

## **Tender Specifications**

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

## **Invitation to tender No. EMSA/NEG/8/2025 for Provision of legal services**

### **1. Introduction**

The European Maritime Safety Agency (EMSA) was established under Regulation (EC) No 1406/2002 of the European Parliament and of the Council<sup>1</sup> for the purpose of ensuring a high, uniform and effective level of maritime safety.

EMSA is applying the environmental management systems ISO 14001:2015 and EMAS (Environmental Management and Audit Scheme of the EU), aiming to continuously improve its environmental performance. EMSA complies with all applicable legal requirements relating to the environment and endeavours to ensure that suppliers comply with its environmental policy<sup>2</sup> within the remit of the activities carried out for the contract. EMSA invites tenderers to consult the document and consider it when preparing tenders.

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

#### **2.1 Objective**

The objective of this procedure is to conclude a single FWC for provision of legal services on EU Contract and Procurement Law, Litigation, and Portuguese Law.

#### **2.2 Scope**

The contractors shall deliver, in English and/or Portuguese:

1. Legal advice on all legal issues related to EU procurement and contract management, in particular:
  - a) Drafting of procurement documentation;
  - b) Communication with potential tenderers;
  - c) Communication with successful and unsuccessful tenderers;
  - d) Contract implementation;
  - e) Implementation of contractual measures such as imposition of liquidated damages, activation of guarantees or warranties, termination of contracts;
  - f) pre-litigation, litigation and dispute resolution, including arbitration;
  - g) any ancillary services and legal support as the context may require.
2. Legal advice on Portuguese law relevant to the tasks of the Agency in particular environmental law, civil and contract law, labour law, tax law, IPR and Construction law.

<sup>1</sup> Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency (OJ L 208, 5.8.2002, p. 1.).

<sup>2</sup> Which can be found at <http://emsa.europa.eu/about/environmental.html>

3. Represent the Agency in front of courts or tribunals, or other judicial, extra-judicial or administrative bodies, in Portugal.

### 3. Contract management responsible body

EMSA Unit 4.2 in charge of Legal, Financial & Facilities Support - will be responsible for managing the contract.

### 4. Project Planning

The FWC will have the duration of one year with maximum three possible renewals under the same conditions and it will be implemented via Order Forms.

Based on EMSA's needs for a concrete legal service, a request for services will be issued, following which the contractor sends back a quotation with an estimation of resources (number of hours per profile) using as maximum the prices in their tender. If accepted by EMSA, an Order Form will be issued to be performed by the contractor.

### 5. Timetable

The estimated date for signature of the contract is Q3 2025.

A remote kick-off meeting will be organised after signature of the contract.

### 6. Estimated Value of the Contract

The maximum budget available for this contract is EUR 20,000.00 excluding VAT. Non-compliance with the previous paragraph will lead to rejection of the bid.

### 7. Terms of payment

Payments will be made in accordance with the provisions of the draft **Framework Service Contract** available in the Procurement Section under the call to tender **EMSA/NEG/8/2025** on EMSA's website (<https://emsa.europa.eu/procurement.html>).

Order forms for the purchase of services shall be established based on the prices indicated in the financial offer. However, EMSA may request the contractor to propose supplementary services to be ordered on the basis of a quote provided by the contractor as per Article I.5.1 of the FWC. The purchase of supplementary services shall not exceed 20% of the contract value.]

The successful tenderer(s) shall take the appropriate measures to be compliant with the e-invoicing conditions as set out in the draft contract.

### 8. Terms of contract

When drawing up a tender, the tenderer shall bear in mind the terms of the draft Framework Service Contract.

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

### 9. Financial guarantees

Not applicable.

## 10. Subcontracting

Subcontracting is the situation where the contractor enters into legal commitments with other economic operators, which will perform part of the contract on its behalf. The contractor retains full liability towards the contracting authority for performance of the contract as a whole.

The following shall not be considered subcontracting:

- a) Use of workers posted to the contractor by another company owned by the same group and established in a Member State ("intra-group posting" as defined by Article 1, 3, (b) of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services).
- b) Use of workers hired out to the contractor by a temporary employment undertaking or placement agency established in a Member State ("hiring out of workers" as defined by Article 1, 3, (c) of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services).
- c) Use of workers temporarily transferred to the contractor from an undertaking established outside the territory of a Member State and that belongs to the same group ("intra-corporate transfer" as defined by Article 3, (b) of Directive 2014/66/EU on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer).
- d) Use of staff without employment contract ("self-employed persons working for the contractor"), without the tasks of the self-employed persons being particular well-defined parts of the contract.
- e) Use of suppliers and/or transporters by the contractor, in order to perform the contract at the place of performance, unless the economic activities of the suppliers and/or the transporting services are within the subject of this call for tenders.
- f) Performance of part of the contract by members of an EEIG (European Economic Interest Grouping), when the EEIG is itself a contractor or a group member.

The persons mentioned in points a), b), c) and d) above will be considered as "personnel" of the contractor as defined in the contract.

All contractual tasks may be subcontracted unless the procurement documents expressly reserve the execution of certain critical tasks to the sole tenderer itself, or in case of a joint tender, to a group member.

By filling in the *List of identified subcontractors* available on the Procurement Section of EMSA's website (<https://emsa.europa.eu/procurement.html>), tenderers are required to give an indication of the proportion of the contract that they intend to subcontract, as well as to identify and describe briefly the envisaged contractual roles/tasks of subcontractors meeting any of these conditions (hereafter referred to as identified subcontractors):

- subcontractors on whose capacities the tenderer relies upon to fulfil the selection criteria<sup>3</sup>;
- subcontractors whose intended individual share of the contract, known at the time of submission, is above 20%.

Any such subcontractor must provide the tenderer with a commitment letter drawn up in the attached model *Commitment letter by identified subcontractor* available on the Procurement Section of EMSA's website (<https://emsa.europa.eu/procurement.html>), and signed by its authorised representative.

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<sup>3</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.

The above rules apply also where the economic operators, which will perform part of the contract on behalf of a successful tenderer, belong to the same economic/corporate group as the sole tenderer or a member of the group submitting the joint tender.

Changes concerning subcontractors identified in the tender (withdrawal/replacement of a subcontractor, additional subcontracting) during the procurement procedure (after the submission deadline and before contract signature) require the prior written approval of the contracting authority subject to the following verifications:

- any new subcontractor is not subject to restrictive measures, has access to procurement and is not in an exclusion situation,
- the tenderer still fulfils the selection criteria and the new subcontractor fulfils the selection criteria applicable to it individually, if any;
- the terms of the originally submitted tender are not altered substantially, i.e. all the tasks assigned to the former subcontractor are taken over by another involved entity, the change does not make the tender non-compliant with the tender specifications, and the evaluation of award criteria of the originally submitted tender is not modified.

#### 10.1 Entities (not subcontractors) on whose capacities the tenderer relies to fulfil the selection criteria

In order to fulfil the selection criteria a tenderer may also rely on the capacities of other entities (that are not subcontractors), regardless of the legal nature of the links it has with them. It must in that case prove that it will have at its disposal the resources necessary for the performance of the contract by producing a commitment letter in the attached model *Commitment letter by an entity on whose capacities is being relied* available on the Procurement Section of EMSA's website (<https://emsa.europa.eu/procurement.html>), signed by the authorised representative of such an entity.

The above rules apply also where the economic operators on whose capacities the tenderer relies to fulfil the selection criteria (that are not subcontractors) belong to the same economic/corporate group as the sole tenderer or a member of the group submitting the joint tender.

#### 10.2 Rules common to subcontractors and entities (not subcontractors) on whose capacities the tenderer relies to fulfil the selection criteria

If a successful tenderer intends to rely on another entity to meet the minimum levels of economic and financial capacity, the contracting authority may require the entity to sign the contract or, alternatively, to provide a joint and several first-call financial guarantee for the performance of the contract.

With regard to technical and professional selection criteria, a tenderer may only rely on the capacities of other entities where the latter will perform the works or services for which these capacities are required, i.e. the latter will either assume the role of subcontractors or will fall within the exceptions listed above (see list under section 10) and will then assume the role of entities (not subcontractors) on whose capacities the tenderer relies to fulfil the selection criteria.

The tenderer must provide required evidence for the exclusion on its own behalf, on behalf of any subcontractors identified in the *List of identified subcontractors*, and on behalf of any other entities (not subcontractors) on whose capacities is being relied on.

The tenderer must provide required evidence for selection criteria on its own behalf and on behalf of any subcontractors on whose capacities the tenderer relies on upon to fulfil the selection criteria as identified in

the *List of identified subcontractors*, and on behalf of any other entities (not subcontractors) on whose capacities is being relied on.

The evidence on 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 / any other entities (not subcontractors) as a whole fulfil the criteria. However, the selection criteria may apply individually where it is relevant in view of their nature, if specified so in selection criteria relevant section of these Tender Specifications.

Relying on the capacities of other entities is only necessary when the capacity of the tenderer is not sufficient to fulfil the required minimum levels of capacity. Abstract commitments that other entities will put resources at the disposal of the tenderer will be disregarded.

## 11. Joint Offer

A joint tender is a situation where a tender is submitted by a group (with or without legal form) of economic operators regardless of the link they have between them in the group. The group as a whole is considered a tenderer.

All group members assume joint and several liability towards the contracting authority for the performance of the contract as a whole.

Group members must appoint from among themselves a group leader (the group leader) as a single point of contact authorised to act on their behalf in connection with the submission of the tender and all relevant questions, clarification requests, notifications, etc., that may be received during the evaluation, award and until the contract signature. All group members (including the group leader) must sign an Agreement/Power of attorney drawn up in the *Agreement Power of attorney (joint tender)* available on the Procurement Section of EMSA's website (<https://emsa.europa.eu/procurement.html>).

The joint tender must clearly indicate the role and tasks of each group member, including those of the group leader who will act as the contracting authority's contact point for the contract's administrative or financial aspects and operational management. The group leader will have full authority to bind the group and each of its members during contract execution.

Changes in the composition of the group during the procurement procedure (after the deadline for submission of tenders and before contract signature) shall lead to rejection of the tender, with the exception of the following case(s):

- case of a merger or takeover of a group member (universal succession), provided that the following cumulative conditions are fulfilled:
- the new entity is not subject to restrictive measures, has access to procurement and is not in an exclusion situation,
- all the tasks assigned to the former entity are taken over by the new entity member of the group,
- the group meets the selection criteria,
- the change must not make the tender non-compliant with the procurement documents,
- the terms of the originally submitted tender are not altered substantially and the evaluation of award criteria of the originally submitted tender are not modified,

- the new entity undertakes to replace the former entity for the implementation of the contract, in case of an award.

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

If the joint tender is successful, the contracting authority shall sign the contract with the group leader, authorised by the other members to sign the contract also on their behalf via the *Agreement Power of attorney (joint tender)* available on the Procurement Section of EMSA's website (<https://emsa.europa.eu/procurement.html>).

## 12. Requirements as to the tender

Tenders can be submitted in any of the official languages of the EU. However, as the main working language of the Agency is English, tenders should preferably be submitted in English and shall in particular include an English version of the documents requested under sections 14.5 and 16 of the present Tender Specifications.

The tenderer must comply with the minimum requirements provided for in these Tender Specifications. This includes compliance with applicable obligations under environmental, social and labour law established by Union law, national law and collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU of the European Parliament and of the Council.<sup>4</sup>

The tenderer shall complete the Tenderer's checklist.

If the tenderer intends to either subcontract part of the work or realise the work in co-operation with other partners (Join Offers) it shall indicate it in its offer by completing the relevant forms *List of identified subcontractors / Agreement/Power of attorney (joint tender)*. These documents are available on the Procurement Section of EMSA's website (<https://emsa.europa.eu/procurement.html>).

The tender must be presented as follows and must include:

- a) A signed **cover letter** indicating the name and position of the person authorised to sign the [contract] [purchase order], including up-to-date proof of that authorisation, the bank account on which payments are to be made and the email address to be used for contacts during the procurement procedure. The cover letter shall be accompanied by the **Authorised Signatory Form** duly completed and signed. This document is available on the Procurement Section of EMSA's website (<https://emsa.europa.eu/procurement.html>).
- b) The **Legal Entities and Bank Accounts Form**, completed, stamped and signed by the person authorised to sign the contract, along with the requested accompanying documentation, including up-to-date proof of that authorisation. This document is available on the Procurement Section of EMSA's website (<https://emsa.europa.eu/procurement.html>).

Tenderers are exempt from submitting Legal Entities and Bank Accounts Form if such a form has already previously been completed and sent to EMSA. In this case the tenderer shall simply indicate on the cover letter the bank account number to be used for any payment in case of award.

- c) All the information and documents required by the contracting authority for the appraisal of tenderers on the basis of the sections 10, 11 **11** and 14.2 of these Tender Specifications.

<sup>4</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

- d) All the information and documents required by EMSA for the appraisal of tenderers on the basis of the **Legal and Regulatory capacity** (part of the selection criteria) set out under section 14.3 of these Tender Specifications, as applicable.
- e) All the information and documents required by the contracting authority for the appraisal of tenderers on the basis of the **Economic and Financial Capacity** (part of the selection criteria) set out under section 14.4 of these Tender Specifications, as applicable.
- f) All the information and documents required by the contracting authority for the appraisal of tenderers on the basis of the **Technical and Professional capacity** (part of the selection criteria) set out under section 14.5 of these Tender Specifications, as applicable.
- g) 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 section 16~~15~~**16** of these Tender Specifications;
- h) Setting out prices in accordance with section 13 of these Tender Specifications.

### 13. Price

- a) Price must be quoted for Provision of legal services and shall be all inclusive.

For this purpose, **the Financial Offer Template** must be filled in without any omission or addition. In the event of any price being omitted, the tender will be deemed incomplete and may be rejected.

The hourly rates in the Financial Offer Template **must be all inclusive of any costs to provide the services such as administrative costs.**

Only in cases where EMSA will explicitly request the contractor to travel outside its place of establishment, travel expenses and accommodation costs related thereto will be reimbursed in accordance with the provisions of the Framework Contract (see Article I.5.3 of the draft FWC). Any fees related to possible representation of EMSA before courts, tribunals, or other judicial, extra-judicial or administrative bodies may also be reimbursed upon production of invoices and only if directly connect with the representation of EMSA

- b) Prices must be fixed amounts and non-revisable and remain valid for the duration of the contract.
- c) Prices must be quoted in euro.
- d) 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 (EC) No 1406/2002. These duties, taxes and other charges can therefore not enter into the calculation included in the tender. The amount of VAT must be shown separately.



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

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

When submitting their tender, tenderers are requested to complete and enclose the Legal Entities and Bank Accounts Form<sup>5</sup> available on the Procurement Section of EMSA's website (<https://emsa.europa.eu/procurement.html>).

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

To be eligible to participate in this contract award procedure, the tenderers, each member of the group in case of joint tender, any identified subcontractors, and any other entities (not subcontractors) on whose capacities the tenderer is being relied on must not be in any of the exclusion situations listed in the Declaration of Honour.

For this purpose, the Declaration of Honour available on the Procurement Section of EMSA's website (<https://emsa.europa.eu/procurement.html>) shall be completed and signed.

### **14.3 Legal and regulatory capacity – Selection criteria**

#### **14.3.1 Standards / Prerequisites**

- A. The tenderer must have the legal and regulatory capacity to pursue the professional activity needed for performing the contract.

The tenderer must be enrolled in a relevant professional or trade register. In particular, the tenderer must be enrolled in the relevant Bar Association allowing to practice as a lawyer and to legally represent EMSA in a court, tribunal, or other judicial, extra-judicial or administrative body

- B. The tenderer, each member of the group in case of joint tender, any subcontractors, and any other entities (that are not subcontractors) on whose capacity the tenderer relies on must ensure that are not subject to [EU restrictive measures](#) adopted under Article 29 of the Treaty on the European Union (TEU) or Article 215 of the Treaty on the Functioning of the EU (TFEU)<sup>6</sup> consisting of a prohibition to make available or transfer funds or economic resources or to provide financing or financial assistance to them directly or indirectly, or of an asset freeze. The prohibition applies throughout the whole performance of the contract.

#### **14.3.2 Evidence**

- A. For each team member, proof of the respective Bar registration.
- B. Duly completed and signed Declaration of Honour available on the Procurement Section of EMSA's website (<https://emsa.europa.eu/procurement.html>).

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<sup>5</sup> Only completion of the information regarding the legal entity is mandatory.

<sup>6</sup> Please note that the EU Official Journal contains the official list and, in case of conflict, its content prevails over that of the EU Sanctions Map.



## 14.4 Economic and financial capacity – Selection criteria

### 14.4.1 Standards / Prerequisites

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

### 14.4.2 Evidence

Not applicable.

## 14.5 Technical and professional capacity – Selection criteria

### 14.5.1 Standards / Prerequisites

Tenderers must comply with the following selection criteria in order to prove that they have the necessary technical and professional capacity to perform the contract. The members of the team proposed by the tenderer shall have and demonstrate all of the following:

- 1 (one) Senior Lawyer/Project Manager, with University Law Degree, with minimum 10 years of experience in at least one of the areas listed in the call for tenders, and an excellent command of English (level C1 or higher), oral and written.
- 2 (two) Lawyer(s), with University Law Degree, with minimum 5 years of experience in Portuguese Law in particular Labour Law, Tax Law, IPR, Environmental, Civil and Construction Law and an excellent command of English (level C1 or higher), oral and written. For this point, tenderers may either propose only one lawyer expert in all the mentioned areas or more than one lawyer each expert in different areas, provided that all mentioned areas of law are covered;
- 1 (one) Lawyer, with University Law Degree, with minimum 5 years of experience in the areas of EU Contract and Procurement Law and Litigation and an excellent command of English (level C1 or higher), oral and written.

Any change to the team (replacement and/or addition of expert(s)) during contract implementation shall be formally requested to EMSA by the legal representative of the Contractor. The modification will not require an amendment to the Contract, however it will be subject to EMSA's prior approval and will take effect on the date of the email approval sent by the responsible Head of Unit, also responsible to make sure that the expert(s) added or replaced are of equivalent profile as the profile set out in the Tender Specifications.

The tenderer must not be in any situation which could give rise to a conflict of interest in what concerns the implementation of the contract and which could influence the impartial and objective performance of the contract; any risk of perceived partiality must be duly assessed, disclosed and addressed. In particular, the tenderer shall disclose if it has knowledge that one of its clients is also EMSA's current tenderer or contractor.

### 14.5.2 Evidence

Tenderers shall complete the "*Table for Selection Criteria, Technical and Professional Capacity – Team Members CV*". EMSA reserves the right to, during evaluation or contract implementation, request the CV any team member in European format or equivalent.

## 15. Evidence on Declaration of Honour (DoH)

Not applicable.

## 16. Award criteria

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

1. Quality criterion 1 ( $W_1 = 25\%$ ), - Quality of the team - Tenderers shall outline their team's composition and structure, specifying each member's role, task distribution, and contingency plans for member unavailability. They shall also detail the overall resources available for assignments, explaining how these resources will be deployed to provide legal advice, particularly how lawyers will be assigned based on availability and expertise.
2. Maybe here we can Quality criterion 2 ( $W_2 = 25\%$ ) - Quality of the methodology for contract implementation - Tenderers shall describe the methodology proposed to implement the contract including contact points, deadlines to deliver assignments, feedback and quality control, communication with EMSA, invoicing, etc

and the price criterion and associated weighting:

3. Price of the tender ( $W_{Price} = 50\%$ ).

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

The score is calculated as

$$S = SQ + SP$$

where:

The average quality for quality criterion  $i$  is

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

The overall weighted quality is

$$Q = \sum_i Q_i * W_i$$

The score for quality is

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

The score for price is

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

Only tenders that have reached a minimum of 60 % for  $Q_1$ , a minimum of 60 % for  $Q_2$ , etc. will be taken into consideration when calculating the score for quality  $SQ$ , score for price  $SP$  and score  $S$ .

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

## 17. Evaluation and award

The evaluation of the tenders that comply with the conditions as per Invitation to tender will consist of the following elements:

- Check if the tenderer is not subject to restrictive measures and has access to procurement;
- Verification of non-exclusion of tenderers on the basis of the exclusion criteria;
- Verification of the absence of professional conflicting interests;
- Selection of tenderers on the basis of selection criteria;
- Verification of compliance with the minimum requirements specified in the procurement documents;
- Evaluation of tenders on the basis of the award criteria.
- EMSA will evaluate the above-mentioned elements in the order that it considers to be the most appropriate. The successful tenderer(s) must pass all the above-listed elements to be awarded the contract.

## 18. Rejection from the procedure

Contracts will not be awarded to tenderers who, during the procurement procedure, are in one of the following situations:

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

## 19. 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 shall be clearly pointed out by the tenderer in the tender. Information shall 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.