

Navigating through EUSPA's Service Operator Contracts



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Importance and needs covered

- The Union has been developing **EGNOS and Galileo**, which respond to the **needs of Union citizens and the requirements of public policies** and contributing amongst other things to the **strategic autonomy of the Union**.
- The **continuity of those initiatives and programmes should be ensured** and the **services** they provide should be **improved**,
- They shall **meet the new needs** of users, **remain at the forefront in view of new technology development** and **are able to meet political priorities** such as climate change, transport, security and defence.
- The Agency needs to **ensure the sustainability** of the Galileo and EGNOS and **the continuity, availability, accuracy, reliability and security of their services**.
- In a changing environment and rapidly developing market, their **development should also continue with new generations of those systems**, including associated space and ground segment evolution.

Trends in implementing the Space Programme specific principles

In case of service contracts with long duration and strong Prime a number of measures are put in place to ensure:

- Fair and balanced distribution of work through competitive tendering outside the Group according to Articles 14.1(a) and 17 of Space Regulation
- Reinforced visibility on supply chain and relationship with subcontractors during contract execution in accordance with the provisions of article 14.1(a) of the Space Regulation
- Best value for money throughout the duration of the Framework Contract and fair competition (see Article 14 of the Space Regulation) including:
 - Bench -marking clauses to align the delivery of services with the most competitive conditions applicable in a relevant or comparable market in accordance with Article 14.1.(b) of the Space Regulation;
 - Incentives on continuous improvements and related efficiencies;
- Limitation of environmental impact as per Article 14.1 (h) of the Space Regulation.
- Alignment with Contracting Authority needs also considering evolving character of the infrastructure including:
 - Mid-term review

EUSPA Service Operator Contracts

- GSA/CD/14/14 – Galileo Service Operator (GSOp I)
- GSA/CD/19/09 – EGNOS Service Provision (NESP)
- EUSPA/CP/09/24 – Galileo Service Operator (GSOp II)

- Typical elements in the scope of operational contracts
 - Hand-over / Hand-back,
 - Operate and maintain the system (ground and space segments),
 - Guarantee compliance with the service performance requirements,
 - Delivery of services

Procurement Procedures

- Complex procurements which necessitate
 - dialogue to precisely defined the requirements or
 - negotiations between the contracting authority and the tenderers
- Based on the subject matter this leads to the following procurement procedures: competitive dialogue or competitive procedure with negotiations
- The competitive dialogue is structured in the following phases:
 - Phase I: Request to Participate and Selection Phase
 - Phase II: Submission of Preliminary Proposal and Dialogue
 - Phase III: Best and Final Offer and award of the Contract
- The competitive procedure with negotiations is structured in the following phases:
 - Phase I: Request to Participate and Selection Phase
 - Phase II: Submission of Initial Tenders and negotiations
 - Phase III: Best and Final Offer and award of the Contract

Points of Attention in the Tender Documentation

- Security requirements as these contracts require handling of EU CI and PRS Information during tendering and contract execution
- Participation Conditions
 - Rules for Primes, Core-Team Members, Subcontractors, specific rules for entities involved in security sensitive activities
 - Possibility of waivers
- Due Diligence
- Foreign Subsidies Reporting
 - Notification / Declaration
- Subcontracting and supply chain
 - Rules applicable to subcontracting
 - Minimum shares of subcontracting to be awarded in competitive tendering outside the Group of the Tenderers → dedicated plan
 - Core procurement principles to be respected during the competitive tenders organized by the Tenderers: fair competition & equality of treatment, transparency, proportionality, best value for money
 - Participation of startups, new entrants and SMEs is encouraged → dedicated plan
 - To be evaluated in a Qualitative Award Criterion

Key concepts for the Contracts

Scope of activities to be performed are defined through the following documentation:

- Key Performance Indicators (KPI) -> Incentives and Liquidated Damages
- CFI, Assets and Agency Deliverable Items
- Liability
- Technology Watch
- Periodic Review
- Competitive Subcontracting -> Importance of the plan
- Mechanism to manage unexpected events -> Ad-Hoc Budget Request

Contracts - Key Performance Indicators (KPI)

- A Key Performance Indicator (KPI) regime is linking the level of performance on certain aspects/services within the contract to the application of financial liquidated damages and incentives.
- The liquidated damage schemes are designed to ensure that the services are delivered by the Contractor at the right time and with the required performance and availability
- The incentive scheme is designed to incentivize and recognise excellent performance by the Contractor.
- The associated parameters will be periodically reviewed and adjusted according to the performance achievable with the deployed infrastructure, the operational service capabilities of new infrastructure/elements, or to adjust them as a function of the experience gained by the Contractor in the actual execution of operations.

Contracts - Key Performance Indicators (KPI) Categories

KPIs are aimed at measuring the performance of Contractor's services to the Contracting Authority.

Typical examples:

- **Quality of Services (QoS):** These are indicators that monitor requirements related to the quality of the services provided by the Contractor, such as correct execution of operations, timely resolution of anomalies, timely publication of user notifications, etc.
- **Reliability of Services:** These are indicators that monitor requirements related to the availability of the services provided by the Contractor to the Contracting.
- **Contractual efficiency:** These are indicators that monitor requirements related to contract execution activities, such as delays in fulfilling contractual obligations, time to reply to Contract Change Requests, time to perform specific validation activities, timely submission of deliverables, etc.

Contracts - Incentives

- In addition to the Liquidated Damages Scheme described above, within the Contract execution, an incentive scheme might in place to incentivise and recognise excellent performance by the Contractor.
 - Continuous performance above the contractual service commitments
 - Exceptional expediency of delivery
- Incentive as defined in the KPI documents – if met, incentive fee will be paid

Contracts - Liquidated Damages

- The contractor shall comply with performance obligations and shall meet delivery milestone specified in SCs
- Liquidated damages shall be paid by the contractor in case of Underperformance as indicated in the KPI documents → Liquidated damages formula
- Different dedicated formula for liquidated damages for delay in achieving a milestone
- Liquidated damages caps
- Gross negligence or wilful misconduct on the side of the Contractor
- Liquidated damages as sole remedy unless the overall cap of Liquidated damages has been reached. In such case the Agency may claim compensation for demonstrated further damages up to the overall liability cap

Contracts - CFI, Assets and Agency Deliverable Items

For the contractor to be able to perform its work, the Programme needs to provide:

- Customer Furnished Items (CFI)
 - Right of use of the premises
 - Maintenance options
 - Manufacturer support
- Assets
 - Tangible and intangible items
- Agency Deliverable Items
 - Inputs to processes (e.g. inputs to the security risk assessment)
 - Programme information (e.g. inventories, obsolescence)

Contracts - Customer Furnished Items (CFI)

- The Agency makes available to the contractor the CFI defined in the CFI, Assets and deliverable item list
- Contractor acknowledges that CFIs are essential for the operation of the assets and seamless operations.
- Contractor cooperate with the CFI Provider and the Agency → it not possible negative impact on the CFI's provision
- In case of any failure of CFI, the Contractor shall notify the agency , propose mitigation action and limit as much as possible the consequences

Contracts - Assets

- Agency make available and grant to the Contractor the right to use, operate and maintain the Assets
- Following the due diligence, the Contractor takes full responsibility of the Assets, with the only exceptions identified in the Contractor's proposal (e.g. corrective actions) and unless such defect could not have been detected or cannot be corrected for reason beyond contractor's control
- Same applies for Assets handed over during Contract implementation
- Assets handed over to the Contractor taken into custody by the Contractor who will assume responsibility for their use according to Good Industry Practice.
- Contractor responsible for the conditions and performances of the Assets, having assessed their fitness for the purpose of fulfilling its obligations under the Contract

Contracts - Liability

- Usage of liability caps
- Contractor indemnification for infringement of Third Party IPR, in case such infringement has been caused by the Contractor
- Responsibility and liability in relation to the provision of services vis-à-vis Users.
- Indemnity and hold harmless clauses
- Contractor's gross negligence or willful misconduct.
- Possibility to Agency recourse vis-à-vis the Contractor under specific conditions

Contracts - Technology watch

- The purpose of a technology watch is to benefit from any material technical advancement and/or technological upgrades
- Findings of the technology watch to be presented once a year
- If positive impact → change process to be implemented
- If cost saving → Contractor and Agency will share the benefit according to the formula in the contract

Contract Trends: Market test and periodic review

- Market test
 - One year before the review date the Parties appoint an independent experts to assess the adequate amounts of costs, profit margin and FUP
 - Periodic review
 - the Parties meeting to review in good faith if certain aspects in order to ensure
 - Alignment with Agency and Programme needs and evolution
 - The performance of the contract according to best value for money conditions
- Taking into account specific elements including the Independent Expert's assessment
- If no agreement between the parties before the review date the matter shall be settled according to dispute settlement provisions

Contracts - Subcontracting

- Contractor may only subcontract subject to the Agency approval
- Compliance with the Supply Chain Requirement
 - The Contractor shall achieve in the course of execution of the contract a minimum share of subcontracting to be awarded in competitive tendering outside the Group
- Payment of Sub-Contractors Contractor's sole responsibility

Contracts - Ad-Hoc Budget Request / Technical Assistance Description

- Provides flexibility
- Request for usage providing a ceiling, payment after the completion
- AHBR: Only in exceptional cases
 - Urgency
 - Unforeseeability
- TAD
 - Scope pre-defined

Other relevant contractual Provisions

- Consents
- Compliance with access to procurement, selection, rejection and exclusion criteria
- Agency Access to premises and Audit right
- Change process
- Payment provisions
- Termination event, termination procedure and step in right
- Force majeure
- Confidentiality
- Applicable law
- Dispute resolution

Q&A Session



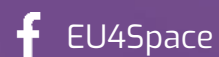
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