

Measures to ensure business continuity in the European Space industry and in the implementation of ESA Programmes during the COVID-19 crisis

The COVID-19 crisis is impacting all ESA Member States.

The fully justified measures taken by the Governments to mitigate and contain this major threat have important repercussions on the economy at large, the operations of the space industry and of ESA.

The Agency is committed to limit as much as feasible these repercussions on industry and on the implementation of ESA Programmes.

To that end, the Agency has put in place a business continuity plan.

That plan covers all phases of procurements for ESA Mandatory and Optional Programmes, i.e. the tendering process, the time-to-contract, the time-to-payment, and the contract execution. Its main elements are as follows.

I. Procurement approval process:

- *Due to the circumstances the next IPC is cancelled. The next meeting will take place in June. To avoid business interruption and in agreement with the IPC Chair, it is proposed to put in place a transparent approval in writing procedure for the Procurement Proposals related to ITTs and RFQs to be issued before end-June 2020 and for the Contract Proposals ready for decision. No policy paper will be submitted to this procedure. This procedure, to be approved by the IPC, will allow a round of questions and answers before the voting process. Should the round of questions indicate that a document does not meet a large majority, it will be withdrawn from the procedure.*
- *For the activities below the IPC threshold the existing approval process is fully digital and will remain fully operational.*

II. Tendering process

- *The ESA-STAR system, that is used to distribute ITTs and RFQs and to collect all offers received from industry, is by construction supporting a dematerialized handling of the offer submission, opening and dispatching to the Tender*

Evaluation Board participants. The ESA IT support services will remain operational and available.

- *The rules in place, allowing for Tender Evaluation Boards (TEB) to meet by tele/video conference will be reminded and instruction will be given to make use of them, therefore ensuring continuity in the evaluation of the offers received.*
- *Where possible from a programme implementation point of view, ESA will implement a relaxation to the closing dates of ITTs currently falling in March, April and May. This will be done on a case by case basis upon request of interested bidders.*

III. *Time-to-contract*

- *To ensure that contracts will continue to be placed, an instruction has been promulgated requiring that negotiations and Kick-off meetings take place by tele/video conference.*
- *An instruction has also been issued authorizing electronic signature by ESA for all contracts, CCN, Work Orders and ATPs irrespective of their value.*

IV. *Time-to-Payment*

- *No specific difficulties are anticipated as the electronic handling of invoices is the baseline for almost all contracts.*
- *Approved invoices will be paid by ESA without delays in March, April and May. The situation will be assessed end-April.*

V. *Contract execution*

- *In order to support financially industry, and upon request by Industry, ESA will make partial payments against forthcoming milestones in line with the level of technical progress reached to date. Partial payment is initiated via a partial GRN/Invoice raised by industry and approved by ESA in line with the relevant contractual provisions. A Contract Change Notice is not required. Evidence of technical progress will be provided by industry. Prime Contractors will be instructed to flow-down and implement the same throughout their entire consortium to ensure all industrial partners share the benefit, and may be required to provide evidence thereof..*
- *Industry may also request additional advances in ongoing contracts, in particular when needed to accelerate payments to subcontractors. This would require a CCN*

to implement. Such CCN should be subject of electronic signature and submission by email between relevant parties.

- *Companies with ESA development contracts could be granted for the duration that they have been affected + 1 month (recovery time), waiver of penalties or extension of incentive milestones for epidemic - related delays (to be cascaded through contract primes, if applicable). ESA will be particularly attentive to the impact of COVID 19-related events in contracts with SMEs with regard to their delivery dates.*
- *SMEs may request exceptionally, until end-June, up to 50% advance of (remaining) contract value, (taking into account any advance already granted), instead of the current 35%. The Agency will consider favourably such request, (taking into account any advance already granted and the particular circumstances of the relevant contract). This would be implemented via CCNs.*
- *Retroactive adjustments to contracts shall not be implemented as this is a source of administrative complexity and delay.*
- *While the above measures are implemented with immediate effect between ESA and its contractors, Prime Contractors will be instructed to flow-down and implement the same throughout their entire consortium to ensure all industrial partners share the benefit. In particular, they shall ensure expeditious assessment of technical progress evidence from their subcontractors and ensure expeditious partial payment to their subcontractors.*

In addition to the above, ESA has put in place a dedicated, virtual COVID-19 Desk, under the form of the e-mail address industry.covid19@esa.int, where ESA suppliers can address any question they might have in relation to the COVID-19 and its impact on their business with the Agency. This Desk is meant for general questions, and, for the sake of its efficient functioning, the following should be observed:

- For questions or clarifications on on-going procurement actions, potential tenderers are requested to abide to communicating exclusively with the point of contacts identified in the cover letter of the corresponding ITT's/RFQ's.

- For payment matters related to ongoing contracts please use the email address ESA.payment.officer@esa.int which is cited in all contracts.

- For questions or claims on running contracts, contractors are requested to contact the ESA representative for contractual matters as identified in the relevant contract.
For the particular case of delays in execution of contracts as mentioned above [and associated claim of Force Majeure], the issue does not need to be addressed at this stage and will be discussed with the ESA contractors after the notification providing the proof required by the contract allowing to assess the actual and final impact on the particular project.

The Agency has both the hope and the priority objective to ensure that we will not add an economic collapse to the on-going human situation.

A key goal of ESA has always been and is, more than ever, the support to European space Industry, and all energies are as of now focused on the diligent implementation of this business continuity plan.
