

Annex XI of the VAC

Agreement for mobilisation of Equipment and/or Dispersants only

Procurement procedure: EMSA/CPNEG/1/2018

Title: Service Contracts for Stand-by Oil Spill Recovery Vessel(s): East Mediterranean Sea

Phase II – Invitation to Tender

PART I

1. DEFINITIONS

1. **“Contractor”** means the party stated in Box 1 of the Form;
2. **“Day(s)”** means Calendar day(s) of 24 hours;
3. **“Dispersants”** means approved oil dispersants¹ with the characteristics listed in Appendix B, in the quantity requested by the Requesting Party and as indicated in Box 5 of the Form;
4. **“EMSA”** means the European Maritime Safety Agency. EMSA is the owner of the equipment and of the dispersants. EMSA has awarded the Contractor a contract under which the latter remains in possession of the equipment and dispersants for the contract duration. The Contractor is responsible for the equipment maintenance and equipment and dispersants storage;
5. **“Equipment”** means the specialised equipment stated in Box 4 of the Form with the characteristics listed in Appendix A;
6. **“Form”** means Part II of this Agreement;
7. **“Notice of mobilisation”** means the Notice sent by the Contractor to the Requesting Party confirming that the equipment and/or the dispersants are ready for delivery at the place of delivery;
8. **“Notice of demobilisation”** means the Notice sent by the Contractor to the Requesting Party indicating the date and time of arrival of the equipment and/or unused dispersants in its original IBC(s) back at the place of redelivery;
9. **“Notice of ending operational activities”** means the Notice sent by the Requesting Party or its Nominee to the Contractor indicating the date and time as from which the equipment shall cease all activities. The equipment shall then be redelivered clean and in good working condition at the place of redelivery. If in accordance with Box 3, the parties have agreed that this agreement is for the

¹ Normally type 3 dispersant.

provision of dispersants only or for the provision of equipment and dispersants, the Notice of ending of operational activities shall indicate whether any unused dispersants in its original IBC(s) will be redelivered or not.

10. **“Requesting Party”** means the party stated in Box 2 of the Form;
11. **“Place of delivery/redelivery”** means the place as stated in Box 6 of the Form, usually the Contractor’s warehouse, where the equipment and/or dispersants are stored or any other place as may be mutually agreed and from where the equipment and/or dispersants should be mobilised and demobilised after ending of operational activities;
12. **Time** means time UTC. Any reference to time in this Agreement should be understood as UTC.

2. PURPOSE

The Requesting Party and the Contractor shall reach an agreement through signing the Form.

By this agreement, the Requesting Party requests the Contractor to provide equipment only or equipment and dispersants or dispersants only as declared by the Requesting Party in Box 3 of the Form.

Neither party shall assign or transfer this Agreement or any part of it without the written approval of the other party.

The Contractor warrants the equipment cleanliness and working condition and the equipment and/or dispersants quality but any other warranties as to fitness for purpose are expressly excluded.

For the purposes of the delivery and redelivery, both parties agree to use the Handover/redelivery statement (Appendix C).

Upon delivery, the Requesting Party shall inspect the equipment and note its condition through filling in the Handover/redelivery statement. The Requesting Party shall note any defect in equipment upon delivery, failing which the Requesting Party shall be deemed to have accepted the equipment in working condition.

The Handover/redelivery statement as completed by the contracting parties upon delivery will be used for demobilisation upon redelivery.

3. ENTRY INTO FORCE AND DURATION

- a. This agreement shall enter into force on the date on which it is signed by the last party as indicated in the Form.
- b. If in accordance with Box 3, the parties have agreed that this agreement is for the provision of equipment only or for the provision of equipment and dispersants or where the Requesting Party has declared in the Notice of Ending operational activities that unused dispersants in its original IBC(s) will be redelivered, this agreement lasts from its entry into force until the date the Requesting Party acknowledges receipt of the Notice of Demobilisation as sent by the Contractor.
- c. If in accordance with Box 3, the parties have agreed that this agreement is for the provision of dispersants only and the Requesting Party declares in the Notice of ending operational activities that no unused dispersants in its original IBC(s) will be redelivered, this agreement lasts from its entry into force until the date the Contractor acknowledges receipt of the Notice of ending operational activities as sent by the Requesting Party.

4. THE CONTRACTOR

For this purpose, the Contractor is responsible to:

- a. Let the equipment and/or dispersants available at the place of delivery/redelivery to the Requesting Party. The equipment and dispersants shall be ready for transportation;
- b. Provide for suitable loading and unloading capacities and operating staff including supervisor in order to ensure that the loading/unloading operations are completed safely and promptly;
- c. Co-operate with the Requesting Party in obtaining authorisations, permits, clearances, licences required under the national laws and regulations in force at the place where the equipment and/or dispersants will be used;
- d. Send promptly written Notices of mobilisation and demobilisation to the Requesting Party as per the contact details set out in Box 2;
- e. Acknowledge receipt of the Notice of ending operational activities sent by the Requesting Party.

5. THE REQUESTING PARTY

The Requesting Party shall:

- a. Take delivery of the equipment and/or dispersants at the place of delivery;
- b. Arrange for transportation of the equipment and/or dispersants from the place of delivery to the incident site and back to the place of redelivery. For insurance purposes during transport, the dispersants value is stated in Box 5 and the equipment value is stated in Box 4;
- c. Obtain all authorisations, permits, clearances, licences required under the national laws and regulations in force at the place where the equipment and/or dispersants will be used and take care of any customs formalities, permits or others matters in connection with the operation of the equipment;
- d. Ensure equipment protection and preservation as from date and time of delivery until date and time of redelivery as stated in the handover/redelivery statement;
- e. Not part possession of the equipment without the Contractor's prior written approval;
- f. Ensure equipment routine maintenance and running repair;
- g. Provide and bear the costs of all fuel and lubricating oil consumed by the equipment as from its delivery until redelivery to the Contractor;
- h. Keep the Contractor informed of the equipment location and report any loss, damage or malfunctioning;
- i. Ensure that all risk insurance cover is provided for the equipment against any loss or damage, theft or liability from the time the equipment is delivered by the Contractor until redelivery of the equipment to the Contractor. For insurance purposes the equipment value is stated in Box 4;
- j. Ensure that the equipment is deployed by trained personnel equipped with personal protective equipment and in accordance with any instructions given by the manufacturer and/or the Contractor;
- k. At all times, have the ultimate decision as to the use and safety of the equipment and/or dispersants. The Requesting Party remains responsible for control and deployment of the equipment and/or dispersants at the location of the clean-up operations;
- l. Send written Notice of ending operational activities to the Contractor as per the contact details set out in Box 1.
- m. Redeliver promptly, the equipment clean in the same good condition, except normal wear and tear, and where applicable any unused dispersants in its original IBC(s). Following receipt of the Notice of ending operational activities by the Contractor, the contracting parties shall mutually agree the exact date and time for the redelivery. With respect to the quality of cleaning, equipment should as a minimum be

cleaned to a level of cleanliness that would prevent contamination in future operations including drills. The level of effort to clean the equipment should take account of its state at the time of handover as noted in the Handover/redelivery statement;

- n. Acknowledge receipt of the Notice of Demobilisation sent by the Contractor.

6. NO CHARGES

All costs related to the delivery of the equipment and/or dispersants and to the redelivery of the equipment and/or any unused dispersants in its IBCs including those costs related to the loading and unloading capacities, but excluding any transport costs, shall be borne by the Contractor.

7. THE EQUIPMENT

- a) As from delivery until redelivery, the Requesting Party remains responsible for the reasonable and safe use of the equipment and its deployment and/or the dispersant application operations. All losses or damages sustained by the equipment from the time of delivery until redelivery will be for the sole account of the Requesting Party. If the equipment is not redelivered by the Requesting Party in good condition, except normal wear and tear, the Requesting Party shall, at its own expenses, clean, replace or reinstate the equipment to its original condition, except normal wear and tear. The Requesting Party shall however have the option of paying the equipment cleaning, reinstatement costs or if the equipment or any part of it cannot be reinstated the value of the equipment or parts replacement. The equipment replacement value shall be the value of the most similar new equipment item (new for old at manufacturer's recommended retail price on the day of entry into force of this Agreement) to be communicated by the Contractor to the Requesting Party.
- b) The Requesting Party warrants that the dispersants and the equipment from the date of delivery until the date of redelivery will be free of any lien or encumbrance whatsoever and that no third party has or will obtain any interests or rights in relation to the equipment and dispersants.
- c) The Requesting Party shall not modify, alter or repair the equipment without the Contractor's prior written consent.

8. LIABILITIES

- a) The Requesting Party:

Notwithstanding anything else contained in this Agreement excepting clause 7 (The Equipment) and clause 9 (Limitations), the Requesting Party shall not be responsible for loss or damage to any property of the Contractor or of its contractors or subcontractors or for personal injury or death of any employee of the Contractor or of its contractors or subcontractors arising out or in any way connected with the performance or non-performance of this Agreement whatsoever and in any circumstances, even if such loss, damage or personal injury or death is caused wholly or partially by the act, neglect or default of the Requesting Party.

- b) The Contractor:

Notwithstanding anything else contained in this agreement excepting sub clause 4 (b) regarding responsibility for loading and unloading operations and clause 9 (Limitations), the Contractor shall not be responsible for loss or damage to any property of the Requesting Party whether owned or hired or for personal injury or death of any employee of the Requesting Party arising out or in any way connected with the performance or non-performance of this Agreement whatsoever and in any

circumstances, even if such loss, damage or personal injury or death is caused wholly or partially by the act, neglect or default of the Contractor.

9. LIMITATIONS

Nothing contained in this Agreement shall be construed or held to deprive the Contractor or the Requesting Party, as against any person or party, including as against each other, of any right to claim limitation of liability provided by any applicable law, statute or convention, save that nothing in this Agreement shall create any right to limit liability. Where the Contractor or the Requesting Party may seek an indemnity under the provisions of this Contract or against each other in respect of a claim brought by a third party, the Contractor or the Requesting Party shall seek to limit their liability against such third party.

10. APPLICABLE LAW AND SETTLEMENT OF DISPUTES

This Agreement shall be governed by the national law of the Requesting Party and any dispute arising out of this Agreement shall be referred to a court of the Requesting Party, indicated in Box 7.

PART II

1. Contractor	2. Requesting Party
Name:	Name:
Full Address:	Full Address:
Tel.:	Tel.:
Fax:	Fax:
E-mail:	E-mail:

3. Scope	
This is an agreement for:	
<input type="checkbox"/>	Equipment only
<input type="checkbox"/>	Equipment and Dispersants
<input type="checkbox"/>	Dispersants only

4. Equipment (characteristics in Appendix A)		5. Dispersants (characteristics in Appendix B)	
Equipment type		Quantity (max. available 200 tons)	
Insurance value (EUR)		Insurance value (EUR)	

6. Place of delivery/redelivery	7. Court for disputes

This Agreement for mobilisation of Equipment and/or Dispersants only consists of the terms and conditions contained in Part I, Part II, appendices A, B and C. If there is any conflict between different provisions in this Agreement, the provisions set out in Part I take precedence over those of Part II and the appendices. The provisions set out in Part II take precedence over those in the appendices.

Signature (Contractor)	Signature (Requesting Party)
Place, Date & Time (UTC)	Place, Date & Time (UTC)

APPENDIX A - EQUIPMENT CHARACTERISTICS

APPENDIX B – DISPERSANTS CHARACTERISTICS

APPENDIX C - HANDOVER – REDELIVERY STATEMENT

	Equipment / Dispersants ² delivery	Equipment / Dispersants redelivery
From:		
To:		

Place of Delivery:		Place of Redelivery:	
Date of Delivery		Date of Redelivery:	

² Delete as appropriate

N°	Category	Item	Description	ID Code	Condition Good/Average/Poor at receipt	Condition Good/Average/Poor at return	Comments

Comments on the condition and completeness of the equipment / dispersants ³
Contractor: Name: Date: Signature:
Requesting Party: Name: Date: Signature:

Delivery	Redelivery

³ Delete as appropriate