



European Railway Agency

SAFETY

**Specifications attached to the Invitation to Tender No.**

**ERA/2011/SAF OP 03**



**BENCHMARKING STUDY OF NSA ENFORCEMENT POWERS**

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## Section A. Introduction

### A.1. What is ERA?

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

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

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

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

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

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

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

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

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

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

1. Part 1, Title 5 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities;
2. Part 1, Title 5 of Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Union;
3. Part 1, Title 5 of Commission Regulation (EC, Euratom) No 652/2008 of 9 July 2008 amending Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities;
4. The World Trade Organisation's Agreement on Government Procurement, which the European Union joined following Council Decision of 16 November 1987 concerning the conclusion of the Protocol amending the GATT Agreement on Government Procurement;
5. Regulation of the European Railway Agency adopted on 30.10.2007 laying down detailed rules for the implementation of the Financial Regulation of 15 July 2004 and amended on 28/10/2008 applicable to the Budget of the European Railway Agency and which can be found at the following link:



<http://www.era.europa.eu/Document-Register/Pages/ERA-Implementing-Rules.aspx>

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

6. the provisions mentioned at 1. and 2. above are largely similar to those contained in the European Union's public procurement directive, namely European Parliament and Council Directive 2004/18/EC of 31 March 2004, which is applicable to the Member States; this Directive entered into force on 30 April 2004 and replaced former legislation in this field, entered into force on 30 April 2004 and replaced former legislation in this field, namely Council Directive 93/36/EEC of 14 June 1993 and Council Directive 92/50/EEC of 18 June 1992;
7. principles arising from the European Court of Justice's case-law in the field of procurement are binding on the European institutions;
8. prospective tenderers are legitimately entitled to expect the Agency to manage its calls for tenders in accordance with principles arising from the European Ombudsman's decisions;
9. the Agency's staff follows the "Code of Good Administrative Behaviour" in their relations with the public, as defined by the Executive Director decision of 10 July 2007.

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

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Participation in the tendering procedures of the Agency is open on equal terms to all natural and legal persons from one of the EU Member States and to all natural and legal persons in a third country which has a special agreement with the European Union in the field of public procurement on the conditions laid down in that agreement. Tenderers must indicate clearly in which country they have their headquarters (legal person) or domicile (natural person). Operators in third countries which have signed an agreement with the European Union in the field of public procurement are allowed to take part in the Tendering procedure on the conditions laid down in this agreement.

The Agency shall not accept Tenders submitted by operators established in third countries which have not signed such an agreements with the European Union.

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

Tenderers are recommended to consult the Guidelines for Tenderers published in our web site at the following link: <http://www.era.europa.eu/The-Agency/Procurement/Pages/home.aspx>

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

Tenderers must submit an offer that comprises of the following 3 elements:

#### B.1.1. Technical proposal

The technical proposal must be consistent with the terms of reference and contain all information requested in **section C.3**. In preparing the technical proposal you should bear in mind the award criteria against which it will be evaluated, see **section C.6**.

#### B.1.2. Financial proposal

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

Prices must be quoted free of all duties, taxes and other charges (including VAT) as ERA is exempt from such charges under Articles 3 and 4 of the Protocol on the privileges and immunities of the European Union. The amount of VAT must be shown separately.

#### B.1.3. Supporting documentation

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

- **Declaration of eligibility**

This declaration must be provided based on the format found in **section D.1**. More information on the eligibility to tender is provided in point 5 below.

- **Selection criteria documentation**

All documentation requested in **section C.5**.

- **Tenderer administrative information**

This information is necessary to allow ERA to produce the contractual documentation in the event you are awarded the contract. This information is particularly important for payments, since payments will be made by bank transfer to the account indicated by the tenderer in the standard forms. The standard forms to be used can be found in **section D.2**.

- **Checklist**

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

### B.2. Contacts between ERA and the tenderer

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

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



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

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

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

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

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

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

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

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

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

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

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

### **B.4. Can a consortium of companies submit an offer?**

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Joint offers from consortia of service providers are permitted provided that conditions for adequate competition are observed. The consortium must clearly indicate which service provider will be carrying out which tasks as well as who has been appointed by the others as the lead partner.

### **B.5. Do I comply with all formal requirements to be eligible for tendering?**

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#### **B.5.1. Exclusion criteria**

Tenderers in order not to be excluded from tender participation should not be in one of the situations described in the declaration of eligibility under **section D.1**.

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

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

This evidence is to be provided by the successful tenderer:

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

Where no such certificate is issued in the country concerned, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.

### **B.5.2. Misrepresentation and corruptive practices**

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

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

### **B.6. Confidentiality & public access to documents**

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

- i Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, and;
- ii Council Regulation (EC) No 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

### **B.7. Where do I find the standard provisions ERA applies in its contracts?**

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

### **B.8. How should I report on my progress?**

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In order to ensure that public funds are being spent correctly, the Contractor chosen as a result of this tendering procedure may be required to submit reports on the progress of the assignment. If applicable, the nature and frequency of these reports is detailed in the terms of reference.

## B.9. How and when should I present my offer?

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### B.9.1. Language

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

### B.9.2. Dates and postal address

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

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

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

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

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

### B.9.3. Double envelope system

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

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

- the reference number of the invitation to tender no. [ERA/2011/SAF/OP/03](#)
- the project title: **"BENCHMARKING STUDY OF NSA ENFORCEMENT POWERS"**
- the name of the Tenderer
- the indication "Offer - Not to be opened by the internal mail service".
- the address for submission of offers (see above)
- the date of posting should be legible on the outer envelope

The **outer envelope or parcel** includes **two innermost envelopes** containing one the original paper version of the technical proposal (signed and clearly marked as "**Original**") and three copies on CD-ROM and the other the financial proposal (signed and clearly marked as "**Original**") and three copies on CD-ROM. Paper version of copies are not requested. Any information presented in tabular form on a CD-ROM should be in a usable format such as a worksheet. In the event of discrepancies between the paper and electronic versions, the paper version will be considered authentic.

#### **B.9.4. How will my offer be evaluated?**

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

#### **B.9.5. Offer opening session**

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

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

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

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

#### **B.9.6. Offer evaluation session**

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

1. The evaluation committee first discusses the eligibility and capacity of the tenderer to perform the contract in view of the Selection Criteria as defined in **section C.5**. If one of the relevant criteria listed under the Selection Criteria is not positive, the offer may not be further evaluated.
2. Each committee member evaluates the technical proposal and awards a score against the Award Criteria as defined in **section C.6**. Weighting the technical quality against the price, the economically most advantageous offer is established.

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

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

### **B.10. Appeals**

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

### **B.11. Intellectual property rights**

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



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

The tenderer shall continue to be bound to this clause after completion of the contract.

## **B.12. Other information**

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The submission of an offer implies acceptance of the terms specified in the "General terms and conditions applicable to contracts" and all provisions laid down in these specifications and its annexes, the invitation to tender and where applicable, additional documents.

Tenderers are expected to examine carefully and respect all instructions and standard formats contained in these specifications and the invitation to tender. An offer which does not contain all the required information and documentation may be rejected.

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

The tenderer shall be bound by his offer for a period of 90 days following the closing date for submission of offers. The successful tenderer must maintain its offer for a further 60 days from the date of notification of the award.

Where a maximum budget is mentioned in the terms of reference, any tenderer submitting a financial proposal exceeding this budget will be rejected.

All documents presented by the tenderer become the property of ERA and are deemed confidential. ERA will not reimburse expenses incurred in preparing and submitting offers.

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

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

## Section C. Specific information related to this Tender

### C.1. Timetable

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

**Title:** ERA/2011/SAF/OP/03 – BENCHMARKING STUDY OF NSA ENFORCEMENT POWERS

Summary timetable	Date	Comments
Launch date	<b>08/03/2011</b>	Date publication sent to OJ
Deadline for request for clarifications from ERA	<b>08/04/2011</b>	
Last date on which clarifications are issued by ERA	<b>15/04/2011</b>	
<b>Deadline for submission of offers</b>	<b>29/04/2011</b>	Tenders delivered in person shall be submitted no later than <b>12h30 local time</b>
Opening session	<b>06/05/2011</b>	<b>at 14h00 local time</b>
Date for evaluation of offers	<b>consequently</b>	Estimated
Notification of award to the selected Tenderer	<b>Mid-June 2011</b>	Estimated
Contract signature	<b>Early July 2011</b>	Estimated
Commencement date of activities	<b>Mid-July 2011</b>	Estimated
Completion date of activities	<b>within July 2012</b>	The final draft report has to be delivered by this time

### C.2. Terms of reference

The purpose of these Terms of Reference is to give instructions and guidance to candidates about the nature of the offer they will need to submit and to serve as the contractor's mandate during project implementation. The Terms of Reference ensure that the project will be properly conceived by the contractor, that the work is carried out on schedule and that resources will not be wasted.

The Terms of Reference will become part of the contract that may be awarded as a result of this tender.

#### C.2.1. Introduction

Supervision by National Safety Authorities (NSA) of a railway undertaking's (RU) or infrastructure manager's (IM) safety performance after the award of a safety certificate/safety authorisation is seen as a key plank in harmonizing the approach of NSAs, especially in relation to the strategy for migrating to one single safety certificate valid throughout the EU, and in reducing the administrative burdens on RUs seeking to operate

in other Member States. Some high level principles to be applied by the NSA Supervision Regime are set out in two Regulations - one (Commission Regulation (EU) 1158/2010)<sup>1</sup> for railway undertakings (RUs) seeking a safety certificate and another (Commission Regulation (EU) 1169/2010)<sup>2</sup> for infrastructure managers (IMs) seeking a safety authorisation. Together, they make up the Common Safety Method on Conformity Assessment (CSM CA) and more detail on how they should be applied will be a key part of the forthcoming CSM on Supervision.

Article 32 of Directive 2004/49/EC requires Member States to lay down penalties for the infringement of the national provisions which implement the requirement of the Directive. The Article further requires such penalties to be effective, proportionate, non-discriminatory, dissuasive and Member States to notify these requirements to the Commission.

Article 16.2(f) requires NSAs in the Member States to monitor, promote and, **where appropriate, enforce** (our emphasis) and develop the regulatory framework. The CSM CA and the forthcoming CSM on Supervision now provides a large part of that regulatory framework, set at an EU level.

The Agency intends to launch a study to gather more information about what enforcement powers are given to NSAs, how they compare with other Competent Authorities (CA) in other selected industrial sectors and to look at developing good practice models in this area. The outputs from this study will be useful for the Agency's ongoing activity in facilitating moves towards harmonized decision-making by NSAs.

### **C.2.2. Objectives**

In order to build on its existing knowledge of the powers available to NSAs in each Member State to encourage and/or to enforce compliance with the law as part of their supervision activities, the Agency has developed the proposals for this study to:

- benchmark what those powers are;
- examine the use of enforcement in other key industrial activities throughout the EU; and
- try to establish what is good practice in enforcement.

### **C.2.3. Contract Purpose and Expected results**

#### ***C.2.3.1. Scope of work***

This study will provide an analysis of information on the current situation in relation to national requirements. It will include information gathered in the 25 Member States who operate rail systems, as well as in Norway and Switzerland..

The study will map what already exists both in the railway sector and other selected industrial sectors, where similar enforcement approaches are in use. Key to this achieving the objectives of this study shall be an identification of what penalties each Member State has notified under Article 32 of Directive 2004/49/EC (the Railway Safety Directive) taking into account the measures used by the Member State to transpose the Railway Safety Directive and any subsequent amendments. This will involve a combination of approaches with the Agency providing relevant information to the contractor it has on notifications made by Member States under Article 32 of Directive 2004/49/EC and the contractor undertaking a parallel information gathering exercise based on information it will seek from NSAs.

The study shall also examine what role does the NSA play in enforcing the safety regulatory framework and what tools does it have at its disposal to do this as well as any restrictions placed upon the NSA to limit or prevent its role in enforcement and how the NSA links its roles in supervision and in promoting the regulatory framework to its role in enforcing the law.

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<sup>1</sup> OJ L326, 10.12.2010,p,11

<sup>2</sup> OJ L327, 11.12.2010 ,p.13

For the purposes of this study enforcement is to be understood in two senses – one being the role played by the NSA or CA to promote compliance with the law through the use of non-legal means to do so and the other being the legal remedies used by NSAs or CAs to force those with responsibilities under the law to comply with the necessary requirements.

The study will examine and compare the approaches to enforcement taken by the CAs in other selected industrial sectors to ensure compliance with the law.

Finally, the study will analyse the findings from the mapping phases seek to establish what are successful approaches to enforcement both in railways and in other sectors, as well as the common features and the key differences between the enforcement regime in place in the railway sector and the enforcement regimes in other sectors.

The study should be carried out in **three steps**:

**First step: Mapping existing requirements for enforcement**

This step should review, on the basis of a survey of all NSAs, how they approach delivering the type of enforcement required by the Safety Directive in each Member State. This survey should take the form of a questionnaire seeking information on:

- What national requirements on enforcement have been notified under Article 32 of the Railway Safety Directive and what body is responsible for this in the Member State?
- What role is given to the NSA in this enforcement process and whether this process is published and what powers has it been given to carry out enforcement activities?
- What does the NSA understand by the term enforcement and does it see a link between this and promoting the regulatory framework?
- Has the NSA published decision-making criteria to aid its decisions on enforcement and how does it communicate these to the wider public?
- Has the NSA got a procedure in place to guide promotion activity on its role and to explain its decision making process?
- What does the NSA understand by promoting the regulatory framework?
- What is publicly available either via the relevant websites or freely available published guidance to explain the objectives of this part of NSA activity?

Further discussions will be needed with a selection of around 12 NSAs following a detailed analysis of the questionnaires. The aim would be to probe in more detail the NSA process and in particular follow-up on some of the answers to the questionnaires to gain clarity and understanding. This further detailed analysis and review should help to provide a complete and representative overview of a sample of Member States requirements. The selection of these could be influenced by responses to the questionnaire and their experience of SMS supervision but the precise details of who to select for further study will need to be agreed between the contractor and the ERA at the end of the questionnaire phase. This work could be undertaken in parallel with the second step outlined below.

**A first interim report of the main findings of this first phase will be sent to the Agency.**

**Please note that the development of the questionnaire and the selection of the NSAs chosen for further analysis should be undertaken in consultation with the Agency. The questionnaire needs to be the same for all NSAs. Customisation has to be avoided to ensure comparability of the results.**

**Second step: Mapping existing practices in use by Competent Authorities in other industrial sectors**

This step should review, on the basis of a desk top survey of and interviews with CAs in selected industrial sectors (aviation, occupational health and safety, petro-chemical industry) about what approaches they take in securing compliance with the relevant regulatory framework in that sector. This should include an examination of:

- How do these bodies view enforcement activity?
- Have they got legal powers to carry out enforcement activity? What other tools (advice/guidance/information) is available to them?
- How do they decide on priorities/frequency for enforcement activities?
- What do they do when they check compliance? Do they have decision-making criteria to inform their decision-making?
- How do they conduct promotion activity on the relevant regulatory framework to those with legal duties?

**Please note that the selection of the CAs chosen for further analysis should be undertaken in consultation with the Agency. Any questions to be used in interviews need to be the same for all CAs. Customisation has to be avoided to ensure comparability of the results.**

**A second interim report of the main findings of this second phase will be sent to the Agency.**

This work could be undertaken in parallel with the first step outlined above.

### **Third step: Analysis and conclusions**

The contractor will review and analyse the information from Step 1 and 2 and discuss the initial results with the Agency. Following the discussion they will prepare a Report to the Agency which maps out the current situation on how enforcement is conducted by NSAs in the railway sector (the first interim report) and by Competent Authorities in the other selected sectors (the second interim report). The mapping exercises should summarise clearly what the national requirements are and how they are applied. They should also map out what available tools and approaches to enforcement exist and how they are applied. The interim reports should then set out in more detail the further discussions and analysis undertaken of the 12 selected NSAs and from the interviews with the Competent Authorities in the other selected sectors.

From this analysis the contractor will need to draw clear conclusions and make recommendations to ERA on:

1. what are successful approaches to enforcement both in railways and in other sectors;
2. what are the common features and the key differences between the enforcement regime in place in the railway sector and other similar enforcement regimes in other sectors. The contractors will make recommendations on good practice in enforcement activity and how to disseminate it.

#### **C.2.3.2. Outlines of the study**

##### **1. Activities**

The collection of information obtained, during the first and second step, including the development of suitable questionnaires, review of public information available either on the web or published guidance and follow-up interviews with representatives of NSAs will be the main source of information. The NSA will be in general the key contact point for gathering required information and data.

##### **2. Milestones**

After each of the above mentioned steps a meeting with the Agency should be organised to present and discuss the results and possible consequences in regard to the proceeding work. For each of the steps the results should be summarised in intermediate reports and in appropriate presentation documents.

### 3. Working Language

The working language for the exchange of information between ERA and the contractor for any activity including the reports and the presentations shall be English. Communication and interviews with the relevant Member States will be in the respective national languages or a language agreed by the parties involved.

### 4. Organisation and planning

The tenderer shall provide a time plan of the activities requested in section C.2.2.1 and C2.2.2. including the dates to which achievement of each milestone is expected in order to allow ERA to monitor the work progress.

#### C.2.4. Deliverables

##### C.2.4.1. Meetings

All meetings will be held at the ERA meeting rooms in Lille or at the Agency's offices in Valenciennes.

##### C.2.4.2 Kick off meeting

No later than two weeks after the signature of the contract, the contractor shall organise in coordination with the Agency Project Manager a **kick-off meeting**. The meeting's agenda should include:

1. a presentation to ERA of the outlined work plan:
  - general description of the methodology to carry out the study
  - a preliminary time plan, referred to the three steps of the study (s. 2.3.1)
  - the core team carrying out the work
  - the person(s) that will be the interface with ERA and attend the following meetings
2. a discussion involving concerned units of the Agency and covering remaining open points to be clarified and details in regard to the needs and expectations.
3. a description in detail of the work methodology for the first step of the survey (s. C2.3.1), the planned schedule of work, the allocation of the interviews to team members and all decisions taken that may be relevant for the performance of the work
4. proposals for monthly progress reports
5. dates for the meetings after each step as described in section C2.3.1 as well as for the presentation of the final deliverables will be decided.

##### C.2.4.3 Intermediate meetings (after each step or steps)

At the **intermediate meetings to be organised after each step or steps**, the contractor shall

- present the results of the step or steps concerned
- describe in detail the work methodology for the next step of activity the planned schedule of work, the allocation of the interviews to team members and all decisions taken that may be relevant for the performance of the work.

##### C.2.4.4 Call conference

A call conference will be organised every second to third week between the contractor and the Agency in order to allow the Agency to follow the progress of the work and to anticipate problems. The substance of this call conference will be covered in the monthly progress reports to the Agency.

#### **C.2.4.5 Final meeting**

At the **final meeting**, there will be a presentation and discussion of the draft final report.

#### **C.2.4.6 Interim results and their presentation**

The work plan defined by the contractor shall include the delivery of intermediate reports as well as presentations of the results of the activities after each step or steps; they will be presented during the meetings. Report and presentation for each step shall include the necessary detail for the Agency to monitor and give its approval on the activities.

Any presentations should be produced in a draft format and sent both on paper and in an electronic form compatible with the Agency's office tools (Microsoft Office 2007, Microsoft Project 2007, Microsoft PowerPoint 2007 and Microsoft Visio 2007). The Agency will provide verbal comments at the related meetings.

#### **C.2.4.7 Final deliverables**

The final deliverables should be based on the intermediate reports and presentations and should involve the outcome of the discussions with the ERA organised following each of the study steps and contain:

- two interim reports
- a final report
- a presentation on the study background, proceeding and findings

The report shall provide the following sections:

- description of the resources and sources used to perform the activities;
- description of the methodology;
- the questionnaire(s) used for the survey and how these were used;
- clear record of performed interviews (incl. name of interview partner, company and position and responsibilities in the company) and the form of structured interview;
- detailed presentation of the results of the information collection activities;
- analysis of the results and the conclusions drawn with reference to the objectives of the work.

The report will be reviewed for approval.

The final deliverables should be produced in a draft format and sent both on paper and in an electronic form compatible with the Agency's office tools (Microsoft Office 2007, Microsoft Project 2007, and Microsoft Visio 2007). These draft deliverables will be sent to the Agency and presented at the final meeting within July 2012.

The Agency will then provide written comments on the draft final report within three weeks after the presentation of the report. They shall be taken into account by the contractor, who shall finalise the report within 5 working days of receipt of the comments.

The contractor shall immediately inform ERA, when obstacle or problems are detected, that can prejudice the compliance with the agreed time planning and/or the quality of the deliverables.

#### **C.2.4.8 Organisation of the deliverables**

During the performance of the contract, if not otherwise officially agreed upon, reports and deliverables are to be sent to:

**Leo McDaid**  
**Project Officer**



European Railway Agency  
BP 20932  
120 rue Marc Lefrancq  
F-59307 Valenciennes Cedex  
France

### C.2.5. Estimate of the amount of work involved

The maximum budget available for the work to be undertaken is 120,000 € (one hundred twenty thousand Euros).

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

All data and information reported into the studies are intended to be made public at the Agency's discretion. Therefore, any restriction as to the public release of any such data or with respect to third parties' intellectual property rights should be clearly identified as such in every service provided, at the earliest possible stage.

## C.3. Content of the technical proposal

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As described in **section B.1**, your offer must consist of the elements described below. One of these elements is the technical proposal, which must clearly contain the following information regarding the achievement of the technical results indicated in section **Error! Reference source not found.**:

- a) **Description of the organisation, thus the proposed working team indicating competences (including language competences) and skills of the team members in particular**, those of the person or persons that the tenderer commits to assign as responsible for overall project management; foreseen subcontractors or consortiums (if any) shall also be listed. In particular:
- Structure – organisation chart
  - Project Manager
  - Technical responsible, detailing the skill levels in the relevant professional fields
  - Level of availability of human and organisational resources to carry out the expected tasks
- Adequacy of the proposed team will be evaluated on the basis of the provided CVs and professional references for the team members.
- b) **Methodology, planning, quality management resources**
- c) **Reporting:** detailed information about how ERA will be able to monitor the progress of the performed services.

## C.4. Content of the financial proposal

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### C.4.1. General

The financial proposal must be based on the format found in **section D.4**.

The proposed, all inclusive lump sum price must be fixed, not subject to revision.

### C.4.2. Taxes

Prices shall be quoted free of all duties, taxes and other charges, i.e. also free of VAT, as the ERA is exempt from such charges in the EU under Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union (OJEU C 83 of 30.03.2010, p. 266). Exemption is granted to the Agency by the governments

of the Member States, either through refunds upon presentation of documentary evidence or by direct exemption.

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

### **C.4.3. Conditions for validity**

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

## **C.5. Selection criteria**

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After having certified, pursuant to **Section B.5.1**, that it is not in one or more of the situations that constitute grounds for exclusion from tender participation, the tenderer must submit evidence of his capacity to perform the contract.

The evaluation committee will examine the offers to ensure that the information requested in the selection criteria has been provided and that the tenderer fulfils all these criteria. Offers which fail to include some of the information requested, may be rejected outright.

NOTE: In the case of a consortium submitting an offer, each member of the consortium must provide the required evidence. For 'technical capacity' the evidence provided by each member of the consortium will be checked at consortium level to ensure that the consortium fulfils the criteria.

### **C.5.1. Economic and financial capacity**

The tenderer shall provide formal evidence that his turnover in the last two financial years has been at least 400 000€ per year.

### **C.5.2. Technical and professional capacity**

The tenderer shall include a brief description about his previous experience of similar work, inclusive of basic details such as the name of the job, the approx. value, the Client and the period it was performed.

N.B.: the Agency will not accept the offer if the tenderer fails to produce the information or if the Agency judges it insufficient or irrelevant.

Please note that the Agency reserves the right to contact prior customers for best assessing tenderer's capacity when rendering similar work and that the Agency will not accept the offer if the tenderer fails to produce the above information or if the Agency judges it insufficient or irrelevant.

## **C.6. Award criteria**

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

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

The award criteria for this tender are:

Award Criteria	Weighting in points
<b>A. Technical criteria (weighting factor of 80%) in their order of importance as weighted by percentages:</b>	
• <b>Demonstration of the understanding of the scope, objectives, tasks and time plan of these TOR</b>	<b>30</b>
• <b>Consistency of proposed working organisation and adequacy of the proposed team vis-à-vis the goals of the Agency, as exposed in the present document</b>	<b>35</b>
• <b>Fitness of the proposed methods, tools, and procedures to perform the tasks</b>	<b>35</b>
<b>Total</b>	<b>100</b>
<b>B. Price (weighting factor of 20%)</b>	

Tenders should elaborate on all points addressed by this invitation to tender in order to score as many points as possible. **The mere repetition of mandatory requirements set out in this invitation to tender, without going into details on how to actually achieve them or without giving any added value, will only result in a very low score.**

In addition, if certain essential points of this invitation to tender are not expressly covered by the tenderer, the Agency may decide to give a zero mark for the relevant qualitative award criterion.

Tenders scoring less than 70% in the overall points total or less than 50% in the points awarded for a single criterion will be excluded from the rest of the assessment procedure.

The points scored for the above qualitative criteria will be compared to the price, and the contract will be awarded to the tender which is the most cost-effective (offers the best value for money) on the basis of the ratio between the total points scored and the total cost.

### **C.7. Sub-contracting**

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

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

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

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

No additional sub-contractor(s) can be presented by the Contractor after the signature of the Contract.

## Section D. Standard Forms

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

### D.1. Declaration of eligibility

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

The undersigned:

**Name of the individual/company/organisation** (*choose as appropriate*):

**Legal address:**

**Registration number/ID Card No.:**

**VAT number:**

Declares on oath that the individual/company/organisation mentioned above is not in any of the situations mentioned below:

- 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 have been convicted of an offence concerning their professional conduct by a judgement which has the force of *res judicata*;
- c) they have been guilty of grave professional misconduct proven by any means which ERA can justify;
- d) they have not fulfilled 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 the country of the contracting authority or those of the country where the contract is to be performed;
- e) they have been the subject of a judgement which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the European Union' financial interests;
- f) following another procurement procedure or grant award procedure financed by the European Union budget, they have been declared to be in serious breach of contract for failure to comply with their contractual obligations.

I, the undersigned, understand that the contract may not be awarded if during the procurement procedure the individual/company/organisation mentioned above:

- is subject to a conflict of interest;
- is guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the contract procedure or fail to supply this information;

Name:

Signature:

Date:

**D.2. Tenderers administrative data**

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**D.2.1. Address and contact details**

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



### **D.2.2. Financial Identification Form and Legal Entities Form**

The forms are available at the following addresses:

[http://ec.europa.eu/budget/execution/ftiers\\_en.htm](http://ec.europa.eu/budget/execution/ftiers_en.htm)

[http://ec.europa.eu/budget/execution/legal\\_entities\\_en.htm](http://ec.europa.eu/budget/execution/legal_entities_en.htm)



**D.3. Financial Proposal**

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The lump sum fixed price offered for implementing the

**BENCHMARKING STUDY OF NSA ENFORCEMENT POWERS**

is: EURO .....

Name:

Signature:

Date:



#### D.4. Curriculum Vitae

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

<http://www.era.europa.eu/Document-Register/Pages/Curriculum-Vitae.aspx>

*- Please press Ctrl and click simultaneously -*



## D.5. Checklist

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

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

*Please Tick ✓ the boxes provided*

### **Envelope 'A' must contain**

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

### **Envelope 'B' must contain**

- one original signed copy and 3 copies in CD-ROM of the financial proposal based on the formats found in **Section D3 and its annex**.

### **You should also ensure that:**

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

Name:

Signature:

Date \_\_\_\_\_



## D.6. Confirmation of offer submission

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

### **ERA/2011/SAF/OP/03: BENCHMARKING STUDY OF NSA ENFORCEMENT POWERS**

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

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

- Normal mail
- Express mail
- Courier Service
- Other

Tenderer's name: [ ]

Email: [ ]

Telephone [ ]



## Section E. Draft Service Contract

The draft contract is provided solely for information. Tenderers should note that in the case that their offer is successful the resulting contract will be based on this draft contract.