

DOING BUSINESS WITH ESA

The ESA Procurement Process and advise to bidders in the tendering process

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3. The overall procurement flow
4. Types of procurement procedure
5. ESA-STAR-EMITS
6. The Content of the RFQ /ITT Package
7. The Tender Evaluation
8. Advice related to content of the offers
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1. Introduction



- The European Space Agency is an international organisation having legal personality.
- **Convention:** Purpose is to “*provide for and to promote, for exclusively peaceful purposes, co-operation 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*”.
- Mandatory and optional activities.
- Council (delegate bodies) gives mandate to Director General.
- Each member state contributes to costs of activities and programmes in accordance with a scale adopted by Council.
- Approximately 90% of ESA’s budget is spent on contracts

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REGULATORY FRAMEWORK

A. Convention

Article VII: *"The industrial policy which the Agency is to elaborate and apply shall be designed in particular to (...) exploit the advantages of free competitive bidding in all cases, except where this would be incompatible with other defined objectives of industrial policy."*

Annex V, Article IV: *"The geographical distribution of all the Agency's contracts shall be governed by the following general rules:*

- 1. A Member State's overall return coefficient shall be the ratio between its percentage share of the total value of all contracts awarded among all Member States and its total percentage contributions."*

REGULATORY FRAMEWORK

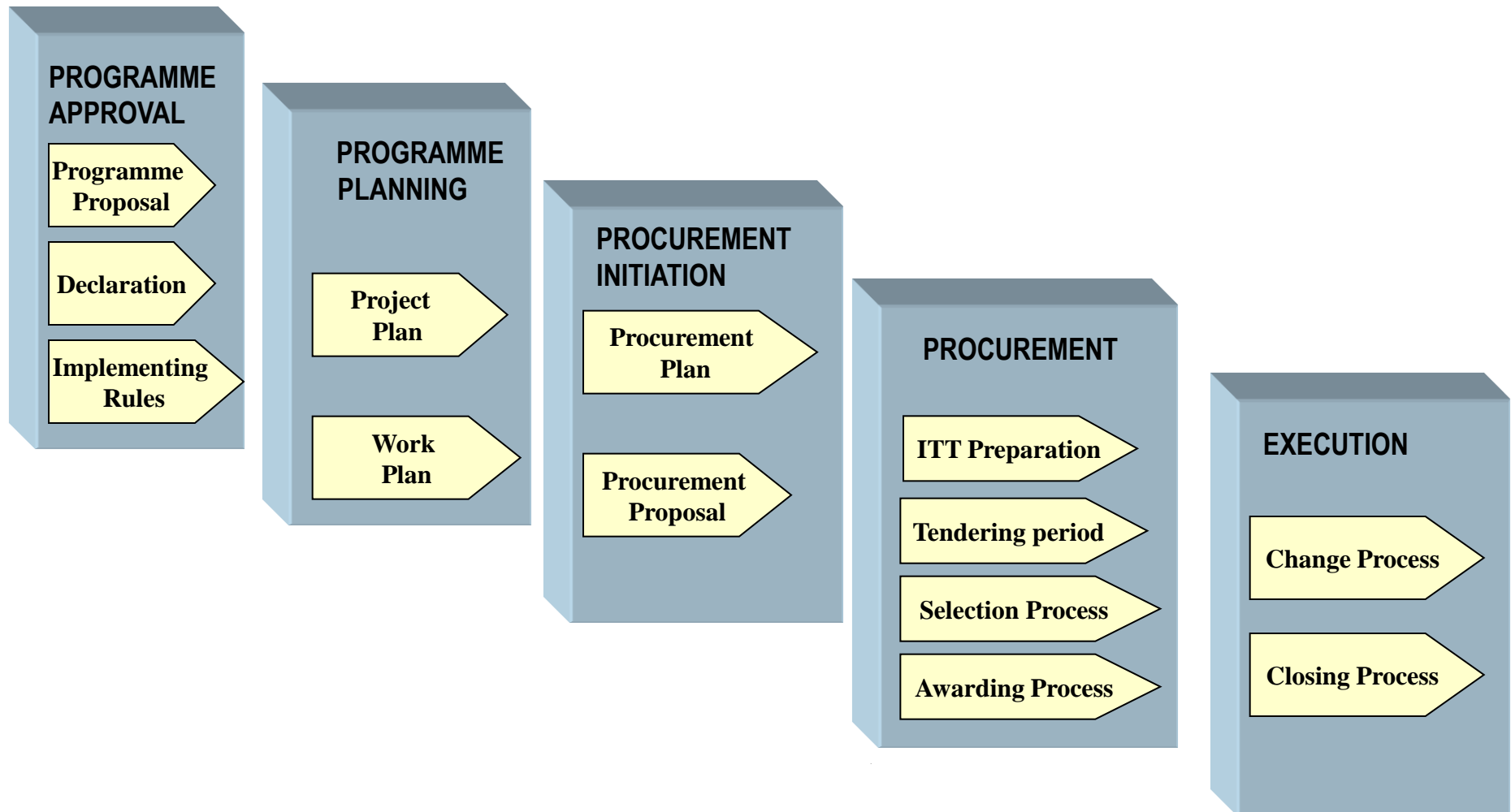
B. Procurement Regulations

In order to implement the procurement principles set forth in the Convention and its Annex V, Council has adopted “Procurement Regulations” (revised in 2011) 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

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3. The overall procurement flow



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4. Types of procurement procedure



1. Definitions

Open Competitive Tender

Restricted Competitive Tender

Non-Competitive Tender

2. Competition

Open Competition is the normal/default Procedure
via the ESA-STAR/EMITS tools

Competition may also be run by industry for the purpose
of an ESA Contract (“Best Practices”) Via EMITS

3. Restricted Competition

Only applied if special nature of supplies or services
limits the capacity to provide them to a few potential
bidders

4. Non-Competitive Tender /Direct Negotiations

- Must always be justified
- Accepted only:
 - 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;
- Case of only one tender submitted after competitive Request for Proposal

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ESA-STAR is the European Space Agency's new electronic tendering and registration system

REGISTRATION:

All Companies, Institutes and Universities wishing to do business with ESA, as a first step **MUST register in ESA-STAR** at the following address:

<https://esastar-emr.sso.esa.int>.

More information can be found at:

[http://emits.sso.esa.int/emits-doc/support/New Tendering and Entity Management processes in ESA.pdf](http://emits.sso.esa.int/emits-doc/support/New_Tendering_and_Entity_Management_processes_in_ESA.pdf)

WARNING!!!

Without an ESA-STAR registration and subsequent Entity Code there is **NO access to EMITS and to:**

- 1) Invitation-To-Tender (ITT) package
- 2) reference documentation linked to the ITT
- 3) access to any clarifications regarding the ITT

→ No Entity Code (1***) = **NO** contract.**

Visit http://www.esa.int/About_Us/Business_with_ESA for further information

5. ESA-STAR/EMITS



TENDERING:

□ **Via EMITS** - ESA's web-based system for publishing **Invitations to Tender** (ITTs) (open or restrictive competition) and **Requests for Quotation** (RFQs). It includes inter alia:

- A **list of intended ITTs**: potential bidders may declare their interest and see which other companies have done the same;
- Many **technical, administrative and contractual standards and documents** (General Tender Conditions, General Clauses and Conditions for ESA Contracts, PSS-A forms, engineering standards etc.);
- **Published ITTs and RFQs**;
- Competitive **ITTs published by ESA on behalf of other entities**.

N.B.: **Request for Quotation** (RFQs) is the term indicating an “ITT” for Direct Negotiations (non-competitive tendering). They are only visible to the companies/institutes to whom the RFQ is addressed

ELECTRONIC TENDERING:

ESA-STAR goes fully operational on 1st October 2016 and allows for the electronic submission of offers to ESA (competitive or not).

Entities registered in ESA-STAR will need to nominate a BID MANAGER who will load the proposal in a on-line restricted access area.

Bidders will be able to change and replace their offer until the due date/hour specified in the ITT/RFQ.

At the time of closure of the ITT/RFQ, the safe area closes for the bidders and opens to the ESA Evaluation team.

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6. The Content of the RFQ /ITT Packages



1. General Principles

- Solicitation packages are issued simultaneously to all potential Bidders, free of charge
- 2 types of procedure used:
 - Nominal procedure
 - Package consisting of Cover letter, technical documentation, draft contract with reference to General Clauses and Conditions, and special tender conditions with reference to General Tender Conditions
 - *Express procedure (EXPRO)*

Package consisting of cover letter, technical documentation, proposal or response template, self standing contract conditions, self standing tender conditions

6. The Content of the RFQ /ITT Packages ESA

2. Cover Letter (may include Key Acceptance Factor and Compliance declarations)

3. Technical Documentation

a) Statement of Work

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

b) Technical Requirements (Specification)

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

c) Applicable documents

4. Draft Contract

- a) Is making reference/modifies/ amplifies the General Clauses and Conditions for ESA Contracts / *is a self-standing document*
- b) Specifies Price and Type of Price
 - Three major types:
 - Fixed Price (Firm Fixed Price being the most common)
 - Ceiling Price to be converted into a Firm Fixed Price and
 - Cost Reimbursement Price
- c) Specifies timeframe for delivery and (if applicable) penalties for late delivery, incentive schemes
 - If time is of the essence (operational constraints, launch contracts, budget): sanction/penalty for late delivery almost always included in the contract
 - In such case, whenever possible, Parties try to build up incentive, related to the achievement of pre-defined target (schedule and performance)
- d) Specifies all other specific aspects (e.g. applicable law, Intellectual Property Rights clauses)

5. Conditions of Tender

Nominal Case

- Special Conditions of Tender making reference to
- General Conditions of Tender

EXPRO procedure

- *Proposal/Response template*
- *Self-standing conditions of tender*

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1. Formalism

To make sure that, in the evaluation of competitive offers, the principle of fair and open competition is maintained and seen to be maintained.

2. Tender Evaluation Board

- Secrecy and Statement of non-Interest Form
- Prior to the Issue of the ITT/RFQ
 - Approves the solicitation package documents
 - Establishes the Evaluation Criteria and weighting factors
- Subsequent to the Receipt of Offers
 - Assesses the offers and marks them
 - Makes a recommendation as to any contract action to be taken as a result of the evaluation (Marking, Price, Industrial Policy)
 - Prepares a report on the results

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8. Importance of ITT/RFQ Cover Letter



The Cover Letter is what determines at Tender Opening if an offer is acceptable for evaluation or not.

So particular attention must be given to requirements listed in ITT/RFQ Cover letter, in particular to the **Key Acceptance Factors declaration** such as :

- a. Compliance with Article 18 of Procurement Regulations (formal warranties and certification)
- b. Validity period
- c. Compliance with price conditions (price type, budget etc.)
- d. Formal requirements related to the bidders
- e. Specific programme requirements

- **THE DECLARATION MUST BE FILLED-IN AND DELIVERED WITH YOUR COVER LETTER**
- **THE CONTENT OF THE DECLARATION MUST BE SUPPORTED BY THE OFFER**

8: Contract conditions



The General Clauses and Conditions for ESA Contracts have been discussed and agreed with industry/institutes of the ESA Member States.

Draft contracts that are part of ITTs/RFQs are tailored to the minimum level sufficient to warrant cohesion with the objectives of the subject procurement action.

As such, comments and/or objections from industry in response to an ITT/RFQ draft contract are not welcomed.

If comments and/or objections are nevertheless provided, they must be thoroughly justified and explained.

- With respect to quality, it should be underlined that ESA is a **technically and scientifically oriented** organisation and strives at achieving **technical/scientific excellence** by:
 - Setting detailed technical requirements
 - Assessing the proposed technical/scientific approach in every detail
 - Deploying the highest level of experts in performing such assessment
 - Monitoring the activity with the same level of expertise and,
 - Accepting the deliverables against the above mentioned strict requirements

8: Evaluation/Recommendation



Evaluation of offers is made

- On quality of the offer as judged against the evaluation criteria specified in the ITT/RFQ

Recommendation for a contract is based

- On result of the evaluation (i.e. marks)
- The Evaluation Board must also address and consider “value for money”; i.e. price factored against quality of the offer
- The reply to any Industrial Policy requirement stated in the ITT/RFQ will also be taken into account.

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9. Conclusions



- **REGISTER in ESA-STAR as a potential supplier**
- Get familiar with the various procurement regulations/documents as soon as possible
- Review EMITS list of Intended ITTs regularly and also ITT announcements made on EMITS under “Entities”;
- **Communicate your interest**, via EMITS, to participate in the corresponding ITTs;
- **Contact potential partners** identified via EMITS;
- Acquire and maintain an **up-to-date knowledge** of ESA’s programmes, activities, organisation and methods of operation;
- Follow carefully the instructions provided in the solicitation packages
- If in doubt ASK (in writing, to the Contracts Officer mentioned in the ITT/RFQ)

- Award of ESA contracts requires
 - **High quality proposals;**
 - **The tenderer's full attention, understanding and responsiveness to all of the ITT/RFQ requirements (not only technical but also formal, administrative, legal, Industrial Policy, etc.)**

- Carefully review the summary of the evaluation in case of unsuccessful tender: this will help to improve the quality of subsequent tenders.

- Learn and
- **Persevere**

The ESA Convention

<http://esamultimedia.esa.int/multimedia/publications/SP-1317-EN/pageflip.html>

The ESA Procurement Rules

The General Clauses and Conditions for ESA Contracts

The General Tender Conditions

All available from EMITS left hand side menu>Reference documentation>Administrative documents

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

ESA industry Portal: [http://www.esa.int/About Us/Business with ESA](http://www.esa.int/About_Us/Business_with_ESA)

(mostly explaining nominal procurement procedure)

QUESTIONS?