

Tender specifications

Attached to the Invitation to tender

Invitation to tender N° EMSA/OP/04/2016 for provision of an evaluation on the implementation of the Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency, as amended.

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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 Council of 27 June 2002 establishing a European Maritime Safety Agency, as amended (hereinafter referred to as the Regulation) for the purpose of ensuring a high, uniform and effective level of maritime safety. Further information concerning EMSA can be found at:

www.emsa.europa.eu

Art 22 of the Regulation states:

- '1. At regular intervals and at least every five years, the Administrative Board shall commission an independent external evaluation on the implementation of this Regulation. The Commission shall make available to the Agency any information the latter considers relevant to that evaluation.
2. The evaluation shall assess the impact of this Regulation as well as the utility, relevance, achieved added value and effectiveness of the Agency and its working practices. The evaluation shall take into account the views of stakeholders, at both European and national level. It shall, in particular, address the possible need to modify the Agency's tasks. The Administrative Board shall issue specific terms of reference in agreement with the Commission, following consultations with the parties involved.
3. The Administrative Board shall receive the evaluation and issue recommendations regarding changes to this Regulation, the Agency and its working practices to the Commission. Both the evaluation findings and recommendations shall be forwarded by the Commission to the European Parliament and to the Council and shall be made public. An action plan with a timetable shall be included, if appropriate.'

The purpose of this call for tenders is to select a contractor who will carry out the independent external evaluation in the meaning of article 22 of the Regulation in order for the Agency's Administrative Board to issue recommendations regarding changes to the Regulation. The last evaluation was commissioned by the EMSA Administrative Board in 2007, and its related final report delivered in 2008.

It shall be noted that as a separate exercise, EMSA will follow the requirement for a specific mid-term evaluation of the Agency's anti-pollution measures by the end of 2017, as per Article 7 of Regulation (EU) No 911/2014¹.

Both evaluations are expected to be delivered at the same time and discussed in parallel. The present evaluation will not therefore address in detail tasks carried out by the Agency funded and governed by Regulation (EU) No 911/2014.

The present terms of reference have been prepared by the EMSA Administrative Board in agreement with the Commission.

¹ Regulation (EU) No 911/2014 on multiannual funding for the action of the European Maritime Safety Agency in the field of response to marine pollution caused by ships and oil and gas installations.

2. Objective, scope and description of the contract

2.1 Objectives

The objective of this contract is to deliver an evaluation study to the EMSA Administrative Board in order to allow for the identification of areas for improvements and to provide the EMSA Administrative Board with the necessary input to deliver recommendations to the European Commission regarding changes to the Regulation, the Agency's tasks and its working practices.

2.1.1 Overall objective

The aim of the evaluation study is to examine the impact of the Regulation as well as the utility, relevance, achieved added value and effectiveness of the Agency and its working practices.

The evaluation will examine the impact of the Regulation beyond its stated objectives, addressing a wide range of relevant possible impacts (economic, environmental and social), including an assessment of the administrative and regulatory burden, an assessment of both costs and benefits and the potential for simplification and rationalisation.

The relevance of the Agency will be looked at and in particular to what extent the objectives of the Regulation have been appropriate; whether its objectives (still) correspond to the needs of the EU; and how relevant is the EU intervention to EU citizens.

The evaluation will look at what added value EMSA contributes operating in an EU context. The added value created for the European institutions, the EU Member States, other agencies and Industry at the European, international and national level, as well as for other non-institutional stakeholders, will be tested on the basis of the effectiveness of the Agency – where its action is the only way to get results -, the efficiency of the Agency – where it offers better value for money - and synergy – where EU action is necessary to complement, stimulate and leverage action.

The evaluation shall look at EMSA's working practices, its planning and priority setting, while taking into account the tasks placed upon it and which are foreseen to be placed upon it over the coming years. It will assess the overall efficiency of the Agency by looking at the relationship between the resources used and the changes generated by the Agency's intervention.

The evaluation will examine the effectiveness of the operational and horizontal resources available to EMSA, the effectiveness and appropriateness of structures, the cost effectiveness in relation to the financial resources allocated by the European Union, the basis of financing of the tasks allocated to EMSA, EMSA's priority setting and how this relates to the roles and responsibilities established in the Regulation and other applicable legal provisions.

Any barriers, or other challenges to EMSA's overall ability, including the deployment of potential unexpressed capabilities, should also be pinpointed and recommendations made as to how these may be overcome. The evaluation should take into account the changing emphasis in EU activities within the areas of EMSA's remit and any upcoming EU initiative.

The evaluation should also provide an opportunity to check whether, based upon the Agency's potential, the existing provisions of the Regulation are able to support short, medium and long term needs, in particular with a view to incorporating new tasks in the Regulation.

The evaluation shall assess the strengths and weaknesses of EMSA's multi annual strategic plan (5-year Strategy).

The evaluation shall also assess the level of implementation of the recommendations issued by the Administrative Board following the 2008 evaluation of EMSA.

The framework for the EMSA evaluation should also include the Programming of human and financial resources for decentralised agencies 2014-2020.

2.1.2 Specific objectives

The specific objectives of the evaluation study shall be to:

1. assess the overall impact of the Regulation;
2. identify, test and apply methodologies for evaluating the utility, relevance, achieved added value and effectiveness of the Agency and its working practices with particular emphasis to the activities identified in the 5-year Strategy;
3. assess the overall ability of EMSA to sustain its activities and meet the challenges of the future and in particular if the provisions of the Regulation are able to support short, medium and long term needs;
4. define the barriers and obstacles to optimal effectiveness;
5. identify improvements and actions which may be relevant to improve overall performance, added value and relevance;
6. define any action which may need to be taken to eliminate or reduce challenges, including for the deployment of unexpressed capabilities;
7. if deemed necessary, provide recommendations to contribute to the optimisation of activities and structures in the short, medium and long term and also on how to foster the trust of stakeholders, organizations and the public.

2.2 Scope of the study

2.2.1 The impact of the Regulation

The overall impact of the Regulation shall be assessed against the objectives of the Regulation, as described in Article 1 of the Regulation (maritime safety and security and prevention of and response to pollution), and as appropriate beyond in terms of economic, social and environmental impact as well as in terms of administrative and regulatory burden.

The utility, relevance, achieved added value and effectiveness of the Agency and its working practices shall be assessed both in relation to the implementation of the activities identified in the 5-year Strategy, and their contribution to the achievement of the objectives of the Regulation as well as in relation to the definition of the Agency's objectives and tasks to address certain needs and problems.

2.2.1.1 Achievement of objectives

The contractor shall examine and evaluate the contribution of EMSA to:

- a) the overall level of maritime safety, security and prevention of pollution caused by ships.²
- b) the development and proper application of relevant legal acts of the Union, through cooperation with and technical, operational and scientific assistance to Member States and the Commission for that purpose.³
- c) the overall efficiency of maritime traffic and maritime transport so as to facilitate the establishment of the European Maritime Space without Barriers.

2.2.1.2 Implementation of core and ancillary tasks and activities and contribution to objectives

The utility, relevance, achieved added value and effectiveness of the Agency and its working practices shall be assessed in relation to the implementation of the activities identified in the 5-year Strategy, and their contribution to the achievement of the objectives of the Regulation.

Strategic Theme	Activities	
Standards, rules and implementation <i>Driver: EMSA shall be a leading EU technical partner in cooperation with EU Member States for the development and implementation of EU safety standards and regulations in the maritime sector.</i>	Ship safety	To support the Commission and the Member States in improving ship safety.
	Adding value from visits and inspections	To increase resource effectiveness and efficiency through the development of a “risk-based” approach to inspections.
		To provide the Commission with objective, comparable audit information and generic findings based on analysis of completed inspection cycles and the whole range of related information available as well as with technical recommendations as appropriate.
		To enhance an effective dissemination of relevant Horizontal Analysis results not only to the Commission but also to Member States’ maritime administrations, including sharing best practices.
	Assistance in monitoring ROs	To increase efficiency of the Commission’s assessments of recognised organisations, in particular through a risk-based approach to inspections.
		To develop ideas for more effective sharing of information on inspections.
		To assist the Commission in verifying the correct implementation by the EU recognised organisations of the quality assessment and certification entity (QACE).

² Response to pollution caused by ships and to marine pollution caused by oil and gas installations will be addressed in detail by the mid-term evaluation of the Agency’s anti-pollution measures by end 2017, as per Article 7 of Regulation (EU) No 911/2014.

³ Operational assistance upon request of the affected State(s) in the field of pollution response will be addressed in detail by the mid-term evaluation of the Agency’s anti-pollution measures by end 2017, as per Article 7 of Regulation (EU) No 911/2014.

	Port State Control	To maximise its support role for an efficient and expanded scope of the PSC regime.
	Accident Investigation	To develop practical solutions for providing operational support to Member States – at their request - concerning investigations related to serious and very serious maritime accidents.
		To support the European Commission and EU Member States to enhance maritime safety through the analysis of accident investigation reports and by producing maritime casualty statistics and analysing trends.
Monitoring, surveillance and information sharing <i>Driver: EMSA shall aim to become a major provider of reliable and efficient information services for the benefit of the EU maritime cluster and, where appropriate, for the use of other communities.</i>	EMSA's monitoring systems for the maritime communities	To increase the effectiveness and efficiency of EMSA's integrated maritime information services to its full potential based on existing applications such as SafeSeaNet.
	EMSA's monitoring systems, creating synergies and benefit for other communities	To explore, at reasonable cost, in a sustainable and viable way, new capabilities offered by technology in the field of maritime surveillance for the benefit of the European Commission and the EU Member States with added value for maritime safety and security.
		Work to further develop the EU maritime traffic monitoring and information system.
		Subject to the provision of financial and human resources the Agency shall engage in supporting other communities and enhance its role as central EU data provider of maritime related information as defined by its Founding Regulation.
Environmental challenges and response <i>Driver: EMSA shall aim to become the main EU resource to support Member States' efforts for mitigating shipping-related environmental risks and responding to environmental accidents in the maritime and offshore sector.</i>	Air pollution	To assist the Commission, Member States and the maritime industry, where appropriate, in meeting, implementing and monitoring international and European legislation and initiatives on the reduction of SOx and NOx emissions.
		To assist the Commission, Member States and the industry in the technical development related to alternative fuels for ships.
		To support if necessary the Commission in setting up a Monitoring, Reporting and Verification system for emissions in line with future policy developments in this area.
	Other types of ship source pollution	To contribute to the protection of the marine environment in the EU.
		To assist Member States in the implementation of the new rules in the field of ship related pollution.
	Pollution preparedness and response activities	To maintain pollution preparedness and response capability to assist Member States to effectively respond to marine pollutions from ships.

		Subject to financial and human resources availability the Agency shall extend its scope of activities to include marine pollutions from oil and gas installations.
Information, knowledge and training <i>Driver: EMSA shall aim to become one of the foremost knowledge providers within the maritime cluster.</i>	Technical and operational assistance to EU/EFTA Member States and relevant third countries	To support EU strategies on regional sea basins.
		To become the implementing body of maritime safety related projects for IPA and ENP countries.
		To prepare IPA and ENP countries for association to EMSA's traffic monitoring services and for use of EMSA's pollution response services.
	Process, analyse and distribute statistical information	To become a reliable source of information and statistics for the EU on maritime matters.
	Platform for best practices and training provider	To continue developing its role as forum for discussion of best practices.
		To consolidate its role as training provider including the use of modern techniques.
	EMSA's role in research	To use available technical knowledge to analyse research projects with a maritime safety or environmental protection interest, where appropriate.

2.2.1.3 The cost-effectiveness of the Agency

The contractor shall examine and evaluate whether the services and functions performed by the Agency are cost-effective, compared to previous, existing or potential equivalent services and functions performed at a more subsidiary level (e.g. regional, national or local).

For the purposes of this analysis the contractor will identify a set of key centralised services or functions that is representative of the range of the Agency's activities, as defined in the 5-year Strategy.

The contractor shall examine whether the costs of these services are justified and proportionate to the benefits achieved and what factors influenced the efficiency with which the achievements observed were attained.

2.2.2 The Agency

The evaluation study shall assess the working practices of the Agency and their impact on effectiveness, both administrative and operational. A system for the measurement of maritime safety will have to be defined within the context of the tasks of EMSA in order to assign the contribution that Agency has provided to the global improvement, where applicable. This part of the evaluation will pay specific attention to the context when these working practices have been implemented.

2.2.2.1 The effectiveness of the Agency in particular with regard to:

The contractor shall examine and evaluate:

a) Policy:

- The strategic choices made by the Agency, taking into account the available means and resources;
- The decision to outsource certain services;
- A general assessment of the Agency in terms of whether the correct actions are being taken by EMSA in fulfilling its tasks as defined by the Regulation, and how these tasks are being executed.

b) Stakeholders and related working practices:

- The relations with the Commission, the European Parliament and the European Council;
- The relations with the States represented in the EMSA Administrative Board, including the technical, operational and scientific assistance offered to them;
- The process and consequences of EMSA visits and inspections in the Member States (dialogue, feedback, follow up by the European Commission);
- Working relations with other EU Agencies or bodies in particular on special projects governed by Administrative Arrangements;
- The assistance by the Agency to Member States, the Commission and industry in monitoring international maritime legislation;
- Contacts and working relations with non EU countries that have concluded or are candidates to conclude agreements with the EU and the Agency (IPA and ENP countries);
- Contacts and working relations with third countries, where legal instruments are in place to promote regulatory cooperation;
- The coordination with external parties, and notably with the delegated certification organisations such as Classification Societies and Notified Bodies, involved in the work of the Agency;
- Relations with industry groups who also are contributors to the process of developing and updating international and EU maritime legislation;
- Public relations.

2.3 Expected Methodology and Technical Resources

The bid shall include:

I. Methodology

The tenderer shall define the methodology it would use for carrying out the study, including a proposed calendar for the different phases of the work to be done.

This methodology shall encompass at least:

- A definition of the scope of the evaluation study and problem defining;
- Three phases: Familiarisation, Investigation, Evaluation;
- A definition of the Agency's processes and activities relevant to the scope of the evaluation study.
- A proposed calendar according to which the tenderer commits to carry out the work;

After each phase deliverables shall be provided to the Administrative Board High Level Steering Committee for comments.

II. Technical resources

The tenderer shall accompany the proposed methodology with a technical proposal which should include:

- a description of the means, resources and expertise put at disposal for the study;
- a description of the methods/criteria to be followed during the evaluation study, taking into account relevant tools in the Commission's Better Regulation Toolbox;
- a proposal for key performance indicators, qualified and quantified, for the deliverables.

2.4 Implementation of the study by the contractor

I. The Familiarisation Phase

The Familiarisation Phase shall consist at least of:

- a. A methodology for the Investigation and Evaluation phases - to be delivered at the beginning of July 2016, after the signature of the contract and prior to a kick-off meeting to be held in early July 2016 in Brussels or Lisbon;
- b. A detailed definition of the objectives of the study and relevant indicators/criteria – to be delivered in mid-August 2016;
- c. A stakeholder mapping exercise and initiation of contacts with stakeholders – to be delivered in mid-August.

Deliverables b. and c. will be subject to acceptance by the High Level Steering Committee by the end of August 2016.

It is essential to the success of the study that the views of stakeholders at a European and national level are taken into account as appropriate.

In this respect, a wide involvement of stakeholders in the evaluation is necessary and shall at the least comprise the following parties who would need to be approached to provide feedback on a separate basis by the selected consultant, depending on their relation with the Agency:

First and foremost, the direct stakeholders:

- a. The European Commission, the States represented in the EMSA Board;
- b. The European Parliament and the European Council;
- c. EU agencies/bodies with which EMSA has concluded cooperation agreements;

Secondly, the indirect stakeholders:

- d. EU Recognised organisations; Regional agreements (Bonn, HELCOM, REMPEC etc.); Paris MOU and other MOUs with a working relation with EMSA; MARED; USCG; EQUASIS; ENP countries taking part in the current cooperation projects with EMSA (SAFEMED and TRACECA) a selection of third countries whose METS are audited (STCW), EMSA's contractors and other relevant international institutions/organisations;
- e. Organisations in the maritime sector (NGOs and other) including: IMO, ETF; IALA; ECSA; ITF; Intertanko; Intercargo; ICS; IACS; ESPO; IGP&I (and other insurance), EMEC; the specialised media.

Other stakeholders may emerge from the mapping exercise and in accordance with priorities and methodological considerations.

II. The Investigation Phase

The contractor shall collect data at least through:

- Meetings;
- Interviews and questionnaires to EMSA stakeholders;
- Interviews of EMSA staff;
- Any other source as necessary.

At the end of this phase, by early November 2016, an Investigation Report including preliminary findings will be submitted by the contractor to the Administrative Board's High Level Steering Committee for comments and acceptance.

III. The Evaluation Phase

On the basis of the knowledge acquired in the previous phases, the contractor shall draft the evaluation report's findings from evaluation and propose recommendations as necessary in the light of Article 22.3 of the Regulation.

This report shall be submitted no later than January 2017.

The deliverables to be provided shall contain:

- III.1 The draft evaluation report which shall include at least:
- a. An executive summary;
 - b. A description of methodology and difficulties encountered;
 - c. Benchmarks and criteria applied by the contractor;
 - d. The main results of the surveys and benchmarks, interviews, etc., as relevant;
 - e. The different views of stakeholders and persons which have taken part to the survey and interviews, when relevant
 - f. The main results of the specific evaluation;
 - g. The evolution of success/ risk factors as identified;
 - h. The conclusions on the overall system;
 - i. The findings from evaluation
 - j. Proposals of recommendations (including timetable for implementation where applicable)
- III.2 A meeting with the Administrative Board High Level Steering Committee to validate to evaluation before presentation to the Administrative Board either in Lisbon or Brussels.
- III.3 A meeting presenting the results of the evaluation to the EMSA Administrative Board in Lisbon (March 2017).
- III.4 A follow up meeting if necessary, and as defined by the EMSA Administrative Board in Lisbon or Brussels.

2.5 Material to be provided to the successful contractor

The Commission and EMSA will make available to the successful contractor all the information relevant for the purpose of this evaluation.

- Last EMSA evaluation report
- 5-year Strategy;
- Strategic survey;
- EMSA Founding Regulation;
- EMSA Administrative Board decisions;
- EMSA Executive Director's decisions;
- EMSA IAS reports;
- Annual work programmes, annual activity reports and other internal reports;
- Other relevant legislation;
- Programming of human and financial resources for decentralised agencies 2014-2020;
- Court of Auditors' reports.
- Commission proposal COM (2015) 667

2.6 The role of the Administrative Board High Level Steering Committee

The Administrative Board High Level Steering Committee was appointed by the Administrative Board during its meeting of November 2015. It is composed of representatives of the Administrative Board. The Agency provides secretarial support, without voting rights in the High Level Steering Committee.

The High Level Steering Committee is to monitor and supervise the work and the progress of the evaluation. Its role is to:

- Draft current terms of reference for the evaluation for the Administrative Board endorsement;
- Give feedback and guidance to the contractor after each phase;
- Report to and consult with the Administrative Board.

3. Contract management responsible body

The European Maritime Safety Agency – Bureau of the Executive Director on behalf of the EMSA Administrative Board - will be responsible for managing the contract.

4. Project Planning

Early June 2016	Signature of contract
Early July 2016	Draft Methodology for the Investigation and Evaluation; Kick-off meeting contractor/High Level Steering Committee
Early July – Mid August 2016	Definition of the objectives of the study and relevant indicators/criteria and of the stakeholder mapping to be delivered to and accepted by the High Level Steering Committee
September 1 to end October 2016	Investigation phase
Early November 2016	Investigation Report including preliminary findings for the High Level Steering Committee
November 2016 (46th AB meeting)	Investigation Report including preliminary findings and state of play presented to the Administrative Board by the High Level Steering Committee
January 2017	Draft Evaluation Report submitted to the High Level Steering Committee
February 2017	Final Evaluation Report, meeting with the High Level Steering Committee
March 2017 (47th AB meeting)	Approval of the final Evaluation Report by the EMSA Administrative Board

June 2017 (48 th AB meeting)	Recommendations issued and approved by the Administrative Board in June 2017
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5. Timetable

The estimated date for signature of the contract is early June 2016.

6. Estimated Value of the Contract

The maximum budget available for this contract is Euro 255,000.00 excluding VAT.

7. Terms of payment

Payments shall be issued in accordance with the provisions of the draft service contract available on the Procurement Section under the call to tender EMSA/OP/04/2016 on the EMSA website at the following address: www.emsa.europa.eu

8. Terms of contract

In drawing up a bid, the tenderer should 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. Sub-contracting

If the tenderer intends to either subcontract part of the work or realise the work in co-operation with other partners he shall indicate in his offer which part will be subcontracted, as well as the name and qualifications of the subcontractor or partner. It should be noted that the overall responsibility for the work remains with the tenderer.

The tenderer must provide required evidence for the exclusion and selection criteria on its own behalf and, when applicable, on behalf of its subcontractors. The evidence for the selection criteria on behalf of subcontractors must be provided where the tenderer relies on the capacities of subcontractors to fulfil selection criteria⁴. 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.

11. Requirements as to the tender

⁴ To rely on the capacities of a subcontractor means that the subcontractor will perform the works or services for which these capacities are required.

Bids can be submitted in any of the official languages of the EU. However, as the main working language of the Agency is English, bids should preferably be submitted in English and should in particular include an English version of the documents requested under points 14.5 and 15 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.⁵

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 (Joint Offers) they shall indicate their intention in their offer by completing the form "Information regarding joint offers and subcontracting".

The tender must be presented as follows and must include:

- a) **A signed letter** indicating the name and position of the person authorised to sign the contract and the bank account to which payments are to be made.
- b) **The Financial Form** completed, signed and stamped. This document is available on the Procurement Section (Financial Form) of EMSA's website (www.emsa.europa.eu)
- c) **The Legal Entity Form** completed, signed and stamped along with the requested accompanying documentation. This document is available on the Procurement Section (Legal Entity Form) of EMSA's website (www.emsa.europa.eu)

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

Part A: All the information and documents required by the contracting authority for the appraisal of tenders on the basis of the points **10, 13, 14.2 and 14.6** of these specifications (part of the exclusion criteria).

Part B: All the information and documents required by the contracting authority for the appraisal of tenders on the basis of the **Economic and Financial capacity** (part of the Selection criteria) set out under point **14.4** of these specifications.

Part C: All the information and documents required by the contracting authority for the appraisal of tenders on the basis of the **Technical and professional capacity** (part of the Selection Criteria) set out under point **14.5** of these specifications.

Part D: 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 point **15** of these specifications.

⁵ 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).

Part E: Setting out **prices** in accordance with **point 12** of these specifications.

12. Price

- Prices for provision of the evaluation study on the implementation of article 22 of Regulation 1406/2002, evaluation of the European Maritime Safety Agency shall include all costs.
- Prices must be quoted in Euro.
- Prices must be fixed amounts, non-revisable and remain valid for the duration of the contract.
- 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 bid. The amount of VAT must be shown separately.

13. Joint Offer

Groupings, irrespective of their legal form, may submit bids. Tenderers may, after forming a grouping, submit a joint bid on condition that it complies with the rules of competition. Such groupings (or consortia) must specify the company or person heading the project and must also submit a copy of the document authorising this company or person to submit a bid.

Each member of the consortium must provide the required evidence for the exclusion and selection criteria. The exclusion criteria will be assessed in relation to each economic operator individually. Concerning the selection criteria the evidence provided by each member of the consortium will be checked to ensure that the consortium as a whole fulfils the criteria.

If awarded, the contract will be signed by the person authorised by all members of the consortium. Tenders from consortiums of firms or groups of service providers, contractors or suppliers must specify the role, qualifications and experience of each member or group.

14. Information concerning the personal situation of the service provider and information and formalities necessary for the evaluation of the minimum economic, financial and technical capacity required

14.1 Legal position – means of proof required

When submitting their bid, tenderers are requested to complete and enclose the **Legal Entity Form** and requested accompanying documentation, available on the Procurement Section (Legal Entity Form) of EMSA's website (www.emsa.europa.eu).

14.2 Grounds for exclusion - exclusion criteria

To be eligible to participate in this contract award procedure, a tenderer must not be in any of the following exclusion situations:

- a) it is bankrupt, subject to insolvency or winding up procedures, its assets are being administered by a liquidator or by a court, it is in an arrangement with creditors its business activities are suspended or

it is in any analogous situation arising from a similar procedure provided for under national legislation or regulations;

- b) it is subject to a final judgement or a final administrative decision establishing that it is in breach of its obligations relating to the payment of taxes or social security contributions in accordance with the law of the country in which it is established, with those of the country in which the contracting authority is located or those of the country of the performance of the contract ;
- c) it is subject to a final judgement or a final administrative decision establishing that it is guilty of grave professional misconduct by having violated applicable laws or regulations or ethical standards of the profession to which the person belongs, or by having engaged in any wrongful conduct which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence, including, in particular, any of the following:
 - i. fraudulently or negligently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of selection criteria or in the performance of a contract;
 - ii. entering into agreement with other persons with the aim of distorting competition;
 - iii. violating intellectual property rights;
 - iv. attempting to influence the decision-making process of the contracting authority during the award procedure;
 - v. attempting to obtain confidential information that may confer upon it undue advantages in the award procedure ;
- d) it is subject to a final judgement establishing that the person is guilty of any of the following:
 - i. fraud
 - ii. corruption
 - iii. participation in a criminal organisation
 - iv. money laundering or terrorist financing
 - v. terrorist-related offences or offences linked to terrorist activities
 - vi. child labour or other forms of trafficking in human beings as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council
- e) the person has shown significant deficiencies in complying with the main obligations in the performance of a contract financed by the Union's budget, which has led to its early termination or to the application of liquidated damages or other contractual penalties, or which has been discovered following checks, audits or investigations by an Authorising Officer, OLAF or the Court of Auditors;
- f) it is subject to a final judgement or a final administrative decision establishing that the person has committed an irregularity within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95
- g) for the situations of grave professional misconduct, fraud, corruption, other criminal offences, significant deficiencies in the performance of the contract or irregularity, the applicant is subject to:
 - i. facts established in the context of audits or investigations carried out by the Court of Auditors, OLAF or internal audit, or any other check, audit or control performed under the responsibility of an authorising officer of an EU institution, of a European office or of an EU agency or body;
 - ii. non-final administrative decisions which may include disciplinary measures taken by the competent supervisory body responsible for the verification of the application of standards of professional ethics;
 - iii. decisions of the ECB, the EIB, the European Investment Fund or international organisations;

- iv. decisions of the Commission relating to the infringement of the Union's competition rules or of a national competent authority relating to the infringement of Union or national competition law; or
- v. decisions of exclusion by an authorising officer of an EU institution, of a European office or of an EU agency or body.

14.3 Legal and regulatory capacity – Selection criteria

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

14.3.1 Economic and financial capacity – Selection criteria

Requirements:

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

Evidence:

- a) Financial statements or their extracts for the last three years for which accounts have been closed.
- b) Statement of the overall turnover and, where appropriate, turnover relating to the relevant services for the last three financial years available.

Tenderers are exempt from submitting the documentary evidence if such evidence has already been completed and sent to EMSA for the purpose of another procurement procedure and still complies with the requirements. In this case the tenderer should simply indicate on the cover letter the procurement procedure where the evidence has been provided.

If, for some exceptional reason which EMSA considers justified, a tenderer is unable to provide one or other of the above documents, he may prove its economic and financial capacity by any other document which EMSA considers appropriate. In any case, EMSA must at least be notified of the exceptional reason and its justification in the tender. EMSA reserves the right to request at any moment during the procedure any other document enabling it to verify the tenderer's economic and financial capacity.

14.4 Technical and professional capacity – Selection criteria

Requirements:

The tenderer must have the following technical capacity to perform the contract:

- Extensive and demonstrable experience of the contractor in the evaluation of similar organisations
- Suitability of the organisation and staffing structure available for the activities covered by the contract
- Experience with the maritime sector, and in particular EU maritime safety legislation and knowledge of most important stakeholders and other relevant actors
- Proven experience in evaluation projects, for public bodies involved in regulatory functions for industry, including the ability to organise and execute benchmark studies in relevant technical policy domains

- Knowledge of and experience with the European Institution's regulatory and institutional framework, notably pertaining to maritime safety regulation and administrative matters would be advantageous
- Quality assurance methodology
- Qualifications and experience of the team members in the technical field concerned
- Linguistic knowledge, in particular demonstrating that the tenderer can guarantee a high standard of spoken and written English (which will be the main working language), and has the linguistic resources to carry out the project in all the locations concerned
- The service provider's independence and impartiality, with regards to the performance and the outcome of the study

Evidence:

- A list of major relevant projects and publications related to the subject of this assignment carried out in the course of the past 5 years by the legal entity submitting the offer;
- Information about organisational structure;
- Disclose a sample of best in class efficiency assessment / costs analysis assessment / independence assessment;
- Detailed curriculum vitae and past assignment of all team members proposed for the assignment, taking account of the profile requirements of the technical specifications.

14.5 Evidence to be provided by the tenderers

For this purpose the Declaration on Honour available on the Procurement Section of EMSA's website (www.emsa.europa.eu) shall be completed and signed.

Please note that **upon request** and within the time limit set by EMSA the tenderer shall provide information on the persons that are members of the administrative, management or supervisory body, as well as the following evidence concerning the tenderer or the natural or legal persons which assume unlimited liability for the debt of the tenderer:

For exclusion situations described in (a), (c), (d) or (f) of point 14.2 above, production of a recent extract from the judicial record is required or, failing that, an equivalent document recently issued by a judicial or administrative authority in the country of establishment of the tenderer showing that those requirements are satisfied.

For the exclusion situation described in (a) or (b) of point 14.2 above, production of recent certificates issued by the competent authorities of the State concerned is required. These documents must provide evidence covering all taxes and social security contributions for which the tenderer is liable, including for example, VAT, income tax (natural persons only), company tax (legal persons only) and social security contributions. Where any document described above is not issued in the country concerned, it may be replaced by a sworn statement made before a judicial authority or notary or, failing that, a solemn statement made before an administrative authority or a qualified professional body in its country of establishment.

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

If the tenderer is a legal person, information on the natural persons with power of representation, decision making or control over the legal person shall be provided only upon request by the contracting authority.

When the tenderer to be awarded the contract has already submitted relevant evidence to EMSA, it remains valid for 1 year from its date of submission. In such a case, the reference of the relevant project(s) should be mentioned and the tenderer is required to submit a statement confirming that its situation has not changed.⁴

15. Award criteria

Only the tenders meeting the requirements of the exclusion and selection criteria will be evaluated in terms of quality and price.

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

1. **Proposed methodology:** The bid shall include the proposed methodology, the tenderer's overall approach to the execution of the evaluation; clarity of the project plan; indication of specific methods proposed for data collection, verification of the reliability of data and analysis, the time schedule envisaged for completion of the study 1 ($W_1 = 25\%$)
2. **Access to relevant data:** The bid shall indicate methodology of obtaining and assessing data necessary for the successful completion of this study ($W_2 = 10\%$)
3. **Quality of the proposed team:** The bid demonstrated organisation and structure of the proposed team; to which extend the organizational set-up is suitable for the implementation of the assignment. ($W_3 = 15\%$)

and the price criterion and associated weighting:

4. Price of the bid ($W_{Price} = 50\%$).

For all bids 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

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

Only bids that have reached a minimum of 60 % for Q_1 , a minimum of 60 % for Q_2 , and minimum of 60 % for Q_3 , will be taken into consideration when calculating the score for quality SQ , score for price SP and score S .

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

16. 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 where this entails a distortion of competition that cannot be remedied otherwise.

17. Intellectual Property Right (IPR)

Please consult the contract for IPR related clauses.

If the results are not fully created for the purpose of the contract this should be clearly pointed out by the tenderer in the tender. Information should be provided about the scope of pre-existing rights, their source and when and how the rights to these rights have been or will be acquired.

In the tender all quotations or information originating from other sources and to which third parties may claim rights have to be clearly marked (source publication including date and place, creator, number, full title etc.) in a way allowing easy identification.

18. Special negotiated procedure under Article 134(1)(f)

EMSA may at a later stage exercise the option to increase the estimated value of the contract via negotiated procedure with the successful tenderer in accordance with Article 134(1)(f) of the Rules of Application to the Financial Regulation.