

Tender Specifications

Attached to the Invitation to tender

Invitation to tender No. EMSA/NEG/1/2021 for Provision of legal services and advice EU Contract and Procurement Law, Litigation, and Portuguese Law (Lot 1) and on Maritime and Aviation Law (Lot 2)

1. Introduction

The European Maritime Safety Agency (EMSA) was established under Regulation (EC) No 1406/2002 of the European Parliament and of the Council¹ for the purpose of ensuring a high, uniform and effective level of maritime safety, as amended. The Agency's main objective is to provide technical, operational and scientific assistance to the European Commission and EU Member States in the proper development and implementation of EU legislation on maritime safety, pollution by ships and security on board ships. To accomplish this, one of EMSA's most important tasks is to improve cooperation with, and between, Member States in all key areas.

2. Objective, scope and description of the contract

2.1 Objective

This procurement procedure is divided in two lots. Tenderers may apply to one lot only or both lots.

Lot 1 – EU Contract and Procurement Law, Litigation, and Portuguese Law

The objective of this lot is to contract at least two, and maximum three, contractors under a multiple framework contract in cascade to provide legal services to EMSA in the areas above-mentioned.

If only one tenderer satisfies all requirements and criteria set in the Tender Specifications, the Agency may decide to sign a single FWC instead of a FWC in cascade.

If, during contract implementation, the contract is only renewed with one contractor, the Agency will continue implementing the contract as single FWC.

Lot 2 – Maritime and Aviation Law

The objective of this lot is to sign a framework contract with one contractor to provide legal services to EMSA in the field of Maritime and Aviation Law.

¹ Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency (OJ L 208, 5.8.2002, p.1.).

2.2 Scope

Lot 1 – EU Contract and Procurement Law, Litigation, and Portuguese Law

The contractors shall deliver, in English and/or Portuguese:

1. Legal advice on all legal issues related to EU procurement and contract management, in particular:
 - a) Drafting of procurement documentation;
 - b) Communication with potential tenderers;
 - c) Communication with successful and unsuccessful tenderers;
 - d) Contract implementation;
 - e) Implementation of contractual measures such as imposition of liquidated damages, activation of guarantees or warranties, termination of contracts;
 - f) pre-litigation, litigation and dispute resolution, including arbitration;
 - g) any ancillary services and legal support as the context may require.
2. Legal advice on Portuguese law relevant to the tasks of the Agency in particular labour law, tax law, IPR and Construction law.
3. Represent the Agency in front of courts or tribunals, or other judicial, extra-judicial or administrative bodies, in Portugal.

Lot 2 – Maritime and Aviation Law

The contractor shall deliver, in English, legal advice in the field of maritime law, marine insurance law, law of the sea and aviation law, in particular:

1. Interpretation of legal or contractual provisions;
2. Drafting of legal documents, including agreements, contracts or tender documentation including contracts for chartering of vessels and aircrafts;
3. P&I matters including contracting liability insurance and support in the handling of potential claims against the Agency's interests;
4. Review of possible agreements and contracts with a focus on limiting litigations risks, limiting potential liabilities and legal exposure of EMSA.

2.3 Description of the contract

Lot 1 – EU Contract and Procurement Law, Litigation, and Portuguese Law

2.3.1 Framework contract in cascade

The awarded framework contracts (FWCs) will be signed with minimum two, and maximum three, contractors and will have the duration of one year with maximum three possible renewals under the same conditions.

The FWCs will be in cascade, which means that EMSA will rank the tenderers in ascending order with a view to establishing the sequence in which they will be requested services. The contractors will be ranked according to their scores in terms of best price–quality ratio according to the scoring scheme described in section 16.

2.3.2 Order Forms

The FWC in cascade will be implemented by signing Order Forms. Based on EMSA's needs for a concrete legal service, a request for services will be issued, following which the contractor sends back a quotation with

an estimation of resources (number of hours per profile) using as maximum the prices provided in their tender. If accepted by EMSA, an Order Form will be issued to be performed by the contractor.

The contractor who is ranked in first place will be the first to be requested services by EMSA. If the contractor ranked first is, however, unable to perform such specific task (due to, for instance, a conflict of interest with another of its clients) for reasons which do not entail terminating the contract, or does not meet the relevant response time, EMSA will consult the contractor ranked second, and then, if necessary and under the same conditions, the third.

Lot 2 – Maritime and Aviation Law

2.3.3 Single Framework contract and Order Forms

The FWC will have the duration of one year with maximum three possible renewals under the same conditions and it will be implemented via Order Forms.

Based on EMSA's needs for a concrete legal service, a request for services will be issued, following which the contractor sends back a quotation with an estimation of resources (number of hours per profile) using as maximum the prices in their tender. If accepted by EMSA, an Order Form will be issued to be performed by the contractor.

3. Contract management responsible body

EMSA Unit 4.2 in charge of Legal, Finance & Facilities - will be responsible for managing the contract.

4. Project Planning

Not applicable.

5. Timetable

The estimated date for signature of the contract is February 2021.

6. Estimated Value of the Contract

The maximum budget available for this contract is EUR 135,000.00 excluding VAT. The maximum ceiling for Lot 1 is EUR 120,000.00 and the maximum ceiling for Lot 2 is EUR 15,000.00.

7. Terms of payment

Payments will be made in accordance with the provisions of the draft **Framework Service Contract** available in the Procurement Section under the call to tender **EMSA/NEG/1/2021** on EMSA's website (www.emsa.europa.eu).

8. Terms of contract

When drawing up a bid, the tenderer shall bear in mind the terms of the draft Framework 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. Subcontracting

If the tenderer intends to either subcontract part of the work or realise the work in co-operation with other partners it shall indicate in its 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 criteria². 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.³ However, the selection criteria may apply individually where it is relevant in view of their nature.

11. Requirements as to the tender

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 shall in particular include an English version of the documents requested under points 13.5 and 14 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.⁴

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 (Join Offers) it shall indicate it in its offer by completing the form "Statement of Subcontracting / Joint Offer". This document is available on the Procurement Section / Calls for Tenders (Documents for tenderer) of EMSA's website (www.emsa.europa.eu).

The tender must be presented as follows and must include:

- a) A signed **cover letter** indicating the name and position of the person authorised to sign the contract/purchase order, the bank account on which payments are to be made and the email address to be used for contacts during the procurement procedure.
- b) **The Financial Identification Form completed**, signed and stamped. This document is available on the Procurement Section (Financial Identification Form) of EMSA's website (www.emsa.europa.eu).
- c) **The Legal Entity Form** completed, signed and stamped along with the requested accompanying documentation, including recent proof of that authorisation (not more than one year old). This

² To rely on the capacities of a subcontractor means that the subcontractor will perform the works or services for which these capacities are required.

³ To rely on the capacities of a subcontractor means that the subcontractor will perform the works or services for which these capacities are required.

⁴ 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).

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 Identification 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 shall 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 13 and 14.2 of these specifications (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 1616 of these specifications;

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

12. Price

- a) Prices must be quoted for Provision of legal services and advice EU Contract and Procurement Law, Litigation, and Portuguese Law (Lot 1) and on Maritime and Aviation Law (Lot 2), shall include all elements of the price as requested in the Financial Offer Template (Appendix I).

The Financial Offer Template (Appendix I) must be filled in without any omission or addition. In the event of any price being omitted, the tender will be deemed incomplete and may be rejected.

For reasons of clarity: the hourly rates in the Financial Offer Template (Appendix I) must be all inclusive of any costs to provide the services such as administrative costs.

For Lot 1, only in cases where EMSA will explicitly request the contractor to travel outside its place of establishment, travel expenses and accommodation costs related thereto will be reimbursed in accordance with the provisions of the contract (see Article I.5.3 of the draft FWC). Any fees related to possible representation of EMSA before courts, tribunals, or other judicial, extra-judicial or administrative bodies may also be reimbursed upon production of invoices and only if directly connect with the representation of EMSA.

- b) Prices must be fixed amounts and non-revisable.
- c) Prices must be quoted in euro.
- d) Under Article 3 and 4 of the Protocol on the privileges and immunities of the European Union, the latter is exempt from all duties, taxes and other charges, including VAT. This applies to EMSA pursuant to the Regulation 1406/2002/EC. Therefore, price and 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 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 group 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 group will be checked to ensure that the group as a whole fulfils the criteria. However, the selection criteria may apply individually where it is relevant in view of their nature.

If awarded, the contract will be signed by the person authorised by all members of the group. Tenders from 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 tenderer and information and formalities necessary for the evaluation of the minimum economic, financial, technical and professional 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** available on the Procurement Section 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 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.

14.3 Legal and regulatory capacity – Selection criteria

14.3.1 Standards / Prerequisites

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

In particular, the tenderer must be enrolled in the relevant Bar Association allowing to practice as a lawyer and to legally represent EMSA in a court, tribunal, or other judicial, extra-judicial or administrative body.

14.3.2 Evidence

For each team member, proof of the respective Bar registration.

14.4 Economic and financial capacity – Selection criteria

14.4.1 Standards / Prerequisites

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

14.4.2 13.4.2 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.
- c) If, for some exceptional reason which EMSA considers justified, a tenderer is unable to provide one or other of the above documents, it 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.

14.5 Technical and professional capacity – Selection criteria

14.5.1 Standards / Prerequisites

The tenderer must demonstrate the technical and professional capacity to provide the requested services. The members of the team proposed by the tenderer shall have and demonstrate all of the following:

- a) Lot 1, at least:
 - 1 (one) Senior Lawyer/Project Manager, with University Law Degree, experience of at least 10 years in the areas of EU Contract and Procurement Law and Litigation and an excellent command of English (level C1 or higher), oral and written;
 - 2 (two) Lawyers, with University Law Degree, experience of at least 5 years in the areas of EU Contract and Procurement Law and Litigation and an excellent command of English (level C1 or higher), oral and written;
 - 1 (one) Lawyer(s), with University Law Degree, experience of at least 5 years in Portuguese Law in particular Labour Law, Tax Law, IPR and Construction Law and an excellent command of English (level B2 or higher), oral and written. For this point, tenderers may either propose only one lawyer expert in all the mentioned areas or more than one lawyer each expert in different areas, provided that all mentioned areas of law are covered.
- b) Lot 2, at least
 - two (2) lawyers with University Law Degree, experience of at least 5 years in the areas of Maritime Law, Law of the Sea, P&I matters, and Aviation law and an excellent command of English (level C1 or higher), oral and written.

For both Lots, the tenderer must not be in any situation which could give rise to a conflict of interest in what concerns the implementation of the contract and which could influence the impartial and objective

performance of the contract; any risk of perceived partiality must be duly assessed, disclosed and addressed. In particular, the tenderer shall disclose if it has knowledge that one of its clients is also EMSA's current tenderer or contractor.

During contract implementation the team members proposed may only be replaced with the agreement of EMSA, after assessing if they fulfil the above-described selection criteria. Replacements of the team members are subject to an amendment to the Contract.

14.5.2 Evidence

- a) For each team member, a detailed CV in English, in the European format⁵ or equivalent, including his/her education and/or training, respective academic qualifications and professional experience, seniority level, Languages' level (as per EuroPass standards)⁶, and former involvement in similar projects;
- b) a presentation of the tenderer in English including a demonstration of its experience in the areas of law above mentioned;
- c) For Lot 1, at least four (4) references in English (such as a declaration issued by the client) of significant projects setting out the proposed team members' experience in the areas mentioned in 14.5.1.a) in the past 5 years.
- d) For Lot 2, at least two (2) references in English (such as a declaration issued by the client) setting out the proposed team members' experiences in projects, assignments, cases in the past 5 years in each of the following areas:
 - Maritime Law;
 - Law of the Sea;
 - P&I matters;
 - Aviation law.

Each of the references requested in c) and d) shall as a minimum detail:

- the specific tasks of the lawyer(s) proposed for the service;
- the year of performance;
- the client;
- the duration of the assignment.

⁵ <https://europass.cedefop.europa.eu/documents/curriculum-vitae>

⁶ Level of languages shall be demonstrated either by a certification from an accredited institution or by the participation in international projects whereas the main working language was the language being evaluated.

15. Declaration of Honour (DoH)

Please note that the 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 tenderer shall provide the following evidence concerning itself, the natural or legal persons as listed under the first paragraph, and concerning the natural or legal persons which assume unlimited liability for the debt of the tenderer:

- For the exclusion situations described in (a), (c), (d), (f), (g) and (h) of the Declaration of Honour, 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 situations described in (a) and (b) of the Declaration of Honour, production of recent certificates issued by the competent authorities of the country of establishment 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.

The successful tenderer must provide the documents mentioned as supporting evidence before signature of the contract and within the deadline given by EMSA. This requirement applies to each member of the group in case of joint tender.

If the candidate already submitted such evidence for the purpose of another procedure, provided 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.

16. Award criteria

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

For Lot 1

1. Quality criterion 1 ($W_1 = 20\%$): Quality of the team.

Tenderers should describe the team composition and structure, the roles of each member within the team, the number of team members, the breakdown of tasks and back-up solutions for unavailability of the team members, etc.

2. Quality criterion 2 ($W_2 = 20\%$): Quality of the methodology for contract implementation.

Tenderers should describe the methodology proposed to implement the contract including contact points, deadlines to deliver assignments, feedback and quality control, communication with EMSA, invoicing, etc.

3. Quality criterion 3 ($W_3 = 10\%$): Quality of the proposal for preferential rates to EMSA staff.

Tenderers should propose an hourly rate (not to be counted in the price of the bid and not to consume the ceiling of the FWC) for the provision of general legal services under Portuguese law that may be required by EMSA staff members such as review of contracts, support with purchases and tax, support with communicating with local authorities, etc. Lower hourly rate will be evaluated higher.

The proposal should include a contact point responsible for directing EMSA staff to the appropriate lawyer and ensure that the preferential hourly rate is applied. The transaction will occur directly between the contractor and the staff member and EMSA will not be involved and may not be held liable for it.

For Lot 2

1. Quality criterion 1 ($W_1 = 25 \%$): Quality of the team.

Tenderers should describe the team composition and structure, the roles of each member within the team, the number of team members, the breakdown of tasks and back-up solutions for unavailability of the team members, etc.

2. Quality criterion 2 ($W_2 = 25 \%$): Quality of the methodology for contract implementation.

Tenderers should describe the proposed methodology used to implement the contract including contact points, deadlines to deliver assignments, feedback and quality control, communication with EMSA for feedback, invoicing, etc.

and the price criterion and associated weighting:

3. Price of the bid ($W_{price} = 50 \%$) according to the scenario in Financial Offer Template (Appendix I).

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

$$PP = \sum_i \frac{\text{lowest } Price_i \text{ of all bids}}{Price_i} * 100 * W_{Price_i}$$

Only bids that have reached a minimum of 60 % for Q_1 and a minimum of 60 % for Q_2 , 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.

17. 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 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.

18. 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 shall be clearly pointed out by the tenderer in the tender. Information shall 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.