

## **Tender specifications**

### **Attached to the Invitation to tender**

#### **Invitation to tender N° EMSA/OP/31/2015 for THETIS Enhancement and Maintenance**

##### **1. Introduction**

The European Maritime Safety Agency (EMSA) was established under Regulation 1406/2002/EC for the purpose of ensuring a high, uniform and effective level of maritime safety. Among its tasks, the Agency has been entrusted with the project management and operation of the information system (THETIS) in order to help the Member States of the Paris MoU (PMoU) in the implementation of the new regime of port State control inspections. The system supports the implementation of Directive 2009/16/EC on Port State Control as amended including its Implementing Regulations, Directive 99/35/EC on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services, and relevant elements of Regulation 319/2009 on Common Rules and standards for Recognized Organizations and Directive 2009/17/EC establishing a Community vessel traffic monitoring and information system as well as the provisions laid down in the text of the memorandum of the Paris MoU. THETIS serves as an information source to facilitate the Port State Control inspection in the broadest sense, and is designed to handle various data simultaneously and keeps necessary separation of information, for instance the support of the implementation of Directive 2012/33/EU amending Directive 1999/32/EC as regards the sulphur content of marine fuels and for support of the implementation of Directive 2000/59/EC as regards the Port Reception Facilities in module THETIS EU. The system has the capacity to interface with other national, community and international maritime safety-related databases or information systems. For instance, information on ships in the system is enriched with information from other sources such as the databases of the Recognised Organisations, the IMO GISIS database or the SafeSeaNet system.

The development of THETIS was assigned to the first contractor at the end of 2008. The system was ready and went live fully operational by the end of 2010. Since the go-live date, the contractor and sub-sequent contractor have been providing on-going enhancement and maintenance of the system. During the execution of the project and until now, the development and testing has been performed at the contractor's site, while acceptance and final production are performed at EMSA premises by EMSA personnel, in conjunction with representatives from the Member States and intra muros consultants.

The Paris MoU enforces International Maritime Conventions, to which it refers as relevant instruments. Over time, new Conventions enter into force and become relevant instruments. Their specific provisions and related workflows will then have to be catered for by THETIS. Moreover, the EU maritime acquis is expanding, requiring relevant information systems in support. In this sense, enhancements in the short term are foreseen in relation to the Regulation on the monitoring, reporting and verification of emissions of carbon dioxide, from maritime transport and amending Directive 2009/16/EC.

## **2. Objective, scope and description of the contract**

### **2.1 Objective**

The objective is to establish a framework contract with a contractor to maintain and enhance the system THETIS and all its subsidiary components as support to the relevant communities in executing their commitments under the European Union maritime legislation and the Paris MoU on PSC.

### **2.2 Scope**

The scope of the contract is enhancement as well as maintenance of the system THETIS.

#### **2.2.1 Enhancement**

Enhancement covers the provision of services for additions, changes or deletions of technical or functional features of the system, including development of stand-alone sub-systems.

#### **2.2.2 Maintenance**

Maintenance covers the services for modification of the system to correct or prevent incidents and for provision of a Service Desk and hot-line support.

These services will also apply to enhancements once delivered under this Framework Contract.

#### **2.2.3 Requirements**

Detailed information about the requirements to be considered and adhered to in the performance of the contract is specified in the Appendixes attached to these tender specifications:

- Appendix 1: Technical Overview
- Appendix 2: THETIS Documentation
- Appendix 3: THETIS EU Documentation
- Appendix 4: Jaspersoft BI Documentation
- Appendix 5: IdM Guide
- Appendix 6: THETIS Book of Exercises
- Appendix 7: Directive 2009/16/EC on Port State Control
- Appendix 8: Working Procedures and Service Requirements

The Appendixes and a user login to the THETIS training system will be provided upon request and shall be used only for the purpose of answering the current call for tender.

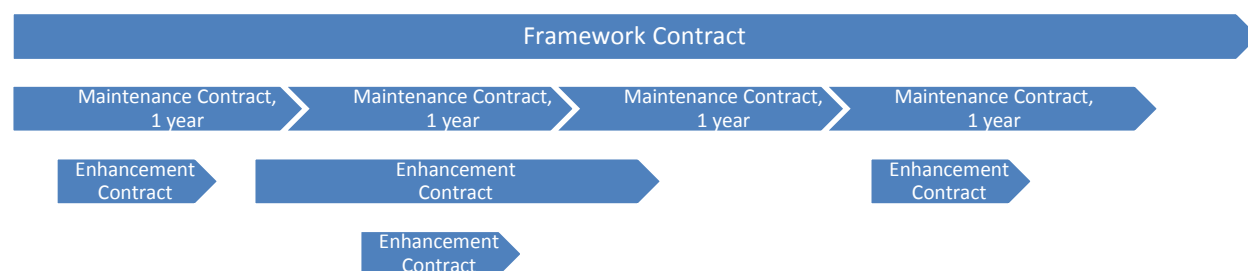
#### **2.2.4 Description**

The framework contract will be implemented by specific contracts:

- Specific contract(s) for maintenance: each for a period of one year;
- Specific contract(s) for enhancements: for a period to be specified in each specific contract.

Specific contracts for enhancements, in principle, will be conducted in sequence. However there might be the case of specific contracts for enhancements to run in parallel.

An example of duration and sequence of contracts is illustrated below, without prejudice of the actual contract dates.



## 2.3 Deliverables

This section provides a list of the deliverables for enhancement and maintenance. Deliverables are detailed in the appendixes attached to the tender specifications.

The language of working and of all deliverables must be in English.

### 2.3.1 Deliverables for Enhancement

For each enhancement requested the contractor shall provide at least:

- Project management documentation:
  - Project charter,
  - Project plan,
  - Gantt chart,
  - Project duration,
  - Work breakdown of the effort in person days per profile,
  - Project reports on the status containing on-going tasks, resource usage, progress and issues,
  - Flash reports
- Design documentation (should be prepared/approved in close collaboration with EMSA's personnel):
  - Functional design specification: uses cases, business rules, processes and interactions,
  - Technical design specification: system architecture, software design/layering, components, interfaces definitions,
- System documentation: operation and maintenance manual, system building procedures, installation and upgrade guides,
- Test documentation and result: evidence that the system is in-line with the functional and technical design specifications and that activities have been applied as described in the project plan and software development methodology,
- Release plan,
- Software releases and release notes,
- Source codes,
- Any other element needed to build/install/upgrade/operate/maintain the system and its components,

- Agenda and minutes of the meetings.

Deliverables provided shall be included in the existent documentation, respecting the existent structure and technical tools.

### **2.3.2 Deliverables for Maintenance**

For maintenance requested the contractor shall provide at least:

- Updated versions of the deliverables specified in 2.3.1 except the project management documentation (the first bullet point),
- Change management documents for each change submitted to the release management process. It must include the evaluation of the change, planning and acceptance,
- Workarounds, emergency software fixes
- Every 3 months a new release with software fixes, some of which may have already been issued as emergency fixes, and enhancements if agreed so with EMSA in the Release plan,
- Service Desk and 7x24 Hotline,
- Monthly service level reports described in the context of service level management,
- 6 months overview report of maintenance activities.

## **3. Contract management responsible body.**

The European Maritime Safety Agency – Unit B.3, in charge of Environment and Enforcement – will be responsible for managing the contract.

## **4. Project Planning**

### **4.1 Meetings**

The project shall respect the planning schedule as described in section 2.2.4. The following meetings are envisaged:

- Signature of the contract: Work shall not start before the signature of the framework contract.
- Kick-off meeting: Within four weeks after the signature of the framework contract and each specific contract for enhancement, a Kick-off meeting will be held in order to present a work break down structure of the tasks and to define the details of the work to be undertaken.
- Final meeting: Prior the end of the framework contract a final meeting shall be held to mark the end of the production stage and enable the contracting parties to discuss the work accomplished.
- Regular management meeting: occurring every three months.

EMSA may call for additional meetings if this should be considered necessary for the better execution of the project.

Meetings will be held in EMSA premises in Lisbon, Portugal, although some meetings could take another form (e.g. virtual) if mutually agreed by EMSA and the contractor.

### **4.2 Minutes of the meetings**

The contractor is responsible for providing to EMSA the agenda 3 days before the meetings. The contractor shall draw up the minutes of the meetings and provide them within 2 working days. The minutes of the meetings should include at least the topics discussed, decisions taken and action items with indication of responsible and deadline. Should the minutes of the meetings be rejected by EMSA, the contractor shall have two working days to revise the minutes according to the comments provided.

## **5. Timetable**

The estimated date for signature of the contract is May 2016.

## **6. Estimated Value of the Contract**

The maximum budget available for this contract is of EUR 2.200.000 € (two million two hundred thousand Euro) excluding VAT.

The maximum budget available for 1 year maintenance is EUR 150.000 € (one hundred fifty thousand Euro) excluding VAT.

## **7. Terms of payment**

Payments shall be issued in accordance with the provisions of the draft framework contract available on the Procurement Section under the call to tender EMSA/OP/31/2015 on the EMSA website at the following address: [www.emsa.europa.eu](http://www.emsa.europa.eu)

## **8. Terms of contract**

In drawing up a bid, the tenderer should bear in mind the terms of the draft framework 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. Financial guarantees**

Pre-financing guarantee may be requested in case of the pre-financing exceeding 150.000 Euro. It will be specified accordingly in the specific contract(s) for enhancements implementing the framework contract.

## **10. Sub-contracting**

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. The evidence for the selection criteria on behalf of subcontractors must

be provided where the tenderer relies on the capacities of subcontractors to fulfil selection criteria<sup>1</sup>. 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.

## **11. Requirements as to the tender**

Bids can be submitted in any of the official languages of the EU. However, since the main working language of the Agency is English, bids should preferably be submitted in English and should in particular include an English version of the documents requested under points 14.5 & 15 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](http://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](http://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 **13, 14.2-14.3** of these specifications (part of the Exclusion criteria)

**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 **14.4** 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 **Technical and professional capacity** (part of the Selection Criteria) set out under point **14.5** of these specifications.

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<sup>1</sup> To rely on the capacities of a subcontractor means that the subcontractor will perform the works or services for which these capacities are required.

**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 **15** of these specifications;

**Part E:** setting out **prices** in accordance with **point 12** of these specifications.

## 12. Price

- Prices shall include all costs e.g. travelling, cost of software licences etc.
- Prices shall be provided in the following manner:
  - Price for maintenance: A fixed price of one year maintenance.
  - Price for enhancements: A fixed price for the following profiles.

| Profile                          | Price per person day |
|----------------------------------|----------------------|
| Project Manager                  |                      |
| Technical Manager                |                      |
| Business Analyst                 |                      |
| Business Intelligence Specialist |                      |
| System Architect                 |                      |
| Software Architect               |                      |
| Designer                         |                      |
| Senior Developer                 |                      |
| Developer                        |                      |
| Test Manager                     |                      |
| Tester                           |                      |

- Prices must be quoted in Euro..
- Prices must be fixed amounts, non-revisable and remain valid for the duration of the contract.
- Under Article 3 and 4 of the Protocol on the privileges and immunities of the European Union, EMSA is exempt from all duties, taxes and other charges, including VAT. This applies to EMSA pursuant to the Regulation 1406/2002/EC. These duties, taxes and other charges can therefore not enter into the calculation included in the bid. The amount of VAT must be shown separately.

## 13. 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.

## **14. Information concerning the personal situation of the service provider and information and formalities necessary for the evaluation of the minimum economic, financial and technical capacity required**

### **14.1 Legal position – means of proof required**

When submitting their bid, tenderers are requested to complete and enclose the **Legal Entity Form** and requested accompanying documentation, available on the Procurement Section (Legal Entity Form) on the EMSA Website at the following address: [www.emsa.europa.eu](http://www.emsa.europa.eu)

### **14.2 Grounds for exclusion - Exclusion criteria**

To be eligible for participating 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 Union financial interests;
- f) they have been the subject of the administrative penalty for being guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the procurement procedure or failing to supply an information, or being declared to be in serious breach of his obligation under contract covered by the budget.

### **14.3 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](http://www.emsa.europa.eu)) shall be completed and signed.

Please note that the tenderer to whom the contract is to be awarded shall provide additional proof evidencing eligibility.

For situations described in (a), (b) and (e), production of a recent extract from the judicial record is required or, failing that, a recent equivalent document issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied. Where the tenderer is a legal person and the national legislation of the country in which the tenderer is established does not allow the provision of such documents for legal persons, the documents should be provided for natural persons, such as the company directors or any person with powers of representation, decision making or control in relation to the tenderer.



For the situation described in point (d) above, recent certificates or letters issued by the competent authorities of the State concerned are required. These documents must provide evidence covering all taxes and social security contributions for which the tenderer is liable, including for example, VAT, income tax (natural persons only), company tax (legal persons only) and social security contributions.

For any of the situations (a), (b), (d) or (e), where any document described in two paragraphs above is not issued in the country concerned, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.

If the tenderer is a legal person, information on the natural persons with power of representation, decision making or control over the legal person shall be provided only upon request by the contracting authority.

When the tenderer to be awarded the contract has already submitted relevant evidence to EMSA, it remains valid for 1 year from its date of submission. In such a case, the reference of the relevant project(s) should be mentioned and the contractor is required to submit a statement of confirmation that their situation has not changed.

#### **14.4 Economic and financial capacity – Selection criteria**

Requirements:

The tenderer must be in stable financial position and the economic and financial capacity to perform the contract.

Evidence:

- Financial statements for the last three years for which accounts have been closed.
- Statement of overall turnover and turnover relating to the relevant services for the last three financial years.
- Tenderers are exempt from submitting the documentary evidence if such evidence has already been completed and sent to EMSA for the purpose of another procurement procedure and still complies with the requirements. In this case the tenderer should simply indicate on the cover letter the procurement procedure where the evidence has been provided.
- If, for some exceptional reason which EMSA considers justified, a tenderer is unable to provide one or other of the above documents, he may prove his economic and financial capacity by any other document which EMSA considers appropriate. In any case, EMSA must at least be notified of the exceptional reason and its justification in the tender. EMSA reserves the right to request any other document enabling it to verify the tenderer's economic and financial capacity.

#### **14.5 Technical and professional capacity – Selection criteria**

- a) Tenderers shall provide documentary evidence of expertise, knowledge and experience in the following areas with a list of comparable, relevant projects and systems in which the tenderer has participated and worked. This must include a description of the services with indication of the objectives, contracting parties, duration and budget:
- Information systems and products based on Web technologies: architecture, development, operation and maintenance,

- Software modules/Frameworks: WebLogic Server, WebLogic Integrator, Liferay Portal, Oracle RAC Database, Oracle Service Bus, Adobe Air, Jaspersoft BI, JasperAnalysis Professional, Jaspersoft ETL, jQueryJS, Sencha ExtJS,
  - Use of quality systems: software quality assurance, software quality management and software testing.
- b) Tenderers shall provide with their bid detailed curriculum vitae of each of the following profiles assigned to the project and their possible substitute: Project Manager, Technical Manager, Business Analyst, Business Intelligence Specialist, System Architect, Software Architect, Designer, Senior Developer, Developer, Test Manager, Tester. Project Manager shall have at least 5 years of experience in projects referred to in point a). Curricula vitae should be presented, preferably, in accordance to the Commission Recommendation on a common European format for curricula vitae, published in OJ L79 of 22 March 2002, p. 66. a). They must include the educational background, degrees and diplomas, professional experience, research work, publications and linguistic skills. When describing the professional experience of each team member, reference must be made to the sectors in which it has been gained and the areas dealt with.

## 15. Award criteria

Only the tenders meeting the requirements of 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 highest score) based on the following quality criteria and their associated weightings:

**Quality criterion 1 ( $W_1 = 30\%$ ):** Quality of the proposed methods, approach and supporting tools to implement the contract requirements to perform the tasks.

Bids shall detail as a minimum the following topics, tailored to the THETIS system:

- Project approach overview,
- Project management methodology and supporting tools
- Plan to acquire knowledge about the system,
- Strategy to improve the quality of the system,
- Design methodology and supporting tools,
- Software development methodology and supporting tools,
- Testing methodology and supporting tools, covering test plan and identified strategy for unit, integration, functional, performance, load and stress tests and the results achieved: test cases, test scripts, test data sets, test results,
- Service Level Agreement. The Service Level Agreement should define all services, include proposed service levels and provide a detailed approach and supporting tools for at least the following Processes and Management plans as described in the Appendix Working Procedures and Service Requirements:
  - a. Change Management,
  - b. Release Management & Planning,
  - c. Service Desk Management,
  - d. Incident Management,
  - e. Problem Management,
  - f. Service Level Management.

**Quality criterion 2 ( $W_2 = 10\%$ ):** Quality and completeness of the suggested plan for the implementation of scenario 1 as enhancement project.

Scenario 1: Replace the mobile client

Provide a technical solution to replace the current off-line mobile client application by a fast, stable, reliable, easy to use/install/operate/maintain system. The installation and upgrades of the new off-line mobile client should be possible without having to be logged in with Administrators permissions on the client machine running Windows, Linux or MacOS operating systems and on tablets running on Android or iOS. The most common browsers should be supported where relevant. The additional effort for the proposed solution of the off-line mobile client on top of the on-line web version should be minimized.

The bidder shall present:

- Project charter,
- Project plan,
- Gantt chart,
- Project duration,
- Work breakdown of the effort in person days per profile,
- Detailed description of the proposed solution.
- Test plan,
- Impacted use cases and proposed modifications,
- Proposed XSD (if necessary),
- Impact on the user interface (if necessary),
- Impacted software modules,
- Overview of the architecture changes (if necessary),
- Impact at database tier, business tier, presentation tier and integration tier (if necessary),
- Chapters to be updated in the Operations and Maintenance Manual,
- Chapters to be updated in the Software Architecture Document.

**Quality criterion 3 ( $W_3 = 10\%$ ):** Quality and completeness of the suggested plan for the implementation of scenario 2 as enhancement project.

Scenario 2: Entry of statutory certificates in a ship's record

Certificates for ships are issued by various entities (e.g. Flag States, Recognised Organisations, P&I Clubs etc.). Such details are usually recorded when enforcement inspections take place through copying results from the inspection forms. However, it could be foreseen that the issuing entity would directly, upon issuance, enter the certificate details in the system. The enforcing inspector would then validate rather than enter such details. The issuer may or may not be a regular THETIS user, and no dedicated system role is yet foreseen. The solution shall allow an issuer to enter the information in the ship-data block at ship level in THETIS. The solution proposed shall aim at security and safeguarding data integrity as well as maintainability of the system.

The bidder shall present:

- Project charter,
- Project plan,

- Gantt chart,
- Project duration,
- Work breakdown of the effort in person days per profile,
- Detailed description of the proposed solution.
- Impacted use cases and proposed modifications,
- Proposed XSD (if necessary),
- Impact on the user interface (if necessary),
- Test plan,
- Impacted software modules,
- Overview of the architecture changes (if necessary),
- Impact at database tier, business tier, presentation tier and integration tier (if necessary),
- Chapters to be updated in the Operations and Maintenance Manual,
- Chapters to be updated in the Software Architecture Document.

**Quality criterion 4 ( $W_4 = 10\%$ ):** Completion of scenario 3.

Scenario 3: Provide inspection report

The bidder shall provide the print-out of an inspection report following an unsupported trial run on the THETIS training system as well as the description of challenges encountered, if applicable. The pertaining training manual and EU legislation is provided in Appendix THETIS Book of Exercises from 2013 and Appendix Directive 2009/16/EC on Port State Control.

**Quality criterion 5 ( $W_5 = 10\%$ ):** Merits of the team and distribution of responsibilities for the performance of the services.

Bids shall detail as a minimum the following topics:

- Project team overview and composition,
- Roles and responsibilities.

and the price criterion and associated weighting:

**Price of the bid ( $W_{Price} = 30\%$ ):**

The price is calculated as sum of the price for a Specific contract of one year maintenance and the price for a standard development team for one month (= 20 days \* (price per person day of one Project Manager \* 0.4 + price per person day of one Technical Manager \* 0.4 + price per person day of one Business Analyst + price per person day of one Business Intelligence Specialist \* 0.4 + price per person day of one System Architect \* 0.4 + price per person day of one Software Architect \* 0.4 + price per person day of one Designer \* 0.4 + price per person day of one Senior Developer \* 0.4 + price per person day of one Developer \* 2 + price per person day of one Test Manager \* 0.4 + price per person day of one Tester).

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

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

Only bids that have reached a minimum of 50% for  $Q_1$ , a minimum of 50% for  $Q_2$ , a minimum of 50% for  $Q_3$ , a minimum of 50% for  $Q_4$ , a minimum of 50% for  $Q_5$  will be taken into consideration when calculating the score for quality  $SQ$ , score for price  $SP$  and score  $S$ .

Only bids that have reached a minimum of 70% for the score  $S$  will be taken into consideration for awarding the contract.

#### **16. 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.

#### **17. 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 14 and 15 above or have been found to have seriously failed to meet their contractual obligations in an earlier procurement 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.

#### **18. 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 to these 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.

**19. Special negotiated procedure under Article 134(1)(f)**

EMSA may at a later stage exercise the option to increase the estimated value of the contract via negotiated procedure with the successful tenderer in accordance with Article 134(1)(f) of the Rules of Application to the Financial Regulation.