

Tender Specifications

Attached to the Invitation to tender

Invitation to tender No. EMSA/NEG/9/2025 for Automatic provision of Health and Safety at Work and Environmental Legal requirements

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1. Introduction

The European Maritime Safety Agency (EMSA) was established under Regulation (EC) No 1406/2002 of the European Parliament and of the Council¹ for the purpose of ensuring a high, uniform and effective level of maritime safety. Among its tasks, the Agency 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 policy² 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

The objective of the procurement procedure is to conclude a contract to provide EMSA with an initial analysis and all subsequent updates of the legal requirements under Portuguese law regarding environmental protection and performance, as relevant for EMSA's compliance with the EMAS regulation (Regulation (EC) No 1221/2009).

- A. The contractor shall provide, within one month of the entry into force of the Contract, one initial analysis of EMSA's situation and context regarding health and safety at work, and environmental standards and, in particular, identify all applicable legal requirements relating to the environment; the result of this analysis, in the form of a report or similar, shall be presented to EMSA.
- B. The contractor shall ensure that EMSA is continuously informed of the relevant and latest health and safety at work, and environmental legal requirements and related guidance as published in official documents; this shall be ensured through the automatic delivery of relevant information whenever available. EMSA might inform the contractor of substantial changes to the system, to be included in the revision.
- C. The contractor shall ensure that EMSA reflects and publishes these legal requirements correctly in the processes and documentation required under applicable laws and standards, including ISO 14001:2015 and EMAS. For this purpose, the contractor shall perform an annual review of the applicable legal requirements of Portugal listed in EMSA's Annual Environmental Statement under EMAS, which will later be verified by external auditors and Portuguese authorities. This review shall identify all applicable requirements, and verify the draft list, indicating any incorrectly listed/non-applicable requirements, and identifying any possibly missing requirements. By this exercise it shall be ensured that EMSA includes in its draft a full and correct list of requirements.. The objective is that EMSA passes these audits and verifications without any findings regarding the interpretation and listing of such requirements.

The review shall be provided at the latest 10 working days from EMSA's request. This process may include further discussions, if and as deemed necessary by EMSA after initially receiving the reviewed text and list.

¹ 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.).

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

3. Contract management responsible body

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

4. Project Planning

Implementation of the contract shall include the following steps:

1. **Following signature of the contract:** initial visit and audit to establish the applicable legal requirements under Portuguese law.
2. **Throughout the full duration of the contract:** continuous update of any changes to the applicable legal requirements / Portuguese law.
3. **December/January each year:** Annual review of EMSA's Environmental Statement as described in section 2.C, to be applied as from the 2025 Environmental Statement, to be published in 2026.

5. Timetable

The estimated date for signature of the contract is Q4 2025.

6. 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 **Service Contract** available in the Procurement Section under the call to tender **EMSA/NEG/9/2025** on EMSA's website (<https://emsa.europa.eu/procurement.html>).

In particular, payments will be processed as follows:

1. A payment following the initial visit and audit to establish the applicable legal requirements under Portuguese law, once the analysis of applicable requirements has been conducted.
2. A yearly payment, paid upfront, for the monthly fee for the permanent monitoring and updating, as necessary, of any changes to the applicable legal requirements / Portuguese law.
3. A yearly payment following the annual review of EMSA's Environmental Statement as described in section 2.C (to be initiated from the 2025/26 Environmental Statement, to be published in 2026).

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 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>~~http://www.emsa.europa.eu/~~), 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 criteria³;
- subcontractors whose intended individual share of the contract, known at the time of submission, is above 20%.

³ To rely on the capacities of a subcontractor means that the subcontractor will perform the works or services for which these capacities are required.

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><http://www.emsa.europa.eu/>), 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.

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><http://www.emsa.europa.eu/>).

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.⁴

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, 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 the Legal Entities and Bank Accounts 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.

- 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.

⁴ 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 1616 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 Automatic provision of Health and Safety at Work and Environmental Legal requirements shall and shall include all services required under section 2.
- b) Prices must be fixed amounts and non-revisable and remain valid for the duration of the contract unless otherwise specified in 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 Form⁵ 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.

⁵ Only completion of the information regarding the legal entity is mandatory.

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.
- 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)⁶ 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

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

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

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

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 tenderer must have at least five years of experience in providing similar services.

14.5.2 Evidence

List of at least three services provided in the last five years, including type of service, name of client, and dates.

⁶ 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.

15. Evidence on Declaration of Honour (DoH)

At any time during the procurement procedure⁷, EMSA may request the documents mentioned in the Declaration on Honour as supporting evidence on non-exclusion (the documentary evidence), namely:

- For the exclusion situations described in points (1) (a), (c), (d), (f), (g) and (h) of the Declaration of Honour, 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 situations described in (1) (a) and (b) of the Declaration of Honour, production of recent certificates issued by the competent authorities of the country of establishment 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.

EMSA may also request information on natural or legal persons that are members of the administrative, management or supervisory body or that have powers of representation, decision or control, including legal and natural persons within the ownership and control structure and beneficial owners, and appropriate evidence that none of those persons are in one of the exclusion situations referred to in Section A point (1) (c) to (f) of the Declaration on Honour.

All tenderers are invited to prepare in advance the documentary evidence, since they may be requested to provide such evidence within a short deadline. In any event, the tenderer(s) proposed by the Evaluation Committee for the award of the contract will be requested to provide such evidence. This requirement applies to 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.

If the tenderer does not provide valid documentary evidence within the deadlines set by EMSA, the latter reserves the right to reject the tender. In any event, in case a tenderer proposed for the award of the contract fails to comply with the above evidence requirement, its tender will be rejected, unless the tenderer can justify the failure on the grounds of material impossibility to provide such evidence.

The tenderer, 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 subject to professional conflicting interests which may negatively affect the contract performance.

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 ($W_1 = 50\%$) - Quality of the proposal in terms of how detailed is the service to be provided, e.g., the level of service delivered, the level of assurance in terms of compliance to the

⁷ The obligation to provide the supporting evidence is waived in the following situations:

- if the same documents have already been provided in a previous award procedure of EMSA, have been issued no more than one year before the date of their request by the contracting authority and are still valid at that date;
- if such evidence can be accessed by the contracting authority on a national database free of charge, in which case the economic operator shall provide the contracting authority with the internet address of the database and, if needed, the necessary identification data to retrieve the document;
- if there is a material impossibility to provide such evidence.

requirements, the actions proposed, the use of alerts, the use of checking mechanisms to ensure that all requirements are being met by the defined deadlines.

and the price criterion and associated weighting:

2. Price of the tender ($W_{Price} = 50\%$) - Price of the proposal, including all the necessary elements to have the service delivered to EMSA in an automatic way, without any prompting, as described in Point 2, for one year, multiplied by four (price evaluation scenario using the Form "Price Offer").

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

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

Only tenders that have reached a minimum of 60% for Q_1 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 60% 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.