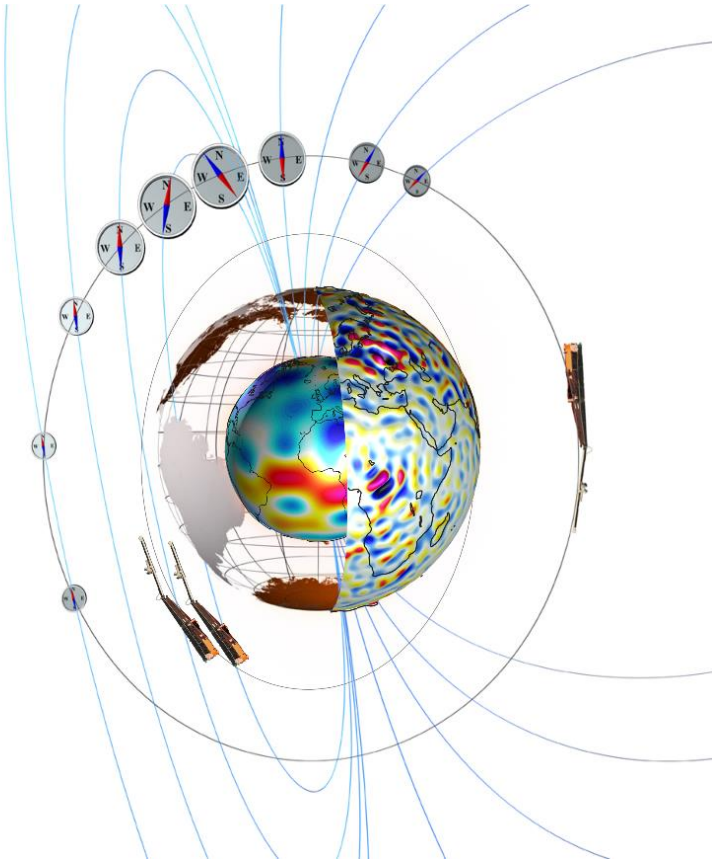
Special Conditions of Tender

Swarm DISC ITT 3.2



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1 Introduction

This Invitation to tender is issued by the Swarm DISC consortium on behalf of the European Space Agency (ESA, or 'the Agency') within the reference frame of ESA contract 4000109587/13/I-NB, in accordance with the Swarm DISC Procurement Procedure [AD-1]. By submitting a tender, you are required as a Key Acceptance Factor to recognize, accept and cooperate with the ESA Ombudsman as being the sole recourse in case of complaints related to the procurement process.

1.1 Scope and applicability

For the purposes of this Invitation to Tender ("the ITT"), the Agency's "General Conditions of Tender for ESA Contracts (Annex IV to the ESA Procurement Regulations ESA/REG/001, rev 4") ([AD-2], "the GCT" – see section 2.1), shall apply as specified, amended or supplemented by these simplified Special Conditions of Tender ("the SCT" – this document) targeted at low value procurements. In the event of conflict between the GCT and the SCT, the SCT shall prevail.

This document contains references to the "General Clauses and Conditions for ESA Contracts" ([RD-2], "the GCC" – see section 2.1).

This procurement action is executed in accordance with the procurement procedure designed specifically for the Swarm DISC as described in [AD-1].

Please note the publication of this ITT does not constitute an obligation neither on behalf of ESA nor on behalf of the Swarm DISC consortium, to issue a contract.

1.2 Maximum Budget

The Agency has through the Swarm DISC earmarked the budget specified in the ITT Cover Letter for this activity. The price type shall be Firm Fixed Price. All prices shall be quoted in EURO. Consequently, **please note that only proposals quoting a Firm Fixed Price in EURO within this limit will be considered for evaluation.**

1.3 Period for tender preparation

Your offer and all supporting documents must reach the Swarm DISC Project Office using the ITT mailbox (or FAX number) stated in the ITT Cover Letter no later than the deadline stated in the same Cover Letter.

Please note that tenders arriving after the closing date will not be evaluated.

Extension of the tendering period is unlikely to be granted but may nevertheless be solicited. This shall be done in writing. Such request will only be considered if fair competition is not thereby impaired. Requests for extension received less than 10 working days before the closing date will not be considered. Refusal to grant extensions may not give rise to any claims by economic operators.

1.4 Negotiation prior to contract award

Swarm DISC reserves the right to negotiate with one or more Tenderers in accordance with instructions from ESA before taking a decision on the placing of a contract. Should such negotiations not be successful the Swarm DISC shall terminate negotiations and reserves the right to enter into negotiation with another Tenderer. Such decisions by the Swarm DISC and ESA may not give rise to any claims by Tenderers.

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The original offer(s) shall remain valid until changes are agreed in writing. Once agreed, the modified offer(s) shall be binding and its validity shall in no case be less than two (2) months from the date of its (re)submission.

2 Applicable and Reference Documentation

2.1 Applicable Documents

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

[AD-1] SW-CL-DTU-GS-125_3-2_Cover_letter

[AD-2] SW-OF-XXX-GS-125_3-2_Proposal_template

[AD-3] SW-RS-DTU-GS-003 rev. 1B, Swarm DISC Procurement Procedure

[AD-4] General Conditions of Tender for ESA Contracts (GCT - Annex IV to the ESA Procurement Regulations ESA/REG/001, rev 4)

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

[RD-1] ESA Code of BEST PRACTICES (IPC(2012)65, rev.2)

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

2.2 Abbreviations

Acronym *or abbreviation*	***Description***
AD	Applicable Document (See section 2.1)
CDM	Configuration and Data Management
CDMP	Configuration and Data Management Plan
DTU	Technical University of Denmark, DK
EOEP	Earth Observation Envelope Programme
ESA	European Space Agency (Also denoted 'the Agency')
ESRIN	European Space Research Institute, Frascati, IT
GCC	General Clauses and Conditions (See [RD-2])
GCT	General Conditions of Tender (See [AD-2])
ITT	Invitation To Tender
RD	Reference Document (See section 2.1)
SCT	Special Conditions of Tender

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Acronym ***or abbreviation***	***Description***
Swarm	Constellation of 3 ESA satellites, https://earth.esa.int/web/guest/missions/esa-operational-eo-missions/swarm
TBC	To Be Confirmed
TBD	To Be Defined
WBS	Work Breakdown Structure
WPD	Work Package Description

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3 General conditions for participating in a tender (ref. GCT Part 1)

Part 1 of the GCT shall apply, with the amendments stated below:

3.1 Eligible Bidders and Industrial Policy Requirements

Bidders should note that the present activity is within the reference frame of ESA contract 4000109587/13/I-NB, as part of the Agency's Earth Observation Envelope Programme (EOEP).

You are, therefore, requested to note that the Agency can only consider tenders from companies or organisations from ESA Member States Participating in EOEP. This includes Prime (and sub-contractors if any) residing in one of the Member States explicitly stated in the ITT Cover Letter.

The participation as External Services from non-eligible countries could be acceptable but only if there is no other alternative in terms of necessary technology and/or knowledge. This has to be clearly identified, explained, and justified in the proposal and the proposal will also have to specify the provider of the External Service, as well as the amount of support thus purchased (in hours) in the cost form Exhibit A to the PSS-A2. As a rough order of magnitude, the External Service should not be higher than 10% of the total ITT volume.

3.2 Registration requirements

The Member States of ESA have made it mandatory for the Agency to register economic operators wishing to do business with ESA. Economic operators wishing to do business with ESA not yet registered as potential Tenderers, are requested to complete the online questionnaire on the "esa-star registration" website (https://esastar-emr.sso.esa.int/).

Any entity, at the time when a response is submitted, should at least have already completed the "Light Registration" as described in the following ESA-STAR Registration User Manual: https://esastar-emr.sso.esa.int/Account/DownloadFile

That registration as an ESA Entity includes the obligation to subsequently fill in the ESA Questionnaire and its yearly updating. Failure to provide or update the required information may result in EMITS non-public part access being blocked.

Further information on the registration process can be found on the Industry Portal pages available at: http://www.esa.int/About_Us/Business_with_ESA/How_to_do/esa-star_Registration_Process.

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4 General conditions for the presentation and submission of tenders (ref. GCT Part 2)

Part 2 of the GCT shall apply subject to the amendments stated below:

(The letters and numbers in brackets refer to the related sections in the GCT Part 2.)

4.1 (A) – General standards of presentation

4.1.1 (1) Length of tender documents

The complete package of tender documents shall not exceed 50 pages (excluding annexes with company presentations, CV's, etc.), and the sum of file sizes should not exceed 5MB in electronic form.

4.1.2 (2) Language of Tender

The tender and all correspondence shall be in English.

4.2 (B) - Formal conditions, commitments, undertakings

4.2.1 (12) Responsiveness of the tender

The tender shall include a signed compliance matrix as specified in the Proposal Template, Annex 2 in his tender.

4.3 (F) – Amendments to documents and communications

Point of contact for this ITT will be the Swarm DISC New Procurements Manager, using the e-mail address or TELEFAX number stated in the ITT Cover Letter.

4.3.1 (2) Amendments of the ITT

Swarm DISC reserves the right to issue amendments to the ITT.

4.3.2 (3) Question relation to the ITT

Any questions concerning the ITT shall be submitted in writing by e-mail or telefax to the Swarm DISC New Procurement Manager not later than ten (10) working days before the closing date. Questions should make specific reference to the appropriate section(s) of the ITT documents. Tenderers are asked to note that it is not possible to receive an immediate response to questions as each response published goes through an internal review process prior to its publication.

When Swarm DISC gives a reply, the reply(ies) will be published together with the question(s) on the Swarm DISC ITT site with an automatic notification to all who have notified an interest. Failure by Swarm DISC to give a reply may not give rise to claims.

Any request for applicable documentation specified in the ITT shall be sent to the Swarm DISC New Procurement Manager. Swarm DISC will not make any document available unless the ITT documents specifically state that such document is available on request for the purpose of the ITT.

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4.4 (G) – Dispatch and receipt conditions

Part 2 - Section G of the GCT is replaced by the following:

4.4.1 Packaging

Tender documents shall be provided electronically. All tender documents shall be available in either a searchable PDF format and/or a Microsoft Word (2010 or compatible) format as appropriate.

Pages containing signatures may be scanned and delivered as additional PDF documents.

A complete tender shall be packaged as one e-mail with all relevant documents attached, observing the size restrictions of section 4.1.1.

4.4.2 Dispatch of tenders

Tenders arriving after the closing deadline will not be taken into account.

Tenders shall be sent via e-mail to the e-mail address specified in the ITT Cover Letter. The subject field shall clearly identify the Swarm DISC ITT reverence ID of this ITT.

If you do not receive confirmation of receipt within the business day following the day your e-mail was sent, please communicate using the FAX number stated in the ITT Cover Letter, clearly addressing the Fax to Swarm DISC New Procurements Manager. The subject field of the e-mail (or FAX cover page) must clearly identify the Swarm DISC ITT reference ID, and identify the contents as confidential.

In case the Swarm DISC receives the tender via FAX - but not via e-mail - before the closing deadline, the tenderer will be informed, and an extension may be granted to allow electronic delivery. In such case only the first received document shall be binding.

4.4.3 Receipt of tenders

Only the Swarm DISC New Procurement Manager is authorized to issue a receipt upon delivery.

4.5 (I) – Conditions relating to security screening

Part 2I of the GCT is not applicable.

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5 General condition for the contents of a tender

Part 3 of the GCT is fully replaced by the sections below.

Using the proposal template provided for this ITT is not a requirement, but recommended.

The Evaluation Criteria and Weighting Factors specified in Annex 1 will be applied during evaluation of the proposal(s).

5.1 Proposal Cover

The cover letter of your proposal must provide references to all tender documents, in case the tender consists of more than one document.

Price summaries shall be provided as annexes, describing the partner distribution and the geographical distribution, with a total budget not exceeding the maximum budget indicated in the ITT Cover Letter.

The name, address, e-mail, telephone and fax numbers, ESA bidder Code of the responsible contact person of the bidder and the vendor code shall be provided, both for the primary contractor and subcontractors, if any.

A signed Declaration of compliance with key acceptance factors as specified in the Proposal Template, Annex 2, must be provided.

The front page of the Proposal Cover shall be signed by the authorized representative(s) of the Tenderer.

5.2 Executive summary

An executive summary of the proposal is recommended but not required. Inspiration can be found in the ANNEX A of the GCT.

5.3 Technical Proposal

The technical proposal shall describe the plan and methodology for delivering the technical products and documentation as specified in the Statement of Work.

The technical proposal shall include:

1) An introduction demonstrating your understanding of the technical requirements in the Statement of Work.
2) A detailed elaboration of proposed approach, including flow chart, product tree or similar description of
    a. which external elements are used,
    b. the internal products that go into producing the required technical output products and
    c. specification of the documentation provided
3) Design references
4) Proposed product test & validation strategy demonstrating the scientific value of the product(s)
5) A compliance matrix detailing all technical requirements specified in the Statement of Work, indicating whether the proposal is compliant or non-compliant, and which section of the proposal that deals with this requirement.

If Tenderer intends to make use of Background Intellectual Property or Third Party Products/Rights, the tender shall explain the rationale for this choice in technical terms. The impact of this approach on the technical activities and resulting products - as well as their usage – shall be indicated.

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5.4 Implementation proposal

The implementation proposal shall contain a Work Breakdown Structure (WBS) and a schedule with milestones suitable to determine project progress. A Graphical overview in the form of a Gantt chart is recommended.

A preliminary risk analysis shall be made, considering e.g. availability of resources (persons, equipment, data). If any significant risks are identified, a risk management strategy shall be included.

The implementation proposal shall contain a clear description of all project deliverables and their relation to the schedule and WBS.

5.5 Management & Administration

The management proposal shall describe project management organization and points of contact for the project (including subcontractors, if any). It shall also describe the relationship between the project and the institution, within which the project is operating.

The management proposal shall include description of:

- Distribution of management roles & responsibilities
- Key persons (CV specifying relevant experience)
- Management procedures
- A project Schedule compliant with the Statement of Work
- Provisions for Document and Configuration Management
- Progress management and reporting

5.6 Financial Proposal

5.6.1 Cost Price Data

The costing information shall be presented according to the Proposal Template.

The PSS forms for detailing Cost Price Data are available on EMITS http://emits.sso.esa.int/emits/owa/emits.main under “Reference Documentation” → “Administrative Documents” → PSS Forms.

As a minimum, the PSS-A2 and -A8 forms shall be completed and signed for the Prime Contractor (and for each Subcontractor if any).

It shall include a travel- and subsistence plan (Exhibit B of the PSS-A2 form) if any travel is foreseen as part of the project.

All cost shall be stated in the national currency and converted to EURO. No negotiations will be entered into, as a result of currency fluctuations.

5.6.2 Quotations free of taxes and customs duties

Prices shall be quoted free of taxes and customs duties. In cases where the Tenderer considers that he will remain subject to the payment of taxes or customs duties, he shall indicate separately the applicable rates, the corresponding estimated total tax or customs duty amount.

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5.6.3 Royalties and licence fees

Swarm DISC will only accept to pay licence fees or royalties as part of the FFP on the condition that:

- They are clearly identified in the tender with the financial basis for their calculation, method of application and total amount,
- They are demonstrated to be of direct and necessary benefit to the work to be performed,
- They are not merely the consequence of a general agreement or commitment to a third party,
- They are applied only to that part of the effort to be performed by a contractor or subcontractor that is directly related to the subject matter of the licence or royalty agreement.

A copy of the documents justifying the request for the payment of a licence fee or royalty, or the appropriate part thereof, may be requested at any time during evaluation or negotiation.

5.6.4 Milestone Payment Plan

The Tenderer shall accept the Milestone Payment Plan provided in the Draft Contract, or propose an alternative using the table specified in the proposal template.

All claims for payment, except the advance, shall be linked to the achievement of defined schedule milestones with tangible deliverables. Examples of such milestones are the satisfactory completion of WPs and delivery and acceptance by Swarm DISC of the related output.

Payments shall be only from Swarm DISC to the Prime Tenderer. No direct payments shall be expected from Swarm DISC to Prime Tenderers Subcontractors.

5.7 Contractual Proposal

5.7.1 Compliance with contract conditions

The Tenderer shall explicitly state that the draft contract conditions have been read, are understood and accepted, and that any sales conditions of his own do not apply. In case, exceptionally, that he wishes to propose modifications or amendments, the full text of such modifications or amendments shall be given and the reasons for their being requested shall be clearly explained.

Acceptance of a tender containing reservations, or proposed modifications or amendments is not construed as acceptance of these, unless and until such modifications or amendments are confirmed in a contract. Any proposed modifications or amendments to the contract conditions shall either be rejected or shall be the subject to negotiation prior to award of the contract.

5.7.2 Statement concerning the use of existing intellectual property rights of the Tenderer and third party commitments

The Tenderer shall address in the contractual proposal any particular conditions related to Background Intellectual Property Rights (BIPR) and third party commitments in accordance with the requirements hereafter (and as further defined in Part 2 of the GCT section C2).

If the Tenderer intends to use own background data corresponding to existing intellectual property rights owned by the Tenderer or by a proposed sub-contractor or by any other third party, he is expected to state this in his tender and to provide as part of his tender a dedicated table as specified in the Proposal template.

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The Agency reserves the right to challenge, in due course and up to contract closure, the BIPR claimed by the Tenderer in the tender and in the corresponding table mentioned above.

The Tenderer shall further specify if such background data is needed only for the development or whether it is also necessary subsequent to the delivery. In the latter case the Tenderer shall along with the lines established in this section confirm the conditions of access (any limitation/restriction, licensing and related costs) and confirm that the Agency and the Swarm DISC Consortium can use them for the intended use/objective of the ITT detailed in the Statement of Work and draft contract.

In case the Tenderer wishes to make any restriction on the rights of distribution and use, as foreseen and defined in Part II of the GCC as amended by the draft contract, of any data, including documentation, related to the work under the contract, such proposed restriction must be clearly defined and justified in the tender. It will be taken into account in the evaluation and if contrary to the stated objectives of the ITT, may render the tender unacceptable. The Agency and Swarm DISC will not accept reservations related to BIPR listed in the tender that would be made subsequent to the closing date of the ITT.

The tender evaluation and draft contract negotiation will be based on the BIPR presented and discussed in the tender. Accordingly, unless having received prior agreement of the Agency and Swarm DISC representatives, no other BIPR should be used during the contract execution (in addition to or in replacement of the BIPR(s) listed in the tender).

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Annex 1 Evaluation Criteria and Weighting Factors

In evaluating the tender(s) the Swarm DISC Tender Evaluation Board will apply the following criteria and weighting factors:

No.	Evaluation Criterion	Weighting Factor
1	Background and experience (general and related to the particular field concerned) of the company(ies) and staff (including adequacy of proposed facilities)	15%
2	Science quality of the proposal, how well established is the science, maturity of existing codes, approach to validation, level of innovation	50%
3	Quality and suitability of proposed programme of work; adequacy of scientific and technical approach; Compliance with specifications	15%
4	Adequacy of management, credibility of costing and planning for the execution of the work	10%
5	Compliance with administrative tender conditions and acceptance of contract conditions	10%

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