

EMSA/OP/13/2014 Service Contract for Aerial Dispersant Application Service

Questions and Answers exchanged through the dedicated mailbox:

OPEN132014@emsa.europa.eu

Question 01 (dated 11/12/2014, 12:53):

Dear EMSA Procurement Team,

[...] We are EXTREMELY interested in submitting an offer for aerial dispersant application service in the event of a request for assistance by European Union (EU) for the Black Sea Coast – where there is a great need of intervention – in case this kind of call is ever opened to us.

Thus, the above mentioned bid (EMSA/OP/13/2014) is designed for the entire UE region and overcomes our company's range of offer and probably there are very few bidders on the market.

Can you advise us, please, what to do? Is there any perspective for a similar bid for the Black Sea / Romanian region ?

What is EMSA strategy for the Black Sea Coast – especially on the aviation side? Can we be part of your programmes in the future?

Answer to question 01 (published on 15/12/2014)

Please note that EMSA does not intend to target any specific geographical area to contract the aerial dispersant application service.

As specified in the tender documentation (available on EMSA's website at the following link:

<http://www.emsa.europa.eu/work/procurement/calls/item/2292-emsa-op-13-2014.html>), the area of operation for the provision of the aerial dispersant application service shall be within the maritime areas under jurisdiction of the coastal of EU Member States and coastal European Free Trade Associations (EFTA) Member States, which includes the Black Sea Region. Accordingly, the service provider may be requested to assist any EU Member States and coastal European Free Trade Associations (EFTA) Member States during oil spill response operations in order to support the existing capacities available at local, national, or regional level.

Question 02 (dated 14/12/2014, 20:01):

I noticed today, tender being called by European Maritime Safety Agency to hire of aircraft for air transport services. [...]

To set a price for a flight hour we need to know how much flight hours approximate can be guaranteed per year and which base you prefer (if not Lisbon).

Answer to question 02 (published on 17/12/2014)

Please note that through this procurement procedure EMSA does not aim at concluding a contract to “hire an aircraft for the provision of air transport services”. The scope of this procurement procedure is to set up a

“service for aerial dispersant application”, fitted with dispersant application systems ” as specified in point 2.3 of the Tender Specifications (enclosure 1 to the Invitation to Tender).

Also, please note that no minimum number of flying hours is to be guaranteed under this service. Instead the contractual system foresees, as indicated by the payment scheme in Part E of the Bid Template (enclosure 3 to the Invitation to Tender) an “Availability Fee” to be paid by EMSA during the stand-by phase that shall include the payment for maintaining the arrangement available, upon request and to perform, within a prescribed time, the dispersant spraying services, and a minimum of one Pollution Response Drill every six months with a foreseen duration of one day (see Articles IV.3.11 and IV.3.12 of the Draft Airplane Availability Contract, enclosure 2 to the Invitation to Tender). Furthermore, during the stand-by phase the service provider might be also requested to participate in one or two Operational Exercises per year for a maximum of six days in total. The price for participating in the exercise will be 75% of the Daily Operational Rate and 100% Hourly Flight Rate (as per Articles V.3.of the Draft Airplane Availability Contract, enclosure 2 to the Invitation to Tender).

Question 03 (dated 7/1/2015, 11:31):

[...] We would be interested to [...] receive further information about the supply of dispersant which will be part of the equipment of the aerial vehicle to be supplied by the tender. QUESTION: Due to different regulations of different European countries, in each of which different dispersants are authorized for use, how can be decided which one will have to be preferred as equipment on board of given aircraft and to be sprayed from it in case of emergency?

Answer to question 03 (published on 8/1/2015)

Please note that the purpose of this procurement procedure is to contract only the aerial dispersant application service. The dispersant to be used by the aerial service may be supplied either by the state requesting assistance or by EMSA. However within the framework of procurement EMSA/OP/13/2014 and subsequent contract, EMSA shall not purchase dispersant.

EMSA completed in 2014, a separate procurement procedure for the purchase of oil dispersant (EMSA/OP/05/2014), which was concluded with the signature of framework contracts in this regard. That procurement procedure addressed the status of approval of dispersants and the national policies across Europe in order to ensure that the dispersant(s) chosen will provide the most optimum coverage. For further information in this regard you may consult the dedicated section on our website at the following address:

<http://emsa.europa.eu/tender-archives/current/item/2063-emsa-op-05-2014.html>.

Question 04 (dated 8/1/2015, 21:36):

[...] In relation to the Invitation to tender, and ability to properly prepare a possible bid, is it possible to more clarify the following requirements in a more explicit way, in order to fully understand this requirement:

1. Dispersant payload

Requirement: The minimum dispersant payload capacity for each airplane part of the arrangement shall be 4 tonnes. What is the relationship to payload capacity during evaluation? Is there an evaluation factor in relation between payload and precision etc.?

2. Cruising Speed

The minimum cruising speed that the airplane shall achieve in order to ensure good transit time during mobilisation and/or operations is 245 KCAS (approx. 454 km/h). An airplane with a speed higher than 245 KCAS is preferred by EMSA. Do we understand correctly the cruising speed during mobilization is an evaluation factor?

The maximum distance from a central point within the EU to the most extreme stated FOB's (e.g. ABERDEEN or VALETTA) is 850 NM, hardly +/- 01:15 Hr Flight hours different between a 380 Kts, 245 Kts or 180 Kts aircraft. This looks irrelevant i.r.t. the mobilization period in general and aircraft turn-around time in particular.

3. Operational Range

Requirement: For the safety of the operations and for ensuring more operational flexibility, an operational range of 1000 nautical miles (1852 km) and above is preferred by EMSA.

We have difficulties understanding the requirement, the maximum distance of oil rigs or edges of the EU EEZ from the stated possible FOB's (Aberdeen-Hammersfest-Limassol-Lisbon_Valetta) is a maximum 212 NM. How will be taken into account the possibility to use other (smaller) airports closer to the incident? What relationship is used between safety of the operation and range of the aircraft?

4. Age of the aircraft

Requirement: The age of the airplane will be considered in the evaluation. For this purpose, an airplane which is less than 20 years old is preferred by EMSA.

Is there a particular reason for this to be used as evaluation factor? Is it for reliability or pollution or noise emission reasons?

5. Flow rate

Requirement: Therefore a good flow rate is important as it ensures that more oil can be treated on a daily basis. A system providing a flow rate higher than 500 liters/minute is preferred by EMSA.

Dispersant effectiveness being in relation to oil-dispersant ration, we have difficulties to understand the relation of flow rate per minute rather than per surface

Answer to question 04 (published on 13/1/2015)

1. Dispersant payload

The methodology for the evaluation of the dispersant payload is described in detail under point 15.1 and 15.3.1 of the Tender Specifications. In summary, scores will be awarded for the payload in accordance with the table provided under 15.3.1. The maximum score of 10 points will be awarded to an arrangement that offers an access of 30 tonnes payload. An offer of an airplane with a payload with 4 to 5 tonnes payload will be given 1 point. The dispersant payload will have a weight of 25% in the evaluation of the offer in the award phase. Regarding the question of the "relation between payload and precision", we assume that you refer to the precision to target the oil slicks with the dispersant. This aspect is evaluated under Quality Criterion 2 ("Quality of the arrangement") and is based on the requirements described under point 2.7 of the Tender Specifications.

2. Cruising Speed

Cruising speed is evaluated under Quality Criterion 2 and is based on the requirements described under point 2.7 of the Tender Specifications.

Mobilization time is a critical factor as the released oil weathers and may not disperse after a short period.

Furthermore, EMSA cannot assume that the offered airplane is located in central Europe, therefore transit times from one peripheral area of Europe to another peripheral area can be considerably longer and a higher cruising speed is therefore preferred.

3. Operational Range

Most offshore oil installations are indeed within 300 nm from an airport. The operational range of 1000 nm or more is based on the assumption that the airplane has to fly to the area of the oil spill (which could be further away than the installation), perform spraying operations, return to the operational airport and still have the required fuel reserve for 45 minutes flying. The operational airport will be chosen by the Requesting State and

must obviously be suitable for the type of aircraft used. While smaller airports may be suitable for smaller airplanes, larger ones with higher payload may not be able to utilize these.

4. Age of the aircraft

EMSA's preference for an airplane of less than 20 years age is based on a combination of factors that include fuel efficiency (affecting the operational cost), noise emissions, maintenance intervals and downtime.

5. Flow rate

Dispersant effectiveness is indeed based on the oil-dispersant ratio (among other factors). Therefore the right amount of dispersant per surface area has to be applied. However, the flow rate of dispersants needs to match the airspeed at which the spraying operations are performed. As EMSA's preference is towards larger and faster airplanes, appropriate flow rates are essential. Furthermore, a system ensuring a higher flow rate will be capable of treating thicker oil slicks, therefore minimizing the likelihood and need to have two or multiple spraying sorties over the same patch of oil slick.

Questions received during the Information meeting held on 14 January 2015 in Lisbon (EMSA premises)

Question 5: Who would enforce the payment terms of the Incident Response Contract and is it admissible that the service provider refuses to conclude the Incident Response Contract for the Airplane (IRC-A) Form with a Member State that appears not to have reliable financial resources to cover the costs of the pollution response operations?

Answer 5: The service provider upon signing a contract with EMSA (AAC), irrevocably commits to perform emergency pollution response operations upon request received from any coastal EU Member States as well as from any coastal EFTA Member States (see Article IV.3.2 of the Airplane Availability Contract), but the IRC-A is signed between the service provider and the Requesting State. Therefore EMSA is not part of this contract and would not step in. The emergency pollution response operations are to be executed in accordance with the IRC-A. Accordingly, any failure to perform this contractual obligation in response to a request for assistance received from any legitimated Requesting State indicated above is considered as breach of the AAC signed with EMSA as well as of the IRC-A. The service provider may decide to settle a dispute against the Requesting State in accordance with Article VI of the IRC-A. Furthermore, to ensure the payments related to the performance of aerial dispersant application service to the service provider, it was highlighted that Member States usually recover reasonable costs expended in the response operations through the International Oil Pollution Compensation (IOPC) Fund.

Question 6: Should the service provider wait more than 30 days to be paid in case the mobilisation of the arrangement is requested under the IRC-A?

Answer 6: The payment of the Hourly Flight Rate and of the Daily Operational Rate is set every seven days. As indicated in Article IV.5 of the IRC-A, 21 days is to be considered as maximum period of time for the execution of

the payment from the receipt of an invoice. Please do not forget that in parallel EMSA will maintain the payment of the Annual Availability Fee.

Question 7: The service provider has to mobilise the arrangement within 12 hours from the time the IRC-A Form is signed by the Requesting State. Could you please indicate how the process to arrange licenses through the Civil Aviation Authority at short notice will be dealt by the Requesting State?

Answer 7: All terms and conditions set in the IRC-A were already discussed and agreed with the Member States prior to the publication of the tender documentation. If the service contract is awarded at the end of this procurement procedure, EMSA will send copy of the IRC-A Form filled in with the relevant information on the service provider to all the Member States. Each Member State will subsequently coordinate with the national Civil Aviation Authority to ensure the correct implementation of the contract, and in particular any required authorisation. During the preparation phase (phase 1), EMSA will inform all Member States to coordinate the provision of the required authorisations for dispersant application operations from their national Civil Aviation Authority. This authorisation shall be issued to the service provider in case of a request for dispersant application services.

Question 8: Could you please clarify how the service will be mobilised by EMSA in case an oil spill is caused by an off-shore installation?

Answer 8: Any coastal EU Member States as well as coastal EFTA Member States may request the aerial dispersant application service established by EMSA in order to “top –up” their local capabilities. EMSA will not request dispersant application operations or take any initiative on its own.

Question 9: Dispersant spraying operations may last for a maximum period of 21 consecutive days. Please clarify if 4 tonnes is a sufficient element to complete the stock of dispersant available during this period of time.

Answer 9: Please note that the 4 tonnes refers to the minimum dispersant payload capacity of the airplane (for each sortie) and not to the quantity of dispersant sprayed during the overall operational period (21 days or more).

Question 10: What kind of dispersant will be used for the performance of the service?

Answer 10: EMSA can provide the technical information (MSDS) of its own stock of dispersant. However, the service provider has to perform the dispersant application service with all approved dispersants that the Member States may provide (‘Type 3’ dispersants).

Question 11: Please clarify if the maximum value of EUR 2,300.000 set for the Airplane Availability Contract (AAC) is applicable for the first term contract.

Answer 11: Yes, this amount is valid for a service contract that lasts for a maximum duration of two years and nine months (preparation phase of maximum 9 months, and initial stand-by phase of 2 years). This first term contract could be extended by two annual renewals. In case of renewal, the annual Availability Fee as well as the Daily Operational and Hourly Flight Rates agreed for the first two years, in the AAC can be recalculated in accordance with the harmonised indices of consumer prices (HICP) European Index of Consumer Prices (EICP) as per Article III.5 of the AAC.

Question 12: In the AAC there is a clause for termination of the contract with a previous 9 months' notice. Is this clause intentional and could it be reworded to make it clearer?

Answer 12: Yes, the clause is intentional, it was considered necessary for the contractors should they need to terminate the contract, as it represents recognition of the difficulties to commit to a 2 year period contract. Any substantial amendment in the text of the contract would affect fair completion and equal treatment in the procurement procedure.

Question 13: The AAC foresees reduction of the compensation for the preparation phase in case the contractor does not meet its obligation to complete all the necessary activities within 9 months from the signature of the contract. Please clarify if this condition is applicable even if this delay is due to technical constraints to conclude the certification process.

Answer 13: The reduction of the compensation for the preparation phase would be applied in case of failure to conclude the preparation phase within the maximum period of 9 months. Therefore this reduction is also applicable if the delay is due to technical or administrative constraints to conclude the certification process. The duration of the preparation phase is one of the evaluation criteria (see point 15.1 of the Tender Specifications) and it is important that tenderers take into account all possible risks when estimating its duration.

Question 14: Please clarify if the reimbursement to be paid to the Member State in case of any loss or damage occurred in connection to the performance of the IRC-A will be calculated in proportion to the scale of the failure as set in Article III.1.3.

Answer 14: Article III.1.3 refers to the reduction or recovery of the Daily Operational and Hourly Flight Rates to be paid to the service provider for the performance of its obligations. This reduction will be reduced or recovered by the Requesting State in proportion to the scale of the failure in case the service provider fails to perform its contractual obligations.

With regard to any loss or damage occurred in connection to the performance of the IRC-A both parties have the right to claim limitation of liability as set under Article VIII of the IRC-A.

Question 15: Is the service provider allowed to refuse the support of the spotter airplane provided by the Requesting State?

Answer 15: The choice of the spotter airplane rests with the Requesting State. However the service provider may refuse the spotter airplane provided by the Member State due to safety considerations.

Question 16: Please clarify how to deal with any conflicting regulations between the different airworthiness authorities (e.g. EASA, FAA, CAA) in relation to the different specifications applicable at national and international level for the registration of airplanes.

Answer 16: The airplane including the installations required for the aerial dispersant application operations to be provided needs to be able to operate in all European and EFTA Member States. With regard to the applicable regulations, the following aspects should be considered:

Aspects of Registration:

Usually civil registered airplanes have a Certificate of Airworthiness (C of A) in accordance with the ICAO standard and have therefore the right to overfly all ICAO member states. Consequently, if the State of Registry issuing the C of A determines compliance with the requirements of ICAO Annex 8 the overfly rights are assured. There is no difference in that aspect between airplanes registered in European Member States (including airplanes referred to under Annex II of Regulation (EC) N° 216/2008) and airplanes registered in third countries.

Aspects of Type Certification:

In case that there is the need to modify the subject airplane(s) e.g. for the purpose of performing the aerial dispersant application operations, these modifications need to get a type certification/supplemental type certification approval by the responsible party for type certification before a C of A can be granted by the State of Registry. EASA is the responsible party to grant the type certification approval for modifications to be installed in European registered airplane(s).

Sometimes, the technical investigation of type certification projects is allocated by EASA to specific National Airworthiness Authorities of European Member States (NAAs). But in any case the investigating team will check if compliance to the applicable type certification basis has been demonstrated and no different specifications will be applied in case that the technical investigation is performed by a NAA on behalf of EASA .

In case that the modification is designed by a non-EU Design Approval Holder and has already been type certificated or is currently under investigation by a foreign (non-EU) airworthiness authority (e.g. by the FAA), the non-EU Design Approval Holder needs to seek a validation of the subject approval by EASA before the associated modification can be installed in European registered airplane(s).

Even though EASA may request that compliance has to be demonstrated to additional specifications/requirements that have not been identified by the foreign airworthiness authority, there are usually no “conflicting” regulations to be expected between the certifying and validating airworthiness authorities.

Question 17: With regard to the definition in the tender of the equipment base, has EMSA any geographical preference for such bases?

Answer 17: As indicated in the Tender Specifications, there is no preference for a specific geographical area to be proposed as operational basis for the equipment, and the tenderers may choose to offer those equipment bases that ensure the best flexibility in terms of mobilisation of their service. This flexibility will be evaluated taking into account the estimated time for mobilisation indicated in the offer and the simulation in part D, point 3, of the Bid Template (enclosure 3 to the Invitation to Tender).

Question 18: Are there any requirements with regard to the spotter airplane, if included in the offer?

Answer 18: Yes, the requirements regarding the spotter airplane are presented in Part 2.10 of the Tender Specifications.

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Question 19 (dated 05/02/2015, 08:30)

We would like to clarify two queries regarding the tender documents and tender submission.

- 1) *Are there templates available for the Declaration of Honour and any other requested documents in the bid template?*
- 2) *In the tender specification the dispersant storage is described as an option, however in the price calculation grid it is included in the total sum of €2.3 mln for all tender. How does it look like if the tenderer does not include the option of dispersant storage? Would then the €50,000 be spent on other deliverables or would this sum be deducted from the total €2.3 mln?*

Answer to question 19 (published on 09/02/2014)

Regarding part 1) of your question, please note that the templates for Declaration on Honour (point 14.3 of the Tender Specifications), Financial Form and Legal Entity Form (point 11 of the Tender Specifications) are available at the following link: <http://www.emsa.europa.eu/work/procurement/items.html?cid=84&id=128>.

Regarding part 2) of your question, the dispersant storage is indeed an optional service that can be included in the offer or not. The amount of EUR 2,300,000 corresponds to the maximum budget for the contract for the first term regardless if the option of storage of dispersant is provided or not:

-If the tenderer includes the storage of dispersants as a service in the offer, the maximum cost linked to it, to be reflected in the price for compensation of the closure phase should be EUR 50,000 (maximum ceiling) (see points 6 and 12.4 of the Tender Specifications).

-If the tenderer does not include the storage of dispersants as a service in the offer, 0 should be indicated in the "price for compensation of the Closure Phase" and the maximum ceiling of 2,300, 000EUR will apply to the addition of the price for the compensation of the preparation phase and the Annual Availability fee.

Accordingly, the maximum budget of EUR 2,300,000 will not be reduced in case the option of the storage of dispersant is not foreseen in the offer.

However, in order not to discriminate the tenderers offering storage of dispersants, the comparison of the offers in terms of price per tonne for the preparation and stand-by phases (SP1 as per point 15.3.2 of the Tender Specifications) will be done based on the addition of the price for the preparation phase and first term of the Stand-by Phase (PCp+Pa) without taking into account the price for compensation of the Closure phase.

Published on 09/02/2015

Requests for additional information regarding this tender should be sent by e-mail to the following address OPEN132014@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 **23 February 2015**.

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