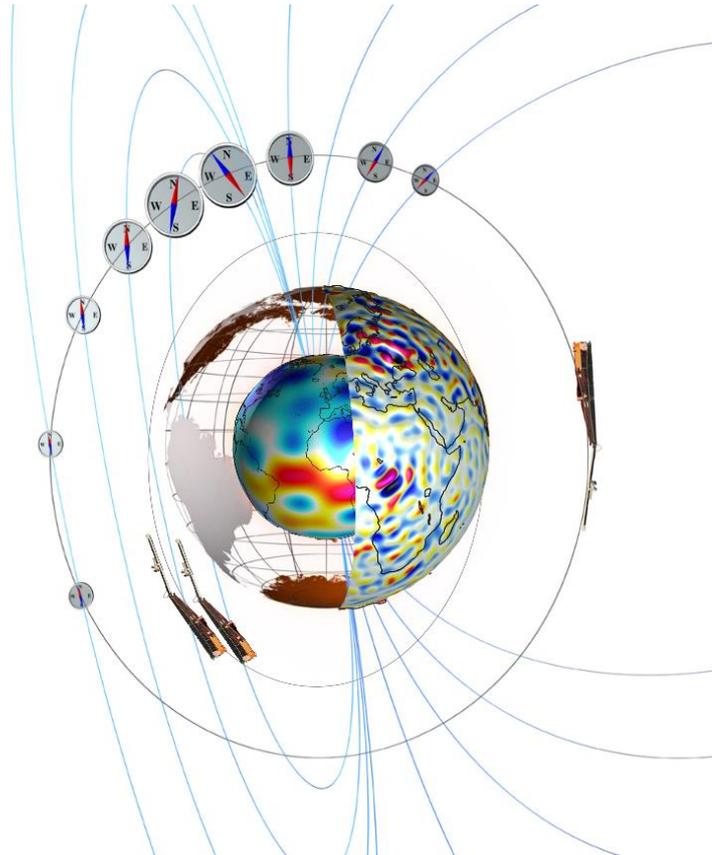

Procurement Procedure



Doc. no: SW-RS-DTU-GS-003, Rev: 2, 21 September 2020

Prepared:



Klaus Nielsen

Date 21 September

New Procurements Manager

Checked:

Nils Olsen

Date 21 September

DISC Executive

Approved:

Poul Erik Holmdahl Olsen

Date 21 September

Project Manager

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Record of Changes

Reason	Description	Rev	Date
Initial version	Released	1 dA	12 April 2016
RIDs and internal review	Response to RIDs from the Negotiation Meeting on 7 June 2016. Updates to reflect the evolution of the definition of the organisation. Updates to ensure adherence to legal and contractual requirements.	1 dB	24 June 2016
Signature	As provided to ESA	1	25 June 2016
ESA comments	Updated to clarify the jurisdiction that applies to procurements on behalf of ESA	1A	06 July 2016
Adaptation to CCN	Updated references to governing contract	1B	13 July 2016
Clarification and update	Stylistic changes, structural relocations, minor procedural changes and additions – Initial draft	2dA	15 July 2020
Clarification and update	Major stylistic changes and structural relocations; minor procedural changes and additions (sections 3.1, 3.2, 3.3, 6.3, 6.4); all figures updated. Sections relocated to reflect sequence of event.	2dB	28 August 2020
ESA approval	Email confirmation 18 September 2020	2	21 September 2020

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1 Introduction

The purpose of this document is to define the procedures for Invitations To Tender (ITTs) performed on behalf of ESA under the SWARM Data, Innovation, and Science Cluster (Swarm DISC) contract 4000109587/13/I-NB.

1.1 Scope and applicability

The document describes the selection mechanisms, rules, and procedures to be used for the process of procuring new products, tools, and services for the Swarm DISC.

This document is publicly available on the SWARM DISC ITT publication site:

https://www.space.dtu.dk/english/research/projects/project-descriptions/swarm/swarm_disc_itts

2 Applicable and Reference Documentation

2.1 Applicable documents

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

[AD-1] ESA General Clauses and Conditions for ESA Contracts ESA/REG/002, rev. 2 (29 June 2015)

2.2 Reference documents

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

[RD-1] [Project Management Plan](#), SW-PL-DTU-GS-006

[RD-2] [Configuration and Document Management Plan](#), SW-PL-DTU-GS-007

[RD-3] [ESA Code of BEST PRACTICES](#) (IPC(2012)65, rev. 2)

2.3 Abbreviations

Cfi	Call for Ideas	PM	Project Manager
DAB	DISC scientific Advisory Board	PO	Swarm DISC Project Office
DISC	Data, Innovation, and Science Cluster	RFQ	Request for Quotation
EXE	Swarm DISC Executive	SoW	Statement of Work
ITT	Invitation To Tender	TEB	Tender Evaluation Board
NPM	New Procurements Manager	TOB	Tender Opening Board

A frequently updated list of Acronyms and Abbreviations for Swarm and related projects can be found [in the Swarm Data Handbook](#).

3 Procurement Procedure

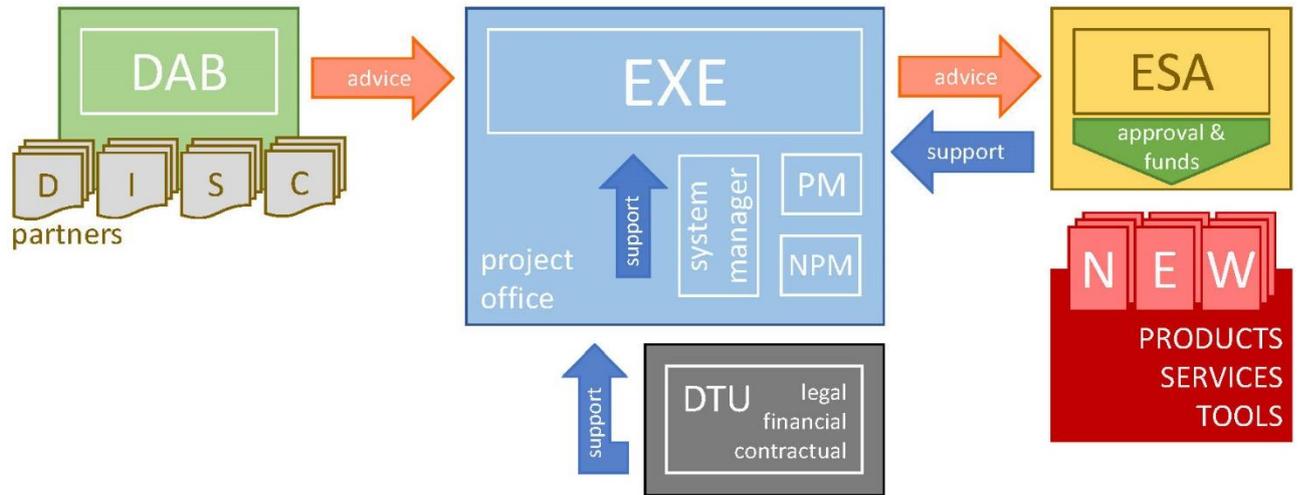


Figure 3-1 - Swarm DISC organization overview

3.1 Standard 2-phased submission

Ideas for new potential products, services, and tools are collected through an open call process repeated at regular intervals. At the onset of each session, open Call for Ideas (CfIs) are published and disseminated throughout the science community with approximately one month for proposers to respond. As part of the open call process, idea titles and names of the proposers are made publicly available on the Swarm web site allowing proposers of similar ideas to get in contact and join efforts. Proposers are requested to confirm their acceptance hereof on the cover page of the submitted ideas. In addition, DISC asks the proposers for permission to make also the content of the ideas publicly available. Idea proposers are, however, free to decline.

Once the submission deadline has been reached, the chairman of the Swarm DISC scientific Advisory Board (DAB) will organize the evaluation process and after possible consultation with proposing entities suggest activity categories and evaluation criteria for the submitted ideas. The material is then distributed amongst the DAB member, and each idea is assessed with regards to: a) maturity of prototype, b) potential scientific impact, c) potential for utilization, and d) likelihood of success. Each idea is reviewed by at least three

members and the principal reviewer presents a consolidated assessment at the following DAB meeting. An overall type category is assigned, signifying the path forward recommended by the DAB.

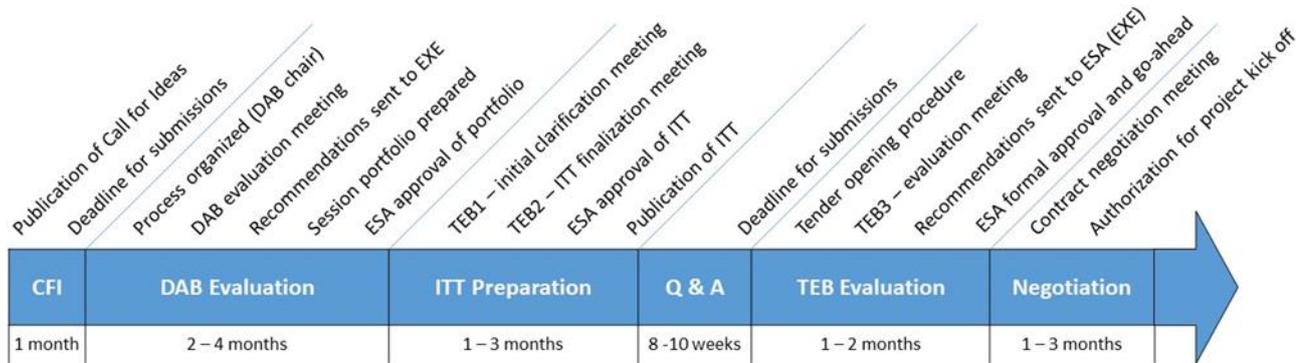


Figure 3-2 - Approximate timeline for 2-phased procurement process

The evaluation discussion is recorded in the minutes of the DAB meeting, and the result of the evaluation is subsequently communicated to the proposers by the DISC Executive (EXE). In collaboration with the Swarm DISC Project Office EXE prepares a session portfolio of potential projects and products to be approved by ESA. The portfolio consists of the DABs recommendations for forthcoming Invitations To Tender (ITTs) based on submitted ideas including budgets and nominees for the Tender Evaluation Boards (TEBs).

Pending approval of the portfolio by ESA, EXE will appoint a procurement team and initiate the process. The procurement team consists of the Project Manager (PM) and the New Procurements Manager (NPM) from the Project Office plus a number of TEBs (see figure 3-3). In principle one TEB will be established for each potential project. However, some overlap of expertise is anticipated and will also minimize work hours and travel costs.

The task of the TEBs is to specify on the basis of the submitted idea what type of project is to be procured through the ITT process and what type of outcome the project should generate. In collaboration with the Project Office the TEB writes the Statement of Work (SoW) for the ITT. Once the ITT deadline has been reached, the TEB will evaluate and assess the proposals submitted in response to the call. Their recommendations are presented to ESA via EXE.

ESA may choose to have representatives participating in the activities of the TEBs. However, these do not have voting rights.

3.2 Pre-studies and other means of support

The DAB may choose either to recommend an idea for further development into an ITT or to recommend its rejection. However, if an idea holds scientific value but is deemed to be of insufficient maturity, the DAB may recommend an alternative means of support. This might be a smaller funding to perform a pre-study, implementation of minor modifications or new features in VirES by direct negotiations with the proposing entity, organization of workshops, or other appropriate actions.

By recommending the initiation of a pre-study the DAB may support a further elaboration and documentation of the idea concept through seed money offered to the proposer. The DISC Project Office will request

the proposer to provide a brief workplan and schedule in response to the DAB’s recommendations including an outline of the proposer’s vision of how to proceed (max 1 A4 page). Once received, the Project Office will request the approval of ESA and draft a subcontract for the activity. The seed money will be paid out upon submission of a final report and approval by DISC.

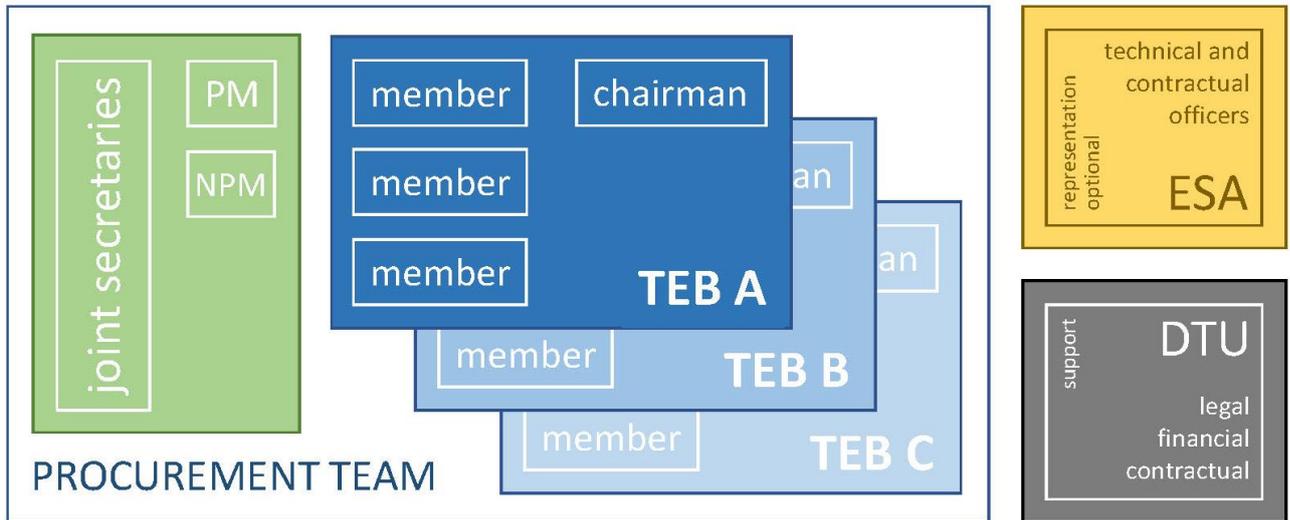


Figure 3-3 - Procurement Team

3.3 Thematic Calls

The DAB may choose to release thematic calls based upon a specific request from Swarm DISC and ESA, and not upon ideas submitted through the standard Cfl process described above. A thematic ITT may for instance have the objective of strengthening the activities of the Swarm community within specific areas such as Space Weather. In addition to expanding the scope of Swarm users, these thematic ITTs also ensure a competitive procurement process which is open to a broader scientific community.

For this purpose, TEBs will be comprised of senior members with a wide overview of the scientific theme of the call rather than expert specialists.

4 Procurement Report

At the initiation of each ITT process, a Procurement Report shall be prepared relating to the specific ITT and proposed product. This report shall be a living document covering all relevant activities throughout the procurement process including all information required for the documentation of the procurement: from the DABs recommendation of the original idea (section 3) until ESAs final endorsement of EXEs recommendation to grant the winning team a contract (section 11).

The Procurement Report shall as a minimum include:

- A table logging all actions to be performed during the procurement process with information on task owner, date of completion, links to documentation (e.g. minutes of TEB meetings), or other relevant notes
- List of Tender Opening Board (TOB) and TEB members plus other members of the procurement team
- A table documenting the briefing of team member on the rules of the procurement process
- References to ITT documents
- Log of opening procedure for each tender including
 - List of Tender documents with identification, place, and date received
 - Dispatch conditions met
 - Admissibility
 - Conclusion
- Tender distribution list covering
 - Technical content
 - Financial and contractual content
- Evaluation criteria
- Reference to evaluations by individual TEB members
- Summarized result for each tender

Related documents are either referenced with links to their location on the SVN server or preferably annexed or attached such as to be readily available. These might include:

- Nomination and appointment of TEB members
- Signed declarations of secrecy and non-conflict-of-interest
- Record of exchanges with tenderers
- Tender opening report
- Tender evaluation forms

The Procurement Report and its related documents are confidential. The file will be maintained in a protected repository in the Project Office by the New Procurements Manager (NPM), and is only accessible by the NPM and Project Manager (PM), and upon request by ESA and the relevant TEB chairman.

5 Appointment of the Tender Evaluation Boards (TEBs)

5.1 Composition of the TEBs

The Swarm DISC EXE shall appoint a TEB for each ITT taking the following into consideration.

In order to minimize the amount of work hours and travel expenses, some overlap between the experts participating in the different TEBs of each session is expected. However, the TEB tasks described must be conducted and documented separately for each procurement procedure.

The nomination of candidates is submitted to ESA for approval as part of the session portfolio (section 3). Once the go-ahead has been obtained, the appointment of TEB members, including chairman and deputy chairman, is recorded in the Procurement Report.

5.2 Principles of the TEB membership

A TEB shall be composed of experts with appropriate experience and qualifications within the specific scientific, technical, and administrative disciplines that the ITT subject requires. It shall, normally, not include more than eight members including the chairman and secretaries. Appointment to, and membership of, a TEB is personal and cannot be delegated. All persons nominated shall be allowed to exercise their independent professional judgement and each member's vote carries equal weight.

All TEBs have a chairman and at least two other members of scientific experience and qualifications. For larger TEBs a deputy chairman is appointed. In addition, the NPM and PM from the Swarm DISC Project Office are mandatory members of, and ex-officio joint secretaries for all TEBs. They shall ensure that the rules and procedures specified in the present document and any supplementary instructions issued by ESA are followed.

The NPM and PM shall provide support to the activities of the TEB but shall neither interfere with the definition of the Statement of Work (SoW) nor with the evaluation process. They are without voting rights as is the case with any possible ESA delegates participating in the TEB meetings. The NPM and PM shall also sign the Declaration of Secrecy and Non-Conflict-of-Interest form.

In the event a TEB member and/or their institutes wishes to bid for the ITT in question, she/he shall be excluded from participating in that TEB, in the interest of impartiality. This also applies in case of companies belonging to the same industrial and/or legal organisation, or affiliated companies, meaning any form of association giving a company a vested interest in the outcome of the evaluation.

It is paramount that all tenders submitted and all documents arising from the evaluation be treated as highly confidential and that access to such documents must be limited to those persons directly involved in the evaluation. The following shall therefore apply:

- At the time of their nomination, TEB members shall be informed by the NPM of their duty to preserve secrecy concerning the contents of any tender and the proceedings of TEB meetings.
- Before the distribution of tenders is performed, each person participating in the evaluation shall confirm in writing that their signed Declaration of Secrecy and Non-Conflict-of-Interest is still valid. A copy of the statements shall be kept in the Procurement Report.

5.3 Duties of the chairman

The chairman of the TEB shall be responsible for the correct proceedings of the evaluation and shall convene its meetings. In case of her/his absence, the meeting shall be chaired by the deputy chairman. No meeting of the TEB may take place without the presence of the chairman (or deputy) or at least one of the joint secretaries.

At the beginning of all TEB meetings, the chairman or the NPM shall remind participants that any personal interest in the subject of the ITT must be declared, and that no documents or information concerning the evaluation can be disclosed to persons not involved in the evaluation.

5.4 Duties of the joint secretaries

The joint secretaries of the TEB shall make the necessary arrangements for the TEB meetings and distribute all required materials. The joint secretaries shall propose to the TEB a schedule for its meetings taking into account the validity period of the tender, any required periods for consultation with ESA, and allowing sufficient time for the TEB to read, understand, and discuss the tenders.

The joint secretaries shall be responsible for keeping the minutes of the TEB meetings. These must specify date, time, place, and names of attendees. The minutes are to record any decisions taken by the TEB, specifically concerning approval of specifications, any other matters which any member may ask to have recorded in the minutes, negotiation points with tenderers and recommendation to place a contract.

Once the ITT submission deadline has been reached, the joint secretaries shall perform the tasks of the Tender Opening Board (TOB) and be responsible for making the necessary arrangements for distributing copies of admitted tenders in accordance with TOB decision (section 8-9).

6 Preparation of the ITT

6.1 Initiation package

Upon recommendation of the DAB and approval of the session portfolio by ESA, the Swarm DISC Project Office shall establish an ITT initiation package for each new procurement action. The initiation package will be distributed to the members of the individual TEBs and shall as a minimum contain the following:

1. Tender Evaluation Board (TEB) appointment
2. Declaration of Secrecy and Non-Conflict-of-Interest signed by all TEB members [see Annex A]
3. Tentative schedule for the procurement action, including ITT closing date
4. The submitted idea in question
5. Summary of the DABs recommendations from the session portfolio

The initiation package may also include templates for the ITT documents specified below.

6.2 Full package

The TEB will meet twice prior to the publication of the ITT: First an initial clarification meeting (TEB1) will be held online (approximately 2 hours), and next the ITT finalization meeting (TEB2) as a half or full-day physical meeting. The purpose of both meetings is to prepare the full ITT package which consist of the following five documents:

1. Cover Letter
2. Statement of Work
3. Draft sub-contract
4. Special Conditions of Tender (including evaluation criteria and weighting factors)
5. Proposal template

The ITT shall make explicit reference to this document and the procurement procedure described herein. The Cover letter shall state that the procurement action is done on behalf of ESA within the reference frame of ESA contract 4000109587/13/I-NB.

The full ITT package must be approved by ESA, who will thereby vouch for the ITT documents adherence to requirements and procedures. ESA approval does, however, not diminish the overall responsibility of Swarm DISC.

6.3 Request for Quotation

Although great efforts are put into preparing the ITTs as open as possible, it is a concern that often only one or a few tenderers will have the scientific background knowledge necessary for submitting successful proposals. In order to accommodate this, the TEB may recommend a Request for Quotation (RFQ) instead by-passing the publication of an open ITT.

The option may be applied in cases when an idea submitted in response to a Cfl and recommended by the DAB for further procurement is deemed to be both of high scientific value and of such a singular and spe-

cific nature that only the idea proposer will be able to perform the work. It is important to stress that although the ITT process in such cases is circumvented, the role of the TEB is maintained in terms of preparation of the Statement of Work and assessment and evaluation of the proposal.

6.4 Preparation of thematic ITTs

Thematic ITTs are prepared following the same procedure as described above only without the inclusion of a submitted idea in the initiation package. The theme and objectives of the call as recommended by the DAB will be included in the summary of the session portfolio.

7 Publication and Communication

7.1 Publication of the ITT

Approved ITT packages will be published and disseminated by the Swarm DISC Project Office via the dedicated ITT publication site: www.space.dtu.dk/swarm_disc_itts, with reference to this procedure document.

The publication site shall clearly indicate that procurements are made on behalf of ESA under the Swarm DISC contract, and the published ITTs shall only be open to ESA member states participating in EOEP. The following list is to be updated and confirmed by ESA for each procurement session. As of January 2020, the list holds the following 24 member states:

Austria	AT	Italy	IT
Belgium	BE	Luxembourg	LU
Canada	CA	The Netherlands	NL
Czech Republic	CZ	Norway	NO
Denmark	DK	Poland	PL
Estonia	EE	Portugal	PT
Finland	FI	Romania	RO
France	FR	Slovenia	SI
Germany	DE	Spain	ES
Greece	GR	Sweden	SE
Hungary	HU	Switzerland	CH
Ireland	IE	United Kingdom	GB

A summary description of the ITT shall be published on the ESA EMITS site, referencing the link to the above mentioned ITT site. ESA and partners of the Swarm DISC may further disseminate links to the ITTs on their own sites and other international networks (e.g. mailing lists of IUGG etc.).

7.2 Communications during the tendering period

Any relations with potential tenderers during the tendering period shall be formal, performed in writing through the channels indicated in the ITT, and restricted to what is necessary to ensure clarity of the requirements and to preserve fair competition. A copy of the exchange shall be kept in the relevant Procurement Report.

Questions raised by potential tenderers shall be submitted in writing to the Swarm DISC Project Office. Following ESA approval responses must be published and disseminated through the ITT site, together with the original questions though without reference to the tenderer(s) who put forth the questions. Questions may only concern clarifications of the ITT requirements, and requests for deadline extension.

The publication site should specify that clarification may be published at any time during the submission period and invite potential bidders to check regularly the site for updates.

7.3 Briefing meetings

Upon agreement between ESA and the Project Office, potential tenderers may, if the complexity of the ITT justifies it, be invited to a briefing meeting where the requirements are described and explained. To minimize the amount of travel, such briefings may be held as teleconferences. All registered tenderers shall be

invited, and all questions submitted and answers given shall subsequently be distributed through the ITT publication site. A briefing may be held before or shortly after issue of the ITT.

8 Receipt and Opening of Tenders

8.1 Receipt of tenders

Tenders must be submitted electronically by email to: Swarm_DISC_ITT@space.dtu.dk, with the specific reference ID stated in the subject field. An autoreply will confirm that the tender has been received.

An alternative means of electronic submission must be provided in case the mail server malfunctions. A fax machine must be kept operational at the Swarm DISC Project Office and the number: +45 4525 9701, must be clearly stated on the ITT publication site. Tenderers using the fax must address the document to the Project Office and mark the front page with 'Confidential' along with the Swarm DISC ITT reference ID.

8.2 Tender Opening Board (TOB)

A TOB shall be appointed by EXE prior to the closing date stated in the ITT. It shall consist of at least two members: the New Procurements Manager (NPM) and the Project Manager (PM), or another person to whom EXE has delegated this authority).

The duties of the TOB are as follows:

1. The TOB shall convene as soon as possible after the closing date. Upon verification that the dispatch conditions have been met, the TOB shall open the tenders.
2. The TOB shall assess the admissibility of tenders. Tenders shall be admitted if they were received before the closing date and time and do not show prima facie evidence of a major non-compliance with the substantive tender conditions, which would impair the fairness or secrecy of the competition. A list of key admissibility criteria is provided in Annex C. Tenders shall be admitted if they were received after the closing date, provided that the tenderer has dispatched the tender in time to meet the closing date and informed the Project Office of the dispatch.
3. If a decision on admissibility cannot be taken unanimously, the TOB shall inform the chairman of the TEB and submit the matter to EXE for decision.
4. If a tender is ruled inadmissible, EXE will inform the tenderer stating the reason. A copy of such notification shall be kept in the Procurement Report.
5. The TOB shall write a Tender Opening Report (Annex B) stating the name, affiliation, and country of each tenderer, whether the tenders have been deemed admissible and if not the reason for inadmissibility. The report shall be signed by the members of the TOB and submitted to the chairman and members of the TEB. A copy shall be kept in the Procurement Report.

9 Distribution of Admitted Tenders

The joint secretaries of the TEB shall distribute a complete copy of each admitted tender to each member of the TEB. Tenders may not be distributed or further redistributed to any other persons until completion of the evaluation. The distribution of cost information shall be restricted to that information which is relevant to the aspect being evaluated by the individual concerned.

No tender shall be distributed until the TEB members have confirmed their non-conflict of interest. A record of all distributions shall be maintained by the joint secretaries as part of the Procurement Report.

10 Responsibilities of the Tender Evaluation Board

The TEB has two main tasks to perform: preparation of the ITT documents, and evaluation of submitted tenders. A third task may be agreed upon by the TEB and the Project Office at the close of the resulting project period. Once the winning team of an ITT process have concluded their project, a final presentation and review process will take place. The TEB members are likely to be obvious candidates for a review panel and may agree upon the request of the Project Office to take part in this process.

10.1 Preparation of the ITT

As stated in section 6.2 above, the TEB will meet twice prior to the publication of the ITT in order to prepare and finalize the necessary documents. In particular, the combined expertise and experience of the TEB members is needed in specifying the scientific and technical content of the Statement of Work (SoW), and the detailed evaluation criteria and weighting factors to be applied during evaluation.

First, an initial clarification meeting (TEB1) will be held online (approximately 2 hours) in which the scientific idea and its technical implications can be discussed and any procedural questions answered. Next, the ITT finalization meeting (TEB2) will be held at DTU as a half or full-day physical meeting possibly over the course of two days. During this meeting the SoW and the evaluation criteria and weighting factors are finalized, and a schedule for the evaluation process is agreed upon.

10.1.1 Statement of Work

The Statement of Work is the central scientific and technical document of the ITT package. It contains a summary of the background for and objectives of the proposed activity as well as an overview description of the work to be performed typically divided into a series of tasks targeting e.g. product definition, preparation of data sets, product validation, implementation, and final presentation.

In addition to the scientific and technical content, the SoW also specifies the managerial requirements for reporting, documentation, and deliverables, and presents a template schedule for milestones, payments, and deliveries.

The SoW shall be written in a neutral and unbiased way so as to ensure the fairness of the competition. The technical parts of the SoW shall not contain contractual aspects.

10.1.2 Evaluation criteria and weighting factors

Evaluation criteria are the norms to be applied by the TEB to determine the strengths and weaknesses of a tender by separate evaluations of its various aspects. The weighting factors specify the relative importance of each of these aspects within the total evaluation.

The joint secretaries shall present the TEB with the template below containing the standard evaluation criteria and weighting factors. However, it is important to emphasize that the TEB are free to adjust these as it sees fit, provided that all significant parts of the ITT are covered, and no unfair advantage to one potential tenderer over another is thereby created.

While credibility of costing is a criterion, price and geographical distribution (ESA's "georeturn") themselves shall not be. Once approved, the evaluation criteria and weighting factors are binding for the evaluation

and may not be further altered or sub divided. Both evaluation criteria and weighting factors are annexed to the Special Conditions of Tender and thus published as part of the ITT documents.

No.	Evaluation Criterion	Weighting Factor
1	Background and experience (general and related to the particular field concerned) of the company(ies) and staff (including adequacy of proposed facilities)	15%
2	Science quality of the proposed concept, approach to uncertainty quantification, approach to validation, data content quality assurance including reprocessing and reproducibility	45%
3	Quality and suitability of proposed programme of work; compliance with technical specifications	20%
4	Adequacy of management, credibility of costing for the execution of the work	10%
5	Compliance with administrative tender conditions and acceptance of contract conditions	10%

If the ITT calls for work to be done within a new field, the number of experts and their level of expertise might not be particularly high. In such case the weighting factor for background and experience can be set at a lower value.

When evaluating the tenderer’s adequacy of management, the TEB must consider the following:

- credibility and adequacy of the detailed costing information as required by the Price Break-down form and any supporting costing documents as required by the Special Conditions of Tender.
- credibility of planning and manpower deployment
- suitability of support facilities and programme
- suitability of overall organisation and management methods

Compliance with administrative tender conditions (no. 5) is mainly assessed by the TOB during the Tender Opening Procedures (see section 8.2 above). However, the TEB is requested to evaluate the level of compliance also. Proposals might contain sections of non-compliance but still be deemed admissible. If e.g. tenderer refuses to provide algorithms as open source as required in the ITT, the TEB will need to assess the implications hereof. If deemed necessary elements of non-compliance may be subject to pre-contract negotiations (section 11.4)

10.1.3 ESA approval of the ITT

As part of finalizing the ITT package the TEB shall review the documents and ensure that they constitute a proper basis for a competitive ITT and meet the requirements laid down in the applicable documentation. Also, the TEB should ensure that the DAB recommendations are taken fully into considerations.

Once finalized, the ITT package shall be delivered to ESA for approval no later than one week prior to the intended issue date. ESA will review the ITT ensuring its impartiality in terms of fair competition within four working days unless justified circumstances calls for longer response time.

Once the documents are approved by ESA, they shall be binding for the evaluation. No amendment shall be made by the Swarm DISC Project Office without ESAs prior approval in writing. Should amendments become necessary during the tender period, the TEB shall, subject to the agreement of ESA, approve such amendments. These will then be communicated simultaneously to all potential tenderers by publication on the ITT site.

The members of the TEB shall be notified of any change to the closing date.

10.2 Evaluation of submitted tenders

The TEB shall assess and mark the tenders, prepare a report on the results and make a recommendation with regards to what contract action is to be taken.

10.2.1 Formal compliance

Prior to a qualitative assessment of the tenders, the TEB shall verify that the tenders are complete and constitute full evaluable responses to the requirements. Specifically, each tender must contain a technical description, a price summary, a delivery date, and a signature validating the offer, the omission of which may have been overlooked by the TOB.

If any formal element is missing and the omission is such as to render the tender substantively incomplete, the TEB shall eliminate such tender from further evaluation so as not to impair fair competition.

If, however, the TEB is of the opinion that the omission is unintentional, and may easily be corrected, the joint secretaries may refer the matter to ESAs contracts officer. In such a case, the TEB proceedings will be adjourned to allow for reply. If ESA approves, the joint secretaries may then consult with the tenderer concerned with the aim of rectification and the tender may be evaluated.

If ESA disapproves, or if the result of the consultation with the tenderer is negative, the TEB shall eliminate the tender concerned from further evaluation. In all cases, details of the decision shall be recorded in the Procurement Report.

10.2.2 Contract conditions

The TEB shall verify that the substantive tender and contract conditions have been accepted.

If this is not the case, the TEB shall determine into which of the following three categories the nonacceptance or omission of tender or contract conditions falls:

1. If the nonacceptance could impair fair competition, or renders the tender substantively incomplete, the TEB shall refer the matter to ESAs Contracts Officer. If the Contracts Officer decides that the case so warrants, she/he shall so inform the TEB, who shall eliminate such tender from further evaluation, and the tender shall be returned to the tenderer with a statement of rejection. Otherwise the tender shall be retained for further evaluation.
2. If the nonacceptance is sufficiently serious to render the tender unacceptable, but could be clarified or rectified without impairing fair competition, the NPM shall consult first with ESAs Contracts Officer, and then, in writing, with the tenderer concerned. In such case, the TEB proceedings will be

adjourned to allow for reply. If the case is sufficiently clarified or rectified, the rectified tender shall be retained for further evaluation. Otherwise the tender shall be eliminated from further evaluation and returned to the tenderer with a statement of rejection.

3. If the nonacceptance is such that it does not affect the overall acceptability of the tender, it shall be taken into account in the marking of the appropriate criteria.

All decisions taken, and all communications shall be recorded in the Procurement Report.

10.2.3 Credibility of costing

The TEB shall evaluate whether the costing and pricing of the tenders is clear. This refers specifically to the correctness and adequacy of the detailed information as required by the Price Breakdown form and any supporting costing documents as required by the Special Conditions of Tender. Credibility of costing shall be assessed with respect to activities proposed.

10.2.4 Compliance with specifications

Compliance shall be evaluated and recorded, including compliance to work statement, management requirements, Special Conditions of Tender and any other requirements described in the ITT package.

The TEB shall identify the strengths and weaknesses of each tender in respect to the evaluation criteria. This shall be done by comparing the tenders with the specifications, not by comparing tenders amongst each other.

If possible the TEB shall identify whether weaknesses are readily capable of being corrected in order to improve the tender concerned.

If the technical statement contained in a tender needs clarification, the chairman of the TEB shall request the Project Office to consult first with ESAs Contracts Officer, and next with the tenderer in question. The objective is to obtain any clarification necessary for evaluation.

Any such communication must be done in writing and recorded in the Procurement Report.

The TEB shall take the outcome of such consultation into its overall assessment of the tender.

10.2.5 Discussion and marking

Prior to the marking of tenders by each individual member, the TEB shall discuss their findings on each aspect of a tender. The chairman shall guide the discussion in such a way that any significant differences of opinion may be reduced, or if this is not possible, that they are clearly identified and recorded.

The TEB shall award marks to each of the criteria. The price shall not be marked.

TEB members shall mark all criteria of which they have a general understanding and can make an assessment. They shall not restrict themselves to criteria related to their professional field of expertise, or aspects of criteria related thereto.

If a member marks one offer under a particular criterion, she/he shall mark all offers hereunder. The marks shall be a number between zero and one hundred for each evaluation criterion in accordance with the following scale of marking:

Perfect	100	Fair	50
Excellent	90	Barely acceptable	40
Very good	75	Worthless	0
Good	60		

Members shall restrict themselves to the indicated figures, although for marks above 40 increments of 5 points may be given to allow differentiation between proposals.

Any member of a TEB, who cannot agree with the consensus, shall state specifically why he/she disagrees or considers the tender unacceptable on that criterion, and the reason shall be recorded. This applies to situations in which one member's marks differ so significantly from the marks given by the other members that no agreement can be reached with respect to acceptability, or who gives a mark below 40 for any criterion.

When the chairman of the TEB is satisfied that further discussion will not lead to a reduction of any discrepancies, the marks shall be officially recorded on the marking sheets. Marks once thus recorded cannot be changed.

10.2.6 Final assessment

If, as a result of the marking, one or more tenders is marked acceptable in all evaluation criteria (more than 40), the TEB shall proceed to apply the weighting factors, make its overall assessment, prepare the final report and recommendation.

If all of the tenders received have one or more criteria judged to be unacceptable, the TEB shall write an interim report and the provisions of section 11.4 below shall be applied.

The TEB shall finalize the evaluation of the tenders by taking into an overall assessment the marked and weighted criteria versus the prices offered: The assessment shall be based on the best combination of technical quality and price.

The overall assessment shall, however, not be based on considerations of industrial policy and in particular geographical distribution (ESA's "georeturn").

10.2.7 Evaluation Report

The TEB shall also identify areas of non-compliance and any items that would require negotiation prior to the placing of a contract.

Each TEB shall produce a report of the evaluation.

The report shall contain: reference and subject of the ITT, evaluation criteria, weighting factors, overall assessment of each tender (listed by alphabetical order), a table of markings, a conclusion listing the tenders in the order of preference, recommendation to place a contract with the tenderer having submitted the most advantageous tender with reasons, and any reservations individual members of the TEB may wish to make.

The recommendations of the TEB shall be strictly based on the conditions of tender: as previously stated above (10.2.6) considerations of industrial policy or geographical distribution shall not be taken into account unless specifically mentioned in the conditions of tender.

The evaluation report shall be signed by the chairman and all TEB members. The NPM shall submit the evaluation report to EXE, who may exceptionally, in case of doubt as to the correctness or completeness of the evaluation, refer the matter back to the TEB for further evaluation.

EXE shall, however, not direct change to evaluation criteria, weighting factors or marks.

The signed original of the report shall be kept in the Procurement Report.

10.2.8 Closing of the TEB

On finalization of the evaluation the TEB chairman shall remind members again not to disclose any information concerning the evaluation to anybody until a final endorsement is made by ESA.

The joint secretaries of the TEB shall ensure that documents no longer needed are collected and disposed of. If a tender is reissued or negotiations take place in accordance with section 11.4 below, the TEB is maintained till the final recommendation is made.

10.3 Proceedings of the TEB

The decisions and marking of the TEB shall be taken preferably by consensus.

The quorum of the TEB for taking decisions shall be two thirds of its members entitled to vote. No member of the TEB shall be subject to the instructions of her/his hierarchical superiors in respect of her/his activities as a member of the TEB.

In case no consensus marking is possible, a note of non-consensus shall be made in the minutes, and decisions shall be taken by majority vote of members present. The chairman shall, in the case of equality of votes, have a casting vote.

Proceedings of the TEB shall be recorded in minutes as per section 5.4. Reference to the approved minutes shall be kept in the Procurement Report.

11 Recommendation and Debriefing of Tenderers

11.1 Recommendation

On the basis of the evaluation results of the TEB Swarm DISC EXE will recommend ESA to award a specific tender the contract. No tender having obtained an overall marking below 50 shall be recommended unless the recommendation specifically identifies the necessary measures which have to be taken in order to raise the quality of the tender to an appropriate maturity level.

11.2 Decision

Upon receipt of the recommendation, ESA shall decide preferably within five working days to either endorse the recommendation or not. If circumstances justify it the response period may be longer. ESA retains the right to request, if so desired, a new evaluation. In such a case ESA shall notify the Project Office of the reasons for its decision.

11.3 Debriefing

After a final decision has been endorsed by ESA, all tenderers will be notified simultaneously by the Project Office of the decision to award or not their specific tenderer a contract. Upon request of a tenderer, the Project Office shall facilitate an explanation stating the reason(s) why the tender has not been recommended. A debriefing of this kind shall be made by the chairman of the concerned TEB and communicated via the Project Office in order to preserve the confidentiality of the TEB members.

Explanations shall be limited to the findings of the TEB on the tender in question, and shall not cover the quality or contents of other tenders. Debriefings may be oral or in writing. A record of the explanation given shall be placed in the Procurement Report.

11.4 Negotiation

Negotiations with tenderers may only be undertaken following written approval by ESA and following a detailed negotiation procedure to be established by ESA.

12 The ESA Industrial Ombudsman

Pursuant to Article 17 of the ESA Procurement Regulations, procurements carried out under these Procurement Procedures (with reference to ESA Code of BEST PRACTICES [RD-3]) are not subject to the right of review provided for under Part VI of the ESAs Procurement Regulations.

Nonetheless, in order to guarantee the principle of fair competition and fair access to Contractor's procurements at all levels, ESA has established an Industrial Ombudsman. In the frame of these Procurement Procedures, companies are required to recognise, accept, and co-operate with this Industrial Ombudsman should the latter be asked to intervene.

The competence of the Ombudsman and procedures to be followed are specified in ESA Code of BEST PRACTICES [RD-3].

The ESA Industrial Ombudsman shall be sole recourse in case of complaints related to the procurement process.

Annex A Declaration of Secrecy and Non-Conflict-of-Interest

Swarm DISC ITT x.x: "[ITT TITLE]"

Contract: ESA-Contract 4000109587 13/I-NB

I, [.....] hereby declare that I shall not disclose to any unauthorized person, whether an employee of [Member's company or institute] or a staff member of ESA or not, knowledge which I acquire through my participation in the above tender evaluation.

Neither I nor any immediate member of my family have any personal interest in the outcome of the above tender action, except *)

I further declare that I have received document [SW-RS-DTU-GS-003](#) describing the Procurement Procedure, and have read and understood my duties as a member of the Tender Evaluation Board (in particular section 10 - and 5.3 if nominated as chairman or deputy) and received any necessary clarifications - prior to signing this declaration.

I understand that my participation in the tender evaluations would invalidate any tender from my own organization to the specific ITT's mentioned above, and further declare, that I will immediately notify the Swarm DISC project Office of the situation, should any conflict of interest arise.

Signed:

Date:

*) Please insert here any exceptions, or delete if not applicable.

Annex B Tender Opening Report

Subject: SD-ITT-x.x “[ITT TITLE]”
 Reference: ESA-Contract 4000109587 13/I-NB
 Budget: XXX EURO (Firm Fixed Price)
 Published on: [DATE]

The tender opening for the above tender action took place on: [DATE]

The following offers were received and accepted for evaluation:

Economic Operators and Country	Price in Euro	TOB Admissibility Screening
Tender x.x.1 [PROPOSED ACRONYM] Prime: OPERATOR (COUNTRY) Sub: OPERATOR (COUNTRY) Sub: OPERATOR (COUNTRY)	x,000 x,000 x,000 <hr/> <u>Total Price xxx,000</u>	Admissible / Inadmissible
Tender x.x.2 [PROPOSED ACRONYM] Prime: OPERATOR (COUNTRY) Sub: OPERATOR (COUNTRY) Sub: OPERATOR (COUNTRY)	x,000 x,000 x,000 <hr/> <u>Total Price xxx,000</u>	Admissible / Inadmissible

The following tender(s) was/were regarded as unacceptable for evaluation for the following reason(s):

-
-

In accordance with the Swarm DISC Procurement Procedure, SW-RS-DTU-GS-003 the chairman of the TEB has been notified and the matter submitted to ESAs responsible Contracts Officer.

[X] acceptable tender(s) has/have been accepted for evaluation, in accordance with the Swarm DISC Procurement Procedure, SW-RS-DTU-GS-003.

The matter has been referred to the ESAs responsible Contracts Officer.

The following persons were present at the tender opening event:

xx, Project Manager

yy, New Procurements Manager

Distribution of Tenders: TEB members + ESAs representatives.

Annex C List of Admissibility Criteria

Annex 2 of the Proposal Template lists nine Key Acceptance Factors. Section 5.1 of the Special Conditions of Tender lists an additional 2 conditions that the proposal cover letter must comply with. Finally, the ITT Cover Letter lists a further three acceptance factors.

Proposal Template (Annex 2)		NPM	PM
1	By submitting this tender, I hereby declare that I have read, understood and accepted the Swarm DISC Procurement Procedure, SW-RS-DTU-GS-003, and will respect the result of the evaluation.		
2	By submitting this tender, I hereby recognize and accept the ESA Ombudsman as being the sole recourse in case of potential complaints related to the procurement process		
3	The tenderer and any subcontractor(s) satisfy/ies the qualification requirements established under section 3.1 of the Special Tender Conditions as well as Part 1 A "Eligibility requirements" paragraphs b) to i) of the Agency's General Conditions of Tender (Part 2B-1 of the GCT).		
4	The tenderer confirms, on his behalf and on behalf of any subcontractors, to be compliant with the requirements listed in the "Certification of Free Competition" (Part 2B-3 of the GCT).		
5	The tenderer confirms, on his behalf (and on behalf of any subcontractors), the acceptance of the conditions listed in the "Non-commitment of Swarm DISC and the Agency" (see Part 2B-11 of the GCT)		
6	The tender cover letter and the tender contain a binding Firm Fixed Price in EURO, compliant with the one requested in the ITT, and a price summary detailing the geographic distribution as indicated in Annex 1.		
7	The tender cover letter contains a confirmation that the validity period is 6 months from the date of tender submission.		
8	The tender contains a technical description of the proposal.		
9	The tender cover letter and this Declaration on Key Acceptance Factors are signed by authorised representative(s) of the Tenderer.		
Special Conditions of Tender (section 5.1)			
	The cover letter of your proposal must provide references to all tender documents, in case the tender consists of more than one document.		
	The name, address, e-mail, telephone and fax numbers, ESA bidder Code of the responsible contact person of the bidder and the vendor code shall be provided, both for the primary contractor and subcontractors, if any.		
ITT Cover Letter			
3	Only tenders from companies or organisations from the following ESA Participating States (including sub-contractors if any) residing in one of the following Participating States can be considered: AT+BE+CA+CZ+DK+EE+FI+FR+DE+GR+HU+IE+IT+LU+NL+NO+PL+PT+RO+SI+ES+SE+CH+GB		
5	The planned duration must not exceed xx months.		
8	Your offer and all supporting documents must reach the Swarm DISC ITT mailbox (or FAX) stated above no later than the Closing Date: [DATE] at 12:00 GMT. Tenders arriving after the Closing Date will not be evaluated.		