

**TENDER SPECIFICATIONS**  
**ATTACHED TO THE INVITATION TO TENDER**

**Invitation to tender No ENER/B3/2013-978-1**  
**concerning a follow-up study on**  
**financial security and liability**  
**for civil damages in the European Union in the context of**  
**offshore oil and gas activities**

## **I. Technical Specifications**

### **Background**

In the wake of the Deepwater Horizon disaster in 2010, the Commission tabled in October 2011 a proposal for legislation to reduce the risks of a major accident from offshore oil and gas operations and, if an accident nonetheless occurs, to ensure effective emergency response and remediation of the damages. The proposal aimed to raise the safety and environmental protection standards in all EU waters to the level of the world's best performing regimes. Directive 2013/30/EU (OSD: Offshore Safety Directive) entered into force on 18 July 2013<sup>1</sup> and sets challenging goals for industry as primary duty holders that are underpinned by responsible licensing by the Member State and overseen by a robust independent competent authority for safety and the environment in each Member State.

The Directive defines the basic elements of an efficient EU-wide framework for preventing major accidents and limiting their consequences. The Directive provides common rules (based on Article 192 of the Treaty on the functioning of the EU) for a sector covered so far mostly by widely diverging national legislation in the quasi absence of international law.

The logic of the new regulatory model is that the most important goal is prevention of a major accident. Secondly, there is to be an immediate response to a major accident, should one nonetheless occur, to limit its consequences to the vicinity of the installation. Thirdly, existing provisions within the Member States to fight an escalating environmental event are strengthened. And fourthly, measures are provided for ascribing liability solely to the licensee and for some further shaping of current measures for financial security and compensation for damages.

As should already be clear from the previous paragraph, the fourth measure – relating to financial security and compensation – is the least developed component of the new offshore legislative model. This study addresses the need for further information to support additional considerations of these issues.

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<sup>1</sup> English version of Dir.2013/32/EU may be downloaded at:  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:178:0066:0106:EN:PDF>

## Introduction to the study

The Commission, Council and Parliament considered it was not feasible to incorporate in OSD definitive measures for ensuring fully adequate financial security and comprehensive compensation schemes throughout the EU. This reflects both the gaps in the market for financial instruments, and the fragmentation of civil mechanisms in the Member States, the alignment of which lies outside the competence of Article 192 of the Treaty, which is OSD's legal basis.

The Macondo incident demonstrated that the costs of responding to, and economic recovery from, extreme-scale offshore accidents have the potential to overwhelm the resources of the liable party. The effect would be a socializing of the costs by transferring the liability for environmental recovery to the affected Member State(s) as well as risking irreparable damage to local business and communities. The underlying risk drivers are the increasing numbers of less-resourced operators in Union waters, the absence of adequate market instruments, and consistent civil law in the Member States.

Notwithstanding that financial provisions for both limiting and compensating damages relating to an offshore major accident are inadequate, the Commission's Impact Assessment<sup>2</sup> determined that the development of remedies was insufficiently advanced for a complete set of measures to be incorporated into the draft legislation. The urgency to legislate for improved preventive safety was of higher priority. In line with requirements of the Offshore Safety Directive, the Commission will further examine liability issues and report to the Parliament and the Council accordingly. The red text in Box 1 is of most relevance.

<p>Directive 2013/30/EU Article 4 <i>Safety and environmental considerations relating to licences</i></p> <p>1. Member States shall ensure that decisions on granting or transferring licences to carry out offshore oil and gas operations take into account the capability of an applicant for such a licence to meet the requirements for operations within the framework of the licence as required by the relevant provisions of Union law, in particular this Directive.</p> <p>2. In particular, when assessing the technical and financial capability of the applicant for a licence, due account shall be taken of the following:</p> <p>(a) the risk, the hazards and any other relevant information relating to the licensed area concerned, including, where appropriate, the cost of degradation of the marine environment referred to in point (c) of Article 8(1) of Directive 2008/56/EC;</p> <p>(b) the particular stage of offshore oil and gas operations;</p> <p>(c) the applicant's financial capabilities, including any financial security, to cover liabilities potentially deriving from the offshore oil and gas operations in question including liability for potential economic damages where such liability is provided for by national law;</p> <p>(d) the available information relating to the safety and environmental performance of the applicant, including in relation to major accidents, as may be appropriate to the operations for which the licence was requested.</p> <p>Before granting or transferring a licence for offshore oil and gas operations, the licensing authority shall consult, where appropriate, the competent authority.</p>
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<sup>2</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011SC1293:EN:NOT> is the link to the Impact Assessment; [http://ec.europa.eu/energy/oil/offshore/doc/ia\\_annexes\\_20122-1292.pdf](http://ec.europa.eu/energy/oil/offshore/doc/ia_annexes_20122-1292.pdf) is the link to the Annexes to the IA

3. Member States shall ensure that the licensing authority does not grant a licence unless it is satisfied with evidence from the applicant that the applicant has made or will make adequate provision, on the basis of arrangements to be decided by Member States, to cover liabilities potentially deriving from the applicant's offshore oil and gas operations. Such provision shall be valid and effective from the start of offshore oil and gas operations. Member State shall require applicants to provide, in an appropriate manner, evidence of technical and financial capacity and any other relevant information relating to the area covered by the licence and the particular stage of offshore oil and gas operations.

Member States shall assess the adequacy of provisions referred to in the first subparagraph in order to establish whether the applicant has sufficient financial resources for the immediate launch and uninterrupted continuation of all measures necessary for effective emergency response and subsequent remediation.

Member States shall facilitate the deployment of sustainable financial instruments and other arrangements to assist applicants for licences in demonstrating their financial capacity pursuant to the first subparagraph.

Member States shall, as a minimum, establish procedures for ensuring prompt and adequate handling of compensation claims including in respect of compensation payments for trans-boundary incidents.

The Member States shall require the licensee to maintain sufficient capacity to meet their financial obligations resulting from liabilities for offshore oil and gas operations.

4. The licensing authority or the licensee shall appoint the operator. Where the operator is to be appointed by the licensee, the licensing authority shall be notified of the appointment in advance. In such cases, the licensing authority, if necessary in consultation with the competent authority, may object to the appointment of the operator. Where such an objection is raised, the Member States shall require the licensee to appoint a suitable alternative operator or assume the responsibilities of the operator under this Directive.

5. The licensing procedures for offshore oil and gas operations relating to a given licensed area shall be organised in such a way that information collected as a result of exploration can be considered by the Member State prior to production commencing.

6. When assessing the technical and financial capabilities of an applicant for a licence, special attention shall be paid to any environmentally sensitive marine and coastal environments, in particular ecosystems which play an important role in mitigation and adaptation to climate change, such as salt marshes and sea grass beds, and marine protected areas, such as special areas of conservation pursuant to the Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora [21], special protection areas pursuant to the Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds [22], and marine protected areas as agreed by the Union or Member States concerned within the framework of any international or regional agreements to which they are a party.

Box 1

In addition, the facility in the environmental liability directive (2004/35/EC) to nominate liable parties has been replaced, in relation to offshore oil and gas operations within the scope of the offshore directive, by a stricter provision ascribing sole responsibility to the licensee. Moreover, the associated revised elements of the Environmental Liability Directive extend liability to water damage from the territorial seas (12 nautical miles) to the exclusive economic zones (200 nautical miles from the coastline) and the continental shelf under the Member States' jurisdiction.

Directive 2013/30/EU

Article 7

*Liability for environmental damage*

Without prejudice to the existing scope of liability relating to the prevention and remediation of environmental damage pursuant to Directive 2004/35/EC, Member States shall ensure that the licensee is financially liable for the prevention and remediation of environmental damage as defined in that Directive, caused by offshore oil and gas operations carried out by, or on behalf of, the licensee or the operator.

Box 2

While the negotiations under the ordinary legislative procedure were still underway, the Commission awarded a tender to Maastricht University to carry out a generic study about civil liability and financial security for offshore oil and gas activities<sup>3</sup> ('the Metro Study') to advance its knowledge of the topic. The Metro study addressed firstly a comparison of existing civil liability schemes and financial security mechanisms in place in the EU and elsewhere. Secondly it addressed scenarios for civil liability regimes and financial mechanisms to cover major offshore accidents from oil and gas activities. Finally it made some general recommendations for further EU action.

In the meantime negotiations on the OSD were concluded resulting in new requirements on the COM to prepare specific EU-wide reports on the availability of financial security, schemes for compensation and the effectiveness of liability regimes relating to offshore oil and gas operations as follows:

Directive 2013/30/EU

Article 39

*Reports to the European Parliament and to the Council*

1. The Commission shall, by 31 December 2014, submit to the European Parliament and to the Council a report on the availability of financial security instruments, and on the handling of compensation claims, where appropriate, accompanied by proposals.
2. The Commission shall, by 19 July 2015, submit to the European Parliament and to the Council a report on its assessment of the effectiveness of the liability regimes in the Union in respect of the damage caused by offshore oil and gas operations. That report shall include an assessment of the appropriateness of broadening liability provisions. The report shall be accompanied, where appropriate, by proposals.

Box 3

Some of the information the Commission requires for preparing the reports described in Box 3 is already available in the Metro study. However, the scope of the Metro study was for a generic overview of the current financial liability and compensation systems, whereas the reports now required under the Directive are directed at specifics and formulated after the Metro study was launched. This second/follow-up study is aimed at providing the supplementary information necessary to extend and complement the results of the Metro Study.

In particular, this study must encompass all relevant Member States, where the Metro Report considered only some Member States selected for the study. On the other hand, the study does not require recommendations or qualitative analysis of various products or systems. The analysis

<sup>3</sup> Maastricht European Institute for Transnational Legal Research, Faculty of Law, Maastricht University

required will instead be to ascertain the relevance to the study, or otherwise, of the information. However, some analysis may also be needed for higher clarity and to avoid ambiguity of data between different Member States, or otherwise as needed for clarity.

The Metro Report will be provided with the tender documents. A subsequent peer review undertaken by a contractor for the Commission will also be made available.

**Licensing hydrocarbon exploration and production**

Licensing is a key checking point for the national authorities to assess the adequacy of the financial capacity of a license applicant to cover liabilities from an eventual accident.

EU Member States have transposed Directive 94/22/EC on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons. Article 5 refers to the technical and financial assessments necessary for the award of a license under full and fair competition (which is the primary aim of the directive) – Box 4

<p>Directive 94/22/EC Article 5</p>
<p>Member States shall take the necessary measures to ensure that:</p> <ol style="list-style-type: none"><li>1. authorizations are granted on the basis of criteria concerning, in all cases:<ol style="list-style-type: none"><li>(a) the technical and financial capability of the entities; and</li><li>(b) the way in which they propose to prospect, to explore and/or to bring into production the geographical area in question; and, where applicable:<ol style="list-style-type: none"><li>(c) if the authorization is put up for sale, the price which the entity is prepared to pay in order to obtain the authorizations;</li><li>(d) if, following evaluation under the criteria (a), (b) and, where applicable, (c), two or more applications have equal merit, other relevant objective and non-discriminatory criteria, in order to make a final choice among these applications.</li></ol></li></ol></li></ol> <p>The competent authorities may also take account, when appraising applications, of any lack of efficiency and responsibility displayed by the applicants in operations under previous authorizations. Where the competent authorities determine the composition of an entity to which they may grant an authorization, they shall make that determination on the basis of objective and non-discriminatory criteria.</p> <p>Where the competent authorities determine the operator of an entity to which they may grant an authorization, they shall make that determination on the basis of objective and non-discriminatory criteria.</p>

Box 4

**Purpose of the contract**

This study will assist the Commission to prepare the reports to the European Parliament and the Council required under Article 39 of Directive 2013/30/EU (Box 3). In particular the study is required to be comprehensive, covering all relevant EU Member States as listed in footnote 4 below.

## **Description of the tasks**

This assignment will consider the situation in all offshore-active Member States and those that have aspirations to become active within the next couple of years.<sup>4</sup>

The study will consist of two parts, corresponding to the two reports that the Commission must prepare.

### **Part 1**

*Information to assist the preparation of a report on the availability of financial security instruments, and the handling of compensation claims (art.39.1).*

The information to be presented in Part 1 must address the following two matters while taking information from the Metro Report as available and suitable and supplementing it with necessary further research and evaluation of the situation in each offshore active or aspirational Member State (footnote 4), hereinafter referred to as 'target MS':

- (1.i) A listing and detailed description must be made of all viable financial security instruments currently available to licensed operators in EU waters. The potential of conceptual security instruments, like the proposals by Munich Re and Noble Energy (see Metro Study), must be evaluated and the measures to make them effective, if applicable, must be addressed.
- (1.ii) A description of the civil law provisions for compensating for damages arising from industrial activities. This information must be presented in a form suitable to identify the schemes and processes in each target MS that correlate with others.

The information referred to in 1.i and 1.ii must *inter alia* address:

- (a) the legal provisions of the target MSs for ensuring offshore duty holders make available sufficient financial resources for the immediate launch and uninterrupted continuation of all measures necessary for effective emergency response and subsequent remediation;
- (b) whether and how the target MS ensures that offshore duty holders retain financial security throughout the lifecycle of the particular offshore project;
- (c) the legal provisions for ensuring prompt and adequate handling of compensation claims including in respect of compensation payments for trans-boundary incidents.

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<sup>4</sup> The 16 actual or aspiring active MS are, clockwise from top left on the EU map: IE, UK, NL, DE, DK, PL, RO, BG, CY, GR, HR, IT, MT, FR, ES, PT. NO and IS, as EEA members, make 18 in total.

## **Part 2**

*Information to assist the preparation of a report on the effectiveness and limitations of liability regimes (art 39.2).*

As in Part 1, this part of the study will take information from the Metro Report as available and suitable and will supplement this with necessary further research and evaluation of the situation in each target MS in order to fulfil three tasks as follows:

- (2.i) Describe for each target MS the measures currently taken to assure adequate financial liability when awarding a hydrocarbons license (see box 4)

The contractor shall as a minimum describe in the study whether and how the MS takes account of:

- (a) the risk, the hazards and any other relevant information relating to the licensed area concerned, including, where appropriate, the cost of degradation of the marine environment;
- (b) the particular stage of offshore oil and gas operations; the contractor shall address whether the target Member State's operation is mature or developing and whether the operations are carried out by oil majors or newcomers. Also indicate the presence of small companies taking over existing installations from major companies for tail end production and abandonment;
- (c) the applicant's financial capabilities, including any financial security, to cover liabilities potentially deriving from offshore oil and gas operations including liability for potential economic damages;
- (d) evidence from the applicant that the applicant has made or will make adequate provision to cover liabilities potentially deriving from offshore oil and gas operations throughout their lifecycle;
- (e) new information available prior to production that was not available prior to exploration.

The information referred to in 2.i shall also include whether the target MS authorities have a standard legal provision or common practice for channeling liability for environmental damages to a single entity in an operation (licensee, operator etc.) or whether other practices are applied (e.g. joint and several liability).

- (2.ii) The study shall present information concerning the amounts of any financial capping or other limitations on financial liability established by the target MS in respect of offshore licensees or other liable entities as identified in the previous paragraph.
- (2.iii) The study shall present the information derived from tasks 2.i and 2.ii in a format that allows comparisons to be made between licensing regimes of target MS in respect of the matters covered in those tasks.

Parts 1 and 2 shall be undertaken simultaneously and in parallel.

A draft interim report will be required no later than 2 months after signing the contract. This way, the contractor is enabled to take account of the Commission's views and instructions on the implementation of the contract at the early stage.



The draft final report shall be submitted no later than 4 months after the start of the contract.

### **General provisions relating to the carry-out of the tasks**

The contractor will cover all tasks by using primary legal sources and available academic literature. The Metro Report and its peer review report shall be taken into account.

The information requested will be reported for each target MS separately. Whenever appropriate, and where specifically required, the report must allow comparison between different national laws and practices, meaning that the presentation of information must be of a uniform manner enabling those comparisons.

Original legal texts of legislation applicable in Member States including their translations if available, which were used for the analysis shall be submitted with the final report or internet links to them provided

Further information used or produced by the contractor during the study must be made available to the Commission if so requested.

### **Reports and documents to produce - Timetable to observe**

Execution of the tasks begins after the date on which the Contract enters into force having been signed by the last contracting party.

The overall duration of the contract is **6 months**. This period is calculated in calendar days as are all other contractual deadlines, unless clearly stipulated otherwise.

In principle, the deadlines set out below cannot be extended. The Contractor is deemed solely responsible for delays occasioned by subcontractors or other third parties involved (except for rare cases of *force majeure*). The contractor must put in place adequate resources and appropriate organisation of the work including management of potential delays in order to observe the timetable below.

A **kick-off meeting** will take place in Brussels in 7 days following the entry into force of the contract, in order to settle all the details of the study to be undertaken.

A meeting for the presentation of the **interim report** will take place on Commission premises in Brussels within 14 days after the submission of draft interim report.

A presentation of the **draft final report** will take place on Commission premises in Brussels within 14 days after the submission of draft final report.

The contractor shall also attend any other meeting that the Commission determines may be beneficial for the contractor to attend, having in mind the purpose of the contract.

The working language for all meetings, for the communication and for the reports is English.

## **Details on deliverables**

### ***Deliverable 1: Interim report***

The draft **interim report** showing progress of the work shall be submitted to the Commission at the latest 2 months after the date of signature of the contract.

The interim report must give at least the basic coverage of all sub-tasks of Part 1 and Part 2 as described above.

The Commission shall have 20 days from receipt of the draft interim to approve, to comment or to reject this draft report. Within 20 days of receiving the Commission's observations, the Contractor will submit additional information or a new version of the interim report, thereby addressing all the Commission's comments and suggestions.

Approval of the interim report by the Commission is a pre-condition for the Contractor to be entitled to the interim payment in the amount of 30 % of the total value of the contract.

The Contractor shall accompany the final version, approved by the Commission, of the interim report with the invoice for the interim payment.

### ***Deliverable 2: Final report***

The contractor will submit a draft final report to the Commission at the latest 4 months after the signature of the contract.

The Commission shall have 20 days from receipt to approve, comment or reject the draft final report, and the Contractor shall have 20 days in which to submit the new version of the final report, thereby addressing all the Commission's comments and suggestions.

The final report will include the following deliverables:

- Data and information thoroughly covering all sub-tasks of Part 1 and Part 2 as described above.
- Conclusions including, whenever possible, recommendations for good practice.
- An executive summary (indicative length: 6 pages) containing
  - 1) The following standard disclaimer:

*“The information and views set out in this [report/study/article/publication...] are those of the author(s) and do not necessarily reflect the official opinion of the Commission. The Commission does not guarantee the accuracy of the data included in this study. Neither the Commission nor any person acting on the Commission's behalf may be held responsible for the use which may be made of the information contained therein.”*

And

- 2) Specific identifiers provided by the Contracting Authority, which shall be incorporated on the cover page.
- A PowerPoint presentation summarising the main issues (trends in data, scenarios and recommendations).

### ***Deliverables: format and publication***

Five copies of the both reports shall be supplied in paper form and one copy in electronic form, either in MS Word or in HTML format.

The Commission may publish the results of the study. For this purpose, the tenderer must ensure that the study is not subject to any restrictions deriving from intellectual property rights of third parties. Should he intend to use data in the study, which cannot be published, this must be explicitly mentioned in the offer.

### **Duration of the tasks**

The duration of the tasks shall not exceed 6 **months**. This period is calculated in calendar days.

### **Place of performance**

The tasks will be performed on the Contractor's premises. However, meetings between the Contractor and the Commission may be held on Commission premises in Brussels at the Commission's request and/or with her agreement.

### **Estimate of the amount of work involved**

The total value of the contract must be less than 60.000 EUR. Offers exceeding this amount will not be evaluated.

## **II. INFORMATION ON TENDERING**

### **Participation**

The invitation was sent to 5 candidates but participation in this tender procedure is open on equal terms to all natural and legal persons coming within the scope of the Treaties and to all natural and legal persons in a third country which has a special agreement with the Union in the field of public procurement on the conditions laid down in that agreement. Where the Multilateral Agreement on Government Procurement<sup>5</sup> concluded within the WTO applies, the participation to the call for tender is also open to nationals of the countries that have ratified this Agreement, on the conditions it lays down.

### **Contractual conditions**

The tenderer should bear in mind the contract provisions which specify the rights and obligations of the contractor, particularly those on payments, performance of the contract, confidentiality, and checks and audits.

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<sup>5</sup> See [http://www.wto.org/english/tratop\\_E/gproc\\_e/gp\\_gpa\\_e.htm](http://www.wto.org/english/tratop_E/gproc_e/gp_gpa_e.htm)

For this purposes, the tenderers are expected to study the annexed draft contract on services.

### **Subcontracting**

Subcontracting is permitted in the tender but the contractor will retain full liability towards the Contracting Authority for performance of the contract as a whole.

Tenderers must give an indication of the part of the services and proportion of the contract that they intend to subcontract.

Tenderers are required to identify subcontractors whose share of the contract is above 20%.

During contract execution, the change of any subcontractor identified in the tender will be subject to prior written approval of the Contracting Authority.

### **Content of the tender**

The tenders must be presented as follows:

Part A: Identification of the tenderer

Part B: Evidence for exclusion criteria

Part C: Evidence for selection criteria

Part D: Technical offer

Part E: Financial offer

Part F: Power of attorney (for consortia only)

### **Part A: Identification of the tenderer: legal capacity and status**

- The tenderer's identification form in **Annex 1** shall be filled in and signed by:
  - The tenderer
  - subcontractor(s) whose share of the work represent more than 20% of the contract.
- In order to prove their legal capacity and their status, all tenderers must provide a signed **Legal Entity Form with its supporting evidence**. The form is available on:

[http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/legal\\_entities/legal\\_entities\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm)

Tenderers that are already registered in the Contracting Authority's accounting system (i.e. they have already been direct contractors) must provide the form but are not obliged to provide the supporting evidence.

- If it has not been included with the Legal Entity Form, tenderers must provide the following information
  - For legal persons, a legible copy of the notice of appointment of the **persons authorised to represent the tenderer** in dealings with third parties and in legal proceedings, or a copy of the publication of such appointment if the legislation which applies to the legal entity concerned requires such publication. Any delegation of this authorisation to another representative not indicated in the official appointment must be evidenced.
  - For natural persons, where applicable, a proof of registration on a professional or trade register or any other official document showing the registration number.
- The tenderer must provide a **Financial Identification Form and supporting documents**. The form is available on:  
[http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/index\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/index_en.cfm)

### **III. EVALUATION AND AWARD**

#### **Evaluation steps**

The evaluation is based on the information provided in the submitted tender. It takes place in three steps:

- (1) Verification of non-exclusion of tenderers on the basis of the exclusion criteria
- (2) Selection of tenderers on the basis of selection criteria
- (3) Evaluation of tenders on the basis of the award criteria (technical and financial evaluation)

Only tenders meeting the requirements of one step will pass on to the next step.

#### **Part B: Exclusion criteria**

All tenderers shall provide a declaration on their honour (see Annex 2), duly signed and dated by an authorised representative, stating that they are not in one of the situations of exclusion listed in the Annex 2.

The declaration on honour is also required for identified subcontractors whose intended share of the contract is above 20%.

The successful tenderer shall provide the documents mentioned as supporting evidence in Annex 2 before signature of the contract and within a deadline given by the contracting authority.

## **Part C: Selection criteria**

Tenderers must prove their economic, financial, technical and professional capacity to carry out the work subject to this call for tender.

The tenderer may rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the Contracting Authority that it will have at its 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 its disposal.

To be eligible, the tenderers must have the economic and financial capacity as well as the technical and professional capacity to perform the tasks required in this call for tender.

### ***Economic and financial capacity – Criteria and references required***

In order to prove their economic and financial capacity, the tenderer (i.e. in case of joint tender, the combined capacity of all members of the consortium) must comply with the following criteria:

The annual turnover of at least 100 000 EUR for each of the last three years

The following evidence has to be provided:

- Copy of the profit & loss account for the last two years for which accounts have been closed,
- Failing that, appropriate statements from banks,
- If applicable, evidence of professional risk indemnity insurance;

If, for some exceptional reason which the Contracting Authority considers justified, a tenderer is unable to provide one or other of the above documents, he or she may prove his or her economic and financial capacity by any other document which the Contracting Authority considers appropriate. In any case, the Contracting Authority must at least be notified of the exceptional reason and its justification in the tender. The Commission reserves the right to request any other document enabling it to verify the tenderer's economic and financial capacity.

### ***Technical and professional capacity – Criteria and references required***

#### **a. Criteria relating to tenderers**

Tenderers (in case of a joint tender the combined capacity of all tenderers) must comply with the following criteria:

- The tenderer must prove of having legal and financial expertise in the field of civil liability and financial security for high risk industries – as a minimum, active participation in 3 projects during the last 3 years is required.
- The tenderer must prove capacity to draft reports in English

- The tenderer must prove experience in survey techniques, data collection, statistical analyses and drafting reports and recommendations **in the field of liability and financial security** - as a minimum, active participation in 3 projects involving each of these fields during the last 3 years is required.

### **Criteria relating to the team delivering the service:**

The team delivering the service must include, as a minimum, the following profiles:

Project Manager: At least 5 years' experience in project management, including overseeing project delivery, quality control of delivered service, client orientation and conflict resolution experience in project of a similar size and coverage (geographical scope at least half of the one subject to this call for tender), with experience in management of team of at least 3 people.

Language quality check: The project manager must be fluent in English and at least 1 member of the team must have proficiency level language skills in German, French **and** Italian, as guaranteed by a certificate or past relevant experience.

At least one expert in civil liability and financial security: Relevant higher education degree and / or 10 years' professional experience in this field. Experience in the offshore oil and gas sector will be of benefit.

### **b. Evidence:**

The following evidence must be provided to fulfil the above criteria:

- List of relevant services provided in the past three years, with sums, dates and recipients, public or private.
- The educational and professional qualifications of the persons who will provide the service for this tender (CVs) including the management staff. Each CV provided must clearly indicate the intended function in the delivery of the service.

The tenderer confirms it meets the selection criteria specified above by signing the declaration on honour attached to this invitation to tender (Annex 2).]

### **Award criteria**

The tender will be awarded according to the best-value-for -money procedure. The quality of the tender will be evaluated based on the following criteria. The maximum total quality score is 100 points.

**1. Quality of the proposed methodology** (50 points - – minimum threshold 60%)

This criterion will assess whether and how the suggested methodology will enable and facilitate to achieve the purposes and carry out the tasks as described in Tender Specifications.

**2. Organisation of the work** (30 points – minimum threshold 60%)

This criterion will assess how the roles and responsibilities of the proposed team and of the economic operators (in case of joint tenders, including subcontractors if applicable) are distributed for each task. It also assesses the global allocation of time and resources to the project and to each task or deliverable, and whether this allocation is adequate for the work. The tender must provide details on the allocation of time and resources and the rationale behind the choice of this allocation.

**3. Quality control measures** (20 points – minimum threshold 60%)

This criterion will assess the quality control system applied to the service foreseen in this tender specification concerning the quality of the deliverables, the language quality check, and continuity of the service in case of absence of the member of the team. The quality system has to be detailed in the tender and specific to the tasks at hand; a generic quality system will result in a low score.

Tenders must score above 60% for each criterion and sub-criterion, and above 70% in total. Tenders that do not reach the minimum quality thresholds will be rejected and will not be ranked.

After evaluation of the quality of the tender, the tenders are ranked using the formula below to determine the tender offering best value for money. <An equal weight > <A weight of 50/50> <A weight of 60/40> is given to quality and price.

**e.g.**

The contract will be awarded to the tender which offers the best ratio quality/price X 10.000

or

Score for tender x =

$$\frac{\text{total quality score for award criteria for tender } x}{100} \text{ multiplied by } 0.7$$

+

$$\frac{\text{price of lowest tender}}{\text{price of tender } x} \text{ multiplied by } 0.3$$



## **Part D: Technical offer**

The technical offer must cover all aspects and tasks required in the technical specification and provide all the information needed to apply the award criteria. Offers deviating from the requirements or not covering all requirements may be excluded on the basis of non-conformity with the tender specifications and will not be evaluated.

## **Part E: Financial offer**

The price for the tender must be quoted in euro. Tenderers from countries outside the euro zone have to quote their prices in euro. The price quoted may not be revised in line with exchange rate movements. It is for the tenderer to assume the risks or the benefits deriving from any variation.

Prices must be quoted free of all duties, taxes and other charges, including VAT, as the European Union is exempt from such charges under Articles 3 and 4 of the Protocol on the privileges and immunities of the European Union. The amount of VAT may be shown separately.

The quoted price must be a fixed amount which includes all charges (including travel and subsistence). Travel and subsistence expenses are not refundable separately.

The maximum price for this specific contract is 59 000 euros. The offers exceeding this amount will not be evaluated.

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

Only bids that have reached a total score of a minimum of 70% and a minimum score of 60 % for each criterion will be taken into consideration for awarding the contract.

a) Technical evaluation criteria in their order of importance as weighted by percentage

<b>N°</b>	<b>Award Criteria</b>	<b>Weighting</b>
1	<b>Quality of the proposed methodology</b>	50
2	<b>Organisation of the work</b>	30
3	<b>Quality control measures</b>	20
<b>Total number of points</b>		<b>100</b>

Since assessment of the tenders will be based on the quality of the proposed services, tenders should elaborate on all points addressed by these specifications in order to score as many points as possible. The mere repetition of mandatory requirements set out in these specifications, without going into details or without giving any added value, will only result in a very low score. In addition, if essential points of these specifications are not expressly covered by the tender, the Commission may decide to give a zero mark for the relevant qualitative award criteria.

b) Total price

The contract will be awarded to the tender which offers the best ratio quality/price.

Score for tender  $x$  =

$$\frac{\text{price of lowest tender}}{\text{price of tender } x} \text{ multiplied by } 0.3$$

+

$$\frac{\text{total quality score for award criteria for tender } x}{100} \text{ multiplied by } 0.7$$

## **ANNEXES**

1. Identification of the Tenderer
  - Financial Identification
  - Legal Entity Forms
2. Declaration by the Tenderer (relating to the exclusion criteria and absence of conflict of interest)
3. Power of Attorney (mandate in case of joint tender)
4. Standard Word template for studies
5. Draft Contract
6. Metro Report
7. Peer Review to Metro Report