



THE EUROPEAN SPACE AGENCY

DOING BUSINESS WITH ESA

An Introductory Presentation

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Introduction: The Purpose of ESA – Article II of its Convention



“The purpose of the Agency shall be to provide for and to promote, for exclusively peaceful purposes, cooperation among European States in space research and technology and their space applications, with a view to their being used for scientific purposes and for operational space applications systems:

- a. by elaborating and implementing a long-term European space policy, by recommending space objectives to the Member States, and by concerting the policies of the Member States with respect to other national and international organisations and institutions;
- b. by elaborating and implementing activities and programmes in the space field;
- c. by coordinating the European space programme and national programmes, and by integrating the latter progressively and as completely as possible into the European space programme, in particular as regards the development of applications satellites;
- d. by elaborating and implementing the industrial policy appropriate to its programme and by recommending a coherent industrial policy to the Member States.”

Introduction: Regulatory Framework



The European Space Agency is an internal organisation having its own legal personality.

In order to implement the procurement principles set forth in the Convention and its Annex V, Council as adopted "Procurement Regulations" that govern the placing of contracts so as to ensure:

- Transparency and fair and equitable treatment of all economic operators;
- The most economic and effective employment of the Agency's resources;
- The implementation of the defined industrial policy

Introduction: Regulatory Framework



The “Implementing Instructions” are contained in the Annexes to the Procurement Regulations.

Annex III contains the “Tender Evaluation Manual”, which describes the Procurement Evaluation Processes in detail.

The Procurement Regulations can be downloaded from:

<http://emits.sso.esa.int/emits/owa/emits.main>

Under this link you will find various other key documents relevant for ESA Procurements.

How to do Business with ESA - Registration



Interested parties should – as a first step – refer to the Agency's web page.

Under the link:

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

you will find the key information to obtain an overview.

In particular, the above link will guide you through the Registration Process for potential Bidders.

(New Entities, not yet registered with ESA, can obtain their unique Entity Code by registering directly on ESA-STAR via <https://esastar-emr.sso.esa.int>).

EMITS – Electronic Mail Invitation to Tender System



Via EMITS, you will have access to

- Open Invitations to Tender
(the ITT documents, the list of interested Tenderers and the Clarifications to the ITT are only accessible for registered ESA Bidders)
- Intended Invitations to Tender
- Reference Documentation (General Clauses and Conditions, forms etc.)
- How to do business with ESA
- EMITS News (which contains important announcements, e.g. announcement of new documents, announcement of Industry Days, Procurement Dashboard etc.)
- Etc.

Via EMITS News, you find also the Procurement Dashboard.

This link shows you the status (evaluation, negotiation, award, cancelled, re-issued) of all ITTs, the Closing Date of which has elapsed.

For awarded contracts, the name of the successful Bidder is stated.

1. **Open Competition** is the normal Procedure.

2. **Restricted Competition**

If the special nature of supplies or services limits the capacity to provide them to a few potential bidders.

3. **Non-Competitive Tender /Direct Negotiations**

Only in the following cases:

- If only one source for the supplies or services exists;
- In case of extreme operational urgency resulting from unforeseeable events;
- Where for scientific, technical or economic reasons, contracts for additional or supplementary supplies or services cannot be separated from a previous contract;
- If the supplies or the services required are subject to intellectual propriety rights and can, as a consequence, only be procured from one particular source;
- If the expenditure does not exceed 100,000.- Euro;
- If the Council has given a directive or guideline to that effect to the Director General.

An Invitation to Tender (ITT) consists of the following elements:

1. Cover Letter

It describes at high level the contents of the Procurement and addresses key aspects (e.g. price type, maximum price to be observed, closing date etc.)

2. Technical Documentation

a) Statement of Work

- Scope and objective of the work
- Applicable documents
- Constraints
- Task Descriptions
- Deliverable Items
- Project Reporting

b) Technical Requirements (Specifications)

- Performance
- Interface
- Design and Engineering
- Integration and Verification
- Operational

c) Draft Contract

The draft Contract consists of:

- its Articles
- its Appendices (incl. e.g. the Statement of Work)

The Contract is based on the Agency's General Clauses and Conditions for ESA Contracts (available on EMITS under Reference Documents).

d) Special Conditions of Tender (SCT)

The SCT describe

- how the tender shall be structured
- which information shall be provided
- which "Key Acceptance Factors" must be adhered to
- which "Evaluation Criteria" and "Weighting Factors" apply

The SCT are based on the "General Conditions of Tender for ESA Contracts" (available on EMITS under Reference Documents).

ITTs are issued in English. A French translation may be provided upon request.

Tenders and all correspondence relating thereto shall be in English.

In every ITT, potential Bidders are invited to “express their interest” in EMITS if appropriate.

This may be done via the EMITS Expression of Interest function

'Public' visibility

or

'ESA only'.

In case Public visibility is chosen, other registered Bidders may see such company's name and contact details.

This information may be used to form co-operations in the subject matter.

Clarifications regarding an ITT



Industry may address questions (technical and contractual) regarding an ITT to the responsible Contracts Officer.

An anonymous version of the questions and the Agency's answers are then published on EMITS under the respective ITT item (under "Clarifications").

This is to ensure that all potential Bidders have access to these Questions and Answers.

Potential Bidders, which have expressed their interest in the subject ITT, will automatically be notified, when a Clarification in such matter is issued on EMITS.

EXPRO (Express Procurements) is a Procurement tool to simplify and speed up the Procurement Process.

It is in principle available for Procurements up to IPC limit.

For small and simple Procurements, Tenderers are requested to submit a Response Letter.

For more complex matters, the provision of a “full proposal” is requested.

In both cases, the Tenderer shall refer to the templates attached to the ITT package.

The General Clauses and Conditions for ESA Contracts (GCC) and the General Conditions of Tender (GCT) are not applicable. Instead, the draft Contract and its Appendices and the EXPRO Tender Conditions contained in the ITT comprehensively cover all contractual/tender aspects.

All GSTP and TRP activities (up IPC limits) are handled via EXPRO.

In all other matters, EXPRO is used whenever deemed appropriate given the complexity of the matter.

Tenders are evaluated by a Tender Evaluation Board, which consists of

- Members (incl. the Contracts Officer and the Technical Officer)
- Experts
- Observers

Only Members have voting rights.

Experts provide special expertise to the TEB for particular elements of the ITT.

Observers from outside the Agency may attend a TEB upon appointment foreseen in the frame of international agreements between ESA and other public bodies. ESA staff may be appointed as Observers for training purposes.

The rules regarding the TEB composition and its tasks are contained in the TEB Manual.

Not more than half of the TEB Members shall be from the Initiating Department (for ESTEC: from the Initiating Directorate).

TEB Participants are not subject to the instructions of their superiors in respect of the Tender Evaluation process.

They are bound by a Secrecy undertaking and must immediately report any possible Conflict of Interest (in which case they will be excluded from the TEB).

Prior to the ITT issue,

- the TEB reviews and finalises the ITT documents
- establishes the Evaluation Criteria and Weighting Factors
- sets the ITT schedule

Evaluation and Best Value for Money Recommendation



The TEB evaluates the tenders on the basis of the “Evaluation Criteria” and the “Weighting Factors” stated in the ITT.

It then recommends the award of a contract to the Agency’s Management on the basis of what the TEB considers the “Best value for money”, i.e. the best combination of quality and price.

The TEB summarizes its findings, markings and its recommendation in a TEB Report.

Unsuccessful Tenderers receive the part of the TEB Report, which relates to their tender.

Such Tenderers may request an oral debriefing.

Explanations shall be limited to the findings of the TEB on the tender in question and shall not cover the quality and contents of the other tenders, except for:

- name of the successful Tenderer
- difference in points (with respect to the overall weighted mark) between the successful Tenderer and debriefed Tenderer
- number of tender evaluated and ranking of the debriefed Tenderer.

Industrial Policy – Discontinuation of the Preference Clause



In the past, ITTs contained a “Preference Clause” according to which Tenderers from “under-returned” countries were privileged in case certain requirements were met.

Currently, this practice has been discontinued.

→ The GOF9 Frame Contract contains the following provision:

“The Agency reserves the right to specify, per RFP, any measures it deems appropriate to meet its Geographical Return and/or Industrial Policy requirements.”

- Special Clauses for particular type of economic operators:
 - "C1": Activities reserved to **Non-Primes and SMEs**
 - "C2": Activities subject to subcontracting Clause in favour of **Non-Primes and SMEs**
 - "C3": Activities restricted to **SMEs and R&D Organisations**
 - "C4": Activities with Sub-contracting clause to **SMEs** only

If applicable, any such measure will be indicated in the ITT Cover Letter.

Particular contractual matters - Loan Employment



For Loan Employment type of activities, particular legal requirements apply.

To conduct Loan Employment in Germany, a company must possess a certification issued by the German Labour Authorities and must comply with various other requirements under the German "Arbeitnehmerüberlassungsgesetz".

Interested Tenders should note that the process for obtaining such certification takes several months.

Service Providers must understand the criteria to distinguish Services from Loan Employment.

Particular contractual matters - Intellectual Property Rights (IPR)



One of the key requirements for every ESA Procurement is a sound approach to IPR matters.

Tenderers must carefully distinguish between

- IPRs, which shall be generated under the Contract
- The use of IPRs already owned by the Tenderer (Background IPR)
- The use of Third Party Proprietary Software
- The use of Open Source Software

Any intended use of BIPR, Third Party Proprietary and Open Source Software must be clearly identified in the tender, requires the prior approval by the Agency and must not affect the Agency's use of the deliverables.

In general, it is the Agency's policy that IPR generated under the Contract shall remain with the Contractor (with ESA having a licence to use such IPR).

However, ESOC Contracts often foresee the transfer of such IPR to ESA (Operational Software).

Particular contractual matters - The ESOC Licensing Portal



Licences for the use of a number of ESOC Software Products can be requested via the ESOC Licensing Portal using the following link:

http://www.esa.int/Our_Activities/Operations/gse/ESA_operations_software_licensable_products_-_overview

One of the options is to request a “familiarization licence” (documentation only).

This may help potential Bidders to prepare for certain activities.

Particular contractual matters - Frame Contracts



Under a Frame Contract, the parties agree on the core technical, contractual and commercial conditions for a certain area.

The Frame Contracts are awarded via the ITT process.

The actual Procurements are then done via Requests for Proposals (RFP), which are sent (per Email) only to the selected Frame Contractor(s).

The process is described in a Work Order Procedure, which is attached to the Frame Contract.

It must be distinguished between

- Non-Competitive Frame Contracts (in areas where only one qualified source of supply exists).
- Competitive Frame Contracts, where typically three to four Frame Contractors are selected, which then compete at RFP level.

Frame Contracts typically have a duration of 3+2 years.

A significant share of ESOC's Procurements are done via Frame Contracts.

Particular contractual matters - Direct Negotiations under ESOC's Current Frame Contracts –



Also under Competitive Frame Contracts, Direct Negotiations with one of the Prime Contractors (or Co-Contractors for Loan Employment activities) are possible.

The requirements are detailed in the Work Order Procedure of the respective contract.

Under GOF9, Direct Negotiations are permitted in the following cases:

- a) if only one source for the supply or services exists;
- b) in case of extreme urgency resulting from compelling operational needs;
- c) where, for scientific, technical or economic reasons, additional or supplementary supplies or services cannot be separated from a previous WO/CCN or contract;
- d) if the supplies or services required are the subject of Intellectual Property Rights and can, as a consequence, only be procured from one particular source;
- e) if deemed appropriate by the Agency to meet its Geographical Return and/or Industrial Policy requirements;
- f) in case of the replacement of Loan Employment personnel, as described in Article 7.6 of the Contract.

Particular contractual matters - The GOF9 Frame Contract



The GOF9 Frame Contract started on 1st July 2016.

It covers the following Domains:

Domain vs. Activity Type	Service Provision	Deliverables	Loan Employment
OE: Operations Engineering Services	✓	✓	
RO: Real-time Operations Services	✓		
IT: Mission Operations Infrastructure IT Services	✓		
GS: Ground Stations Engineering	✓	✓	
DS: Data Systems	✓	✓	
AD: Astro-dynamics	✓	✓	
GSLE: Ground Stations Engineering Loan Employment			✓
DSLE: Data Systems Loan Employment			✓
ADLE: Astro-dynamics Loan Employment			✓

Tenders were submitted and Frame Contracts were awarded per Domain, i.e. a successful Tenderer could win one, several or all of the above Domains.

As part of the ITT, numerous Initial Work Packages were awarded.

Particular contractual matters - The GOF9 Frame Contract



The GOF9 Frame Contract provides for a certain flexibility regarding the Consortia in the Services/Deliverables Domains. The respective provision reads:

“To allow flexibility on the composition of the consortia over the duration of the Contract (provided the Primes remain stable for the existing Domains/Parts), the inclusion of new sub-contractors to the selected consortia will be permitted at Request For Proposal level, in particular in order to:

- address Industrial Policy matters at RFP level;
- allow for newcomers to join, especially from new Member States;
- allow for the consortia to team up with other small or academic entities (e.g. universities or research institutes) and bring in additional expertise and innovation.

The role of any such new sub-contractor shall be limited to the tasks under the respective RFP/Work Order i.e. such company shall not become a part of the fixed Consortium.

Details will be provided in the respective RFP.”

This provision was applied to include 2 activities under the Polish Incentive Scheme in the GOF9 Frame Contract.

This allows the Polish companies concerned to benefit from the experience and expertise of the respective GOF9 Prime Contractor.

The “Bidding Period”, i.e. the time between ITT issue and deadline for the submission of tenders is typically quite short (usually 6 weeks).

Therefore, potential Bidders should monitor the EMITS list of Intended ITTs to identify the Procurements, for which they may wish to tender.

It is recommended that potential Bidders – which have so far not tendered for an ESA activity - familiarise themselves proactively with:

- The Agency’s General Clauses and Conditions for ESA Contracts
- The typical structure and content of the SCT
- The typical content of an ESA draft Contract

even though the SCT and the draft Contract do, of course, vary from ITT to ITT.

Also, potential Bidders should familiarise themselves with the standard documents for EXPRO Procurements (available on EMITS).

Industry Days are held to e.g.

- Brief Industry on major Procurement activities
- Discuss scientific or operational topics
- Introduce the Agency to interested companies

Such Industry Days are typically announced via EMITS News.

They are also an opportunity for Industry to connect with industrial partners.

- use the information available on the ESA web page “How to do Business with ESA”
- register as a potential ESA Bidder;
- review EMITS Intended ITTs and ITTs regularly;
- familiarize yourself with the Agency’s standard documents/requirements;
- pay special attention to the Key Acceptance Factors of the ITT;
- express your interest via EMITS, if appropriate;
- acquire and maintain an up-to-date knowledge of ESA’s programmes, activities, organisation and methods of operation;
- award of ESA contracts requires
 - High quality proposals
 - The tenderer’s full attention, understanding and responsiveness to all of the ITT requirements (not only technical but also formal, administrative, legal, etc.)
 - Competitive Prices
- request a briefing following an unsuccessful proposal submission: this will help to improve the quality of subsequent tenders