

## **ENCLOSURE A.1 - APPLICATION SPECIFICATIONS**

**Enclosed to Procurement Procedure No. EMSA/CPNEG/17/2016 concerning Service Contracts for stand-by oil spill recovery vessels**

**Competitive procedure with negotiations**

**Phase I – Invitation to Apply**

### **1. Introduction**

The European Maritime Safety Agency (EMSA) was established under Regulation (EC) No 1406/2002 of the European Parliament and of the Council for the purpose of ensuring a high, uniform and effective level of maritime safety. The Agency was tasked to “work with the Member States to support on request 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” (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](http://www.emsa.europa.eu) under “Publications”.

### **2. Type of procurement procedure**

#### **2.1 Two phases**

This procurement procedure consists of two phases, “Application Phase” and “Tender Phase”.

In Phase I, referred to as the “Application Phase”, economic entities are invited to submit an application to this Competitive Procedure with Negotiations in accordance with the rules set out in the Invitation to Apply and its associated Enclosures. Following that, a list of pre-selected candidates shall be drawn up according to the criteria set out in the Contract Notice, the Invitation to Apply and in this Application Specifications. Pre-selected candidates shall be invited to submit a full bid in Phase II, referred to as the “Tender Phase”. Inclusion of a company or grouping on the list of pre-selected candidates will not entail any obligation on the part of the Agency concerning either the award of the contract or concerning invitations to submit a tender. It should be noted that in this document any mentioning of the terms ‘candidates’ or ‘applications’ is in reference to Phase I of the procedure and any mention of the terms ‘tender’ or ‘tenderers’ is in reference to Phase II.

#### **2.2 Phase I - Application Phase (current phase)**

The invitation to Apply just launched constitutes the start of the first phase “Application Phase”.

Applications should be submitted in accordance with the Invitation to apply, these Applications specifications and associated Enclosures. Applications that are not received by the deadline and/or not submitted in a closed envelope as set in the invitation to Apply will be rejected by EMSA from further evaluation.

In this Application Phase, EMSA will then assess the fulfilment by the Applicants of the requirements published in these Application Specifications:

1. Legal form to be taken by the proposed contractors and their Legal position (see points 7, 8 and 10.1);
2. Exclusion criteria (see points 10.2 and 10.3);
3. Selection criteria – the tenderer must submit evidence of his capacity to perform the contract, both from the financial (see point 10.4) and technical and professional (see point 10.5) point of view.

An applicant (company or grouping) that does not fulfil the exclusion and selection criteria will not be pre-selected for the Tender Phase.

## **2.2 Phase II - Tender Phase**

The Tender Specifications -Enclosure T.1- and Draft Contract (Vessel Availability Contract) -Enclosure T2- are herewith published and contain documentation that will be required in the Tender phase from the pre-selected candidates and future procedure for evaluation in the course of Phase II.

Following Phase I **pre-selected candidates only** will be invited to submit a full Tender in accordance with the rules set out in the Invitation to Tender, Tender Specifications and associated Enclosures and Annexes.

Following the submission of the full tender, EMSA will provide feedback to the tenderers concerned, in accordance with the principles of equal treatment and non-discrimination, to adapt, if required, the tenders to the procurement requirements. No negotiation will be possible on the maximum budget available, on the requirements referred hereunder in paragraph 3 nor on any element that is considered as part of the exclusion or selection criteria.

This will ultimately result in the identification of the tender offering the best value for money (based on quality and price) for the Agency.

## **3. Contract objective and scope**

### **3.1. Overall objective**

The primary objective of the EMSA Stand-by Oil Spill Recovery Vessel service, and therefore of this procurement procedure, is to protect the coastlines of EU Member States. This is in accordance with its founding Regulation 1406/2002/EC as amended.

### **3.2. Specific objective**

The Agency intends to establish, for certain defined areas of the EU coastline, additional response capacity to that of the pollution response mechanisms of Member States in case of a major oil spill.

For each area this can be provided by either a single vessel or through a “pool” of vessels arrangement. EMSA would like to utilise vessels that are engaged in economic activities, during the contract period, in the identified area, by establishing Service Contracts for their availability during a (major) incident for spill response activities.

Following a request for assistance, such vessels would be transformed into oil recovery vessels and made available at short notice for at-sea oil recovery activities during a (major) oil spill.

National authorities from an EU Member State, an EU Candidate Country, Iceland, Norway, the European Commission or a third country sharing a regional sea basin with the European Union can through the European Emergency Response Coordination Centre (<http://ercportal.jrc.ec.europa.eu/>) request assistance of an EMSA oil spill response vessel (see article III.3.1. of the Draft Vessel Availability Contract). In addition, a third party not being a National authority but being involved in the marine incident

such as the owner of the ship causing or threatening to cause a pollution by oil, the cargo owner or the oil and gas installation operator can hire an EMSA oil spill response vessel (see article III.3.4. of the Draft Vessel Availability Contract).

The service contracts will have duration of some 4.5 years (up to 7 months preparation phase, 4 years stand-by phase -renewable up to a maximum of 4 additional years-, up to 3 months closure phase).

### 3.3. Geographical scope of the service

Whilst oil spills occur on a regular basis in European waters, it is impossible to predict the location of (major) future incidents with any certainty. It can be expected that EMSA contracted vessel(s) will at any time, following an advanced notice, be within the geographical area defined below, equipped and ready to respond to incidents. However, if needed and technically appropriate, they will assist elsewhere as well. Given logistical and technical considerations, these other areas would probably be adjacent.

In order to maximise the operational efficiency of the Agency's network of additional spill response capacity, such resources should be distributed as best as possible around the European coastline. With this in mind, the **stand-by areas of operation of the vessels** are detailed in the table below:

Lot	Stand-by area of operation of vessel(s)
1. Southern Black Sea	Limited by the coastline of Bulgaria and the Turkish coastline in the Black Sea limited by the 32° meridian east and 43°45' parallel north.
2. Northern Baltic Sea	Covering the area from the line Liepāja (Latvia) and Kalmar (Sweden) to the North.

N.B. The vessel(s), if necessary and previously notified, can sail out of the area of operation as long as the service mobilisation time for the contracted response capacity is respected.

The EMSA Oil Pollution Response Equipment managed under these contracts should be stored, maintained and insured either on board the vessel(s) or in a stockpile located on the coastline of an EU Member State.

### 3.4. Minimum requirements regarding the Service Contracts type

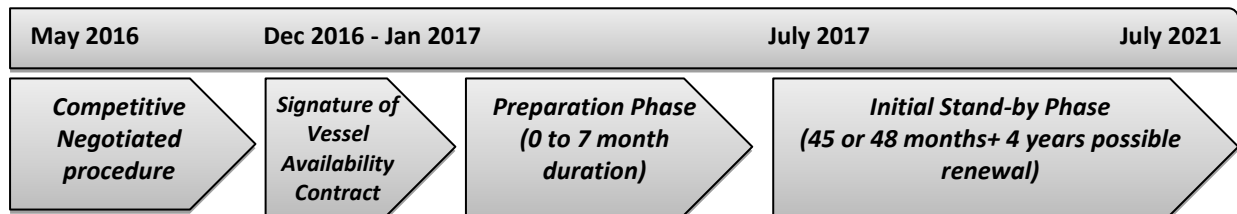
The service for an area will be structured and specified in the two following contracts:

- A **“Vessel Availability” contract** (VAC) signed between the company/consortia and the Agency for the availability and associated preparation of vessel(s) for spill response activities.
- An **“Incident Response” contract** (IRC) signed between the company/consortia and the party requesting the provision of at-sea oil recovery resources during an actual incident. In order to improve vessel mobilisation time, the Incident Response contract will include pre-agreed terms, conditions and tariffs for the provision of the service.

### 3.5. Minimum requirements regarding project phases and related tasks

The estimated date for signature of the service contract is December 2016/January 2017.

A range of indicative project milestones are identified here below:



For each contract signed by EMSA there should be three different implementation phases:

- **Preparatory Phase** (estimated between 0 and 7 months following signature of the contract depending on the vessel(s) offered and needs) during which the Contractor will have to:
  - adapt or pre-fit, if needed, the vessel(s) concerned in order to bring it(them) up to “Occasional Oil Recovery Vessel” classification or equivalent;
  - carry out the transportation and servicing, if necessary, of the oil pollution response equipment transferred from EMSA;
  - purchase and obtain all certificates for the oil pollution response equipment to be purchased;

Both the pre-fitting and equipment costs can be pre-financed by the Agency in accordance with the rules established in the Vessel Availability Contract.

- **Stand-by Phase** (between 45 and 48 months after the Preparatory Phase, renewable for an additional period of 4 years) during which the vessel(s) will:
  - under normal circumstances, carry out their usual commercial activities, train the crew, participate to regular drills and to oil pollution exercises on request. Participation in at-sea spill response exercises and similar activities will either be for a maximum of 10 days a year per contract or 3 days per vessel offered, whichever is more. These days are inclusive of time to sail to/from exercise location.
  - in the event of a (major) oil spill and following a request for assistance, via the Agency, by a coastal State, the vessel(s) will cease its usual activity as soon as possible and will operate as an at-sea oil recovery vessel(s). The services will be provided to the Requesting Party on the basis of the “Incident Response” contract. The vessel(s) must be available, at short notice, in the geographical area, during the whole period of the contract for pollution response activities to ensure rapid mobilisation.
- **Closure Phase** (up to three months after the end of the Stand-by Phase) during which the contractor will complete the necessary reporting and handover the Oil pollution Response Equipment to EMSA's designated representatives.

During all phases the contractor will be responsible for the maintenance, insurance and storage of the oil pollution response equipment.

### 3.6. Minimum requirements regarding the proposed arrangement and the vessel(s)

The minimum requirements applicable to the vessel(s) and the arrangement, to be evaluated during the tender phase will be:

- a) **“Top-up” principle:** The Agency is tasked to provide response capacity in addition to that already under contract to the Member States of the European Union, countries which are contracting parties to the European Free Trade Association (EFTA) as well as States applying for

Accession. Consequently, at the tender phase, if a bid includes a **vessel that is engaged with such a country to provide pollution response services at the expected time of award** (December 2016) this will be a **ground for exclusion** of the offer from the procurement process.

- b) In the Tender Phase, the company/consortia must be in a position to ensure the availability of the vessel(s) to provide the requested service during the whole duration of the Contract. This generally implies that, **as a minimum, the shipowner/operator is part of the company/consortia submitting a tender.**
- c) The Agency expects proposals for a comprehensive arrangement for the geographical area. A **minimum vessel net storage capacity** for recovered oil storage has been identified as shown in the table below:

Lot	Minimum vessel net storage capacity (m <sup>3</sup> )
1. Southern Black Sea	1,250
2. Northern Baltic Sea	1,500

It is impossible to predict the precise location of the available vessel(s) at the time of an oil spill. With this in mind, companies/consortia can explore the possibilities of providing a comprehensive arrangement based around a “pool” of pre-fitted vessels from which one or more could be mobilised when the Agency receives a request for assistance from a coastal State.

The appropriate number of equipment stockpiles must be available to allow the mobilisation of a sufficient number of vessel(s) so that the contracted target capacity can be achieved at all times.

- d) It is important to note that regardless of what vessel arrangement is offered (single vessel or “pool” of vessels), the **availability of the vessel(s) at short notice** remains as a key element of the arrangement proposed. The oil pollution response equipment can either be permanently on-board or stored onshore ready for rapid installation.
- e) Vessel(s) should be **self-propelled** and capable of performing the required services under heavy weather conditions. Accordingly, arrangements in which the storage capacity is in one vessel and the propulsion or oil recovery capability in a second vessel will not be accepted unless they have the statutory certificates considering the arrangement as a single unit.
- f) Vessel(s) should not be subject to the single hull phase-out requirements of Regulation (EC) No 417/2002 of the European Parliament and of the Council, as amended.
- g) Vessel(s) should be registered on either a Member State of the European Union or a contracting party to European Free Trade Area (EFTA) or a non-EU white listed register as defined by the Paris MoU. This is applicable from the time of the Contract signature onwards.
- h) Vessel(s) must be classified by an organization recognised in accordance with Regulation (EC) No 391/2009.
- i) Vessel must be classed for unrestricted sea-going service and have all the certificates required for international voyages without any limitation. For Lot 2 – Northern Baltic Sea the vessel must have at least Ice Class 1 or equivalent.
- j) In case a vessel offered is not built and ready by 15th September 2016 the following conditions must be satisfied:
  - The ship must be under construction by 15th September 2016<sup>1</sup>.
  - The construction of the ship must be finalised before the end of the Preparation Phase.

<sup>1</sup> The construction contract may be requested as a proof.

- k) The vessel's Safety Management Certificate (SMC) for the International Safety Management (ISM) Code should valid.
- l) Please note that for safety reasons (during oil spill response operations), the contact person of the company/consortium and the responsible crew on the vessel(s) must have a good command of the English language.

### 3.7. Minimum requirements regarding the equipment and pre-fitting

With regard to the equipment and pre-fitting on board the vessel, the contractor will receive from EMSA a set of oil pollution response equipment. The transferred set will vary depending on the lot but will include at least a set of sweeping arms, a skimmer, booms and a slick detection system. The contractor will be requested to purchase also some additional equipment.

The **technical specifications of the equipment and pre-fitting** are detailed in the tender documents and in particular in Enclosure T.1 – Tender Specifications and the following annexes to Enclosure T.2 – Vessel Availability Contract: Annex IV – Technical Specifications of the Vessel; Annex V – Technical Specifications of the Equipment.

## 4. Contract management responsible body

The European Maritime Safety Agency - Pollution Response Services Unit C.1 will be responsible for managing the contract.

## 5. Procurement planning and timetable

The following table summarises the tentative milestones and deadlines for the procurement:

Activity	Tentative dates
<b>Information Meeting(s)</b>	June 2016
<b>Deadline for submission of Applications</b>	22 June 2016
<b>Invitation to tender for selected candidates</b> <b>Start of tender period</b>	28 July 2016
<b>Visit to the equipment stockpiles</b> (equipment depot for the relevant Lot)	16 – 19 August 2016
<b>Clarification Meetings</b> with tenderers in Lisbon (if requested)	24 – 25 August 2016
<b>Deadline for submission of tenders</b>	7 September 2016
<b>Negotiation phase</b> and visit to the vessels offered	October 2016
<b>Deadline for final improved tenders</b>	4 November 2016
<b>Award procedure and signature of contracts</b>	December 2016/January 2017

## 6. Maximum value of the Contract

EMSA is tasked to provide response capacity within a specific budgetary framework. Accordingly, the Agency has assigned specific budgetary ceilings to each of the main contract elements (availability fee, equipment and pre-fitting). Consequently, if any offer in the Tender Phase has a value above the relevant ceiling this will be a ground for rejection of the offer from the procurement process. A template to include the prices for the different contract elements will be enclosed to the Invitation to Tender addressed to the Pre-selected Candidates.

The maximum budget available to the procedure is indicated in the table below<sup>2</sup>:

Lot	Maximum Availability Fee (initial Stand-by period)	Maximum Equipment Price	Maximum Pre-fitting Price	Maximum overall budget
1. Southern Black Sea	EUR2,200,000.00	EUR200,000.00	EUR600,000.00	EUR2,800,000.00
2. Northern Baltic Sea	EUR2,400,000.00	EUR250,000.00	EUR600,000.00	EUR3,050,000.00

The difference in the ceilings between the lots is explained by different specific requirements per lot in terms of equipment and/or vessel.

The contract for Lot 2 will only be awarded on the condition that EMSA Administrative Board approves the service for the Baltic Sea. When the approval of the Administrative Board is granted, the contract will be awarded either in 2016 or 2017 subject to the availability of necessary budgetary resources.

Please note that all costs incurred during the preparation and submission of tenders are to be borne by the tenderers and will not be reimbursed.

## 7. Subcontracting

If the candidate intends to either subcontract 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. It should be noted that the overall responsibility for the work remains with the candidate.

The candidate 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 candidate relies on the capacities of subcontractors to fulfil selection criteria. 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 candidate and its subcontractors as a whole fulfil the criteria.

Changes in subcontractors between the Application Phase and the Tender phase will be acceptable (e.g. to incorporate the vessel owner or charterer of the vessel chosen in the Tender Phase) but:

- The company heading the project should not be changed;
- In case of change, the check on the evidence for the exclusion and selection criteria performed in the Application phase will be performed again in the Tender Phase.

## 8. Joint Offer

Groupings, irrespective of their legal form, may submit joint applications and tenders. Candidates may, after forming a grouping, submit a joint application on condition that it complies with the rules of competition. Such

---

<sup>2</sup> Please note that for this first phase of the procurement procedure (Applications) no financial offer must be presented.

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 the application/tender.

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 grouping.

Tenders/candidates 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 application file**

Participation in this tender procedure is open on equal terms to all natural and legal persons coming within the scope of the EU Treaties and to all natural and legal persons in a third Country which has a special agreement with the Union in the field of public procurement under the conditions laid down in that agreement.

Applications can be submitted in any of the official languages of the EU. However, as the main working language of the Agency is English, applications should preferably be submitted in English and should in particular include an English version of the documents requested under point 10.6 - General description of the proposed arrangement.

The candidate must comply with the minimum requirements provided for in these application 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.

The candidate shall complete the Candidate's Checklist (Enclosure A.2).

If the candidate intends to either subcontract part of the work or realise the work in co-operation with other partners (Joint Offers) he/she shall indicate it in his/her application by completing the Statement regarding subcontracting/joint offers (Enclosure A.6).

The applicant should note the following important points:

- Failure to submit relevant information by the applicant could be a ground for rejection of their application from the procurement process.
- The responsibility lies with the applicant to verify that all documentation requested in this Invitation to Apply is provided.
- Each application needs to be treated as individual/unique and, accordingly, a full set of all relevant supporting documentation must be submitted with each application, for each Lot.
- Applicants are requested to arrange their application documents in the format identified below. If the applicant does not include one of the requested documents, a clear and thorough justification must be provided.

The Application file should include, respecting the order, the following documents as a minimum:

- A completed **Checklist** (Enclosure A.2 to the Invitation to Apply).
- **Part A:** all the information and documents required by the contracting authority for the shortlisting candidates on the basis of the points 7, 8, 10.1, 10.2 and 10.3 of these Application specifications (part of the Identification information and Exclusion criteria):
  1. Signed Cover Letter indicating the name of the company and the person heading the project, and in the case of groupings, specifying the companies that



are part of the consortium (including role, qualifications and experience of each member or group) and indicating the company and person heading the project ;

2. the “Statement of subcontracting/Joint offer” – Information regarding joint offers and subcontracting, if the candidate intends to either sub contract part of the work or realise the work in co-operation with other partners (Joint Offer) he shall indicate in his offer by completion of the template (Enclosure A.6 to Invitation to Apply).
3. Original of the document authorising the person to represent the company/grouping or consortium for the purpose of this procurement procedure and sign the contract on behalf of the company;
4. For each of the companies involved in the consortium and subcontractors: Legal Entity Form (Enclosure A.3 to Invitation to Apply; also available on EMSA website) completed, dated and signed by the authorised representative and accompanied by:
  - A copy of the VAT Registration Document, if applicable, and if the VAT number does not appear on the Official Document referred to the point below.
  - A copy of an Official Document (Official Gazette, Company Register, etc.) showing the name of the Company, the address of the Head Office and the Registration Number given to it by the relevant National Authorities.
5. For the company heading the application only: Financial Identification Form (Enclosure A.4 to Invitation to Apply; also available on EMSA website) filled and signed by the account holder and the bank (or accompanied by a recent bank statement).

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

- **Part B:**

6. Declaration of Honour (Enclosure A.5 to Invitation to Apply) completed and signed, or alternatively, the additional proof listed under point 10.3.

- **Part C:** all the information and documents required by the contracting authority for the appraisal of the **Economic and Financial capacity** (part of the Selection criteria) set out under point 10.4 of these specifications:

7. Balance Sheets for the last 3 financial years
8. Turnover and Profit and Loss account for the last 3 financial years

or, for semi-public or non-profit organisations, the annual budget of the last year

- **Part D:** all the information and documents required by the contracting authority for the shortlisting candidates based on the **Technical and professional capacity criteria applicable to the company and/or consortia** (part of the Selection Criteria) set out under point 10.5 of these specifications.

9. Document of Compliance for the ISM Code, including the related latest external audit report to the company
10. PSC record for fleet or Flag State annual surveys reports
11. List of works related to the field, if appropriate

- **Part E: Documentation relating to Point 10.6 (for information purposes only)**

12. General description of proposed arrangement
13. Identification and technical characteristics of vessel(s) proposed
14. Usual area of operation and economic activity
15. Proposed location for pollution response equipment stockpile
16. Draft mobilisation plan

**10. 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**

**10.1. Legal position – means of proof required**

When submitting an application, candidates (and every company part of a Grouping) are requested to **complete, sign and enclose to their application the Legal Entity Form (Enclosure A.3)**.

Note that in the case the bid is submitted by a consortium, each member is requested to complete and enclose the Legal Entity Form.

**10.2. Grounds for exclusion (Exclusion Criteria)**

To be eligible for participating in this contract award procedure, a candidate 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 national legislation or regulations;
- b) it is subject to a final judgement or a final administrative decision establishing that it is in breach of its obligations relating to the payment of taxes or social security contributions in accordance with the law of the country in which it is established, with those of the country in which the contracting authority is located or those of the country of the performance of the contract;
- c) it is subject to a final judgement or a final administrative decision establishing that it is guilty of grave professional misconduct by having violated applicable laws or regulations or ethical standards of the profession to which the person 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 with the aim of distorting competition;
  - iii. violating intellectual property rights;
  - iv. attempting to influence the decision-making process of the contracting authority 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 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 has shown significant deficiencies in complying with the main obligations in the performance of a contract financed by the Union's budget, which has led to its early termination or to the application of liquidated damages or other contractual penalties, or which has been discovered following checks, audits or investigations by an Authorising Officer, OLAF or the Court of Auditors;
- f) it is subject to a final judgement or a final administrative decision establishing that the person 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 applicant is subject to:
  - i. facts established in the context of audits or investigations carried out by the Court of Auditors, OLAF or internal audit, or any other check, audit or control performed under the responsibility of an authorising officer of an EU institution, of a European office or of an EU agency or body;
  - 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 the ECB, the EIB, the European Investment Fund or international organisations;
  - 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.

### **10.3. Evidence to be provided by the candidates**

For this purpose each candidate, each subcontractor essential to fulfil the selection criteria, and each company part of the Consortium should provide in this Application phase, the Declaration of Honour, completed and signed, as attached in Enclosure A.5 to Invitation to Apply.

Please note that additional proof evidencing eligibility will be requested as follows from the company/consortia wishing to submit a full tender in the tender phase:

For exclusion situations described in (a), (c), (d) or (f) of point 10.2 above, production of a recent extract from the judicial record is required or, failing that, an equivalent document recently issued by a judicial or administrative authority in the country of establishment of the tenderer showing that those requirements are satisfied.

For the exclusion situation described in (a) or (b) of point 10.2 above, production of recent certificates issued by the competent authorities of the State concerned is 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. Where any document described above is not issued in the country concerned, it may be replaced by a sworn statement made before a judicial authority or notary or, failing that, a solemn statement made before an administrative authority or a qualified professional body in its country of establishment.

If the candidate already submitted such evidence for the purpose of another procedure, its issuing date does not exceed one year and it is still valid, the person shall declare on its honour that the documentary evidence has already been provided and confirm that no changes have occurred in its situation.

If the candidate 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 candidate 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 tenderer is required to submit a statement confirming that its situation has not changed.

#### **10.4. Economic and financial capacity – means of proof required (Selection Criteria)**

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

To prove their economic and financial capacity, candidates must provide with their application:

1. The balance sheets or extracts from balance sheets for the last three financial years for which accounts have been closed.
2. Statement of overall turnover and profit & loss account during the last three financial years, if applicable.
3. For semi-public or non-profit organisations, the annual budget of the last year.
4. Applicants 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 applicant 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 candidate is unable to provide one or other of the above documents, he may prove its 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 at any moment during the procedure any other document enabling it to verify the tenderer's economic and financial capacity.

In the case the bid is submitted by a consortium, then each member of the consortium must submit the above mentioned documents. The documentation may be evaluated according to international rating practice.

#### **10.5. Technical and professional capacity applicable to the Company and/or Consortia (Selection Criteria)**

The Agency reserves the right to request any documentary evidence it deems necessary or useful in order to verify the candidates on this point(s).

To prove their general technical capacity, applicants must provide with their application proof of the following:

1. The individual company or at least one of the members of the consortium participating must have a valid Document of Compliance (DOC) for the International Safety Management (ISM) Code. A copy of this document must be attached to the application together with the related latest external audit report to the company.
2. Overview of the company/consortium's fleet PSC inspections and, where applicable, detentions for the last three years under the Paris MoU. If the fleet concerned does not have PSC records,

the relevant Annual Flag Surveys reports must be submitted. Three detentions or more in the last 3 years will be considered as a ground for exclusion.

3. Where applicable, an additional list identifying work carried out during the last five years that is of relevance and/or analogous to the services to be provided.

#### **10.6. General description of the proposed arrangement for information purposes only**

Applicants are invited to submit a first proposal indicating the arrangement envisaged to fulfil the objectives of the project. This description is for information purposes and should be confirmed in case the candidate is invited to tender. It is expected the description would include, the following points:

- General description of proposed arrangement.
- Identification of the vessel(s) proposed including the technical characteristics: this must include at least the main particulars, IMO number, heating, pumping and storage capacity and speed, general arrangement plan of the vessel.
- Usual area of operation and economic activity: a brief description of the usual commercial operations of the vessel, trade patterns, etc.
- Proposed location for any pollution response equipment stockpile(s).
- Draft mobilisation plan: a brief procedure indicating the way in which the vessel would be made available to EMSA for pollution response when requested at short notice.

#### **11. Rejection from the procedure**

Candidates that, during the procurement procedure, are in one of the following situations will be rejected from the 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 where this entails a distortion of competition that cannot be remedied otherwise.

#### **12. 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.

#### **13. Additional Information**

Documents for the Phase II - Tender Phase (published with the Invitation to Apply)

- Enclosure T.1 – Tender Specifications;

- Enclosure T.2 – Draft Vessel Availability Contract (VAC);
  - Annex I – Application and Tender Specifications (to be added later);
  - Annex II – Tenderer's Application and Tender (to be added later);
  - Annex III – Incident Response Contract template– Vessel (IRC-V);
  - Annex IV – Technical Specifications for the vessel/Pool of Vessels:
    - Appendix 1 – Heating system (for lot 1 only)
  - Annex V - Technical Specifications for the equipment (per lot);
  - Annex VI – Technical Specifications for the Mobilisation procedures;
  - Annex VII – Technical Specifications for the Crew;
  - Annex VIII – Drills and Exercises Guidelines;
  - Annex IX – Pre-financing Guarantee template;
  - Annex X – Bank account details template.
- Enclosure T.3 – Pre-financing guidelines;
- Enclosure T.4 – Bid template (per lot);
  - Appendix 1 – Summary Table.

- Previous procurement procedures for similar services

The information which can be found in the link below provide general guidance about the different documents that the pre-selected candidates will have to present when invited to submit a full tender in the Invitation to Tender phase. This information also addresses in general terms how the evaluation of the tenders will be undertaken.

It must be noted that this information is not binding and may change:

EMSA website: [www.emsa.europa.eu](http://www.emsa.europa.eu) → Working with us → Procurement section

Through the “Procurement” section there is access to a range of “hyperlinks” and “documents” including tender archives from the past years.

- Other relevant EMSA documents:

EMSA website: [www.emsa.europa.eu](http://www.emsa.europa.eu) → Operational Tasks → “Pollution Response Services” section there is access to a range of “hyperlinks” and “documents” including:

- Network of Stand-by Oil Spill Response Vessels & Equipment (Handbook 2014);
- EMSA leaflet: Effective at sea Pollution Response;
- EMSA contracted Oil Recovery Vessels - Technical Specifications;
- EMSA Pollution Response – FAQs;
- EMSA Action Plan for Oil Pollution Preparedness and Response (2004);
- EMSA Action Plan for Response to Marine Pollution from Oil and Gas Installations (2013).

- Oil Spill Response Information Resources

Companies/consortia can consult the websites and documents listed below for further information on oil spill response operations and technical aspects to be considered. The list is not exhaustive.

- European Commission (DG Humanitarian Aid and Civil Protection)
  - <http://ec.europa.eu/echo/en>
- Bonn Agreement Counter Pollution Manual
  - <http://www.bonnagreement.org/eng/html/welcome.html>
- HelCom Response Manual

<http://www.helcom.fi/action-areas/response-to-spills/manuals-and-guidelines/>

- REMPEC (Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea)

<http://www.rempec.org/>

- IMO Combat Manual

<http://www.imo.org/> → Publications section