

Annex XI of the VAC

Agreement for mobilisation of Dispersants only

Procurement procedure: EMSA/CPNEG/1/2019

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

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 A, in the quantity requested by the Requesting Party as indicated in Box 3 of the Form;
4. **“EMSA”** means the European Maritime Safety Agency. EMSA is the owner of the dispersants. EMSA has awarded the Contractor a contract under which the latter remains in possession of the dispersants for the contract duration and ensures the dispersants availability for mobilisation as part of oil pollution response operations. The Contractor is responsible for the storage of the dispersants until the dispersants are requested for oil pollution response operations under the supervision of an EU Member State, Norway or Iceland. EMSA has an interest in the dispersants covered by this agreement and has approved its content;
5. **“Form”** means Part II of this Agreement;
6. **“Notice of mobilisation”** means the Notice sent by the Contractor to the Requesting Party confirming that the dispersants are ready for delivery at the place of delivery;
7. **“Notice of demobilisation”** means the Notice sent by the Contractor to the Requesting Party indicating the date and time of arrival of the unused dispersants in its original IBC(s) back at the place of redelivery;
8. **“Notice of ending operational activities”** means the Notice sent by the Requesting Party or its Nominee to the Contractor after completion of all the oil pollution response operations which justified the mobilisation of dispersants under this agreement and indicating whether any unused dispersants in its original IBC(s) will be redelivered or not;

¹ Normally type 3 dispersant.

9. **“Requesting Party”** means the party stated in Box 2 of the Form;
10. **“Place of delivery/redelivery”** means the place as stated in Box 4 of the Form, usually the Contractor’s warehouse, where the dispersants are stored, or any other place as may be mutually agreed and from where the dispersants should be mobilised and demobilised after ending of operational activities;
11. **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 dispersants in the quantity indicated by the Requesting Party in Box 3 of the Form.

The Contractor warrants the 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 B).

Upon delivery, the Requesting Party shall inspect the dispersants in their IBCs and note their condition through filling in the Handover/redelivery statement. The Requesting Party shall note any defect in the dispersants in their IBCs upon delivery, failing which the Requesting Party shall be deemed to have accepted them in good condition.

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) Where the Requesting Party has declared in the Notice of Ending operational activities that unused dispersants in their 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) Where the Requesting Party declares in the Notice of ending operational activities that no unused dispersants in their 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 dispersants available at the place of delivery/redelivery to the Requesting Party. The 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 and 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 dispersants will be sprayed;
- 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 possession of the dispersants at the place of delivery/redelivery;
- b) Arrange for transportation of the dispersants from the place of delivery/redelivery to the incident site and back to the place of delivery/redelivery where unused dispersants in their original IBCs are to be redelivered;
- c) Obtain all authorisations, permits, clearances, licences required under the national laws and regulations in force at the place where the dispersants will be sprayed;
- d) Send written Notice of ending operational activities to the Contractor as per the contact details set out in Box 1;
- e) Redeliver promptly, where applicable, any unused dispersants in their original IBCs. 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;
- f) Acknowledge receipt of the Notice of Demobilisation sent by the Contractor;
- g) Dispose of empty IBCs.

6. NO CHARGES

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

7. DISPERSANTS

- a) As from delivery until redelivery, the Requesting Party remains responsible for the reasonable and safe use of the dispersants and the dispersant application operations.
- b) The risks related to the dispersants are transferred to the Requesting Party as from delivery until redelivery to the Contractor. Where the dispersants are lost while under the care of the Requesting Party, excluding when consumed as part of the spraying activities during the oil pollution response operations, the Requesting Party shall indemnify EMSA up to the maximum aggregate total value of the dispersants as stated in Box 3.3. of the Form. Both contracting parties hereby irrevocably agree that the indemnity rights under this clause are for the benefit of EMSA as owner of the dispersants.
- c) The Requesting Party warrants that the dispersants 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 dispersants.

8. LIABILITIES

- a) EMSA or the Contractor shall have no liability to the Requesting Party for any loss or damage caused to any person, property or the environment arising out or in any way connected with this agreement, unless caused by the gross negligence or wilful misconduct of EMSA or of the Contractor.
- b) Unless wilful misconduct or gross negligence on the part of the Contractor or of EMSA, the Requesting Party shall be liable for and agree to indemnify, defend and hold harmless the Contractor and EMSA against all claims, costs, expenses, actions, proceedings, suits, demands and liabilities whatsoever arising out or in any way connected with this agreement

9. COMPENSATION FOR OIL POLLUTION DAMAGE

In case the Requesting Party seeks to recover the costs incurred in relation to this Contract from the entity liable under International Conventions and/or national regulations for pollution damage resulting from marine oil spills, the Requesting Party shall include EMSA's costs related to establishing the mobilisation and demobilisation services and purchasing the dispersants in its claim and, if successful, reimburse EMSA. For this purpose, the Requesting Party, EMSA and the Contractor shall co-operate and provide each other any documentation, explanation and information necessary in this regard.

10. INSURANCE

- a) To cover its liabilities regarding the dispersants, the Requesting Party may under clause 7 by taking out an insurance to cover risks of damage to or loss of the dispersants during transport, storage or handling, excluding when sprayed during the oil pollution response operations.
- b) For insurance purposes, the dispersants value per IBC is stated in Box 3.2 and the total value of the dispersants delivered to the Requesting Party is stated in Box 3.3. Lower limits cannot be opposed to EMSA.
- c) The insurance shall be primary and non-contributory.
- d) Deductibles shall be borne by the Requesting Party.
- e) Exclusions to the insurance cover cannot be opposed to EMSA.
- f) Where permissible under the terms of the Requesting Party's insurance policy, the Requesting Party shall require the insurer to indemnify EMSA directly for lost or damaged dispersants as per the limits set under clause 7 (b) above, following which the Requesting Party's obligations for the dispersants under clause 7 (b) shall cease together with the payment of the indemnity.

11. 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 5.

PART II – Agreement for mobilisation of dispersants Form

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

3. Dispersants	4. Place of delivery/redelivery
3.1. Quantity (number of IBCs of 1 m ³ each):	
3.2. Value of the dispersants for insurance purposes per IBC (EUR):	5. Court of disputes
3.3. Total value of the dispersants for insurance purposes (EUR):	

This Agreement for mobilisation of dispersants consists of the terms and conditions contained in Part I, Part II, appendices A and B. 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: DISPERSANTS CHARACTERISTICS

APPENDIX B - HANDOVER – REDELIVERY STATEMENT

	Dispersants ² delivery	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	Comments

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

Delivery	Redelivery