

*Instructions to tenderers and Specifications attached to  
the Invitation to Tender No.*

*ERA 2016 02 OP*

*“Provision of legal services in the field of preparation and  
implementation of the Agency's new tasks envisaged after  
the adoption of the European Commission legislative  
proposal ‘4th railway package-technical pillar’ ”*

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## Section A. Introduction

### A..1. What is ERA?

The European Railway Agency, (hereinafter "ERA" or "the Agency"), is a specialised agency of the European Union, which has been given specific regulatory tasks in the railway sector.

The Agency is located in Valenciennes/Lille, France, and has the mission of reinforcing safety and interoperability of railways throughout Europe, and thus adding a strong new momentum towards the shared vision of a truly integrated, competitive European railway area.

As part of its common transport policy, the European Union has adopted legislation to pave the way for gradual establishment of an integrated European railway area, both legally and technically. This involves the development and implementation of Technical Specifications for Interoperability and a common approach to questions concerning railway safety. The Agency's main task is to manage the preparation of these measures. The Agency has in 2006 finished its organisational setup phase and got fully operational, with initially about 100 members of staff, 150 nowadays, mostly professionals from the European railway sector.

Agency structure, main tasks and working methods are outlined in Regulation (EC) No 1335/2008 amending Regulation (EC) 881/2004 of the European Parliament and of the Council of 29 April 2004 establishing a European Railway Agency.

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

### A..2. What is a tender?

For its organisation and functioning ERA is in constant need of goods and services. 'Tendering' is the structured way to consult the market for the purchase of these goods and services.

The purpose of competitive tendering for awarding contracts is two-fold:

- to ensure the transparency of operations;
- to obtain the desired quality of services, supplies and works at the best possible price.

The procurement procedure for the EU institutions, agencies and other bodies is governed by the following provisions, namely:

1. Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012);
2. Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 362, 31.12.2012);
3. The World Trade Organisation's Agreement on Government Procurement, which the European Union joined following Council Decision of 16 November 1987 concerning the conclusion of the Protocol amending the GATT Agreement on Government Procurement.
4. Decision n°93 of the Administrative Board of the European Railway Agency adopting the financial regulation of the Agency (dated 3 December 2013) and which can be found at the following link:  
<http://www.era.europa.eu/Document-Register/Documents/ERA%20AB%20Decision%2093%20-%20financial%20regulation.pdf>
5. Corrigendum Decision n°96 of the Administrative Board of the European Railway Agency laying down detailed rules for the implementation of the Financial Regulation of the European Railway Agency

(dated 26 November 2014) and which can be found at the following link:

<http://www.era.europa.eu/Document-Register/Pages/DECISION-n°96-of-the-Administrative-Board-of-the-European-Railway-Agency-laying-down-detailed-rules-for-the-implementation.aspx>

In addition to the above-mentioned legislation, it is worth noting that:

6. The provisions mentioned at 1. and 2. above are largely similar to those contained in the European Union's public procurement directive, Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, which is applicable to the Member States;
7. Principles arising from the European Court of Justice's case-law in the field of procurement are binding on the European institutions;
8. Prospective tenderers are legitimately entitled to expect ERA to manage its calls for tenders in accordance with principles arising from the European Ombudsman's decisions;
9. ERA's staff follows the “Code of Good Administrative Behaviour” in their relations with the public, as defined by the Executive Director decision of 10 July 2007 and which can be found at the following link: <http://www.era.europa.eu/Document-Register/Pages/Code-of-good-administrative-behaviour.aspx>

### **A.3. Who is eligible to participate to this tender?**

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#### **A.3.1. Participation**

**Participation** in this tender procedure is open on equal terms to all natural and legal persons from one of the EU Member States, to all natural and legal persons in a third country which has a special agreement with the European Union in the field of public procurement on the conditions laid down in that agreement and to international organisations.

Tenderers must indicate clearly in which country they have their headquarters (legal person) or domicile (natural person). Operators in third countries which have signed an agreement with the European Union in the field of public procurement are allowed to take part in the Tendering procedure on the conditions laid down in this agreement. The Agency shall not accept Tenders submitted by operators established in third countries which have not signed such an agreement with the European Union.

#### **A.3.2. Contractual conditions**

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

#### **A.3.3. Joint tenders**

A joint tender is a situation where a tender is submitted by a **group (2 or more) of economic operators** (consortium). Joint tenders may include subcontractors in addition to the joint tenderers.

In case of joint tender, all economic operators in a joint tender assume joint and several liabilities towards the Contracting Authority for the performance of the contract as a whole. Nevertheless, tenderers must designate a single point of contact for the Contracting Authority.

After the award, the Contracting Authority will sign the contract either with all members of the group, or with the member duly authorised by the other members via a power of attorney.

#### A.3.4. 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.

Tenderers must give an indication of the proportion of the contract that they intend to subcontract and to identify all subcontractors whose share of the contract is above 30%.

All sub-contractors must be eligible for the contract (cf. section B.5) and fulfil the selection criteria (cf. section C.3).

The identity for the intended subcontractor(s) shall be known at the time of submitting the tender and the tenderer must furnish a statement guaranteeing the eligibility of the subcontractor.

If any subcontractor does not meet the eligibility and selection criteria, the offer of the tenderer shall be rejected.

The contracting authority reserves the right to request the evidence mentioned in Section B.5 with regard to sub-contractors.

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

## Section B. Guidelines and general information related to this tender

### B.1. What should my offer consist of?

Tenderers must submit an offer that comprises of the following 4 elements:

#### B.1.1. Identification of the tenderer

The tender must include a cover letter presenting the name of the tenderer (including all entities in case of joint offer) and identified subcontractors if applicable, and the name of the single contact person in relation to this tender.

[If applicable, the cover letter must indicate the proportion of the contract to be subcontracted.]

In case of joint tender, the cover letter must be signed by a duly authorised representative for each tenderer, or by a single tenderer duly authorised by other tenderers (with power of attorney).

Subcontractors must provide a letter of intent stating their willingness to provide the service foreseen in the offer and in line with the present tender specification.

In order to prove their legal capacity and their status, all tenderers and identified subcontractors must provide a signed **Legal Entity Form with its supporting evidence**. The form is available on:

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

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 on:

[http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/financial\\_id/financial\\_id\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/financial_id/financial_id_en.cfm)

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

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.

### **B..1.2. Technical proposal**

The technical offer must be consistent with the terms of reference and contain all information requested in **Section C**, thus cover all aspects and tasks required in the technical specification and provide all the information needed to apply the award criteria described in the said section. Offers deviating from the requirements or not covering all requirements may be excluded on the basis of non-conformity with the tender specifications and will not be evaluated.

### **B..1.3. Financial proposal**

The financial proposal shall be prepared according to the format found in **section D.3**. Prices must be quoted in EURO using the conversion rates published in the C series of the Official Journal of the European Union on the day when the invitation to tender was issued. This information is also available on the Website of the European Central Bank at the following URL: <http://www.ecb.int/stats/exchange/eurofxref>.

Prices must be quoted free of all duties, taxes and other charges (including VAT) as ERA 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 must be shown separately.

The financial quotation shall be completely unambiguous. Your tender shall be disqualified if it contains any statements preventing an accurate and complete comparison of the tenders (such as "To be discussed", "Depending on x", "Conditional to" etc.) or referring to external circumstances (such as an already existing but separate contract).

### **B..1.4. Supporting documentation**

The supporting documentation is an important part of your offer and must be complete to guarantee that your proposal will be evaluated. The supporting documentation must contain the following elements:

#### **a) Declaration of honour on exclusion criteria**

In order not to be excluded from tender participation tenderers and identified subcontractors should not be in one of the situations described in the declaration of eligibility under **section D.1**.

Before the Contracting Authority signs the contract with the successful selected contractor, the successful selected contractor must provide the documentary proof or statements required under the law of the country in which the company (or each of the companies in case of a consortium) is established, to show that it does not fall into any of the exclusion situations listed in **section D.1**. This evidence or these documents or statements must carry a date, which cannot be more than 1 year before the date of submission of the tender. In addition, a sworn statement shall be furnished stating that the situations described in these documents have not changed since then.

The successful selected contractor will be given a two weeks period after the notification of the award to provide the above-mentioned documentary evidence. Therefore selected contractors are requested to take all the necessary arrangements in order to be able to submit, in case they are awarded the contract, the evidence within such a short period of time.

This evidence is to be provided by the successful selected contractor:

- i. ERA shall accept, as satisfactory evidence that the selected contractor is not in one of the situations described in point (a), (b) or (e), mentioned in the declaration of eligibility under **section D.1**, production of a recent extract from the judicial record or, failing that, a recent equivalent document issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied.
- ii. ERA shall accept, as satisfactory evidence that the selected contractor is not in the situation described in point (d) mentioned in the declaration of eligibility under **section D.1**, a recent certificate issued by the competent authority of the State concerned.

Where no such certificate is 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.

### ***b) Selection criteria documentation***

Tenderers must prove their technical and professional capacity to carry out the work subject to this call for tender. The evidence requested should be provided by each member of the group in case of joint tender and identified subcontractor whose intended share of the contract is above 30%. However a consolidated assessment will be made to verify compliance with the minimum capacity levels.

The tenderer may rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the Contracting Authority that it will have at its disposal the resources necessary for performance of the contract, for example by producing an undertaking on the part of those entities to place those resources at its disposal.

All documentation requested in **section C.3**.

### ***c) Selected contractor administrative information***

This information is necessary to allow ERA to produce the contractual documentation in the event you are awarded the contract. This information is particularly important for payments, since payments will be made by bank transfer to the account indicated by the selected contractor in the standard forms. The standard forms to be used are the ones already mentioned at point **B.1.1. Identification of the tenderer**.

### ***d) Checklist***

The checklist found in **section D.5** must be included as a cover page of your technical proposal.

## **B..2. Contacts between ERA and the tenderers**

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### ***B..2.1. Written clarification before the closing date for submission of tenders***

Requests for clarification regarding this procurement procedure or regarding the nature of the contract can be sent by post mail or, preferably, by email to:

**Procurement Services**  
**European Railway Agency**  
**120, rue Marc Lefrancq**  
**BP 20392**  
**F-59307 Valenciennes Cedex**  
**France**  
**Email: [procurement@era.europa.eu](mailto:procurement@era.europa.eu)**

The deadline for clarification requests is indicated in the timetable under **section C.1**. Each request for clarification sent to ERA should indicate the reference number and the title of the tender.

ERA will provide additional information resulting from the request for a clarification in the following way: the following URL address where the written clarifications will be available for download:

<http://www.era.europa.eu/The-Agency/Procurement/Pages/Procedures-over-60000.aspx>

selecting Calls for tender – on-going and, under the heading of the tender, clicking on “**Read more**”

In case ERA discovers an error, a lack of precision, an omission or any other type of clerical defect in the text of the contract notice or in the tender specifications, ERA will inform candidates at its own initiative.

### **B..2.2. Oral clarification before the closing date for submission of tenders**

Where a site visit at ERA's premises or a meeting is deemed necessary before the closing date for submission of tenders in order to clarify certain aspects of the tender, ERA shall make the necessary arrangements and inform or invite candidates. The costs incurred in attending shall be borne by the tenderer. ERA may, however, decide that the query would be more efficiently dealt with by means of a written clarification.

In case a meeting or visit is taking place, the dates of main study stages are indicated in the timetable under **section C**.

### **B..3. Can I offer something that varies from what is requested in the terms of reference?**

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

### **B..4. Misrepresentation and corruptive practices**

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The contract will not be awarded to selected contractors who, during the procurement procedure:

- i Are subject to a conflict of interest;
- ii Are guilty of misrepresentation in supplying the information required by ERA as a condition of participation in the contract award procedure or fail to supply this information;
- iii Any attempt by a tenderer to obtain confidential information, enter into unlawful agreements with competitors or influence the evaluation committee of ERA during the process of examining, clarifying, evaluating and comparing tenders, will lead to the rejection of his offer and may result in administrative penalties.

### **B..5. Confidentiality & public access to documents**

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In the general implementation of its activities and for the processing of tendering procedures in particular, ERA observes the following rules:

- i Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, and;
- ii Council Regulation (EC) No 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

### **B..6. Where do I find the standard provisions ERA applies in its contracts?**

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In drawing up your offer, you should bear in mind the provisions of the draft contract (see **section E**). In particular, the draft contract indicates the method and the conditions for payments to the contractor. Provisions included in the draft contract may be subject to change.

## **B..7. How and when should I present my offer?**

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### **B..7.1. Data Protection**

Please note that if processing your reply to the invitation to tender involves the recording and processing of personal data (such as your identification data, contact data, bank information data, evaluation/assessment data, etc.), such data will be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Unless indicated otherwise, your replies to the questions and any personal data requested are required to evaluate your tender in accordance with the specifications of the invitation to tender and will be processed solely for that purpose by the entity acting as data controller is in our case the Authorising Officer.

Details concerning the processing of your personal data are available on the privacy statement at:  
[http://www.era.europa.eu/Pages/Privacy\\_Statement.aspx](http://www.era.europa.eu/Pages/Privacy_Statement.aspx)

### **B..7.2. Language**

Offers must be submitted in one of the official languages of the European Union, but preferably in English (for practical reasons). Both the technical proposal and the financial proposal should be signed and perfectly legible in order to rule out any ambiguity.

### **B..7.3. Dates and postal address**

The offer should be postmarked no later than the date indicated in the timetable in **section C.1** or submitted by hand not later than the date and time indicated in **section C.1**.

Tenders sent by post mail are to be sent to the following postal address:

**Procurement Services  
European Railway Agency  
BP 20392  
120, Rue Marc Lefrancq  
F-59307 Valenciennes Cedex  
France**

Tenders sent by Express Mail, commercial courier or hand-delivered should be addressed to the following physical address:

**Procurement Services  
European Railway Agency  
120, Rue Marc Lefrancq  
F-59307 Valenciennes Cedex  
France**

### **B..7.4. Double envelope system**

Offers must be submitted in accordance with the **double envelope system**: the technical proposal and the financial proposal are submitted separately.

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 no. **ERA 2016 02 OP**
- › the title: **“Provision of legal services in the field of preparation and implementation of the Agency's new tasks envisaged after the adoption of the European Commission legislative proposal ‘4th railway package-technical pillar’ ”**
- › the name of the Tenderer

- › the indication "Offer - Not to be opened by the internal mail service".
- › the address for submission of offers (see above)
- › the date of posting should be legible on the outer envelope

The **outer envelope or parcel** includes **two innermost envelopes** containing one the original paper version of the technical proposal (signed and clearly marked as "**Original**") and three copies on USB key and the other the financial proposal (signed and clearly marked as "**Original**") and one copy on USB key. **Paper version of copies is not requested.**

The electronic copies must **exactly match** the paper originals. Nevertheless, in case of discrepancies between the paper and electronic versions, the paper version will be considered authentic.

## **B..8. How will my offer be evaluated?**

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Offers are opened and evaluated by a committee, possessing the technical and administrative capacities necessary to give an informed opinion on the offers. The committee members are appointed on a personal basis by ERA under guarantee of impartiality and confidentiality. Each of them has equal voting rights.

### **B..8.1. Offer opening session**

The main aim of the opening session is to check whether the offer received is compliant with the following formal requirements:

- Not submitted later than the submission deadline;
- The envelope containing the offer is sealed;
- Written in a EU language;
- Declaration Signed;
- Contains a technical and financial proposal;
- Submitted in the number of copies required.

The offer opening session will take place on the date indicated in the timetable in **section C.1** at the premises of ERA.

Tenderers wishing to attend the opening session should send a confirmation e-mail to [procurement@era.europa.eu](mailto:procurement@era.europa.eu) Maximum one representative per tenderer may attend the opening session and their participation will be restricted to an observer role.

### **B..8.2. Offer evaluation session**

Offers complying with the formal requirements checked during the offer opening session will be evaluated in two stages:

1. The evaluation committee first verifies whether the Declaration of Eligibility is included, complete and signed by the authorised representative of the tenderer.
2. The evaluation committee then discusses the capacity of the tenderer to perform the contract in view of the Selection Criteria as defined in **section C.3**. If one of the relevant criteria listed under the Selection Criteria is not positive, the offer may not be further evaluated.
3. Each committee member evaluates the technical proposal and awards a score against the Award Criteria as defined in **section C.6**. Weighting the technical quality against the price, the economically most advantageous offer is established.

The offer evaluation procedure is confidential. The Evaluation Committee's deliberations are held in closed session and its decisions are collectives. The members of the Evaluation Committee are bound to secrecy.

The evaluation reports and written records are for official use only and may not be communicated to the selected contractors or to any party other than ERA, the European Anti-Fraud Office and the European Court of Auditors.

## B..9. Appeals

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Tenderers believing that they have been harmed by an error or irregularity during the award process may petition the Contracting Authority directly (European Railway Agency). If the above procedure fails, the tenderers may have recourse to procedures established under European Union legislation. European citizens also have the right to complain to the European Ombudsman, who investigates complaints of maladministration by the European Union.

## B..10. Other information

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The submission of an offer implies acceptance of the terms specified in the "General terms and conditions applicable to contracts" and all provisions laid down in these specifications and its annexes, the invitation to tender and where applicable, additional documents. Tenderers are expected to examine carefully and respect all instructions and standard formats contained in these specifications and the invitation to tender. An offer which does not contain all the required information and documentation may be rejected.

Tenders must be clear and concise, with continuous page numbering, and assembled in a coherent fashion (e.g. bound or stapled, etc.). Since tenderers will be judged on the content of their written tenders, these must make clear that they are able to meet the requirements of the specifications.

Tenderers shall be bound by their offer for a period of **180 days** following the closing date for submission of offers. The successful selected contractor must maintain its offer for a further **60 days** from the date of notification of the award. Where a maximum budget is mentioned in the terms of reference, any tenderer submitting a financial proposal exceeding this budget will be rejected.

All documents presented by the tenderers become the property of ERA and are deemed confidential. ERA will not reimburse expenses incurred in preparing and submitting offers. Completing the adjudication or the procedure of the call for tenders in no way imposes on ERA an obligation to award the contract. ERA shall not be liable for any compensation with respect to tenderers whose offers have not been accepted, nor shall ERA be liable when deciding not to award the contract.

Each tenderer will be informed in writing about the outcome of the call for tender.

## B..11. Intellectual property rights

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Without prejudice to pre-existing intellectual property rights of third parties, all the data collected and produced by the selected contractor in the scope of this contract as well as the deliverables and all the related artefacts shall be the properties of the Agency and shall not be used by the selected contractor without prior agreement of the Agency.

With respect to pre-existing intellectual property right of third parties, the selected contractor shall warrant to the Agency to have obtained all necessary prior approval of such third parties (to the extent legally required) and shall indemnify and hold the Agency harmless from and against any claim by such third parties, claiming a violation of their rights.

Tenderers shall be aware that the selected contractor (and all parties involved in the performance of the services of the contract) shall continue to be bound to this clause after completion of the contract. All data and information reported into the studies are intended to be made public at the Agency's discretion. Therefore, any restriction as to the public release of any such data or with respect to third parties' intellectual property rights should be clearly identified as such in every service provided, at the earliest possible stage.

## Section C. Specific information related to this Tender

### C.1. Timetable

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

**ERA 2016 02 OP: “Provision of legal services in the field of preparation and implementation of the Agency's new tasks envisaged after the adoption of the European Commission legislative proposal ‘4th railway package-technical pillar’ ”**

Summary timetable	Date	Comments
Launch date	27/01/2016	Date publication sent to OJ
Deadline for request for clarifications from ERA	23/02/2016	By email to : <a href="mailto:procurement@era.europa.eu">procurement@era.europa.eu</a>
Last date on which clarifications are issued by ERA	29/02/2016	At ERA website
Deadline for submission of offers	09/03/2016	Tenders delivered in person shall be submitted no later than 12h30 local time
Opening session	16/03/2016	at 14h00 local time
Date for completion of evaluation of offers	Mid-April	Estimated – During the evaluation tenderers could be invited for an interview session
Notification of award to the selected contractor	Mid-April	Estimated
Contract countersignature	Mid-May	Estimated
Commencement date of activities		Upon counter-signature of 1 <sup>st</sup> specific service contract

## C..2. Terms of reference

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The purpose of these Terms of Reference is to give instructions and guidance to candidates about the nature of the work they will need to perform and to serve as the Agency's mandate during project implementation. The Terms of Reference ensure that the services will be properly conceived by the Agency, that the work is carried out on schedule and that resources will not be wasted. The Terms of Reference will become part of the Service Contract that may be awarded as a result of this tender procedure.

This tender will lead to the signature of a 2 year validity Framework Contract (FWC), with one possible renewal of 1 year, awarded to minimum 2, maximum 3 contractors in cascade. The Framework Contract(s) will be implemented via Specific Contracts. Signature of the Framework Contract(s) does not commit the Agency to placing specific contracts and does not give the Contractor(s) any exclusive rights regarding the services covered by the Framework Contract(s). In any case, the Agency reserves the right, at any time during the validity of the Framework Contract(s), to cease placing orders, without the Contractor(s) having the right to any compensation.

The initial maximum budget value of the contract is 60,000 Euro, but in case the use of FWC is faster than initially assumed or additional similar services are required, provided that these do not account for more than 50% of the initial contract value, the Agency, in compliance with Article 114a (3) (a) of the Financial Regulations, reserves the right to modify the FWC.

### C..2.1. Introduction

#### C.2.1.1. The European Railway Agency and the 4th Railway Package

The construction of a safe, modern integrated railway network is one of the EU's major priorities. Railways must become more competitive and offer high quality, end-to-end services without being restricted by national borders.

The European Railway Agency was set up to help create this integrated railway area by reinforcing safety and interoperability.

The Agency also acts as the system authority for the European Rail Traffic Management System (ERTMS) project, which has been set up to create unique signalling standards throughout Europe. However, national technical and safety rules remain valid alongside the EU rules ones drafted by the Agency ERA. This fact creates unnecessary complexity for rail operators. Although there are harmonised standards, rail authorisations and safety certificates are still issued by member states.

On 31 January 2013, the Commission adopted six legislative proposals for a 4th Railway Package (4RWP) aiming at removing the remaining barriers to the completion of the Single European Railway Area. The package contains three groups of measures, with a view to:

- renewing rules on governance structure in relation to infrastructure management and transport operations (the “governance pillar”);
- ensuring further opening of the market for domestic passenger transport services by rail (the “market opening pillar”); the governance pillar and the market opening pillar forming together the « political pillar »; and
- cutting administrative costs for rail operators and making it easier for new operators to enter the rail market by removing the remaining market obstacles and reinforcing the harmonisation of interoperability and safety requirements to ensure a higher level of harmonisation of the EU railway network and providing for a new role for the European Railway Agency (the “technical pillar”).

The technical pillar covers updates to three existing pieces of legislation:

- 1) a proposal for a revised regulation on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004 ;
- 2) a proposal for a revised directive on the interoperability of the rail system in the EU ; and
- 3) a proposal to amend the directive on railway safety.

These proposals will be adopted through the ordinary legislative procedure whereby the Council co-legislates with the European Parliament. Currently, the proposals have reached agreement at the level of the European Parliament and Council of the European Union and it is envisaged to be adopted in the course of the year 2016.

The Agency has already started to prepare for the implementation of the new legislative framework which will take place in 2016. External expertise is however required in relation to legal aspects stemming from the future tasks of the Agency under the technical pillar of the 4RWP.

Considering the latest drafts legislative acts of the technical pillar that are available and subject to the on-going legislative procedure, the draft new ERA Regulation provides for new competences of the Agency, in particular:

a) issuing of vehicle authorisations and safety certificates:

The Agency will act as the European authority responsible for issuing authorisations for placing on the market of railway vehicles and of vehicle types for vehicles intended for cross-border operations and for issuing single safety certificates for railway undertakings involved in cross-border traffic. National safety authorities (NSAs) will still have an important role in carrying out part of the necessary assessments. For vehicles and railway undertakings involved in national transport only, there will be a choice between submitting a request for authorisation or certification to the Agency or to the national safety authority.

The Agency and the NSAs will have to cooperate and share competencies for the issuing of authorisations to facilitate the practical implementation of the new certification and authorisation system. In specific cases of isolated networks, the Agency may subcontract certain certification and authorisation tasks to the national authorities, it is foreseen that cooperation agreements will have to be established between them. Such cooperation agreements will have to be in place before the Agency is entitled to receive applications for single safety certificates and vehicles authorisations.

A mechanism of appeals to a specialised Board of Appeal will be set up, with the possibility for any natural or legal person to appeal against a decision of the Agency addressed to them, or of direct and individual concern to them. In the event of a disagreement between the Agency and the NSAs on the issuing of safety certificates or vehicle authorisations, an arbitration procedure should be established before the Board of Appeal at a national authority's request.

The Agency will be held accountable when carrying out its tasks related to safety certifications and vehicle authorisations. There are specific provisions concerning a waiver of the immunity of staff members of the Agency under the Protocol on the Privileges and Immunities of the European Union and the loyal cooperation by the Agency with the national judicial authorities.

The Agency will be financed in part by fees and charges paid by the applicants for, and holders of, vehicle authorisations and safety certificates and for the provision of other services by ERA. Fees to be charged by the Agency will be set in a transparent manner, with due regard to the

principle that they must not lead to an unnecessary burden on companies. They should, however, cover the cost of the services delivered. Part of the fees will be shared with the NSAs involved in the process of certification conducted by the Agency. Fees and charges may also be levied for the processing of appeals.

- b) monitoring through audits and inspections the performance and decision-making of NSAs;
- c) support the Commission in monitoring, through audits and inspections the notified conformity assessment bodies;
- d) more powers concerning reduction of unnecessary national rules through the examination of national railway rules in connection with the railway safety and interoperability directives;
- e) system authority for ERTMS and telematics applications with an increased role in ensuring the consistent development and swift deployment of telematics applications and ERTMS; and
- f) increased role in providing training and information to stakeholders.

The draft Agency Regulation also includes changes and improvements to the organisation's governance structure and internal operating methods in line with the principles contained in the "Common approach of the European Parliament, Council and Commission on decentralised agencies" agreed on 12 June 2012.

It is envisaged that there will be a transition period of maximum four years for the certification and authorisation tasks during which several implementing acts will have to be adopted by the Commission and during which the Agency will have to prepare itself for its new tasks in cooperation with the NSAs.

The Agency has already started with the preparation work, in particular in cooperation with the NSA network.

The Agency is seeking the services of experienced legal counsels who could advise on legal issues, assist during the preparation of and the implementation of the technical pillar of the 4RWP. Such advices will focus on the legal aspects of the new tasks for ERA. Certain tasks that will be required from the legal counsel may serve as a basis for recommendations from ERA to the Commission for adoption of implementing acts foreseen in the technical pillar of the 4RWP.

As already mentioned, this tender will lead to the signature of a two-year validity Multiple Framework Contract (FWC) with a possible renewal of one year, awarded to minimum 2 and maximum 3 contractors in cascade. During the implementation of the FWC, whenever specific services will be requested, details on amount, content and size of the Specific Contracts will be defined.

Modalities for implementing the FWC are explained in the Draft FWC of this tender documents at ARTICLE I.4 - PAYMENT ARRANGEMENTS AND PERFORMANCE OF THE FRAMEWORK CONTRACT.

In the following paragraphs, the possible activities to be contracted are described.

### **C.2.1.2. Reference documents<sup>1</sup>**

#### **1) Evaluation of ERA Regulation**

Evaluation of Regulation 881/2004 - Final report - April 2011  
[http://ec.europa.eu/transport/modes/rail/interoperability/index\\_en.htm](http://ec.europa.eu/transport/modes/rail/interoperability/index_en.htm)

#### **2) Vehicle authorisation**

- Report on the work performed by the Task Force on Railway Vehicles Authorisation:  
[http://www.era.europa.eu/Document-Register/Pages/Report\\_TF\\_Railway\\_Vehicles\\_Auth.aspx](http://www.era.europa.eu/Document-Register/Pages/Report_TF_Railway_Vehicles_Auth.aspx)
- Report on railway vehicle authorisation Part 1 – the current situation (including benchmarking with other transport modes): [http://www.era.europa.eu/Document-Register/Documents/Final%20report%20on%20vehicle%20authorisation%20\(part%201\).pdf](http://www.era.europa.eu/Document-Register/Documents/Final%20report%20on%20vehicle%20authorisation%20(part%201).pdf)
- Report on the certification of ERTMS equipment: [http://www.era.europa.eu/Document-Register/Documents/Report%20ERTMS%20Certification%20vers%201.0%20\(2011\).pdf](http://www.era.europa.eu/Document-Register/Documents/Report%20ERTMS%20Certification%20vers%201.0%20(2011).pdf)
- Application Guide - Part 1 of the Reference Document (EN):  
[http://www.era.europa.eu/Document-Register/Pages/Application\\_Guide\\_EN.aspx](http://www.era.europa.eu/Document-Register/Pages/Application_Guide_EN.aspx)

#### **3) Other documentation related to vehicle authorisation/registration:**

ERA Databases: RDD, ECVVR, ERADIS <http://www.era.europa.eu/Core-Activities/Pages/Registers.aspx>

#### **4) 4RWP (technical pillar)**

- Proposal for a Directive of the European parliament and of the Council on railway safety:  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0031:FIN:EN:PDF>
- Proposal for a Directive of the European parliament and of the Council on the interoperability of the rail system within the European Union:  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0030:FIN:EN:PDF>
- Proposal for a Regulation of the European parliament and of the Council on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004:  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0027:FIN:EN:PDF>
- Impact assessment:  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2013:0008:FIN:EN:PDF>
- Executive summary of the impact assessment:  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2013:0013:FIN:EN:PDF>

Each specific contract will specify whether the Agency will provide documents or data to the contractors. In the absence of any provision to that effect, it will be the sole responsibility of the contractors to gather all required data and information needed to perform the tasks under the specific contracts.

### **C..2.2. Contract Purpose and expected results**

#### **C.2.2.1. General objective**

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<sup>1</sup> **IMPORTANT** The mentioned reference documents are for information purpose only. It is the sole responsibility of the tenderer(s) to check the latest versions available at the time of bidding to this procurement. The contractor(s) will have to work on the basis of the latest status of the legislative procedure concerning the 4<sup>th</sup> Railway Package.

The aim of the framework contract(s) is to provide the Agency with external highly qualified expertise in legal services to enable ERA to effectively prepare itself to the new tasks as provided in the new draft Agency Regulation included in the 4RWP.

The basis of the services should be the identification of the reference/best in class practices that can be found in other European organisations/bodies performing tasks of a similar nature (e.g. other EU regulatory Agencies (EASA for example), National (railway) Safety Authorities).

Work already performed and experience acquired by ERA and/or the Commission in preparing implementation of the 4RWP at ERA or work that will be performed and/or achieved by the Agency during the term of the FWC should be taken into account if appropriate and if so requested by ERA.

#### **C.2.2.2. Specific objectives**

The following areas have been provisionally identified as requiring preliminary legal consultancy services through specific contracts under the framework contract(s) (more details are provided in C.2.3);

- I. Liability of the Agency in performing its new activities and how the respective tasks, responsibilities and liabilities should best be allocated through cooperation agreements between ERA and the NSAs;
- II. Legal issues arising from the new 4RWP tasks, roles and responsibilities in relation to the establishment and functioning of the Board(s) of Appeals; and
- III. Legal issues arising from the new 4<sup>th</sup> RWP tasks, roles and responsibilities in relation to the cooperation agreements between the Agency and the NSAs and other national authorities and competent bodies for the new certification and authorisation tasks.
- IV. Other issues arising from the new 4RWP tasks, roles and responsibilities, waiver of immunity, languages, and other issues related to governance and administration of the Agency).

Such list of specific objectives and tasks may not be considered as exhaustive.

Other specific tasks may later appear necessary depending on the evolution of the 4RWP and the lessons learnt or difficulties resulting from the preparatory work conducted by the Agency with its stakeholders (mainly the NSAs and the Commission).

#### **C.2.3. Scope of work**

This tender is requesting suitably qualified service providers and/or individual experts. The services to be provided relate to legal advice to the Agency in specific areas related to the new tasks of the Agency under the technical pillar of the 4RWP.

The scope of work of any specific contract(s) may include one or more of the following tasks:

- Analysis and studies concerning legal aspects under EU law of the new tasks of ERA under the 4RWP.
- Analysis and studies of EU legal framework applicable to other EU bodies performing regulatory tasks to the extent relevant to assess the implications on ERA of the 4RWP.

The tasks related to the specific objectives listed under point C.2.2.2 above will be defined in one or more specific contracts but are tentatively defined as follows (subject to the final terms of any specific contract):

##### ***A. Liability of the Agency and its Staff***

Taking into account the case-law of the Court of Justice of the EU concerning the contractual and non-contractual liability of EU institutions and agencies, a legal study should make clear what liabilities will arise

for the Agency and its staff and which organisational and contractual measures (including possible insurance cover) are to be taken to mitigate any liability issues.

The study should consider the immunity issues related the Agency and its staff, members of the Management and Appeal Boards; the procedures to be put in place on how a decision to waive the immunity should be taken, what aspects should be examined and the procedures for cooperation of the Agency and its staff in national judicial proceedings.

As well as the effects of a possible decision waiving the immunity of a staff member involved on safety certification and authorisation tasks or of the Executive Director.

The study should assess what are the respective liabilities of the Agency and the NSA involved in issuing vehicle authorisations and safety certificates and in particular what liability is borne by the Agency in the event of an incomplete or defective assessment by an NSA.

### ***B. Board(s) of Appeals***

The study should analyse the role of the Board(s) of Appeal, assess in detail the way the findings in the decisions of the Board(s) will have to be taken into consideration by the Executive Director and clarify if there are circumstances under which the Executive Director may digress from the findings of the Board(s) or may consider the findings but without modifying his decision.

In addition, it is requested to provide:

1. Analysis of the establishment and functioning of the Board(s) of Appeals including the conditions on which the appeal is introduced, deadlines, against which decisions, arbitration etc
2. Analysis of how the interlocutory revision should function in relation to the workings of the Board (s) of Appeals and make recommendations;
3. Analysis of the circumstances where an Agency (=Executive Director) decision is overturned by an appeal clarifying the liabilities of the Board(s) of Appeal vis-à-vis the Agency in this respect and making recommendations;
4. Assessment in what circumstances and using what decision criteria the appeal board may overturn a decision made by the Executive Director, whether these are appropriate , and, in the event of ambiguity or inappropriate circumstances, make recommendations;
5. Assessment of possible liability of Appeal Board(s) members for their decisions, and in case such liability cannot be established, liable analyse how the Agency can be held liable, under what consequences and make recommendations.

### ***C. Cooperation Agreements***

The study should make recommendations on the provisions which should be included in the cooperation agreements that will have to be signed between the Agency and the NSAs, particularly regarding the allocation of tasks, responsibilities and liabilities related to issuing vehicle authorizations and safety certificates. The analysis should cover also other legal issues, like applicable laws and appropriate means of settlement of disputes from the point of view of the interests of the Agency (not studying legal issues under the national laws applicable to the NSAs). At a later stage, a draft of cooperation agreement may be requested or draft(s) of cooperation agreement negotiated with the NSAs network may have to be reviewed.

### ***D. Other Possible Tasks (e.g. Translation and language issues, governance issues, conflicts of interest, a.o.)***

In order to make decisions on authorisations, safety certifications, ERTMS projects and national rules, the Agency will need to make use of translations of rules and other information and assessments supplied in languages other than English. The study should evaluate:

1. whether the practicalities of the necessity to translate are clearly defined and, in the case of uncertainty and ambiguity, make recommendations;
2. whether the consequences of delays or errors in translation are properly covered by the legislative proposals, in particular with respect to the consequences of delays and errors in translation upon the Agency's ability to make a timely and robust decision;
3. the liability and legal aspects and implications in relation to translations and language issues; and
4. the conflict of interests issues for all actors involved in the decision-making process, ERA staff, members of the Management Board, Appeal Board etc and propose policies and ways to manage them including performing of risk assessment.

The Agency may ask the contractor(s) to draft or assist in the drafting of any of the preparation of the implementing acts that the Commission should adopt under any of the legislative acts of the technical pillar.

#### **C..2.4. Organisation and planning**

The contractor shall identify the management structure of the organisation that will carry out the goals of this FWC, in particular the Senior legal advisor and the main responsible person for the management of this contract shall be identified.

The contractor shall ensure, through the time planning and the intermediate milestones or other means, that the Agency will be able to monitor the progress of the work.

#### **C..2.5. Communication with ERA**

Correspondence related to the resulting Contract shall be sent to:

**Procurement Services  
European Railway Agency  
BP 20392  
120 rue Marc Lefrancq  
F-59307 Valenciennes Cedex  
France**

#### **C..2.6. Confidentiality – Intellectual property rights**

Without prejudice to article B.11 of these Terms of reference and the articles of the contract related to CONFIDENTIALITY AND PRIVACY, all data and information included in the studies may be intended to be made public at the Agency's discretion. Therefore, any restriction as to the public release of any such data or with respect to third parties' intellectual property rights should be clearly identified as such in every service provided, at the earliest possible stage. There should be no restriction as to a release of the studies and other deliverables under the FWC to the European Commission.

#### **C..2.7. Working Language**

The working language for the exchange of information between the Agency and the contractor for any activity including in the contract shall be English. If, the activities performed within this contract would require analysis of documents written in other EU official languages than English, translation expenses, if any, will not be borne by the Agency.

### **C..2.8. Estimate of the amount of work involved**

The maximum budget for the work to be undertaken over the entire duration of the Framework Contract is **60,000 EUR** (excluding VAT). Specific contracts will not be signed once the budget is consumed, but as explained in C.2, the Agency, in compliance with Article 114a (3) (a) of the Financial Regulations, reserves the right to modify the FWC in case additional similar services are required, provided that these do not account for more than 50% of the initial contract value,

### **C..2.9. Meetings**

The adequate and efficient implementation of the contract will imply a close cooperation with ERA. Once the contract has been signed, regular meetings might be held between the contractor and ERA either at ERA premises (meetings costs to be borne by the contractor) or, if deemed more appropriate by ERA, at the contractor's premises when needed: in such a case, the contractor shall be responsible for the overall organisation of the meetings in its premises. Video-conferences could be envisaged as well.

### **C..2.10. Deliverables**

The scope of the specific services contract (s) to be contracted after the conclusion of the Framework Contract will concern the following deliverables:

Legal analysis and advice drafted in a form of a report. A draft will have to be provided before the final version. The details will be defined in the specific services contract (s).

## **C..3. Selection criteria**

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After having certified, pursuant to **Section B.1.4**, that it is not in one or more of the situations that constitute grounds for exclusion from tender participation, the evaluation committee will examine the offers to ensure that the information requested in the selection criteria has been provided and that the tenderer fulfils all these criteria. Offers which fail to include some of the information requested, may be rejected outright. To be eligible, the tenderers must have the technical and professional capacity to perform the tasks required in this call for tender.

### **C..3.1. Technical and professional capacity**

As proof of the technical and professional capacity of the tenderers, the following evidence should be provided to fulfil the above criteria:

1. Proof of authorisation to perform the contract under 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.
2. List of at least three relevant services similar to the tasks envisaged under the present specifications in the field of legal analysis in regulated sectors provided in the past three years with:
  - a) brief description of the services rendered and how they would be relevant to the ones envisaged in this document; and
  - b) dates and recipients, public or private, with at least one service valued at minimum 15,000 Euro;
3. The tenderer must have proven experience in all the following:
  - a) legal analysis and advice on issues of liability in an international or EU context and drafting legal reports and recommendations;
  - b) legal analysis and advice on issues regarding the functioning of EU judiciary bodies and drafting opinions and recommendations;

**NOTES:**

- I. Tenderers must meet all of the above requirements otherwise the submission will not be considered.
- II. The Agency reserves the right to contact prior customers for best assessing selected contractor's capacity when rendering similar work and that the Agency will not accept the offer if the selected contractor fails to produce the above information or if the Agency judges it insufficient or irrelevant.

## C..4. Content of the technical proposal

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Tenderers must present in their offers a proposal on the general methodology and the organisation of the work they will apply to the possible tasks under the specific contracts. The level of detail of the tender will be important for the evaluation of the tender. In particular, tenderers must prove in the technical proposal that they have adequate capability and legal and financial/economical expertise.

The technical offer must clearly contain the following information regarding the achievement of the technical results indicated in **section C**:

**Description of the organisation, thus the proposed working team indicating competences (including language competences) and skills of the team members** namely, those of the person or persons that the tenderer commits to assign as responsible for overall management of the legal services. In particular:

- a) Structure – organisation chart for carrying out the required services;
- b) A Senior Legal Advisor with at least 18 years' experience in legal counselling, including litigation and provision of other similar legal services especially in a EU context;
- c) Lawyer with evidence and proven experience of at least 10 years of skill level in the professional fields and related to the tasks envisaged under C.2.3;
- d) Junior Lawyer with evidence and proven experience of 3 years of skill level in the relevant professional fields and related to the tasks envisaged under C.2.3.

English is the working language for the envisaged services but knowledge of other EU languages might be required to perform adequately certain tasks. **Each CV<sup>2</sup>** provided should indicate the intended function in the delivery of the service. Adequacy of the proposed team will be evaluated on the basis of the provided CVs and professional references for the team members.

The above capabilities shall be clearly demonstrated in the CV included in the proposal and should indicate whether the CV refers to a Senior or Junior Expert.

The composition of the proposed working team(s) will be considered as a contractual commitment.

**Note:** The technical proposal shall include information on how the Agency will be able to monitor the progress of the performed services.

Offers deviating from the requirements or not covering all requirements may be excluded on the basis of non-conformity with the tender specifications and will not be evaluated.

**NOTE:** The tenderer should be aware that his services will be subject to the following standards:

- I. the experts included in the proposal of the contractor are bound to perform the services subject of the resulting contract;
- II. should any of the experts become unavailable after the signature of the contract, the Contractor will have the contractual obligation to inform the Contracting Authority and propose a replacement who shall have at least equal qualifications and experience;

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<sup>2</sup>The CV's **must be provided** in the EU format, see Section D.4.

- III. specific type of deliverables (e.g. work plan, interim report(s), final report(s) / summary report(s) and any other deliverable(s)) shall be prepared by the Contractor according to terms agreed with the Agency; and
- IV. deliverables shall be drawn up in English and shall be supplied in electronic format to be delivered simultaneously with the paper copy and submitted as per the contractual time schedule.

These standards will be included in the contract; should the level of quality not be reached during contract execution, the Agency may activate the penalty clause.

## C..5. Content of the financial proposal

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### C..5.1. General

The financial proposal must be based on the format found in **section D.3**; the tenderer is requested to specify its costs and the total price for **a simulated service**.

#### NOTES:

- 1) Should the tenderer be selected as a framework contractor, he will be compelled to use the unit prices included for this tender as the maximum unit prices for request of services issued by the Agency during the implementation of the FWC.
- 2) The total price offered for this tender, instead, will be used and calculated according to the terms specified in the Award Criteria just for the purpose of selecting the framework contractors. In other words, for the purpose of the award and the evaluation of the financial offer, the Total cost for the simulated services will be considered fictively as the financial proposal.

Prices are intended inclusive of all costs and expenses (company management, secretariat, social security, salaries, travel and office expenses, insurance, etc.) directly and indirectly connected with the provision of the service.

### C..5.2. Taxes

Prices shall be quoted free of all duties, taxes and other charges, i.e. also free of VAT, as the ERA is exempt from such charges in the EU under Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union (OJEU C 326 of 26.10.2012, p. 266). Exemption is granted to the Agency by the governments of the Member States, either through refunds upon presentation of documentary evidence or by direct exemption.

For those countries where national legislation provides an exemption by means of a reimbursement, the amount of VAT is to be shown separately. In case of doubts about the applicable VAT system, it is the selected contractor's responsibility to contact his national authorities to clarify the way in which the European Union is exempt from VAT.

### C..5.3. Conditions for validity

The financial quotation shall be completely unambiguous. A tender shall be disqualified if it contains any statements preventing an accurate and complete comparison of the tenders (such as "To be discussed", "Depending on x", "Conditional to" etc.) or referring to external circumstances (such as an already existing but separate contract).

## C..6. Award criteria

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Once the tenderer has demonstrated the appropriate capacity to perform the contract on the grounds of the selection criteria, the offer will be assessed on the basis of the award criteria.

The award criteria serve to identify the most economically advantageous tender using the best price-quality ratio method. The quality of each offer will be evaluated in accordance with the award criteria and the associated weighting. No award criteria other than those detailed below will be used to evaluate the offer.

Tenders will be ranked according to the criterion of the economically most advantageous tender that is with the highest technical quality/price combination.

Provided that there is a sufficient number of admissible tenders (those that satisfy the exclusion and selection criteria) that satisfy the award criteria, the Framework Contract(s) will be awarded to a maximum of three (3) tenderers.

The award criteria for this tender are:

AWARD CRITERIA	Weighting in points
<b>A. Technical Criteria</b>	<b>70</b>
<b>1. Demonstration of the understanding of the scope, objectives, tasks, topics to be covered and strategy to perform the services.</b>	<b>20</b>
<b>2. Consistency of proposed working organisation and adequacy of the proposed team to conduct the tasks foreseen in this tender</b>	<b>50</b>
<b>B. Price</b>	<b>30</b>
<b>TOTAL</b>	<b>100</b>

Tenders should elaborate on all points addressed by this Terms of reference in order to score as many points as possible. The mere repetition of mandatory requirements set out in this invitation to tender, without going into details on how to actually achieve them or without giving any added value, will only result in a very low score. In addition, if certain essential points of this invitation to tender are not expressly covered by tenderer, the Agency may decide to give a zero mark for the relevant qualitative award criterion. In order to assure that the candidates can offer a good understanding of and consistency/fitness with the scope, objectives, tasks etc. of these ToR, they could be invited for an interview session as part of the award process.

Technical Criteria: Tenders scoring less than 70% in the overall points total (read: 49 points out of 70) or less than 50% in the points awarded for a single criterion will be excluded from the rest of the assessment procedure.

The points scored for the above qualitative criteria will be compared to the price, and the contract will be awarded to the tender which is the most economically advantageous tender (MEAT) on the basis of the ratio between the total points scored and the total cost. The tenders are ranked using the formula below to determine the tender offering best value for money =

$$\text{Total score for a tenderer} = \text{The score of his technical offer} + \frac{\text{The cheapest received offer (price)}}{\text{The price offer of the tenderer}} * 30$$

## Section D. Standard Forms

The standard forms are to be completed and provided as part of your offer.

## D.1. Declaration of eligibility

**(To be completed and signed by applicant)**

The undersigned, [*insert name of the signatory of this form*], representing:

<i>(only for natural persons)</i> himself or herself	<i>(only for legal persons)</i> the following legal person:
ID or passport number:	Full official name: Official legal form: Statutory registration number: Full official address: VAT registration number:

(1) declares whether the above-mentioned person is in one of the following situations or not:		
<b>SITUATION OF EXCLUSION CONCERNING THE PERSON</b>	YES	NO
(a) it is bankrupt, subject to insolvency or winding up procedures, its assets are being administered by a liquidator or by a court, it is in an arrangement with creditors, its business activities are suspended or it is in any analogous situation arising from a similar procedure provided for under national legislation or regulations;	<input type="checkbox"/>	<input type="checkbox"/>
(b) it has been established by a final judgement or a final administrative decision that the person is in breach of its obligations relating to the payment of taxes or social security contributions in accordance with the law of the country in which it is established, with those of the country in which the contracting authority is located or those of the country of the performance of the contract;	<input type="checkbox"/>	<input type="checkbox"/>
(c) it has been established by a final judgement or a final administrative decision that the person is guilty of grave professional misconduct by having violated applicable laws or regulations or ethical standards of the profession to which the person belongs, or by having engaged in any wrongful conduct which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence, including, in particular, any of the following:		
(i) fraudulently or negligently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of selection criteria or in the performance of a contract;	<input type="checkbox"/>	<input type="checkbox"/>
(ii) entering into agreement with other persons with the aim of distorting competition;	<input type="checkbox"/>	<input type="checkbox"/>
(iii) violating intellectual property rights;	<input type="checkbox"/>	<input type="checkbox"/>
(iv) attempting to influence the decision-making process of the contracting authority during the award procedure;	<input type="checkbox"/>	<input type="checkbox"/>
(v) attempting to obtain confidential information that may confer upon it undue advantages in the award procedure;	<input type="checkbox"/>	<input type="checkbox"/>

(d) it has been established by a final judgement that the person is guilty of any of the following:		
(i) fraud, within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests, drawn up by the Council Act of 26 July 1995;	<input type="checkbox"/>	<input type="checkbox"/>
(ii) corruption, as defined in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of EU Member States, drawn up by the Council Act of 26 May 1997, and in Article 2(1) of Council Framework Decision 2003/568/JHA, as well as corruption as defined in the legal provisions of the country where the contracting authority is located, the country in which the person is established or the country of the performance of the contract;	<input type="checkbox"/>	<input type="checkbox"/>
(iii) participation in a criminal organisation, as defined in Article 2 of Council Framework Decision 2008/841/JHA;	<input type="checkbox"/>	<input type="checkbox"/>
iv) money laundering or terrorist financing, as defined in Article 1 of Directive 2005/60/EC of the European Parliament and of the Council;	<input type="checkbox"/>	<input type="checkbox"/>
(v) terrorist-related offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA, respectively, or inciting, aiding, abetting or attempting to commit such offences, as referred to in Article 4 of that Decision;	<input type="checkbox"/>	<input type="checkbox"/>
(vi) child labour or other forms of trafficking in human beings as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council;	<input type="checkbox"/>	<input type="checkbox"/>
(e) the person has shown significant deficiencies in complying with the main obligations in the performance of a contract financed by the Union's budget, which has led to its early termination or to the application of liquidated damages or other contractual penalties, or which has been discovered following checks, audits or investigations by an Authorising Officer, OLAF or the Court of Auditors;	<input type="checkbox"/>	<input type="checkbox"/>
(f) it has been established by a final judgment or final administrative decision that the person has committed an irregularity within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95;	<input type="checkbox"/>	<input type="checkbox"/>
(g) for the situations of grave professional misconduct, fraud, corruption, other criminal offences, significant deficiencies in the performance of the contract or irregularity, the applicant is subject to: <ul style="list-style-type: none"> <li>i. facts established in the context of audits or investigations carried out by the Court of Auditors, OLAF or internal audit, or any other check, audit or control performed under the responsibility of an authorising officer of an EU institution, of a European office or of an EU agency or body;</li> <li>ii. non-final administrative decisions which may include disciplinary measures taken by the competent supervisory body responsible for the verification of the application of standards of professional ethics;</li> <li>iii. decisions of the ECB, the EIB, the European Investment Fund or international organisations;</li> <li>iv. decisions of the Commission relating to the infringement of the Union's competition rules or of a national competent authority relating to the infringement of Union or national competition law; or</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>

v. decisions of exclusion by an authorising officer of an EU institution, of a European office or of an EU agency or body.		
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***[Only for legal persons other than Member States and local authorities, otherwise delete this table]***

(2) declares whether a natural person who is a member of the administrative, management or supervisory body of the above-mentioned legal person, or who has powers of representation, decision or control with regard to the above-mentioned legal person (this covers the company directors, members of the management or supervisory bodies, and cases where one natural person holds a majority of shares) is in one of the following situations or not:

SITUATIONS OF EXCLUSION CONCERNING NATURAL PERSONS WITH POWER OF REPRESENTATION, DECISION-MAKING OR CONTROL OVER THE LEGAL PERSON	YES	NO
Situation (c) above (grave professional misconduct)	<input type="checkbox"/>	<input type="checkbox"/>
Situation (d) above (fraud, corruption or other criminal offence)	<input type="checkbox"/>	<input type="checkbox"/>
Situation (e) above (significant deficiencies in performance of a contract )	<input type="checkbox"/>	<input type="checkbox"/>
Situation (f) above (irregularity)	<input type="checkbox"/>	<input type="checkbox"/>

(3) declares whether a natural or legal person that assumes unlimited liability for the debts of the above-mentioned legal person is in one of the following situations or not:

SITUATIONS OF EXCLUSION CONCERNING NATURAL OR LEGAL PERSONS ASSUMING UNLIMITED LIABILITY FOR THE DEBTS OF THE LEGAL PERSON	YES	NO	N/A
Situation (a) above (bankruptcy)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (b) above (breach in payment of taxes or social security contributions)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

(4) declares whether the above-mentioned person is in one of the following situations or not:

GROUPS FOR REJECTION FROM THIS PROCEDURE	YES	NO
(h) has not distorted competition by being previously involved in the preparation of procurement documents for this procurement procedure;	<input type="checkbox"/>	<input type="checkbox"/>
(i) has provided accurate, sincere and complete information to the contracting authority within the context of this procurement procedure;	<input type="checkbox"/>	<input type="checkbox"/>
(5) acknowledges that the above-mentioned person may be subject to rejection from this procedure and to administrative sanctions (exclusion or financial penalty) if any of the		

declarations or information provided as a condition for participating in this procedure prove to be false.	
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**REMEDIAL MEASURES**

If the person declares one of the situations of exclusion listed above, it should indicate the measures it has taken to remedy the exclusion situation, thus demonstrating its reliability. They may include e.g. technical, organisational and personnel measures to prevent further occurrence, compensation of damage or payment of fines. The relevant documentary evidence which appropriately illustrates the remedial measures taken should be provided in annex to this declaration. This does not apply for the situations referred in point (d) of this declaration.

**EVIDENCE UPON REQUEST**

Upon request and within the time limit set by the contracting authority the person shall provide information on the persons that are members of the administrative, management or supervisory body, as well as the following evidence concerning the person or the natural or legal persons which assume unlimited liability for the debt of the person:

For situations described in (a), (c), (d) or (f), production of a recent extract from the judicial record is required or, failing that, an equivalent document recently issued by a judicial or administrative authority in the country of establishment of the person showing that those requirements are satisfied.

For the situation described in point (a) or (b), production of recent certificates issued by the competent authorities of the State concerned are required. These documents must provide evidence covering all taxes and social security contributions for which the person is liable, including for example, VAT, income tax (natural persons only), company tax (legal persons only) and social security contributions. Where any document described above is not issued in the country concerned, it may be replaced by a sworn statement made before a judicial authority or notary or, failing that, a solemn statement made before an administrative authority or a qualified professional body in its country of establishment.

If the person already submitted such evidence for the purpose of another procedure, its issuing date does not exceed one year and it is still valid, the person shall declare on its honour that the documentary evidence has already been provided and confirm that no changes have occurred in its situation.

Full name:

Signature:

Date:

## D..2. Tenderer’s address and contact details

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Tenderer’s Name	
Address	
Post Code	
Tel	
Fax	
Email	
Web Site (if applicable)	
Legal Status	
Contact person for this tender	
Legal signatory(ies)	

### D.3. Financial Proposal

<u>Professional Profiles</u>	Cost of each working man-day, all inclusive EUR (VAT excl.)		Simulated number of man-days	Simulation cost
Senior Legal Advisor (minimum 18 years relevant experience)		x	5	
Lawyer (minimum 10 years relevant experience )		x	1	
Junior Lawyer (minimum 3 years relevant experience )		x	14	
<b>Total cost for the simulated services</b>				

**For the purpose of the award and the evaluation of the financial offer, the Total cost for the simulated services will be considered fictively as the financial proposal**

Name:

Signature:

Date:

## D.4. Curriculum Vitae

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This form is available in electronic format at the following address:

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

***- Please press Ctrl and click simultaneously -***

The CVs included in the proposal will be used to evaluate the technical capabilities of the proposed experts and shall indicate whether it refers to a Senior or Junior Expert.

## D.5. Checklist

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The checklist must be used to ensure that you have provided all the documentation for this tender and in the correct way. This checklist should be signed and included in envelope **A** of your offer.

You must submit your offer in one envelope which contains 2 separate inner envelopes clearly marked envelope **A**, and **B**.

*Please Tick ✓ the boxes provided*

### Envelope ‘A’ must contain

- one original signed copy and 3 copies in USB key, not paper version, of the technical proposal
- a declaration of eligibility based on the format found in **section D.1**.
- administrative data following the format found in **section D.2** and supporting documents.
- this checklist signed and dated.

### Envelope ‘B’ must contain

- one original signed copy and 1 copy in USB key, not paper version, of the financial proposal based on the formats found in **Section D3 and its annex**.

### You should also ensure that:

- your offer is formulated in one of the official languages of the European Union.
- both the technical and financial proposals of the offer are signed by the Tenderer or his duly authorised agent.
- your offer is perfectly legible in order to rule out any ambiguity.
- your offer is submitted in accordance with the double envelope system as detailed in **section B.9**.
- The outer envelope bears the information mentioned in **section B.9**.

Name:

Signature:

Date \_\_\_\_\_

## D..6. Confirmation of offer submission

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In order to keep track of offers due to arrive, Tenderers who do not hand deliver their offers are requested to complete and return this form by fax or email.

**ERA 2016 02 OP: “Provision of legal services in the field of preparation and implementation of the Agency's new tasks envisaged after the adoption of the European Commission legislative proposal ‘4th railway package-technical pillar’ ”**

**Att.: Procurement Services  
European Railway Agency  
120 rue Marc Lefrancq  
59300 Valenciennes (France)  
Email: [procurement@era.europa.eu](mailto:procurement@era.europa.eu)  
Fax: +33 3 27 09 66 96**

I have submitted an offer for this tender on \_\_\_\_\_ dd/mm/year using the following delivery service:

- Normal mail
- Express mail
- Courier Service
- Other

Tenderer's name: [ ]

Email: [ ]

Telephone [ ]

<b>Section E.</b>	<b>Draft Multiple (cascade type) Framework Service Contract</b>
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The draft contract is provided solely for information. The tenderer should note that in the case that his offer is successful the resulting contract will be based on this draft contract.