



Specifications attached to the Invitation to Tender

**14.CAT.OP.065**

**“Liability for operations in Unmanned Maritime Vehicles  
with Differing Levels of Autonomy”**

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## **Introduction to EDA**

Pursuant to Council Decision 2011/411/CFSP of 12 July 2011 defining the statute, seat and operational rules of the European Defence Agency and repealing Joint Action 2004/551/CFSP, the mission of the European Defence Agency (hereinafter “EDA” or “the Agency”) is “to support the Council and the Member States in their effort to improve the EU’s defence capabilities in the field of crisis management and to sustain the CSDP as it stands now and develops in the future.”

### Functions and tasks

The European Defence Agency, within the overall mission set out in the Agency’s constituent act, is ascribed four functions, covering:

- developing defence capabilities;
- promoting Defence Research and Technology (R&T);
- promoting armaments co-operation;
- creating a competitive European Defence Equipment Market and strengthening the European Defence, Technological and Industrial Base.

All these functions relate to improving Europe's defence performance, by promoting coherence. A more integrated approach to capability development will contribute to better-defined future requirements on which collaborations - in armaments or R&T or the operational domain - can be built. More collaboration will, in turn, provide opportunities for industrial restructuring and progress towards the continental-scale demand and market, which industry needs.

Further information can be found on the Agency’s web site at <http://www.eda.europa.eu>

## 1 Overview of this tender

### 1.1 Description of the contract

The services required by EDA are described in the terms of reference in part 2 of the present tender specifications.

### 1.2 Timetable

Summary timetable	Date	Comments
Launch date	28/07/2014	
Deadline for request of clarifications from EDA	09/09/2014	
Site visit or clarification meeting (if any)	N/A	
Last date on which clarifications are issued by EDA	12/09/2014	
<b>Deadline for submission of tenders</b>	18/09/2014	Tenders delivered by hand shall be submitted not later than <b>17:00h Local Time</b>
Opening session	19/09/2014	14:00h Local Time
Interviews	N/A	
Completion date for evaluation of tenders	October 2014	Estimate
Signature of contract(s)	October 2014	Estimate

### 1.3 Participation in the tender procedure

This procurement procedure is open to any natural or legal person wishing to bid for the assignment and established in any of the European Union Member States, countries under the Stabilization and Association Agreements (SAA) or countries under the EEA Agreement.

Tenderers must not be in any of the exclusion criteria indicated in section 3.1 of these tender specifications and must have the legal capacity to allow them to participate in this tender procedure (see section 3.2.1).

Please note that any attempt by a tenderer to obtain confidential information, enter into unlawful agreements with competitors or influence the evaluation committee or the EDA during the process of examining, clarifying, evaluating and comparing tenders will lead to the rejection of his tender and may result in administrative penalties.

#### **1.4 Participation of consortia**

Consortia, may submit a tender on condition that it complies with the rules of competition.

A consortium may be a permanent, legally-established grouping or a grouping which has been constituted informally for a specific tender procedure.

Such grouping (or consortia) must specify the company or person heading the project (the leader) and must also submit a copy of the document authorising this company or person to submit a tender. All members of a consortium (i.e., the leader and all other members) are jointly and severally liable to the Contracting Authority.

In addition, each member of the consortium must provide the required evidence for the exclusion and selection criteria (see **Section 3** of these tender specifications). Concerning the selection criteria “economic and financial capacity” as well as “technical and professional capacity”, the evidence provided by each member of the consortium will be checked to ensure that the consortium as a whole fulfils the criteria.

The participation of an ineligible person will result in the automatic exclusion of that person.

#### **1.5 Sub-contracting**

**The tenderer must indicate clearly, which parts of the work will be sub-contracted and to what extent (proportion in %).**

Sub-contractors must satisfy the eligibility criteria applicable to the award of the contract. If the identity of the intended sub-contractor(s) is already known at the time of submitting the tender, all sub-contractors must provide the required evidence for the exclusion and selection criteria as detailed in **Section 3** of these tender specifications.

If the identity of the sub-contractor is not known at the time of submitting the tender, the tenderer who is awarded the contract will have to seek the EDA's prior written authorisation before entering into a sub-contract.

Where no sub-contractor is given, the work will be assumed to be carried out directly by the bidder.

## 1.6 Presentation of the tenders

### 1.6.1 The tenders must comply with the following conditions:

Tenders must be submitted in accordance with the **double envelope system**:

The outer envelope or parcel should be sealed with adhesive tape and signed across the seal and carry the following information:

- the reference number of the invitation to tender **14.CAT.OP.065**
- the project title “**Liability for operations in Unmanned Maritime Vehicles with Differing Levels of Autonomy**”
- the name of the Tenderer
- the indication “**Tender - Not to be opened by the internal mail service**”
- the address for submission of tenders (*as indicated in the letter of invitation to tender*)
- the date of posting (*if applicable*) should be legible on the outer envelope.

The outer envelope must contain **three inner envelopes**, namely, **Envelope A, B and C**.

The content of each of these three envelopes must be as follows:

#### **Envelope A – Administrative documents**

- the **Tender Submission Form** found in **Annex VII**.
- the duly filled in, signed and dated **Exclusion Criteria Declaration(s)** as requested in section 3.1 and using the standard template in **Annex IV**.
- the duly filled in, signed and dated **Legal Entity Form(s)** as requested in section 3.2 and using the standard template in **Annex V**.
- the duly filled in, signed and dated **Financial Identification Form<sup>1</sup>** using the template in **Annex VI**.
- The **Economic & Financial Capacity** criteria documents as requested in section 3.2.

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<sup>1</sup>in case of consortia, only **one** Financial Identification Form for the whole consortium shall be submitted, nominating the bank account into which payments are to be made under the contract in the event that the respective tender is successful

- The Technical & Professional Capacity criteria documents as requested in section 3.2 - **One signed original and 3 (three) copies.**
- **Duly authorised signature**, i.e. an official document (e.g. statutes, power of attorney, notary statement, etc.) proving that the person who signs on behalf of the tenderer is duly authorised to do so.
- In case of **consortia**, the consortium agreement or a duly signed and dated consortium statement by each of the consortium members specifying the company or person heading the project and authorised to submit a tender on behalf of the consortium.

### **Envelope B – Technical proposal**

One signed original and 3 (three) copies of the technical proposal providing all information requested in point 4.2. In addition an electronic version (one CD) of the technical proposal should be included in envelope B.

### **Envelope C – Financial proposal**

One signed original of the financial proposal based on the format found in **Annex II**.

- 1.6.2** The original tender must be signed, dated and marked “**ORIGINAL**”, and the copies marked “**COPY**”.
- 1.6.3** Tenders should be drafted in one of the official languages of the European Union, **preferably** English. Requested documents not available in English should be accompanied by an English courtesy translation. The contract shall be entered into in English.

It is extremely important that tenders be presented in the correct format and include all documents necessary to enable the evaluation committee to assess them. Failure to respect these requirements will constitute a formal error and may result in the rejection of the tender.

## **1.7 Period during which the tenders are binding**

Period of validity of the tenders, during which tenderers may not modify the terms of their tenders in any respect is 120 days after the deadline for the submission of tenders. In exceptional cases, before the period of validity expires, the EDA may ask tenderers to extend the period for a specific number of days, which may not exceed 40.

The selected tenderer must maintain its tender for a further 60 days from the date of notification that his tender has been recommended for the award of the contract. The further period of 60 days is added to the validity period irrespective of the date of notification.

## **1.8 Contacts between the EDA and tenderers**

Contacts between the EDA and tenderers are prohibited throughout the procedure save in exceptional circumstances and under the following conditions only:

### **A. Before the final date for submission of tenders:**

- At the request of the tenderer, the EDA may provide additional information solely for the purpose of clarifying the nature of the contract. Any request for additional information must be made in writing by **e-mail** at [procurement@eda.europa.eu](mailto:procurement@eda.europa.eu) or at the **Fax no.: +32 (0)2 504 29 75** and should indicate the reference number and the title of the tender.
- Requests for additional information received after the deadline for request of clarifications from the EDA as specified in point 1.2 – *Timetable* will not be processed.
- The EDA may, on its own initiative, inform interested parties of any error, inaccuracy, omission or any other clerical error in the text of the call for tender.
- Any additional information including that referred to above will be published on the EDA's website. Please ensure that you visit regularly the site for updates.

### **B. After the opening of tenders:**

- If, after the tenders have been opened, some clarification is required in connection with a tender, or if obvious clerical errors in the submitted tender must be corrected, the EDA may contact the tenderer, although such contact may not lead to any alternation of the terms of the submitted tender.

## **1.9 Visits to EDA premises**

No site visit/information meeting at EDA's premises is deemed necessary for this procedure.

## **1.10 Division into lots**

This tender is not divided into lots. The tenderer must be in a position to be able to provide all the services requested.

### **1.11 Variants**

In the absence of any such indication in the terms of reference your tender should not deviate from the services requested.

### **1.12 New services**

In accordance with Article 31 of the Council decision 2007/643/CFSP of 18 September 2007 on the financial rules of the European defence Agency and on the procurement rules and rules on financial contributions from the operational budget of the European defence Agency, the EDA may have recourse to the negotiated procedure without prior publication of a contract notice for additional contracts involving services similar to those assigned to the party that was awarded this contract.

### **1.13 Security standards**

In the general implementation of its activities and for the processing of tendering procedures in particular, the EDA observes the Council Decision 2013/488/EU of 23 September 2013 on the security rules for protecting EU classified information.

### **1.14 Contract provisions**

In drawing up your tender, you should bear in mind the provisions of the draft contract (see **Annex I** to the present tender specifications). In particular, the draft contract indicates the method and the conditions for payments to the contractor.

## **2 Terms of Reference**

The Terms of Reference will become part of the contract that may be awarded as a result of the tender.

### **2.1 Introduction: background of the invitation to tender**

Unmanned Maritime Systems (UMS) is one of the agreed 22 priority areas, that has the potential for success as part of the joint European research work in the European Defence R&T (EDRT) strategy. As a result, several research projects, comprising of a number of EU Nations in the area of UMS came together in the European Defence Agency UMS (Unmanned Maritime Systems) programme.

National or International rules, regulation and legislation governing safe operations at sea and specifically applicable to Unmanned Maritime Vehicles (UMV's) are virtually non-existent. A common understanding of minimum safety procedures and a joint view on rules and regulations, both present and in the future, for European governments would enhance interoperability in future joint maritime operations and training. This would also provide a guide for industry in the design of new systems.

To establish a basis to achieve this desired interoperability, a forum was created to address regulations, legislation and safety issues related to the design and operations of UMS. The forum evolved to a project group and forms part of the UMS research program with the name SARUMS (abbreviation for Safety and Regulations for European Unmanned Maritime Systems).

The scope of Unmanned Maritime Systems (UMS) covers Unmanned Surface Vehicles (USV) and Unmanned Underwater Vehicles (UUV).

The objective of SARUMS is to provide European Union Member States with a best practice safety framework for Maritime Unmanned Systems that recognises their operational usage, legal status and the needs of Navies. The philosophy behind this guidance will be based on the management of risk as well as applicable rules and regulations. The group is currently developing a document for this purpose titled: "Best practice guide for UMS handling, operations, design and regulations".

The SARUMS group has members from Belgium, Finland, France, Germany, Netherlands, Italy, and Sweden.

## 2.2 Scope of the contract

The SARUMS group aims to cover legislation and regulatory issues. Liability is one particular area deemed useful and necessary to seek advice from external expertise. Uncertainty regarding liability for UMS is recognised as a factor that slows introduction of such systems, both in government/military and civilian applications.

Liability takes different forms. In general, concepts of liability and compensation stem from the principles of tort law in which a wrongful act causing injury permits the injured party to obtain compensation, usually in the form of monetary damages, through a private civil action against the person or entity that caused the injury. There may also be instances where contract law applies (i.e. what not to do as specified under contract).

However, these concepts at present are much broader, both in the active and passive side: lawful acts (acts that are not forbidden or are even required) can entail the duty of compensation of an injured party, and liability can ensue without an injured party in the case of damage to the environment. In such cases, an action may be brought by a government or government agency. For government operations, state responsibility for lawful or unlawful acts could give rise to liability under international law.

In the case of Unmanned Maritime Systems (UMS) and unmanned vehicles, it is not *apriori* clear where the responsibility for damages lies. For non-autonomous vehicles the operator or supervisor is an obvious candidate, but arguments can also be made for the producer (as in product liability) e.g. when the operator has bought an existing standard system, the designer or even the entity that decided that the task could (better) be executed unmanned.

In the case of naval vehicles, this issue will in most cases be relatively simple in practice in municipal law: in a foreign court (when the act causing damage has taken place in another jurisdiction), the state whose unmanned naval vehicles cause damage can usually claim sovereign immunity, and in its own courts, the matter will be dealt with according to national law. Moreover, in the case of the State, most actors mentioned in the previous paragraph are either the state itself, or so closely related that they can be considered as acting for the state. The case could be more difficult under international law.

Many private parties are presently reluctant to consider using UMS, as it is still not clearly defined which party has to take out insurance - the operator, the owner, the producer or the designer - and in the private sector, these are often different entities. This uncertainty has a negative result and manifests in slowing technological progress and slowing the acquisition of operational experience.

When these matters are cleared up, it is expected that the number of UMS will increase. The defence sector will benefit both from economies of scale and the greater reliability brought by the much faster accumulation of practical experience.

## **2.3 Use of the results**

Liability issues and appropriation of blame and damages are a barrier to the increased usage of UMS. By seeking to clarify and define liability issues, this study will assist in increasing the confidence in UMS applications and missions. The resulting utilisation of UMS will create the demand and guidance for industry and thus will assist in expediting technological development and also ensure that operational experience is increased. The study will therefore provide a crucial step in the utilisation of UMS.

## **2.4 Outline of the services required**

### **2.4.1 General survey and landscaping of liability and legal status for UMS – TASK 1**

The study shall include a review of previous surveys of International as well as national Maritime regulations and the contractor will assess their applicability to UMS. The regulations shall include, but not be limited to, the following:

- International Regulations for preventing Collisions at Sea (COLREGS)
- SOLAS – International Convention for the Safety of Life at Sea
- UNCLOS – United Nations Convention on Law of the Sea
- Salvage Convention
- LLMC - Convention on Limitation of Liability for Maritime Claims
- ODAS – Convention on Ocean Data Acquisition Systems
- MARPOL – International Convention for the Prevention of Pollution from Ships
- STCW – Standards for Training, Certification and Watch-Keeping
- ISM Code – International Ship Management Code
- Regional and National Merchant Shipping Rules
- Naval Ship Code
- Naval Cooperation and Guidance for Shipping (NCAGS) ATP 2(B)
- Law of Armed Conflict (LOAC)
- Marine Mammal Protection

Example of special questions and considerations related to regulations are:

- Would the regulation apply to UMS?

- Many regulations refer its applicability to ships and/or vessels. Is UMS ship/vessel or not? And if not, would the regulation apply by analogy or would a case be decided using only general liability principles?
- Would a naval UMS be considered as a military ship under UNCLOS? Would the answer be different for underwater vehicles and surface vehicles?
- Could UMS sailing in a formation be treated as a single ship?
- Would UMS be expected to be capable of assistance to other ships in distress? Would failure to do so entail liability?
- Would UMS be expected to answer communication calls? Would the answer be different for naval, government, scientific and commercial UMS? If so, in what circumstances.
- Are there any special considerations as to have special signals for UMS recognition?
- Could an UMS owner decide to define his UMS as a ship with limited manoeuvring ability? Would this shift liability for collision to the other party?
- When an UMS owner decides that his UMS will conform to COLREG, would that limit his liability?
- Would the LLMC regulation apply to UMS?

Deliverable: The study will conduct a landscaping exercise of maritime and national regulations. This aspect of the study will detail the legislative areas that apply specifically to UMS. This aspect of the study will also provide an in depth assessment of future trends and the impacts on UMS. The Questions listed above are required to be fully addressed.

#### **2.4.2 Liability analysis – Task 2**

The liability analysis shall be the major study effort. This task shall consider liability against typical UMS accident cases. This shall include a review of the example scenarios as given below, adding more if deemed necessary. The scenarios shall be analysed against law or best practice in EDA Participating Member States and in the United States. A determination of what law would be applicable and what verdict (or verdicts in the case where different jurisdictions could be applicable) would be likely based on combined team experience.

#### Scenarios

There are two major areas at sea scenario categories deemed relevant to investigate.

- UMS involved in an accident at sea with people, geostatic objects or non-moving floating objects

- UMV involved in accidents at sea with other vehicles under way

All accidents below are situations that result in either:

- damage to property
- damage to environment
- personal injury
- rendering incapable to fulfil mission

The study shall treat all 4 cases and identify liability consequences.

The extent of UMV autonomy versus degree of operator control or influence is complex, but for the purpose of the study the UMV may be considered as either being controlled with operator direct control - his/hers influence or autonomous. The study shall address both control cases.

#### Example of Damage or injury

These examples are for guidance only, and not meant to be either exhaustive or definitive.

Category of accidents involving UMV and geostatic objects such as bridges, quays or structures on the shore or harbours or stationary (moored or anchored) vehicles as well as floating non-moving objects or people.

- Operator/UMV performing correct/as designed, collides into geostatic object and causes accident.
- UMV conducts unintended manoeuvre and collides into geostatic object and causes accident.
- UMV conducts unintended manoeuvre and force other nearby vehicle to make evasive manoeuvre that causes other vehicle to collide into geostatic object and causes accident.
- Other vehicle conducts unexpected manoeuvre and force the UMV to make evasive manoeuvre that causes the UMV to collide into a geostatic object and causes an accident.
- Other nearby vehicle does unexpected manoeuvre and collides into geostatic object and causes accident. UMV has done nothing wrong but Master/owner blame UMV for accident.

#### Examples of collision between vehicles under way

- UMV conducts an unexpected manoeuvre and collides with other vehicle.

- Other vehicle collides with UMV that is performing correct. Possible continuation of the scenarios is that both UMV owner and other ship blame each other for the accident. Proof of what happened may exist in Platform or Base station log. Will this be sufficient?
- UMV under obligation to give way, fails to make evasive manoeuvre and collides with other vehicle.
- UMV conducts unexpected manoeuvre and force other nearby vehicle to make evasive manoeuvre that causes other vehicle to collide with yet another vehicle.
- Other nearby vehicle conducts unexpected manoeuvre and force UMV to make evasive manoeuvre that causes UMV to collide with other vehicle.
- UMV makes sudden stop in water caused by fault and/or abort procedure. UMV is not capable to raise/light signals (at all or in time). Other ship collides with UMV.

#### Examples of alternative reasons for UMV accidents

- Reason alternative 1: Operator erroneous behaviour. Operator fails to command UMV in a proper way. Reason:
  - No excuse. No one to blame except operator. (No case)
  - Not sufficiently qualified despite having completed producers training.
  - Base station interface gave erroneous or insufficient information.
  - Operator follows “the manual” but accident occurs anyway
- Reason alternative 2: Physical fault.
  - Fault occurs on board and abort procedure is invoked.
  - Operator has selected an abort procedure that is not properly executed
- Reason alternative 3: logical (behavioural) fault.
  - Producers program fault.
- Reason alternative 4: Communication fault.
  - Communication failure
  - Information fault
  - Third party communication intentionally or by accident gives turning command to UMV

## Roles:

Organisations, entities or individuals that may have a role in liability cases.

- Maritime Authority
- Requirement definer
- Designer
- Producer
- Owner
- Operating organisation (including training, maintenance etc.)
- Operator
- Third party entity

The successful contractor will be expected to travel and investigate all topics mentioned in the specifications. As per the specifications the study is not limited/confined to the examples listed. Instead these should be used as a basis for direction and the study should evolve based on the findings acquired.

Deliverable: The successful contractor, in the study will address at a minimum the scenarios listed above and will expand upon the examples given so that a comprehensive analysis is undertaken.

## **2.5 Management and Contractual Deliverables**

### **2.5.1 Management**

The Contractor shall carry out an efficient and cost-effective management of the study. The project manager nominated shall be responsible for the management and execution of the work to be performed and for the coordination and control of the work.

### **2.5.2 Meetings/Workshops**

- An initial kick off meeting will be required, EDA, half Day.
- Progress review meetings with EDA and pMS representatives every three months at EDA premises.
- Presentation of Intermediate report at T0+6 months at EDA premises.
- Presentation of the final report T0+12 months at EDA premises.

(Venues for the progress reports are indicative only and are inserted to allow for costing).

### 2.5.3. Management Plan

- A draft management plan is to be elaborated at the tendering stage, building upon the information provided in these specifications :
- The management plan shall :
  - Provide evidence that the contractor endorses responsibility for the general objectives of the project and that will produces the required results;
  - Propose any potential relevant modification in the logic of the project to improve its results;
  - Include a statement of the work ( a fist iteration of various tasks, with particular emphasis on the methodology to be followed to gather and consolidated requirements);
  - Explain the organization, methodology and means intended to be used in the project;
  - Provide a GANTT chart with logical dependencies for the production of the project;
  - Explain the monitoring structure proposed to ensure appropriate decisions in due time, including interaction with EDA and its representatives for project orientation matters.

This management plan is considered as a living document will be updated during the duration of the contract and will be part of the deliverables.

### 2.5.4 Consultation Plan

The general aspects relating to the consultation process should be contained within the relevant sections of the Project Management Plan.

### 2.5.5 Final Deliverables

Nr	Title	Description	Timelines	Format deliverables
1	Kick-off presentation	Presentation of the study including a draft project plan	T0	Power point Electronic Copy Not classified

2	Intermediate Report	Intermediate status report, update on task 1 and 2, (general Survey and Landscaping, Liability Analysis)	T0 + 6 months	Presentation to SARUMS working group/CapTech  5 hard copies  Electronic copies
4	Final presentation and final report	Presentation of the reports	T0 + 12 months	6 hard paper copies, electronic copies

A detailed and comprehensive study will be the overall that will address fully the following:

D-1 The study will contain a review of previous surveys of International and national maritime regulations. Assess the applicability to UMS. Also address the questions that were listed in relation to the regulations.

D-2 Liability Analysis: The study will contain a full analysis of liability in relation to the specified UMS accident areas that will also encompass the details provided in section 2.4.2 provided.

D-3 A final report summarising the outcome of the study with reference to scenarios will be presented at the ESM1, Naval Systems Captech.

## **2.6 Specific Security Issues**

The project and its findings will be unclassified.

## **2.7 Volume of the contract**

The maximum contract value is 150,000.00 EUR (VAT excluded).

## **2.8 Duration of the contract**

Estimated contract implementation period: 12 months.

## **2.9 Place of delivery/execution**

The Contractor shall execute the contract at its premises. Deliverables shall be delivered at EDA premises in Brussels, Belgium. All meetings shall normally be held at EDA premises, unless otherwise indicated in this document or agreed between the two parties.

## **2.10 Terms of Payment**

### Pre-financing

No pre-financing payment will be made for the implementation of the ensuing service contract.

### Interim Payment

An interim payment of 30% of the total contract value shall be made following the delivery and acceptance of the intermediate report t0+6.

### Payment of the Balance

Under the conditions set out in the draft contract annexed hereto, payment of the balance equal to 70% of the total amount shall be made following acceptance of the final report and presentation.

### **2.11 Variant solutions**

Not applicable.

### **2.12 Reporting**

The reports and all deliverables shall be submitted to the EDA Project Manager identified in the contract who is responsible for approving them.

The Contractor shall work closely with the EDA Capabilities, Armaments and Technology Directorate (CAT) and the SARUMS community in performing and conducting the requested contract. The Contractor shall ensure the overall management and appropriate reporting during the contract, including - as described in points a, b and c below - the preparation of Progress Reports for EDA CAT Directorate/SARUMS WG, management of effort spent on contract and the preparation of the Final Report.

Reports are allowed to have Appendices. EDA CAT Directorate shall be entitled to ask for clarifications and modifications of elements and parameters of the deliverables and the contractor shall provide such clarifications/modifications in writing. It shall be the contractor's sole responsibility to manage all aspects of the contract and provide the deliverables in the required time scales.

#### a.) Kick-off meeting with Conceptual Report

The Contractor shall prepare a Conceptual Report on the planning and methodology to be used to conduct the contractual support. The Project Management Plan of the contractual support shall also be presented after the contract signature.

#### b.) Progress Reports

The Contractor shall provide Progress Reports and present them in writing to the EDA CAT Directorate for acceptance. This will coincide with the three monthly progress. The contractor should specify within their Project Management Plan and Work Breakdown Structure what activities will be finalised at for each Progress meeting.

#### c.) Final Deliverables to EDA CAT Directorate

Draft final deliverables D1 and D2 shall be submitted to EDA CAT Directorate 4 weeks before the Final Report. EDA CAT Directorate will be consulted and is entitled to ask for clarifications on

the elements and parameters of the report and the Contractor shall provide such clarifications in writing before the final deliverables are submitted and approved.

The final deliverable will be of the contract will be a presentation of the report to the ESM1 Naval Systems CapTech.

In addition the front cover of the final report shall carry the following text within a delineated box of at least 10 cm x 4 cm, preferably located in the top or bottom left-hand corner of the cover:

This study was commissioned by the European Defence Agency in response to the invitation to tender No. 14.CAT.OP.065. The study does not, however, express the Agency's official views. The views expressed and all recommendations made are those of the authors.

This study as well as any other results and rights obtained in performance of the ensuing contract, including copyright and other intellectual or industrial property rights, shall be owned solely by the Agency, which may use, publish, assign or transfer them as it sees fit, without geographical or other limitation, except where industrial or intellectual property rights exist prior to the contract being entered into.

The delivery shall be in accordance with the following distribution:

- 1 CD-ROM containing the final report shall be sent to the EDA Contracting Officer as well as 1 paper copy to the EDA Contracting Officer.
- 10 CD-ROMs containing the final study shall be sent to the Agency's Technical Officer.
- The CD-ROMs shall be labelled with: the title "Final Report", the project name, the company name, the contract number, and the completion date. They shall include Acrobat Reader and the documents in PDF format and it shall be possible to print the documents from the CD-ROM. Any videos shall be Microsoft Media Player compliant.
- 6 paper copies each of the final of the final report shall be sent to the EDA Project Officer.
- All documentation shall be submitted in draft and shall be provided in final format after comments and acceptance from EDA.

### 3 Exclusion and selection criteria

#### 3.1 Exclusion criteria

Participation to this tender is only open to tenderers who are not in one of the situations listed below:

- a) bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- b) have been convicted of an offence concerning their professional conduct by a judgement which has the force of res judicata;
- c) have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;
- d) have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;
- e) have been the subject of a judgement which has the force of res judicata for fraud, corruption, involvement in a criminal organization or any other illegal activity detrimental to the Communities' financial interests;
- f) following another procurement procedure or grant award procedure financed by the Community budget, they have been declared to be in a serious breach of contract for failure to comply with their contractual obligations.

In addition to the above, contracts may not be awarded to tenderers who, during the procurement procedure:

- are subject to a conflict of interest;
- are guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the contract procedure or fail to supply this information.

#### **Means of proof required**

Tenderers, **including all consortium members and all sub-contractors where applicable**, shall provide a declaration on their honour (see model in **Annex IV**), duly signed and dated, stating that they are not in one of the situations referred to above.

**Nota bene:**

The tenderer to whom the contract is to be awarded shall provide, within 15 days following notification of award and preceding the signature of the contract, the following documentary proofs to confirm the declaration referred to above:

- For points a), b) and e) a recent extract from the judicial record or, failing that, an equivalent document recently issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied.
- For point d) a recent certificate issued by the competent authority of the State concerned.

Where the document or certificate referred to above is not issued in the country concerned, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.

### **3.2 Selection criteria**

The tenderers must submit evidence of their legal, economic, financial, technical and professional capacity to perform the contract.

#### **3.2.1 Legal capacity**

**Requirement**

The tenderers, **including all consortium members and all sub-contractors where applicable**, are asked to prove that they are authorised to perform the contract under their national law as evidenced by inclusion in a trade or professional register, or a sworn declaration or certificate, membership of a specific organisation, express authorisation or entry in the VAT register.

**Evidence required**

Each tenderer, **including every consortium member and every sub-contractor where applicable**, shall provide a duly filled in and signed **Legal Entity Form** (see **Annex V**) accompanied by the documents requested therein.

#### **3.2.2 Economic & Financial capacity**

**Requirement**

The tenderer, **including every consortium member and every sub-contractor where applicable**, must be in a stable financial position and have the economic and financial capacity to perform the contract.

**Evidence required**

The tenderer which according to the law of the country in which it is established is required to publish the balance sheet shall complete and include in the offer a financial statement form as in **Annex VIII** to these tender specifications. Please observe the following aspects in completing this financial statement:

1. It should be certified by means of a signature of the chief accounting officer of tendering organization.
2. EDA has the right during the tendering process and before awarding the contract to request further evidence on the tenderer's compliance with the economic & financial capacity requirement, in which case balance sheets and profit & loss accounts for the past financial years may be requested.
3. In the case of a consortium submitting an offer, or in case of subcontracting, the financial statement as is **Annex VIII** should be included in the offer for all consortium partners and subcontractors.
4. In the case of a physical person the financial statement as in **Annex VIII** should be included in the offer for where only the lines 16 and 17 need to be filled in and the financial statement can be signed by the physical person only.

### **3.2.3 Technical and professional capacity**

#### **Requirement(s)**

The tenderer shall demonstrate that they can successfully conduct the study by:

- Demonstrating at least 10 years' experience in the field of maritime law/marine accident and investigation as well as an in-depth knowledge of unmanned maritime systems;
- Demonstrating in-depth knowledge of the global UMS sector and stakeholders (market, industrial actors, other stakeholders) which may have an impact on the scope and outputs of the study;
- Demonstrating in-depth knowledge of the European naval tasks and missions especially with respect to the use of unmanned maritime systems including current but also future tactical and operational issues;
- Demonstrating proficiency in English and experience in report writing.

### **Evidence required**

The following documents or information must be presented as evidence of compliance with the technical and professional criteria:

- A list of the principal services (contracts, studies), major relevant projects and publications that have been carried out in the course of 5 years by the legal entity or the legal entities submitting the offer that correspond and relate (in terms of scope and complexity) to the services of the present call for tender;
- Organisational structure;
- CVs of project team members, using the template in Annex III;
- Information on which parts or tasks of the assignment will be assumed by a consortium partner or a subcontractor. The respective subcontractor or consortium partner should be specified for each part or task;
- Any other document necessary to demonstrate the tenderer's technical and professional capacity, knowledge and experience according to the requirements set in this paragraph.

**The technical and professional capacity will be assessed in relation to the combined capacities of all the Consortium members [leader and member(s)] and the subcontractor(s), if any, as a whole.**

#### **4 Award of the contract**

Only the tenders meeting the requirements of the exclusion and selection criteria will be evaluated in terms of quality and price.

The contract shall be awarded to the tenderer submitting the tender offering the best-value-for-money (best quality-price ratio).

#### 4.1 Technical evaluation

The quality of each technical offer will be evaluated in accordance with the award criteria and the associated weighting as detailed in the evaluation grid below.

No	QUALITY CRITERIA	Max points
1	<b>Understanding of the Assignment</b> (understanding of the tender specifications, coverage of the scope, understanding of the objectives, understanding of the work to be performed)	<b>30</b>
2	<b>Methodology</b> Adequacy of the proposed work programme and reporting structure will be assessed in light of the following : logic, clear timelines, defined list or required and intended contacts ( level of contact/ organisation)	<b>40</b>
3	<b>Organisation of the work</b> Adequacy of the project management plan, organisation and coordination of the work, allocation of tasks, risk management, timing, sequence and duration of the proposed activities, identification and timing of major milestones in execution of the contract, the suitability of the contractor team to undertake this work)	<b>20</b>
5	<b>Quality Control Measures</b> This is to assess the quality control mechanisms put in place to guarantee the high quality of deliverables.	<b>10</b>
	<b>Total</b>	<b>100</b>

#### Interviews

The Evaluation Committee does not expect to conduct any interviews.

#### 4.2 Technical proposal

The Tenderers in their bids shall demonstrate the necessary know-how, experience and reliability as described in **paragraph 3.2.3** of this document to perform the contract and shall present for evaluation evidence that they are capable to perform the study in order to deliver of high quality results according to the required deliverables.

Tenders shall also include all detailed information and documentation (incl. technical data, catalogues etc) to allow the Evaluation Committee to assess all the evaluation criteria. The Evaluation Committee reserves the right not to attribute points when insufficient evidence is provided.

To do so, tenders shall include in the bids at least the following elements/information:

A detailed methodology for implementation of the study ;

- A detailed analytical outline (on how the key aspects of the study will be approached) that demonstrates a good understanding of the challenges in this area and its driving factors ;
- A detailed work programme and reporting structure that explain how much and how requirements will be measured ;
- A detailed composition of the team and CV's of the team proposed, based on the model provided in Annex III;
- All additional documentation deemed necessary from the tenderer's perspective to demonstrate the ability to meet the prescribed technical requirements

#### **4.3 Technical quality threshold**

Only tenders scoring 70 points or more (of a maximum of 100) points against the technical award criteria will have their financial proposal evaluated.

#### **4.4 Financial evaluation**

The evaluation will be made on the basis of the price offered in the model financial offer (Annex II) and based on the following formula:

Financial Score for offer x= (Cheapest Bid Price received/price of offer x)\*100

Where a maximum budget is mentioned in these tender specifications, any tenderer submitting a financial proposal exceeding this budget will be rejected.

#### **4.5 Financial proposal**

-The financial proposal should be presented in the format found in **Annex II**.

-Prices must be quoted in **EURO** and include all expenses necessary to perform the contract.

-The price quoted is fixed and is subject to **NO revision**.

-Prices must be quoted free of all duties, taxes and other charges (including VAT) as the EDA is exempt from such charges under Article 3 of the Protocol on the Privileges and Immunities of the European Union.

-Costs incurred in preparing and submitting tenders are borne by the tenderer and shall not be reimbursed.

#### **4.6 Choice of the selected tender**

The most economically advantageous tender is established by weighing technical quality against price on an **70/30** basis.

The consolidated score for each candidate shall be calculated as follows:

Consolidated score= Technical Score\*0,7+Financial Score\*0,3

**ANNEX I - DRAFT CONTRACT**

(attached as a separate document)

**ANNEX II - MODEL FINANCIAL OFFER**

Prices should be all-inclusive; the Agency will not pay expenses for any additional costs incurred from the execution of the contract.

**Financial proposals exceeding the amount indicated in Section 2.7 shall be excluded outright.**

<b>Name of Tenderer:</b>	
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<b>TOTAL COST OF ASSIGNMENT, INCLUDING ALL ASSOCIATED EXPENSES AND EXCLUDING VAT :</b>	<b>€</b>
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<b>Name:</b> (of the Tenderer or authorised representative)	<b>Signature:</b>	<b>Date:</b>
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### **ANNEX III - CURRICULUM VITAE**

To be downloaded from the following URL address:

<http://europass.cedefop.europa.eu/en/documents/curriculum-vitae/templates-instructions>

#### ANNEX IV - DECLARATION ON EXCLUSION CRITERIA

**(To be completed and signed by each Consortium member and by each Sub-contractor, where applicable)**

The undersigned:

Name of the individual/company/organisation:

Legal address:

Registration number/ID Card No.:

VAT number:

Declares on oath that the individual/company/organisation mentioned above is not in any of the situations mentioned below:

- a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- b) they have been convicted of an offence concerning their professional conduct by a judgement which has the force of *res judicata*;
- c) they have been guilty of grave professional misconduct proven by any means which the EDA can justify;
- d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;
- e) they have been the subject of a judgement which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- f) following another procurement procedure or grant award procedure financed by the European Union or the Agency's general budget, they have been declared to be in serious breach of contract for failure to comply with their contractual obligations.
- g) they are subject to a conflict of interest;

they are guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the contract procedure or fail to supply this information

Full name:

Date & Signature:

## **ANNEX V - LEGAL ENTITY FORM**

To be downloaded from the following URL address:

[http://ec.europa.eu/budget/info\\_contract/legal\\_entities\\_en.htm](http://ec.europa.eu/budget/info_contract/legal_entities_en.htm)

**ANNEX VI - FINANCIAL IDENTIFICATION FORM**

**(attached as a separate document)**

**ANNEX VII - TENDER SUBMISSION FORM**

**14.CAT.OP.065**

**“Liability for operations in Unmanned Maritime Vehicles with Differing Levels of  
Autonomy”**

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**One signed original** of this tender submission form must be supplied.

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**1. SUBMITTED by (i.e. the identity of the Tenderer)**

	<b>Name(s) of legal entity or entities submitting this tender</b>	<b>Nationality<sup>2</sup></b>
<b>Leader</b>		
<b>Member 2</b>		
<b>Etc ... <sup>3</sup></b>		

**2. SUBCONTRACTORS (if applicable)**

	<b>Name(s) of the legal entity or entities identified as sub-contractor(s)</b>	<b>Nationality</b>
<b>Sub-contractor 1</b>		
<b>Etc ... <sup>4</sup></b>		

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<sup>2</sup>Country in which the legal entity is registered

<sup>3</sup> If this tender is being submitted by an individual legal entity, the name of the legal entity should be entered as “Leader” (and all other lines should be deleted)

<sup>4</sup> Add / delete additional lines for sub-contractors as appropriate

**3. CONTACT PERSON for this tender (to act as focal point for all communication which may take place between the EDA and the Tenderer)**

<b>Name and position</b>	
<b>Organisation</b>	
<b>Address</b>	
<b>Telephone</b>	
<b>Fax</b>	
<b>e-mail</b>	

**4. STATEMENT**

I, the undersigned, being the authorised signatory of the above Tenderer (including all consortium members, in the case of a consortium), hereby declare that we have examined and accept without reserve or restriction the entire contents of the tender specifications for the tender procedure referred to above.

We are fully aware that, in the case of a consortium, the composition of the consortium cannot be modified in the course of the tender procedure except with the prior written authorisation of the EDA. We are also aware that the consortium members would have joint and several liability towards the EDA concerning participation in both the above procedure and any contract awarded to us as a result of it.

Our tender is subject to acceptance within the validity period stipulated in point 1.7 of the Tender Specifications and is made up of the following documents:

<b>ENVELOPE A - ADMINISTRATIVE DATA:</b>	
▪ This <b>Tender Submission Form</b>	<input type="checkbox"/>
▪ The duly filled in, signed and dated <b>Exclusion Criteria Declaration(s)</b> by every legal entity identified under point 1 and point 2 of this Tender Submission Form	<input type="checkbox"/>
▪ The duly filled in, signed and dated <b>Legal Entity Form</b> ( <i>using the standard template referred to in Annex V to the Tender Specifications</i> ) and the supporting documents requested therein, by every legal entity identified under point 1 and point 2 of this tender submission form	<input type="checkbox"/>
▪ The duly filled in, signed and dated <b>Financial Identification Form</b> ( <i>using the standard template in Annex VI to the Tender Specifications</i> ) to nominate the bank account into which payments would be made in the event that our tender is successful	<input type="checkbox"/>
▪ <b>Documents proving the economic and financial status</b> (as requested in point 3.2.2 of the Tender Specifications) of every legal entity identified under point 1 and point 2 of this tender submission form	<input type="checkbox"/>
▪ <b>Documents proving our technical and professional capacity</b> (as requested in point 3.2.3 of the Tender Specifications) - One signed original and three copies	<input type="checkbox"/>
▪ <b>Duly authorised signature</b> , i.e. an official document ( <i>statutes, power of attorney, notary statement, etc.</i> ) proving that the person who signs on behalf of the Tenderer is duly authorised to do so	<input type="checkbox"/>
▪ Our <b>consortium agreement/</b> duly signed and dated <b>consortium statement</b> by each of the consortium members specifying the company or person heading the project and authorised to submit a tender on behalf of the, as requested in point 1.4 of the tender specifications	<input type="checkbox"/>
<b>ENVELOPE B - TECHNICAL PROPOSAL</b> (one signed original and three copies and providing all information requested in point 4.2 of these specifications).	<input type="checkbox"/>
<b>ENVELOPE C - FINANCIAL PROPOSAL</b> (one signed original using the template in Annex II), <b>which is submitted in a separate, sealed envelope.</b>	<input type="checkbox"/>

Signed on behalf of the Tenderer

<b>Name</b>	
<b>Signature</b>	
<b>Date</b>	

**ANNEX VIII – ECONOMIC AND FINANCIAL CAPACITY**

*(Please fill in the excel file uploaded together with the tender documents)*

**Information on financial capacity of the tenderer**

When analyzing the submitted simplified financial statements, in the case of doubt and before excluding the company on the sole basis of financial incapacity, EDA will request from the tenderer further information, e.g. complete official financial statements or provisional financial statement at half year.

The numbers in the below cells must be indicated in **ABSOLUTE VALUES** (i.e. as full amounts and not in thousands or similar) and in **EUROS**

The exchange rate to be used for the conversion of the amounts should be the monthly accounting rate of the last month of the financial year as published in the Official Journal of the European Union.  
<http://ec.europa.eu/budget/infocore/index.cfm?fuseaction=home&Language=en>

Tenderer name:

Begin and end of the financial year (eg: 1/1/n - 31/12/n):

<b>Asset</b>	<b>2013</b>	<b>2012</b>	<b>2011</b>
Long term assets (assets convertible in cash in > than 1 year)	€ 0	€ 0	€ 0
Short term assets (current assets convertible in cash in =/< than 1 year)	€ 0	€ 0	€ 0
<b>Total assets ( TOTAL ASSETS SHOULD EQUAL TOTAL LIABILITIES)</b>	<b>€ 0</b>	<b>€ 0</b>	<b>€ 0</b>
<b>Liabilities</b>	<b>2013</b>	<b>2012</b>	<b>2011</b>
Own capital (Equity)	€ 0	€ 0	€ 0
Long term debts (to be repaid in > than 1 year)	€ 0	€ 0	€ 0
Short term debts (to be repaid in =/< than 1 year)	€ 0	€ 0	€ 0
<b>Total liabilities (TOTAL LIABILITIES SHOULD EQUAL TOTAL ASSETS)</b>	<b>€ 0</b>	<b>€ 0</b>	<b>€ 0</b>
<b>Profit and loss account data</b>	<b>2013</b>	<b>2012</b>	<b>2011</b>
Turnover (sales revenue realized from the day-to-day operations of the entity)	€ 0	€ 0	€ 0
Turnover in the filed of the call for tenders	€ 0	€ 0	€ 0
Depreciation & amortisation	€ 0	€ 0	€ 0
EBITDA (Earnings before interest, taxes, amortisation, depreciation)	€ 0	€ 0	€ 0
Net profit (Earnings after interest, taxes, amortisation, depreciation)	€ 0	€ 0	€ 0
<b>Main indicators</b>	<b>2013</b>	<b>2012</b>	<b>2011</b>
Operational profit margin (EBITDA/turnover)			
Return on Equity: Rentability of own capital (net profit/own capital)			
Net working capital (current assets - current liabilities)			
Current ratio (current assets/current liabilities)			
Debt ratio - indebtness (debts/total liabilities)			

**Declaration by the Chief Accounting Officer of the tenderer:**

**From my position of the Chief Accounting Officer of the tenderer,**

- I confirm that the information presented in this simplified financial statement are correct and are taken from the official financial statements either finally approved, or from the preliminary financial statements in case these are not yet finally approved (applicable only to the last year statements).
- I confirm that I am aware that, in the case we are successful tenderer, EDA, before signing the contract, may ask and verify the official financial statements for the last 3 years.
- I confirm that I have been informed that, under the Procurement rules of the EDA (Council Decision No 2007/643/CFSP of 18 September 2007), tenderers found guilty of false declarations may be subject to administrative and financial penalties in accordance with the conditions laid down in that Decision. In particular, I am aware that the information from this simplified financial statement must be in compliance with the official financial statements which EDA may verify before signing the contract.

<b>Name of Chief Accounting Officer of the tenderer:</b>	
<b>Date:</b>	
<b>Signature:</b>	