

ANNEX IV

to Framework contract N° EMSA/OP/05/2015

[MODEL] LETTER FOR PRE-FINANCING FIRST DEMAND GUARANTEE

**Attached to the Invitation to tender
N° EMSA/OP/05/2015 for the Supply of specialised oil pollution response (OPR)
equipment**

Bank (Letterhead)

[Place/Date]

European Maritime Safety Agency
represented by Markku Mylly, Executive Director
Praça Europa 4
1249-206 Lisbon
Portugal

Reference: Contract N° and exact title: [...]

ARTICLE 1 – DECLARATION ON GUARANTEE, AMOUNT AND PURPOSE

We, the undersigned [name and address of the financial institution or bank] (hereinafter referred to as "the Guarantor") hereby confirm that we give European Maritime Safety Agency, an unconditional, irrevocable and independent first-demand guarantee consisting in the undertaking to pay to European Maritime Safety Agency a sum equivalent to the amount of:

EUR [in figures: ...] (in words: ... EUR)

on simple demand, for guarantee of the pre-financing(s) stipulated in the contract (N°/exact title, hereinafter referred to as the "contract") concluded between European Maritime Safety Agency and [name and address], (hereinafter referred to as "the contractor").

ARTICLE 2 – EXECUTION OF GUARANTEE

If European Maritime Safety Agency gives notice that the contractor has for any reason failed to reimburse pre-financings paid by European Maritime Safety Agency, we, acting by order and for account of the contractor, shall undertake to immediately pay up to the above amount, in EUR, without exception or objection, into a bank account designated by European Maritime Safety Agency, on receipt of the first written request from European Maritime Safety Agency sent by registered letter or by courier with acknowledgement of receipt. We shall inform European Maritime Safety Agency in writing as soon as the payment has been made.

ARTICLE 3 – OBLIGATIONS OF THE GUARANTOR

1. We waive the right to require exhaustion of remedies against the contractor, any right to withhold performance, any right of retention, any right of avoidance, any right to offset, and the right to assert any other claims which the contractor may have against European Maritime Safety Agency under the contract or in connection with it or on any other grounds.

2. Our obligations under this guarantee shall not be affected by any arrangements or agreements made by European Maritime Safety Agency with the contractor which may concern his obligations under the contract.
3. We shall undertake to immediately inform European Maritime Safety Agency in writing, by registered letter or by courier with acknowledgement of receipt, in the event of a change of our legal status, ownership or address.

ARTICLE 4 – DATE OF ENTRY INTO FORCE

This guarantee shall come into force upon its signature. If, on the date of its signature, the [first] pre-financing has not been paid to the contractor, this guarantee shall enter into force on the date on which the contractor receives the [first] pre-financing.

ARTICLE 5 – END DATE AND CONDITIONS OF RELEASE

1. We may be released from this guarantee only with European Maritime Safety Agency's written consent.
2. This guarantee shall expire on return of this original document by European Maritime Safety Agency to our offices by registered letter or by courier with acknowledgement of receipt.
3. This must occur at the latest one month after the payment of the balance under the contract has been made or three months after the issuance of the corresponding recovery order.
4. After expiry, this guarantee shall become automatically null and void and no claim relating thereto shall be receivable for any reason whatsoever.

ARTICLE 6 – APPLICABLE LAW AND COMPETENT JURISDICTION

1. This guarantee shall be governed by and construed in accordance with the law applicable to the contract.
2. The courts having jurisdiction for matters relating to the contract shall have sole jurisdiction in respect of matters relating to this guarantee.

ARTICLE 7 - ASSIGNMENT

The rights arising from this guarantee may not be assigned [*without our written consent*].

Done at [insert place], on [insert date]

Signature/Function at the Bank]

Done at [insert place], on [insert date]

Signature/Function at the Bank]