

EMSA Guidelines for candidates and tenderers

Participating in a procurement procedure organised by the European Maritime Safety Agency

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Document

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Disclaimer

This document is designed to help candidates and tenderers to submit their requests to participate and/or tenders in the framework of a procurement procedure launched by the European Maritime Safety Agency (EMSA).

The information contained in this document is of a general nature only and is not intended to address specific circumstances of any particular individual or entity and therefore EMSA accepts no responsibility or liability whatsoever with regard to it.

Candidates and tenderers are requested to note that any information, questions or observations, of whatever kind, contained in this document can in no way be regarded as a commitment on the part of EMSA to enter into any contract. No binding commitment will be entered into until a procurement procedure is completed and the relevant contract is signed.

In case of a framework contract, the signature does not impose any obligation on EMSA to purchase. Only the implementation of the framework contract through either specific contracts or order forms is binding on both EMSA and the contractor.

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List of Abbreviations

| | |
|------|--|
| DoH | Declaration of Honour |
| EMSA | European Maritime Safety Agency |
| FWC | Framework Contract |
| FR | 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. |
| OJ | Official Journal of the European Union |

1. Legal Framework

This section lists the main legal provisions applicable to calls for tenders launched by the European Maritime Safety Agency (hereinafter EMSA).

The procurement procedure is governed by the following provisions:

- 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 (hereinafter FR);
- 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, as amended;
- Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts;
- EMSA Financial Regulation adopted on 25 July 2019;

In addition to the above-mentioned legislation, it should be noted that:

- a) Principles arising from the Court of Justice of the European Union case law in the field of procurement are binding on EMSA;
- b) Prospective candidates and/or tenderers are legitimately entitled to expect EMSA to manage its calls for tenders in accordance with principles arising from the European Ombudsman decisions;
- c) EMSA staff is bound by the European Code of Good Administrative Behaviour in their relations with the public. This includes the management of procurement procedures, subject to the restrictions laid down in the above-mentioned legal provisions.

2. Basic information about the Procurement Procedures launched by EMSA

2.1. Principles

When awarding a contract, EMSA follows the principles of transparency, proportionality, equal treatment, non-discrimination and sound financial management.

2.2 Thresholds

The choice of the procurement procedure depends mainly on the threshold amounts:

[Table 1 Procurement thresholds](#)

| Estimated value of the contract (C) | Minimum procedure | Special procedures |
|--|--|--|
| $C \leq \text{€ } 1000$ | Simple payment against invoice | Competitive Dialogue for particularly complex contracts or the Negotiated procedure without publication of a contract notice for exceptional cases |
| $\text{€ } 1001 > C \leq \text{€ } 15,000$ | Negotiated procedure with at least one candidate | |
| $\text{€ } 15,001 > C \leq \text{€ } 60,000$ | Negotiated procedure with at least three candidates | |
| $\text{€ } 60,000.01 > C < \text{€ } 139,000$ | Negotiated procedure with at least five candidates , without a contract notice ----- Procedure following a call for expressions of interest (CEI/AMI) , or if considered appropriate Open or Restricted procedure | |
| $C \geq \text{€ } 139,000$ | Open or Restricted procedure | |
| Services under Annex XIV to Directive 2014/24/EU, concessions, certain research services and certain audio-visual or media services, without limit | Competitive procedure with negotiation | |

Use of the open or restricted procedure with publication of a contract notice in the Official Journal is always an option. The other procedures are going to be used in specific cases only.

The thresholds set out for service contracts under Section 2 and Annex XIV to Directive 2014/24/EU are updated every two years on 1 January.

2.3 EMSA Procurement Newsletter

If an economic operator is interested in receiving information about calls to tender launched by EMSA, it may subscribe to the EMSA Procurement Newsletter. Once registered, an economic operator will receive a notification whenever EMSA launches a new call to tender. At any time, subscription may be cancelled or modified following instructions contained in the emails that subscribers will be receiving. To view how to register for the EMSA Procurement Newsletter, please refer to EMSA website: www.emsa.europa.eu.

2.4 Who can participate in EMSA procurement procedures?

Participation in EMSA's public procurement procedures is open on equal terms to all natural and legal persons falling within the scope of the EU Treaties (this includes all economic operators registered in the EU and all EU citizens).

In addition to economic operators established in the Member States of the Union, only economic operators from the following countries are eligible to participate: Albania, FYROM, Iceland, Liechtenstein, Montenegro, Norway, Serbia and Bosnia and Herzegovina.

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.

For UK established economic operators - please note that during the transition period, UK economic operators remain eligible for grants and procurement procedures as if the UK was an EU Member State unless security considerations apply. After the transition period and the UK's withdrawal from the EU, the rules of access to EU procurement procedures of economic operators established in third countries will apply to tenderers from the UK. In case such access is not provided by legal provisions in force, candidates and/or tenderers from the UK will be rejected from the procurement procedure.

2.5 Types of tendering procedures

The type of procedure used by EMSA is selected in accordance with the minimum and maximum expected contract value. The two types of procedure most commonly used are the Open procedure and the Negotiated procedures. One of the differences between these procedures is the way in which potential tenderers are invited to participate.

2.5.1 Open Procedure

The open procedure is the standard procurement procedure and may be used for any public contract with estimated value equal and above EUR 139,000.00.

Contracts are awarded to the tenderer submitting the most economically advantageous tender (please see [Point 9.3](#)).

EMSA publishes all procurement documents on the TED e-Tendering webpage (<https://etendering.ted.europa.eu>). The procedures are also advertised on the EMSA website (<http://emsa.europa.eu/>). Seeing there is the mandatory publication of a Contract Notice (CN) in the Official Journal of the European Union (OJ), publication on the e-Tendering website of the procurement documents will occur at the date of the CN publication in the OJ. EMSA may also advertise its procurement procedures in other media (publication in the general or specialist press, mailshot based on transparent and not discriminatory criteria, etc.), following publication in the OJ.

See Figure 1 for Open Procedure scheme

2.5.2 Restricted Procedure

The restricted procedure may be used for any public contract as an equal alternative to the open procedure for all contracts with an estimated value equal or above EUR 139,000.00.

The restricted procedure is a standard procedure composed of two phases: Phase I – Requests to participate and Phase II: Tender. In Phase I any interested provider may submit a request to participate in response to the publication of the contract notice and is evaluated based on the published exclusion and selection criteria. Following that, in Phase II, EMSA invites the submission of tenders simultaneously from the pre-selected candidates. Tenders are then evaluated against award criteria. In case of a restricted procedure, EMSA publishes all procurement documents on the EMSA webpage (<http://emsa.europa.eu/>).

See Figure 2 for Restricted Procedure scheme.

2.5.3 Competitive procedure with negotiations

The competitive procedure with negotiations is a procedure composed of two phases: Phase I - Requests to participate and Phase II - Tender. In Phase I, any interested provider may submit a request to participate in response to the publication of the contract notice and they are evaluated based on the published exclusion and selection criteria. Following that, in Phase II, EMSA invites the submission of tenders simultaneously from the pre-selected candidates.

Unlike the open or restricted procedure, the submitted tenders can be negotiated, more specifically the technical and the financial offers. If EMSA decides not to negotiate, this possibility shall be announced in advance. The competitive procedure with negotiations may be launched only under the circumstances and cases specified in Annex I to the FR.

See Figure 3 for Competitive procedure with negotiations scheme.

2.5.4 Restricted procedure following a call for expressions of interest

The restricted procedure following a call for expression of interest runs like a normal restricted procedure, the only difference being that a call for expressions of interest is published, rather than a contract notice. Pre-selected candidates, who successfully passed the published exclusion and selection criteria, are then placed on a list to be used at later stage. When a particular contract is to be awarded, the procurement documents are sent, on the basis of non-discriminatory and objective criteria, to all or some of the parties on the list and the contract is awarded in line with the second stage of the restricted procedure following a call for expressions of interest.

Typically, the call for expressions of interest remains open for four years and as a result offers submitted during that time (up to the final three months) are evaluated on a regular basis.

See Figure 4 for Restricted procedure following a call for expressions of interest scheme.

2.5.5 Negotiated procedure for very low, low and middle value contracts

For contracts with an estimated value below EUR 60,000.00, or between EUR 60,000.01 and EUR 138,999.99, the following procedures are possible:

Very Low and Low value negotiated procedures:

- EUR 1000.01 - EUR 15,000.00 = Minimum one candidate must be invited
- EUR 15,000.01 - EUR 60,000.00 = Minimum three candidates must be invited

Middle value negotiated procedure:

- EUR 60,000.01 to > EUR 138,999.99 = Minimum five candidates must be invited

See Figure 5 for Very Low, Low and Middle Value negotiated procedures scheme.

2.5.6 Negotiated procedure without publication of a Contract Notice

In certain exceptional cases, a negotiated procedure may be applicable regardless of the estimated value of the contract. As part of this procedure, EMSA may consult economic operators of their choice and negotiate the terms of the contract with one or more of them.

The negotiated procedure without publication of a contract notice may be used in the circumstances specified in Annex I to the FR.

See Figure 6 for Negotiated procedure without publication of a Contract Notice scheme

2.5.7 Competitive Dialogue

In the case of particularly complex contracts, if EMSA considers that direct use of the open procedure or the existing arrangements governing the restricted procedure will not allow the contract to be awarded to the tender offering best value for money, it may make use of the competitive dialogue.

The competitive dialogue consists of three phases: Phase I – Requests to participate and selection of economic operators, Phase II - Dialogue and Phase III - Tender. This procurement procedure may be launched under the circumstances specified in Annex I to the FR.

See Figure 7 for Competitive Dialogue scheme.

2.5.8 Call for Expression of Interest (CEI)

A call for expression of interest (CEI) serves to invite experts/economic operators to put themselves forward to be included either on a list of external experts, a list of pre-selected candidates or on a list of vendors.

The main difference is between the procedure for the selection of the remunerated external experts and the procedure for selection on the pre-selected candidates/vendors. While the contracts with the remunerated external experts can be signed at any point in time after their inclusion on the list up until the end of validity of the list, for the pre-selected candidates and vendors the CEI is the first step out of a two (or three) step procedure. The CEI allows creation of lists (sub-lists) to be used for inviting the economic operators on these lists to tender for a procurement procedure (further step).

See Figures 8 and 9 for CEI schemes.

3. Nature of the contractual relationship resulting from the award of the contract

When preparing a tender, tenderers should take full account of the procurement documents, as they will define and govern the contractual relationship to be established between EMSA and the successful tenderer.

The procurement documents shall clearly indicate the type of contract that EMSA is seeking to enter into and its duration. EMSA shall establish either a direct contract or a framework contract which can be single or multiple. In case EMSA chooses to procure under a multiple framework contract, the contract may be either in cascade or with reopening of competition.

Whereas direct contracts stipulate the parties, the subject, and the precise volume and timing of the delivery, framework contracts only stipulate the parties, the duration, the subject and the way of implementation.

It should be stressed that framework contracts involve no direct commitment and, in particular, do not constitute orders as such. Instead, they only lay down the legal, financial, technical and administrative provisions governing the relationship between EMSA and the contractor during their period of validity.

Actual orders will be placed only after the framework contract is signed, in the form of specific contracts or order forms concluded in pursuance of the framework contract.

The procurement documents, besides the Invitation to tender and the Tender Specifications, shall also include:

- A draft version of the contract, which, on completion of the procurement procedure, shall be modified as necessary in line with the information pertaining to the successful tender (e.g. contact data, bank account, prices);
- In some cases, additional documents will be annexed to the contract (e.g., technical annexes, service level agreements, others).

EMSA may indicate that it wishes to conclude a multiple framework contract in cascade with a certain number of contractors. In such case, when specific contracts are to be awarded, the economic operator whose tender for the award of the framework contract was considered the best will be contacted first, as it has priority above the other contractors. When the first contractor is unavailable or unable to fulfil the demands of the contracting authority the second contractor on the list will be contacted, and so on.

EMSA may also conclude multiple framework contracts with a number of contractors where not all the terms are laid down in the framework contract and without a system of priority being established. In such cases EMSA may re-open competition and ask the parties to compete on the basis of more precisely formulated terms. EMSA shall consult the contractors in writing, fixing a time limit which is sufficiently long to allow tenders to be submitted in writing. EMSA shall then award each specific contract to the contractor which has submitted the best tender on the basis of the award criteria set out in the initial Tenders Specifications.

4. Considering whether or not to submit a request to participate/a tender

This section contains important information which will help candidates/tenderers to take an informed decision on whether or not to commit resources to the submission of a request to participate/tender in response to a procurement procedure.

4.1 Subject of the contract

The subject matter of the contract is mentioned in the prior information notice (if published), in the contract notice published in the OJ (if applicable) and described more in detail in the procurement documents. In order to understand the exact scope of the contract, the aspects mentioned below should be considered by the candidate/tenderer.

4.2 Volume of the contract

To guide the candidate/tenderer in preparing a request to participate/a tender, the procurement documents contain certain indications on the foreseeable volume of goods, services and/or works required under the contract.

In case of direct contracts, the value is fixed and expressed as a price in the contract signed as a result of the procurement procedure.

In case of framework contracts, EMSA aims to give its best estimate in good faith. Candidates/Tenderers should be aware that any information on volume is purely indicative and shall not be binding on EMSA. It should not be considered as a warranty as to the probable value of the contract. The total value of the framework contract will ultimately depend on the orders which EMSA may place through either order forms or specific contracts during the contractual period.

4.3 Lots

When a procurement procedure is divided into lots, this is explicitly mentioned in the procurement documents. In this case, unless stated otherwise in the procurement documents, candidates/tenderers may submit requests to participate/tenders for one lot only, for any combination of lots, or for all the lots.

At the evaluation phase - each individual lot is assessed independently of any other lot and considered only in its entirety. Tenderers may therefore not submit a tender that:

- covers only part of a lot, or
- is declared as dependent, or being conditional, on the award of any other lots within the particular procurement procedure.

EMSA will disregard any statement to this effect contained in a tender and may reject such tenders without further evaluation on the grounds that they do not comply with the tender specifications.

4.4 Variants

“Variant” means a solution technically or economically equivalent to a model solution described by the contracting authority. Variants may relate to the whole contract or to certain parts or aspects of it. Variants must be submitted separately and identified as variants.

If the contract is awarded to the tender offering the best price quality ratio, the contract notice must indicate whether or not variants are accepted. If there is no indication, variants will not be authorised.

4.5 Product names and trademarks

Unless stated to the contrary, whenever the procurement documents mention a specific product name or trademark and a sufficiently precise and a fully intelligible description using generic language is not possible, such mention shall be understood as referring to the product belonging to the trademark owner in question, or its equivalent fulfilling the required specifications.

5. Preparing a request to participate/a tender

5.1 Language

A request to participate/a tender may be drawn up in any of the official languages of the European Union. However, EMSA appreciates to receive documentation in English, especially in the second step (tendering phase) for two step procedures - regarding technical and financial proposals.

5.2 Confidential information

EMSA undertakes to protect commercial interests by treating all the information contained in a request to participate/a tender as confidential.

In particular, EMSA will not disclose any information where such disclosure would impede law enforcement, be contrary to public interest, prejudice the legitimate commercial interests of the economic operators or might distort fair competition between them.

EMSA has a general obligation to disclose documents in accordance with the Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents. The provisions of this Regulation provide with an exhaustive list of exceptions from this general obligation which enables EMSA to respect fully the confidentiality of information as described above.

5.3 Protection of personal data

In certain cases, the follow-up of candidate's/tenderers' responses to the procurement procedure will require the recording and further processing of personal data (e.g. name, address or CV of natural persons). Such data will be processed in accordance with the provision of 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.

Candidates/tenderers may, upon request, obtain the details of any personal data previously submitted by it and rectify any inaccurate or incomplete personal data. Should a candidate/tenderer have any queries concerning the processing of personal data, it should address its concerns to the appointed contact person for that procurement procedure, as indicated in the procurement documents.

5.4 Specific requirements for the financial quotation

Financial quotations must be drawn up in any ad-hoc form which might be annexed to the Tender Specifications.

Prices must be quoted:

- in Euro (unless indicated otherwise in the procurement documents);
- free of all duties and taxes (VAT shall be quoted separately);
- inclusive of all costs and expenses directly and indirectly connected with the goods and/or services to be supplied (unless indicated otherwise in the procurement documents);
- as fixed amounts, non-revisable and remain valid for the duration of the contract.

The financial quotation should be completely unambiguous.

6. Submitting a request to participate/a tender

6.1 Implications of submission

Submitting a request to participate/a tender in response to a procurement procedure launched by EMSA shall be deemed to imply that candidates/tenderers:

- **accept** all the terms and conditions as stipulated in the procurement documents; and
- **waive** their own terms of business such that any resultant contractual relationship shall be governed exclusively by the terms of the tender.

EMSA will disregard any qualification, disclaimer or intention to the contrary contained in a request to participate/a tender and may reject such requests/tenders without further evaluation on the grounds that they do not comply with the procurement documents.

6.2 Period of tender validity

Unless the procurement documents stipulate a different time period, tenderers shall be bound by their tender for a minimum of ninety days from the deadline for submission of tenders.

6.3 No obligation to award

When awarding a contract, EMSA undertakes to assess the tenders in the light of the criteria laid down in the contract notice and the Tender Specifications.

However, publishing a prior information notice and/or contract notice does not oblige EMSA to award the contract to a tenderer simply because its tender fulfils those criteria. It may decide not to award the contract to any tenderer and to cancel the procedure at any time before awarding the contract.

EMSA is not liable to pay any compensation in such circumstances. The decision not to award a contract shall be substantiated and shall be brought to the attention of the tenderers.

6.4 Tax exemption

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, as amended. 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.

6.5 Submitting offers as a group of companies and/or using subcontractors

Companies may consider two ways of collaborating in a procurement procedure: either as joint partners, or through subcontracting. Unless stated otherwise in the contract notice and/or the procurement documents, both the joining of candidates/tenderers and the subcontracting are allowed in response to a procurement procedure. Candidates/tenders may even combine both approaches.

In any case, the request to participate/tender must specify clearly whether each company involved is acting as a partner in a consortium/joint offer or as a subcontractor. The document 'Statement of subcontracting/joint offer' (to be found at <http://emsa.europa.eu/work/procurement/> Documents for Tenderer section) shall be completed. This also applies where the various companies involved belong to the same group or where one is the parent company of the others.

The implications of these two modes of collaboration are different and are outlined below.

6.5.1 Joint offer

Liability of joint offers:

Partners in a joint tender shall be required to assume joint and several liabilities towards EMSA for the performance of the contract as a whole.

Statements, for instance:

- that one of the partners of the joint tender will be responsible for a part of the contract and another one for the rest, or
- that more than one contract should be signed if the joint tender is successful,

are thus incompatible with the principle of joint and several liabilities. EMSA shall disregard any such statement contained in a joint tender and may reject such tenders without further evaluation on the grounds that they do not comply with the procurement documents.

In case of joint tender, EMSA shall request the identity of each member of the group and may also request a document stating clearly the allocation of tasks between members.

Evaluation - Joint offers will be assessed as follows:

- the exclusion criteria shall be assessed in relation to each economic operator individually;
- the selection criteria shall be assessed in relation to the combined capacities of all members of the group as a whole (exceptionally the selection criteria may apply individually where it is relevant in view of their nature);
- the award criteria shall be assessed in relation to the tender.

For Joint offers in the stage following the award:

The contract shall be signed by the member of the group which has been duly authorised by the other members of the group (a power of attorney or sufficient authorisation must be provided and will be attached to the contract).

6.5.2 Subcontracting

Certain operational tasks provided for in the contract may be entrusted to subcontractors. Subcontracting is the situation where a contract has been or is to be established between EMSA and a contractor and where the contractor, in order to carry out that contract, enters into legal commitments with other legal entities for performing part of the work, services or supplies. However, EMSA has no direct legal relationship with the subcontractor(s).

Accordingly:

- EMSA shall treat all contractual matters (e.g. payment) as being exclusively with the main contractor, whether or not the tasks are performed by a subcontractor;
- Under no circumstances the main contractor can avoid liability towards EMSA on the grounds that the subcontractor is at fault.

Submission of a request to participate/tender envisaging subcontracting

If subcontracting is envisaged the request to participate/tender must include:

- (1) The document 'Statement of subcontracting/joint offer' duly completed;
 - stating clearly data of subcontractor(s), and;
 - specifying the volume/proportion of the tender being subcontracted for each subcontractor;
- (2) A letter of intent by each subcontractor stating its intention to collaborate if the tenderer is awarded the contract.

Evaluation of requests to participate/tenders envisaging subcontracting

If the candidate/tenderer relies on the capacities of subcontractors to fulfil selection criteria for the technical and professional capacity, then requests to participate/tenders involving subcontracting shall be assessed as follows:

- The exclusion criteria shall be assessed in relation to each company individually;
- The selection criteria shall be assessed in relation to the combined capacities of the candidate/tenderer and the subcontractor(s), as a whole, to the extent that the subcontractor puts its resources at the disposal of the candidate/tenderer for the performance of the contract (exceptionally the selection criteria may apply individually where it is relevant in view of their nature);
- The award criteria shall be assessed in relation to the tender. Subcontracting as such cannot be an award criterion.

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

6.5.3 Change in the composition of the group/change of subcontractor during the procurement procedure:

During the procedure, the candidate/tenderer may inform the contracting authority that a member of the group has dropped out of the process, and/or is being replaced by another entity or that a subcontractor is removed or replaced during the procedure. In some cases, the contracting authority itself may find a member of a group/subcontractor to be in an exclusion situation or reject it because it does not comply with a selection criterion applicable to it.

As a principle, a change in the composition of the group at the request of the candidate/tenderer shall not be accepted and could lead to the rejection of the corresponding tender.

The only cases where a change in the composition of a group may be accepted are:

- where there is a merger or takeover of one member of the group (universal succession);
- where the change comes from the contracting authority, i.e. one member of the group is subject to exclusion or rejected because it does not comply with a selection criterion applicable to it. Indeed, in this case, exclusion or rejection applies to a legal entity, not to a group, so it may be disproportionate to reject the whole request to participate/tender on that basis; such situations should be appreciated on a case-by-case basis. The position to adopt could be different according to the various exclusion cases (for instance, a change could be accepted in case of bankruptcy, but not in the case where the member of the group has been convicted of fraud, corruption, etc.). In case of rejection, withdrawal of the rejected member of the group could be accepted if the selection criterion is still fulfilled without it.

With regards a change in subcontracting, an assessment shall be made to check the impact this change has on the capacity to execute the contract and on the initially submitted tender. A positive assessment may lead to acceptance of the change in subcontracting.

6.6 Submission phase

Methods of submission of requests to participate/tenders differ for procurement procedures as detailed below:

6.6.1 Open procedures

For the open procedures, the submissions of tenders shall be made electronically, via the electronic submission system (e-Submission) available from the TED e-Tendering website¹ and accessible on the Funding and Tenders Opportunities portal (F&T portal)².

The above mentioned application allows economic operators to respond to calls for tenders by preparing their tenders electronically in a structured and secured way and submitting their tenders electronically. The e-Tendering is the starting point for launching the e-Submission system.

In order to be able to submit electronically, the first step is to create a user account in the system ([EU Login](#))³.

The online application will guide you through the distinct Steps for the Submission package and the Submission preparation report to be created and successfully submitted.

The procurement documents shall contain all relevant information with regards electronic submission.

Exceptionally, there might be cases where paper submission in case of an open procedure is still applicable (e.g. need of samples), therefore the procurement documents are always to be considered before actual submission.

6.6.2 Other procedures equal or above EUR 139,000.00 (Restricted procedure, Competitive procedure with negotiations, Negotiated procedure without prior publication of a Contract Notice)

Candidates/tenderers who wish to submit a request to participate/a tender are invited to send it to EMSA, duly signed by their authorised representative. EMSA may choose one of the two following methods for submission:

- (a) Electronically – by sending before submission deadline an encrypted request to participate/ a tender, following the instructions in the published procurement documents; or
- (b) In paper – by submitting requests to participate/tenders in three different ways:

- **by post**

The requests to participate/tenders shall be posted no later than the date specified in the Invitation to submit a Request to participate/Tender, with the stamp of the post office acting as proof. Please note, if submitted by post it is recommended that it is sent by registered post.

- **by hand-delivery**

¹ For detailed instructions on how to submit a tender please consult the e-Submission Quick Guide available at: https://webgate.ec.europa.eu/digit/opsys/esubmission/assets/documents/manual/quickGuide_en.pdf.

The supported browsers, file types, size of attachments and other system requirements can be consulted at: <https://webgate.ec.europa.eu/fpfis/wikis/xf6dqEq>. In case of technical problems, please contact the e-Submission Helpdesk (see contact details in the e-Submission Quick Guide) as soon as possible.

² <https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/home>

³ For more information see the [EU login help](#).

The hand delivery shall be made no later than the date and the time (Lisbon local time) specified in the Invitation to submit a Request to participate/Tender.

A dated and signed receipt or a registration number has to be requested by the person delivering the request as proof of delivery.

- **by private courier service**

The request to participate/tender shall be 'deposited' with the private courier service no later than the date specified in the Invitation to submit a Request to participate/Tender, with the slip issued by the private courier service acting as proof.

In whichever form the request to participate/tender is submitted (for paper submission), the following address shall be used:

European Maritime Safety Agency

Praça Europa 4
1249-206 Lisbon
Portugal

Requests to participate/Tenders must be submitted in two envelopes, one inside the other and both envelopes shall be sealed. The inner envelope must be marked as follows:

Call for tenders No. EMSA XX/xx/20XX
Lot (if applicable)
NOT TO BE OPENED BY THE INTERNAL MAIL DEPARTMENT
To the attention of Mr/Ms [name of the contact person]

The outer envelope must be marked as follows:

Call for tenders No. EMSA XX/xx/20XX
Lot (if applicable)
NOT TO BE OPENED BY THE INTERNAL MAIL DEPARTMENT
To the attention of Mr/Ms [name of the contact person]

The chosen method for submission shall be described in the procurement documents, therefore the procurement documents are always to be considered before actual submission.

6.6.3 Procedures below EUR 139,000.00

Tenderers who wish to submit an offer are invited to send it to EMSA within the time-lines specified in the procurement documents. The offer shall be duly signed by the authorised representative, scanned and submitted by e-mail to the email address created for the respective procurement procedure, as indicated in the procurement documents. 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 may be requested from the company to which the contract is awarded.

7. Contacts between EMSA and candidates/tenderers

Contact between EMSA and the candidates/tenderers outside the strict requirements of the procedure are prohibited save in exceptional circumstances and under the following conditions:

Before the closing date of submission:

In this phase EMSA may, on its own initiative, inform candidates/tenderers of any error, inaccuracy, omission or other clerical error in the text of the contract notice or the procurement documents.

At the request of the candidate/tenderer, EMSA may provide additional information solely for the purpose of clarifying specific issues arising from the procurement documents.

To this effect candidates/tenderers should:

- formulate their questions in writing, within the applicable deadline stipulated in the Invitation to tender (EMSA is not bound to reply to questions arriving after the applicable deadline); and
- send their questions via e-Tendering (for Open procedures) or by e-mail to the dedicated e-mail address indicated in the Invitation to tender (for all other types of procurement procedures). EMSA will not reply to questions which are not submitted in writing.

In the interest of fairness and equal treatment, any additional information will be sent in an identical manner simultaneously to all candidates/tenderers.

Answers to questions of general interest and any other important information about the procurement procedure arising during the tendering period shall be published on the TED e-Tendering website for Open procedures and on the website of EMSA for all other types of procurement procedures.

The answers provided by EMSA should be regarded as an integral part of the procurement documents.

After the closing date of submission/opening:

EMSA may contact candidates/tenderers in writing to obtain further clarification on specific points of a request to participate/tender or to correct obvious clerical errors. Candidates/Tenderers should be prepared to reply to such requests for clarification within a very short deadline as stated in the request for clarification.

With regards tenders - such contacts must not lead to any alteration of the terms of the tender (except for the negotiated procedures).

More particularly:

- Tenderers must not modify a tender or add any new elements to it (other than purely administrative documentation). The reply must therefore make clear reference to the relevant information already present in the offer.
- Where the financial quotation is concerned, tenderers must not add any new prices, but only explain the quotation on the basis of elements already present in the offer, which should be explicitly mentioned (e.g. in case of a lump sum price, tenderers are required to include, in a separate sheet, a price breakdown for the various services and deliverables).

If tenderers fail to observe these restrictions, their reply may be disregarded. If the reply plainly contradicts the original tender, EMSA may reject the tender.

In case of negotiated procedures, the submitted tenders can be negotiated, more specifically the technical and the financial offers. If EMSA decides not to negotiate, this possibility shall be announced in advance.

8. Opening of requests to participate/tenders

EMSA is required to appoint an Opening Committee for all contracts with a value equal or above EUR 139,000.00. The Opening Committee will open all the requests to participate/tenders on the date and at the time and place indicated in the procurement documents.

In case of the Open procedure, each tenderer may send one representative to the opening session.

If tenderers choose to do so, they should notify the name of that person by e-mail to EMSA no later than five days before the opening session. Failing to notify before this deadline may lead to refusal of admission to the opening session.

The representative shall present on the set day for the opening session, the submission receipt confirmation received from e-Submission or any other proof stating the date & hour of submission (e.g. for paper submission if applicable). This is considered as the official time of receipt and will constitute proof of submission and compliance with the deadline given in the Invitation to tender.

The tenderers' representatives will be required to sign an attendance sheet.

The public part of the opening session will be strictly limited to the following aspects:

- verification that each tender has been submitted correctly (in particular that the deadline for submission has been complied with and the integrity of the tender was preserved);
- announcement of the tenders received for each lot (if applicable). The names announced will be those of the companies having sent tenders, as they appear in the e-Submission (or on the envelopes for paper submission). Please note that these names may or may not correspond to the precise legal identity of the actual tenderers and may or may not include other companies involved in the tenders (e.g. as partners in joint tenders);
- if the contract is awarded based on the lowest price or lowest cost method, the prices shown in the tenders found to be in order are read out loud.

For all other types of procurement procedures, the opening is not public.

9. Assessment of candidates/tenderers and requests to participate/tenders

EMSA is required to appoint an Evaluation Committee for all contracts with a value equal or above EUR 139,000.00. The candidates/tenders will be assessed by an Evaluation Committee working under conditions of confidentiality. Once the assessment is completed, the Evaluation Committee will draw up a report for the competent Authorising Officer, who will take the final decision on the award of the contract.

The evaluation is based exclusively on the exclusion, selection and award criteria set out in the procurement documents.

For procedures in one step, the three categories of criteria will be evaluated in no particular order or in a pre-defined order, as announced in the Tender Specifications.

For procedures in two steps, the exclusion and selection criteria will be evaluated at the stage of the evaluation of requests to participate and the award criteria at the stage of the evaluation of tenders.

9.1 Exclusion

Grounds for Exclusion

To be eligible to participate in procurement procedures, a candidate/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 (www.emsa.europa.eu) shall be completed and signed.

Please note that the candidate/tenderer shall provide information with regards its situation and on the natural or legal persons that are members of the administrative, management or supervisory body or that have powers of representation, decision or control and beneficial owners.

Upon request and within the time limit set by EMSA, the candidate/tenderer shall provide evidence concerning itself, the natural or legal persons as listed under the previous paragraph, and concerning the natural or legal persons which assume unlimited liability for the debt of the tenderer.

Where appropriate, the candidate/tenderer shall provide the same Declaration signed by a subcontractor or any other entity on whose capacity it intends to rely, as the case may be. Whenever requested by the authorising officer responsible and where this is necessary to ensure the proper conduct of the procedure, these entities / the subcontractor(s) shall provide supporting evidence for the signed Declaration of Honour.

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.

Exclusion criteria evidence to be submitted:

For one step procedures, the successful tenderer shall provide the documents mentioned as supporting evidence before signature of the contract and within the deadline given by EMSA (if applicable). This requirement applies to each member of the group in case of joint tender and for subcontractors, if deemed appropriate. The request for supporting evidence may be waived for procurement procedures below Directive thresholds (EUR 139,000.00) based on a risk assessment or in case the supporting evidence was already provided in the context of a previous procedure and the documents were issued not more than one year earlier and are still valid. In case of procurement procedures in two steps, the supporting evidence shall be submitted in Phase I.

Before taking the decision to award a contract EMSA will consult the Early Detection and Exclusion System (EDES).

9.2 Selection

Candidates/Tenderers will be selected if they can prove that they have sufficient economic and financial capacity, on the one hand, and sufficient technical and professional capacity, on the other hand.

9.2.1 Economic and financial capacity

In order to assess if candidates/tenderers have sufficient economic and financial capacity to perform the contract, the candidate's/tenderer's economic and financial capacity will be evaluated on the basis of the information included in the request to participate/tender.

The scope of this verification is to classify the financial status of candidates/tenderers and to carry out an appropriate risk assessment in order to decide upon solutions which will contractually minimise risks (e.g. no pre-financing to a candidate/tenderer with a weak financial status).

If the candidate/tenderer relies on the capacities of other entities (e.g. a parent company), a written undertaking is needed on the part of those entities, confirming that they will place the resources necessary for the performance of the contract at the disposal of the candidate/tenderer for the period of the contract.

The exact requirements will be specified in the procurement documents.

9.2.2 Technical and professional capacity

The criteria used to check whether a candidate/tenderer has sufficient technical and professional capacity to perform the contract, as well as the evidence required to that effect, will be listed in the procurement documents. These criteria will relate to the candidate's/tenderer's skills, efficiency, experience, reliability etc. and of its staff.

Candidates/Tenderers may be requested to submit proof of the minimum fulfilment of the criteria as well as related independent assessments of the quality of the performed services.

9.3 Award

The award of contracts is based on the most economically advantageous tender, which consists in one of the three award methods: lowest price, lowest cost or best price-quality ratio:

Lowest price: the contract is awarded to the lowest tender that satisfies the minimum requirements set in the technical specifications.

Lowest cost: the contract is awarded based on a cost-effectiveness approach including life-cycle costing. Life –cycle costing covers costs over the life cycle (acquisition, use, maintenance and end of life costs) as well as costs attributed to environmental externalities.

Best price – quality ratio: the contract is awarded taking into account both the price or cost and the set quality criteria.

The method chosen for each procurement procedure shall be announced in the procurement documents.

10. Outcome of the Procurement Procedure

During the assessment period, EMSA will not provide any information on an ongoing procurement procedure except if it adversely affects the candidate/tenderer. The only contacts allowed are those mentioned in Section 7. If a candidate/tenderer is not contacted, this should not be regarded as either a positive or a negative sign.

Candidates and tenderers shall be informed of the outcome of the procurement procedure as outlined below:

10.1 Notification of results

EMSA shall inform candidates and tenderers, simultaneously and individually, of decisions reached concerning the outcome of the procedure as soon as possible at the following stages:

- After the opening stage for tenderers received after the deadline (or already open) for the procedures in one step and for requests to participate received after the deadline (or already open) for procedures in two steps;
- After the selection stage for candidates who failed to meet exclusion and selection criteria for procedures in two steps;
- After the award decision for all procurement procedures and for the award of specific contracts with reopening of competition.

At the completion stage of any procurement procedure and as soon as the competent Authorising Officer has signed the award decision, a notification letter will be sent simultaneously to all tenderers. The letters to unsuccessful tenderers will state the grounds on which the decision was taken.

Please note, however, that the dispatch of these letters does not constitute the award of the contract. This will not be completed until the contract has been signed by the successful tenderer and the representative of EMSA.

In case of a contract with a value equal or above EUR 139,000.00, EMSA undertakes not to sign the contract until a period of at least 10 days has elapsed following the dispatch of the notification letters by electronic means, so that unsuccessful tenderers have sufficient time to react if considered appropriate.

10.2 Additional information

If candidates/tenderers are notified that a request to participate/a tender has not been successful, they may request additional information by letter or e-mail.

This information is given in a follow-up letter providing further details in writing. However, it must be stressed that EMSA is not free to disclose any information affecting the commercial interests of other candidates/tenderers.

With regards requests from tenderers - EMSA shall reply within fifteen calendar days of receiving a written request at most and shall provide additional information about the reasons for rejection. Only the unsuccessful tenderers who are not in an exclusion situation, who are not rejected from the procurement procedure for misrepresentation of information or distortion of competition and whose tender is compliant with the procurement documents may request in writing information about the name of the winning tenderer and the characteristics and relative advantages of its tender.

10.3 Award notice

Once the contract is signed, EMSA will publish a contract award notice in the OJ summarising the results of the procurement procedure, where the contract value is equal or above EUR 139,000.00.

For contracts with a value below the Directive thresholds, EMSA will publish on its external webpage (www.emsa.europa.eu) a list of contracts concluded during the previous year with values between EUR 15,000.00 and EUR 138,999.00. The list will be published before the 30th of June of each year.

10.4 Applicable Law

Unless the procurement documents stipulate otherwise, contracts resulting from a procurement procedure issued by EMSA are governed by the law of Portugal.

10.5 Remedies

General Court of the European Union

The court responsible for hearing appeal procedures is the General Court of the European Union:

General Court of the European Union

Rue du Fort Niedergrünewald

L-2925 Luxembourg

Tel.: (352) 4303-1 Fax: (352) 4303 2100

E-mail: Generalcourt.Registry@curia.europa.eu

URL: <http://curia.europa.eu>

The European Ombudsman

The European Ombudsman investigates complaints about maladministration in the institutions and bodies of the European Union.

The European Ombudsman
1 Avenue du Président Robert Schuman
CS 30403
FR - 67001 Strasbourg Cedex
Tel. +33 (0)3 88 17 23 13
Fax +33 (0)3 88 17 90 62
URL: <http://www.ombudsman.europa.eu/>

Figure 1 Open Procedure scheme

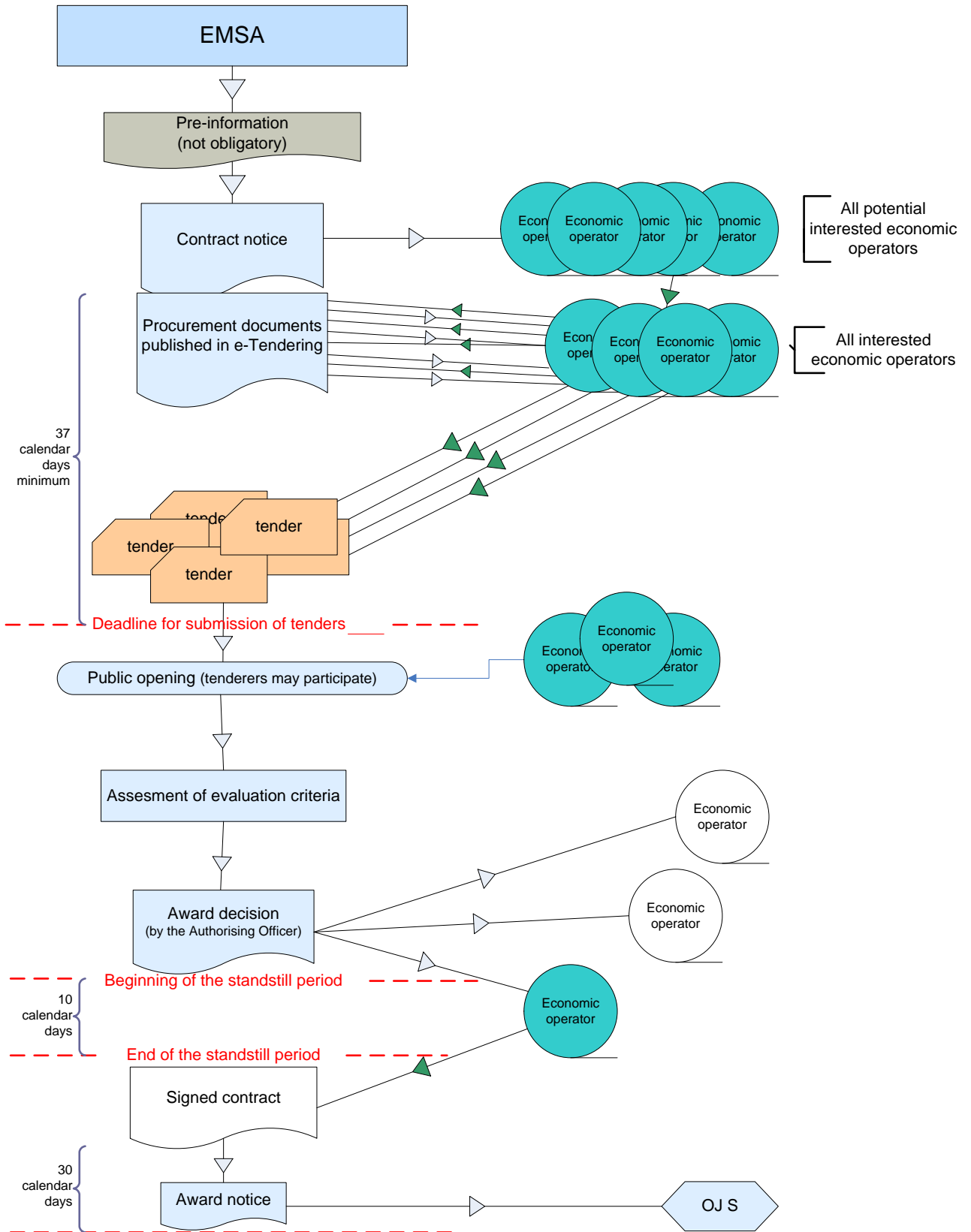


Figure 2 Restricted Procedure scheme

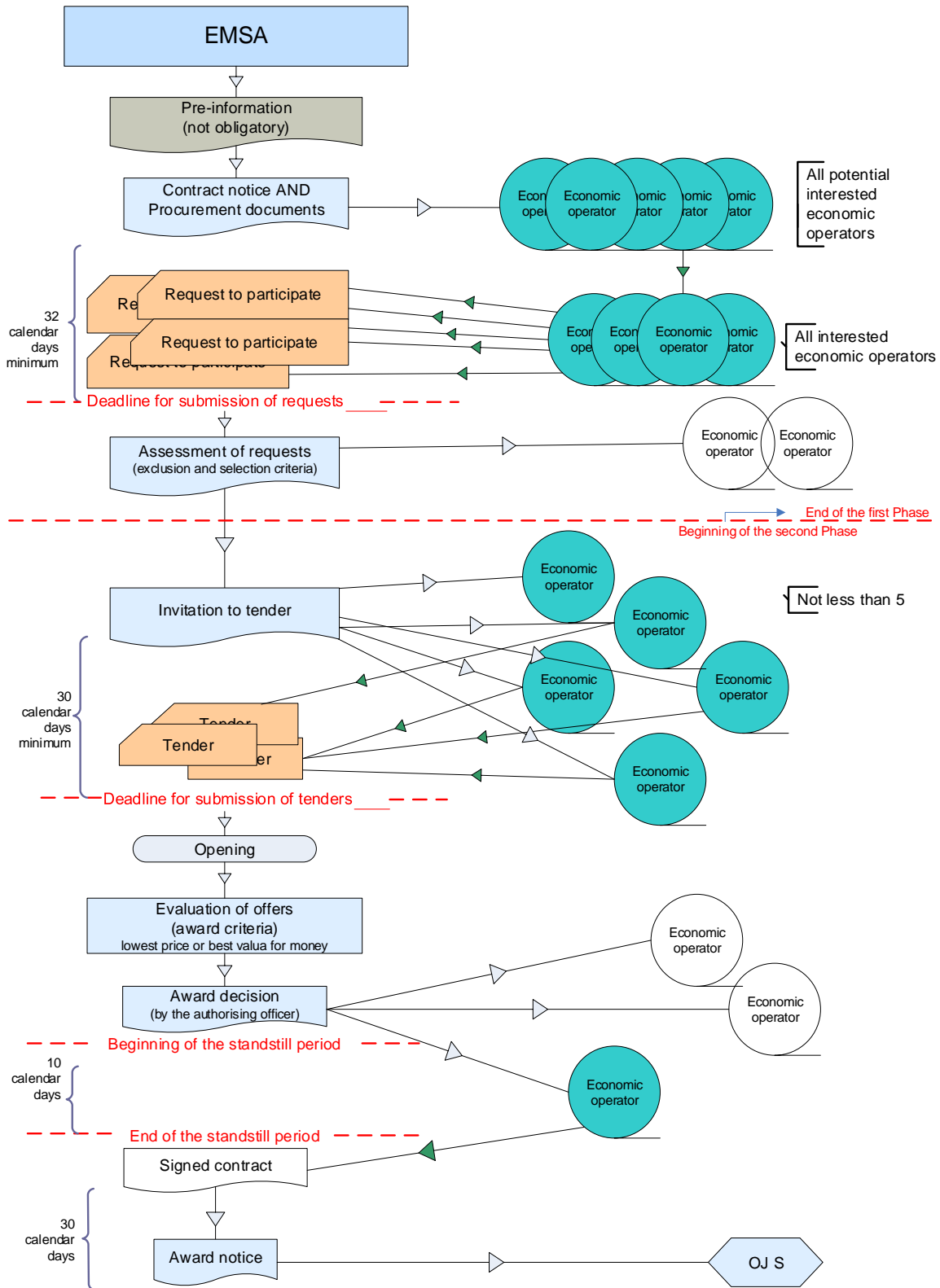


Figure 3 Competitive procedure with negotiation scheme

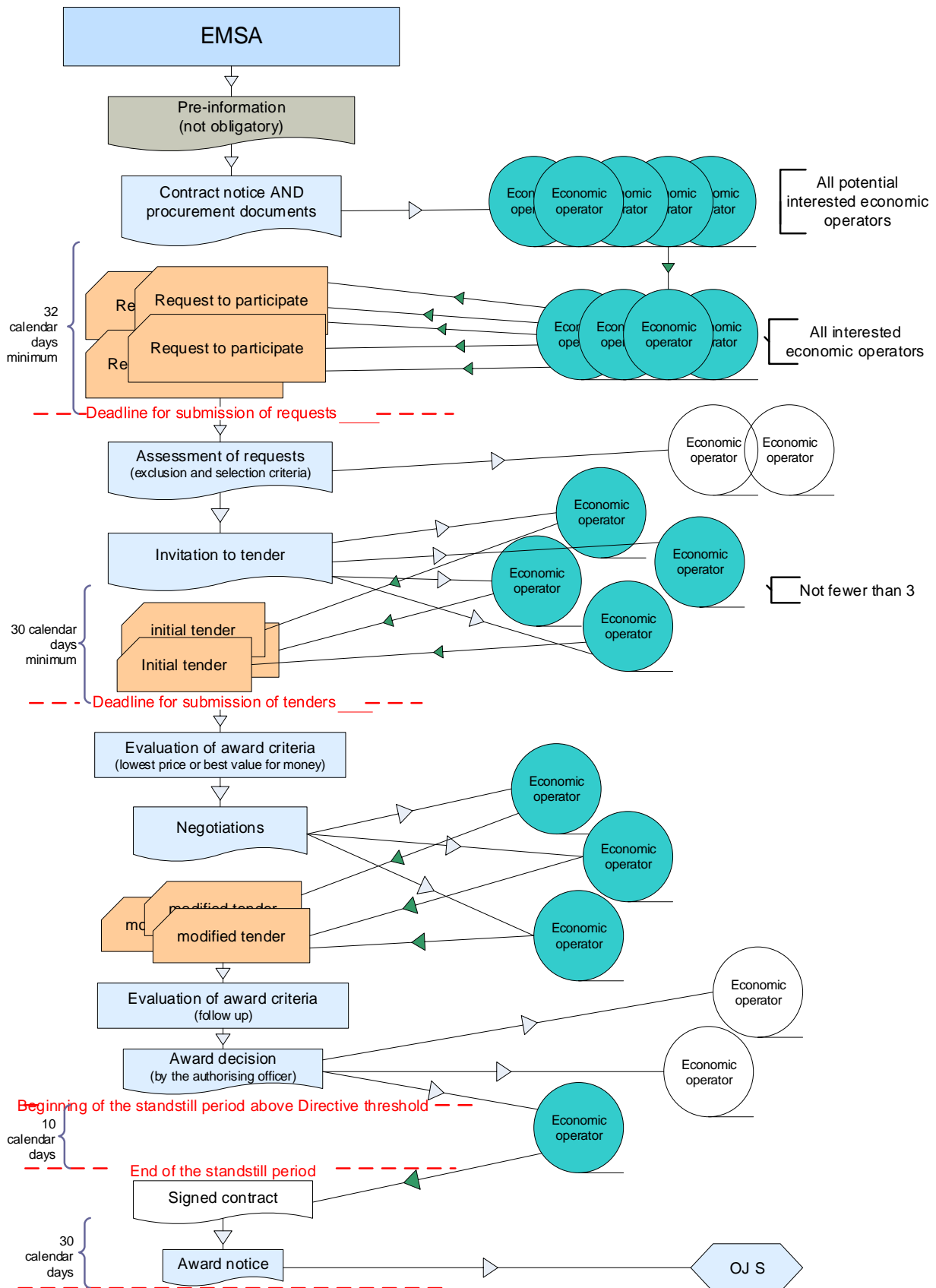


Figure 4 Restricted procedure following a call for expressions of interest

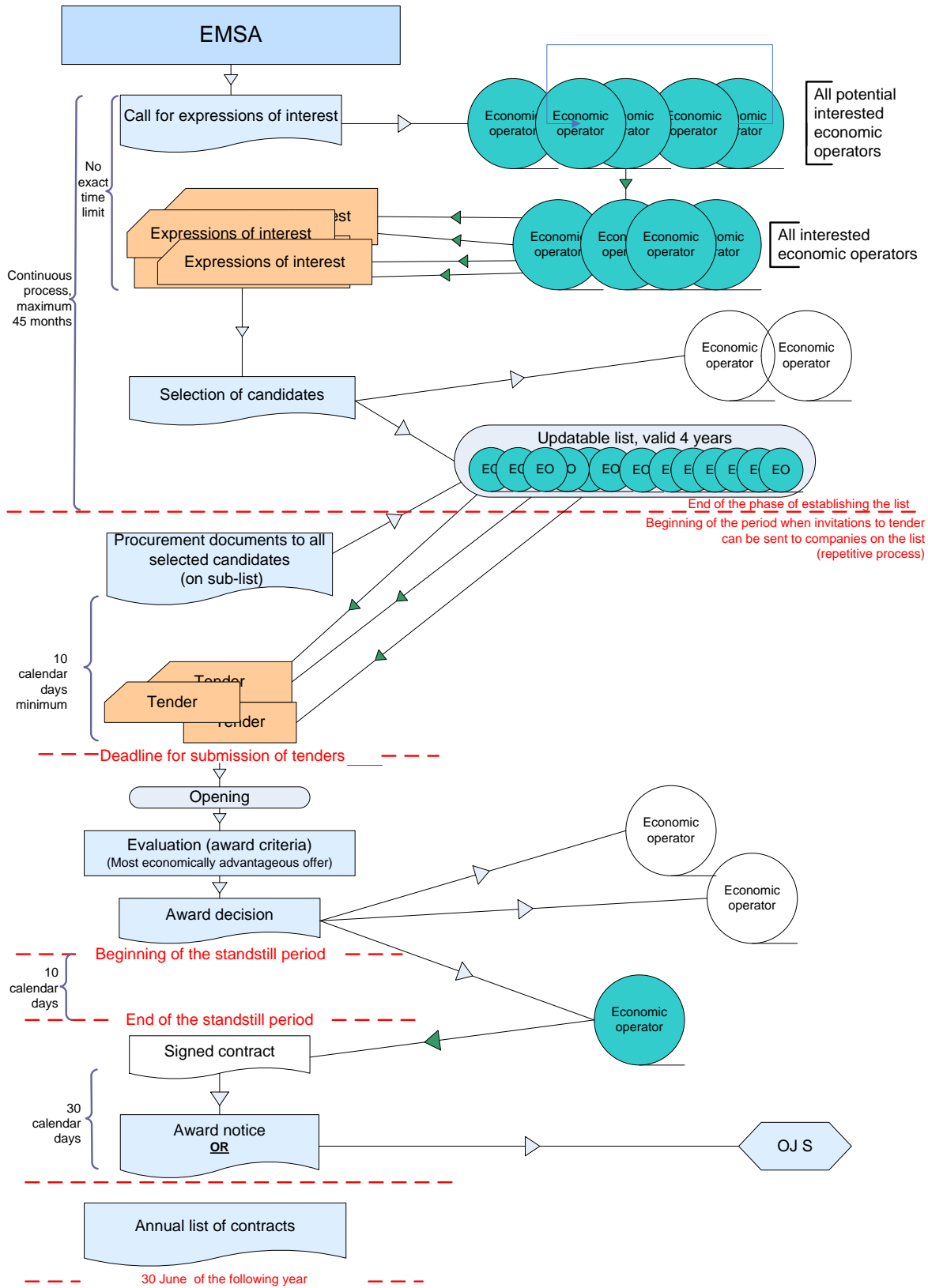


Figure 5 Very Low, Low and Middle value negotiated procedures scheme

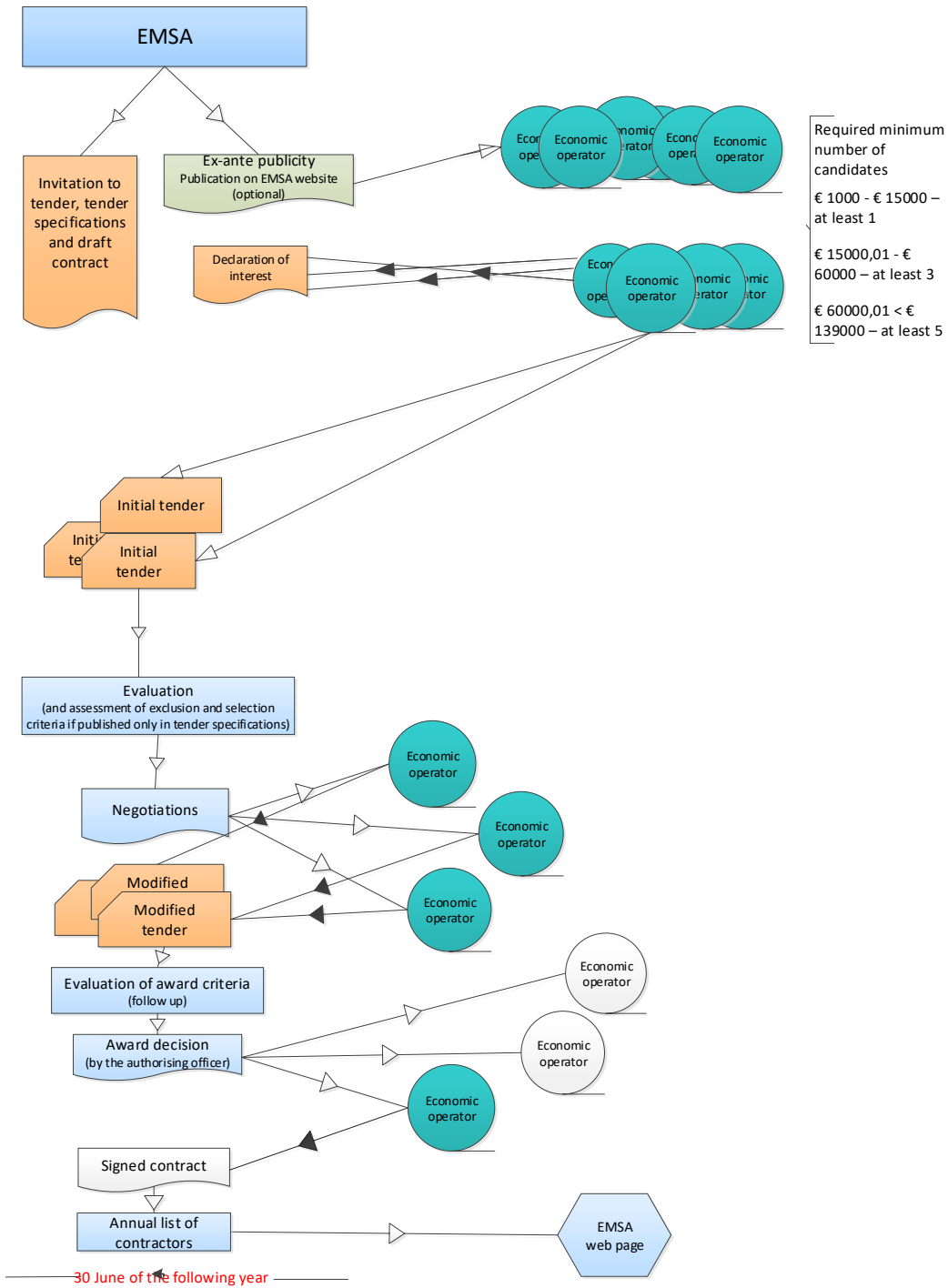


Figure 6 Negotiated Procedure without prior publication of Contract Notice scheme

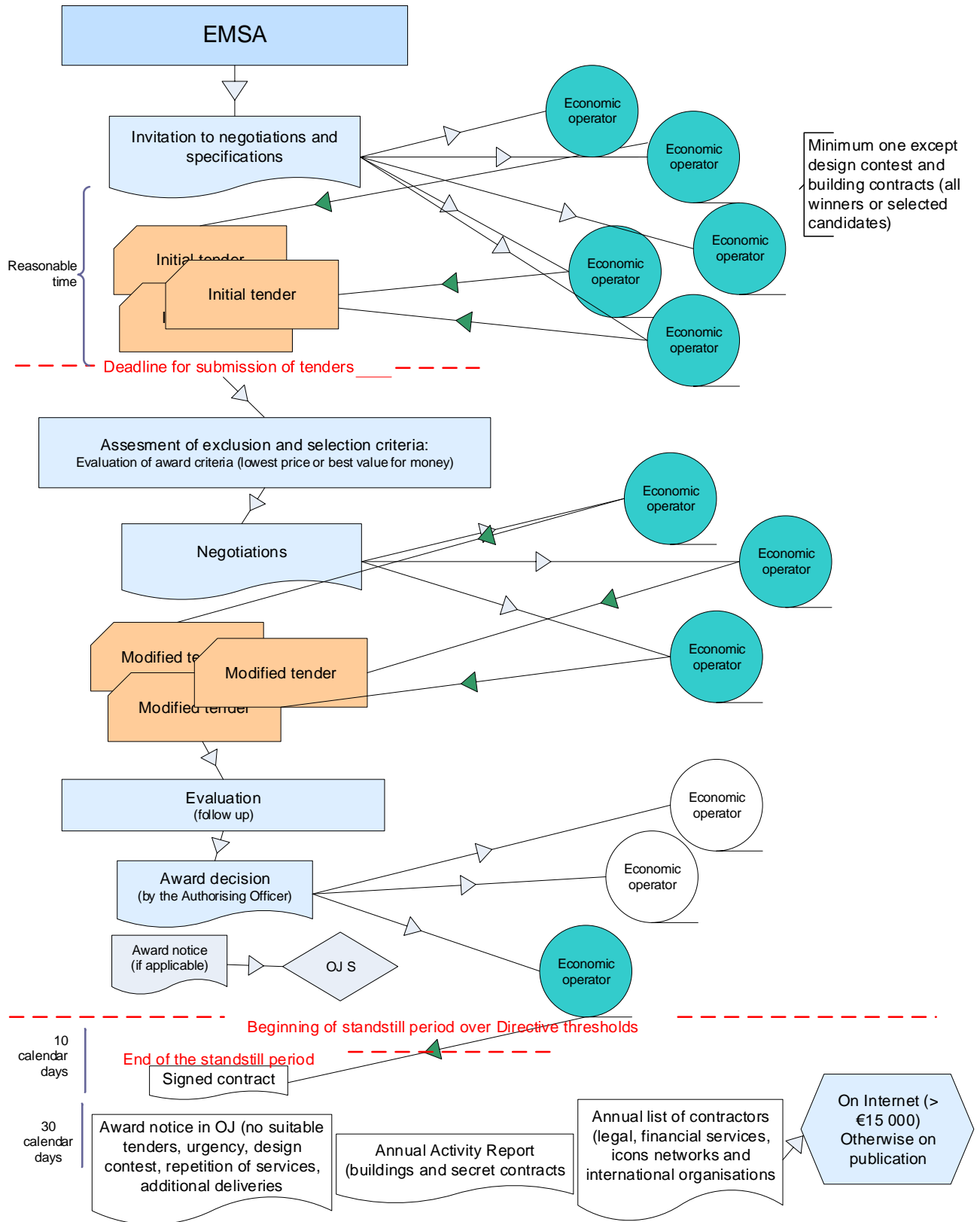


Figure 7 Competitive Dialogue scheme

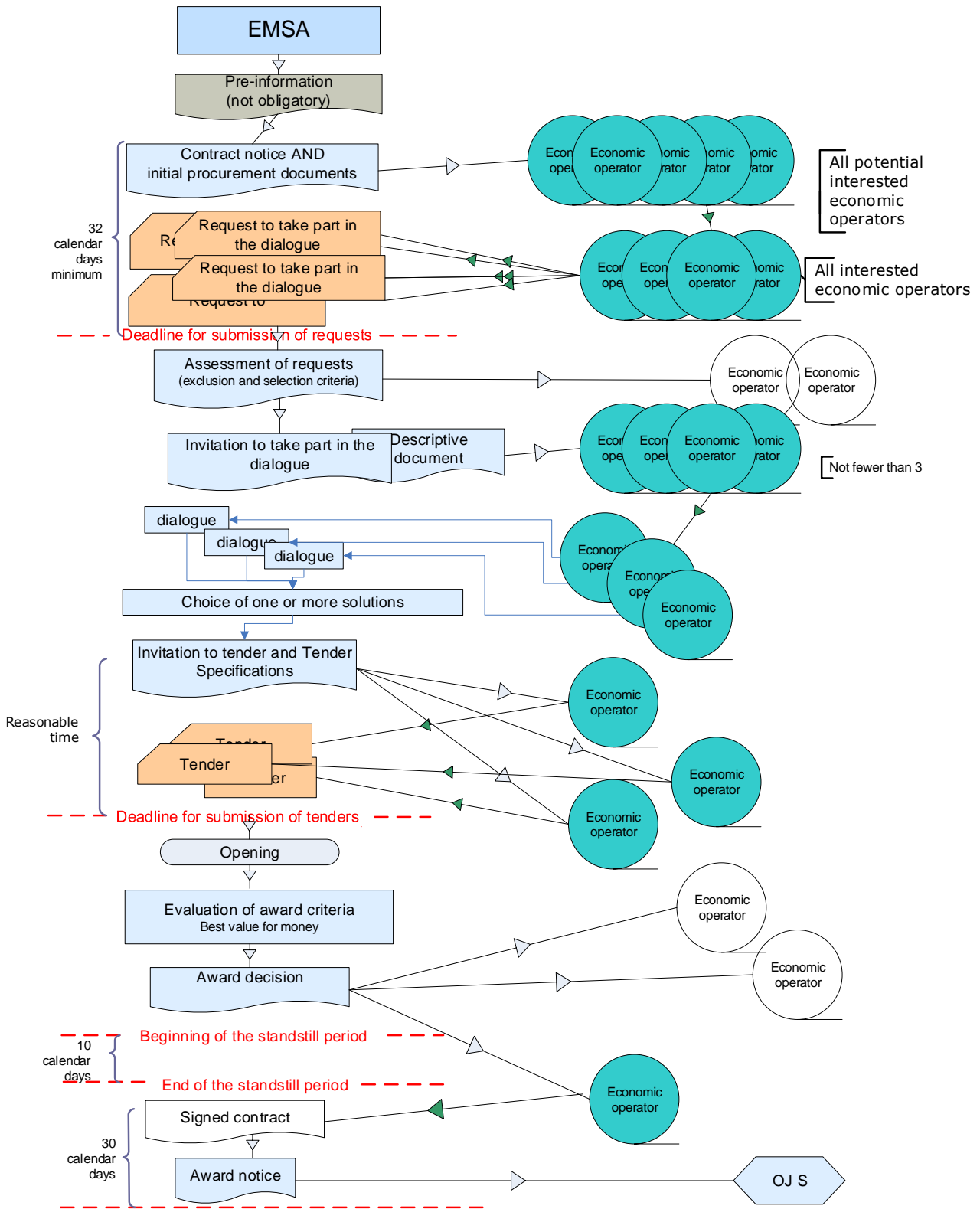


Figure 8 CEI for list of pre-selected candidates' scheme

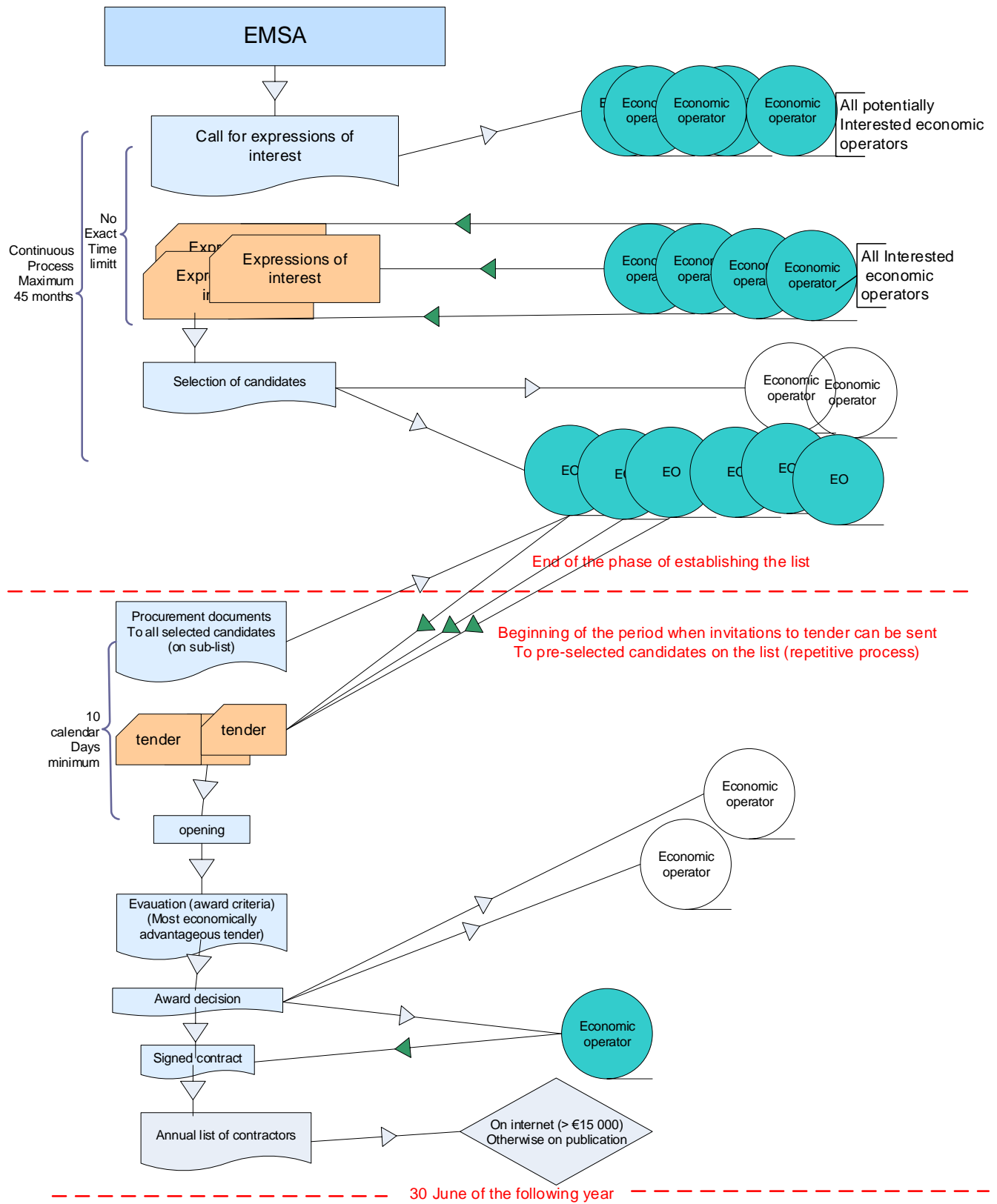
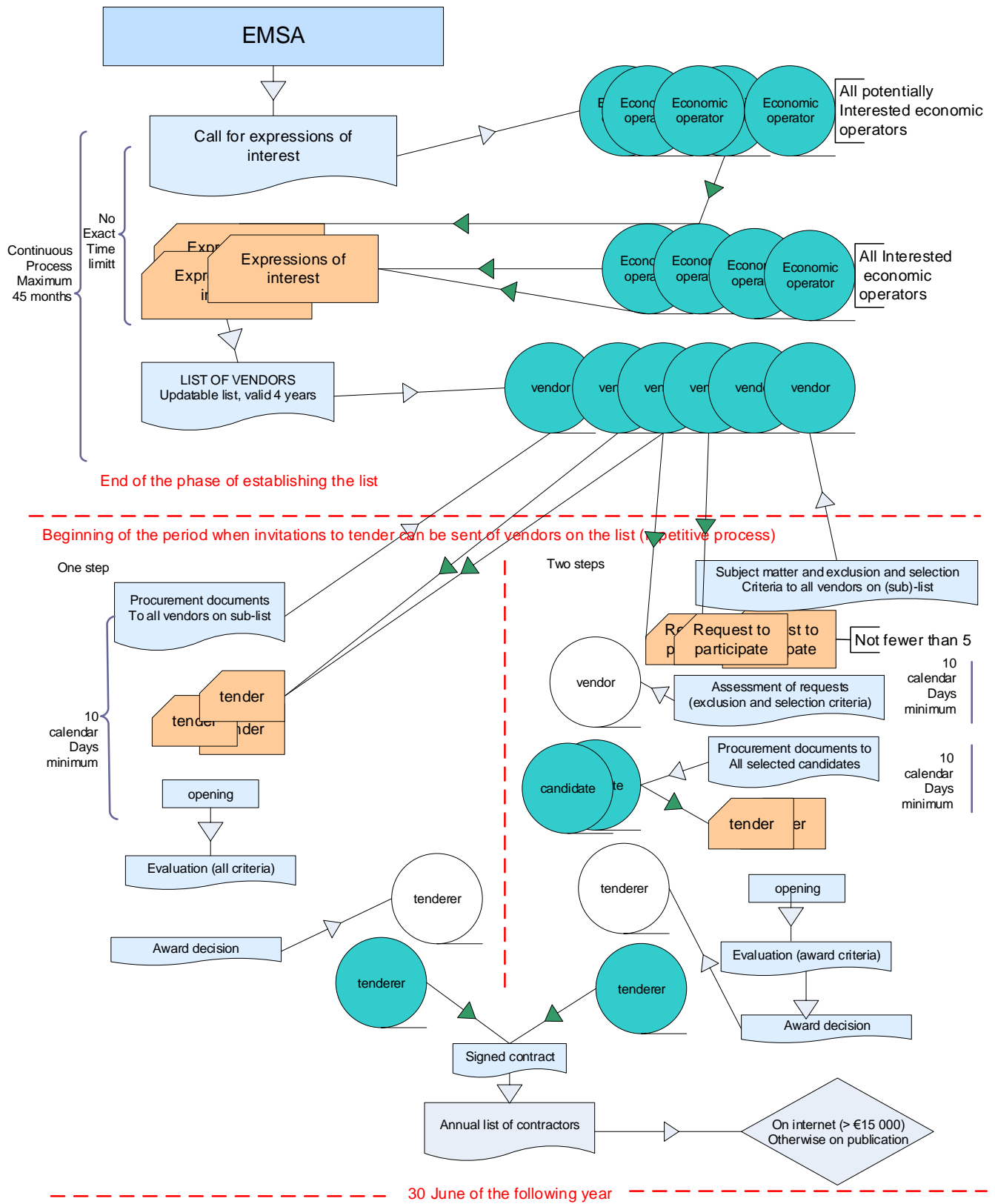


Figure 9 CEI for list of vendors scheme



Glossary of terms used in the Guidelines for candidates and tenderers

Award Notice

Advertisement published in the OJ to inform interested parties that a contract has been awarded or is to be awarded.

Call for tender

Terminology used for any type of procurement procedure.

Candidate

Any economic operator who submits a request to participate in a two-step procedure (restricted or negotiated procedure).

Contract

- Direct contract: contract containing all the details necessary to be implemented;
- Framework contract: contract establishing only the general outline of the services or goods to be delivered and requiring an additional step to make the actual purchase. These types of contracts are implemented through specific contracts and/or order forms.

Contract Notice

Advertisement launching the procurement procedure published in the OJ.

Contractor

An economic operator that EMSA signed a contract with.

Day

Means a calendar day (not a working day) unless specified otherwise.

Declaration of Honour

A document signed by candidates/ tenderers/ members of a grouping/ subcontractors (as applicable) stating that they are not in any of the situations of exclusion listed in the FR.

Economic operator

Any natural or legal person, public entity or group thereof that offers products, services or works on the market.

Evaluation Committee

A group of persons drawn up ad-hoc for the purpose of evaluating the submitted request/tender. The Evaluation Committee assesses all offers, applying the exclusion, selection and award criteria separately. An Evaluation Committee must be appointed when the estimated value of the contract is equal or above EUR 139,000.00.

Invitation to tender

One of the procurement documents, giving the necessary details with regards the procurement procedure.

Opening Committee

A group of persons drawn up ad hoc to open the sealed applications/tenders received for a procurement procedure. An Opening Committee must be appointed when the estimated value of the contract is equal or above EUR 139,000.00.

Order form

An Order form (OF) is a simplified form of specific contract, used, whatever the value, when only the type of service /supplies, the quantity ordered, and place of delivery need to be indicated.

Prior Information Notice

Advertisement in the OJ announcing the intention of launching a procurement procedure in the near future.

Procurement documents

Set of documents presented by EMSA to economic operators to enable them to submit offers. It consists of an Invitation to tender, Tender Specifications and a model draft contract. The procurement documents are prepared in English.

Request to participate

Request to participate in a procurement procedure is the first step in two-step procedures.

Specific contract

Simplified contracts used for the implementation of framework contracts (FWC). These specify the date and quantity of delivery, as well as other terms not defined at FWC level.

Tender

An offer submitted by an economic operator in a procurement procedure.

Tenderer

An economic operator who has submitted a tender.

Tender Specifications

Document or set of documents giving full details of the conditions, organisation and subject of the procurement procedure (including technical specifications).

European Maritime Safety Agency

Praça Europa 4
1249-206 Lisbon, Portugal
Tel +351 21 1209 200
Fax +351 21 1209 210
emsa.europa.eu

