

EMSA/CDI/01/2014

Service Contract for Aerial Application of Dispersant Service

Questions and Answers exchanged through the dedicated mailbox:

CDI12014@emsa.europa.eu

Question 01 (dated 8/1/2014, 16:55):

Dear Sir,

Our company has over 30 years experience in aerial application services such as crop-dusting and fire-fighting. We would like to have more information regarding the above mentioned contest, namely following items:

- Were will the aircrafts be parked, i.e., what's the intended home-base;*
- Although the flight range operational requested is between 350 to 1 000 nautical miles, is this contest just for Portugal?;*
- Finally, regarding the quantity or scope: the estimated value does it include operational flight costs? Is there any minimum or maximum flight hours included or requested in this item?*

Your prompt reply is appreciated

Best regards

Answer to question 01 (published on 9/1/2014)

With regard to your questions, please find the answers below:

1. Where will the aircrafts be parked, i.e., what's the intended home-base?
The airplanes will have to be parked at their normal home-base, so they will not need to be relocated to any other location while on stand-by.
2. Although the flight range operational requested is between 350 to 1 000 nautical miles, is this contest just for Portugal?
The contracted airplanes need to have the specified minimum range (see point 12.6 of the Description of needs and requirements document, enclosure 1 to the Invitation to submit request) as they will be intended to provide a European coverage. Therefore, the tender procedure targets airplanes that will be able to provide dispersant application services in all European waters and shared sea basins and not Portugal only.
3. Finally, regarding the quantity or scope: the estimated value does it include operational flight costs? Is there any minimum or maximum flight hours included or requested in this item?

With regard to the contract value, this does not include the operational flight costs. The price per flight hour during response operations is an award criterion that needs to be specified in the final tender as indicated in point 13 of the Description of needs and requirements document (enclosure 1 to the Invitation to submit request). This cost will be supported by the requesting State as part of an Incident Response Contract signed directly with the airplane provider (as presented in the published documentation).

The number of flight hours will be dependent on the necessity of spraying dispersants, as coordinated by the requesting State, but these operational flight hours cannot exceed the maximum limit as stated in the relevant airworthiness requirements.

We hope that our answers provide you a better understanding of the services we are looking for. However, should you have any further questions, please do not hesitate to contact us or consider participating in the information meeting organised by EMSA on 21 January, precisely for the purpose of better explaining the service and tender requirements.

Question 02 (dated 9/1/2014, 11:20):

We are in the process of getting everything lined up for the meeting with your Department on the 21st this month. An official confirmation via email will follow soon.

In the interim we need to find out the container size for the dispersants to be fit in the aircraft.

If you could come back to me as soon as possible please?

Bid you a good day,

Answer to question 2 (published on 9/1/2014)

The dispersant is to be loaded on-board the airplane inside the storage tanks that are part of the dispersant application system. Based on the type of the airplane to be provided, the number, size and volume of the tanks may differ (2, 3 or 4 tanks, each with a volume of 2 to 4 tonnes), as a dispersant application system is purpose built and certified for a specific type of airplane. This means that the dispersant application system is dependent on the type of airplane to be provided and not the other way.

**Questions and answers exchanged during the Information Meeting held in
Lisbon on 21 January 2014**

- **Aerial dispersant application service (description of the service, area of operation, duration of the service)**

Question 3:

Is it possible to use a backup for the airplane?

Answer to question 3:

The backup solution can be foreseen in case the airplane is engaged in other scheduled operations that could, for instance, last for 3 or 4 months and the back-up allows to maintain the same level of service. For short-term unavailability on the other hand, EMSA could consider the establishment of a predefined ceiling of days during which the airplane may be out of service (e.g. for maintenance), as it is currently foreseen in the EMSA stand-by oil spill response vessels contracts. If the unavailability of the airplane exceeds this ceiling, then the provider would have to provide a replacement plane, otherwise liquidated damages will apply.

Question 4:

Will the airplane be required to operate for 21 days during the performance of the contract?

Answer to question 4:

No, what the invitation to apply indicates is that the airplane may be requested to operate for a maximum period of 21 consecutive days each time it is requested for an operation. This period can be extended with the consent of the airplane provider. However, it cannot be foreseen how many times, if at all, a request for mobilisation will be placed during the contract. Please refer to point 3.4 of Enclosure 1 - Description of needs and requirements.

Question 5:

Do these 21 days concern 24 hour operation or only include daylight time?

Answer to question 5:

The airplane is expected to perform aerial application of dispersant during daylight hours only. Therefore these 21 days do not refer to 24 hour operation.

Question 6:

Please clarify the meaning of the 'usual operations' that the airplane can continue during the stand-by phase.

Answer to question 6:

During the stand-by phase the airplane operator may continue to undertake its usual commercial or military activity. However, upon request, the airplane must be able to cease any activity in order to be ready to provide aerial dispersant application operations as contracted with EMSA. Please refer to point 3.6 (b) of Enclosure 1 - Description of needs and requirements.

The usual operations of an airplane should not be dispersant application services within the European waters, as this would render the service not in line with EMSA's mandate of topping-up the Member States' capabilities. Please refer to point 3.4 ("Top-up" principle) of Enclosure 1 - Description of needs and requirements.

Question 7:

Shall EMSA cover the cost for the participation in an annual pollution response drill?

Answer to question 7:

One has to distinguish two different cases: drills and exercises. The airplane operator will perform one annual drill in order to demonstrate its capacity to perform the service and prove that the equipment is operational. The satisfactory performance of the drill will be a condition for EMSA to pay the annual availability fee agreed in the contract. On the other hand, the airplane operator might be requested to participate in exercises, and in this case receive an additional ad-hoc financial compensation separate from the initial amount foreseen in the main contract.

Question 8:

With regard to the general description of the proposed arrangement, will EMSA need to prove that the airplane can be ready to fly to the selected location within 24 hours?

Answer to question 8:

Yes, EMSA will carefully examine the mobilisation plan of the airplane provider. Besides, the effectiveness of the mobilisation plan is an award criterion and will be evaluated accordingly. The 24 hour mobilisation benchmark was set at the time of the establishment of the EMSA network of stand-by vessels. It is preferable that the airplane is also mobilised within 24 hours, however offers that exceed this time will still be admitted to the Competitive Dialogue. Please refer to point 13 of Enclosure 1 - Description of needs and requirements.

➤ **Dispersant application equipment**

Question 9:

Has any specific type of dispersant application system been identified for the service?

Answer to question 9:

Not yet, the suitable aerial dispersant application system will be identified during the dialogue phase. The technical specifications for the equipment, as well as for the airplane, will be drafted after the dialogues held during the bilateral meetings with the pre-selected candidates.

Question 10:

Which organisation is recognised to approve and certify that a specific dispersant application system has been flight tested and approved for the use on board the type of airplane offered for this procurement competition?

Answer to question 10:

Any organisation recognised by the EU Member State where the airplane is based may issue this kind of certificate. This is applicable for both military and civilian airplanes.

Question 11:

With regard to the regulations applicable to certify and approve the airplanes for operation with the dispersant spraying equipment within Europe, EASA allows each Member State to interpret the relevant requirements. In addition, the EASA requirements do not apply to military aircraft. How will EMSA balance this difference in treatment with regard to offers received from different countries and sectors?

Answer to question 11:

EMSA has set this requirement for the airplane to be certified and approved to fly with the dispersant spraying equipment on the basis of the need to be able to operate within European air space and taking into account the applicable EU and international legislation. The requirements for either civilian or military aircraft are the same as these are necessary for the final objective of the procurement procedure.

Question 12:

With regard to the dispersant spraying equipment, how will the Agency adjust to any new technology that might be developed after the conclusion of the service contract?

Answer to question 12:

The development of new technology was taken into account for the definition of the duration of the service contract. The service contract is foreseen for two years followed by a maximum of two annual renewals. If minor adjustments need to be made (for instance fitting new nozzles to the dispersant spraying equipment), these could be implemented through an improvement project to be negotiated with the existing contractor. However, if major adjustments need to be made, the Agency may decide not to renew the contract and to launch a new procurement procedure with the purpose of improving the service.

Question 13:

Can EMSA estimate the available budget for the purchase of the aerial application system?

Answer to question 13:

No, the current EMSA estimations should be confirmed or refined during the dialogue phase.

➤ **Management (storage and transportation) of dispersant**

Question 14:

How does the Agency intend to supply the dispersant to the airplane provider? How will the location of the dispersant depots take into account the operational needs during the mobilisation of the airplane?

Answer to question 14:

A stock of dispersant will be purchased by EMSA through a separate procurement procedure and will be stored in selected locations strategically identified by EMSA. In case of mobilisation, the airplane will be requested to fly to a storage place in order to load the dispersant or may have a small stock of dispersant at the home airport, which can be loaded before take-off.

➤ **Evaluation criteria**

Question 15:

Will the service contract be awarded based only on the price of the final offer?

Answer to question 15:

No, both technical and price criteria will be assessed for the awarding of the contract. Their relative weights are already set in point 13 of the 'Description of needs and requirements' document (Enclosure 1 to the Invitation to Submit Request letter). Following the Dialogue phase, the breakdown of the weight of each of the technical and price award criteria will be described in detail in the tender documentation sent to the pre-selected candidates.

➤ **Financial and contractual issues**

Question 16:

Does the budget ceiling cover both lot 1 and lot 2, or is it for one lot only?

Answer to question 16:

The budget ceiling covers all services to be contracted as a result of this procurement procedure. Three possibilities are envisaged as explained by the invitation to submit request enclosure: either one airplane is contracted from one tenderer under lot 1, or two airplanes

are contracted from the two best tenderers under lot 1, or two airplanes are contracted from the same tenderer having submitted an offer for two airplanes under lot 2.

Question 17:

Is the cost for the purchase of dispersant included in the estimated maximum budget available for the contract(s)?

Answer to question 17:

No, the cost of the dispersant will not be covered from the budget estimated for the service to be procured through the current procedure EMSA/ CDI/1/2014, which is EUR 2,300,000 (excluding VAT).

➤ **Miscellaneous**

Question 18:

Will the Requests to participate in the Competitive Dialogue submitted at this stage of the procedure be published on the EMSA website?

Answer to question 18:

No, the requests will be confidential and will not be disclosed. Any subsequent meeting in the context of the Dialogue will also be held on a bilateral confidential basis.

Questions and Answers exchanged through the dedicated mailbox:
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Question 19 (dated 28/1/2014, 09:54):

Dear Sirs / Madams,

Concerning subject pre-qualification request, we would appreciate your kind advice (Enclosure 1/Par. 12.5b) on whether the participating aircraft could have military registration, although the owning company is private. If not and a civil registration is required, would it be possible to register the aircraft as civil, after the successful tender award?

Answer to question 19

Please note that requirement in point 12.5 (b) is a selection criterion applicable only to private entities. Accordingly the Certificate of professional or commercial registration is an evidence to prove the technical and professional capacity of the company that must be

issued by the "competent Authority of the country where they are established, with an indication of its geographical scope".

With regard to the airplane, please note that point 12.6. (b) indicates that this must be "able to operate in Europe in accordance with the existing regulations". Accordingly, military airplanes are not excluded from the tender and there is no need to register your airplane as civil. You will only have to make sure that the military airplane you intend to offer meets the technical requirements set in the tender documents under point 12.6.

Question 20 (dated 10/02/2014, 18:29)

"The tender documentation is unclear as to what constitutes 'additional capacity'. It refers to contracts with member nations and elsewhere general contracts. Please clarify (...)."

Answer to question 20

The description of needs and requirements in Enclosure 1 to the invitation to submit requests refers indeed, within the description of the scope of the work, to the "Top-up" principle and therein to the fact that "The Agency is tasked to provide additional response capacity to that under contract to the Member States of the European Union as well as EU accession and Candidate Countries and countries which are contracting parties to the EFTA. In addition, the Agency may also provide assistance in case of pollution to third countries sharing a regional sea basin with the European Union (...). Consequently EMSA cannot award a contract for an airplane that is already engaged with such a country or in the same geographical area for the same services".

This principle is related to the selection criteria under point 12.6.e) of the same Enclosure that states that "candidates providing an airplane already adapted or used for aerial dispersant application are accepted only if the provided airplane is not part of any other contractual arrangement in the EU, EFTA or Candidate country for the same type of service".

This approach is necessary to ensure that in case of a major oil spill, EMSA's services to be established do not enter in competition for response resources with the regional, national or local actors. This means that at regional, national or local level, operators, responsible parties or institutions responsible for pollution response, either private or public, do not rely already, within their contingency plans for pollution response, on the airplane and/or the aerial dispersant application services to be contracted by EMSA. Instead, EMSA intends to top-up such currently existing arrangements in the EU, EFTA or Candidate countries, in order to create additional capacity for aerial dispersant application, to be made available to a requesting party, in line with its mandate. The important criteria is not if the airplane has already been equipped or used for such similar services in the past, but if the potential airplane proposed within the request to participate is part of an existing service agreement/contract of any type/form at the estimated date of EMSA's contract signature, in

such a way that, EMSA's request for mobilization would imply using the same already available oil spill response resources for other actors in the same geographical area, whether private or public. In case of such a potential competition for the airplane service, the request to participate would not be considered to fulfil the selection criteria referred above and the candidate would not be invited to the dialogue.

Question 21 (dated 21/02/2014, 11:33):

Concerning subject pre-qualification request, we would appreciate your kind advise on following:

QUESTION 1

In Enclosure 1, page (6), it is stated that "For both lots, candidates may also foresee in their proposals the purchase of one (or two) dispersant application equipment set(s)...." thus giving the alternative to a candidate under Lot 2 to foresee the purchase of one dispersant application system.

However, paragraph at the same page under Lot 2 is stating that "For a service including the possibility to mobilize up to two airplanes at the same time..."

Therefore, under LOT 2 requirements for mobilization of up to two airplanes at the same time, how the second airplane will be equipped if only one dispersant application system may be purchased?

Will EMSA fund the application system(s) purchased on-top of the budget ceiling?

QUESTION 2

If two contracts will be awarded under Lot 1, the budget ceiling will be divided in half?

Answer to Question 21:

As for the service to be provided under lot 2, the Description of needs and requirements (enclosure 1) in point 4 specifies that: "[...] The procurement procedure will be divided in two lots [...]. Lot 2: for a service including the possibility to mobilise up to two airplanes at the same time, allowing for higher response capacity".

Accordingly, in case two airplanes are offered for the service under lot 2, each of them must be equipped with one dispersant application system in order to enhance the response capacity (point 4 of enclosure 1). EMSA will not pay for any cost that would exceed the budget ceiling. Therefore, if candidates decide to purchase the dispersant spray equipment, this cost must be covered within the maximum budget available for the contract, which is equal to EUR 2,300,000 excluding VAT (see point 8 of enclosure 1).

With regard to the budget ceiling, this covers all services to be contracted as a result of this procurement procedure. However, the exact distribution of the budget between the lots will be defined later on in the dialogue procedure.

Question 22 (dated 14/03/2014, 10:29):

In order to give continuity to our bid in potentially becoming a provider to EMSA, there are a couple of things we would like to discuss and establish prior to preparing our proposed plan. These questions involve both the financial and operational aspects of the contract and they concern the operator we are working in partnership with. They follow:

- Would you accept the proposed aircraft to be based in the United States, providing the aircraft has the required availability and respond within the desired time frame for the response operation;
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- *It has been pointed out to us that guaranteed aircraft availability for the response whilst having the aircraft available for other jobs is something rather difficult to achieve. Therefore the aircraft would be dedicated to EMSA and EMSA only. Our partner has illustrated that if the aircraft is not on an exclusive contract for the Agency then it may be or get involved in another job (aerial R&D, film production, etc.) which could have it tied up for days, weeks or even months. Due to that reason their exclusivity standby fees are very high, and they would charge a retainer in the value of circa USD (XXXX) per year per aircraft, including the spray system itself, flight crew, all maintenance support and insurance requirements.*

As we understand the retainer fee is way over budget to the Agency. Therefore, prior to us to prepare and finalise our proposed plan, we would like to know whether the above is of feasibility to you, as in case of negative response we will then have to retire our initial bid as a potential provider to you.

Answer to Question 22:

Please find hereunder the answers to the two parts of the question:

- *Regarding the base of the plane: The proposed airplane must be able to fulfil the requirements with regard to the mobilisation time and availability for dispersant spraying services as defined by the tender documentation prepared by EMSA (point 12.6 of Enclosure 1 -Description of needs and requirements). At this stage of the procurement procedure, the location proposed as base of operations for the airplane does not represent an element for evaluating the requests. However, when drafting the general description of the proposed arrangement (point 12.7 of enclosure 1) the tenderer should consider the impact that the proposed location of base of operations will have on the mobilisation plan of the airplane and on the cost for mobilisation.*
- *Regarding to the budget of the project, point 8 of Enclosure 1 sets that: "The maximum budget available for the contract(s) is EUR 2.300.000, excluding VAT".*

Requests for additional information regarding this tender should be sent by e-mail to the following address: CDI12014@emsa.europa.eu. Requests for additional information received less than five working days before the closing date for submission of final tenders will not be processed.

The deadline for submission of the Requests to Participate is **20 March 2014**.

Responsibility for monitoring the Agency's website for replies to queries and/or further information remains with potential tenderers.