

Very Low and Low-Value procurement procedure

Tendering Conditions

1. Introduction

The European Maritime Safety Agency (EMSA) was established under Regulation 1406/2002/EC of the European Parliament and of the Council to contribute to the enhancement of European maritime safety.

Any interested service provider may submit an offer in response to the publication of invitation to tender.

2. Bid submission

A bid can be submitted either through e-mail (option 1) or through post, hand-delivery, private courier (option 2). The option applicable for the procurement procedure is indicated in the **Invitation to tender**.

The bids must be perfectly legible so that there can be no doubt as to words and figures.

2.1 Option 1 – Submission by e-mail

In case the **Invitation to tender** indicate that the bid shall be sent to EMSA electronically, the date and hour of deadline shall be the one indicated in the **Invitation to tender**. The hour is stated in Lisbon time. The offer shall be duly signed by the authorised representative, scanned and submitted by e-mail to the e-mail address stated in the **Invitation to tender**. The size of the mail may not exceed 12 Mb per one email. Please note that an original hard copy of the offer including all accompanying documentation will be requested from the company to which the contract is awarded.

2.2 Option 2 – Submission by post, hand-delivery or private courier

In case the **Invitation to tender** indicate that the bid shall be sent to EMSA by post, hand-delivery or private courier, tenderers who wish to submit an offer shall send to EMSA **a bid duly signed** by their authorised representative, together with **three (3) copies** of their bid, strictly identical to the original bid (total: 1 original and 3 copies). Bids can be submitted in three different ways:

- a) either by post
in this case the bid shall be posted not later than the deadline stated in the **Invitation to tender** (the stamp of the **post office** acting as proof). If the bid is submitted by post, it is recommended to send it by registered post.
- b) or by hand-delivery
in this case hand delivery shall be made not later than the deadline stated in **Invitation to tender**, (Lisbon local time). A dated and signed receipt or a registration number has to be requested by the person delivering the bid as proof of delivery of the bid.
- c) or by private courier service to the European Maritime Safety Agency
in this case the bid shall be 'deposited' with the private courier service not later than the deadline stated in the Invitation to tender (the slip issued by the private courier services acting as proof).

3. Validity tender

Period of validity of the tender, during which tenderers may not modify the terms of their tenders in any respect shall be 12 months as from the submission deadline stated in the **Invitation to tender**.

4. Acceptance EMSA conditions

Submission of a bid implies full acceptance of the Purchase Order available at www.emsa.europa.eu/low-value-procurement and, where appropriate, waiver of the tenderer's own general or specific terms and conditions. These requirements are binding on the tenderer to whom the contract is awarded for the whole duration of the contract.

5. Supporting evidence (*if applicable)

The specification, listing all the documents that must be produced in order to tender, including supporting evidence of economic, financial, technical and professional capacity and the Purchase Order/ Contract are available under the Procurement Section relevant to the present call to tender on the EMSA website at the following address: www.emsa.europa.eu/low-value-procurement

6. Contact between EMSA and interested tenderers

Contacts between the contracting authority and tenderers are prohibited throughout the procedure save in exceptional circumstances and under the following conditions only:

6.1 Before the final date for submission of tenders:

At the request of the tenderer, EMSA may provide additional information solely for the purpose of clarifying the nature of the contract.

Any requests for additional information must be made in writing and sent to the e-mail address stated in the **Invitation to tender**.

EMSA is not bound to reply to requests for additional information made less than six working days before the deadline for submission of tenders.

EMSA may, on its own initiative, inform interested parties of any error, inaccuracy, omission or any other clerical error in the text of the call for tenders.

Any additional information including that referred to above will be published on EMSA website www.emsa.europa.eu/low-value-procurement

6.2 After the opening of tenders

If clarification is required or if obvious clerical errors in the tender need to be corrected, EMSA may contact the tenderer provided the terms of the tender are not modified as a result.

EMSA may negotiate with tenderers the offers they have submitted, in order to adapt them to the requirements set out in Tender Specifications or any additional document and in order to find the tender offering best value for money. During negotiations equal treatment of all tenderers will be ensured.

7. Subcontracting

If the tenderer intends to either sub contract part of the work or realise the work in co-operation with other partners he shall indicate in his offer which part will be subcontracted, as well as the name and qualifications of the subcontractor or partner. (NB: overall responsibility for the work remains with the tenderer).

The tenderer must provide required evidence for the exclusion and selection criteria on its own behalf and when applicable on behalf of its subcontractors i.e. when the tenderer relies on the capacities of subcontractors to fulfil selection criteria as specified in the **Invitation to tender**. To rely on the capacities of a subcontractor means that the subcontractor will perform the works or services for which these capacities are required.

The exclusion criteria will be assessed in relation to each economic operator individually. Concerning the selection criteria, the evidence provided will be checked to ensure that the tenderer and its subcontractors as a whole fulfil the criteria. However, the selection criteria may apply individually where it is relevant in view of their nature.

8. Joint Offer

Groupings, irrespective of their legal form, may submit bids. Tenderers may, after forming a grouping, submit a joint bid on condition that it complies with the rules of competition. Such groupings (or consortia) must specify the company or person heading the project and must also submit a copy of the document authorising this company or person to submit a bid.

Each member of the consortium must provide the required evidence for the exclusion and selection criteria. The exclusion criteria will be assessed in relation to each economic operator individually. Concerning the selection criteria, the evidence provided by each member of the consortium will be checked to ensure that the consortium as a whole fulfils the criteria. However, the selection criteria may apply individually where it is relevant in view of their nature.

If awarded, the contract will be signed by the person authorised by all members of the consortium. Tenders from consortiums of firms or groups of service providers, contractors or suppliers must specify the role, qualifications and experience of each member or group.

9. Requirements as to the tender

Bids can be submitted in any of the official languages of the EU. However, as the main working language of the Agency is English, bids should preferably be submitted in English.

The tenderer must comply with the minimum requirements provided for in these Tender Specifications. This includes compliance with applicable obligations under environmental, social and labour law established by

Union law, national law and collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU of the European Parliament and of the Council.¹

The tenderer shall complete the Tenderer's checklist

If the tenderer intends to either subcontract part of the work or realise the work in co-operation with other partners (Join Offers) he shall indicate in his offer by completion of the form – Information regarding joint offers and subcontracting.

The tender must be presented as follows and must include:

Signed cover letter indicating the name and position of the person authorised to sign the contract/order form and the bank account on which payments are to be made.

Financial Identification Form completed, signed and stamped; available on the Procurement Section (Financial Identification Form) on the EMSA Website at the following address:

<http://emsa.europa.eu/work/procurement/calls.html>

Legal Entity Form completed, signed and stamped and requested accompanying documentation, available on the Procurement Section (Legal Entity Form) on the EMSA Website at the following address:

<http://emsa.europa.eu/work/procurement/calls.html>

Tenderers are exempt from submitting the Legal Entity Form and Financial Identification Form requested if such a form has already been completed and sent either to EMSA or any EU Institution previously. In this case the tenderer shall simply indicate on the cover letter the bank account number to be used for any payment in case of award.

Part A: all the information and documents required by EMSA for the appraisal of tenders on the basis of the point **2 (exclusion criteria)** if required by the **Invitation to tender**

Part B: all the information and documents required by the contracting authority for the appraisal of tenders on the basis of the **Economic and Financial capacity** (part of the selection criteria) set out under point **11.4** and in the **Invitation to tender** if required by **Invitation to tender**

Part C: all the information and documents required by the contracting authority for the appraisal of tenders on the basis of the **Technical and professional capacity** (part of the selection Criteria) set out under point **11.4** and in the **Invitation to tender** if required by **Invitation to tender**

Part D: all the information and documents required by the contracting authority for the appraisal of tenders on the basis of the **Award Criteria** set out under point 12 and in **Invitation to tender**.

10. Price

- a) Price must be quoted for the subject in the **Invitation to tender** and shall be all-included.
- b) Prices must be fixed amounts and non-revisable.

¹ 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 (OJ L 94, 28.3.2014, p. 65).

- c) Prices must be quoted in Euro.
- d) Under Article 3 and 4 of the Protocol on the privileges and immunities of the European Communities, the latter is exempt from all duties, taxes and other charges, including VAT. This applies to EMSA pursuant to the Regulation 1406/2002/EC. Therefore price and the amount of VAT must be shown separately.

11. Information concerning the personal situation of the tenderer and information and formalities necessary for the evaluation of the minimum economic, financial, technical and professional capacity required (if applicable)

11.1 Legal position – means of proof required

When submitting their bid, tenderers are requested to complete and enclose the **Legal Entity Form** available on the Procurement Section on the EMSA Website at the following address:

<http://emsa.europa.eu/work/procurement/calls.html>

11.2 Grounds for exclusion – exclusion criteria

To be eligible to participate in this contract award procedure, a tenderer must not be in any of the following exclusion situations:

- a) it is bankrupt, subject to insolvency or winding up procedures, its assets are being administered by a liquidator or by a court, it is in an arrangement with creditors, its business activities are suspended or, it is in any analogous situation arising from a similar procedure provided for under EU or national laws or regulations;
- b) it is subject to a final judgement or a final administrative decision establishing that the person or entity is in breach of its obligations relating to the payment of taxes or social security contributions in accordance with the applicable;
- c) it is subject to a final judgement or a final administrative decision establishing that the person or entity is guilty of grave professional misconduct by having violated applicable laws or regulations or ethical standards of the profession to which the person or entity belongs, or by having engaged in any wrongful conduct which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence, including, in particular, any of the following:
 - i. fraudulently or negligently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of selection criteria or in the performance of a contract;
 - ii. entering into agreement with other persons or entities with the aim of distorting competition;
 - iii. violating intellectual property rights;
 - iv. attempting to influence the decision-making process of the authorising officer responsible during the award procedure;
 - v. attempting to obtain confidential information that may confer upon it undue advantages in the award procedure ;
- d) it is subject to a final judgement establishing that the person or entity is guilty of any of the following:
 - i. fraud
 - ii. corruption
 - iii. participation in a criminal organisation
 - iv. money laundering or terrorist financing
 - v. terrorist-related offences or offences linked to terrorist activities

- vi. child labour or other forms of trafficking in human beings as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council
- e) the person or entity has shown significant deficiencies in complying with the main obligations in the performance of a contract financed by the Union's budget;
- f) it is subject to a final judgement or a final administrative decision establishing that the person or entity has committed an irregularity within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95
- g) for the situations of grave professional misconduct, fraud, corruption, other criminal offences, significant deficiencies in the performance of the contract or irregularity, the candidate is subject to:
 - i. facts established in the context of audits or investigations carried out by the Court of Auditors, European Anti-Fraud Office or internal audit, or any other check, audit or control performed under the responsibility of an authorising officer;
 - ii. non-final administrative decisions which may include disciplinary measures taken by the competent supervisory body responsible for the verification of the application of standards of professional ethics;
 - iii. decisions of entities and persons implementing Union funds pursuant to point (c) of Article 61(1) of the Financial Regulation or of entities implementing the budget pursuant to Article 62 of the Financial Regulation;
 - iv. decisions of the Commission relating to the infringement of the Union's competition rules or of a national competent authority relating to the infringement of Union or national competition law; or
 - v. decisions of exclusion by an authorising officer of an EU institution, of a European office or of an EU agency or body.

11.3 European Single Procurement Document (ESPD)

In order for the fulfilment of the above criteria to be demonstrated, an ESPD electronic form, available at <https://ec.europa.eu/tools/espdl/welcome>, shall be dully filled in, signed and submitted together with the tender.

Tenderers may be excluded from the procedure if the information in the ESPD is seriously misrepresented, withheld or cannot be complemented with supporting documents.

For the selection criteria, the tenderer shall provide information only with regards the selection criteria as required by EMSA in the procurement documents.

11.4 Selection criteria

Tenderers must:

- have the legal and regulatory capacity to pursue the professional activity needed for performing the contract as required in the Tender Specifications;
- fulfil the applicable economic and financial criteria indicated in the Tender Specifications;
- fulfil the applicable technical and professional criteria indicated in the Tender Specifications;
- be able to provide the necessary supporting documents listed in the relevant sections of the Tender Specifications and which are not available electronically upon request and without delay.

12. **Contract award scheme**

The contract is awarded on the basis of the most economically advantageous tender, which shall consist in one of three award methods: lowest price, lowest cost or best price-quality ratio. Which scheme applies depends on what is stated in the **Invitation to tender**.

12.1. Option 1 – Lowest price

The contract will be awarded to the tenderer who submits the tender with the lowest price.

12.2. Option 2 – Lowest cost

The contracting authority uses a cost-effectiveness approach including life-cycle costing.

12.3. Option 3 – Best value for money

The contract will be awarded to the tenderer who submits the most economically advantageous tender (the one with highest score) based on the quality criteria and their associated weightings as stated in the **Invitation to tender**.

For all tenders evaluators will give marks between 0-10 (half points are possible) for each quality criterion.

The score is calculated as $S = SQ + SP$ where:

The average quality for quality criterion i is

$$Q_i = \frac{1}{\text{number of evaluators}} * \sum_{\text{evaluator}} \text{mark of the evaluator for quality criterion } i$$

The overall weighted quality is

$$Q = \sum_i Q_i * W_i$$

The score for quality is

$$SQ = \frac{Q}{Q \text{ of the bid with highest } Q} * 100 * \sum_i W_i$$

The score for price is

$$PP = \sum_i \frac{\text{lowest } Price_i \text{ of all bids}}{Price_i} * 100 * W_{Price_i}$$

Only tenders that have reached minimum 60% per criterion will be taken into consideration when calculating the score for quality SQ , score for price SP and score S .

13. Contracts will not be awarded to tenderers who during the procurement procedure

- a) are in an exclusion situation;
- b) have misrepresented the information required as a condition for participating in the procedure or have failed to supply that information;
- c) were previously involved in the preparation of procurement documents used in the award procedure where this entails a breach of the principle of equality of treatment, including distortion of competition that cannot be remedied otherwise.

14. Other conditions

- Public Procurement rules applying to calls for tender launched by EMSA are contained in the EMSA Financial Regulation under the Financial Regulation section on the EMSA website (www.emsa.europa.eu).
- This procurement procedure is in no way binding on EMSA. EMSA contractual obligation commences only upon signature of the contract with the successful tenderer.
- Up to the point of signature, the contracting authority may either abandon the procurement or cancel the award procedure, without the candidates or tenderers being entitled to claim any compensation. This decision must be substantiated and the candidates or tenderers notified.
- Once EMSA has opened the tender, the document shall become the property of EMSA and it shall be treated confidentially.
- Tenderers will be informed of the outcome of this procurement procedure by email. It is the tenderers' responsibility to provide a valid email address and together with your contact details in your tender offer and to check it regularly.
- Processing your reply to the invitation to tender will involve the recording and processing of personal data (such as your name, address and CV). Such data will be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Unless indicated otherwise, your replies to the questions and any personal data requested are required to evaluate your tender in accordance with the **Invitation to tender** and will be processed solely for that purpose by Head of unit responsible for management of the contract specified in the **Invitation to tender**. Details concerning processing of your personal data are available on the privacy statement "[Information on personal data protection in procurement procedures](http://www.emsa.europa.eu/about/personal-data-protection.html)" at: <http://www.emsa.europa.eu/about/personal-data-protection.html>
- Your personal data may be registered in the Early Detection and Exclusion System (EDES) if you are in one of the situations mentioned in Article 106 of the Financial Regulation². For more information, see the Privacy Statement on http://ec.europa.eu/budget/library/explained/management/protecting/privacy_statement_edes_en.pdf.
- In addition to economic operators established in the Member States of the Union, only economic operators from the following countries are eligible to participate in the present procurement procedure: Albania, FYROM, Iceland, Liechtenstein, Montenegro, Norway, Serbia and Bosnia and Herzegovina. In the case of economic operators from other non-EU member states, EMSA may, only in exceptional circumstances, accept their participation in a particular procurement procedure without creating a precedent or obligation for future participation.

² Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298 of 26.10.2012, p. 1) as amended.

- For British tenderers - please be aware that after the UK's withdrawal from the EU, the rules of access to EU procurement procedures of economic operators established in third countries will apply to candidates or tenderers from the UK depending on the outcome of the negotiations. In case such access is not provided by legal provisions in force candidates or tenderers from the UK could be rejected from the procurement procedure.