

**Tender Specifications
attached to the Invitation to tender**

**Invitation to tender N° EMSA/NEG/44/2014
for a Framework contract for the provision of consultancy
services to draft or revise the written agreement(s) SAFEMED
beneficiaries have in place with their Recognised Organisations**

1. Introduction

The European Maritime Safety Agency (EMSA) was established under Regulation 1406/2002/EC of the European Parliament and of the Council, as amended, for the purpose of ensuring a high, uniform and effective level of maritime safety. Among its tasks, the Agency provides Member States with technical and scientific assistance and a high level of expertise in order to help them to apply Community legislation properly in the field of maritime safety, prevention of pollution by ships and recently, maritime security. Based on specific agreements with the EU Commission technical assistance can be also provided to candidate, potential candidate and the EU Neighbourhood partner countries. Since 16th June 2013, EMSA is implementing the SAFEMED III project for the provision of technical assistance in the field of maritime safety, maritime security and marine pollution prevention, preparedness/response to project's beneficiaries - Algeria, Egypt, Israel, Jordan, Libya, Lebanon, Morocco, Palestine, Syria (currently suspended) and Tunisia-.

In this framework EMSA, through the provision of consultancy services, expects to support the SAFEMED beneficiaries to revise the written agreement(s) they have signed with the Recognised Organisations authorised to perform statutory surveys and issue relevant certificates on behalf of the Flag State or provide with a draft text of "written agreement" those SAFEMED beneficiaries which perform statutory services through Recognised Organisations but do not have any written agreement in place.

2. Objective, scope and description of the contract

Under the provisions of regulation 1/6 of International Convention for the Safety of Life at Sea (SOLAS) 1974, article 13 of the International Convention on Load Lines 1966, regulation 4 of Annex 1 and regulation 10 of Annex II of MARPOL Convention 73/78 and article 6 of Tonnage Convention 1960, flag States may authorize organizations to act on their behalf in the surveys and certification and determination of tonnages as required by these conventions. The delegation of authority has to be regulated by a "written agreement" between the Flag State and the Recognised Organisation (IMO Resolution MSC. 349 (92) part II article 8.2.1)

The overall objective of this contract is to provide SAFEMED beneficiaries with consultancy services to draft such "written agreements" and/or to amend the existing "written agreements" the beneficiaries have currently in place.

Both the draft proposals and the amendments shall be in line with the following international standards:

- IMO Resolution A. 739 (18) *Guidelines for the authorization of organizations acting on behalf of the Administration* Annex and Appendix 1 (as amended) and Appendix 2 and IMO Resolution A.789(19) *Specifications on the survey and certification functions of recognized organizations acting on behalf of the Administration*, which have become mandatory under chapter XI-1 of the International Convention for the Safety of Life at Sea (SOLAS), 1974, under chapter I of annex I to annex B of the Protocol of 1988 relating to the International Convention on Load Lines, 1966 and under Annex I and Annex II of the MARPOL Convention;
- General principles of IMO Resolution MSC 349 (92) *Code for recognized organizations (RO Code)* that will take effect on 1 January 2015 upon the entry into force of the respective amendments to the 1974 SOLAS Convention and 1988 Load Lines Protocol;

and if agreed by the relevant Beneficiary, they will also be in line with the relevant EU standards as contained in:

- Regulation (EC) 391/2009 Annex 1, as much as practicable and if agreed with the relevant Beneficiary;
- EU Directive 2009/15 particularly with reference to article 5 point 2.b, 2.c, 2.d, 2.e, as much as practicable and if agreed with the relevant Beneficiary.

3. Meetings with the relevant governmental bodies in the SAFEMED beneficiaries.

Up to two 2-day meetings between the contractor and the competent institutional bodies of relevant SAFEMED project's beneficiary may take place if requested by one of the two parties.

Objectives of the first meeting to be held in the beneficiary country are to:

- gather information about the beneficiary Country's specific needs;
- gather information about the SAFEMED project's beneficiary's national legal framework with reference to the topics covered by this service framework contract;
- gather information on the view and perspectives of the relevant administration about the relations with Recognised Organisations;
- agree which items of the pertinent EU legislation (DIR 2009/15 and REG (EC) 391/2009) may be considered applicable and therefore included in the guidelines/agreement being drafted/updated.

Objectives of the second meeting to be held in the beneficiary Country are:

- discuss the first draft of the proposed amendments;
- make sure that the final outcome is in line both with the legislation and the expectation of the relevant beneficiary;

- fine-tuning according to the relevant beneficiary's needs.

Should this need arise, the meetings shall be previously approved by EMSA which will cover directly the travel (from the country where the contractor is based to the relevant beneficiary) and accommodation expenses for one person. EMSA will take care of all the travel and accommodation arrangements. The statement of expenses, relevant supporting documentation and a meeting report containing as minimum, date and location of the meeting, persons met, topics discussed and conclusions shall be sent via e-mail by the contractor to EMSA not later than 10 working days after the conclusion of the meeting.

4. Additional requirements

When the relevant beneficiary has one or more "written agreements" in place with Recognised Organisations, the contractor will be provided by the SAFEMED beneficiary through EMSA with a copy of such agreements in English or French language.

It's up to the contractor to arrange a translation of the mentioned agreement(s) from French to English when applicable.

All correspondence with EMSA and the meeting reports will be in English language. Communication with beneficiary countries and results of the activity (proposed texts or amendments for written agreements) will be in English language and in French language if so requested.

All documents, information, correspondence remain confidential to the person(s) performing the tasks under this contract. Documents which are linked to the performance of this contract shall not be divulged to any third party. For this purpose the person(s) performing the tasks under the contract for the provision of consultancy services to draft or revise the written agreement(s) SAFEMED beneficiaries have in place with their Recognised Organisations will be asked to sign a declaration of absence of conflict of interest and confidentiality.

The declaration of absence of conflict of interest and confidentiality is attached to the invitation to tender.

5. Notice of planned events

EMSA shall give 2-month notice of the planned consultancy service and the SAFEMED beneficiary involved. The precise date to start the consultancy will be decided in agreement with the contractor at a later stage.

6. Contract management responsible body

The European Maritime Safety Agency – Sector B.0.2, in charge of Training and Cooperation – will be responsible for managing the service framework contract.

7. Project Planning and implementation

The final version of the proposed text and/or the proposed amendments for existing written agreements shall be provided to EMSA not later than 90 calendar days after the date the order form was signed by the contractor and EMSA unless a different date is indicated by EMSA. The final draft shall be in English and in French language if so requested.

The contractor will inform EMSA about the problems eventually met for the implementation of the contract.

The first meeting as per point 3 (if requested) shall take place not later than 30 calendar days after the order form has been signed by the contractor and EMSA.

The second meeting as per point 3 (if requested) shall take place not later than 70 calendar days after the order form has been signed by the contractor and EMSA.

The first draft of the proposed texts and/or amendments for existing written agreements between the Administration and the Recognized Organizations shall be sent to the relevant beneficiary and EMSA by email not later than 60 calendar days after the order form has been signed by the contractor and EMSA.

Please note that the implementation of the contract depends on a request by the Beneficiaries for such consultancy service. After such request is received EMSA will complete an order form with the successful tenderer to start the consultancy service.

8. Timetable

The estimated date for signature of the contract is October 2014.

9. Value of the Contract

The maximum allocated amount for the contract is EUR 60,000 (sixty thousand Euro), excluding VAT. This amount includes subsistence and travel expenses for a maximum of EUR 20,000 and up to 5 consultancy services (maximum of EUR 8,000 per consultancy service amounting to a maximum of EUR 40,000 for consultancy services over the whole duration of the service framework contract (3 years). Every consultancy service will be subject to its own order form.

10. Terms of payment

Payments shall be issued in accordance with the provisions of the **multiple framework service contract** 'in cascade' available on the Procurement Section under the call to tender EMSA/NEG/44/2014 on the EMSA website at the following address: www.emsa.europa.eu

11. Terms of contract

In drawing up a bid, the tenderer should bear in mind the terms of the **multiple framework service contract** in cascade.

EMSA may, before the contract is signed, either abandon the procurement or cancel the award procedure without the tenderers being entitled to claim any compensation.

The Framework Contract will be signed for a duration of 3 years. The Framework contract is based on the system of a multiple Framework Contract 'in cascade'. A (multiple) Framework Contract 'in cascade' will be signed with each of the Contractors which have been ranked above a price/quality threshold. The Contractors are ranked in descending order resulting from the evaluation of offers. This order represents the sequence in which they will be offered order forms. The Framework Contract will specify their ranking position.

Should the contractor be unavailable, or should the contractor be unable to sign a the Declaration of confidentiality and of absence of conflict of interest (Annex VI) it shall give reasons for refusal within the same period and EMSA shall be entitled to send the order form to the next contractor on the list. In the event of failure to observe this deadline, the contractor shall be considered unavailable

12. Sub-contracting

If the tenderer intends to either sub contract part of the work or realise the work in co-operation with other partners he shall indicate in his offer which part will be subcontracted, as well as the name and qualifications of the subcontractor or partner. (NB: overall responsibility for the work remains with the tenderer).

If the tenderer relies on the capacities of subcontractors to fulfil selection criteria as specified in section 16.5 (technical and professional capacity), then each subcontractor must provide the required evidence for the exclusion and selection criteria. To rely on the capacities of a subcontractor does not mean that the contractor has to use deliveries or services of another company but that this company and its special capacity is central to the capacity of the contractor to fulfil the contract and that it cannot be easily changed or replaced. The exclusion criteria and the selection criteria for "economic and financial capacity" will be assessed in relation to each economic operator individually. Concerning the selection criteria for "technical and professional capacity", the evidence provided will be checked to ensure that the tenderer and its subcontractors as a whole fulfil the criteria.

13. Requirements as to the tender

Bids can be submitted in any of the official languages of the EU. The working language of the Agency is English. Bids must include an English version of the documents requested under points 16.5.5 & 17 of the present tender specifications.

The tenderer shall complete Tenderer's checklist.

If the tenderer intends to either sub contract part of the work or realise the work in co-operation with other partners (Joint Offers) he shall indicate in his offer by completion of the form – Information regarding joint offers and subcontracting.

The tender must be presented as follows and must include:

Signed cover letter indicating the name and position of the person authorised to sign the contract and the bank account on which payments are to be made.

Financial Form completed, signed and stamped; available on the Procurement Section (Financial Form) on the EMSA Website at the following address: www.emsa.europa.eu

Legal Entity Form completed, signed and stamped and requested accompanying documentation, available on the Procurement Section (Legal Entity Form) on the EMSA Website at the following address: www.emsa.europa.eu

Tenderers are exempt from submitting the Legal Entity Form and Financial Form requested if such a form has already been completed and sent either to EMSA or any EU Institution previously. In this case the tenderer should 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 **13, 15, 16.2, 16.3** of these specifications (part of the 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 **16.4** 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 **16.5** 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 **17** of these specifications;

Part E: setting out **prices** in accordance with **point 14** of these specifications.

14. Price

The price **for the provision of consultancy services to draft or revise the written agreement(s) SAFEMED beneficiaries have in place with their Recognised Organisations** shall be quoted for one consultancy service and shall be all inclusive (excluding possible travel and accommodation expenses which shall be reimbursed according to EMSA's reimbursement rules and on production of original supporting documents, including receipts and used tickets, in line with article I.3.2 of the draft contract). Each consultancy service shall be subject to one order form per beneficiary country.

- Price must be quoted in Euro.
- Price must be fixed, non-revisable and remain valid for the duration of the contract.
- Under Article 3 and 4 of the Protocol on the privileges and immunities of the European Union, EMSA is exempt from all duties, taxes and other charges, including VAT. This applies to EMSA pursuant to the Regulation 1406/2002/EC. These duties, taxes and other charges can therefore not enter into the calculation included in the bid. The amount of VAT must be shown separately.

15. 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 (or consortia) 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 consortium must provide the required evidence for the exclusion and selection criteria. The exclusion criteria and the selection criteria for "economic and financial capacity" will be assessed in relation to each economic operator individually. Concerning the selection criteria for "technical and professional capacity", the evidence provided by each member of the consortium will be checked to ensure that the consortium as a whole fulfils the criteria.

If awarded, the contract will be signed by the person authorised by all members of the consortium. Tenders from consortiums of firms or groups of service providers, contractors or suppliers must specify the role, qualifications and experience of each member or group.

16. Information concerning the personal situation of the service provider and information and formalities necessary for the evaluation of the minimum economic, financial and technical capacity required

16.1 Legal position – means of proof required

When submitting their bid, tenderers are requested to complete and enclose the **Legal Entity Form** and requested accompanying documentation, available on the Procurement Section (Legal Entity Form) on the EMSA Website at the following address: www.emsa.europa.eu

16.2 Grounds for exclusion - Exclusion criteria

To be eligible for participating in this contract award procedure, tenderers must not be in any of the following exclusion grounds:

- a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- b) they have been convicted of an offence concerning their professional conduct by a judgement which has the force of res judicata;
- c) they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;
- d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;
- e) they have been the subject of a judgement which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Union financial interests;
- f) they have been the subject of the administrative penalty for being guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the procurement procedure or failing to supply an information, or being declared to be in serious breach of his obligation under contract covered by the budget.

16.3 Evidence to be provided by the tenderers

For this purpose the Declaration on Honour available on the Procurement Section on the EMSA Website (www.emsa.europa.eu) shall be completed and signed.

16.4 Economic and financial capacity – Selection criteria

Requirements:

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

Evidence:

- Financial statements for the last three years for which accounts have been closed.
- Statement of overall turnover and turnover relating to the relevant services for the last three financial years.
- Tenderers are exempt from submitting the documentary evidence if such evidence has already been completed and sent to EMSA for the purpose of another procurement procedure and still complies with the requirements. In this case the tenderer should

simply indicate on the cover letter the procurement procedure where the evidence has been provided.

- If, for some exceptional reason which EMSA considers justified, a tenderer is unable to provide one or other of the above documents, he may prove his 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 any other document enabling it to verify the tenderer's economic and financial capacity.

16.5 Technical and professional capacity – Selection criteria

The tenderer shall clearly indicate the name of the consultant/s involved in the provision of the consultancy and shall provide evidence of:

- Experience within a maritime administration; or professional experience within a EU recognised organisation,
- Expertise in dealing with international and European maritime legislation;
- Ability to establish and maintain effective working relations with people of different national and cultural backgrounds;
- Excellent communication skills, both orally and written in English
- Excellent communication, both orally and written, in French. The communication in French when needed can take place with the assistance of an interpreter/translator. Should the need for such services arise all of its related costs shall be the sole responsibility of the tenderer.

Tenderers should provide with their bid detailed curriculum vitae of each consultant who will be involved in such activity. The curricula vitae shall include the educational background, degrees and diplomas, professional experience, research work, publications and linguistic skills.

17. Award criteria

Only the tenders meeting the requirements of the exclusion and selection criteria will be evaluated in terms of quality and price.

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

17.1 Quality criterion ($W_1 = 70\%$)

- Quality of the proposed consultant(s) based on professional merit of the person(s) involved as per the evidence requested under point 16.5 above and on a description of the distribution of the tasks among the team members when several persons are proposed for performing the tasks.
- Advantageous:
 - Experience within a maritime administration dealing with recognized organizations related issues;
 - Experience within a EU recognized organization dealing with Flag State's relationships;
 - implementation plan of the consultancy services where a quality management system based on the ISO 9001 or equivalent standard is implemented;

and the price criterion and associated weighting:

17.2 Price of the bid ($W_{Price} = 30\%$)

P = price of the provision of a single consultancy service according to points 9 and 14 of these Tender Specifications.

For all bids evaluators will give marks between 0-10 (half points are possible) for the 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

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

Only bids that have reached a minimum of 60 % for Q_1 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 60 % for the score *S* will be taken into consideration for awarding the contract.

18. Contracts will not be awarded to tenderers who, during the procurement procedure:

- a) are subject to a conflict of interest
- b) are guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the contract procedure or fail to supply this information.

19. False declarations

Without prejudice to the application of penalties laid down in the contract, tenderers and contractors who have been guilty of making false declarations concerning situations referred to in points 156 and 168 above or have been found to have seriously failed to meet their contractual obligations in an earlier procurement or grant shall be subject to administrative and financial penalties set out in Article 134b of Commission Regulation 2342/2002 of 23/12/2002 (OJ L 357 of 31/12/2002).

20. Intellectual property rights

If the results are not fully created for the purpose of the Contract this should be clearly pointed out in the tender. Information should be provided by the tenderer about the scope of pre-existing materials, their source and how the rights to these materials have been (or will be) acquired.

In the tender all quotations or information originating from other sources to which third parties may claim rights have to be clearly marked (source, publication including date and place, creation, number, full title, etc...) in a way allowing easy identification.

