

NEG/44/2014 Question/ Answer

Question 01 (27 August 2014 08:22)

I wish to clarify some points arising from your invitation to tender dated the 14th August 2014 as follows:

In the "Tender Specifications" document at point 11 - the term "Should the contractor be unavailable..." is used, followed later by "...shall give reasons for refusal...".

Can you please indicate what EMSA consider to be valid reasons for refusal of an individual order form which will not result in a possible damages claim against the awarded contractor by EMSA? Further, should a valid refusal of an order form take place by an awarded contractor will this be considered termination of the FWC with no further order forms being made available to that contractor?

Answer to question 01:

The paragraph reads:

"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".

"Should the contractor be unavailable":

This could be any condition that forces the contractor to be unavailable for the execution of the offered service but is not reason for the contractor or EMSA to terminate the framework contract. An exhaustive list of reasons cannot be given here, but it could for example include inability to execute the service due to its timing, volume or exact subject.

When offered the order form and the contractor feels that a condition such as the above is present, the contractor has to reply within the deadline giving the reasons for refusal. This will enable EMSA to offer the order form could to another contractor in cascade.

Neither the condition: *"Should the contractor be unavailable,"* nor the condition *"should the contractor be unable to sign the Declaration of confidentiality and of absence of conflict of interest (Annex VI)"* leads to damage claims against the awarded company. If any of those situations happen, then EMSA should be duly notified. This is a totally different situation than when an order form is signed and the contractor fails to perform the services agreed upon.

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Requests for additional information regarding this tender should be sent by e-mail to the following address NEG442014@emsa.europa.eu . Requests for additional information received less than five working days before the closing date for submission of tenders will not be processed.

The deadline for submission of the bids of this tender is 12/09/2014; 12h00 Lisbon time.

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