TEB members confirm that they have signed the relevant declaration and that they shall not disclose to any unauthorized person knowledge which they acquire through their participation in the above tender evaluation.

They further confirm that neither they nor any immediate member of their family have any personal interest in the outcome of the above tender action[, except]

SCHEDULE

Target ITT publication date

Target closing date

Target date next TEB meeting (evaluation)

SIGNATURE OF THE TEB MEMBERS

Chairman:

Deputy chairman:

Members:

Joint secretaries: