

Very Low and Low-Value procurement procedure

Tendering Conditions

1. Introduction

The European Maritime Safety Agency (EMSA) was established under Regulation 1406/2002/EC of the European Parliament and of the Council to contribute to the enhancement of European maritime safety.

Any interested service provider may submit an offer in response to the publication of invitation to tender.

2. Bid submission

A bid can be submitted through e-mail.

The bids must be perfectly legible so that there can be no doubt as to words and figures.

2.1 Submission by e-mail

In case the **Invitation to tender** indicates that the bid shall be sent to EMSA electronically, the date and hour of deadline shall be the one indicated in the **Invitation to tender**. The hour is stated in Lisbon time. The offer shall be duly signed by the authorised representative, scanned and submitted by e-mail to the e-mail address stated in the **Invitation to tender**. The size of the mail may not exceed 12 Mb per one email. Please note that an original hard copy of the offer including all accompanying documentation will be requested from the company to which the contract is awarded.

3. Validity of a tender

Period of validity of the tender, during which tenderers may not modify the terms of their tenders in any respect shall be 6 months as from the submission deadline stated in the **Invitation to tender**.

4. Acceptance EMSA conditions

Submission of a bid implies full acceptance of the Purchase Order / Contract provisions - documents available under the Procurement Section relevant to the respective call for tenders on EMSA's website (<https://emsa.europa.eu/procurement>) - and, where appropriate, waiver of the tenderer's own general or specific terms and conditions. These requirements are binding on the tenderer to whom the contract is awarded for the whole duration of the contract.

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

5. Supporting evidence (*if applicable)

The specification, listing all the documents that must be produced in order to tender, including supporting evidence of economic, financial, technical and professional capacity and the Purchase Order/ Contract are available under the Procurement Section relevant to the respective call for tenders on EMSA's website (<https://emsa.europa.eu/procurement>).

6. Contact between EMSA and interested tenderers

Contacts between the contracting authority and tenderers are prohibited throughout the procedure save in exceptional circumstances and under the following conditions only:

6.1 Before the final date for submission of tenders:

At the request of the tenderer, EMSA may provide additional information solely for the purpose of clarifying the procurement documents.

Any requests for additional information must be made in writing and sent to the e-mail address stated in the **Invitation to tender**.

EMSA is not bound to reply to requests for additional information made less than six working days before the deadline for submission of tenders.

EMSA may, on its own initiative, inform interested parties of any error, inaccuracy, omission or any other clerical error in the procurement documents.

Any additional information including that referred to above will be published on EMSA's website under the Procurement Section relevant to the respective call for tenders (<https://emsa.europa.eu/procurement>).

6.2 After the opening of tenders

If clarification is required or if obvious clerical errors in the tender need to be corrected, EMSA may contact the tenderer provided the terms of the tender are not modified as a result.

EMSA may negotiate with tenderers the offers they have submitted, in order to adapt them to the requirements set out in Tender Specifications or any additional document and in order to find the tender offering best value for money. During negotiations equal treatment of all tenderers will be ensured.

7. 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 **Invitation to tender** 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 criteria¹;
- 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 / Calls for Tenders (Documents for tenderer) of EMSA’s website (<https://emsa.europa.eu/procurement.html>), and signed by its authorised representative.

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.

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

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.

The tenderer must provide required evidence for the exclusion and selection criteria (as applicable) on its own behalf and on behalf of any subcontractors identified under the List of identified subcontractors available on the Procurement Section of EMSA's website (<https://emsa.europa.eu/procurement.html>), and entities (not subcontractors) on whose capacities on whose capacities is being relied on. 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. However, the selection criteria may apply individually where it is relevant in view of their nature.

7.1 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.

7.2 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 then assume the role of entities (not subcontractors) on whose capacities the tenderer relies to fulfil the selection criteria.

8. 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 (as applicable). 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 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 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>).

9. 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.

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.²

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) he shall indicate in his 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) **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) **Financial Identification Form** completed, signed and stamped This document is available on the Procurement Section of EMSA's website (<https://emsa.europa.eu/procurement.html>).
- c) **Legal Entity Form** completed, signed by the person authorised to sign the contract and stamped along with the requested accompanying documentation, including recent 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 the Legal Entity Form and Financial Identification Form requested 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.

- d) All the information and documents required by the contracting authority for the appraisal of tenders on the basis of the **Exclusion criteria** (if required by the **Invitation to tender**);
- 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 in the **Invitation to tender** (if required by **Invitation to tender**);

² 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).

- 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 in the **Invitation to tender** (if required by **Invitation to tender**);
- 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 in **Invitation to tender**.

10. Price

- a) Price must be quoted for the subject in the Invitation to tender and shall be all-inclusive.
- b) Prices must be fixed amounts and non-revisable.
- c) Prices must be quoted in Euro.
- d) Under Article 3 and 4 of the Protocol on the privileges and immunities of the European Communities, the latter is exempt from all duties, taxes and other charges, including VAT. This applies to EMSA pursuant to the Regulation 1406/2002/EC. Therefore, price and the amount of VAT must be shown separately.

11. 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 (*if applicable)

11.1 Legal position – means of proof required

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

11.2 Grounds for exclusion – exclusion criteria

To be eligible to participate in this contract award procedure, a tenderer 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.

11.3 Selection criteria

Tenderers must:

- have the legal and regulatory capacity to pursue the professional activity needed for performing the contract as required in the **Invitation to tender**;
- fulfil the applicable economic and financial criteria as required in the **Invitation to tender**;
- fulfil the applicable technical and professional criteria as required in the **Invitation to tender**;
- be able to provide the necessary supporting documents listed in the relevant sections of the **Invitation to tender** and which are not available electronically upon request and without delay.

12. Purchase Order/ Contract award scheme

The purchase order/ contract is awarded on the basis of the most economically advantageous tender, which shall consist in one of three award methods: lowest price, lowest cost or best price-quality ratio. Which scheme applies depends on what is stated in the **Invitation to tender**.

12.1 Option 1 – Lowest price

The purchase order/ contract will be awarded to the tenderer who submits the tender with the lowest price.

12.2 Option 2 – Lowest cost

The contracting authority uses a cost-effectiveness approach including life-cycle costing.

12.3 Option 3 – Best value for money

The purchase order/ contract will be awarded to the tenderer who submits the most economically advantageous tender (the one with highest score) based on the quality criteria and their associated weightings as stated in the **Invitation to tender**.

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

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

The minimum quality levels per each quality criterion are defined in the procurement documents of each call for tenders.

13. 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;
- 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.

14. Purchase Orders/ Contracts will not be awarded to tenderers who during the procurement 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 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.

15. Other conditions

- Public Procurement rules applying to calls for tender launched by EMSA are contained in the EMSA Financial Regulation under the Financial Regulation section on the EMSA website (www.emsa.europa.eu).
- This invitation to tender is in no way binding on EMSA. EMSA contractual obligation commences only upon signature of the contract with the successful tenderer.
- Up to the point of signature, the EMSA may cancel the award procedure, without the candidates or tenderers being entitled to claim any compensation. This decision must be substantiated, and the candidates or tenderers notified.
- Once EMSA has opened the tender, the document shall become the property of EMSA and it shall be treated confidentially.

- Tenderers will be informed of the outcome of this procurement procedure by email. It is the tenderers' responsibility to provide a valid email address and together with your contact details in their tender offer and to check it regularly.
- Processing your reply to the invitation to tender will involve the recording and processing of personal data (such as your name, address and CV). Such data will be processed pursuant to Regulation (EU) 2018/1725 of the European Parliament and of the Council³. Unless indicated otherwise, replies to the tenderers and any personal data requested shall be used to evaluate your tender in accordance with the **Invitation to tender** and will be processed solely for that purpose by the Authorising Officer responsible for management of the contract specified in the **Invitation to tender**. Details concerning the processing of your personal data are contained in the privacy statement "Information on personal data protection in procurement procedures" available at: <http://www.emsa.europa.eu/about/personal-data-protection.html>
- Personal data may be registered in the Early Detection and Exclusion System (EDES) if a tender is deemed to be in one of the situations mentioned in Article 136 of Regulation (EU, Euratom) No 2018/1046 of the European Parliament and of the Council⁴. For more information, see the Privacy Statement available at [EDES \(europa.eu\)](http://www.emsa.europa.eu/edes).
- In addition to economic operators established in the Member States of the Union, only economic operators from the following countries are eligible to submit a tender to the present procurement procedure: Albania, Republic of North Macedonia, Iceland, Liechtenstein, Montenegro, Norway, Kosovo, Serbia and Bosnia and Herzegovina and Georgia, Moldova and Ukraine⁵. In the case of economic operators from other non-EU Member States, EMSA may, only in exceptional circumstances, accept their participation in a particular procurement procedure without creating a precedent or obligation for future participation (if applicable as required in the **Invitation to tender**).
- Participation in this call for tenders is open on equal terms to international organisations.
- Tenderers, including each member of the group in case of joint tender, any identified subcontractors, and any entities (not subcontractors) on whose capacities the tenderer is being relied on, must ensure that they 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).⁶ The prohibition applies throughout the whole performance of the contract.

³ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC.

⁴ Regulation (EU, Euratom) No 2018/1046 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1269/2013, (EU) 1301/2013, (EU) 1303/2013, (EU) 1304/2013, (EU) 1309/2013, (EU) 1316/2013, (EU) 223/2014, (EU) 283/2014 and Decision No 541/2014/EU and repealing Regulation No 966/2012.

⁵ Georgia, Moldova and Ukraine are only eligible to participate to procurement procedures for the award of supply contracts with a value equal or above 133.000 EUR.

⁶ Please note that the EU Official Journal contains the official list of entities subject to restrictive measures and, in case of conflict, it prevails over the list of the [EU Sanctions Map](http://www.emsa.europa.eu/edes).