

Enclosure 1- Tender specifications
attached to the Invitation to Tender N°EMSA/NEG/19/2014 for
Legal services in the field of aviation law

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.

Among its tasks, the Agency shall “work with the Member States to support with additional means, in a cost efficient way, the pollution response actions in case of pollution caused by ships as well as marine pollution caused by oil and gas installations, when a request has been presented” (Art. 2 (3) d of Regulation 1406/2002/EC as amended).

EMSA’s Action Plan for Oil Pollution Preparedness and Response (2004), as well as the Action Plan for Response to Marine Pollution from Oil and Gas Installations (2013), as updated by the annual Work Programmes of the Agency, identify how to implement these tasks. These documents are available on the Agency’s website www.emsa.europa.eu under “Publications”.

In line with its mandate in the field of pollution response, the Agency intends to set-up aerial application of dispersant services to EU/EFTA and candidate countries through establishing contractual arrangements with airplane operators. Following a request for assistance sent to EMSA from a coastal states affected by a large scale oil spill, the aircraft should be available at short notice for aerial application of dispersants.

For that purpose EMSA is drafting the contractual terms and conditions that will be supporting that service implementation between EMSA and the service providers.

Information regarding the on-going competitive dialogue procurement procedure EMSA/CDI/01/2014 for the contracting of such services is available section of the Agency’s website www.emsa.europa.eu under “Procurement”.

2. Objective, scope and description of the contract

2.1. Overall objective

The overall objective of this contract is to provide EMSA with high quality legal consultancy service in the field of aviation law.

The awarded tenderer will be required to support EMSA during the competitive dialogue procurement procedure EMSA/CDI/01/2014 for Service Contract for Aerial Application of Dispersant Service which will be on-going until December 2014. More particularly the

awarded tenderer will support EMSA with the drafting of the contractual terms and conditions for the abovementioned aerial application of dispersant services.

2.2. General technical requirements

In order to ensure fair competition during the competitive dialogue (procurement procedure N° EMSA/CDI/01/2014 for Service Contract for Aerial Application of Dispersant Service) it is a key requirement that all documents, information, correspondence remain confidential to the person(s) performing the tasks under this contract. In order to ensure equal treatment and transparency, information or documents which are linked to the performance of this contract shall not be divulged to any third party.

For this purpose the person(s) performing the tasks under the contract for the provision of legal services in the field of aviation law will be asked to sign a declaration of absence of conflict of interest and confidentiality.

The working language of the Agency is English. The draft Contracts are drafted in English and all correspondences and documents shall be submitted in English.

2.3. Specific tasks and requirements

The provision of the legal services shall cover the following activities:

- a. **'Initial assignment'** (some 70 hours): critical review and advise from a legal perspective on the drafting of contracts for aerial dispersant application services by the Agency on a stand-by basis (Airplane Availability Contract) and by a coastal State during actual oil spill response operations (Incident Response Contract).

The contractor mindful of the interests of the Agency is expected to provide advice as to how the drafts should be improved. The contractor shall also review and advise on the drafts in the light of relevant standard terms and conditions in the aviation sector in order to develop a set of terms and conditions acceptable for the industry.

Particular issues to be addressed are related to:

- chartering airplanes;
- liability aspects for aircraft charterer;
- insurance requirements;
- leasing of specialised equipment to be installed on board the airplane;
- ownership of specialised equipment to be installed on board the airplane;
- distribution of risks related to damage of and or loss of specialised equipment;
- Resolution of disputes;
- Clauses for non-compliance with contractual obligations;
- Aircrew labour standards including health and safety.

The Agency expects to receive, in writing and in English, comments, drafting suggestions and where appropriate justifications. The drafting suggested should be clear having in mind the need to reduce the likelihood of disputes arising over the interpretation of clauses by the contracting parties.

The initial review and advice provided will be considered by EMSA which may require clarifications, adjustments, further drafting, and corrections.

On the basis of these revised draft Airplane Availability Contract and Incident Response Contract, EMSA will complete negotiations with the pre-selected candidates for the competitive dialogue and launch the invitation to tender phase.

- b. **'Ad hoc' advice in the field of aviation law:** to provide, upon EMSA's request, advice on other specific issues related to the negotiation of the contracts terms arising during the dialogue and negotiations with candidates to the competitive dialogue and prior to the signing of the contract for Aerial Application of Dispersant Service which is expected in November 2014.

2.4. Main features of the Contract for services for aerial applicant of dispersants

Electronic copies of the draft Airplane Availability Contract and Incident Response Contract (some 50 pages in total) can be provided by EMSA to companies which wish to submit an offer for this procurement procedure N°EMSA/NEG/19/2014. **Requests for provision of the draft contracts shall be submitted by e-mail to the following address: NEG192014@emsa.europa.eu, accompanied by the signed declaration of absence of conflict of interest and confidentiality attached as annex 6 to this Invitation to Tender.**

Requests received less than five working days before the closing date for submission of tenders will not be processed.

Note that these versions of the draft Airplane Availability Contract and Incident Response Contract might slightly vary from the versions which will be sent in June to the tenderer awarded with the contract for the provision of legal services in the field of aviation law based on initial inputs during the "Dialogue" within the competitive Dialogue N°EMSA/CDI/01/2014.

Tenderers will find hereunder a description of the main features of the Contract for services for aerial applicant of dispersants.

The Contract for services for aerial applicant of dispersants has the nature of a public contract and will be structured based on a two Contract system along the general following lines:

- a. **Airplane Availability Contract:** binding agreement between EMSA and the company awarded under the competitive dialogue procurement procedure usually the airplane operator.

Main elements covered by the Airplane Availability Contract are described below:

- Duration: 2 years, renewable twice each time for a period of one year.
- It arranges:
 - The purchase or leasing and maintenance of dispersant application system (equipment);
 - The storage of dispersants;
 - The training of the aircrew;
 - The requirements and necessary modifications of the airplane;

- Avoiding potential contractual conflicts with the usual employment of the plane;
- The participation of the airplane in drills and exercises;
- The stand-by, preparedness and mobilisation to enter into a contract with the State requesting pollution response assistance.
- The mandatory use of the Incident Response Contract

The Airplane Availability Contract defines three main financial elements, namely:

- the payment of the costs related to modifying/preparing the airplane for the required service;
 - the equipment purchase costs or the equipment leasing price if this option is finally offered/preferred;
 - the availability fee compensating the costs related to the preparedness to provide the required service such as costs for storing the dispersants and aircrew training.
- b. **Incident Response Contract:** binding agreement between the requesting coastal state and the company awarded under the competitive dialogue procurement procedure usually the airplane operator. The objective is to present a model contract which is workable between a government and a commercial party. The terms and conditions are fixed and shall be standard for 28 different legal systems.

Main elements covered of the Incident Response Contract are described below:

- Mutual responsibilities;
- Service period renewable by mutual agreement and under the same conditions;
- Procedures for mobilisation and performance of services and duties (Notices);
- Performance of the airplane and of its crew;
- Payments.

3. Contract management responsible body.

The European Maritime Safety Agency – Unit C.1, in charge of Pollution Response Services, will be responsible for managing the contract.

4. Project Planning

The provision of the services targeted under this procurement procedure should take place between June and December 2014.

The following table presents the planning for the provision of the legal services under this procurement procedure in parallel to the different phases of the EMSA/CDI/01/2014 competitive dialogue for aerial dispersant spraying services.

By submitting a bid, tenderers commit to respect the following timeframe for performance of the specific tasks and requirements.

Stage in competitive dialogue procurement procedure N° EMSA/CDI/01/2014	Deliverables/specific tasks and requirements within current EMSA/NEG/19/2014 services	Responsible	Maximum timeframe
Phase I 'Pre-selection'		EMSA	Completed
Phase II "Dialogue" with pre-selected candidates	Signature of the contract for the provision of legal services in the field of aviation law by the last contracting party	EMSA/ awarded contractor NEG/19/2014	Estimated mid-June 2014
	Provision of the draft of the contract (Availability Contract + Incident Response Contract) in electronic version (Note that this version of the draft contract might slightly vary from the version which can be submitted to tenderers upon requests as per point 2.4 above based on initial inputs during the "Dialogue" within the competitive Dialogue N°EMSA/CDI/01/2014)	EMSA	
	Review and analyse of the draft Contracts Submission of initial comments and drafting suggestions in writing (electronic and hard copy) to EMSA	Awarded contractor NEG/19/2014	Within 1 week following receipt of the first draft
	Internal review of the initial submission by the Contractor and submission of revised contracts based on EMSA's questions, clarifications, remarks, request for further drafting	EMSA	Within 1 week following receipt of revised draft from contractor
	(Possible review consultation on changes in the second draft)	Awarded contractor NEG/19/2014	Within 1 week following receipt of revised second draft from EMSA
	Sending out invitation to tender to candidates within EMSA/CDI/01/2014 competitive dialogue Including draft contract	EMSA	

	Submission of the invoice for interim payment and draft contracts (Availability Contract + Incident Response Contract) in hard copies	Awarded contractor NEG/19/2014	Within 15 days following completion of the activities detailed under point 2.3 (a) and rows above.
Phase III "Tender phase"	Provision of 'ad hoc' legal advice upon EMSA's request (point 2.3 (b)) above	N/A At any time during the duration of the Contract and on an "ad hoc" basis	
Phase IV "Award phase"	Signature of the contract for services for aerial applicant of dispersants EMSA/CDI/01/2014	November 2014	
	End of the period for execution of the services under EMSA/NEG/19/2014		
	Submission of invoice for balance payment and supporting documents	One week after the end of the period for execution of the services	
	Payment of the invoice for balance payment by EMSA	Within 30 days following receipt of the invoice and supporting documents.	

5. Timetable

The estimated date for signature of the contract is June 2014. The contract duration will be six months following signature.

6. Maximum Value of the Contract

The maximum budget available for this contract is of 33,000 Euro excluding VAT. This maximum budget should cover the price for the 'initial assignment' as described under point 2.3.a above and the price of maximum 30 hours for the 'ad hoc' advice under point 2.3.b above. As per point 11 below 'price', the tenderers are invited to present as part of their financial offer an hourly rate for the provision of 'ad hoc' advice. The maximum ceiling for the hourly rate is of 330 Euro, excluding VAT.

7. Terms of payment

Payment will be made in accordance with the provisions of the draft contract in particular article I.4.

8. Terms of contract

In drawing up a bid, the tenderer should bear in mind the terms of the draft contract.

EMSA may, before the contract is signed, either abandon the procurement or cancel the award procedure without the tenderers being entitled to claim any compensation.

9. 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).

10. Requirements as to the tender

Bids can be submitted in any of the official languages of the EU. The working language of the Agency is English. Bids must include an English version of the documents requested under point 13.4 & 14 of the present tender specifications.

The tenderer shall complete Tenderer's checklist.

If the tenderer intends to either sub contract part of the work or realise the work in co-operation with other partners (Joint 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 and the bank account on which payments are to be made.

Financial Form completed, signed and stamped; available on the Procurement Section (Financial Form) on the EMSA Website at the following address: www.emsa.europa.eu

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: www.emsa.europa.eu

Tenderers are exempt from submitting the Legal Entity Form and Financial 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 should 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 the contracting authority for the appraisal of tenders on the basis of the points **12, 13.2** of these specifications (**Exclusion criteria**)

Part B: 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 **13.4** of these specifications.

Part C: 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 **14** of these specifications;

Part D: setting out **prices** in accordance with **point 11** of these specifications.

11. Price

- Price must be quoted for legal services in the field of aviation law, taking into account the maximum ceilings indicated in point 6 of these specifications, and shall include:
 - the price for the 'initial assignment' as described under point 2.3.a above (P_{ia});
 - the hourly rate to be charged to EMSA for the provision of 'ad hoc' advice under point 2.3.b above (P_h).
- Prices must be fixed regardless of the composition of the team involved.
- Prices shall be all inclusive (e.g. phone bills).
- Prices must be fixed amounts and non-revisable.
- Prices must be quoted in euro.
- 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.

12. 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.

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.

13. Information concerning the personal situation of the service provider and minimum technical and professional capacity

13.1. 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: www.emsa.europa.eu.

13.2. Grounds for exclusion – Exclusion criteria

To be eligible to participate in this contract award procedure, tenderers must not be in any of the following exclusion grounds:

- (a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) they have been convicted of an offence concerning their professional conduct by a judgement which has the force of res judicata;
- (c) they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;
- (d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;
- (e) they have been the subject of a judgement which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- (f) following another procurement procedure or grant award procedure financed by the Community budget, they have been declared to be in serious breach of contract for failure to comply with their contractual obligations.

13.3. Evidence to be provided by the tenderers

For this purpose the Declaration on Honour available on the Procurement Section on the EMSA Website (www.emsa.europa.eu) shall be completed and signed.

13.4. Technical and professional capacity – Selection criteria

The following **requirements** will have to be fulfilled in order for the offers to be selected for evaluation against the award criteria:

- Professional experience of the person(s) proposed, in particular in the following areas:
 - chartering airplanes;
 - negotiating and drafting legal terms;
 - liability aspects for aircraft charterer;
 - insurance requirements;
 - ownership/lease of specialised equipment to be installed on board aircraft
 - distribution of risks related to damage of and or loss of specialised equipment;
 - resolution of disputes;
 - clauses for non-compliance with contractual obligations;
 - aircrew labour standards including health and safety.
- Excellent English speaking and writing skills of the person(s) proposed as working and contractual language.

In order to prove fulfilment of the above requirements the following **evidence** will have to be provided in the tender:

- The CV(s) of the person(s) proposed including a list of references and publications where applicable.
- If the information is not included in the CV, a detailed table with a list of the previous relevant experiences detailing the specific tasks of the person(s) proposed for the service, the year of performance, the duration of the involvement and the company or service beneficiary.

14. Award criteria

Only the tenders respecting the maximum budget ceiling and the exclusion and selection criteria will be evaluated in terms of quality and price.

The contract will be awarded to the tenderer who submits the most economically advantageous bid (the one with the highest score) based on the following quality criteria and their associated weightings:

1- Quality criteria 1 (W1= 70%):

- Quality of the proposed team based on professional merit of the person(s) involved as per the evidence requested under point 13.4 above and on a description of the distribution of the tasks among the team members when several persons are proposed for performing the tasks;

And the price criterion and associated weighting:

- 2- Price of the bid ($W_{\text{Price}} = 30\%$) whereby the price of the bid ($Price_i$) is the sum of:
- the price for the 'initial assignment' as described under point 2.3.a above (P_{ia});
 - the price of a maximum of 30 hours of legal services work based on the hourly rate for the provision of 'ad hoc' advice as described under point 2.3.b (calculated as $30 * P_h$).

For all bids 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

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

Only bids respecting the tender specifications and that have reached a minimum score of 70% for the quality criteria will be taken into consideration when calculating the score for quality SQ , score for price SP and score S .

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

- (a) are subject to a conflict of interest
- (b) are guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the contract procedure or fail to supply this information.

16.False declarations

Without prejudice to the application of penalties laid down in the contract, tenderers and contractors who have been guilty of making false declarations concerning situations referred to in points 12 and 13 above or have been found to have seriously failed to meet their contractual obligations in an earlier procurement procedure or grant shall be subject to administrative and financial penalties set out in Article 145 of Commission Delegated Regulation of 29.10.2012 on the rules of application of Regulation (EU) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union.

17.Intellectual Property Right (IPR)

Please consult the contract for IPR related clauses.

If the results are not fully created for the purpose of the contract this should be clearly pointed out by the tenderer in the tender. Information should be provided about the scope of pre-existing rights, their source and when and how the rights have been or will be acquired.

In the tender all quotations or information originating from other sources and to which third parties may claim rights have to be clearly marked (source publication including date and place, creator, number, full title etc.) in a way allowing easy identification.