

Procurement procedure: EMSA/NEG/5/2021

Questions and Answers

Number	Question	Date and time	Reply	Date of publication
4	<p>We would like to clarify certain points and conditions.</p> <p>In regards to your invitation to tender No. EMSA/NEG/5/2021 “feasibility study for the development of a software tool to support Member States on oil pollution response operations at sea”:</p> <p>a) The paragraph 1 of the Article I.12 “applicable law and settlement of disputes” of the SERVICE CONTRACT (enclosure 1) states that “<i>The contract shall be governed by Union law, complemented, where necessary, by the law of Portugal</i>”. Would it be possible to change the applicable national law to another EU member state, e.g. the Netherlands or the country of whoever wins the bid?</p> <p>b) The paragraph II.6.3 of the Article II.6 “liability” of the SERVICE CONTRACT (enclosure 1) states in the first part that “<i>The contractor is liable for any loss or damage caused to the</i></p>	09/08/2021 19:41	<p>Regarding question (a):</p> <p>The applicable law must be Portuguese law, as it is in all contracts concluded by EMSA. This is also in coherence with Art. 12.2 according to which the court of jurisdiction is the competent court in Lisbon, Portugal.</p> <p>Regarding question (b):</p> <p>The provisions in Art. II.6.3 of the draft contract regarding liability are the standard provisions as used in all contracts by EMSA as well as the European Commission or other EU Agencies. They are proven and accepted by EU courts and EMSA does not want to change them.</p> <p>Regarding question (c), please note that questions</p>	11/08/2021

	<p><i>contracting authority during or as a consequence of performance of the contract, including in the event of subcontracting, but only up to an amount not exceeding three times the total amount of the contract.” Would EMSA agree to the following changes : “The contractor is liable for any loss or damage caused to the contracting authority during or as a consequence of performance of the contract, including in the event of subcontracting, but only up to an amount not exceeding the total amount of the contract. No Contractor shall be responsible to another for indirect or consequential loss or damages such as but not limited to loss of profit, loss of revenue, or loss of contracts”.</i></p> <p>c) Could you please indicate the latest date we could ask EMSA questions or clarifications regarding this tender.</p>		<p>received less than six working days before the closing date for submission of tenders (27 August 2021) may not be processed.</p>	
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Requests for additional information regarding this procurement procedure shall be sent by e-mail to the following address **NEG52021@emsa.europa.eu**.

Requests for additional information received less than six working days before the closing date for submission of tenders may not be processed.

The deadline for submission of the tenders is 27/08/2021.

The responsibility for monitoring the Agency’s website for replies to queries and/or further information remains with potential tenderers.