

**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.

## **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/esastar\\_Registration\\_Process](http://www.esa.int/About_Us/Business_with_ESA/How_to_do/esastar_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.

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## **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 ( see <https://esastar.sso.esa.int/> ) as per the instructions contained in the RFP/ITT Cover Letter and in the EXPRO/TC herein.

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, the Annex 2 of the EXPRO/TC herein contains important considerations related to “esa-star” operation that Tenderers are invited to take in consideration for:

- preparation of their tender,
- submission of their tender,
- steps to be followed strictly in case of “esa-star” not being operational at the time of tender submission.

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
<b><u>Procurement Regulations</u></b>	
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"> <li>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”)</li> <li>GCT Part 3 replaced by standard RFP Response/Proposal Template</li> </ul>
Time limits for Tendering period → Art. 29	Time limits reduced in view of the various measures introduced to reduce the effort necessary to respond to an EXPRO(+) RFP/ITT  Bidding period depends on the EXPRO(+) procurement method used: <ul style="list-style-type: none"> <li><b>42 calendar days</b> for <u>Open Competitive tendering</u>.</li> <li><b>42 calendar days</b> for <u>Restricted Competitive tendering (standard procedure)</u>.</li> <li><b>28 calendar days</b> for <u>Restricted Competitive tendering (simplified procedure for procurements not exceeding a value of 250k€)</u>.</li> <li><b>14 calendar days</b> for <u>Non-Competitive tendering, if a Detailed Proposal is required</u>.</li> <li><b>7 to 14 calendar days</b> 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).</li> <li><b>42 calendar days</b> for <u>Small Services or Standard Supplies, if no Industrial Policy implications</u>.</li> </ul>



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## 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 (ESA 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”, Tenderers are strongly invited to make use of “esa-star” 's "Upload", "Submit" and "Recall" functionalities, whether using actual (draft) tenders 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.

The HelpDesk function “ID Help” provided by the Agency is available Monday through Friday, from 08:00 to 18:00. ID Help shall be preferably contacted by phone +39 06 941 80444, the email [idthelp@esa.int](mailto:idthelp@esa.int) being only a back-up contact possibility. When contacting ID Help to open tickets relative to technical problems with “esa-star”, 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.

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 ID Help and the time needed by ID Help to

analyse and solve an issue. The Agency will not consider network speed / latency or ID Help normal response times as extenuating reasons in regard to an RFP/ITT closing date/time.

Tenderers finding the “esa-star” system technically not operational at the time of tender submission shall immediately contact ID Help by phone (+39 06 941 80444) for assistance, preferably by phone, and shall abstain from directly contacting the responsible Contracts Officer.

- ID Help will analyse the issue, ultimately determine whether or not, “esa-star” can be objectively considered as “technically not operational”, and therefore be in a position to conclude if the issue cannot be resolved by technical means before the RFP/ITT closing date,
- in such cases ID Help will request a process related intervention under the lead of the responsible Contracts Officer who, on the basis of the information provided by ID Help, will define an appropriate process approach (i.e. upload on behalf of the Tenderer, limited extension of the closing date, etc.) and inform accordingly the Tenderer(s).

“esa-star” being 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”.

Tenders declared not admissible by the Tender Opening Board shall remain locked in “esa-star” and shall not be made available to Tender Evaluation Board members.