

OPEN CALL FOR TENDERS

*concludes with a **single Framework supply contract***

Tender Documentation

Supply of mobile devices, accessories and associated services

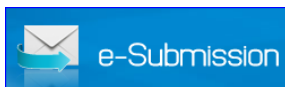
ENISA F-CSS-23-T13

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*Offers via e-Submission portal **ONLY***

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1.1 INTRODUCTION

The European Union Agency for Cybersecurity (ENISA) was established by the European Parliament and the Council Regulation (EU) No 2019/881 of 17 April 2019 (OJ L 151/15, 07.06.2019). ENISA contributes to EU cyber policy, enhances the trustworthiness of ICT products, services and processes with cybersecurity certification schemes, cooperates with Member States and EU bodies, and helps Europe prepare for the cyber challenges of tomorrow.

1.2 SCOPE

The European Union Agency for Cybersecurity, ENISA, is the Union's agency dedicated to achieving a high common level of cybersecurity across Europe. Established in 2004 and strengthened by the EU Cybersecurity Act, the European Union Agency for Cybersecurity contributes to EU cyber policy, enhances the trustworthiness of ICT products, services and processes with cybersecurity certification schemes, cooperates with Member States and EU bodies, and helps Europe prepare for the cyber challenges of tomorrow. Through knowledge sharing, capacity building and awareness raising, the Agency works together with its key stakeholders to strengthen trust in the connected economy, to boost resilience of the Union's infrastructure, and, ultimately, to keep Europe's society and citizens digitally secure.

The permanent mandate and enhanced role of the Agency established by the 2019 EU Cybersecurity Act (CSA) and ENISA's new strategy are two milestones that mark an unprecedented and exciting period in the 17 years of the Agency's life. ENISA aims to build from these two success stories and continue to raise cybersecurity awareness in the EU public fora. In addition, as regards to Article 3 (1c) of the MB decision MB/2020/9 planning, coordinating and implementing communication and outreach activities, the Agency needs to support the necessary activities to fulfil tasks as set out in Art. 21 and 23 of the CSA.

In order to do so the Agency's communications sector supports the implementation of the Agency's Annual Work Programme and has developed a Multi-Annual Communication Strategy and a brand positioning strategy. The strategy lists the steps that the Agency needs to undertake to strengthen its existing communication activities and credibility among its key stakeholders while serving its strategic and policy goals.

1.3 OBJECTIVES

The Agency's objectives are as follows:

- ENISA shall be a centre of expertise on cybersecurity by virtue of its independence, the scientific and technical quality of the advice and assistance it delivers, the information it provides, the transparency of its operating procedures, the methods of operation, and its diligence in carrying out its tasks.
- ENISA shall assist the Union institutions, bodies, offices and agencies, as well as Member States, in developing and implementing Union policies related to cybersecurity, including sectoral policies on cybersecurity.
- ENISA shall support capacity-building and preparedness across the Union by assisting the Union institutions, bodies, offices and agencies, as well as Member States and public and private stakeholders, to increase the protection of their network and information systems, to develop and improve cyber resilience and response capacities, and to develop skills and competencies in the field of cybersecurity.
- ENISA shall promote cooperation, including information sharing and coordination at Union level, among Member States, Union institutions, bodies, offices and agencies, and relevant private and public stakeholders on matters related to cybersecurity.

- ENISA shall contribute to increasing cybersecurity capabilities at Union level in order to support the actions of Member States in preventing and responding to cyber threats, in particular in the event of cross-border incidents.
- ENISA shall promote the use of European cybersecurity certification, with a view to avoiding the fragmentation of the internal market. ENISA shall contribute to the establishment and maintenance of a European cybersecurity certification framework in accordance with Title III of this Regulation, with a view to increasing the transparency of the cybersecurity of ICT products, ICT services and ICT processes, thereby strengthening trust in the digital internal market and its competitiveness.
- ENISA shall promote a high level of cybersecurity awareness, including cyber-hygiene and cyber-literacy among citizens, organisations and businesses.

2. ADDITIONAL INFORMATION

Further information about ENISA can be obtained on its website: www.enisa.europa.eu.

PART 2 TERMS OF REFERENCE

I. SCOPE OF THIS TENDER

By means of this Call for Tenders, ENISA seeks to conclude a single framework supply contract for the acquisition of mobile devices, mobile device accessories and associated services.

A detailed description of the scope and requirements regarding the services covered by this procurement procedure is presented in the Part 2 Terms of Reference.


Provision of the software licenses is out of the scope of the contract resulting from this procurement procedure unless it constitutes an integral part or is an associated service of the ordered equipment.

In accordance with Article 164 of the Financial Regulation, the framework contract will be awarded through one single open procedure.

In accordance with Articles 2(63) and 162(1) and (2) of the Financial Regulation, the subject matter of this procurement is a supplies contract.

Subject of the tender	Maximum budget
Supply of mobile devices, mobile devices' accessories and associated services	A maximum budget of €400.000,00 (four hundred thousand euro) over the maximum possible period of 4 years
Last date for <u>dispatch</u> of offers	5th September 2023 until 18:00 CEST
<p>PLEASE NOTE the following:</p> <p>a). Entities subject to restrictive measures and rules on access to procurement: who may submit a tender?</p> <p>Tenderers must ensure that no involved entities nor any subcontractors, including those which do not need to be identified in the tender, are subject to EU restrictive measures adopted under Article 29 of the Treaty on the European Union (TEU) or Article 215 of the Treaty on the Functioning of the EU (TFEU) , consisting of a prohibition to make available or transfer funds or economic resources or to provide financing or financial assistance to them directly or indirectly, or of an asset freeze. For further information, refer to the 'EU sanctions map' website. The prohibition applies throughout the whole performance of the contract.</p> <p>b). This tender procedure is limited to tenderers which are legally incorporated or which have an incorporated subsidiary in a member state of the European Union / EEA as well as SAA countries¹ . The Agreement on Government Procurement (GPA) does not apply to EU Regulatory Agencies and as such, ENISA cannot accept offers from legal entities based in 'third countries'.</p> <p>c). In the case where unforeseen circumstances result in this contract being consumed faster than originally planned, the Agency reserves the right to consider conducting a 'Negotiated procedure without prior publication of a contract notice' with the existing contractor in order to increase the maximum amount stated above by up to 50%. This procedure being fully in accordance with Article 164(4) and Annex I - point 11.1(e) of the EU Financial Regulation (FR)).</p>	

¹ Under the Stabilisation and Association Agreements (SAA) economic operators established in FYROM, Albania, Montenegro, Serbia, Bosnia and Herzegovina and Kosovo have been granted access to procurement procedures of the Union institutions, agencies and bodies.

Method of submitting tenders: 	<i>e-Submission portal</i>	YES
	<i>Courier or postal service</i>	NO
	<i>By hand</i>	NO
	<i>By email</i>	NO

1. GENERAL REQUIREMENTS

The prospective Contractor shall be able to provide mobile devices and any accessories such as but not limited to covers, chargers, data cables, memory cards and headsets.

The mobile devices shall always be current generation, meaning normally not older than 2 years.

The contractor shall be able to provide at a minimum, mobile devices that operate on iOS and mobile devices that operate on Android software and must be without network provider locks.

All ordered products (including all internal or external components) must be brand new at the time of acceptance by the Contracting Authority. The Contracting Authority reserves the right to either carry out its own documentary and/or physical checks, or ask the Contractor, both prior to and after acceptance of delivery, to provide evidence of this fact.

The mobile devices should be able to be registered by the contractor under the enterprise management programs of the manufacturers.

The mobile devices offered by the contractor must be covered by a supply chain security programme of the manufacturer to ensure that no malicious components are introduced into the devices during production or transportation.

2. DETAILED REQUIREMENTS

It is estimated that the number of mobile phones that will be purchased during the whole duration of this contract is approximately 450, as well as associated accessories.

This figure is however an approximation and does not constitute or imply any commitment on behalf of the Contracting Authority to purchase this quantity.

2.1 PROVISION OF CURRENT MODEL PRODUCTS

It should be highlighted that the mobile models included in your technical offer shall be in the form of a catalogue, which meet the minimum technical requirements where explicitly mentioned as the latest model, it is not anticipated to be superseded before the end of 2023. Similarly, all accessories for the make/model offered shall be freely available on the market and not in short supply and if not available, a replacement of the equivalent or better specifications products should be offered by contractor in its place. The Contractor is obliged to provide ENISA with a regularly updated mobile devices and related

accessories price catalogue (at least 2 times per year) as well as upon request by the Contracting Authority. The catalogue can be provided either in PDF format or as a web link²;

2.2 MODELS REPLACEMENT

Should the models covered by the ensuing contract be no longer available, the Contractor undertakes to replace them by newer models satisfying at least the same technical requirements, at no extra cost, subject to ENISA's approval. ENISA is entitled to withhold the approval of a replacement model if it does not offer at least the same level of functionality and performance as the model to be replaced, at a price ceiling no greater than that of the original model.

2.3 PRODUCT RECALLS

The Contractor shall assist the contracting authority with product recalls announced by manufacturers, throughout the entire duration of the Framework Contract. Product recalls can also relate to accessories such as power adapters or cables.

In particular, product recalls may be triggered by health and safety concerns identified by manufacturers. The assistance with product recalls includes such activities as rapidly identifying and making available the list of affected items sold to the contracting authority within the relevant period. It also includes liaising with the relevant manufacturer to establish the optimal way of having the affected items replaced at no cost to the contracting authority.

Product recalls should be organised in a way compatible with a corporate environment; in particular users of the contracting authority should not be expected to visit manufacturer's premises in order to have a product recall done.

2.4 WARRANTY AND REPAIR

The Contracting Authority expects **repair of defective products free of charge for a period of 24 months** from the time of delivery of the relevant item.

Warranty of products must be offered by an official EU representative.

Defective accessories under warranty must be replaced.

All phones will be wiped of data by the Contracting Authority before they are sent back to the Contractor for any reason.

In addition to the warranty, it is also expected by the prospective contractor to include/submit policies by which ENISA may be entitled to have the defected mobile devices replaced. This includes for example, your Dead on Arrival (DOA) and Early Life Failure (ELF) policies.

² The successful contractor is obliged to provide a Catalogue which is regularly updated. Upon specific request by the Contracting Authority, the Contractor will be obliged to provide ENISA with the latest updated catalogue of mobile handset models and associated prices within 48 hours.

2.5 CONFORMITY OF THE DELIVERED PRODUCTS

Conformity of the delivered products implies that these must:

- Correspond to the description given in the Technical Specifications and its annexes;
- Satisfy the conditions of quantity, quality, price and packaging laid down in the Technical Specifications and its annexes and in the relevant Order Form/Specific Contract;
- Be fit for any specific purpose required of them and made known to the Contractor at the time of conclusion of the Contract and accepted by the Contractor;
- Be fit for the purposes for which goods of the same type are normally used;
- Demonstrate the quality and performance which are normal in goods of the same type and which the Contracting Authority can reasonably expect, given the nature of the goods and taking into account any public statements on the specific characteristics of the goods made by the Contractor, the producer or his representative, particularly in advertising or on labelling;
- Be packaged according to the usual method for goods of the same type or, failing this, in a way designed to preserve and protect them.
- The Contractor is liable for any lack of conformity or hidden defect which exists at the time of delivery, even if this defect does not appear until a later date.

The Contracting Authority shall be entitled:

- To have the goods brought into conformity, free of charge, by repair or replacement; OR
- To have an appropriate reduction made in the price.

Any repair or replacement shall be completed within a reasonable time and without any significant inconvenience to the Contracting Authority, taking account of the nature of the goods and the purpose for which they are required. The term 'free of charge' above refers to the costs incurred to bring the goods into conformity, particularly including the cost of carriage, labour and materials.

Any non-conformity claims within six (6) months of the signature of the Delivery Note for the product shall be accepted by the Contractor.

2.6 ENVIRONMENTAL IMPACT AND ENERGY EFFICIENCY

During the life cycle of a mobile phone and its charger, energy consumption is the key environmental impact, especially in the mobile phone manufacture and use phases. In addition, the use of various hazardous materials can pose a potential risk to the environment and the focus on recycling in the end-of-life phase is also key to reducing the environmental impact of mobile phones. Extending the lifetime of the product will naturally reduce resource consumption and disposal burdens. All the proposed products shall comply with the requirements of the Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment (RoHS 2) and the requirements of the Directive 2006/66/EC on the batteries and accumulators. It is expected the tenderer to provide a technical dossier from the manufacturer, a test report from a recognised body, or other relevant evidence of energy use (during use) of the mobile phone and charger system, and/or hazardous materials. ENISA aims to:

- Purchase energy efficient chargers

- Communicate key issues to end users e.g. unplugging chargers / take back schemes
- Purchase models that restrict the use of hazardous materials
- Promote effective end of life management e.g. take back schemes / re-use / recycling
- Purchase products designed to be easily dismantled and recycled.
- Provision of replacement components / accessories to extend the life of the mobile phone
- Promote use of recycled/recyclable/reusable materials in mobile phones

3 ORDERING

The order process covers all the activities carried out for the acquisition of products by the contracting authority. This includes all commercial aspects from the ordering phase until signature of the Order Form or Specific Contract. The Order Form should include all relevant delivery details.

Modifications to the Order Form are only possible with the written approval of the contracting authority.

3.1 PROCESS FLOW

- The contracting authority initiates the order process by issuing a request for a specific offer and sends to the Contractor.
- The Contractor based on the availability of mobile models/accessories, drafts the specific offer, mentioning the delivery date and sends it to the Contracting Authority within three (3) Working Days.
- The Contracting Authority validates the specific offer, drafts an official Order Form (OF), sends the signed OF to the Contractor and requests to have it countersigned.
- The Contractor shall sign and send back the countersigned Order Form to the contracting authority within (2) working days.
- The OF includes at least the following information: quantity, configuration, delivery address, Delivery Lead Time, invoice address and contact person for delivery.

3.2 PROCESS INDICATORS AND LIQUIDATED DAMAGES

- Indicator 1 (I1): date of reception of the Specific Offer from the Contractor
- Indicator 2 (I2): date of reception of the signed Order Form from the Contractor

Where:

I1: ≤ three (3) working days

I2: ≤ two (2) working days

For each Working Day of delay, the Contractor shall, upon claim by the Contracting Authority, pay Liquidated Damages of 1% of the total amount of the Order Form (I2) or the Specific Offer (I1), if these indicators are not met, with the exception of force majeure and duly justified cases upon discussion and acceptance by the Contracting Authority.

4. DELIVERY

The delivery process goes from reception of the fully signed Order Form to the complete and order - compliant delivery of the ordered products. The procedure includes logistical and contractual aspects, which ends with the signature of a Delivery Note, as the acceptance for payment of the delivered equipment.

Unless expressly requested by the Contracting Authority, partial delivery of products in an Order Form is not allowed.

4.1 REQUIREMENTS

In the event of a change in the delivery date or if a problem occurs during the preparation or implementation of an order, the Contractor must immediately inform the Contracting Authority (i.e. provide a description of the problem, state when the problem started, and what action it is taking to resolve the problem).

The Contracting Authority shall, during Working Days and Normal Working Hours³, provide access to its premises for delivery on the notified delivery date.

Deliveries shall be complete. The Contractor shall bear all costs and risks associated with the delivery of the products to the place of delivery. Incomplete or wrong deliveries are regarded as delayed until completion and/or correction.

4.2 PROCESS FLOW

The Contractor shall deliver the ordered goods to the premises of the contracting authority as defined in the Order Form within the Delivery Lead Time. No later than five (5) Working Days before the actual delivery date, the Contractor will confirm the actual date of delivery by email to the Contracting Authority.

- The date of reception of the signed OF by the Contractor starts the Delivery Lead Time and thus defines the contractual delivery deadline. The Contracting Authority and the Contractor agree upon the actual delivery date, which should be within the Delivery Lead Time (14).
- At least five (5) Working Days before the actual delivery date, the Contractor will send by email to the Contracting Authority the confirmation of the actual delivery date. This confirmation shall be considered complete, only if it contains the information necessary for the Contracting Authority to receive the delivery (e.g. name of the courier company, tracking number, delivery note or packing slip including the description of the products as indicated in the OF, serial numbers, quantities, OF number, planned delivery date and time).
- The ordered products are delivered by the Contractor to the exact premises defined in the Order Form.
- The reception of each delivery is recorded in a Delivery Note, to be signed by the Contracting Authority.
- Once the Delivery Note is signed by the Contracting Authority, the invoice can be accepted and payment processed

³ Monday to Friday from 09:00 to 17:00

4.3 PROCESS INDICATORS AND LIQUIDATED DAMAGES

The actual date of delivery shall not exceed the Delivery Lead Time.

- Indicator 3 (I3): Actual delivery date
- Indicator 4 (I4): Date of Contractor's confirmation of the actual delivery date

Where:

I3 : ≤ thirty (30) working days

I4 : ≤ five (5) working days

For each Working Day of delay beyond the Delivery Lead Time or the agreed delivery date, the Contractor shall, upon claim by the Contracting Authority, pay Liquidated Damages of 1% of the total amount of the Order Form with the exception of force majeure and duly justified cases upon discussion and acceptance by the Contracting Authority. Liquidated Damages will not exceed 100% of the total amount of the Order Form.

5. CONTENT AND PRESENTATION OF THE TECHNICAL OFFER

This section is of a great importance in the assessment of the bids, the award of the contract and the future execution of any resulting contract. A technical tender must consist of a clear and comprehensive response to all requirements of the technical specifications.

The technical tender shall be based on the technical tender form, which can be found in Annex IV.

6. CONTENT AND PRESENTATION OF THE FINANCIAL OFFER

The Financial offer must be drawn up using the **Financial Offer form (see Annex V)**. The prices must be inclusive of all costs and expenses directly and indirectly connected with the goods to be supplied. This includes warranty costs.

In order to be considered a valid offer, it must be duly filled in, dated, stamped, and signed by the authorised person.

Please take special care to enter price data **in all boxes as described**. Failure to provide a fully completed form may result in your offer being declared invalid and not being further evaluated.

7. TENDER RESULT AND ESTIMATED CONTRACT VALUES

The result of the evaluation of tenders will be the awarding of a single Framework Service Contract. The estimated overall maximum contract value without this being binding for ENISA is **four hundred thousand Euro (€ 400.000)** over a maximum possible period of four (4) years.

(Please note that in the case where unforeseen circumstances result in this contract being consumed faster than originally planned, the Agency reserves the right to consider conducting a 'Negotiated procedure without prior publication of a contract notice' with the existing contractor in order to increase the maximum amount stated above by up to 50%. This procedure being fully in accordance with Article 164(4) and Annex I - point 11.1(e) of the EU Financial Regulation (FR)).

8. DATA PROTECTION AND TRANSPARENCY

Processing of personal data in the context of this contract shall comply with the legal framework on data protection, i.e.:

- **Regulation (EU) 2018/1725⁴ ('the EDPR')** as concerns personal data processing by the selected contractor, processing data in execution of the contract with ENISA.

The EDPR constitutes the specific data protection legal framework applicable to institutions, bodies, offices and agencies of the European Union, including ENISA, mirroring the GDPR applicable within the Union.

ENISA is the controller under this Regulation and the prospective contractor is the processor. The processor shall act only under the instructions of ENISA. ENISA's terms and conditions concerning procurement contracts are included in Article II.9.2 of the draft contract in Annex V.

- **Regulation (EU) 2016/679⁵ (General Data Protection Regulation – 'the GDPR')** as concerns personal data processing carried out by the contractor on its proper behalf as a controller.

Processing of personal data by ENISA as contracting authority:

Information on the processing of personal data by ENISA as contracting authority in charge of the present procurement procedure is available in the Privacy Statement on the ENISA website as well as in Article II.9.1 of the draft contract in Annex V. In this context, please be informed that ENISA may register your personal data as a tenderer or selected contractors in the Early Detection and Exclusion System (EDES) if you are in one of the situations mentioned in Article 136 of the Financial Regulation. The relevant Privacy Statement is available on the European Commission's website, here:

http://ec.europa.eu/budget/explained/management/protecting/protect_en.cfm#BDCE.

Processing of personal data by the selected contractor:

Personal data processing in execution of the contract between ENISA and the selected contractors shall comply with Regulation (EU) 2018/1725 (the EDPR).

The processing of personal data shall happen in accordance with Article 29 of the EDPR. In particular, the selected contractor shall comply with the following:

- to process the personal data only on documented instructions of ENISA, in particular with regard to the purposes of the processing, the categories of data that may be processed, the recipients of the data and the means by which the data subject may exercise its rights;
- to abide in particular by ENISA's data protection policies as regards the confidentiality of electronic communications (Section 3 EDPR) and the processing of personal data in web services;
- to ensure that access to personal data is granted to the extent strictly necessary for the implementation of the contract and to ensure that persons authorised to process the personal data have committed themselves to confidentiality;

⁴ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295/39 21.11.2018

⁵ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, OJ L 119, 4.5.2016, p. 1–88

- to implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks, in particular the risk of accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the personal data, processed or stored;
- not to engage another processor of personal data (i.e. by means of a subcontract), without prior written authorisation of ENISA. Where another processor is engaged for carrying out specific processing activities on the personal data, the same data protection obligations as set out in the contract shall be imposed on the other processor;
- to assist ENISA in the fulfilment of the controller's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III of the EDPR;
- to assist ENISA with its obligations with regard to security of processing, the notification obligations in case of a personal data breach, as well as where applicable cooperation in data protection impact assessments (DPIAs) and prior consultations with the European Data Protection Supervisor (the EDPS)⁶, outlined in Art. 33 to 40 of the EDPR;
- to make available to ENISA all information to demonstrate compliance with the obligations laid down in the EDPR and to allow for and to contribute to audits, including inspections, conducted by ENISA or another auditor mandated by ENISA;
- As concerns the localisation of and access to the personal data, to comply with the following:
 - the personal data shall only be processed and held in data centres within the territory of the European Union and the European Economic Area and will not leave that territory. This includes also any backup centres and location of backup data.;
 - the contractor may not change the location of data processing without the prior written authorisation of ENISA ;
 - The contractor shall inform ENISA in case of any need for transfer of personal data to third countries or international organisations and will perform such transfer only after written authorisation by ENISA. Any transfer of personal data to third countries or international organisations shall fully comply with the requirements laid down in Chapter V of the EDPR ;
 - The contractor shall notify ENISA without delay of any legally binding request for disclosure of the personal data processed on behalf of ENISA made by any national public authority, including an authority from a third country. The contractor may not give such access without the prior written authorisation of ENISA;
 - To contact the Data Protection Officer (DPO) of ENISA, in charge of monitoring data protection compliance, with any questions arising or in case of need for assistance concerning personal data protection dataprotection@enisa.europa.eu.

In addition, **Article II.9.2 of the draft contract** provided in Annex V is applicable.

Confidentiality:

ENISA will disregard general statements that the whole tender or substantial parts of it contain confidential information. Tenderers need to mark clearly the information they consider confidential and explain why it may not be disclosed. The EU body reserves the right to make its own assessment of the confidential nature of any information contained in the tender.

⁶ <http://www.edps.europa.eu>

9. MARKING OF SUBMITTED DOCUMENTS

The tenderer SHOULD NOT mark tender documents (for e.g. the header or footer) with any of the following words: RESTRICTED, CONFIDENTIAL, SECRET or TOP SECRET. If the tenderer considers that such markings are required, a prior approval from the ENISA Procurement Coordinator should be obtained BEFORE sending the tender documents. The tenderer should be aware that the information sent to ENISA for procurement purposes is handled in accordance with the governing rules for EU Public Procurement and the EU Financial Regulation framework.

10. PRICE

Prices submitted in response to this Tender must be inclusive of all costs involved in the performance of the contract. Prices shall be submitted only in Euro and VAT excluded.

11. PRICE REVISION

The price quoted must be fixed and not subject to revision during the first year of performance of the contract. From the beginning of the second year of performance of the contract, prices may be revised in accordance with Article I.3.3 of the framework contract.

12. COSTS INVOLVED IN PREPARING AND SUBMITTING A TENDER

ENISA will not reimburse any costs incurred in the preparation and submission of a Tender. Any such costs must be paid by the Tenderer.

13. PERIOD OF VALIDITY OF THE TENDER

Tenderers must enclose a confirmation that the prices given are valid for six (6) months from the date of submission of the tender.

14. PROTOCOL ON PRIVILEGES & IMMUNITIES OF THE EUROPEAN UNION

ENISA is exempt from all taxes and duties, including value added tax (VAT), pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union. Tenderers must therefore give prices, which are exclusive of any taxes and duties and must indicate the amount of VAT separately.

15. PAYMENT ARRANGEMENTS

Payments under the Contract shall be carried out, subject to prior approval of the report accompanying the invoices, listing the services rendered, within 30 days of submission of an invoice accompanied by the Delivery Note signed by the Contracting Authority based on the conditions set out in the draft contract.

16. CONTRACTUAL DETAILS

A Framework Supply Contract will be proposed to the successful tenderer. Selection of a tenderer and / or signature of the Framework Contract imposes no obligation on ENISA to order supplies or services.

The contract and its annexes draw up the legal, financial, technical and administrative provisions governing the relations between the Agency and the Contractor during its period of validity.

The tender will conclude, valid as of the date of the last signature, with a one-year Framework Supply contract, tacitly renewable up to three times for a maximum of four years.

The Agency reserves the right to end the contract at any time, without any obligation to invoke the reason for it, at one month's notice. The Tenderer's offer must be drafted taking fully into account the provisions of the draft Framework Supply contract annexed to this call for tenders (See draft contract, in Annex VI).

Please note that the general conditions of our standard framework service contract cannot be modified. Submission of a tender by a potential contractor implies acceptance of this contract and all of the terms and conditions contained therein. It is strongly recommended that you have this draft contract checked and passed by your legal services before committing to submitting an offer.

PART 3 TENDER SPECIFICATIONS

1. INFORMATION ON TENDERING

1.1 CONTRACTUAL CONDITIONS

In drawing up their offer, the tenderer should bear in mind the provisions of the draft contract (Annex VI) attached to this invitation to tender particularly those on payments, performance of the contract, confidentiality, and checks and audits. Submission of a tender by a potential contractor implies acceptance of this contract and all of the terms and conditions contained therein. Any limitation, amendment or denial of the terms of contract will lead to automatic exclusion from the procurement procedure.

It is strongly recommended that you have this draft contract checked and passed by your legal representative before committing to submitting an offer.

Before the contract is signed, the Agency may decide to abandon the procurement procedure or cancel the award procedure without the tenderers being entitled to claim any compensation.

1.2 JOINT TENDERS (IF APPLICABLE)

A joint tender is a situation where a tender is submitted by a 'group' of economic operators (consortium). Joint tenders may include subcontractors in addition to the joint tenderers.

Tenders can be submitted by groupings of service providers/suppliers who will not be required to adopt a particular legal form prior to the contract being awarded. However, the Agency will require the grouping:

- Either to have the contract signed by all members (partners) of the grouping. In this case, one of them, as 'Lead Partner', will be responsible for the receipt and processing of payments for members of the grouping, for managing the service administration and for coordination of the contract;
- Or to have the contract signed by the 'Lead Partner' only, who has been duly authorised by the other members to bind each of them (a fully completed 'power of attorney' form for each member of the Group will be attached to the contract according to the template provided by the Agency).

In addition, the composition and constitution of the grouping, and the allocation of the scope of tasks amongst the members, shall not be altered without the prior written consent of the Agency, which can be withheld at its discretion.

In case of a joint offer, each member of the grouping shall provide the following:

- a **Legal Entities form** and a **Power of Attorney of each consortium partner**, must be filled in, signed by (an) authorised representative(s), scanned and uploaded in the corresponding section.
- a **Declaration of honour with respect to the Exclusion Criteria and absence of conflict of interest** must be filled in, signed by (an) authorised representative(s), scanned and uploaded in the corresponding section.

1.3 LIABILITY OF MEMBERS OF A GROUP

Partners in a joint offer assume **joint and several liability** towards the Agency for the performance of the contract as a whole.

Statements, saying for instance:

- That one of the partners of the joint offer will be responsible⁷ for only one part of the contract and another one for the rest, or
- That more than one contract should be signed if the joint offer is successful

are thus incompatible with the principle of joint and several liability. The Agency will disregard any such statement contained in a joint offer, and reserves the right to reject such offers without further evaluation, because they do not comply with the tendering specifications.

1.4 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.

If the tenderer intends to subcontract part of the service, they shall indicate in their offer which part will be subcontracted and to what extent (% of the total contract value).

Tenderers must ensure that Article II.7 of the contract (Annex VI) can be applied to subcontractors.

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

Tenderers are required to identify all subcontractors.

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

2. STRUCTURE AND CONTENT OF THE TENDER

2.1 GENERAL

Tenders must be written in **one of the official languages** of the European Union. The working language of ENISA is English.

Tenders must be written in a clear and concise manner, with continuous page numbering. Since tenderers will be judged on the content of their written bids, they must make it clear that they are able to meet the requirements of the specifications/terms of reference.

2.2 STRUCTURE OF THE TENDER

Based on the **e-Submission** environment⁸, all tenders must provide information and supporting documentation in two sections:

⁷ not to be confused with distribution of tasks among the members of the grouping

⁸ For detailed instructions on how to submit a tender please consult the e-Submission Quick Guide available at: https://webgate.ec.europa.eu/digit/opsys/esubmission/assets/documents/manual/quickGuide_en.pdf

- 1) Qualification - data and documentation;
- 2) Tender offer - data and documentation.

2.3 QUALIFICATION DATA

a) Identification of the Tenderer

The tenderer must fill in all required fields in the qualification section. In case of a joint tender the consortium name has to be provided and an identification of every party in the consortium needs to be added.

The following information should also be provided:

(i) Legal Entities

In order to prove their legal capacity and their status, all tenderers and identified subcontractors must provide a Legal Entity Form with its supporting evidence.

However, the subcontractor(s) shall not be required to fill in or provide those documents when the services represent less than 20% of the overall contract value.

The Legal Entity Form can be generated via the e-Submission application. Alternatively, a standard template in each EU language is available at:

http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm

Tenderers must provide the following information if it has not been included with the Legal Entity Form:

- 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.

(ii) Financial identification

The tenderer (or the single point of contact in case of joint tender) must provide a Financial Identification Form and supporting documents. Only one form per offer should be submitted (no form is needed for subcontractors and other joint tenderers). The form is available at:

http://ec.europa.eu/budget/contracts_grants/info_contracts/financial_id/financial_id_en.cfm

Remark: Tenderers that are already registered in the Agency's accounting system (i.e. they have already been direct contractors **with ENISA** in the past) must provide the filled in form but are not obliged to provide the supporting evidence.

The form needs to be printed, filled in and then scanned and uploaded in the Qualification section. In case of a joint tender, it has to be uploaded in the **"Documents"** section of the Consortium Leader.

(iii) Power of Attorney

In case of a joint tender, an Agreement / Power of Attorney for each partner must be filled in, signed by (an) authorised representative(s), scanned and uploaded. Please choose 'Model A' for an ad hoc grouping or 'Model B' for a legally constituted consortium - see templates in Annex VII (a) and (b)

(iv) Lots interested in (only in case the tender has multiple lots)

The tenderer must indicate for which lots the tender is applicable, by ticking the relevant boxes in the section: *"Interested in the following lots"*.

b) Information regarding exclusion and selection criteria:

The tenderer is requested to submit the following documents:

1. Declaration by the Tenderer relating to the exclusion criteria (see 3.1 below)

The filled-in Declaration form.

In case of a joint tender, each member of the consortium has to submit a declaration under the respective party name (see template in Annex III)

2. Documents certifying economic and financial capacity (see 3.2.2 below)

In case of a joint tender, each member of the consortium has to submit the documents under the respective party name.

3. Proof of technical and professional capacity (see 3.2.3 below)

In case of a joint tender, each member of the consortium has to submit the documents under the respective party name.

If any of the above documents are associated with a specific Lot, please indicate for which Lot it is applicable inside the document AND in the Description field of the attachment (*only in case the tender has multiple lots*).

2.4 TENDER DATA

a) Technical proposal

The technical section is of great importance in the assessment of the bids, the award of the contract and the future execution of any resulting contract.

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 based on non-conformity with the tender specifications, and will not be evaluated.

The technical tender needs to be uploaded in the relevant section:

The tenderer selects the "Technical Tender" document from the dropdown box ("Financial Tender or Technical Tender"). The e-Submission application allows attachment of as many documents as necessary.

b) Financial proposal

- All tenders must contain a financial proposal, to be submitted **using the form attached as Annex V.**

The tenderer's attention is drawn to the following points:

- Prices must be quoted in **euro**, including the countries that are not in the euro-zone. As far as the tenderers of those countries are concerned, they cannot change the amount of the bid because of the evolution of the exchange rate. The tenderers choose the exchange rate and assume all risks or opportunities relating to the rate fluctuation.
- **Prices must be fixed amounts.**
- **Estimated travel and daily subsistence allowance expenses must be indicated separately.**
(only if applicable to this procedure)

This estimate should be based on Articles I.5 and II.22 of the draft framework contract (Annex VI). This estimate will comprise all foreseen travel and will constitute the maximum amount of travel and daily subsistence allowance expenses to be paid for all tasks.

- **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 total price needs to be encoded in the e-Submission application⁹.

- In the box labelled '**Total amount exclusive of taxes**' – please add the amount Total P_B from your Financial Offer form.
- In the box labelled '**Total taxes amount**' – please put zero (if this is not accepted by system then enter 0,01)
- In the box labelled '**Total amount**' – again simply add the amount Total from your Financial Offer form or the maximum budget assigned for this tender

The completed Financial Offer form(s), MUST ALSO be uploaded in the relevant section:

The tenderer selects the "Financial Tender" document from the dropdown box ("Financial Tender or Technical Tender"). The e-Submission application allows attachment of as many documents as necessary.

3. ASSESSMENT AND AWARD OF THE CONTRACT

The assessment will be based on each tenderer's bid. All the information will be assessed in light of the criteria set out in these specifications. The procedure for the award of the contract, which will concern only admissible bids, will be carried out in three stages, normally in the order shown below.

The aim of each of these stages is:

- 1) to check on the basis of the **exclusion criteria**, whether tenderers can take part in the tendering procedure;

⁹ In the case of framework contracts, unless otherwise instructed, please add the maximum budget given for this tender

- 2) to check on the basis of the **selection criteria**, the technical and professional capacity and economic and financial capacity of each tenderer;
- 3) to assess on the basis of the **award criteria** each bid which has passed the exclusion and selection stages.

Only tenders meeting the requirements of each stage will pass on to the next evaluation stage.

3.1 EXCLUSION CRITERIA

Tenders will be rejected if they do not comply with applicable obligations under environmental, social and labour law established by Union law, national law and collective agreements, or by the international environmental, social and labour law provisions listed in Annex X to the Directive 2014/24/EU and compliance with data protection obligations resulting from Regulation (EU) 2016/679 and Regulation (EU) 2018/1725¹⁰.

All tenderers shall provide a 'declaration on their honour' (see Annex III), stating that they are not in one of the situations of exclusion listed.

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

The 'declaration on honour' has to be duly signed by parties that are not signing the Tender Preparation Report in *e-Submission*.

The successful tenderer shall be asked to provide the actual documents mentioned as supporting evidence in Annex III before signature of the contract and within a deadline given by the contracting authority. This requirement applies to all members of the consortium in case of joint tender.

Remark:

A tenderer may be waived of the obligation to submit the documentary evidence mentioned above if such evidence has already been submitted for the purposes of another procurement procedure launched by ENISA, provided that the documents are **not more than one-year-old** starting from their issuing date and that they are still valid. In such a case, the tenderer shall declare on his/her honour that the documentary evidence has already been provided in a previous procurement procedure, specifying the reference of the call for tender for which the documents have been provided, and confirm that no changes in their situation has occurred.

ENISA will also waive the obligation of the tenderer to submit the documentary evidence if it can access it on a national database free of charge.

Each tenderer (and each member of a consortium) shall declare in the relevant field in Annex VIII (Administrative Identification form) whether it is a Small or Medium Size Enterprise (SME) in accordance with Commission Recommendation 2003/361/EC¹⁰.

As a general guideline, here is an excerpt from the Recommendation:

¹⁰ Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:124:0036:0041:en:PDF>

“The category of micro, small and medium-sized enterprises (SMEs) is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.”

3.2 SELECTION CRITERIA

The following criteria will be used to select the Tenderers for further evaluation. If the Tender is proposed by a consortium, these criteria apply to the tenderer as a whole (unless otherwise stated).

Documentary evidence of the Tenderers' claims in respect of the below-mentioned criteria is required.

3.2.1 LEGAL AND REGULATORY CAPACITY

The Tenderer must provide evidence of enrolment (declaration or certificates) in one of the professional or trade registers related to the subject of this tender, in the country of its establishment.

3.2.2 FINANCIAL AND ECONOMIC CAPACITY

Proof of financial and economic standing shall be furnished by the following documents and minimum requirements:

- (a) Copy of the financial statements (balance sheets and profit and loss accounts) for the last two (2) financial years for which accounts have been closed, where publication of the accounts is required under the company law of the country in which the economic operator is established. In case of a consortium, each consortium member shall present their financial statements.

If the tenderer is not obliged to publish its accounts under the law of the state in which it is established, a copy of audited accounts for the last two (2) financial years should be presented. In case of a consortium/grouping, audited accounts for each consortium partner shall be presented.

- (b) **Complete (also) the attached Annex II ‘Simplified Financial Statement’**, which summarises your recent financial capacity. Please note that the average turnover for the last two (2) financial years for which accounts have been closed must meet our **minimum annual average turnover of €100.000 (one hundred thousand euro)**:

In case of a consortium/grouping, the annual average turnover for each of the partners shall be presented. The sum of the annual average turnovers of each partner will be taken into account to reach the annual average turnover of **€100.000**.

- (c) If tenderers will call on the competences of another entity (for example, a parent company), a written undertaking by the said entity certifying that it will make available to the tenderers the resources required to implement the contract.

If for some exceptional reason which the Contracting Authority considers justified, the tenderer is unable to provide the documentary evidence requested above, he may prove his economic and financial capacity by any other means which the Contracting Authority considers appropriate, but only following a formal request for clarification before the tender expiry date.

3.2.3 TECHNICAL AND PROFESSIONAL CAPACITY CRITERIA AND EVIDENCE

The Tenderers are required to have sufficient technical and professional capacity to perform the contract. Evidence of the technical and professional capacity of the tenderers shall be furnished on the basis of the following requirements:

Criterion T1 Tenderers must have a minimum relevant experience of at least 3 years, by the deadline for dispatching of tenders, in providing the supplies as stated in the technical specifications.

Evidence 1: Reference list of the principal supplies delivered in the past three years, with the sums, quantity and dates, which shall be provable upon request by statements issued by the clients;

3.3 AWARD CRITERIA

3.3.1 QUALITY OF THE OFFER

Once the Tenderer has demonstrated the appropriate capacity to perform the Contract on the grounds of the selection criteria, the offer will be assessed based on the award criteria.

No	Qualitative award criteria		Weighting (max. points)
1.	Ordering Process	Description of the ordering process and timeframe with respect to Section 3 in Part 2 of the Tender Specifications document	25
2.	Delivery Process	Description of delivery timeframe in respect with Section 4 in Part 2 of the Tender Specifications document	25
3.	Quality and environmental impact	Quality, environmental friendliness and energy efficiency in compliance with Section 2 in Part 2 of the Tender Specifications document, as evidenced through certifications; a technical dossier from the manufacturer; a test report from a recognised body, or any other relevant evidence	10
4.	Warranty, Repair and support	Description of the policy(ies) related to the warranty and repair, DOA and ELF with respect to Section 2.4 of Part 2 of the Tender Specifications document. Other value-added services like extended security support via Enterprise packages	40
Total Qualitative Points (QP)			100

Minimum attainment per criterion

Offers scoring less than 50% for any criterion will be deemed to be of insufficient quality and eliminated from further consideration.

Minimum attainment overall

Offers scoring less than **60%** after the quality evaluation process will be considered to be of insufficient quality and eliminated from the following phase.

The sum of all criteria gives a total of 100 points. The respective weighting between the different award criteria depends on the nature of the services required and is consequently closely related to the terms of reference. The award criteria are thus quantified parameters that the offer should comply with. The **qualitative award criteria** points will be weighted at **60%** in relation to the price.

3.3.2 PRICE OF THE OFFER

The Financial Offer form (Annex V) contains price boxes, which shall be completed with a monetary amount by the tenderer. The prices must be inclusive of all costs and expenses directly and indirectly connected with the goods to be supplied. This includes warranty costs.

Information provided in the aforementioned Financial Offer form is merely a simulation of the estimated needs, based on an evaluation scenario that allows a direct comparison of offers. The unit prices and all other inputs provided by the tenderers in their financial offer are binding and will be used for the calculation of prices for products actually provided.

The list of products in Annex V is not exhaustive but serves evaluation purposes and the Contracting Authority can purchase other types of mobile devices, provided they meet the requirements and are offered by the prospective contractor in the submitted Catalogue.

The prices of the different product categories in the Contractor's financial offer submitted under the call for tenders shall be considered as the maximum price ceiling for the Contracting Authority for the entire duration of the validity of the respective Framework contract. Apart from this, each Contractor will always be entitled to reduce its prices at its own initiative.

The total bid price ratio '**PP**' will be calculated using the following formula and weightings:

$$PP = (PC / PB) \times 100$$

Where;

PP = Price points
PC = Cheapest bid price received
PB = Bid price being evaluated

Please note: If any price box is left blank by the tenderer then the Financial Offer may be considered to be invalid and will be eliminated from further evaluation.

3.3.3 AWARD OF THE CONTRACT

The contract will be awarded to the offer that is the most cost effective (offers the best value for money) which obtains the highest number of points after the final evaluation, based on the ratio between the **quality criteria (60%) and the price (40%)**. The following formula will be used:

$$\text{TWP} = (\text{QP} \times 0.6) + (\text{PP} \times 0.4)$$

Where;

QP = Qualitative points
PP = Price points
TWP = Total weighted points score

In case the successful tenderer is unable to sign the contract for any reason, the Contracting Authority reserves the right to award the contract to other tenderers as per the ranking order established following the evaluation procedure.

4. TENDER OPENING

The public opening of received tenders will take place online on **6th September 2023 at 09:30 CEST Central European Summer Time**.

***Please note** that all tenderers may simply request a copy of the Opening Report to be sent to them by email after the conclusion of the Opening Session procedure.*

5. OTHER CONDITIONS

5.1 VALIDITY

Period of validity of the Tender: six months from the closing date stated in Invitation to Tender. The successful Tenderer must maintain its Offer for a further 120 days from the notification of the award.

5.2 LOTS

This Tender is not divided into Lots.

5.3 ADDITIONAL PROVISIONS

- Changes to tenders will be accepted only if they are received on or before the final date and time set for the receipt of tenders.
- Expenses incurred in respect of the preparation and presentation of tenders cannot be refunded.
- No information of any kind will be given on the state of progress with regard to the evaluation of tenders.

- All documents submitted by Tenderers will become the property of ENISA and will be treated as confidential.

5.4 NO OBLIGATION TO AWARD THE CONTRACT

Initiation of a tendering procedure imposes no obligation on the Contracting Authority to award the contract. Should the invitation to tender cover several items or lots, the Contracting Authority reserves the right to award a contract for only some of them. The Contracting Authority shall not be liable for any compensation with respect to Tenderers whose tenders have not been accepted. Nor shall it be so liable if it decides not to award the contract.

6. SPECIFIC INFORMATION

6.1 TIMETABLE

The timetable for this tender and the resulting contracts is as follows:

Title: “**Supply of mobile devices accessories and associated services**”

ENISA F-CSS-23-T13

Summary timetable comments

Launch of tender: - Contract notice to the Official Journal of the European Union (OJEU) - Uploaded to e-Tendering website - Uploaded to ENISA website	17 th July 2023	
Deadline for request of information to ENISA	28 th August 2023	
Last date on which clarifications are issued by ENISA	1 st September 2023	
Deadline for electronic reception of offers via e-Submission	5th September 2023	18:00 CEST Central European Summer time
Opening of offers	6 th September 2023	09:30 CEST Central European Summer time
Date for evaluation of offers	TBA	
Notification of award to the selected candidate + 10 day standstill period commences	TBA	
Contract signature	end September 2023	Estimated