



European Securities and
Markets Authority

Technical Specifications and monitoring

Training services for ESMA

Invitation to tender no. OJ/06/11/2013-PROC/2013/007

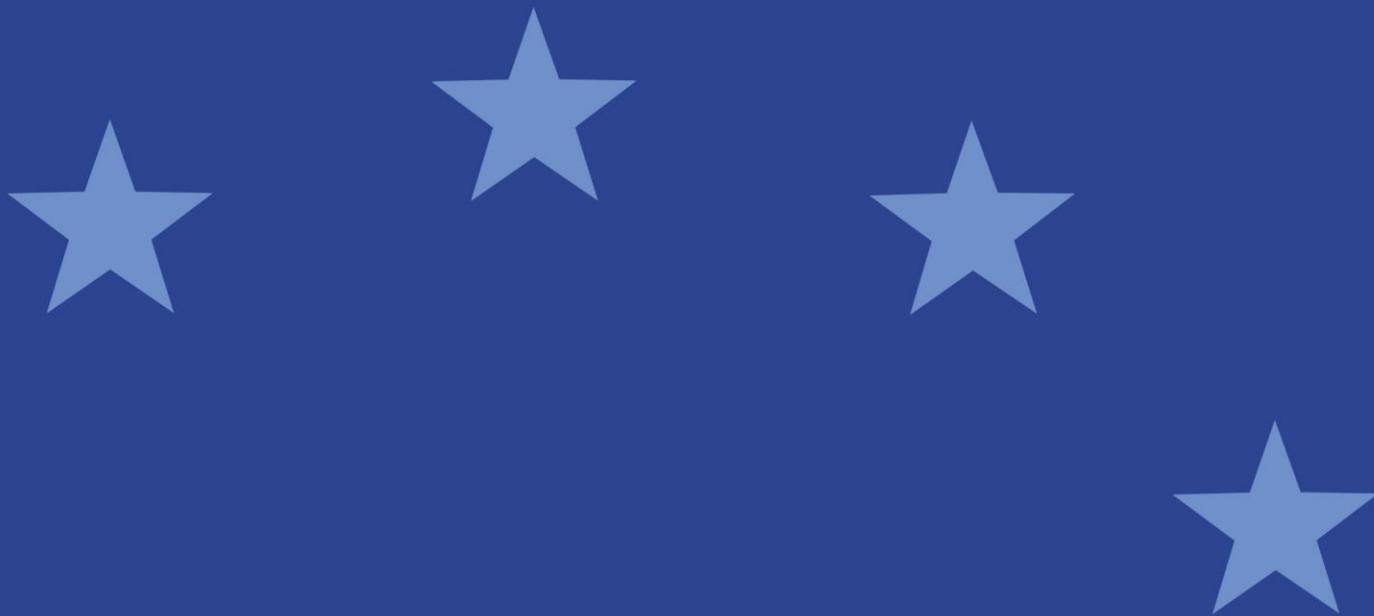


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Introduction to ESMA

ESMA is an independent EU Authority that was established on 1 January 2011. It works closely with the national competent authorities who are members of the European System of Financial Supervision and the other European Supervisory Authorities – the European Banking Authority (EBA) responsible for banking and the European Insurance and Occupational Pensions Authority (EIOPA) responsible for insurance and occupational pensions.

ESMA also contributes to the financial stability of the European Union, in the short, medium and long-term, through its contribution to the work of the European Systemic Risk Board, which identifies potential risks to the financial system and provides advice to diminish possible threats to the financial stability of the Union. ESMA is also responsible for coordinating actions of securities supervisors or adopting emergency measures when a crisis situation arises.

ESMA's mission is to enhance the protection of investors and promote stable and well-functioning financial markets in the European Union (EU). As an independent institution, ESMA achieves this aim by building a single rule book for EU financial markets and ensuring its consistent application across the EU. ESMA contributes to the regulation of financial services firms with a pan-European reach, either through direct supervision or through the active co-ordination of national supervisory activity.

Further information about the Authority can be found on the ESMA website www.esma.europa.eu.

The tender process

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 applicable regulations, namely directives **92/50/EEC**, **93/36/EEC** and **93/37/EEC**, oblige the ESMA to guarantee the widest possible participation, on equal terms in tender procedures and contracts

1. Overview of this tender

1.1. Description of the tender

The services required by ESMA are described in the terms of reference in [section 2](#) of the present tender specifications.

In drawing up a tender, tenderers should bear in mind the provisions of the draft contract in **Annex I**. In particular, the draft contract indicates the method and the conditions for payments to the contractor. An offer once submitted means that the tenderer has agreed to the conditions of these tender specifications as well as to all terms and conditions set out in the draft contract.

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.

1.2. Timetable (UPDATED)

Activity	Date	Comments
Launching of tender	06/11/2013	Dispatch of contract notice to the OJ
Deadline for request of clarifications from ESMA	06/01/2014 20/01/2014	
Site visit or clarification meeting (if any)	-	Not applicable to this tender
Last date on which clarifications are issued by ESMA	10/01/2014 22/01/2014	
Deadline for submission of offers	15/01/2014 27/01/2014	At 16:00 local time if hand delivered
Interviews (if any)	NA	Not applicable to this tender
Opening session	22/01/2014 03/02/2014	
Date for evaluation of offers	<i>[Opening date plus 1 week]</i>	Estimated
Notification of award to the selected Tenderer	<i>[Evaluation date plus 3 weeks]</i>	Estimated
Contract signature	<i>[Notification date plus 2 weeks]</i>	Estimated

1.3. Participation in the tender procedure

This procurement procedure is open to the natural or legal person wishing to bid for the assignment and established in the EU. Tenderers must not be in any situation of exclusion under the exclusion criteria indicated in section 3.1 of these tender specifications and must have the legal capacity to allow them to participate in this tender procedure (see section 3.2.1).

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

1.4. Participation of consortia

For all lots (1, 2, 3, 4) a consortium may submit a tender on condition that it complies with the rules of competition.

A consortium may be a permanent, legally-established grouping or a grouping which has been constituted informally for a specific tender procedure. Such grouping (or consortium) must specify the company or person heading the project (the leader) and must also submit a copy of the document authorising this company or person to submit a tender. All members of a consor

tium (i.e., the leader and all other members) are jointly and severally liable to the Contracting Authority.

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

The participation of an ineligible person will result in the automatic exclusion of that person. In particular, if that ineligible person belongs to a consortium, the whole consortium will be excluded.

1.5. Subcontracting

If subcontracting is envisaged, the tenderer must clearly indicate in the tender which parts of the work will be subcontracted. The total value of the subcontracted part of the services cannot represent the total value of the contract value.

Subcontractors must satisfy the eligibility criteria applicable to the award of the contract. If the identity of the intended subcontractor(s) is already known at the time of submitting the tender, all subcontractors above 10% of the planned budget must provide the required evidence for the exclusion and selection criteria.

If the identity of the subcontractor is not known at the time of submitting the tender (and for subcontractors below the 10% threshold), the tenderer who is awarded the contract will have to seek ESMA's prior written authorisation before entering into a subcontract.

Where no subcontractor is given, the work will be assumed to be carried out directly by the tenderer, or with subcontractors with less than 10% of the planned budget.

1.6. Presentation of the tender

Tenders must comply with the following conditions:

a) Double envelope system

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

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

- the project title: "**Training services for ESMA**" - **OJ/06/11/2013-PROC/2013/007**
- the name of the tenderer;
- the indication "**Offer - Not to be opened by the internal mail service**";
- the address for submission of offers (as indicated in the invitation to tender letter)
- the date of posting (if applicable) should be legible on the outer envelope

The outer envelope must contain three inner envelopes, namely, Envelopes A, B and C. In case of applying for more lots the envelopes, must consist all necessary documents in separate offers, binder (one for each lot).

The content of each of these envelopes shall be as follows:

1. Envelope A – Administrative documents

- The signed, dated and duly completed **Tender Submission Checklist** using the template in **Annex VIII**;

 - The duly filled in, signed and dated **Exclusion Criteria and Non-Conflict of Interest Declaration(s)** as requested in section 3.1 and using the standard template in **Annex II**;
 - The duly filled in, signed and dated **Legal Entity Form(s)** as requested in section 3.2.1 and using the standard template in **Annex III** as well as the requested accompanying documents;
 - The duly filled in, signed and dated **Financial Identification Form** using the template in **Annex IV**;
 - Financial and economic capacity documents as requested in section 3.2.2;
 - The technical and professional capacity documents as requested in section 3.2.3;
 - A statement containing the name and position of the tenderer's **authorised signatory**; and
 - In case of consortia, a **consortium agreement** duly signed and dated by each of the consortium members specifying the company or person heading the project and authorised to submit a tender on behalf of the consortium (please see section 1.4 of these tender specifications);
 - In case of **subcontracting**, the tender must include a cover letter presenting the name of the tenderer and identified subcontractors above 10% of the planned budget 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.
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.
2. Envelope B – Technical proposal
- One original (unbound, signed and clearly marked as “Original”) and four copies (bound and each marked as “Copy”) of the Technical Proposal, providing all information requested in section 4.
3. Envelope C – Financial proposal
- One signed original and four copies of the Financial Proposal, based on the format in found in **Annex VI**.

b) Language

Offers must be submitted in one of the official languages of the European Union. ESMA prefers, however, to receive documentation in English. Nonetheless, the choice of language will not play any role in the consideration of the tender.

1.7. Confirmation of offer submission

In order to keep track of offers due to arrive, tenderers who do not hand deliver their offers are requested to complete and return the form found **Annex VIII**.

1.8. Contacts between ESMA and the tenderers

Contacts between ESMA and tenderers are prohibited throughout the procedure, except in the following circumstances:

1.8.1. Written clarification before the deadline for submission of offers

Requests for clarification regarding this procurement procedure or the nature of the contract should be done **in writing only** and should be sent by mail or email to:

ESMA
Attn: Procurement Office
103, Rue de Grenelle 103
CS60747
75345 Paris cedex 07, France
email: procurement@esma.europa.eu

Each request for clarification sent to ESMA should indicate the publication reference and the title of the tender.

The deadline for clarification requests is indicated in the timetable under section 1.2. Requests for clarification received after the deadline will not be processed.

At the request of the tenderer, ESMA may provide any additional information or clarification resulting from the request for a clarification on the ESMA Procurement webpage.

ESMA may, on its own initiative, inform interested parties of any error, inaccuracy, omission or other clerical error in the text of the contract notice or in the tender specifications by publishing a corrigendum on its website:
(<http://www.esma.europa.eu/page/Procurement>)

Tenderers should regularly check the ESMA website for updates.

1.8.2. After the closing date for submission of tenders

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

1.9. Visits to ESMA premises

Not applicable

1.10. Interviews

Not applicable

1.11. Division into Lots

The tender is divided into four lots. The tenderers may apply for one lot only, or for more lots or for all lots.

1. Language training (Lot 1)
2. E-learning language courses (Lot 2)
3. IT training (Lot 3)
4. Professional training (Lot 4)

1.12. Variants

Not applicable

1.13. Confidentiality and public access to documents

All documents presented by the tenderer become the property of the ESMA and are deemed confidential.

In the general implementation of its activities and for the processing of tendering procedures in particular, ESMA observes the following EU regulations:

1. Council Regulation (EC) No. 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents; and
2. Council Regulation (EC) No. 45/2001 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.

The tender process will involve the recording and processing of personal data (such as a tenderer's name, address and CV). Such data will be processed pursuant to Regulation (EC) No. 45/2001.

Unless indicated otherwise, a tenderer's replies to questions and any personal data requested by ESMA are required to evaluate the tender in accordance with the tender specifications and will be processed solely for that purpose by ESMA. A tenderer is entitled to obtain access to their personal data on request and to rectify any such data that is inaccurate or incomplete.

1.14. Contractual details

Draft contracts are attached to these technical specifications as **Annex I** for all Lots. The terms and conditions of the draft contracts cannot be modified. Tenderers must confirm acceptance of these draft contracts and terms and conditions of the tender as part of their tender response. It is strongly recommended that Tenderers have the draft contracts checked and passed by their legal section before committing to submitting an offer

Lot 1, 2, 3, 4

ESMA wishes to conclude multiple framework contracts with reopening of competition with a minimum of 3 and a maximum of 5 economic operators providing services for an initial period of 1 year, with 3 possible extensions of 1 year each, giving a maximum possible duration of 4 years. The framework contracts will establish the terms governing specific contracts and order forms to be awarded during a given period, in particular, with regard to price. They will not establish any priority amongst contractors. Signature of the framework contracts imposes no obligation on ESMA to order services.

Only the implementation of the framework contract through specific contracts/order forms is binding for ESMA.

For each specific requirement (e.g. a dedicated project) ESMA will send a service request to all contractors on the list for the lot with a 5 days deadline to respond. A specific contract/purchase order will be signed with the awarded contractor after evaluation of the best offer according to the award criteria in 4.2 and will contain details of deliverables and timelines for particular services to be provided.

2. Terms of reference

The terms of reference will become an integral part of the contract that may be awarded as a result of this tender procedure.

2.1. Introduction: Background to the invitation to tender

The European Securities and Markets Authority (ESMA) is a multi-cultural, multi-lingual European organisation. ESMA manages a number of European networks, standing committees, working groups and organizes a number of events during the year to support the convergence in financial supervision in Europa. To achieve its aims ESMA needs partners who can support the various activities in the fields of training, including development of skills, language training, consulting and coordination of training events.

Currently ESMA has about 130 full time employees and according to the multiannual staff plan during the contracting period it shall reach 250-260.

For lot 4, the participants shall come (beside ESMA's staff) from all National Competent Authorities of the European Union.

2.2. Description of the services & scope of the contract

2.2.1. Contract objectives, scope and activities

The objective of the invitation to tender is to sign contracts with providers that would support ESMA with:

Lot 1

Providing language courses

Lot 2

Providing e-learning language courses

Lot 3

Providing IT training

Lot 4

Providing professional training in the domain of financial markets

In particular, as for the activities covered by each lot:

Lot 1: includes the delivery of language training in the major European languages

Lot 2: includes the delivery of 'off-the-shelf' e-learning language training in the major European languages

Lot 3: includes the delivery of all kind of IT training

Lot 4: includes the delivery of all kind of Professional training in the domain of the financial markets, (class room or blended learning)

2.2.2. Description of the work/tasks

Lot 1

Tasks in lot 1 Language training:

- Delivery of various language courses and training for small groups and individuals:
 - coordination of the training, including the administration of the courses;
 - pre-course and after course test;
 - French in small groups and individual training;
 - individual training or small groups in major European languages (mainly English, German, Spanish, Italian, but not limited to these);
 - specialised, bespoke courses in English (i.e. legal English, financial English);
 - design and delivery of bespoke courses;
 - exams preparation courses;
- Reporting on the achievements in electronic format (word, excel)
 - Statistics on the course (number of participants, results, feedbacks)
 - Report on the trainers, speakers
 - Report on the venues
 - List of arisen issues and solutions

Number of hours annually: between 200 and 1500

Lot 2

Tasks in lot 2 e-learning Language training:

e-Learning is defined as: 'the use of new multimedia technologies and the Internet to improve the quality of learning by facilitating access to resources and services as well as remote exchanges and collaboration (European Commission's definition, June 2003)

Providing all types of 'off-the-shelf' online language training (e-Learning) in the major European Languages from CEFR A1 to B1:

- with synchronous and/or asynchronous online mentoring (coaching)
- without mentoring (coaching)
- with or without tutoring
- reporting both for the students and for ESMA's HR unit
- free placement test
- technical hotline (24 hours a day, 7 days a week)
- Reporting on the achievements in electronic format (word, excel)
 - Statistics on the course (number of participants, results, feedbacks)
 - Report on the trainers, speakers
 - Report on the venues
 - List of arisen issues and solutions

Lot 3

Tasks in lot 3 IT training:

- Delivery of various IT training courses for small groups and individuals;
- Open courses for various IT areas;
- E-learning courses in various IT areas;
- Areas of the IT courses might cover (but not limited to the following areas):
 - Any MS Office (Word, Excel, Power Point, including Macros);
 - Any MS system administrators;
 - Exchange;
 - Any networking courses;
 - Any hardware and network design, operation and management courses;
 - IT tools;

- Adobe software;
- Web content design
- Content management systems;
- Virtual server environment;
- IT security;
- IT Audit;
- Project management.
- Reporting on the achievements in electronic format (word, excel)
 - Statistics on the course (number of participants, results, feedbacks)
 - Report on the trainers, speakers
 - Report on the venues
 - List of arisen issues and solutions

Number of courses annually: 1 to 15 and in addition, depending on the course catalogue and the location of the contractors, participation on open courses.

Lot 4

Tasks in lot 4 Professional training:

- Delivery of a training (classroom and/or blended learning) in the domains of the financial markets and economics, under the supervision of ESMA's Training Officer or Subject Matter Expert;
- The courses will/can cover all areas in the domains above, including but not limited to MiFID/R, MAD/R, Commodities, Valuation of illiquid assets, different types of risk (and their management), High Frequency Trading, Short selling, any area of IFRS, Corporate Governance, Financial products (and Innovation), UCITS, EMIR, AIFMD, CRD IV, Corporate reporting, Post trading, Market Surveillance, Enforcement, Microstructural issues, Regulator framework, Prospectus, PRIIPS, Micro/Macro-economic, financial mathematics, financial analysis, etc.;
- Planning, design, preparation, organisation, and delivery of specific training events in the domains listed above;
- Providing the proper and adequate e-learning course (in the case of a blended learning course), if it is not available in ESMA's course catalogue (including the negotiations for the best price for value);
- Development and implementation of appropriate training methodology including suggestions and ideas for the training events;
- Development and implementation of the programme for the training;
- Identification and organization of the speakers, trainers and venue for the training:
 - Arrangements with the speakers;
 - Arrangements with the venues.
- Registration of participants;
- Preparation, printing and delivery of all training materials including teaching aids, hand-outs, etc. to the training venue;
- Coordination of the training event (coordination between the trainers, the Contractor and ESMA);
- Evaluation of feedback, tests, exams and the training events;
- Reporting on the achievements in electronic format (word, excel):
 - Statistics on the course (number of participants, results, feedbacks);
 - Report on the trainers, speakers;
 - Report on the venues;
 - List of arisen issues and solutions.
- Open courses for various training in the domain of the financial markets (preferable in Paris).

Important information for all lots

All documents, addresses or details of the participants and speakers from ESMA or from the National Competent Authorities, content of the courses (including but not limited to the programme, content of the sections, course materials, hand-outs, questions arisen, tests and their results) have to be handled confidentially, may not be disclosed to third party or to the public and may not be used for other purposes than the purpose of this contract.

Except for the language training, all the training should be provided in English language. It is expected that the contractor is able to deliver standard training courses and coaching within maximum of 3 weeks from the date of the request. The contractor shall be able to deliver consulting and tailored/bespoke training within maximum of 5 weeks from the date of the request.

Cancellation policy

ESMA reserves the right to withdraw or cancel a request for a service and the contractor shall not be entitled to claim any compensation, if the cancellation is done at least 15 days prior to the date of the event.

Tenderer's terms and conditions for a cancellation done less than 15 days prior to the event (including any compensation that ESMA may incur for such late cancellation) shall be clearly and specifically stated in the offer submitted in accordance with the requirements as for section 4.1

2.2.3. Deliverables, reporting and project schedule

Defined in each specific contract and purchase order.

2.3. Duration of the contract

Each framework contract should be signed for an initial one-year period, and can be renewable up to a maximum of three times, under the same conditions e.g. four years in total.

2.4. Place of performance of the contract

For all lots (Lot 1, Lot 2, Lot 3, Lot 4) the place of execution will be mainly ESMA's premises and/or other venues in Paris and in the rest of Ile-de-France. However, occasionally 1 or 2 days courses might be requested to be delivered in one of the EU Member-states.

In the case of delivering a course outside of Paris (FR), the travel time (up to 2 days) of the trainer can be invoiced together with price of the course's delivery (hours/days) and the travel (economy class) and accommodation costs (up to 150€ per night and per person) can be invoiced as well additionally. In case when the delivery of the course is in Paris, France, no travel time can be invoiced, nevertheless travel and accommodation costs can be invoiced up to 500€ per trainer per event against the proofs of payments.

2.5. Reference documents

Not applicable

2.6. Prices

2.6.1. Currency of tender

Prices must be quoted in Euro.

The total volume for all lots (Lot1, Lot2, Lot3, Lot4) will not exceed **€1.484.080** during the 4 years period for all 4 lots.

The Financial Proposal Form in Annex VI must be used to submit a tender.

2.6.2. All-inclusive prices

Prices submitted in response to this tender must be inclusive of all costs involved in the performance of the contract (e.g. to include delivery, supply and installation, maintenance, travel, subsistence, etc.). No expenses incurred in the performance of the services will be reimbursed separately by ESMA.

2.6.3. Price revision

Prices submitted in response to this tender shall be fixed and not subject to revision.

2.6.4. Costs involved in preparing and submitting a tender

ESMA will not reimburse any costs incurred in the preparation and submission of a tender. Any such costs must be paid by the tenderer.

2.6.5. Protocol on the Privileges and Immunities of the European Union

ESMA is, as a rule, exempt from all taxes and duties, and in certain circumstances is entitled to a refund for indirect tax incurred, such as value added tax (VAT), pursuant to the provisions of articles 3 and 4 of the Protocol on Privileges and Immunities of the European Union. Tenderers must therefore quote prices which are exclusive of any taxes and duties and must indicate the amount of VAT separately.

2.6.6. Payments

Payments will be done separately after each delivery. The Contractor will have to issue an invoice in-line with the Purchase order or specific contract and in-line with the real delivery and ESMA will settle the payment with-in 30 days after receiving the invoice.

2.6.7. Financial guarantees

Not applicable

3 Exclusion and selection criteria

3.1 Exclusion criteria

- a) Tenderers shall be excluded from participation in procurement procedure if they are in any of the following situations: they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- b) they or persons having power of representation, decision making or control over them have been convicted of an offence concerning their professional conduct by a judgment of a competent authority of a Member State which has the force of *res judicata*;
- c) they have been guilty of grave professional misconduct proven by any means which ESMA can justify including by decisions of other EU institutions and of other international organisations;
- d) they are not in compliance with their obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of France or those of the country where the contract is to be performed;
- e) they or persons having power of representation, decision making or control over them have been the subject of a judgment which has the force of *res judicata* for fraud, corrupt-

- f) tion, involvement in a criminal organisation, money laundering or any other illegal activity detrimental to the Union's financial interests;
- g) following another procurement procedure or grant award procedure financed by the Community budget, they have been declared to be in serious breach of contract for failure to comply with their contractual obligations.

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

- are subject to a conflict of interest;
- are guilty of misrepresenting the information required by ESMA as a condition of participation in the procurement procedure or fail to supply this information.

The declaration on honour is also required for identified subcontractors whose intended share of the contract is above 10%.

Declaration and means of proof

All tenderers must certify that they are not in any of the situations listed above by completing and signing the attached Exclusion Criteria & Non-Conflict of Interest Declaration in **Annex II**.

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

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

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

This requirement applies to all members of the consortium in case of joint tender and to identified subcontractors whose intended share of the contract is above 10%.

3.2 Selection criteria

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

3.2.1 Legal capacity

Requirement (for all lots)

A tenderer is asked to prove that they are authorised to perform the contract under the national law as evidenced by inclusion in a trade or professional register, or a sworn declaration or certificate, membership of a specific organisation, express authorisation or entry in the VAT register.

Evidence required (for all lots)

The tenderer shall provide a duly filled in and signed Legal Entity Form (see **Annex III**) accompanied by the documents requested therein.

(Where the tenderer has already signed another contract with ESMA, they may provide instead of the legal entity file and its supporting documents a copy of the legal entity file provided on that occasion, unless a change in his legal status occurred in the meantime).

3.2.2 Economic and financial capacity

Requirement

The tenderer must be in a stable financial position and have the economic and financial capacity to perform the contract.

For lot 1, lot 2, lot 3, lot 4,

The tenderer applying to one of these lots must have had an average annual turnover in the last three years (2010, 2011 and 2012) of at least €500,000 in relevant activities. If a tenderer applies for more than one lot it must comply with the aggregate financial and economic capacity requirements of the lots for which it is applying.

For all lots

If a tenderer applies for more than one lot it must comply with the aggregate financial and economic capacity requirements of the lots for which it is applying.

Evidence required (for all lots)

Proof of economic and financial capacity shall be furnished by the following documents, if subcontracting is envisaged, documentation must be provided in relation to any subcontractors:

1. A copy of the most recent audited accounts that cover the last three years of trading or for the period that is available if trading for less than three years.
2. A statement of the company's turnover, profit and loss, and cash flow position for the most recent full year of trading (or part year if full year not applicable) and an end period balance sheet, where this information is not available in audited form at point 1 above.
3. Where documents mentioned under point 2 cannot be provided, the tenderer should provide a statement of the company's cash flow forecast for the current year and a bank letter outlining the current cash and credit facility position.
4. If the organisation is a member of a group of companies, documents under points 1, 2 and 3 are required for both the tenderer and its ultimate holding company. Where a consortium or association is proposed, the information is requested for each member company.
5. The tenderer should enclose a separate statement of its turnover that relates directly to the requirements of the ESMA for the past three years, or for the period the tenderer has been trading (if less than three years).

If the tenderer is not obliged to publish its accounts under the company law of the country in which it is established, he/she should supply copies of such accounting information as he/she is willing to provide relating to the last three financial years or any period since the end of the last financial year.

If, for some exceptional reason which ESMA considers justified, the tenderer is unable to provide the references requested by the contracting authority, he/she may prove his economic and financial capacity by any other means which ESMA considers appropriate.

ESMA reserves the right to request any additional documentary evidence it deems necessary or useful in order to verify a tenderer's economic and financial standing.

3.2.3 Technical and professional capacity

The tenderer's technical and professional capacity will be evaluated on the following criteria.

Requirements

Lot 1.

- Suitability of the organisation and staffing structure available for the activities;
- Ability to provide relevant administrative support;
- Suitability of the staff responsible for ESMA: staff dealing with ESMA have to have proficiency in English;
- Number and level of the teachers and trainers: at least 3 full time or five part time trainers contracted by the company;
- Suitability of the course portfolio to ESMA's needs;
- For French language minimal requirement is to be capable to deliver up to 8 courses in parallel;
- For other European languages minimal requirement is to be capable to deliver up to 3 courses in parallel;
- Requirements for the language teachers and trainers:
 - Must demonstrate the knowledge of the language of the course at the level of native speaker;
 - Must have at least three (3) years of professional experience as a language teacher or trainer;
 - Teachers and trainers shall have at least a good working knowledge of English, i.e. at B2 level – even if they deliver a non-English language course.

Lot 2.

- Suitability of the organisation and staffing structure available for the activities;
- Ability to provide relevant administrative support;
- Suitability of the staff responsible for ESMA: staff dealing with ESMA have to have proficiency in English;
- Number and level of the mentors and tutors: at least 3 full time or five part time mentors/coaches and tutors contracted by the company;
- Suitability of the system to ESMA's needs:
 - The training platform must be available for 24 hours a day 7 days a week
 - The interface languages must be a minimum of French and English
- Licences must be available for Three-month (3), six-month (6) and one-year:
 - with synchronous and/or asynchronous online mentoring,
 - without mentoring.
- Suitability of the language portfolio to ESMA's needs:
 - at least two (2) of the official EU languages should be offered to at least CEFR levels A1 to B1.
 - Courses will be preceded by a free obligatory placement test indicating the candidate's level and enabling the platform to be parameterised in the light of the results of the test
- Availability of mentors and tutors:
 - Mentor must be available for a minimum of one hour a day between 9.00 and 16.00 (GMT+1) from Monday to Friday.
 - In the case of the licence with asynchronous online mentoring/tutoring via the Contractor's platform, the mentor must respond within a period of not more than 24 working hours.
- The language taught by the mentor/coach should be his or her mother tongue.

Lot 3.

- Suitability of the organisation and staffing structure available for the activities;

- Ability to provide relevant administrative support;
- Suitability of the staff responsible for ESMA: staff dealing with ESMA have to have proficiency in English;
- Number and level of the teachers and trainers: at least 3 full time or five part time trainers contracted by the company;
- Suitability of the course portfolio/catalogue to ESMA's needs;
 - At least 15 different IT courses covering at least 50% of the courses listed under 2.2.2, which tenderer can deliver in English;
- Trainers must have C1 level in English.

Lot 4.

- Suitability of the organisation and staffing structure available for the activities;
- Ability to provide relevant administrative support;
- Suitability of the staff responsible for ESMA: staff dealing with ESMA have to have proficiency in English;
- Number and level of the teachers and trainers: at least 8 full time or five part time trainers contracted by the company;
- Suitability of the course portfolio/catalogue to ESMA's needs
 - The tenderer had to delivered at least 10 bespoke or otherwise tailored courses in the area of the financial markets and economics during the last 3 years
OR
 - The tenderer had to delivered at least 5 bespoke or otherwise tailored blended learning courses during the last 3 years
OR
 - The tenderer had to delivered at least 20 open courses for at least 250 participants in total (with not less than 15 per course) in the area of the financial markets and economics during the last 3 years
- Trainers must have C1 level in English

Evidence required

For lot 1

- Indication of the number of trainings, number of attendees, type of training delivered provided in the last three years for companies, with at least 20 participants for general language course and with at least 10 participants for technical skill and bespoke courses;
- Tenderers are required to prove that they have performed at least two (2) language courses of a scope or nature or size similar to the lot the tenderer applies for under this tender.
- Indication of the number of unsuccessful training delivered (or not delivered) during the last three years (unsuccessful either by the evaluations, or by lack of participants or by other default – reasons of failure, actions taken)
- Indication of the value of successful training and their domains provided in the last three years
- The provider's organisational internal structure, the number of employees, number of trainers and teachers (fully employed and contracted) and the number of managerial staff over the past three years;
- CVs and references of the relevant employees (with reference to their language skills – above 10 trainers a description of the requirements of the company)
- Any other additional information that the tenderer deems relevant and useful in order to enable the evaluation concerning the above mentioned criteria.
- References in relation to similar training.

For lot 2

- Description of the e-learning languages courses offered by the tenderer;
- References for e-learning language training
- Results of satisfactory surveys done by the tenderer for users
- Indication of the number of users, their advance, drop-out ratio – anonymised results to have an overview on the efficiency of the system, the advance of the students and drop-out ratio
- The provider's organisational internal structure, the number of employees, number of trainers and teachers (fully employed and contracted) and the number of managerial staff over the past three years;
- CVs and/or references of the relevant employees (staff dealing with ESMA, mentors, coaches, tutors with reference to their language skills – above 10 a description of the requirements of the company)
- Any other additional information that the tenderer deems relevant and useful in order to enable the evaluation concerning the above mentioned criteria.
- References in relation to similar training.

For lot 3.

- Indication of the number of trainings, number of attendees, type of training delivered provided in the last three years;
- Indication of the number of unsuccessful training delivered (or not delivered) during the last three years (unsuccessful either by the evaluations, or by lack of participants or by other default – reasons of failure, actions taken)
- Indication of the value of successful training and their domains provided in the last three years

- The provider's organisational internal structure, the number of employees, number of trainers (fully employed and contracted) and the number of managerial staff over the past three years;
- CVs and references of the trainers (with reference to their language skills – above 10 involved a description of the requirements of the company)
- Any other additional information that the tenderer deems relevant and useful in order to enable the evaluation concerning the above mentioned criteria.
- References in relation to similar training.

For lot 4.

- List of courses delivered during the last three years
- Information on the courses delivered in the financial markets and economics domain
- Information on the experts, project managers
- Description of the training development procedures, including (but not limited to) the quality assurance and speaker selection procedures, the timeframe, internal procedures, quality control, experts search
- Information on the contracted expert institutions
- References

For all lots

The following documents or information must be presented as evidence of compliance with the technical and professional criteria. Evidence of the tenderer's technical competence must be furnished by means of a declaration of the main services provided by the tenderer in the past three years, detailing:

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. A description of the company profile, structure and information on its human resources
3. A list of the principal services performed during the last 3 years (2010, 2011, and 2012) giving the dates, name and address of the client, and description of the services undertaken including name and role of any sub-contractors and/or consortium members. The ESMA may elect to contact any of the aforementioned companies for a reference. Your permission to do so will be assumed unless you state any objections
4. Details of any quality assurance accreditation the tenderer holds or if no accreditation is held an outline of any quality assurance policy
5. A statement of the tenderer's policy on the use of sub-contractors, if relevant, and of the means of ensuring quality when sub-contractors are used

The tenderer should, upon request, be able to provide evidence of these services in the form of certificates issued or countersigned by public authorities, or declarations of performance by private purchasers.

The tenderer must be registered in a relevant commercial or trade register.

Evidence of the tenderer's professional competence must be proofed.

4 Award of the contract

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 nominated on a personal basis by the ESMA under guarantee of impartiality and confidentiality. Each of them has equal voting rights.

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

4.1 Technical proposal

The assessment of technical quality will be based on the ability of the tenderer to meet the purpose of the contract as described in the terms of reference. To this end, the technical proposal shall contain the following information to allow evaluation of the tender according to the technical criteria mentioned in section 4.2.

Lot 1

- List of languages in which the Tenderer can provide courses between A1 and C2 level;
- List and description of the soft and technical skills (i.e. communication, presentation) courses which the tender can deliver in English;
- List and description of the bespoke courses (i.e. Legal English, Business English) which the tender can deliver in English;
- A description of the organisation methods of the tenderer for bespoke courses;
- CVs of the teachers available to deliver French language courses in Paris (above 10 teachers – the 10 most relevant CVs and description of the requirements of the company)
- CVs of the trainers available to deliver technical skills and bespoke courses in English in Paris (above 10 trainers – the 10 most relevant CVs and description of the requirements of the company);
- Cancellation policy;
- Online booking possibility;
- Minimum notice period, which would be required to provide bespoke courses;
- A presentation of the company.

Lot 2

- List of languages, on which the Tenderer can provide language courses between A1 and at least B1 level;
- List of languages, on which the Tenderer can provide language courses above B1 level;
- Course catalogue and description of the courses (including as detailed as possible information on the quality of the courses, level of support mentor/tutor/coach, number of hours of support)
- Description and capacities of the system
- Technical helpdesk, availability, reply time, access (email or telephone)
- CVs of the tutors, mentors, coaches (above 10 – the 10 most relevant CVs and description of the requirements of the company)
- Tutors', mentors', coaches' reply period
- Placement tests and in courses tests
- ESMA requires for testing and evaluating the course catalogue and LMS
 - 2 test accounts for the catalogue

- 1 test accounts for the admin interface
- All relevant policies, especially Licencing policy and Cancellation policy;
- Online booking possibility;
- A presentation of the company.

Lot 3

- A description of the courses the tenderer can deliver, including at least a short summary and description of the methodologies for each course;
- A description of the organisation methods of the tenderer for these kind of courses;
- CVs of the trainers available to deliver IT courses in English in Paris (above 10 trainers – the 10 most relevant CVs and description of the requirements of the company);
- English language course catalogue of the relevant courses, which can be provided as standard courses (please provide, beside the title a description of the courses as well);
- English language course catalogue of the relevant courses, which are provided as open training (please provide, beside the title a description of the courses as well);
- Cancellation policy;
- Minimum notice period, which would be required to provide bespoke courses;
- A presentation of the company.

The information in the technical proposal must be consistent with the terms of reference and must be signed by the tenderer.

Lot 4

Tenderers are requested to develop a proposal for:

- a) A two day MiFID course on the existing MiFID regulation, which should cover all important elements of MiFID regulation.
The target group: all supervisors and regulators in the financial supervisory authorities in Europe with 0-5 years of experience.

OR

- b) A two days High Frequency Trading training, which should cover:
- Development of HFT in Europe;
 - Market impact;
 - Strategies behind HFT
 - DMA/SA, tick-size, co-location;
 - Risk controls, market safeguards;
 - Regulation MIFID and MAD review, ESMA guidelines;
 - Consequences for market surveillance.

The target group: all supervisors and regulators in the financial supervisory authorities in Europe with 0-5 years of experience.

OR

- c) A one + one day course on IFRS
- First day focusing on IFRS 10,11,12,13 for supervisors and regulators;
 - Second day focusing on consistent application of IFRS.

The target group: all supervisors and regulators in the financial supervisory authorities in Europe with 0-5 years of experience.

OR

- d) A two day Corporate Governance training focusing on:
- Lessons learned from the financial crisis;
 - Remuneration Disclosures;
 - Shareholder rights and activism;

- Code of Conduct for Board Members;
- The role of voting agencies;
- Different European enforcement systems;
- Role of Corporate Governance in investment decisions.

The target group: all supervisors and regulators in the financial supervisory authorities in Europe with 0-5 years of experience.

The proposal should include

- a) Description of the development process
 - Including all necessary and important steps, timeframe, internal procedures, quality control, expert/speaker search, development of case-studies, e-learning course search (if relevant), venue search
- b) Description of the course
 - List of the speakers and their qualification, level of expertise;
- c) Description of the process to handle the quality problems of the course
 - Negative feedbacks on the e-learning;
 - Negative feedbacks on the training.

Information on the number and quality of the courses the tender offers as off-the-shelf training

- Information on the quality of the courses (preferable using the feedback forms)
- Information on the number of courses in the different areas (especially in financial markets, economics, regulation, supervision domains)
- Information on the case-study based courses
- Training materials (hand-outs, or learning support materials) used already in training (preferably but not necessary connected to the course above)
- Preferably 3 test accounts for the at least 3 different e-learning courses, which the tenderer uses in blended learning, including at least one case-study based

IMPORTANT FOR LOT 4

The purpose of asking for a proposal is to have comparable offers; ESMA will not use or disclose the information provided in the proposals to any third party or for the public. ESMA will refrain from using the proposed programmes, course descriptions, list of speakers, invitation letters in any way.

During the implementation of the multiple framework contract similar courses will have to be delivered by the contractor(s) covering the whole area of the financial markets and economics.

For all lots

- A detailed description of the tenderer's understanding of the objectives of the (multiple) framework contract and the work to be carried out;
- A detailed description of the tenderer's training methodology;
- A description of the team that the tenderer is proposing for implementing the work.

The information contained in the technical proposal must be consistent with the terms of reference.

For all lots, technical proposals during the re-opening competition.

During the re-opening competition phase, each tender will focus to one specific training request (a course in one or more specific languages, training in one specific area of IT or financial markets and economics). Therefore the technical proposals, during the re-opening competition phase, will have to focus also to the specific area of the particular tender.

4.2 Technical evaluation: award criteria

The quality of technical offers will be evaluated in accordance with the award criteria listed below.

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

Lot 1 Award criteria

1. Suitability and quality of the language training the tenderer can provide according to 4.1	60 points
2. Suitability and quality of the organisation methods of the tenderer according to 4.1	10 points
3. Suitability and quality of the teachers	15 points
4. Suitability of the Cancellation policy according to ESMA needs	5 points
5. Minimum notice period, which would be required to provide bespoke courses	10 points
Total	0-100

Offers scoring less than **60%** for any award criterion will be deemed to be of insufficient quality and eliminated from further consideration.

During the reopening competition phase, in case of a non-bespoke training the following Award criteria will be used:

1. Suitability and quality of the language training the tenderer can provide according to 4.1	60 points
2. Suitability and quality of the organisation methods of the tenderer according to 4.1	15 points
3. Suitability and quality of the teachers	20 points
4. Suitability of the Cancellation policy according to ESMA needs	5 points
Total	0-100

Lot 2 Award criteria

1. Suitability and quality of the e-learning language courses the tenderer can provide according to 4.1	30 points
2. Suitability and quality of the services (reply periods, availability of supports, policies) of the tenderer according to 4.1	30 points
3. Suitability and quality of the tutors, coaches, mentors	20 points
4. Suitability of the system to ESMA needs according to 4.1	20 points
Total	0-100

Offers scoring less than **60%** for any award criterion will be deemed to be of insufficient quality and eliminated from further consideration.

Lot 3 Award criteria

1. Suitability of the organisation methods of the tenderer according to 4.1	25 points
2. Suitability and quality of the IT courses delivered in English language	30 points
3. Suitability and quality of the trainers	10 points
4. Suitability and quality of the IT courses delivered as open training in English language in Paris	20 points
5. Suitability of the Cancellation policy according to ESMA needs	5 points
6. Minimum notice period, which would be required to provide bespoke courses	10 points
Total	0-100

Offers scoring less than **60%** for any award criterion will be deemed to be of insufficient quality and eliminated from further consideration.

During the reopening competition phase, in case of a non-bespoke training the following Award criteria will be used:

1. Suitability of the organisation methods of the tenderer according to 4.1	40 points
2. Suitability and quality of the proposed course	30 points
3. Suitability and quality of the proposed trainer(s)	15 points
4. Suitability and quality of the IT courses delivered as open training in English language in Paris	10 points
5. Suitability of the Cancellation policy according to ESMA needs	5 points
Total	0-100

During the reopening competition phase, in case of a bespoke training the following Award criteria will be used:

1. Suitability of the organisation methods of the tenderer according to 4.1	30 points
2. Suitability and quality of the proposed course	40 points
3. Suitability and quality of the proposed trainer(s)	15 points
4. Suitability of the Cancellation policy according to ESMA needs	5 points
5. Minimum notice period, which would be required to provide the courses	10 points
Total	0-100

Lot 4. Award criteria

1. Suitability and Quality of the offer for the example case under 4.1	50 points
2. Suitability and quality of courses that the tender offers as off-the-shelf courses in the financial markets, economics, regulation, supervision domains	25 points
3. Quality and suitability of the development process	10 points
4. Suitability of the Cancellation policy according to ESMA needs	5 points
5. Minimum notice period, which would be required to provide bespoke courses	10 points
Total	0-100

Offers scoring less than **60%** for any award criterion will be deemed to be of insufficient quality and eliminated from further consideration.

During the reopening competition phase, in case of a specific training the following Award criteria will be used:

1. Suitability and Quality of the offer for the example case under 4.1	40 points
2. Suitability and quality of courses that the tender offers as off-the-shelf courses in the financial markets, economics, regulation, supervision domains	20 points
3. Quality and suitability of the development process	15 points
4. Suitability and quality of the proposed trainer(s)	15 points
5. Suitability of the Cancellation policy according to ESMA needs	10 points
Total	0-100

4.3 Financial proposal

The financial proposal for each lot should be presented in the format found in **Annex VI**

Lot 1

Price category	Fee/60 minutes	Comment
Price A Fee of the Language course for a group of 4-8 participants		Lessons are usually 1,5 hours long. One semester at ESMA is about 12-15 weeks long, weekly 1 lesson per group, 4-5 groups in parallel. Language: mainly French, but might include English, German, Spanish, Italian.
Price B Language course for individuals (up to 3 participants)		Private (one-to-one) lessons are usually 1,5 hours long.
	Fee / participants	
Price C Assessment test		Pre course and post course assessment test.
Price D Course materials		
	Fee/trainer/day	
Price C Soft or bespoke course delivery		
Price D preparatory day		Fee for preparatory day cannot be higher than 90% of the delivery fees Number of preparatory days per training cannot be more than the length of the training plus one day.
Total costs		$288*A+300*B+50*(C+D)+4*E+4*F$ <i>2 semesters of 4 groups 12 weeks 2 lesson per group + 5 individual course for 40 weeks + pre-course tests and language materials for 50 participants + 4 days of course delivery + 4 preparatory days</i>

All fees must be in Euro.

During the reopening competition phase only the relevant price categories will be evaluated:

For language courses: Price A or Price B, Price C, Price D

For bespoke courses: Price C and Price D (if relevant)

The total price will be calculated always on the basis of the foreseeable demand of the specific tender.

Lot 2

Price category	3 months	6 months	12 months
Price A Licence with e-tutoring for (e-mail reply to all questions)			
Price B Licence with e-coaching for			
E-coaching (Price B) has to include at least :			
Initial phone call	1	1	1
Coaching calls (15-20 minutes each)	2 hours	3.5 hours	7 hours
Individual feedback calls (15-30 minutes each)	2	3	4
Price of additional phone call	€/60 minutes		
Total cost <i>35*Price B 3 months +30*Price B 12 Months + 30 times Price A 6 months+30 hours of additional phone call</i>			

All fees must be in Euro.

During the reopening competition phase only the relevant price categories will be evaluated in line with the specific tender. The total price will be calculated always on the basis of the foreseeable demand of the specific tender.

Lot 3

Price category	Fee/trainer/day	Comment
Price A Delivery of a standard IT course		Course listed in the technical proposal and provided in Ile-de-France
Price B Delivery of a bespoke IT course		Courses not listed in the technical proposal and provided in Ile-de-France
Price C Preparatory day (used for preparatory days and for travel)		Fee for preparatory day cannot be higher than 90% of the delivery fees Number of preparatory days per training cannot be more than the length of the training plus one day.
Total costs		4*A+4*B+2*C <i>Delivery of 4 days of standard IT courses+ 4 days of bespoke IT courses + 2 days of preparation for the bespoke courses.</i>

All fees must be in Euro.

In general for a course, with less than 16 participants one trainer will be requested.

During the reopening competition phase only the relevant price categories will be evaluated:

For standard IT courses: Price A and Price C if relevant

For bespoke courses: Price B and if relevant Price C

The total price will be calculated always on the basis of the foreseeable demand of the specific tender.

Lot 4

Price category	Fee for the two days	Comment
Price A Delivery of the example course		Fee of the proposed 2 days course for the example under 4.1 with one trainer, for 40 participants in Paris in ESMA premises, including all costs: <ul style="list-style-type: none"> • Preparation costs • Hand out and education material costs • Organisational costs (arrangement with speakers, preparation of documents) • Tests for the participants • If necessary Trainers'/Speakers' travel, accommodation (above the 500€ specified under 2.4) • Any other costs Not including the costs for the licences of the e-learning course (if relevant), for the venue, catering, social event, technical equipment
	Fee/trainer/day	
Price B Price preparatory or travel days day		Price of a trainer day for 30 participants Used for re-running a course or preparatory days or delivery of off-the-shelf courses or travel days
Total costs		8*A+8*B+6*B <i>Development and delivery of 8 courses, plus re-run of 4 courses, with 6 additional days for travel</i>

All fees must be in Euro. In general participants' numbers are between 30 and 60.

During the reopening competition phase:

- Only the relevant price categories will be evaluated.
- In case of a one day training 50% of the Price A will be used
- In case of delivering a training with 2 or more trainers, 50% of Price A might be multiplied by the actual number of trainer-days
- Price B will be evaluated only if relevant
- Tenderers will be permitted to give discount
- The total price will be calculated always on the basis of the foreseeable demand of the specific tender.

4.4 Choice of the selected tender

The contract will be awarded to the tenderer offering the best quality/price, taking into account the awarding criteria listed above. No award criteria and sub-criteria other than those detailed above will be used to evaluate the offer.

The weighting of quality and price will be applied as follows:

For each lot

Weights for the prices:

Score for offer	$\frac{\text{cheapest total cost}}{\text{total cost of offer X}}$	*40+	$\frac{\text{Total quality score of offer X}}{100}$	*60
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4.5 No obligation to award

Completing the procedure of the call for tenders in no way imposes on the ESMA an obligation to award the contract. The ESMA shall not be liable for any compensation with respect to tenderers whose offers have not been accepted, nor shall ESMA be liable when deciding not to award the contract.

4.6 Notification of outcome

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

If tenderers are notified that a tender has not been successful, tenderers may request additional information by fax or mail. At the discretion of ESMA, this information can be given in a follow-up letter providing further details in writing, such as the name of the tenderer to whom the contract is awarded and a summary of the characteristics and relative advantages of the successful tender. However, ESMA would like to stress that it is not free to disclose any information affecting the commercial interests of other tenderers.

List of Annexes

Annex I – Draft contract

Annex II – Exclusion criteria and non-conflict of interest declaration

Annex III – Legal entity form

Annex IV – Financial identification form

Annex V – Authorised signatory form

Annex VI – Financial proposal form

Annex VII – Confirmation of offer submission

Annex VIII – Tender submission checklist

Annex IX – Code of Good Conduct

Annex X – List of ESMA public holidays 2013



Annex I – Draft contract

See the Annex to these tender specifications

Annex II – Exclusion criteria and non-conflict of interest declaration

TO BE COMPLETED AND SIGNED BY THE TENDERER

The undersigned: _____

in his/her own name (if the economic operator is a natural person or in case of own declaration of a director or person with powers of representation, decision making or control over the economic operator)

or

representing (if the economic operator is a legal person)

official name in full (only for legal person):

official legal form (only for legal person):

official address in full:

VAT registration number:

declares that the company or organisation that he/she represents he/she:

declares that the company or organisation that he/she represents:

- a) is not bankrupt or being wound up, is not having its affairs administered by the courts, has not entered into an arrangement with creditors, has not suspended business activities, is not the subject of proceedings concerning those matters, and is not in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- b) or persons having power of representation, decision making or control over it have not been convicted of an offence concerning their professional conduct by a judgment of a competent authority of a Member State which has the force of *res judicata*;
- c) has not been guilty of grave professional misconduct proven by any means which the contracting authorities can justify including by decisions of the EIB and international organisations;
- d) is in compliance with their obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of France and those of the country where the contract is to be performed;
- e) or persons having power of representation, decision making or control over them have not been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation, money laundering or any other illegal activity detrimental to the Union's financial interests;
- f) following another procurement procedure or grant award procedure financed by the Community budget, has not been declared to be in serious breach of contract for failure to comply with their contractual obligations.

In addition, the undersigned declares on their honour:

- g) they have no conflict of interest in connection with the contract; a conflict of interest could arise in particular as a result of economic interests, political or national affinities, family or emotional ties or any other relevant connection or shared interest;
- h) they will inform the contracting authority, without delay, of any situation considered a conflict of interest or which could give rise to a conflict of interest;
- i) they have not made and will not make any offer of any type whatsoever from which an advantage can be derived under the contract;
- j) they have not granted and will not grant, have not sought and will not seek, have not attempted and will not attempt to obtain, and have not accepted and will not accept any advantage, financial or in kind, to or from any party whatsoever, constituting an illegal practice or involving corruption, either directly or indirectly, as an incentive or reward relating to award of the contract;
- k) that the information provided to ESMA within the context of this invitation to tender is accurate, sincere and complete;
- l) that in case of award of contract, they shall provide the evidence that they are not in any of the situations described in points a, b, d, e above.

For situations described in (a), (b) and (e), production of a recent extract from the judicial record is required 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. Where the Tenderer is a legal person and the national legislation of the country in which the Tenderer is established does not allow the provision of such documents for legal persons, the documents should be provided for natural persons, such as the company directors or any person with powers of representation, decision making or control in relation to the Tenderer.

For the situation described in point (d) above, recent certificates or letters 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 Tenderer is liable, including for example, VAT, income tax (natural persons only), company tax (legal persons only) and social security contributions.

For any of the situations (a), (b), (d) or (e), where any document described in two paragraphs above is not issued in the country concerned, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.

By signing this form, the undersigned acknowledges that they have been acquainted with the administrative and financial penalties described under art 141 and 145 b of Rules of Applications (Commission Delegated Regulation 1268/2012 of 29/10/12), which may be applied if any of the declarations or information provided prove to be false.

Full name

Date

Signature

Annex III – Legal entity form

Please download and complete the appropriate legal entity form:

For individuals:

http://ec.europa.eu/budget/library/contracts_grants/info_contracts/legal_entities/legEnt_indiv_en.pdf

For private companies:

http://ec.europa.eu/budget/library/contracts_grants/info_contracts/legal_entities/legEnt_privComp_en.pdf

For public entities:

http://ec.europa.eu/budget/library/contracts_grants/info_contracts/legal_entities/legEnt_public_en.pdf



Annex IV – Financial identification form

Please download and complete the financial identification form available at:
http://ec.europa.eu/budget/library/contracts_grants/info_contracts/financial_id/fich_sign_ba_gb_en.pdf

Annex V – Authorised signatory form

Address and contact details

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

Annex VI— Financial proposal form for Lot 1

Company: _____
Date: _____
Signature: _____

Lot 1

Price category	Fee/60 minutes	Comment
Price A Fee of the Language course for a group of 4-8 participants		Lessons are usually 1,5 hours long. One semester at ESMA is about 12-15 weeks long, weekly 1 lesson per group, 4-5 groups in parallel. Language: mainly French, but might include English, German, Spanish, Italian.
Price B Language course for individuals (up to 3 participants)		Private (one-to-one) lessons are usually 1,5 hours long
	Fee / participants	
Price C Assessment test		Pre course and post course assessment test
Price D Course materials		
	Fee/trainer/day	
Price C Soft or bespoke course delivery		
Price D preparatory day		Fee for preparatory day cannot be higher than 90% of the delivery fees Number of preparatory days per training cannot be more than the length of the training plus one day.
Total costs		$288*A+300*B+50*(C+D)+4*E+4*F$ <i>2 semesters of 4 groups 12 weeks 2 lesson per group + 5 individual course for 40 weeks + pre-course tests and language materials for 50 participants + 4 days of course delivery + 4 preparatory days</i>

All fees must be in Euro.

During the reopening competition phase only the relevant price categories will be evaluated:

For language courses: Price A or Price B, Price C, Price D

For bespoke courses: Price C and Price D (if relevant)

The total price will be calculated always on the basis of the foreseeable demand of the specific tender.

Annex VI— Financial proposal form for Lot 2

Company: _____
Date: _____
Signature: _____

Lot 2

Price category	3 months	6 months	12 months
Price A Licence with e-tutoring for (e-mail reply to all questions)			
Price B Licence with e-coaching for			
E-coaching (Price B) has to include at least :			
Initial phone call	1	1	1
Coaching calls (15-20 minutes each)	2 hours	3.5 hours	7 hours
Individual feedback calls (15-30 minutes each)	2	3	4
Price of additional phone call	€/60 minutes		
Total cost <i>35*Price B 3 months +30*Price B 12 Months + 30 times Price A 6 months+30 hours of additional phone call</i>			

All fees must be in Euro.

During the reopening competition phase only the relevant price categories will be evaluated in line with the specific tender. The total price will be calculated always on the basis of the foreseeable demand of the specific tender.

Annex VI— Financial proposal form for Lot 3

Company: _____
Date: _____
Signature: _____

Lot 3

Price category	Fee/trainer/day	Comment
Price A Delivery of a standard IT course		Course listed in the technical proposal and provided in Ile-de-France
Price B Delivery of a bespoke IT course		Courses not listed in the technical proposal and provided in Ile-de-France
Price C Preparatory day (used for preparatory days and for travel)		Fee for preparatory day cannot be higher than 90% of the delivery fees Number of preparatory days per training cannot be more than the length of the training plus one day.
Total costs		$4*A+4*B+2*C$ <i>Delivery of 4 days of standard IT courses+ 4 days of bespoke IT courses + 2 days of preparation for the bespoke courses.</i>

All fees must be in Euro.

In general for a course, with less than 16 participants one trainer will be requested.

During the reopening competition phase only the relevant price categories will be evaluated:

For standard IT courses: Price A and Price C if relevant

For bespoke courses: Price B and if relevant Price C

The total price will be calculated always on the basis of the foreseeable demand of the specific tender.

Annex VI– Financial proposal form for Lot 4

Company: _____
Date: _____
Signature: _____

Lot 4

Price category	Fee for the two days	Comment
Price A Delivery of the example course		Fee of the proposed 2 days course for the example under 4.1, for 40 participants in Paris in ESMA premises, including all costs: <ul style="list-style-type: none"> • Preparation costs • Hand out and education material costs • Organisational costs (arrangement with speakers, preparation of documents) • Tests for the participants • If necessary Trainers’/Speakers’ travel, accommodation (above the 500€ specified under 2.4) • Any other costs Not including the costs for the licences of the e-learning course (if relevant), for the venue, catering, social event, technical equipment
	Fee/trainer/day	
Price B Price preparatory or travel days day		Price of a trainer day for 30 participants Used for re-running a course or preparatory days or delivery of off-the-shelf courses or travel days
Total costs		8*A+8*B+6*B <i>Development and delivery of 8 courses, plus re-run of 4 courses, with 6 additional days for travel</i>

All fees must be in Euro. In general participants’ numbers are between 30 and 60.

During the reopening competition phase:

- Only the relevant price categories will be evaluated.
- In case of a one day training 50% of the Price A will be used
- In case of delivering a training with 2 or more trainers, 50% of Price A might be multiplied by the actual number of trainer-days
- Price B will be evaluated only if relevant
- Tenderers will be permitted to give discount
- The total price will be calculated always on the basis of the foreseeable demand of the specific tender.



Annex VII – Confirmation of offer submission

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.

Title: Training services for ESMA

Publication Reference: OJ/06/11/2013-PROC/2013/007

Attn: ESMA, Attention to the Procurement Office

Email: procurement@esma.europa.eu

I have submitted an offer for this call on ____/____/____ using the following delivery service:

- Registered mail
- Express mail
- Courier Service
- Other _____

Tenderer name:

email:

Telephone number:

Annex VIII – Tender submission checklist

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 outer envelope which contains 3 separate inner envelopes clearly marked **Envelopes A, B and C**.

Please Tick ✓ the boxes provided

Envelope 'A' – Administrative documents – must contain

- The duly completed, signed and dated **Exclusion Criteria and Non-Conflict of Interest Declaration**.
- The duly completed, signed and dated **Legal Entity Form(s)**
- The duly completed, signed and dated **Financial Identification Form**
- The **economic and financial capacity documents** requested in section 3.2.2
- The **technical and professional capacity documents** requested in section 3.2.3.
- The duly completed **Authorised Signatory Form**
- In the case of consortia, a **consortium agreement** and any other documents as requested in section 1.4
- This **tender submission checklist**, completed, signed and dated.

Envelope 'B' – Technical proposal – must contain

- One original signed copy and 4 copies of the **technical proposal**.

Envelope 'C' – Financial proposal – must contain

- One original signed copy and 4 copies of the **financial proposal**.

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 1.6.1.
- The outer envelope bears the information detailed in section 1.6.1.

Name: _____

Signature: _____

Date: _____

Annex IX – Code of Good Conduct

Code of Good Administrative behaviour

The Management Board

Having regard to Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC¹ (the “Regulation” and “ESMA”)

Having regard to the provisions on openness in the Treaties, in particular Article 1 of the Treaty on European Union and Article 24 of the Treaty on the Functioning of the European Union,

Having regard to the own initiative inquiry of the European Ombudsman into the existence and the public accessibility in the different Community institutions and bodies of a Code of good administrative behaviour for agents or other servants in their relations with the public,

Whereas

(1) The Amsterdam Treaty explicitly introduced the concept of openness into the Treaty on European Union, by stating that it marks a new stage in the process of creating an ever closer union in which decisions are taken as openly as possible and as closely as possible to the citizen.

(2) In order to bring the administration closer to the citizens and to guarantee a better quality of administration, a Code should be adopted which contains the basic principles of good administrative behaviour for agents and other servants of ESMA when dealing with the public.

(3) Considering it therefore desirable to adopt the following Code and to make it publicly available.

1) Has adopted this decision:

Article 1 – General provision	45
Article 2 – Personal scope of application	45
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¹ OJ L 331, 15.12.2010, p. 84.

Article 17 – Reasonable time-limit for taking decisions	48
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Article 1 – General provision

In its relations with the public, any agent and other servant of ESMA shall respect the principles which are laid down in this Decision and which constitute the Code of good administrative behaviour (the ‘Code’).

Article 2 – Personal scope of application

The Code shall apply to all agents and other servants to whom the Staff Regulations and the Conditions of employment of other servants apply in their relations with the public.

ESMA will take the necessary measures to ensure that the provisions set out in this Code also apply to other persons working for it, such as persons employed under private law contracts, experts on secondment, trainees or other relevant persons.

The public refers to natural and legal persons, whether they reside or have their registered office in a Member State or not.

Article 3 – Material scope of application

This Code contains the general principles of good administrative behaviour, which apply to all relations of ESMA’s agents and other servants with the public, unless they are governed by specific provisions.

The principles set out in this Code do not apply to the relations between ESMA and its agents and other servants. Those relations are governed by the Staff Regulations and the Conditions of Employment of Other Servants.

Article 4 – Lawfulness

The agent or other servant of ESMA shall act according to law and apply the rules and procedures laid down in Union legislation. The agent or other servant of ESMA shall in particular take care that decisions which affect the rights or interests of individuals have a basis in law and that their content complies with the law.

Article 5 – Absence of discrimination

In dealing with requests from the public and in taking decisions, the agent or other servant of ESMA shall ensure that the principle of equality of treatment is respected. Members of the public who are in the same situation shall be treated in a similar manner.

If any difference in treatment is made, the agent or other servant of ESMA shall ensure that it is justified by the objective relevant features of the particular case.

The agent or other servant of ESMA shall in particular avoid any unjustified discrimination between members of the public based on nationality, sex, racial or ethnic origin, religion or belief, disability, age, or sexual orientation.

Article 6 – Proportionality

When taking decisions, the agent or other servant of ESMA shall ensure that the measures taken are proportional to the aim pursued. The agent or other servant shall in particular avoid restricting the rights of the citizens or imposing charges on them, when those restrictions or charges are not in a reasonable relation with the purpose of the action pursued.

When taking decisions, the agent or other servant of ESMA shall strike a fair balance between the interests of private persons and the general public interest.

Article 7 – Absence of abuse of power

Powers shall be exercised solely for the purposes for which they have been conferred by the relevant provisions. The agent or other servant of ESMA shall in particular avoid using those powers for purposes which have no basis in the law or which are not motivated by any public interest.

Article 8 – Impartiality and independence

The agent or other servant of ESMA shall be impartial and independent. The agent or other servant shall abstain from any arbitrary action adversely affecting members of the public, as well as from any preferential treatment on any grounds whatsoever.

The agent or other servant of ESMA shall not be guided by any outside influences of whatever kind, including political influences, or by personal interests.

The agent or other servant shall abstain from being involved in the taking of a decision on a matter concerning his or her own interests, or those of his or her family, relatives, friends and acquaintances.

Article 9 – Objectivity

When taking decisions, the agent or other servant shall take into consideration the relevant factors and give each of them its proper weight in the decision, whilst excluding any irrelevant element from consideration.

Article 10 – Legitimate expectations and consistency

The agent or other servant of ESMA shall be consistent in his own administrative behaviour as well as with the administrative action of ESMA. The agent or other servant shall follow ESMA's normal administrative practices, unless there are legitimate grounds for departing from those practices in an individual case.

The agent or other servant shall respect the legitimate and reasonable expectations that members of the public have in the light of how ESMA has acted in the past.

Article 11 – Fairness

The agent or other servant of ESMA shall act fairly and reasonably.

Article 12 – Courtesy

The agent or other servant of ESMA shall be service-minded, correct, courteous and accessible in relations with the public. When answering correspondence, telephone calls and e-mails, the agent or other servant shall try as much as possible to be helpful and to reply to the questions which are asked.

If the agent or other servant is not responsible for the matter concerned, he shall direct the citizen to the appropriate agent or other servant.

If an error occurs which negatively affects the rights or interests of a member of the public, the agent or other servant shall apologise for it.

Article 13 – Reply to letters in the language of the citizen

The agent or other servant shall ensure that every citizen of the Union or any member of the public who writes to ESMA in one of the Treaty languages receives an answer in the same language.

Article 14 – Acknowledgement of receipt and indication of the competent agent or other servant

Every letter or complaint to ESMA shall receive an acknowledgement of receipt within a period of two weeks, except if a substantive reply can be sent within that period.

The reply or acknowledgement of receipt shall indicate the name and the telephone number of the agent or other servant who is dealing with the matter, as well as the service to which he or she belongs.

No acknowledgement of receipt and no reply need be sent in cases where letters or complaints are abusive because of their excessive number or because of their repetitive or pointless character.

Article 15 – Obligation to transfer to the competent service of ESMA

If a letter or a complaint to ESMA is addressed or transmitted to a unit or sector which has no competence to deal with it, its services shall ensure that the file is transferred without delay to the competent service of ESMA.

The service which originally received the letter or complaint shall notify the author of this transfer and shall indicate the name and the telephone number of the agent or other servant to whom the file has been passed.

Article 16 – Right to be heard and to make statements

In cases where the rights or interests of individuals are involved, the agent or other servant shall ensure that, at every stage in the decision-making procedure, the rights of defence are respected.

Every member of the public shall have the right, in cases where a decision affecting his rights or interests has to be taken, to submit written comments and, when needed, to present oral observations before the decision is taken.

Article 17 – Reasonable time-limit for taking decisions

The agent or other servant shall ensure that a decision on every request or complaint to ESMA is taken within a reasonable time limit, without delay, and in any case no later than two months from the date of receipt. The same rule shall apply to answering letters from members of the public.

If a request or a complaint to ESMA cannot, because of the complexity of the matters which it raises, be decided upon within the above-mentioned time-limit, the agent or other servant shall inform the author thereof as soon as possible. In that case, a definitive decision should be notified to the author in the shortest time.

Article 18 – Duty to state the grounds of decisions

Every decision or recommendation of ESMA which may adversely affect the rights or interests of a private person shall state the grounds on which it is based by indicating clearly the relevant facts and the legal basis of the decision.

The agent or other servant shall avoid making decisions which are based on brief or vague grounds or which do not contain individual reasoning.

If it is not possible, because of the large number of persons concerned by similar decisions, to communicate in detail the grounds of the decision and where standard replies are therefore made, the agent or other servant shall guarantee that he subsequently provides the citizen who expressly requests it with an individual reasoning.

Article 19 – Indication of the possibilities of appeal

A decision or recommendation of ESMA which may adversely affect the rights or interests of a private person shall contain an indication of the appeal possibilities available for challenging the

decision or recommendation. It shall in particular indicate the nature of the remedies, the bodies before which they can be exercised, as well as the time limits for exercising them.

Article 20 – Notification of the decision or recommendation

The agent or other servant shall ensure that decisions or recommendations which affect the rights or interests of individual persons are notified in writing, as soon as the decision has been taken, to the person or persons concerned.

The agent or other servant shall abstain from communicating the decision to other sources until the person or persons concerned have been informed.

Article 21 – Data protection

The agent or other servant who deals with personal data concerning a citizen shall respect the principles laid down in 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.

The agent or other servant shall in particular avoid processing personal data for non-legitimate purposes or the transmission of such data to non-authorized persons.

Article 22 – Requests for information

The agent or other servant shall, when he has responsibility for the matter concerned, provide members of the public with the information that they request. The agent or other servant shall take care that the information communicated is clear and understandable.

If an oral request for information is too complicated or too comprehensive to be dealt with, the agent or other servant shall advise the person concerned to formulate his demand in writing.

If, because of its confidentiality, an agent or other servant may not disclose the information requested, he or she shall, in accordance with 0 of this Code, indicate to the person concerned the reasons why he cannot communicate the information.

Further to requests for information on matters for which he has no responsibility, the agent or other servant shall direct the requester to the competent person and indicate his name and telephone number. Further to requests for information concerning another Union institution or body, the agent or other servant shall direct the requester to that institution or body.

Where appropriate, the agent or other servant shall, depending on the subject of the request, direct the person seeking information to the unit or sector responsible for providing information to the public.

Article 23 – Requests for public access to documents

Further to requests for access to documents of ESMA, the agent or other servant shall give access to these documents in accordance with the decision on access to ESMA documents.

If the agent or other servant cannot comply with an oral request for access to documents, the citizen shall be advised to formulate it in writing.

Article 24 – Keeping of adequate records

ESMA's units and divisions shall keep adequate records of their incoming and outgoing mail, of the documents they receive, and of the measures they take.

Article 25 – Public access to the Code

ESMA will take the necessary measures in order to ensure that this Code enjoys the widest possible publicity amongst the citizens. It will in particular make it available on its Internet site and will provide a copy of this Code to any citizen who requests it.

Article 26 – Right to complain to the European Ombudsman

Any failure of an agent or other servant to comply with the principles set out in this Code may be the subject of a complaint to the European Ombudsman in accordance with Article 228 of the Treaty on the Functioning of the European Union and the Statute of the European Ombudsman.

Article 27 – Revision

Within two years of entry into force of this Decision, the Executive Director shall review the implementation of this Decision and submit a report to the European Ombudsman.

Article 28 – Entry into force

This decision enters into force on the day after its adoption.

Done at Paris on 11 January 2011

[]

Vice-Chair

For the Management Board

Annex X – List of ESMA Public Holidays 2013

1 January	Tuesday, New Year's Day
2 January	Wednesday, the day following New Year's Day
28 March	Maundy Thursday/Holy Thursday
29 March	Good Friday
1 April	Easter Monday
1 May	Wednesday, Labour Day
9 May	Thursday, anniversary of the declaration made by President Robert Schuman in 1950 and Ascension Day
10 May	Friday, the day following Ascension Day
20 May	Whit Monday
15 August	Thursday, Assumption Day
16 August	Friday, the day following Assumption Day
1 November	Friday, All Saints' Day
24 December to 31 December	Tuesday (6 end-of-year days) to Tuesday