

Training Course

- How to handle the negotiation phase for activities stemming from
- PECS Call for Proposals,
 - Associate Member or
 - Member State Requesting Party Activities

1. General overview
2. Negotiation phase
 - Doing Business with ESA – esa-star platform: Full registration
 - Negotiation phase in detail
 - Negotiation document template - Minutes of Meeting (MoM)
 - Examples of negotiation points
 - Annexes of the MoM document
3. Contract signature & Kick-off Meeting (KOM)



This presentation material is intended to provide an insight into the negotiation process of activities arising from PECS, AM RPA or STD MS RPA Call for Proposals only. It is not relevant for other ESA ITTs or calls.

The slides give a generalisation of the process and each case may be slightly different due to the contents of the proposal and specifics of the CfP as listed in the Cover letter

The rules, regulations and conditions contained in the respective PECS / RPA documentation published on esa-star, as well as instructions received by the relevant Contracts Officer in any direct communication, for that call take priority.

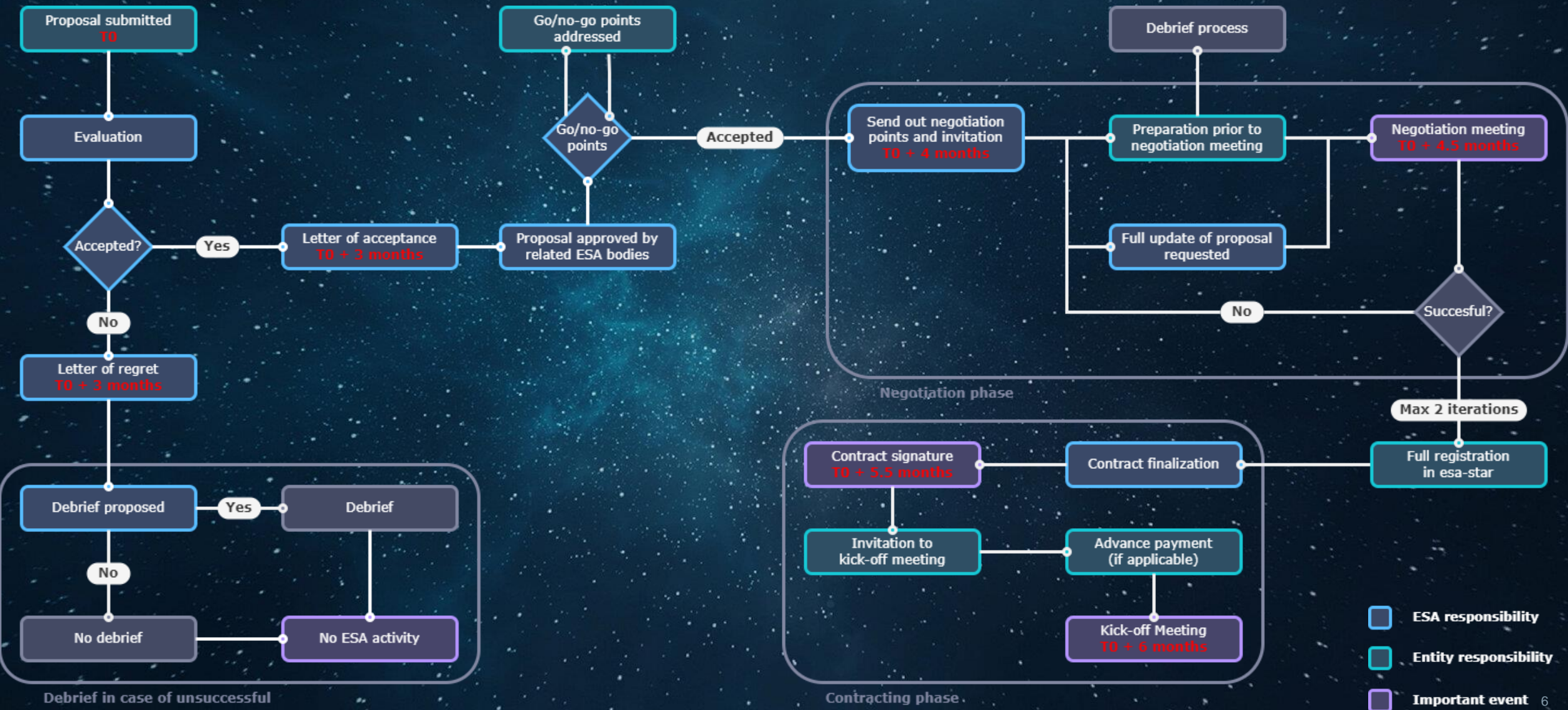
Part 1: General overview

- This training course is intended to explain the main steps expected during the negotiation phase and to help the entities take the maximum benefit from this period and achieve a successful negotiation for their activities
- It covers the period between the ESA approval of an activity submitted in an Open Call and the kick-off meeting
- It mainly addresses the things that must be done after the receipt of the acceptance letter and before signing a contract:
 - What are the main steps (with expected timeline)
 - Who is responsible for initiating each step
 - What needs to be done and how to avoid typical mistakes



Receiving the Letter of Acceptance DOES NOT mean that a Contract will be necessarily placed!

Implementation process action flowchart



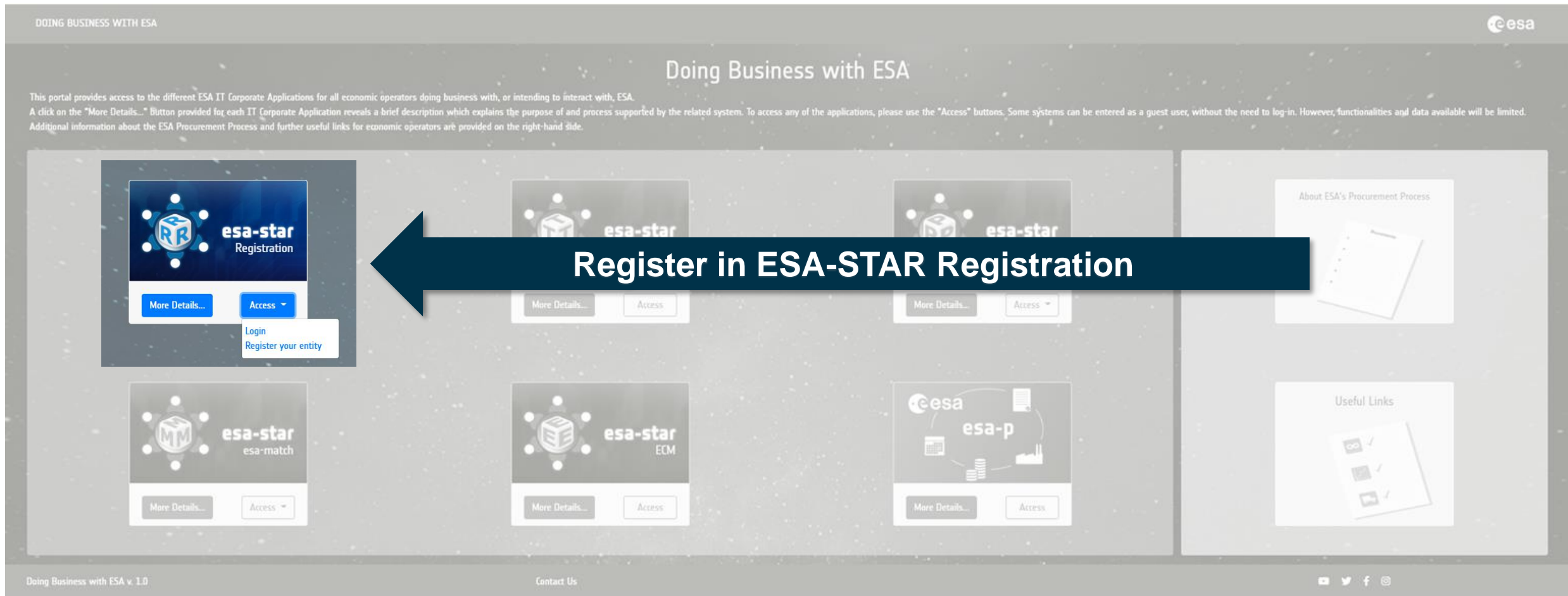
Part 2: Negotiation phase



Part 2.1: Doing Business with ESA – esa-star platform

<https://doing-business.sso.esa.int/>

- Portal for access to the entire esa-star toolset, including associated ESA corporate applications like esa-p
- All applications are connected, making it easier for users to access the systems and retrieve information
- Optimised and supported for use with the Google Chrome browser

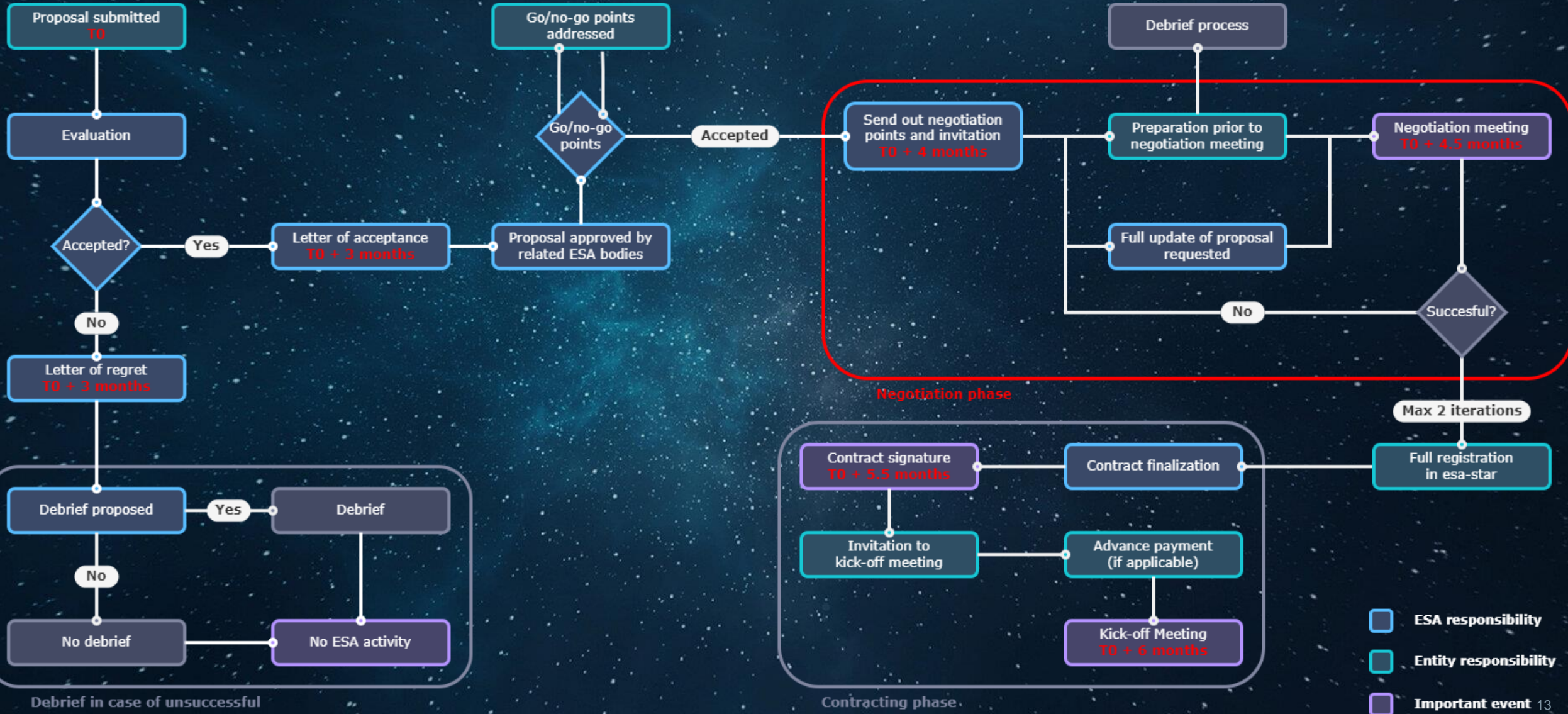


- Update the registration (**FULL** registration)
- The contract cannot be signed if not updated

Part 2.2: Negotiation phase in detail

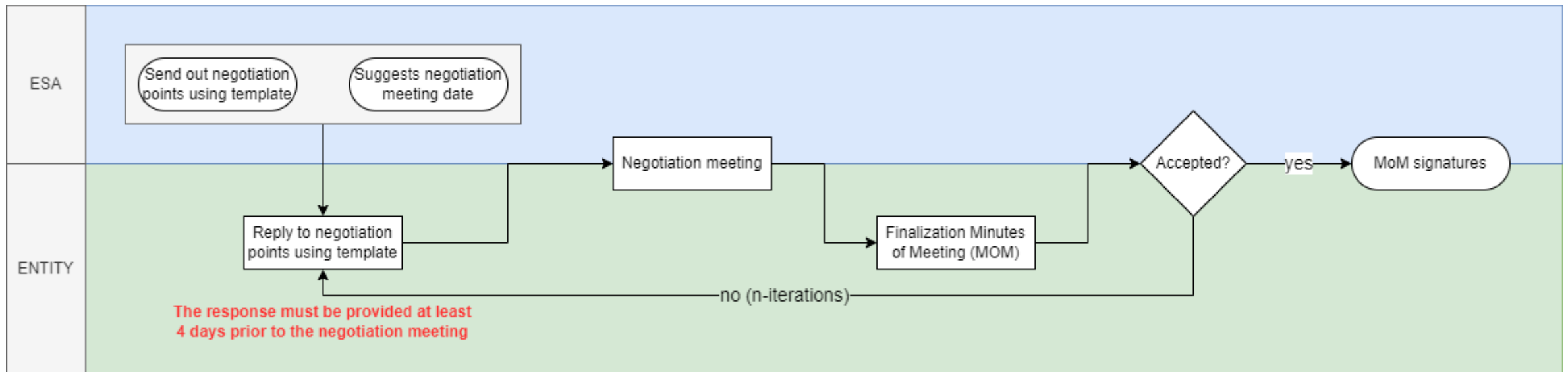
- Negotiation Points template (MoM of Negotiation Meeting)
- What is expected from the Entity
- Example of negotiation points (technical, management/planning, costing)
[incl. examples of answers to negotiation points → how to respond and avoid typical mistakes]
- How to record the discussion and track decisions and actions
- Use of Annexes to Negotiation MoM

Negotiation phase in general timeline



Negotiation phase in detail

- After final approval from ESA Boards, ESA prepares and sends the negotiation points and the invitation to the negotiation meeting (together with a draft contract for review)
- Entity prepares the answers directly in the provided template (it is already in the form of Minutes of Meeting to facilitate the process), **at least 4 days prior to meeting**
- **Negotiation meeting between ESA and entity**
- After the meeting, the Entity provides the Minutes of Meeting (MoM) updated according to the discussions held during the meeting, also recording for each negotiation points if it is closed or the actions to closure
- Once finalised, ESA and the Entity will sign the MoM – it forms part of the contract!



Part 2.3: Negotiation document template

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Minutes of Meeting (MoM)

The template with negotiation points sent by ESA is already in the form of Minutes of Meeting.
It consists of three main parts:

- 1. Cover Page of MoM** with some preliminary info (date, participants, objectives, etc.)
→ this page will be signed at the end of the negotiation
- 2. Negotiation points** (with answers, tracking of discussion and actions, and final status)
→ see the structure in the next slides
- 3. Summary and Annexes**
 - Summary with general info (contract starting date, progress reports timeline, AOB, etc.)
 - Mandatory Annexes: Summary Table, Milestone Payment Plan, Table of Deliverables
 - Optional Annexes: updated GANTT chart, updated WBS, PSS forms, etc.

Why The Minutes of Meeting are so important:

- The MoM becomes an Applicable Document of the project (i.e. part of the contract)
- The agreements in the MoM supersede the proposal (e.g. list of deliverables, GANTT chart, etc.)
- The MoM contains the final agreed time schedule (with actual start and end dates)
- The Negotiation Meeting is usually the first meeting with the ESA TO and it is important to track the technical discussions held during the meeting

Negotiation Points template (MoM)

Header

[Please follow this model template by replacing/deleting ALL the red text accordingly and replacing it with black text to populate the template in the course of the negotiation process. Your organisation is responsible for the preparation of the minutes of meeting, but we have started to populate this template to help expedite arriving at an acceptable document, which will be an applicable document to the contract. Please include the response to the points of negotiation raised by ESA. This includes the inputs your company provided before the meeting, and provide a summary of the discussion during the negotiation meeting and the status of the discussion.]

Date: **DD/Month/Year**
Time: **XX:XX**

REFERENCE Nr. OF MINUTES OF MEETING: **<file name>**

SUBJECT: **<activity name>**

PARTICIPANTS TO THE NEGOTIATION MEETING & SIGNATURE

Company	Name and Title	Attendance (Yes / No)	Signature & Date
ESA	Person X, Contract Officer		
ESA	Person Y, Technical Officer		
(ESA)	(Person Z, Support Engineer)		
PRIME	..., Project Manager		
	...		

Main Objective(s) & Scope : The subject proposal has been recommended for implementation. The main objective of this meeting is to reach an agreement on the points risen by the Tender Evaluation Board to proceed with the signature of the contract.

The following comments were made by ESA and answered by the company:

Negotiation Points: TECHNICAL

NP-X: **<description>**

Response inputs provided before the negotiation meeting: **<Please use reference to annexes when responses are long or require graphical modifications.>**

Summary of the discussion: **...**

NP-X Status: **<Closed. Clarifications accepted.> or <Closure pending ...XXX>**

⋮

Negotiation Points: MANAGEMENT

NP-Y: **<description>**

Response inputs provided before the negotiation meeting: **<Please use reference to annexes when responses are long or require graphical modifications.>**

Summary of the discussion: **...**

NP-Y Status: **<Closed. Clarifications accepted.> or <Closure pending ...XXX>**

⋮

Summary:

PECS Progress Reporting: Every **3 or 6** months

Tentative Kick Off meeting date: **DD/Month/YEAR**

Tentative Starting Date: **DD/Month/YEAR or counter signature of the contract.**

Tentative End of Contract: **DD/Month/YEAR**

Any Other Business:

- The draft contract **was returned in the course of the meeting.**
- The bidder confirmed the full registration in ESA Start **has been / will be** completed.
- The negotiation meeting is considered successful subject to closure of all pending negotiation points, signature of the minutes and final signature of the contract by both parties.

Management nego points

Summary + AOB

Technical nego points

SUMMARY

PECS Progress Reporting: Every 6 months using the PECS template

Tentative Kick Off meeting date: 01/06/2023

Tentative Starting Date: 01/06/2023 or counter signature of the contract

Tentative End of Contract: 31/05/2023

Any Other Business:

- The Bidder confirmed the full registration in ESA Star has been completed.
- The Parties agree that electronic signature(s) of this Contract and/or the scanned version of this Contract bearing a hand-signed signature(s) shall have the same force and effect as hand-signed originals and shall be binding on both Parties to this Contract.
- The negotiation meeting is considered successful subject to closure of all pending negotiation points, signature of the minutes and final signature of the contract by both parties. **The agreements documented herein shall be contractually binding only upon signature of the contract by both parties.**

Part 2.4: Examples of negotiation points

Negotiation Point (NP-x):

Text to explain the negotiation point (it is derived from the indications provided by the TEB)

The Bidder is requested to clarify... and to provide...

Response inputs provided before the negotiation meeting:

Here the Entity must provide the answer **BEFORE** the negotiation meeting

Summary of the discussion:

This part is filled **AFTER** the negotiation meeting to track the discussion held during the meeting

NP-x Status:

This part is filled **AFTER** the negotiation meeting to specify the status of the negotiation point:

- **Open**
- **Closure pending** the update of answer or the provision of additional information (updated workflow, updated GANTT, etc.)
- **Closed** → the negotiation phase is successful when all the NPs will be closed

Typical language and what it means:

Must be clarified

The wording or intention was unclear or ambiguous, the bidder shall explain what their intention was in more detail

Shall be justified

An element was proposed (typically a requirement, design choice or meeting) without due reasoning and where other approaches/ choices could have been taken. Explain the reasoning.

Shall be reduced or strongly justified

Typically for hours or costs. The amount is considered unreasonable for the work and the bidder shall re-assess and propose a more reasonable amount or augment the work description such that 'hidden' work driving the hours / costs is made explicit.

To be provided

An element of the proposal was missing or not provided in sufficient detail. Provide this missing element (typically as a separate annex to the MoM)

To be updated

The information was not enough, was inconsistent, or other discussion have affected this element and an update of the whole element is needed. (typically for planning for example)

Typical language and what it means:

Shall be removed

Certain elements are not agreed to be funded/ part of the scope – the bidder shall remove these and adjust the cost and planning accordingly.

Shall be added

Additional work is being requested. The bidder shall add this to the WPD and update costing and planning accordingly

Shall be re-balanced/ adjusted

The overall cost/ hours/ duration is considered fitting but how it is allocated to parts of the project is not. These shall be re-allocated without changing the overall budget/ duration.

High level

The discussion/ information was insufficiently detailed.

Generic

The proposed approach/ discussion was insufficiently tailored to the subject and could be equally applicable to many things.

Negotiation Point: The analysis of the state-of-the-art is considered largely not sufficient and does not provide any information on what is already available on the market, who are the competitors, what has already been developed in order to highlight the benefits stemming from the proposed activity. This needs to be addressed to ensure a good requirements baseline in view of a competitive service.

The Bidder is requested to provide a comprehensive and detailed analysis of the state-of-the-art on the subject of the proposal, also identifying the benefits and the added value of the proposed solution.

→ State of the art shall include a comprehensive analysis on the topic:

- Scientific background and context (where relevant)
- Existing solutions / products / services already available
- Main competitors (both in Europe and Worldwide)
- Benefit (in terms of performances, costs, etc.) of the proposed solution that mean it will be competitive on the market

➤ The text shall be clear, concise and respond to the exact request explained in the NP!!

➤ Avoid generic discussions, or statements that the request will be addressed in the course of the activity

Negotiation Point: The workflow logic is considered too high-level and not sufficiently consistent with the proposed technical steps. Therefore, the workflow shall be reworked in order to better reflect the technical steps to be performed. It shall at least include: 1) the consolidation of the requirements 2) a testing/validation phase (in terms of functionalities and performances) at the end of the development 3) the key review points.

The Bidder is requested to provide an updated workflow diagram.

- Include the reviews and decision points
- Consistency with WBS (and easy traceability)
- Parallel/serial consistency is logical (consistent with GANTT chart)
- Sub-contractor work is clear
- Dependencies clear



Negotiation Point: The GANTT chart is considered too high-level. The different duration of tasks and their dependencies are not presented, and the WPs duration is not justified. The Warranty period is out of scope. As such, the GANTT chart shall be reworked and better detailed.

The Bidder is requested to provide an updated GANTT chart.

- Include the reviews and main milestones
- Consistency with WBS (and easy traceability)
- Consistency with workflow logic
- Explain the duration of the main work packages and sub-WPs / tasks
- Dependencies are clear



See the Proposal Writing Training Course!

Negotiation Point: Concerning the PSS forms of the Prime, the cost allocated to Other Direct Cost for External Service (EUR xx,xx) are presented under Exhibit A. However, they are not sufficiently detailed nor justified. Subcontractor A is included as External Services, which is considered not correct, as there is no description of the work assigned to them and it is therefore difficult to assess the related costs. This point shall be clarified and corrected.

The Bidder is requested to provide an updated set of PSS forms to address the points mentioned above.

- Exhibit A : Details the cost allocated to hardware and services: justified by scope of work? Not representing infrastructure? Not representing 'normal work' items? Sufficiently identified? Reasonable cost?
- TIPS: Cost must be detailed and verifiable against current market price
- External Services: clearly described? Clearly needed? Value for money? Referenced in the proposal?
- TIPS: allowed in case of purchasing the services of a testing facility (i.e., there is no specific work assigned to a sub-contractor) – or the services of a data delivery platform



See the Proposal Writing Training Course!

Part 2.5: Annexes of the MoM document

Mandatory Annexes – Summary Table

ANNEX 1 - SUMMARY TABLE <Please fill in the table>

Proposal Title:	<Proposal title>
Duration (months):	<X months>
Contractor's Name:	<Name 1>
Contractor's Address:	<Address X>
(Subcontractor's Name:)	(<Name 2>)
Bidder/Vendor Codes of Contractor and Subcontractor(s)	<Name 1 – 10000XXXXX> <Name 2 – 10000XXXXX>
Firm Fixed Price (€):	<Name 1 – xxx,xxx.xx EUR> <Name 2 – xxx,xxx.xx EUR >
Signatory + Position/title:	<Person 1, CEO>
Electronic and Hand Signature:	<Electronic / hand signature>
Technical Representative (name, telephone and email address):	<Person 1, telephone, email>
Contractual Representative (name, telephone and email address):	<Person 2, telephone, email>
Data Protection Officer Representative (name, telephone and email address)	<Person 3, telephone, email>
Start dates:	<XX.XX.XXXX>
Final delivery Date:	<XX.XX.XXX>
Background IPR:	<Name 1>

Can be the same person



Mandatory Annexes – Milestone Payment Plan

ANNEX 2 - MILESTONE PAYMENT PLAN (same as per contract)

Milestone (MS) Description	Schedule Date	Payments from ESA to (Prime) Contractor (in Euro)	Country (ISO code)
Progress (MS 1): Upon successful completion of WPs xxx and successful review and acceptance by the Agency of all related deliverable items D1.x, D1.xx.....	To + ... months		
Progress (MS 2): Upon successful completion of WP xxx and successful review and acceptance by the Agency of all related deliverable items D2.x, D2.xx.....	To + ... months		
Final Settlement (MS 3): Upon the Agency's acceptance of all deliverable items due under the Contract and the Contractor's fulfilment of all other contractual obligations including submission of the Contract Closure Documentation	To + ... months	(not less than 10% of the total contract price)	
TOTAL		XXX	

In finalized MoM, these should be actual dates

Advance Payment(s) and other Financial Conditions:

Prime (P)	Company Name	ESA Entity Code	Country (ISO code)	Advance Payment (in Euro)	Offset against	Offset by Euro	Condition for release of the Advance Payment
P				Amount (not more than 35% of the total contract price for SMEs and not more than 10% for non-SMEs)	MS1	Amount	Upon signature of the Contract by both Parties

Mandatory Annexes – List of Deliverables Table

<u>Doc ID</u>	<u>Title</u>	<u>Milestone</u>	<u>Description of documents</u>
Requirements Baseline (RB)	<Title>	RR (MS1)	<description>
Architectural Design Document (ADD) – v1		PDR	
Architectural Design Document (ADD) – v2		CDR	
Acceptance Test Plan		CDR (MS2)	
Acceptance Test Report		AR (MS3)	
⋮	⋮	⋮	⋮

- The negotiation phase goes on until all the negotiation points are clarified to the satisfaction of ESA, and all the decisions and requested information is clearly inserted in the MoM. Note ESA aim for a maximum of 2 negotiation meetings, lack of agreement in this timeframe can lead to the negotiation being declared unsuccessful.
- Once all the negotiation points have been closed, the MoM will be signed by both parties
- The Contract Officer will then prepare the final version of the Contract and send to the Bidder for signature

Date: **DD/Month/Year**
 Time: **XX:XX**

REFERENCE Nr. OF MINUTES OF MEETING: **<file name>**

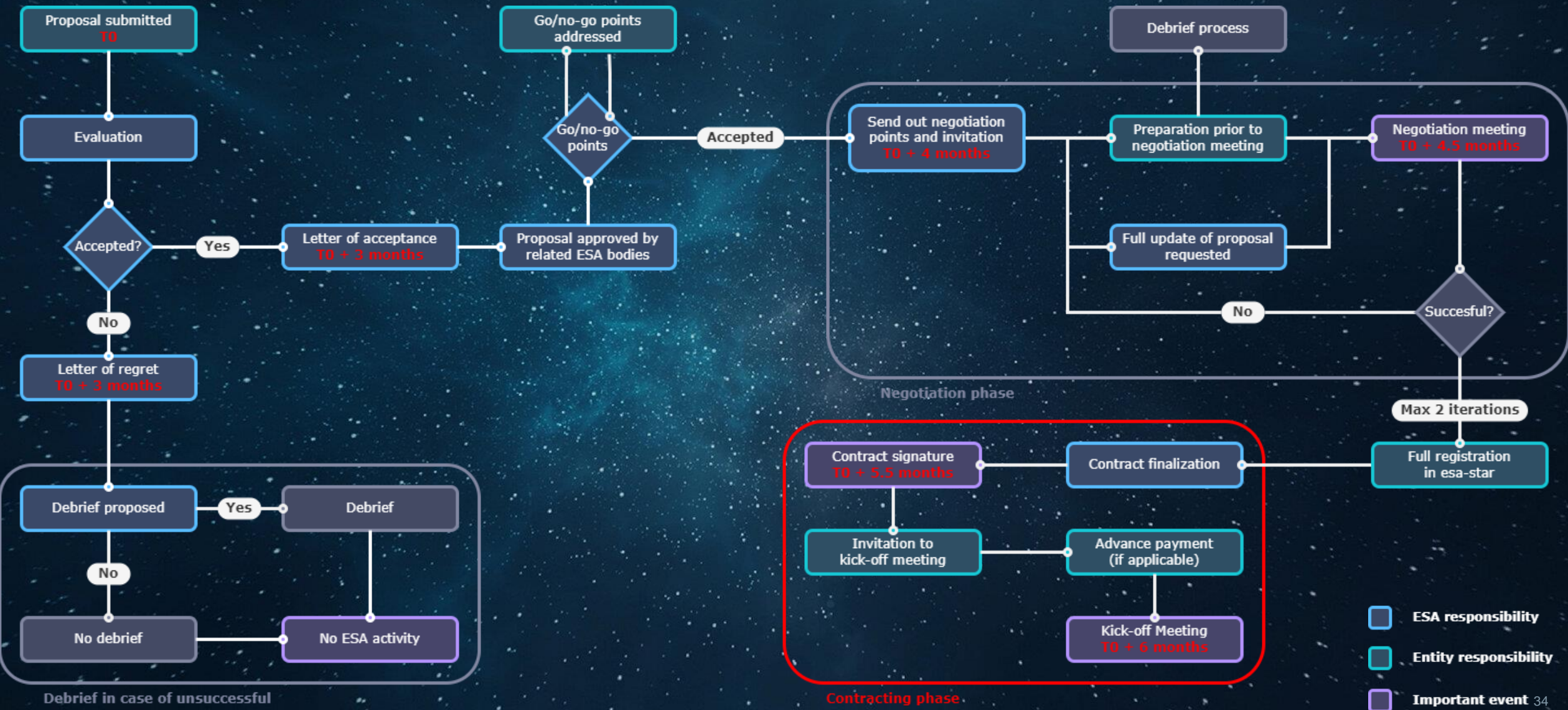
SUBJECT: **<activity name>**

PARTICIPANTS TO THE NEGOTIATION MEETING & SIGNATURE

Company	Name and Title	Attendance (Yes / No)	Signature & Date
ESA	Person X, Contract Officer		Signature 1
ESA	Person Y, Technical Officer		Signature 2
(ESA)	(Person Z, Support Engineer)		Signature 3
PRIME	..., CEO		Signature 4
PRIME	..., CTO		Signature 5
PRIME	..., Project Manager		Signature 6
PRIME	..., Researcher		Signature 7
(SUBCO 1)	..., Director		Signature 8
(SUBCO 2)	..., Director		Signature 9

Part 3: Contract signature & Kick-off Meeting (KOM)

Contracting phase in general timeline



After Contract signature:

Now that the contract is signed, there is no need to CC the ESA Contract Officer, unless specific contractual questions arise. Please keep the CDO and the TO in CC of all communications with ESA representatives related to this contract.

Kick-Off Planning

The Contractor, TO and CDO shall agree on a date for the KO meeting (if different from what agreed in the negotiation).

It is always recommended to invite also the Subcontractors – the full team is desired, both on the technical and management side. A KO meeting is not mandatory if all parties agree at the nego that it is not needed.

KO Meeting Preliminary Agenda. (roughly 1h)

- Welcome and introductions
- Short presentation of project (technical objectives, tasks, schedule and GANTT chart, milestone reviews, deliverables, etc.)
- Project management (progress reports, review meetings, internal meetings, etc.)
- Plan for the next steps / next meetings
- Any Other Business

Minutes of Meeting

In all formal meetings with ESA, the Prime Contractor is responsible to prepare the minutes of meeting for review and approval. You may use whatever meeting minute format your company uses to produce the minutes.

Mandatory aspects: Each MoM has a unique reference number and any Action Items raised are clearly listed and are tracked to closure throughout the project, any MoM containing decisions or Actions are SIGNED by both parties.

A draft of the minutes is requested within 5 business days of the meeting – best practice is during the meeting or day after.

Progress Reports

As agreed in the negotiation, a Progress Report is due every x months (1, 2, 3 or 6).

ESA will deliver a template for the Progress Report but contents are agreed with the TO.

The progress report is intended to provide a high level management view of the project relative to the contractual deliverables and original planning in the contract. It is not a technical note and should have only highlights with respect to technical details.

Advance Payment

You may now submit for the Advance Payment Request (series 8xxxxxxx) on ESA-P system. Please consult the contract on how to get access to ESA-P. Please submit your APR as per instructions in the attached guide (page 12):

[http://esa-p-help.sso.esa.int/Quick Guide How to submit a Confirmation or Invoice or APR.pdf](http://esa-p-help.sso.esa.int/Quick_Guide_How_to_submit_a_Confirmation_or_Invoice_or_APR.pdf)

Once submitted, our Finance Department will pay it as soon as possible.

As agreed, the Advance Payment is a loan against MS1 and MS2. Once MS1/MS2 will be achieved, you will have to submit an invoice (series 7000xxxxx) and confirmation (6000xxxxx) for the remaining balance of the MS1/MS2 payment.

PECS Activity Achievement Summary Slide

For ESA promotion of PECS projects, we ask you to complete the 1-page slide called Achievement Summary. ESA will provide the template. It is for ESA internal use, so we can highlight the capabilities of your team to interested internal parties.

If we want to display it outside ESA we will ask you for approval in advance. It should be updated as you deem appropriate as the project progresses.



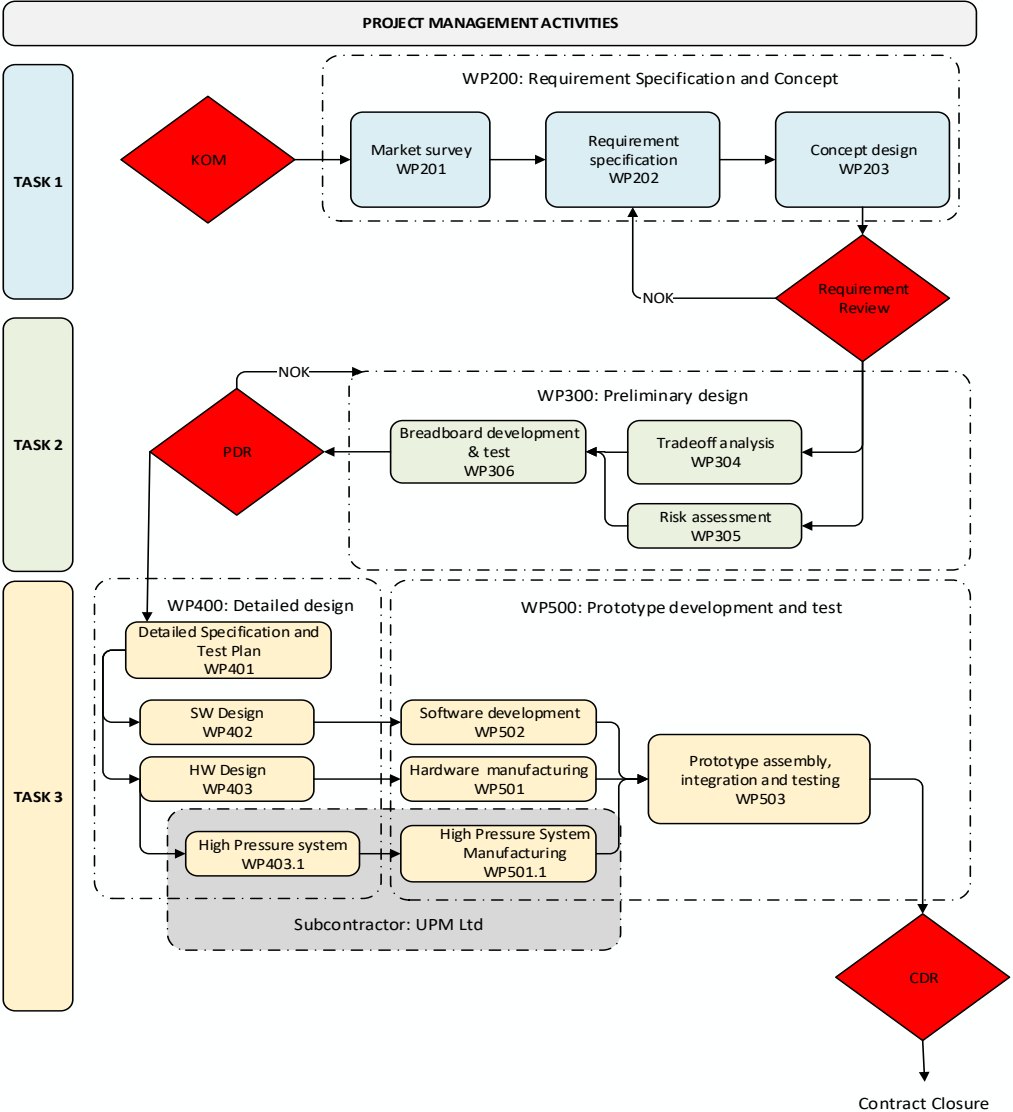
- Check <http://esa-p-help.sso.esa.int/>
- In case of questions and issues, please contact:
ESA Helpdesk at esait.Service.Desk@esa.int



Backup Slides



Technical Negotiation Point (Example B)



Example of a good Workflow

Technical Negotiation Point (Example C)

Example of a good GANTT chart

