

Frequently asked questions on EU OPEN CALLS

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Section 1: Procedures

1. Is it possible to submit a tender only in paper version, without the e-submission?

No.

2. How can an account on the PMP be opened?

The following alternative options can be used by the tenderers to create an account:

- by the creation of a username/password to login;
- registration by using a LUXTRUST product;
- registration via eIDAS

The procedure to obtain a LUXTRUST product is described in the following website:
<https://www.luxtrust.lu/>.

Please note that for economic operators residing outside Luxembourg, the procedure to obtain a LUXTRUST product can be long (approximately 4 weeks). Information regarding the procedure can be found at the following link <https://www.luxtrust.lu/en/simple/206>.

3. What type of electronic signature is required for the submission of the tender and which documents of the tenders must be signed electronically?

All tendering documents submitted electronically must also be electronically signed by the economic operator, respectively by its representative, through an electronic signature as foreseen by the national (Luxembourg) Law modified on 14th of August 2000 on electronic trade¹.

The electronic signature to sign documents in the Luxembourgish Public Procurement Portal (PMP) can be any qualified certificate of the Trusted List of EU Commission (<https://webgate.ec.europa.eu/tl-browser/#/>).

The Luxembourg Portal of Public Procurement allows economic operators to test whether their electronic signature is valid and whether it can be used to submit the tender at the following link:
<https://pmp.b2g.etat.lu/index.php?page=commun.VerifierSignature&callFrom=entreprise>

In case economic operators do not have a valid electronic signature certificate, they will need to request one from the authorised institutions. Please note that the procedure to obtain an electronic signature certificate can take some time.

4. What has to be signed electronically? The whole offer or each individual document submitted?

You have the choice to sign the whole offer or the Annex A (ESPD) and the financial offer.

5. Who should sign the ESPD electronically? Can it be the project leader, employed at the consortium leader institution, or does it need to be the formal leader of the same institution?

¹ <http://data.legilux.public.lu/eli/etat/leg/loi/2000/08/14/n8/jo>

The person signing the ESPD should have the legal capacity to engage the tenderer with its signature. It is up to the tenderer to clarify this internally.

6. How can tendering documents be downloaded?

Tendering documents can be downloaded either through the PMP website: <https://pmp.b2g.etat.lu> or through ESPON's e-Tendering platform: <https://etendering.ted.europa.eu/general/page.html?name=home> .

7. Is the registration in the PMP Portal a requirement only for the lead partner?

To download the tender documents, you can either register or declare as anonym. To submit a tender, as the tender is to be submitted by the main tenderer on behalf of the consortium, only the main tenderer is required to register in the Luxembourg Portal of Public Procurement.

8. How can we create an account on the Luxembourg Portal of Public Procurement?

The economic operators must create an Enterprise account in the PMP – www.pmp.lu

The configuration and internet browsers recommended according to the PMP can be found on the PMP website :

To create an account in the PMP, (www.pmp.lu) the economic operators have 3 options:

1. By the creation of a username/password to login
2. Registration by using a LUXTRUST product
3. Registration via Luxembourg ID or eIDAS

If the economic operator opts for options 2. or 3., the authentication procedure can be made by using a LUXTRUST product (smart card or signing stick, issued by the Luxembourg relevant authorities), or with a recognised eID card.

The procedure to obtain a LUXTRUST product is described at the following website:

<https://www.luxtrust.lu/>

Please note for the economic operators outside Luxembourg that the procedure to obtain a LUXTRUST product can be longer (approximately 4 weeks). Information regarding the procedure can be found at the following link <https://www.luxtrust.lu/en/simple/206>

9. If a submitted tender is selected, does this represent a formal commitment to sign the contract? If yes, what is the time frame between the announcement of the results and the signing of the contract?

By signing the ESPD, the tenderer accepts to keep its offer valid for 4 months from the date of its submission.

After the official notification awarding the contract, a standstill period of 10 calendar days must be observed to allow the non-selected tenderers to lodge a complaint if they wish so. After the expiration of this period, and in case no complaint is lodged, a final award will be sent to the selected tenderer. The formal process of signing the contract takes about 1 month from the expiration of the referred standstill period of 10 calendar days, in case no complaint is lodged.

10. What is a “LuxTrust product” and how can I obtain one?

A “LuxTrust product” refers to a secured authentication and electronic signature device (please see www.luxtrust.lu for further information). A LUXTRUST smart card or signing stick constitutes one of the options to participate in e-procurement procedures on the Luxembourgish Public Procurement Portal (www.pmp.lu) (see question 2 above).

The procedure to receive a LuxTrust product for companies outside Luxembourg is described at the link: <https://www.luxtrust.lu/en/simple/206>.

In order to obtain a LuxTrust product, you will need the following documents:

- Copy of the ID card of the legal representative of the economic operator;
- Copy of the ID card of the designated user of the Luxtrust product. This copy must bear a certificate (apostille) as defined by the Hague Convention of 5 October 1961.

The copy of the identity document and the apostille must be legible according to the standards applicable to Luxembourg (alphabet, language, ...).

The documents must be sent to the:

House of Entrepreneurship

« One Stop Shop » - cellule LuxTrust

14, rue Erasme

L-1468 Luxembourg

Postal mail to : B.P. 3056 | L-1030 Luxembourg

For more clarifications on this procedure, please contact:

House of Entrepreneurship

« One Stop Shop » - cellule LuxTrust

Phone : 42 39 39 – 341

Fax : 43 83 26

E-mail : luxtrust@cc.lu

Section 2: Content of the tender

11. How long should a tender be? Are there any page limits applying to proposals/applications?

There are no page limits for part A – Administrative Part. Regarding part B – Technical Offer, the page limits may be specified in the Terms of Reference, if applicable.

12. Do we need to submit all the original documents related to the exclusion and selection criteria issued by the various institutions together with the tender?

By signing the ESPD, the tenderers declare that they meet the requirements in the selection and exclusion criteria mentioned in the Terms of Reference. At this stage of the procedure, there are no other documents to be submitted. Only the awarded tenderer will be requested by the contracting authority to submit supporting documents to check its compliance with the exclusion and selection criteria.

13. Does ESPON EGTC provide a template for the technical offer? Can the tenderer submit the document in a free format?

There is no predefined format/template for the technical offer. In some cases, some page limits can be applied, these will be specified in the Terms of Reference.

14. In case of a joint tender, is it necessary to include in the tender a letter delegating the power of attorney to the lead partner (signed by all partners), or is it enough to provide this before signing the contract (after selection)?

If a joint tender is proposed by the tenderer with one or several partners and the organisation has already set up a consortium or a legal entity, this should be mentioned in the field “is the economic operator participating in the procurement procedure together with others?” (included in **Part II**, “information concerning the economic operator”, **Section A** of the ESPD (Annex A)), together with any other relevant information.

If this step has not yet been taken, the tenderer should be aware that if the contract is awarded, the contracting authority will require giving a legal status to the collaboration before the contract is signed. This collaboration can take the form of:

- an entity with legal personality recognised by EU Member States and ESPON Partner States (i.e. Iceland, Liechtenstein, Norway, and Switzerland) or
- the signature of a “power of attorney” by all the partners to the designated duly authorized representative of the consortium. The power of attorney should designate the contracting rights and sole liability of one of the partners in the consortium towards the contracting authority and any other relevant right. The duly authorized representative of the consortium and its partners will be responsible for organizing the internal partnership concerning the liability among each other.

15. Does the power of attorney need to be sent in original for all joint partners or can it be sent as a scanned copy?

A scanned copy of the power of attorney will be enough for the tendering phase. ESPON does not provide templates for the power of attorney.

16. What can I do if I am not able to provide some documents requested for economic and financial capacity?

All documents listed in the selection letter sent to the awarded tenderer must be submitted to the contracting authority. If, for some exceptional reason, which the contracting authority considers justified, the tenderer is unable to provide the references requested for economic and financial capacity, he/she may prove his/her capacity by any other means considered appropriate by the contracting authority.

17. If a financial offer exceeds the total budget, will it still be considered in case no other tender is selected?

Tenders for which the financial offer exceeds the maximum budget available will be excluded from the procedure.

18. Annex B- Financial proposal: Is ESPON an EU-institution exempt from VAT? From our past experience in contracts with other EU-institutions, we never have to include VAT on our invoices. Can we therefore leave the column 'Price incl VAT' empty?

Please note that ESPON is not an EU institution but a legal entity registered in Luxembourg. The applicable VAT rate depends on factors such as the nature of the tenderer and the location of its registered office. Please note though that the evaluation of tenders will be performed based on the prices excluding VAT. Individual situations regarding the applicable VAT rate may be assessed and/or further clarified in case of contracting.

19. Do Universities and public research labs being part of a consortium need to fill in Part IV B of the ESPD? Universities can't provide a yearly turnover.

Universities and similar economic operators can quote their annual budget in this section.

Section 3: Participation in tender procedures

20. Can economic operators from the United Kingdom participate in ESPON procurements?

UK-based tenderers must be treated like other third-country economic operators for procedures launched from 1 January 2021. The UK is an individual member of the GPA (Multilateral Agreement on Government Procurement concluded within the World Trade Organisations) as of that date.

Furthermore, pursuant Title VI of the « EU-UK Trade and Cooperation Agreement (TCA)» ([https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22020A1231\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22020A1231(01)&from=EN)), the general rules and principles of European Union Law applicable to the award of public contracts, as well as the principle of non-discrimination by contracting authorities with regard to tenderers and persons entitled to submit applications or offers, are applicable between the EU and the UK as of the 1st of May 2021, when the TCA entered into force.

Therefore, tenders from the UK can apply to EU public procurement calls.

21. We are not a SME. Is there any limitation regarding this as lead partners?

No, there is no limitation. However, please note that the exclusion and selection criteria must be met.

22. If a proposed key expert is a previous ESPON Contact Point, should a note be added justifying that its involvement is not distorting the competition?

At present time, no specific information is requested from ESPON Contact Points (former or present) justifying its participation in an ESPON EGTC Public Procurement procedure. Please note, though, that the Contracting Authority may not pre-assess individual situations of tenderers. Such assessments, if required, will only be carried out during the tender evaluation.

However, any person intending to take part in a Public Procurement procedure should assess, depending on their personal situation, the risk of conflict of interest that may arise from their participation in accordance with the following legal provisions:

- Art. 29 of the Law of 8 April 2018 of Grand Duchy of Luxembourg on public procurement;
- Art. 24 of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC; and

- Art. 61 of the Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012.

23. Can a subcontractor be a natural person?

Yes, subcontractors can be natural persons.

24. Can the same economic operator submit more than one proposal participating in different partnerships? As a University, we have several departments that are potentially interested in the call, but we are a single economic operator (we have a single VAT number).

An economic operator is not precluded from participating in a call within different partnerships. However, please note that this must be done independently and autonomously and must not distort competition.

For guidelines on consortia agreements and competition rules in public procurement, economic operators should consult its respective national competition authorities or/and seek professional legal advice.

25. We intend to submit a joint tender with several organizations. Are we only invited to submit the European Single Procurement Documents of these organizations or may we also provide a short explanation of the reasoning behind the consortium we have established (i.e. why we think this specific group of organizations will be able to provide relevant inputs)?

The economic operators are only invited to submit the ESPDs of the consortium members. In principle, they are not prevented from providing other documents such as a reasoning behind the consortium established. For guidelines on consortia agreements and competition rules in public procurement, economic operators should consult its respective national competition authorities or/and seek professional legal advice.

Please note that joint tenders will be assessed in the same way as any other type of tender and each will be assessed for their own merits against the criteria and the evaluation procedure set out in these Terms of Reference.

26. What are the criteria to form a consortium and to build a partnership?

The ESPON EGTC does not provide criteria for setting up consortia. It is for the tenderer to decide to submit a tender individually or jointly with partners/subcontractors. The Terms of Reference, however, do provide relevant information on setting up a consortium/building a partnership to submit a tender. Also, each partner of a joint tender is requested to meet (at least) the exclusion criteria.

For further information regarding the formation of consortia in public procurement and on the compliance with the principle of competition in public procurement, economic operators should search for information on joint bidding from its national competition authorities or/and seek appropriate legal professional advice.

27. Will it be possible for the successful consortium to take on an additional subcontractor or adjust the allocation of funds between economic operators after the award of the contract?

As stipulated in the Terms of Reference, the change of any subcontractor identified in the tender or the addition of new subcontractors during the execution of the contract is possible. However, it is subject to prior written approval by the contracting authority.

The share of the contract to be sub-contracted must be declared in the ESPD. Any further change must also be communicated to the contracting authority.

Also, as of 25th January 2019, in case of a consortium, each partner must indicate its share in the contract in the procurement documents.

28. In case of subcontractors, where should their tasks and costs be detailed?

This information needs to be provided in the ESPD, part II-D, at the very last line of the ESPD.

29. If a subcontractor has not been identified at the submission of the offer, can it be done *a posteriori*?

An ESPD should be submitted for all sub-contractors listed as part of the consortium. In addition, as laid down in the Terms of Reference, please note that during the contract execution the change of any subcontractor identified in the tender or the addition of new subcontractors will be subject to prior written approval by the contracting authority. For all new subcontractors, the compliance with exclusion criteria will be checked.

30. Is it sufficient if we submit the ESPD in pdf with the electronic signature?

No, as indicated in the Terms of Reference, we do not only expect the ESPD signed with the electronic signature in any format (the most frequent is pdf) but we also request the ESPD in the Excel format.

31. What are the requirements to participate and submit a tender?

Participation in this procurement procedure is open on equal terms to all natural and legal persons coming within the scope of the Treaties. It is also open to all natural and legal persons established in a third country that has a special agreement with the European Union in the field of public procurement on the conditions laid down in that agreement. Where the plurilateral Agreement on Government Procurement concluded within the World Trade Organisation applies, the participation to this procedure is also open to all natural and legal persons established in the countries that have ratified this Agreement, on the conditions it lays down. For more detailed information, please consult the respective responsible national authorities.

Please note, however, that the admissibility of the offer to the evaluation phase is subject to the fulfilment of the exclusion and selection criteria as mentioned in the tendering documentation.

32. In case of joint tender does only the designated representative of the consortium sign the financial offer?

As indicated in the Terms of Reference, only one financial offer must be originally signed and stamped by the representative of the tenderer or main tenderer, in case of a consortium.

33. In case of a joint tender, does each participant in a consortium have to submit an ESPD?

The ESPD (Annex A) with all required information (i.e. duly completed Parts II, III, IV and VI) must be provided by each partner of the consortium. In case the contract is awarded, the contracting authority will require giving a legal status to the collaboration before the contract is signed. This can take the

form of a legal entity or by signing a Power of Attorney document to the lead tender by all the partners of the consortium.

34. Should we understand from point .2.2. that companies that cannot provide proof of economic & financial capacity for the last three financial years will be automatically excluded, i.e. a company created less than three years ago cannot participate in this tender?

No. In case the information concerning turnover (general or specific) is not available for the entire period required, please state the date on which the economic operator was set up or started trading in Part IV B 3) of Annex A (ESPD).

An economic operator may also set up a consortium and rely on partners and/or structural subcontractors to meet the selection criteria. In this case, the tender evaluation detailed in Section 4 of the Terms of Reference will be made in relation to the combined capacities of the economic operators in relation to the requirements laid down in the Terms of Reference. Additionally, please note that an economic operator may, when appropriate and for a specific contract, rely on the capacities of another entity not taking part in the tendering process to meet the selection criteria. (art. 33 of the Law on Public Procurement of 8 April 2018).

35. Please advise on the following section of the call: "The tenderer must be in a stable financial position and the total turnover of the tenderer (or the consortium, see Sections 3.1.1 and 3.1.2) (see Part IV(B)(1b) of the ESPD (Annex A)) must equal or exceed 75% of the maximum available budget for this contract as stated in these Terms of Reference." Does this mean that annual turnover of the company must equal or exceed the maximum available budget for this contract or the sum of yearly turnovers for the last three financial years must equal or exceed the maximum available budget?

This means that the sum of the annual turnovers for the last three financial years must equal or exceed 75% the maximum available budget.

36. Is it necessary to be legally established at the moment of submission of the tender or can it be done later? We are creating a spin-off from a University and are interested to apply.

If the economic operator is not yet legally established, prospective applicants should participate either as part of the University (established legal person) or as individual experts (either joint partners or subcontractors).

Section 4: Other questions

37. In the framework of Targeted Analysis projects, is it allowed to contact the stakeholders during application phase about their wishes concerning the case studies?

The potential tenderers are not authorized to directly contact the stakeholders during this stage of the public procurement. Following the rules on public procurement, the ESPON EGTC ensures a free competition and equal treatment for all the potential interested economic operators. Any request for clarification or question in relation with the tender documentation, including on the case studies, should be addressed directly to ESPON EGTC, as the Contracting Authority, using the e-mail: tenders@espon.eu. Following the reception of a question/request for clarification ESPON EGTC will consult the stakeholders and send afterwards an answer to all potentially interested economic operators.

38. In the case the tenderer is a VAT payer, is the maximum budget indicated in the Terms of Reference considered including or excluding VAT?

The maximum budget indicated in the Terms of Reference is to be considered excluding VAT, independently from the VAT status of the tenderer.

39. Is it mandatory to submit English translations of the requested documents if they are only available in another language?

No, it is not mandatory, but the contracting authority may ask for a courtesy translation.

40. Does the ESPON EGTC provide a template for invoices by service providers? How does it work with electronic invoices?

The ESPON EGTC does not provide a template for invoices. Invoices shall contain the Contractor's identification, the currency, the date, the task(s) reference or description, as well as the Contract reference.

Please note that all companies must issue and transmit electronic invoices complying with:

- the latest European standard; and
- one of the following 2 formats:
 - XML UBL (Universal Business Language), as defined by ISO/IEC 19845:2015, and maintained by the non-profit organisation OASIS Open;
 - XML UN/CEFACT CII (Cross Industry Invoice), developed by UN/CEFACT based on the XML 16B (SCRDM — CII) schemas

Use of the Peppol²⁵ network

Tendering authorities and entities **must use the Peppol** (Pan-European Public Procurement OnLine) network to automatically receive electronic invoices. The network can also be used to automatically issue and send electronic invoices.

Economic operators have a **range of options** in order to be able to issue and send compliant electronic invoices through Peppol:

- renting a Peppol access point from one of the numerous specialist service providers²⁶ already active in this field;
- establishing their own Peppol access point: for organisations of a certain size which have:
 - their own, experienced IT department; and
 - sufficient resources;

- using one of the invoicing and accounting tools (ERP software) that offers Peppol invoicing by default.

41. For some projects, travel, accommodation and subsistence costs cannot be higher than 10% of the total costs, according to the Terms of Reference. In this 10 % are included only partner costs or also subcontractors?

The threshold of 10% for travel, accommodation and subsistence costs is applicable at the consortium level. Thus, it includes the related costs for all partners and subcontractors officially listed in the ESPD.

42. Concerning the Allocation of Resources, as indicated in Annex D, should the information in this document concern all involved staff of different entities (e.g. the joint tenders or subcontractors) or only staff of the main tenderer?

The table aims at summarizing all the staff members foreseen to take part in the implementation of the activity, therefore all staff members of all partners and/or subcontractors must be listed.

43. Should all partners have a specific professional risk indemnity insurance for their companies? Is it an exclusion criterion?

No, the economic capacity of the tenderer is not an exclusion but a selection criterion. If an economic operator does not have a professional risk indemnity insurance or if you are a public institution, where the State provides the professional risk coverage, a statement should be provided to this effect. In case of contracting, the Contracting Authority will then request a bank statement.

44. Will the data already assembled by (or for) ESPON for its previous studies related to this call for tender, together with details of the sources of these data, be made available to the successful tenderer?

Data collected or produced by previous ESPON studies dealing with this topic that was delivered to ESPON EGTC will be made available to the service provider who is awarded the contract.

45. Is it expected that all experts of the team must work in all activities and for every delivery?

All the members should contribute to provide the services, but they are free to organise the tasks among themselves, within the limits of the submitted tender.

46. Is there an obligation to keep an audit trail if I am awarded a tender?

No, solely the ESPON EGTC is responsible to keep the necessary documents for the audit trail.

47. Who is the owner of the results?

According to the Terms of Reference and to the service contract, the ESPON EGTC will be the owner of the results.

48. How can the deliveries be submitted?

The deliveries must be submitted electronically.

49. Under which conditions can a contract be modified?

Article 43 of the national law of 8 April 2018 and article 72 of Directive 2014/24 lay down the conditions under which a contract can be modified.

50. Could you elaborate on the notion of conflict of interests?

The notion of conflict of interest is defined in article 13(2) of the Luxemburgish law on public procurement of April 2018 and in article 24 of Directive 2014/24/EU as follows:

“The concept of conflicts of interest shall at least cover any situation where staff members of the contracting authority or of a procurement service provider acting on behalf of the contracting authority who are involved in the conduct of the procurement procedure or may influence the outcome of that procedure have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure”.

The tenderer should make all due diligence to avoid a conflict of interest situation and provide all relevant information related to this issue in the ESPD.

51. Does the call for tender result in a service contract or in a grant?

Call for tenders result in service contracts.