

Annex IX of the VAC

Pre-financing Guarantee Template

Procurement procedure: EMSA/CPNEG/1/2020

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

Phase II – Invitation to Tender

LETTER FOR PRE-FINANCING FIRST DEMAND GUARANTEE

Bank (Letterhead)

[Place/Date]

European Maritime Safety Agency

represented by Maja Markovčić Kostelac, Executive Director

Praça Europa 4

1249-206 Lisbon

Portugal

Reference: [Contract No. and exact title]

ARTICLE 1 – DECLARATION ON GUARANTEE, AMOUNT AND PURPOSE

1. The European Maritime Safety Agency (hereinafter referred to as 'EMSA') has on [date] concluded a Service Contract for Stand-by Oil Spill Recovery Services (Contract Number [tbc] (hereinafter referred to as "the contract")) with the company [tbc], statutory registration n°[tbc] (hereinafter referred to as 'the contractor').
2. Under the terms of the contract, the contractor will provide stand-by oil spill recovery services. For this purpose the contractor will pre-fit the contracted vessel(s) and purchase, transport, overhaul and/or service the oil pollution response equipment and dispersants. The contractor is entitled to receive a pre-financing of 100% of the costs to purchase, transport, overhaul and/or service the oil pollution response equipment and dispersants (max. EUR [tbc in figures] [tbc in words: ... EUR]) and 80% of the costs of the pre-fitting works (max EUR [tbc in figures] [tbc in words: ... EUR]) under the terms of Article VI.2 of the contract under the condition that a duly constituted guarantee from a bank is provided covering the amount of the pre-financing.
3. We, the undersigned, [Full details of bank, incl. registration and representatives] (hereinafter referred to as 'the guarantor') hereby confirm that we give to EMSA an unconditional, irrevocable and independent first-demand guarantee consisting in the undertaking to pay to EMSA, upon simple demand for guarantee of the pre-financing, a sum equivalent to the amount of:

[EUR [tbc in figures] (in words: ... EUR)].

ARTICLE 2 – EXECUTION OF GUARANTEE

Payment shall be made without objection or legal proceedings of any kind, upon receipt of EMSA's first written claim (sent by registered letter with confirmation of receipt) stating that the Contractor has not repaid the pre-financing on request or that the Contract has been terminated. The guarantor shall not delay the payment, nor shall the guarantor oppose it for any reason whatsoever. The guarantor shall inform EMSA in writing as soon as payment has been made.

ARTICLE 3 – OBLIGATIONS OF THE GUARANTOR

1. The guarantor waives the right to require exhaustion of remedies against the contractor, any right to withhold performance, any right of retention, any right of avoidance, any right to offset, and the right to assert any other claims which the contractor may have against EMSA under the contract or in connection with it or on any other grounds. The guarantor accepts notably that no amendment to the terms of the Contract can release it from its obligation under this guarantee. The guarantor waives the right to be informed of any change, addition or amendment of the Contract.

2. The obligations of the guarantor under this guarantee shall not be affected by any arrangements or agreements made by EMSA with the contractor which may concern his obligations under the contract.
3. The guarantor undertakes to immediately inform EMSA in writing by registered letter or by courier with acknowledgement of receipt in the event of a change of its legal status, ownership or address. Communications shall be sent to the following address:

European Maritime Safety Agency (EMSA)
Executive Director
Praca Europa 4
1249-206 Lisbon
Portugal

ARTICLE 4 – DATE OF ENTRY INTO FORCE

This guarantee shall come into force upon its signature. If, on the date of its signature, the pre-financing has not been paid to the contractor, this guarantee shall enter into force on the date on which the contractor receives the pre-financing.

ARTICLE 5 – END DATE AND CONDITIONS OF RELEASE

1. The guarantor may be released from this guarantee only with EMSA's written consent.
2. This guarantee shall expire on return of this original document by EMSA to the guarantor offices by registered letter or by courier with acknowledgement of receipt. This must occur during the month after the pre-financing under the contract has been cleared or until 31 March 2022, whichever is earliest.
3. In case completion of the clearance of the pre-financing is delayed, the guarantee validity period can be extended by a maximum period of six months at EMSA's written request. The request for extension of validity must be sent by registered letter or by courier with acknowledgement of receipt to the guarantor by 1 March 2022 at the latest.
4. After expiry, this guarantee shall become automatically null and void and no claim relating thereto shall be receivable for any reason whatsoever.

ARTICLE 6 – APPLICABLE LAW AND COMPETENT JURISDICTION

Any dispute concerning this guarantee shall be governed by and construed in accordance with the Law of the country of establishment of the guarantor and fall within the sole competence of the [corresponding national] Courts.

ARTICLE 7 - ASSIGNMENT

The rights arising from this guarantee may not be assigned.

Done at [insert place], on [insert date]

Signature/Function at Bank