



European Securities and  
Markets Authority

# Technical Specifications and monitoring

Data gathering and impact assessment on implementing measures for the Markets in Financial  
Instruments Directive and Regulation  
Invitation to tender n° OJ/16/07/2013 – PROC/2013/005



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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 coordination of national supervisory activity.

Further information about the Authority can be found on ESMA website [www.esma.europa.eu](http://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 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 contract

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.

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.

ESMA will require a certain degree of flexibility from the successful tenderer when executing the contract as the point in time when the negotiations for the recast Markets in Financial Instruments Directive (MiFID) and the Markets in Financial Instruments Regulation (MiFIR) will be finalised as well as the timelines granted to ESMA to produce technical standards and technical advice remain unclear at this stage. As described in paragraph 2.3 ESMA therefore reserves the right to delay the start of the work for any of the topics described in paragraph 2.2.2 in line with any delays in the conclusion of the negotiations on MiFID and MiFIR in Council and European Parliament.

Nonetheless, ESMA considers it necessary to launch the tender process at this stage as launching it after final texts for MiFID and MiFIR are agreed would – due to the time period necessary for awarding the contract – not leave sufficient time for the successful tenderer and ESMA to produce the required impact assessments. As the texts of MiFID and MiFIR are still liable to change in the on-going negotiations ESMA also needs to point out that not all deliverables specified in this tender may be required if indeed the corresponding relevant provisions in MiFID and MiFIR are dropped.

### 1.2 Timetable

Activity	Date	Comments
Launching of tender	16/07/2013	Dispatch of contract notice to the OJ
Deadline for request of clarifications from ESMA	<del>21/08/2013</del> 06/09/2013	
Site visit or clarification meeting (if any)	-	Not applicable to this tender
Last date on which clarifications are issued by ESMA	<del>27/08/2013</del> 13/09/2013	
Deadline for submission of offers	<del>02/09/2013</del> <b>New deadline:</b> <b>20/09/2013</b>	At 16:00 local time (Paris 12.00h, GMT + 1)
Interviews (if any)	-	Not applicable to this tender

Opening session	<del>09/09/2013</del> 27/09/2013	At 10:00 local time
Date for evaluation of offers	Opening date plus 1 week	Estimated
Notification of award to the selected Tenderer	Evaluation date plus 3 weeks	Estimated
Contract signature	Notification date plus 2 weeks	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, the EEA.

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

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

In addition, each member of the consortium must provide the required evidence for the exclusion and selection criteria (see section 3 of these tender specifications). Concerning the selection criteria '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 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, 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.

## 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: “**Data gathering and impact assessment on implementing measures for the Markets in Financial Instruments Directive and Regulation OJ/16/07/2013 – PROC/2013/005**”;
- 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.

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 IX**;
- 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** in **Annex V**; 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).

2. Envelope B – Technical proposal
  - One original (unbound, signed and clearly marked as “Original”) and three 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 three copies of the Financial Proposal, based on the format in found in **Annex VII**.

#### **b) Language**

Offers must be submitted in one of the official languages of the European Union. ESMA’s working language, however, is English. ESMA therefore strongly prefers 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, fax or email to:

ESMA  
Attn: Procurement Office  
CS 60747  
103, Rue de Grenelle  
75345 Paris, CEDEX France  
email: [procurement@esma.europa.eu](mailto: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 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.

Tenderers should regularly check 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 cor-



rected, 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**

No site visit at ESMA's premises are deemed necessary for this procedure

### **1.10 Interviews**

Not applicable

### **1.11 Division into Lots**

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

### **1.12 Variants**

Not applicable.

### **1.13 Confidentiality and public access to documents**

All documents presented by the tenderer become the property of 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:

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

A draft contract is attached to these technical specifications as **Annex I**.

ESMA wishes to conclude a framework service contract, as and when required, for a period of two years.

A framework contract will establish the terms governing specific contracts to be awarded during two years; in particular, with regard to price.

Signature of the framework contract imposes no obligation on the Authority to order services. Only the implementation of the framework contract through specific contracts is binding for ESMA.

Each specific contract will contain details of deliverables and timelines for particular services to be provided.



Being a framework contract, ESMA is not obliged to award all the tasks contained in this framework contract. Therefore, ESMA retains the right to contract only a sub-set of the tasks and also to contract them at different times, within the contractual period. Likewise, ESMA does not guarantee the full use of the estimated market value of this tender.

## **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**

ESMA is an independent EU Authority that contributes to safeguarding the stability of the European Union's financial system by ensuring the integrity, transparency, efficiency and orderly functioning of securities markets, as well as enhancing investor protection. In particular, ESMA's work on securities legislation contributes to the development of a single rule book in Europe, notably through the drafting of Regulatory and Implementing Technical Standards (RTS and ITS). This serves two purposes; firstly, it ensures the consistent treatment of investors across the Union, enabling an adequate level of protection of investors through effective regulation and supervision. Secondly, it promotes equal conditions of competition for financial service providers, as well as ensuring the effectiveness and cost efficiency of supervision for supervised companies.

In October 2011, the European Commission adopted proposals for a recast of MiFID and MiFIR which are intended to supersede Directive 2004/39/EC on Markets in Financial Instruments.

Both pieces of legislation are still in the negotiation phase. According to the proposals by the European Commission as well as the texts currently negotiated in Council and European Parliament, ESMA will have to prepare a significant number of draft RTS and ITS on a large number of provisions in MiFID and MiFIR. The Technical Standards to be proposed by ESMA to the European Commission for endorsement should be subject to an impact assessment carried out in accordance with Regulation 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) and ESMA's internal procedures on conducting cost-benefit analysis.

In addition, the draft MiFID and MiFIR texts entail a number of provisions empowering the European Commission to adopt Delegated Acts and Implementing Acts. While it will ultimately be the responsibility of the European Commission to conduct impact assessments for any legislative acts based on these empowerments, ESMA expects the European Commission to request technical advice from ESMA before developing such acts. For ESMA to be able to deliver sound technical advice it is also necessary to undertake an independent data gathering exercise to properly assess the impact of recommendations made to the European Commission.

The contract will therefore cover a number of potential:

- technical standards and guidelines for which an in-depth ESMA cost-benefit analysis will be required; and
- legislative acts by the European Commission for which a thorough data gathering will be necessary.

Due to the legal texts still being negotiated it is not in all cases clear yet whether an empowerment will be for ESMA standards or Commission legislative acts. ESMA has marked those areas in the list of tasks under 2.2.2 where based on the current texts in Council and Parliament a data gathering should suffice because implementing measures should have the format of delegated acts by the Commission. Tenderers are asked to submit their bids on that basis.

## 2.2 Description of the services & scope of the contract

### 2.2.1 Contract objectives and scope

In the context of the preparation of ESMA technical standards and technical advice to the European Commission the purpose of this study is to gather relevant data, analyse it and test policy options in order to:

- enable ESMA to prepare an in-depth impact assessment that meets the standards of the Impact Assessment Board of the European Commission; and
- enable ESMA to prepare high-quality technical advice to be delivered to the European Commission for future legislative acts to be prepared by the European Commission.

The basis for the work of the contractor, in terms of indications of the direction of the regulations or policy options to analyse will be twofold:

- The MIFID/MIFIR texts, as available at the time of the start of the contract.
- A draft Discussion Paper that ESMA will provide to the contractor. This discussion paper will identify and analyse many of the elements that ESMA will have to develop (technical standards or advice). It will contain ESMA's initial approach to those areas and, whenever possible, a description of the main options to address them. Depending on the calendar of the legislative negotiations, this discussion paper might be already published by ESMA for consultation by the time the contract starts. Otherwise, ESMA will provide a confidential copy of the latest version to the contractor.

ESMA expects the contractor to use the Discussion Paper as a starting point to their analysis, at least for all the points contained in this Discussion Paper.

The basis for the work of the contractor, in terms of indications of the direction of the regulations or policy options to analyse will be twofold:

The contractor will be able to use its own methodology but this should as compatible as possible with the Impact Assessment Guidelines by the European Commission ([http://ec.europa.eu/governance/impact/commission\\_guidelines/docs/iag\\_2009\\_en.pdf](http://ec.europa.eu/governance/impact/commission_guidelines/docs/iag_2009_en.pdf)). These methodologies include conducting surveys and/or interviews, given the need to collect factual evidence and the requirement set in the European Commission guidelines to get relevant input for the impact assessment.

More specifically, for each of the categories mentioned under 2.2.2 here below, ESMA expects the contractor to:

- Develop a clear baseline scenario
- Identify (direct and indirect) economic impacts and how they occur (causality).
- Identify who is affected (i.e. financial intermediaries, investors, national competent authorities, ESMA, persons outside the EU) and in what way.
- Assess the impacts against the baseline in qualitative, quantitative and monetary terms. If quantification is not possible explain why.
- When costs are identified, they shall be evidenced and substantiated with relevant figures, they shall include where relevant any types of costs (one off, recurrent or on-going; setting-up, maintenance etc.).
- Identify benefits in particular with regard to the objectives set out for the revision of MiFID (e.g. increasing transparency, reinforcing confidence in markets, reducing unregulated areas and ensuring adequate powers for supervisors to fulfil their tasks).
- Identify and assess administrative burden/simplification benefits when possible.

- Consider the risks and uncertainties in the policy choices, including obstacles to compliance.
- Weigh-up the positive and negative impacts for each option on the basis of criteria clearly linked to the objectives.
- Where feasible, display aggregated and disaggregated results.
- Present comparisons between options by categories of impacts or affected stakeholder.
- The contractor shall also identify any weaknesses or limitations in the analysis conducted resulting from external factors, such as the absence of accurate data, and duly justify them.

### 2.2.2 Description of the work/tasks

The contractor will be expected to:

- gather and analyse data and test policy options in relation to future technical standards and guidelines<sup>1</sup>
- gather and analyse data in relation to legislative acts (items marked below as ‘data gathering only’ where ESMA is not asking for a full cost-benefit-analysis but is rather looking for contractors to collect data and information which shall form the basis for technical advice to be delivered to the European Commission)

covering the following topics (references to Articles are based on the numbering in the proposals by the European Commission of 20 October 2011):

- Specifying the criteria for establishing when an activity is to be considered as ancillary to the main business of a person (Article 2 (1) (d)(i) and (i), in particular
  - collecting data on capital employed for the ancillary activity in absolute terms and in relative terms in relation to the capital employed for the main business;
  - collecting data on the size of the trading activity in financial instruments in absolute terms and in relative terms in relation to the overall market trading activity in a particular asset class;
- organisational requirements for investment firms engaging in algorithmic trading (Article 17 MiFID Draft), in particular
  - setting-up effective systems and controls to ensure orderly trading and effective business continuity arrangements;
  - effective systems and controls for granting direct market access;
  - effective systems and controls to ensure that clearing services are only provided to suitable persons governed by appropriate requirements;
- rules, systems and procedures for SME Growth Markets (Article 35 MiFID Draft; **data gathering only**), in particular;
  - initial and on-going criteria for admission to trading;
  - consequences of the application of particular financial reporting standards;
  - consequences of different dissemination and storage requirements;

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<sup>1</sup> See Art. 10(1) , 15(1) and 16(2) of Regulation No 1095/2010.

- requirements for regulated markets, MTFs and OTFs in respect of system resilience, circuit breakers and electronic trading (Article 51 MiFID Draft in conjunction with Articles 19(4) and 20(4) MiFID Draft), in particular
  - setting-up effective systems and controls to ensure resilient trading systems with adequate capacity;
  - setting-out conditions for trading halts;
  - setting-out order-to-transaction ratios;
  - setting-out minimum tick sizes;
  - effective systems, procedures and arrangements for granting direct market access;
  - ensuring fair and non-discriminatory co-location services and fee structures.
- the determination of position limits for the trading in commodity derivatives (Article 59 MiFID Draft), in particular;
  - establishing quantitative thresholds;
  - taking into account a series of factors in respect of the financial instruments concerned, the underlying commodities and the actors in the market in order to determine the quantitative thresholds;
- the framework for a position reporting system by categories of traders for trading commodity derivatives, emission allowances and derivatives thereof (Article 60 MiFID Draft), in particular;
  - determining format and content of position management reports;
  - determining thresholds to be potentially applied and refinements of categories of traders who should report;
- authorisation and organisational requirements for Approved Publication Arrangements (APAs) Consolidated Tape Providers (CTPs) and Approved Reporting Mechanisms (ARMs) (Articles 63 to 68 MiFID Draft), in particular;
  - determining the cost impact associated with different levels of harmonisation in respect of the data to be submitted and published;
- determining what constitutes a reasonable commercial basis for the provision of data (Articles 66(6), 67(7), 68(5) MiFID and Articles 12(2), 14(6), 18(3) MiFIR; **data gathering only**)
- calibrating the requirements to determine whether an investment firm internalises on a frequent, systematic and substantial basis and therefore shall be classified as a systematic internaliser (Article 2(3) MiFIR Draft);
- calibrating the thresholds foreseen in MiFIR for the future pre- and post-trade transparency regime to apply to equities and non-equities with a focus on the parameters described in Article 2(7a) MiFIR Draft; more in detail the obligations to be calibrated are the following:
  - Framing of pre-trade transparency obligations and waivers for equity and equity-like instruments (Article 4 MiFIR Draft);
  - framing of post-trade transparency obligations and conditions for a deferred publication for equity and equity-like instruments (Article 6 MiFIR Draft in conjunction with Article 19 MiFIR Draft);

- framing of pre-trade transparency obligations and waivers for non-equity instruments (Article 8 MiFIR Draft);
- framing of post-trade transparency obligations and conditions for a deferred publication for non-equity instruments (Article 10 MiFIR Draft in conjunction with Article 20 MiFIR draft);
- determination of a threshold below which quotes by systematic internalisers in non-equities shall be accessible to other clients of the systematic internaliser (Articles 17 and 18(2) MiFIR Draft);
- determination of minimum liquidity levels for derivatives to be traded on organised venues (Article 26 MiFIR Draft);
- determination of the level of disaggregation of data that is being made available to the public (Article 11 MiFIR Draft);
- determination of conditions and factors to be taken into account for granting or refusing access to
  - CCPs;
  - trading venues; and
  - benchmarks (Articles 28, 29 and 30 MiFIR Draft).
- determination of criteria and factors for specifying
  - the existence of a threat to the stability of the whole or part of the financial system or to the orderly functioning and integrity of financial markets or commodity markets;
  - the appropriate reduction of a position or exposure;
  - situations where a risk of regulatory arbitrage could arise (Article 35 MiFIR Draft; **data gathering only**).
- organisational requirements for investment firms and branches of third country firms performing investment services and/or activities and ancillary services (Article 16 of MiFID draft - **data gathering only**), including:
  - policies and procedures sufficient to ensure compliance of the firm including its managers, employees and tied agents with its obligations under the provisions of MiFID as well as rules governing personal transactions by such persons;
  - organisational and administrative arrangements designed to prevent conflicts of interest from adversely affecting the interests of clients;
  - product governance
  - steps to ensure continuity and regularity in the performance of investment services and activities;
  - outsourcing agreements;
  - record keeping of all services and transactions undertaken (including recording of telephone conversations or electronic communications);
  - arrangements for the safeguard of clients' ownership rights when holding financial instruments and funds on behalf of clients;
  - title transfer collateral arrangements';

- rules, systems and procedures concerning measures to ensure that investment firms comply with the principles set out in Article 24 of MiFID draft (**data gathering only**), and in particular:
  - information provided to clients (“independence” of advice and nature of services provided);
  - assessment of suitability (on-going suitability, basis used for the assessment);
  - remuneration policies and practices and assessment of staff;
  - requirements for firms’ product development processes.
- rules for the assessment and the supervision of cross-selling practices indicating, in particular, situations in which cross-selling practices are not compliant with obligations in paragraph 1 of Article 24 of MiFID draft.
- determination of when an activity is to be considered as ancillary to the main business on a group level as well as for determination of when an activity is provided in an incidental manner (Article 2 of MiFID draft – “exemptions”). The analysis shall take into account at least the following elements:
  - the extent to which the activity is objectively measurable as reducing risks directly related to the commercial activity or treasury financing activity;
  - the capital employed for carrying out the activity.

The contractor should also identify and analyse further criteria to help identify whether an activity is provided in an incidental manner and should therefore be considered exempt from MiFID requirements.
- determination of the specific content, the format and the periodicity of data related to the quality of execution to be published by venues (Article 27 of MiFID draft). This includes:
  - the specific content, the format and the periodicity of data related to the quality of execution to be published in accordance with paragraph 2 of Article 27, taking into account the type of execution venue and the type of financial instrument concerned;
  - the content and the format of information to be published by investment firms in accordance with paragraph 5 of Article 27, second subparagraph.
- rules regarding the obligation to execute orders on terms most favourable to the client (Article 27 of MiFID draft), (**data gathering only**), in particular:
  - criteria for determining the relative importance of the different factors that may be taken into account for determining the best possible result taking into account the size and type of order and the retail or professional nature of the client;
  - factors that may be taken into account when reviewing execution arrangements and the circumstances under which changes to such arrangements may be appropriate;
  - nature and extent of information to provide to clients on their execution policies.
- determination of criteria and factors to be taken into account by competent authorities and ESMA when evaluating product banning initiatives because threats to investor protection or to the orderly functioning and integrity of financial mar-



kets and to the stability of the whole or part of the financial system of the Union arise (Articles 31 and 32 of MiFIR draft – **data gathering only**);

- rules for the suitability assessment of financial instruments incorporating a structure which makes it difficult for the client to understand the risk involved (Article 25 of MiFID draft);
- authorisation requirements for investment firms (Article 7 of MiFID draft). This includes:
  - the tasks of nomination committees required under Article 9;
  - the requirements applicable to the management of investment firms under Article 9(8) and the information for the notifications under Article 9(5);
  - the requirements applicable to shareholders and members with qualifying holdings, as well as obstacles which may prevent effective exercise of the supervisory functions of the competent authority, under Article 10(1) and (2).
- determination of conditions for the assessment of the sufficient initial capital at free disposal of the branch (Article 44 of MiFID draft). The amount of initial capital must be determined in accordance with the requirements of Directive 2006/49/EC, having regard to the nature of the investment service or activity in question;
- determination of content and format of information to be notified by investment firms in accordance with Article 36 and 37 of MiFID draft;
- determination of details of the other relevant order data that constitutes the characteristics of the order, including the identification code of the member or participant which transmitted the order, the identification code of the order, the date and time the order was transmitted, the characteristics of the order, including the type of order, the limit price if applicable, the valid period, and specific order instructions, details of any modification, cancellation, partial or full execution of the order, the agency or principal capacity (Article 22 of MiFIR draft);
- determination of data standards and formats for reporting details of executed transactions in financial instruments, including the methods and arrangements for reporting financial transactions and the form and content of such reports (Article 23 of MiFIR draft);
- determination of criteria for defining a relevant market in terms of liquidity (Article 23 of MiFIR draft); and
- determination of references of the instruments bought or sold, the quantity, the dates and times of execution, the transaction prices, the information and details of the identity of the client, a designation to identify the client on whose behalf the investment firm has executed that transaction, a designation to identify the person and the computer algorithms within the investment firm responsible for the investment decision and the execution of the transaction, a designation to identify the applicable waiver under which the trade has taken place, means of identifying the investment firms concerned, the way in which the transaction was executed, and data fields for the processing and analysis of the transaction reports (Article 23 of MiFIR draft);
- the designation to identify a short sales as defined in Article 2(1)(b) of Regulation 263/2012 in respect of any shares and sovereign debt within the scope of Articles 12, 13 and 17 of that Regulation (Article 23 of MiFIR draft);

- the relevant financial instruments to be reported in accordance with paragraph 2 (Article 23 of MiFIR draft);
- the applications of transaction reporting obligations to branches of investment firms (Article 23 of MiFIR draft);
- what constitutes a reportable transaction for the purpose of this Article (Article 23 of MiFIR draft);
- the data standards to determine the data standards and formats of the instruments reference data to be provided by operators of trading venues in accordance with paragraph 1, including instrument identifiers as well as technical arrangements for supplying the data (Article 23a of MiFIR draft).

### **2.2.3 Deliverables, reporting and project schedule**

ESMA will provide the contractor with documents outlining the proposed technical standards, or technical advice (as the case may be) once they are available in order to carry out the final analysis. These documents might be taken in whole or in part from public consultation documents and may include additional information if considered necessary.

Any non-public document rendered to the contractor under this contract will be deemed strictly confidential and the contractor will not be able to use it for any other purpose than the object of the contract.

The contractor must deliver the following deliverable by the end of the assignment:

- A report setting out the results of the analysis for each work item described under 2.2.2 as well as the methodology used; and
- The data gathered by the contractor for conducting and supporting the analysis, indicating their source.

The final deliverables must be submitted in English.

ESMA will be free to incorporate part or all of the analysis received in its own analysis of costs and benefits and will be the sole owner of the deliverables of the contract.

The contractor is required to produce all the final deliverables in:

- two printed copies and
- an electronic word processor format (.doc) and
- spread sheet files (.xls) with the tables and graphs with data

The contractor shall report to ESMA regarding its work progress on an on-going basis. In addition, the contractor shall meet with ESMA at ESMA offices in Paris at the start and before the finalisation of each phase of the contract. The contractor is also expected to submit interim studies to allow ESMA to provide its feed-back before the finalisation of each study.

The final date for submission of the deliverables for each phase of the contract will be determined at a later stage depending on the progress of the MiFID negotiations.

Periods specified in the contract are calculated in calendar days. Execution of the tasks shall start from date of entry into force of the contract.

Following the award of the specific contract and once ESMA has requested the contractor to start the work on a particular topic in line with the paragraph supra ESMA

expects the following milestones to be delivered by the contractor in respect of each topic:

- Final delivery of all data for the items marked as “data gathering only” 5 months after the start date ;
- a progress report, describing the work done so far and outlining the structure of the final report for all items in relation to ESMA technical standards 5 months after the start date;
- a first draft of the final report to be commented on by ESMA 8 months after the start date;
- the final report 11 months after the start date.

### **2.3 Duration of the contract**

The contract will be concluded for duration of two years.

ESMA is planning to award the contract when a final text of MiFID/MiFIR has been agreed by the European co-legislators.

ESMA reserves the right to delay the start of the work for any of the topics described in paragraph 2.2.2 in line with any delays in the conclusion of the negotiations on MiFID and MiFIR in Council and European Parliament. ESMA would therefore request contractors to start the work on some of the topics described in paragraph 2.2.2 earlier than others. There may therefore be a different ‘start date’ for each topic.

### **2.4 Place of performance of the contract**

The tasks are expected to be performed at the contractor’s premises unless otherwise specified in the contract.

### **2.5 Reference documents**

Not applicable.

### **2.6 Prices**

#### **2.6.1 Currency of tender**

Prices must be quoted in Euro.

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

#### **2.6.2 All-inclusive prices**

**A total price for the project over the 2 years has to be submitted.**

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. (Annex VII to be filled in)

The maximum volume of this contract shall be **€500,000**.

#### **2.6.3 Price revision**

Specific Contracts shall be concluded on the basis of the prices in force on the date on which they are signed. Such prices shall not be 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**

The payment will be performed according to the conditions indicated in the model contract (Annex I), with interim payments and payment of the balance. Payments under the contract shall be executed only if the contractor has fulfilled all their contractual obligations by the date on which the invoice is submitted, including specified deliverables.

### **3. Exclusion and selection criteria**

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#### **3.1 Exclusion criteria**

Tenderers shall be excluded from participation in procurement procedure if they are in any of the following situations:

- a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- b) they 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 the EIB and 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, 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, 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.

#### **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

### **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**

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**

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.

##### **Evidence required**

Proof of economic and financial capacity shall be furnished by the tenderer (i.e. in case of joint tender, the combined capacity of all members of the consortium and identified subcontractors) providing the following documents:

- Copy of the profit & loss account and balance sheet for the last two years for which accounts have been closed,
- Failing that, appropriate statements from banks,
- If applicable, evidence of professional risk indemnity insurance;

If, for some exceptional reason which ESMA considers justified, the tenderer is unable to provide the above documents, he or she may prove his or her economic and financial capacity by any other means which ESMA considers appropriate.

ESMA must at least be notified of the exceptional reason and its justification in the tender. ESMA reserves the right to request any other document enabling it to verify the tenderer's economic and financial capacity.

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

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

The tenderer's technical and professional capacity will be evaluated using the following criteria:

- A) Suitability of the organisation and staffing structure available for the activities covered by the contract;
- B) Relevant qualifications in the fields of financial services regulation and expertise of key personnel allocated to the project: technical experience, knowledge and capability in the area of the study fields as well as the ability to prepare and present clear and concise reports in the English language to an international audience;
- C) Involvement in relevant research activities, particularly for the financial services sector and involvement on subjects related to this tender in the past 5 years.
- D) The tenderer, including all consortium members and any proposed subcontractors, shall in no way be subject to a conflict of interest concerning the implementation of the contract.

**Evidence required**

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

- A) Details of the structure of the organisation (including the number of staff) and relevant subcontractors;
- B) Professional accreditations or references held by the tenderer and relevant subcontractors; CVs of the key experts to carry out the study (preferably using the template in **Annex VI**), covering work experience, education and training, organisational and technical skills as well as an excellent level of English, attesting the drafting and presentation skills;
- C) A list and description of recent activities (in the last 5 years) in the field of financial services regulation; including 2 examples of research or cost benefit analysis projects on subjects related to this tender conducted in an international environment.
- D) A list of contact persons at previous clients to enable ESMA to enquire on their level of satisfaction and the degree of technical expertise demonstrated.

## 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 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:

- A description of the approach proposed and the proposed methods to be applied; means to be used to meet the objectives of the terms of reference and assessment of the main issues, limitations, risks of the analyses to be carried out as well as the proposed mitigation measures;
- Work organisation and planning (including major milestones and dates for meetings with ESMA to report on progress, as requested in section 2.2.3 of these tender specifications);
- Description of the involvement of the proposed key experts (roles and responsibilities) to execute the planned activities, in particular to cover the key analyses and investigations of the study.

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

### 4.2 Technical evaluation

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

No	Criteria	Max points	Awarded score
1	<b>Rationale and methodology:</b> <ul style="list-style-type: none"> <li>- Understanding of the implications of the MiFID review for financial markets, understanding of the logic and relations of the different aspects of the project,</li> <li>- Coverage of the required analyses, data sources, technical issues and proposed methods: adequacy to the tender requirements</li> <li>- Evaluation of the difficulties, limitations and risks given the EU securities markets structure as well the proposed mitigations by the tenderer.</li> </ul>	<b>30</b>	
2	<b>Work organisation and planning within the tenderer/consortium:</b> <ul style="list-style-type: none"> <li>- Description of activities and planning of tasks/work packages (sequence, duration),</li> <li>- Sequence, timing of major milestones in execution of the contract, including in the case of consortium/subcontracting de-</li> </ul>	<b>35</b>	



	<p>scription of the key contributions from each of the consortium members, subcontracting arrangements foreseen.</p> <ul style="list-style-type: none"> <li>- Quality assurance methods and internal organization of the work</li> </ul>		
3	<p><b>Involvement of key personnel:</b></p> <ul style="list-style-type: none"> <li>- Description of the involvement of the proposed experts (roles and responsibilities) to cover the main project activities.</li> <li>- Previous experience in the area of tender</li> </ul>	<b>35</b>	
<b>TOTAL</b>		<b>100</b>	

Only tenders scoring **65 points** or more (of a maximum of 100) points against the technical award criteria will have their financial proposal evaluated.

### 4.3 Financial proposal

The financial proposal should contain a total price for the project and should be presented in the format found in **Annex VII**.

### 4.4 Choice of the selected tender

The contract will be awarded to the tenderer offering the best value for money, 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:

Score for tender X	=	$\frac{\text{cheapest price}}{\text{price of tender X}}$	x	35	+	$\frac{\text{Total quality score of tender X}}{100}$	x	65
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### 4.5 No obligation to award

Completing the procedure of the call for tenders in no way imposes on ESMA an obligation to award the contract. 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

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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 – Curriculum Vitae template

Annex VII – Financial proposal form

Annex VIII – Confirmation of offer submission

Annex IX – Tender submission checklist



Data gathering and impact assessment on implementing measures for the Markets in Financial Instruments Directive and Regulation

## **Annex I – Draft contract**

Please see the attached document

## 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:

- 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 the 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.

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Full name	Date	Signature
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### **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](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](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](http://ec.europa.eu/budget/library/contracts_grants/info_contracts/legal_entities/legEnt_public_en.pdf)



Data gathering and impact assessment on implementing measures for the Markets in Financial Instruments Directive and Regulation

## **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](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)	





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## **Annex VI – Curriculum Vitae template**

A template of ESMA's preferred Curriculum Vitae format is available from:

<http://europass.cedefop.europa.eu/europass/home/vernav/Europass+Documents/Europass+CV.csp>

## Annex VII – Financial proposal form

**Company:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

The maximum estimated budget for this assignment is **500,000 euros**.

### **A total price for the project over the 2 years has to be submitted.**

Prices should be quoted free of all duties, taxes and other charges including VAT, as ESMA is exempt from such charges under Article 3 and 4 of the Protocol on the Privileges and Immunities of the European Union. (See section 2.3.5).

The total price must be fixed and **include all costs** (project management, quality control, training of the contractor's staff, support resources, etc.) and **all expenditure** (management of the firm, secretarial services, social security, salaries, etc.) incurred directly and indirectly by the contractor in performance of the tasks. In particular, unit prices for services provided on the contractor's premises and in **the Contracting Authorities' premises in Paris must also include travel and accommodation costs**.

The table below shall be completed in order to give an indication of how the various components of the contract are weighted by the tenderer.

Item	Amount
1. Price for preparing the impact assessment in respect of requirements applicable to investment firms and trading venues in respect of automated trading (Articles 17 and 51 MiFID Draft)	€ _____
2. Price for preparing the impact assessment in respect of requirements applicable to commodity derivatives markets (Articles 59 and 60 MiFID Draft) and for specifying criteria for establishing when an activity is to be considered as ancillary (Article 2 (1) (d)(i) and (i) MiFID Draft)	€ _____
3. Price for preparing the impact assessment in respect of authorisation and organisational requirements of APAs, CTPs and ARMs (exact Articles depend on the ultimate solution on the consolidated tape) and in respect of the level of disaggregation of data being made available to the public (Article 11 MiFIR Draft)	€ _____
4. Price for calibrating the requirements in respect of the pre- and post-trade transparency obligations in MiFIR (Articles 2(3), 2(7a), 4, 6, 8, 10, 17, 18, 19, 20 and 26 MiFIR Draft)	€ _____
5. Price for preparing the impact assessment in respect of access provisions (Articles 28 to 30 MiFIR Draft)	€ _____
6. Price for preparing the impact assessment in respect of cross-selling and suitability assess-	€ _____

ment of financial instruments incorporating a structure (Articles 24 and 25 of MiFID draft)	
7. Price for preparing the impact assessment and data gathering in respect of best execution topics (Article 27 of MiFID draft)	€ _____
8. Price for preparing the impact assessment in respect of requirements on the authorisation of investment firms and determination of initial capital at free disposal of a branch (Articles 7 and 44 of MiFID draft)	€ _____
9. Price for preparing the impact assessment in respect of content and format of information to be notified by investment firms in accordance with Article 36 and 37 of MiFID draft	€ _____
10. Price for the data gathering exercises in respect of organisational requirements for investment firms and branches of third country firms performing investment services and/or activities and ancillary services (Article 16 of MiFID draft)	€ _____
11. Price for the data gathering exercises in respect of general principles and information to clients (Article 24 of MiFID draft)	€ _____
12. Price for the data gathering exercises in respect of product banning initiatives (Articles 31 and 32 of MiFIR draft)	€ _____
13. Price for preparing the impact assessment in respect of transaction reporting by investment firms (Article 23 MiFIR Draft)	€ _____
14. Price for preparing the impact assessment in respect of provision of instrument reference data by operators of trading venues (Article 23a MiFIR draft)	€ _____
15. Price for the data gathering exercises in respect of the SME Growth Market Concept (Article 35 MiFID Draft), determining a reasonable commercial basis for the provision of data (exact Articles to be determined) and determining factors for the use of position management powers (Article 35 MiFIR Draft).	€ _____
16. Overall	€ _____
<b>TOTAL PRICE FOR 2 YEARS PROJECT</b>	<b>€ _____</b>



## **Annex VIII – 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: “Data gathering and impact assessment on implementing measures for the Markets in Financial Instruments Directive and Regulation”**

**Publication Reference:** OJ/16/07/2013 – PROC/2013/005

Attn: ESMA, Attention to the Procurement Office

Email: [procurement@esma.europa.eu](mailto: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 IX – 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: \_\_\_\_\_