

EUROPEAN SPACE AGENCY – ESA

CALL FOR PROPOSALS – “CfP”

**TENDERING CONDITIONS OF TENDER (“CfP/TC”) APPLICABLE TO THE FULL
PROPOSAL**

NOTE

For the purposes of Calls for Proposals (CfP) the Agency’s Contracting Regulations (ESA/REG/001, rev. 6) shall be the applicable regulatory framework, as specified, amended or supplemented by these TENDERING CONDITIONS (“CfP/TC”).

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 CfP procurement actions (“CfP TENDERING CONDITIONS” or, in short, “CfP/TC” and attached to the CfP as Appendix 2),
- the Agency’s Cover Letter, and
- “Proposal Template(s)”, specific to each CfP, which constitutes the latter’s Appendix 2; 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” 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 (including its Annex “Governance Scheme of the Agency’s Personal Data Protection”) adopted by Director General of ESA on 1

March 2022.

Details of this framework can be found via the link given on esa-star Publication (<https://esastar-publication.sso.esa.int/supportingDocumentation> under “Reference Documentation”---> “Administrative Documents”).

Personal data processed under an ESA Contract will be subject to the Personal Data Protection Clause in the Draft Contract or the Personal Data Processing Annex, attached to the Draft Contract of the CfP. Special attention is drawn to paragraph 8 of the Cover Letter of the “Proposal Template”.

1. FORMAL CONDITIONS, COMMITMENTS, UNDERTAKINGS

1.1 Eligibility requirements

The registration requirements can be found in the ESA Industrial Portal at the following address:

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

Specific attention is drawn to the following:

The economic operator shall satisfy the qualification requirements established under Article 12 paragraphs 1 and 2. of the Contracting Regulations. Economic operator shall further specifically self-certify that it, and when applicable any of its subcontractors, does not fall under any of the exclusions foreseen under the ESA Contracting Regulations, Article 12, paragraphs 3 and 14.

1.2 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 CfP.

1.3 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 is under no obligation to award a contract to a Tenderer with whom the Agency entered into negotiations. Such decisions by the Agency may not give rise to any claims by Tenderers.

The original tender(s) shall remain valid until changes are agreed in writing. Once agreed, the modified tender(s) shall be binding and its validity shall in no case be less than sixty (60) calendar days from the date of its (re)submission.

1.4 Retention of tenders

Any document submitted in response to an CfP 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.

1.5 No reimbursement of tender expenses

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

1.6 Non commitment by the Agency

ESA reserves the right at any time to suspend or cancel the CfP. Such suspension or cancellation may not give rise to any claims by economic operators.

A final recommendation for awarding the Contract, unless otherwise stated in the CfP, 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 CfP 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 CfP.

1.7 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 CfP has received or will be offered by the Tenderer or any of its Subcontractor(s) any direct or indirect benefit arising from the CfP or the award of any subsequent Contract.

If the Tenderer or its Subcontractor 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 Subcontractor, 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

In the process of tender submission, it is compulsory for Tenderers to make declarations related to Compliances and to Key Acceptance Factors.

2.1 Declarations of Compliances

With regard to the “Declaration of Compliance” to be submitted in esa-star Tendering, 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 content of the Tenderer’s Full Proposal may lead to significant down-marking in the evaluation of the Tender.

2.2 Declarations related to “Key Acceptance Factors”

The Tenderer will have to provide, in the dedicated sections of the Tenderer’s Cover Letter and in esa-star Tendering, the declarations related to “Key Acceptance Factors” (which are mirrored in section 3 of the CfP Cover Letter).

A statement of non-compliance in the Tenderer’s Cover Letter to any of the Key Acceptance Factors will lead to the tender being declared non-admissible and excluded from evaluation.

In addition, if the analysis of the full proposal admitted for evaluation reveals that the tender is not in line with any of the declarations related to the “Key Acceptance Factors”, the tender will be excluded from further evaluation.

3. DOCUMENTS AND COMMUNICATIONS

3.1 Amendment of the Call for Proposals

ESA reserves the right to issue amendments to the CfP.

3.2 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 authorised only, if made in writing to the Contracts Officer nominated in the CfP.

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

3.3 Amendment, withdrawal or resubmission of the tender

Amendment, withdrawal or resubmission of the tender is permitted, if the amendments or new tender are done in esa-star Tendering for the subject CfP before the closing date and time, in accordance with the submission conditions.

3.4 Information about the result of the Call for Proposals

Tenderers will be informed in writing of the result of the CfP after a decision has been taken. The notification to unsuccessful Tenderers will contain an invitation to the unsuccessful Tenderers to an oral debriefing during which the evaluation of the TEB on the tender in question, including the associated marks and any other information limited to the Tenderer's own tender will be discussed.

4. SUBMISSION CONDITIONS

Full Proposals shall be submitted , before the closing date and time, exclusively in electronic format via esa-star Tendering as per the instructions contained in the CfP Cover Letter and in the CfP/TC herein.

The tender is successfully submitted when the status of the proposal in esa-star Tendering 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" and Tenderers click on "submit proposal to ESA".

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

Furthermore, Annex I of the CfP/TC herein contains important considerations related to the 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 the 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

The length of the tender document shall not exceed **25 pages (excluding the Cover Letter, Annexes and the PSS forms)**.

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 the Contracting Regulations (ESA/REG/001, rev. 6) by the Agency, may seek review in accordance with Part VII of these Regulations, subject to certain restrictions stated therein. The instructions and relevant forms can be found on esa-star Publication under Supporting Documentation in the following link:

<https://esastar-publication.sso.esa.int/supportingDocumentation/details/23>

6. FINANCIAL VIABILITY ASSESSMENT

In the frame of monitoring of the risks taken by the Agency with respect to economic operators in its tendering and contract implementation, the financial viability of tenderers may be assessed by the Agency at any time during the tendering process, including the potential negotiation stage and contract duration, if selected. Specific financial information might be requested by the Agency, which shall be provided as soon as possible within the timeline indicated by the Agency. If as a result of the assessment, the risk is deemed too high, the Agency reserves the right not to place the contract or to implement specific safeguards within the contract (such as e.g. specific monitoring, termination provisions).

7. CRITERIA USED BY ESA FOR TENDER EVALUATION

In evaluating the individual quality of the Full Proposals, ESA will use those criteria and where applicable, the associated weighting factors, which are specified in the Agency's CfP Cover Letter and are mirrored in esa-star Tendering.

ANNEX I

IMPORTANT CONSIDERATIONS RELATED TO ESA-STAR SYSTEM

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

- 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;
- if Tenderers wish to upload additional material (*e.g.*, company brochures, videos, animations), such material shall be strictly related to the subject of the tender and can be uploaded separately in the 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 Tendering);
- Maximum file size is 250 MB per file.
- file names may not contain the following characters:
 - \ (backslash)
 - / (forward slash)
 - : (colon)
 - * (asterisk)
 - ? (question mark)
 - " (double quote)
 - < (less than)
 - > (greater than)
 - | (vertical bar)
 - # (hash)
 - % (percent)
 - ! (exclamation point)

esa-star is optimised and its functionalities are certified for use with Google Chrome. 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 Google Chrome 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 CfP 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 Tendering's "Upload", "Submit proposal to ESA" and "Recall" functionalities, whether using actual (draft) proposals or "dummy" material, well ahead of the CfP 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 Tendering, 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 CfP 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 Tendering and shall not be evaluated.

- Tenderers may submit only one tender in a Bidder Restricted Area. The esa-star Tendering does not support more than one tender in a single Bidder Restricted Area.

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 Tendering before the applicable closing date / time.