

EUROPEAN SPACE AGENCY – ESA
EXPRESS PROCUREMENT PROCEDURE – “EXPRO” / “EXPRO+”
TENDERING CONDITIONS (“EXPRO/TC”)

NOTE

For the purposes of “EXPRO” and “EXPRO+” categories of Requests for Proposal (RFP) and Invitations to Tender (ITT) aimed, respectively, at the placing of contracts for low- to medium-value procurements through a simplified tendering procedure, the Agency’s ESA Procurement Regulations (ESA/REG/001, rev. 4) shall be the applicable regulatory framework, as specified, amended or supplemented by these EXPRO TENDERING CONDITIONS (“EXPRO/TC”). The list of adopted waivers from the ESA Procurement Regulations can be found in Annex I hereto.

In the event of conflict between the ESA Procurement Regulations and the EXPRO/TC, the EXPRO/TC shall prevail.

All the applicable requirements for the submission and the contents of tenders are set forth in the following documents:

- This document, containing all the applicable general requirements concerning tenders submitted for all EXPRO/EXPRO+ procurement actions (“EXPRO TENDERING CONDITIONS or, in short, EXPRO/TC and attached to the RFP/ITT as Appendix 3) and
- a “Proposal Template” or an “RFP Response Template”, specific to each RFP/ITT, which constitutes the latter’s Appendix 4; such document lists all specific tender conditions and relevant costing forms as well as all the statements and certifications which are required from any Tenderer in an offer to ESA.

Tenderers are requested to include personal data as part of their tender as described in the “Proposal Template” or “RFP Response Template” regarding proposed Key Personnel and regarding contact details. The Agency, while not being subject to national or international laws on Personal Data Protection, ensures a high level of

protection of personal data and preserves thereby the dignity and privacy of the individuals concerned (Data Subjects).

The Agency is subject to a Personal Data Protection Framework composed of the below elements and will process and protect the personal data submitted in accordance herewith. The Agency will process the personal data provided in the tender for the sole purpose of evaluating the tender and for inserting required data in the Contract should the tender be successful.

1. The Principles of Personal Data Protection, as adopted by ESA Council Resolution (ESA/C/CCLXVIII/Res. 2 (Final)) adopted on 13 June 2017;
2. The Rules of Procedure for the Data Protection Supervisory Authority, as adopted by ESA Council Resolution (ESA/C/CCLXVIII/Res. 2 (Final)) adopted on 13 June 2017;
3. The Policy on Personal Data Protection (ESA/C/CCLXVIII/Res. 2 (Final)) adopted by the Director General of ESA on 05 February 2018 and effective on 01 March 2018.

Details of this framework can be found via the link given on EMITS (<http://emits.sso.esa.int/emits/owa/emits.main> under “Reference Documentation” ---> “Administrative Documents”).

Personal data processed under an ESA Contract will be subject of the Personal Data Processing Annex attached to the Draft Contract of the ITT/RFP. Special attention is drawn to Section 7 of the Cover Letter of the “Proposal Template” or “RFP Response Template”.

1. FORMAL CONDITIONS, COMMITMENTS, UNDERTAKINGS

1.1 Eligibility requirements

The latest information on the registration process is now found in the ESA Industry Portal at the following address:

http://www.esa.int/About_Us/Business_with_ESA/How_to_do/esa-star_Registration_Process

All economic operators (companies or institutes) are eligible to submit a tender provided:

- a) they satisfy the requirements set under Article II.3 of Annex V to the ESA Convention for what concerns their belonging to an ESA Member State, Associated State or Cooperating State; it being noted that in the placing of all contracts, ESA shall give preference to industry and organisations of the Member States and that within each “optional programme”, particular preference shall be given to industry and organisations in the States participating in such a programme; furthermore, where specific geographical return and/or industrial policy measures requirements are mentioned in an RFP/ITT, preference in the placing of contracts shall be given to industry and organisations responding to such requirements;
- b) they possess the necessary professional and technical qualifications and competences, financial resources, equipment and other physical facilities, managerial capability, reliability and experience, and the personnel, to perform the contract in question;
- c) they have the legal capacity to enter into the procurement contract;
- d) they are not bankrupt or being wound up, are having their affairs administered by the courts, have not entered into an arrangement with creditors, have not suspended business activities, are not the subject of proceedings concerning those matters, or are not in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- e) they have not been convicted of an offence concerning their professional conduct by a judgment which has the force of res judicata;
- f) they have not been guilty of grave professional misconduct proven by any means which ESA can justify;
- g) they have fulfilled their obligations relating to the payment of social security contributions and the payment of taxes in accordance with the legal provisions of the country in which they are established or those of the country where the contract is to be performed;

- h) they have not been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organization or any other illegal activity detrimental to ESA's interests; and,
- i) they are not currently subject to a suspension by ESA for having been found guilty of misrepresentation in supplying the information required under points d) to h) above.

ESA may suspend economic operators from participating in ESA's procurements if they are found guilty of misrepresentation in supplying the above information or when formally required, they fail to supply this information on three (3) consecutive accounts.

In the special frame of arrangements and/or procurements made with non-Member States, Associate States, Cooperating States or International Organizations, economic operators from those States or from the Member States of the International Organization, shall be required to satisfy the above requirements, unless otherwise agreed in the arrangement

1.2 Period for tender preparation

Extension of the tendering period is unlikely to be granted but may nevertheless be solicited. This shall be submitted by the Tenderer exclusively via the dedicated functionality in the "esa-star" system. Such request will only be considered by ESA if operational requirements so permit, and if, in the case of competitive tendering, fair competition is not thereby impaired. Refusal by the Agency to grant extensions may not give rise to any claims by economic operators.

1.3 No publicity action

Any entity invited by ESA to submit a tender or participating in a tender to ESA is not authorised to mention in its publicity that it has been invited to tender, is tendering or has tendered, until after notification of the result of the RFP/ITT.

1.4 Negotiation prior to contract award

ESA reserves the right to negotiate with one or more Tenderers before taking a decision on the placing of a contract. Should such negotiations not be successful the Agency shall terminate negotiations and reserves the right to enter into negotiation with another Tenderer. Such decisions by the Agency may not give rise to any claims by Tenderers.

The original offer(s) shall remain valid until changes are agreed in writing. Once agreed, the modified offer(s) shall be binding and its validity shall in no case be less than two (2) months from the date of its (re)submission.

1.5 Retention of tenders

Any document submitted in reply to an RFP/ITT shall become the property of ESA. However ESA will solely use any commercial, confidential or proprietary information included in the tender for cost reference purposes and for the purpose of the evaluation of tenders and the selection of a contractor.

ESA reserves the right to eliminate from consideration tenders which seek to restrict the use of documents or information beyond these provisions. Unless otherwise specifically required in the tenders with reasonable justifications, unsuccessful tenders shall be disposed of by ESA in accordance with its regulations.

1.6 No reimbursement of tender expenses

Expenses incurred in the preparation and submission of the tender will not be reimbursed.

1.7 Non commitment by the Agency in competitive procurements

A final recommendation for awarding the Contract, unless otherwise stated in the ITT, shall take into account the best combination of the total weighted mark, price and, when applicable, the industrial policy measures and/or the geographical return requirements established in the ITT at the time of its issuing, meaning that the resulting Contract will not necessarily be attributed to the Tenderer having received the highest overall weighted mark. Such decision by the Agency may not give rise to any claims by Tenderers having submitted a tender in response to the ITT.

1.8 Non benefits requirements

In submitting a tender, the Tenderer shall implicitly warrant that no official of the Agency or any individual participating in the evaluation of the tender(s) submitted in response to an RFP/ITT has received or will be offered by the Tenderer or any of his Sub-contractor(s) any direct or indirect benefit arising from the RFP/ITT or the award of any subsequent contract.

If the Tenderer or his Sub-contractor is found guilty of any infringement of this requirement, this will result in the immediate elimination of the tender from evaluation and where a resulting contract has been awarded the immediate cancellation of the said resulting contract; and, the suspension of the Tenderer or of the Sub-contractor guilty of misrepresentation, from participating in any further procurements of the Agency. Such elimination or cancellation shall not be a cause of claim.

2. DECLARATION OF COMPLIANCE AND KEY ACCEPTANCE FACTORS (not applicable for Non-Competitive tendering, if only an RFP Response is required)

In the “esa-star” process of tender submission, it is compulsory for Tenderers to make declarations related to compliances and to Key Acceptance Factors.

Any declaration made which would contradict the content of the tender may result, as applicable, in the subsequent elimination of the tender or in a significant down-marking of the tender.

With regard to the “Declaration of Compliance” to be submitted in “esa-star”, the Tenderer will have to provide the corresponding statement that all the required declarations of compliance have been addressed and included in the Tenderer’s Cover Letter.

Any compliance statement or statement for partial compliance in the Tenderer’s Cover Letter that would be contradicted by the detailed content of the Tenderer’s Detailed Proposal, may lead to significant down-marking in the evaluation of the tender.

With regard to the declarations related to “Key Acceptance Factors”, to be submitted in “esa-star” (and are mirrored in section 3 of the RFP/ITT Cover Letter) the Tenderer will have to provide, in the dedicated section of Tenderer’s Cover Letter and dedicated section of “esa-star”, the corresponding statement of compliance. If the analysis of the full tender reveals that the tender is not in line with any of the declarations given in the “Key Acceptance Factors” section, the tender will be excluded from further evaluation.

3. DOCUMENTS AND COMMUNICATIONS

3.1 Amendment of the RFP/ITT

ESA reserves the right to issue amendments to the RFP/ITT.

3.2 Questions relating to an ITT or to a tender in competitive procurements

- Any questions concerning an ITT shall be submitted by the Tenderer exclusively via the dedicated functionality in the “esa-star” system. Questions, in their subject line, shall make specific reference to the appropriate section(s) of the ITT documents. When ESA gives a reply it will notify such reply, together with the question, to all who have expressed interest in the ITT.
- ESA reserves the right to ask Tenderers for clarifications of their tenders during the evaluation period. Answers, addressed to the Agency through the “esa-star”

system for the subject ITT, must be received within three (3) days of submission of the request, if no other period is stated. Clarifications shall not be regarded as amendments or modifications of the tender, in the case of competitive tenders.

3.3 No information about evaluation during evaluation period

Tenderers are not entitled to contact ESA during the evaluation and selection period to ask for information on the evaluation except if strictly limited to the overall time schedule (planned date for notification of the Tenderer selection results) and provided that ESA has not taken the initiative in informing all Tenderers, in writing, of any significant delay which would affect the evaluation/selection process. Such contact with ESA, if any, is authorized only if made in writing to the Contracts Officer nominated in the RFP/ITT.

ESA reserves the right to eliminate from the evaluation a Tenderer contravening these provisions.

3.4 Amendment, withdrawal or resubmission of the tender

Amendment, withdrawal or resubmission of the tender is permitted if the amendments or new proposal are done in the “esa-star” system for the subject RFP/ITT before the closing date and time, in accordance with the submission conditions.

3.5 Information about the result of the ITT in competitive procurements

Tenderers will be informed in writing of the result of the ITT after a decision has been taken. The notification to unsuccessful Tenderers will comprise a short résumé of the evaluation findings on the tender in question, including the associated marks; any information will be limited to the Tenderer’s own tender. Within ten (10) calendar days following the receipt of the above notification, any unsuccessful Tenderer may submit a formal request in writing to the nominated ESA Contracts Officer in order to obtain an oral debriefing explaining the reasons why his tender was not successful. Such oral debriefing shall usually take place at ESA premises.

4. SUBMISSION CONDITIONS

Tenders shall be submitted, before the closing date and time, exclusively in electronic format via the “esa-star” system as per the instructions contained in the RFP/ITT Cover Letter and in the EXPRO/TC herein.

The Tender is successfully submitted when the status of the proposal in “esa-star” reads “submitted”, i.e. when each section in the dashboard (Declaration of Compliance, Key Acceptance Factors, and Consortium Structure) reads “completed”

and all required proposal documents read “uploaded”.

Tenderers are invited to refer to the tutorial “Offer Preparation and Submission” that is available under:

[http://www.esa.int/spaceinvideos/Videos/2016/03/Offer Preparation and Submission](http://www.esa.int/spaceinvideos/Videos/2016/03/Offer_Preparation_and_Submission)

Furthermore, Annex II of the EXPRO/TC herein contains important considerations related to “esa-star” system that Tenderers are invited to take into consideration when preparing and submitting their tender. It contains, in particular, the requirements to be strictly followed in case of problem being encountered with “esa-star”.

Tenderers are reminded that the “esa-star” system does not allow the submission of tenders after the closing date and time.

4.1 Length of Tender documents

As a rough guideline, the length of tender documents shall not exceed:

<u>MAX N. OF PAGES</u>	<u>CONTRACTUAL PRICE</u>
50	below 200 K€
75	above 200 K€

5. RIGHT TO REVIEW

A Tenderer or any other economic operator demonstrating a direct interest in an Agency’s procurement and that claims a potential loss due to an alleged procedural breach of ESA Procurement Regulations (ESA/REG/001, rev. 4) by the Agency may seek review in accordance with Part VI of these Regulations, subject to certain restrictions stated therein.

6. CRITERIA USED BY ESA FOR TENDER EVALUATION (Applicable only in case a Proposal Template is required)

In evaluating the individual quality of the tenders, ESA will use those criteria and where applicable, the associated weighting factors (i.e. restricted and open competitive tendering), which are specified in the Agency’s RFP/ITT Cover Letter and are mirrored in the “esa-star” system.

ANNEX I

ADOPTED WAIVERS FROM THE ESA PROCUREMENT REGULATIONS

SYNOPTIC TABLES: EXPRO(+)

STANDARD REGULATORY FRAME	EXPRO(+) RENDERING
<u>Procurement Regulations</u>	
Applicability of the General Clauses and Conditions for ESA Contracts (GC&C) → Art. 10.4	Self-contained standard contract embedding the relevant parts of the GC&C
Applicability of the General Conditions of Tender for ESA Contracts (GCT) → Art. 24.2	<ul style="list-style-type: none"> • GCT Parts 1 and 2 are replaced by dedicated and simplified EXPRO(+) document covering eligibility as tenderer and formal conditions for tender submission (“EXPRO/TC”) • GCT Part 3 replaced by standard RFP Response/Proposal Template
Time limits for Tendering period → Art. 29	<p>Time limits reduced in view of the various measures introduced to reduce the effort necessary to respond to an EXPRO(+) RFP/ITT</p> <p>Bidding period depends on the EXPRO(+) procurement method used:</p> <ul style="list-style-type: none"> • 42 calendar days for <u>Open Competitive tendering</u>. • 42 calendar days for <u>Restricted Competitive tendering (standard procedure)</u>. • 28 calendar days for <u>Restricted Competitive tendering (simplified procedure for procurements not exceeding a value of 250k€)</u>. • 14 calendar days for <u>Non-Competitive tendering, if a Detailed Proposal is required</u>. • 7 to 14 calendar days for <u>Non-Competitive tendering, if only an RFP Response is required</u> (depending on extra elements requested in point 8 of the RFP Response Template). • 42 calendar days for <u>Small Services or Standard Supplies, if no Industrial Policy implications</u>.

ANNEX II

IMPORTANT CONSIDERATIONS RELATED TO “ESA-STAR” SYSTEM

The following requirements apply with regards to files to be uploaded to “esa-star”:

- the tender documents, duly signed when required, shall be submitted in pdf format containing no dynamic content (i.e. no animations);
- if so required by the Agency, specific tender components (i.e. PSS forms, planning charts, etc.) may have to be also uploaded, in addition, in their native format;
- only unencrypted files, which are not password protected can be uploaded (the Agency ensures that files are encrypted after upload to esa-star);
- Maximum file size is 250 MB per file.

“esa-star” is optimised and its functionalities are certified for use with MS Internet Explorer 11 (MS IE11). Other web browsers may work but the Agency declines any responsibility in case Tenderers choose to use a different type of web browser. Problems deriving from the use of web browsers other than MS IE11 will under no circumstances be considered as an extenuating reason in the Tenderer's favour during the tender submission process or any other situation or transaction within the system where time is of the essence (e.g. an RFP/ITT closing date / time).

In order to understand and characterise the behaviour of own network and/or internet connection facilities and software (web browsers, etc.) with regard to “esa-star”, it is strongly recommended that the Tenderers make use of “esa-star” 's "Upload", "Submit" and "Recall" functionalities, whether using actual (draft) proposals or "dummy" material, well ahead of the RFP/ITT actual closing date and time.

When submitting the tender, due consideration should be taken of the fact that the speed of response of the internet connection to “esa-star” may be slower the more the closing time approaches.

In view of the previous points, Tenderers are strongly invited to adequately plan the submission of their tender through “esa-star”, making allowance for the submission process itself, the possible need to contact esait Service Desk and the time needed by esait Service Desk to analyse and solve an issue.

Tenderers facing any technical problem with “esa-star” can contact the HelpDesk (“esait Service Desk”) that is available, Monday through Friday, from 08:00 to 18:00. Esait Service Desk shall be preferably contacted by phone +39 06 941 80700, the email esait.Service.Desk@esa.int being only a back-up contact possibility. When contacting esait Service Desk to open tickets relative to technical problems with “esa-star”, the Tenderers are strongly advised to take into due account the following elements:

- there may be waiting queues before phone calls or e-mails are taken into charge,

- there may be additional waiting time for a ticket to be opened and queued for action,
- issues require a certain time of investigation before they can be solved.

Tenderers finding the “esa-star” system technically not operational at the time of tender submission shall immediately contact esait Service Desk by phone (+39 06 941 80700) for assistance, and shall abstain from directly contacting the responsible Contracts Officer at this stage. Esait Service Desk will:

- analyse the issue, and
- determine whether “esa-star” can be objectively considered as "technically not operational",
- conclude whether the issue can be resolved by technical means before the RFP/ITT closing date / time,
- In case where esait Service Desk concludes that “esa-star” was considered as "technically not operational", esait Service Desk will request a process-related intervention under the lead of the responsible Contracts Officer. Based on the information provided by esait Service Desk, the Contracts Officer will define an appropriate procedural approach and instruct the relevant Tenderer(s) as necessary. Tenderers may contact the responsible Contracts Officer directly only in case the latter has not contacted the tenderer within 24 hours of the applicable closing date / time.

Please note that:

- “esa-star” is the default means for submitting tenders to the Agency. Tenderers shall not, unless explicitly instructed to do so by the responsible Contracts Officer, submit a tender through different means than “esa-star”. Failure to adhere to this instruction will result in tenders not being considered for admission and immediately being discarded.
- Tenders submitted through the correct procedure and subsequently declared not admissible by the Tender Opening Board shall remain locked in “esa-star” and shall not be evaluated.

Disclaimer: Technical issues encountered by Tenderers when submitting their tenders through “esa-star”:

- i. in case the system is technically operational and such problems being, among others, network speed / latency, esait Service Desk normal response times, non-adherence to the requirements, and recommendations described above, or
- ii. in case the system is technically not operational

shall not grant an automatic right to submit the tender by any other means

than “esa-star” before or after the applicable closing date/time, such right being in all cases subject to explicit authorisation by the responsible Contracts Officer, who will, among others, take into account a) whether the Tenderer has contacted esait Service Desk within a reasonable time prior to the closing date / time, b) how long the system has been objectively considered as being “technically not operational”, c) whether the instructions given have been adhered to.

ESA reserves the right not to authorise submission of tenders by other means than “esa-star” and to immediately discard tenders submitted through other means without due prior written authorisation by ESA.

Under no circumstances shall ESA be responsible for any delays caused by problems with Tenderers’ connectivity and/or Tenderers’ IT hardware and tools.

Tenderers are reminded that it is their sole responsibility to ensure that their tender is submitted in esa-star before the applicable closing date and time.