

Call for tenders' details

Title: Provision of Interim Staff Services for Frontex

Start date: 14/08/2019

Time limit for receipt of tenders: 09/09/2019

Contracting authority: European Border and Coast Guard Agency (Frontex)

Status: Closed

Call for tenders question list

| # | Submission date | Publication date | Question subject | Question | Answer |
|---|---------------------|---------------------|--|--|--|
| 1 | 14/08/2019 10:50 | 19/08/2019 12:21 | Subcontractor past performance and revenue | Is it permissible for the submitting company to use subcontractor (interim personnel service providers) past performance and revenue (3 year revenue average) as part of the offer? To put it another way, will subcontractor experience and revenue count towards the prime contractor meeting tender requirements? Thank you! | 19/08/2019 According to point 3.6 of the Annex I Tender Specifications the selection criteria for technical and professional capacity as well as the selection criteria for economic and financial capacity (total turnover from the past three years) shall be assessed in relation to the combined capacities of all members of the consortium (including subcontractors), as a whole. |

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| 2 | 27/08/2019 10:57 | 27/08/2019 11:20 | Validation of documents provided on RFP launch dated JUL 2019 | In consideration of voided RFP published on TED e-tendering on the 26th JUN 2019, please confirm if provided documents signed by hand on JUL 2019, in particular declaration on honour and any other documents will be still acceptable? | <p>27/08/2019 Since this is a new procurement procedure no documents can be accepted when submitted to other tender procedures except Annex V - declaration on honour which states that: "The person is not required to submit the declaration on exclusion criteria if the same declaration has already been submitted for the purposes of another award procedure of the same contracting authority, provided the situation has not changed, and that the time that has elapsed since the issuing date of the declaration does not exceed one year" However, the refernce to the previous procedure should be indicated on the declaration (see page 1 of the declaration).</p> |

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| 3 | 27/08/2019 13:13 | 28/08/2019 16:44 | Agreement between Poland and EC related to Frontex | Due to the differences in the Polish and English translations of the agreement between the Polish State and the European Commission, I am asking for an unequivocal explanation that the Polish version of the agreement should not be used in these proceedings, despite its ratification by the Polish parliament. I would like to point out that this document clearly indicates that temporary employees are Frontex staff and the lack of the necessity to pay contributions is the privilege of these people. Withdrawal of this privilege may give temporary employees a claim for unequal treatment. | 28/08/2019 According to point 4.5 of Terms of reference "the requested under this FWC interim personnel remains staff of the contractor and the contractor will be obliged to engage interim staff in line with the local labour law and pay all taxes and social security contributions in line with the applicable laws and regulations. The interim personnel under this FWC is not Frontex staff. On the contrary, Frontex staff is employed based on the Staff Regulations of officials and the Conditions of Employment of other servants of the European Union." In line with the Terms of Reference (point 10) "all issues (rights and entitlements) related to the employment, remuneration and social contributions (salary, health insurance, pension contribution, taxes) of the interim personnel must be covered and managed by the contractor in line with the national law applicable to employment of interim personnel. The contractor is the sole responsible party to ensure compliance with national legislation. Frontex reserves the right to access the relevant documentation in relation to the provided interim services on its site in order to verify their legality." |

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| 4 | 27/08/2019 13:20 | 28/08/2019 16:50 | salaries in net/gross | <p>The documentation of the procedure presents the remuneration for comparable positions in Frontex specified in net EUR amounts, and the contracting authority expects the offer indicated as the margin calculated for net remuneration, including all public-legal burdens. Due to the relatively high amounts of remuneration, it is completely realistic that employees will exceed the first tax threshold during the tax year. In addition, there may be further differences in the amount of public-legal burdens (e.g. the amount of tax deductible costs due to where you live, any zero PIT for employees younger than 26 years or not counting all contributions for 55+ employees). Polish regulations require the same GROSS remuneration to be paid in the same positions. For this reason, please change the tender documentation and indicate GROSS rates of remuneration. In our opinion, the above problem results from the fact of concluding contracts with Frontex permanent employees based on an international</p> | <p>28/08/2019 As indicated in point 4.5. of the Terms of reference Frontex staff is employed based on the Staff Regulations of officials and the Conditions of Employment of other servants of the European Union. Remuneration of post with similar functions in Frontex is indicated in the tender documentation in net value, in order to allow equal treatment of interim personnel engaged under this framework contract.</p> |

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| | | | | <p>based on an international agreement, which allows them to be determined in net amounts. Differentiation of temporary employees in this respect additionally leads to the above problem.</p> | |
| 5 | 27/08/2019 16:57 | 28/08/2019 16:55 | Framework Contract for Services | <p>The Framework contract which is a part of tender documentation does not include basic rules regarding temporary employment required by Polish law. There are: - information that cooperation concerning temporary service providing is three parties agreement (Employer-User, Agency and Temporary Worker), - responsibilities of Employer-User and Agency, -information about conditions regarding temporary contract - maximum period of cooperation on the basis of this type of contract. We would highly appreciate if you add this information to the framework contract.</p> | <p>28/08/2019 This information is included in the Terms of reference which constitute part of the contract (Annex I).</p> |

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| 6 | 27/08/2019 12:24 | 28/08/2019 17:04 | Questions about the preferences and expectations of the contracting authority | Does the Partner must have the status of a temporary employment agency? | 28/08/2019 There is no requirement in the tender specifications that the tenderer should be registered as a temporary employment agency. As indicated in point III.4.1 of the Tender Specifications "The tenderer shall provide evidence that is authorised to perform the contract under the national law by provision of the evidence that the Tenderer is already established as a recognised legal entity and is registered in a relevant professional or trade register" |
| 7 | 27/08/2019 17:07 | 28/08/2019 17:09 | Annex II. point copy of a valid clean criminal record certificate. | Is copy of a valid clean criminal record certificate required during recruitment process or after employment decision? | 28/08/2019 Valid clear criminal record certificate is required after the employment decision is made by Frontex. There is no need to submit the certificate during the recruitment procedure. |
| 8 | 27/08/2019 12:24 | 28/08/2019 17:12 | Questions about the preferences and expectations of the contracting authority | Do I understand correctly that the given daily salary for individual job profiles is a net rate for an employee, not a net amount on a VAT invoice for a contractor? | 28/08/2019 Yes, those amounts are the net salaries that should be paid to the interim personnel engaged under the contract. |

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| 9 | 29/08/2019 14:33 | 03/09/2019 17:11 | wynagrodzenia netto/brutto - ponowne i uszczegółowione pytanie | <p>Stosując równe traktowanie pracowników jedynie w zakresie kwoty netto, może dojść na gruncie polskiego prawa do złamania zasady równego traktowania pracowników. W szczególności kwoty odprowadzanych składek za poszczególnych pracowników, czy też kwoty odprowadzane na PPK naliczane są od kwoty brutto wynagrodzenia, która może być różna dla pracowników otrzymujących identyczne kwoty netto wynagrodzenia. Te naliczenia są bezpośrednią indywidualną korzyścią pracownika i różnicowanie podstawy naliczenia (kwoty brutto wynagrodzenia) narusza wprost wymagane regulacje co do „równiej płacy za równą pracę”. Przykładowo dla wynagrodzenie netto 80 EUR / dzień ~ = 334 zł/dzień ~ = 7000 zł netto / miesiąc Pracownik A: osoba uprawniona do skorzystania z 0% PIT - kwota brutto (podstawa składek na ubezpieczenie społeczne): ~9.950 zł brutto Pracownik B: osoba bez szczególnych uprawnień - kwota brutto (podstawa składek na</p> | <p>03/09/2019 First of all, we would like to inform that the principal of equal treatment of interim and statutory staff should be interpreted in accordance to EU legal and labour framework. The main document, on which we base our requirement in this perspective, is Directive 2008/104/EC. As it is almost impossible to harmonise taxation, health care and pension scheme systems described under Staff Regulations and Polish Labour Regulation, we decided that the main and most important tool in assuring the equal treatment policy, should be the net salary. We are very much concerned and highly motivated to ensure that all interim employees engaged under the same profile will receive the same net salary. And that this salary will be equal to the basic salary of Frontex statutory staff members, who perform tasks at the similar level of difficulty. We would like to also highlight that it is not an easy task to ensure the 100% equality in the field of both gross and net salaries of interim and statutory employees. The obvious reasons are discrepancies between Staff Regulations and Polish Labour Regulation. In the Directive 2008/104/EC we could also find two paragraphs that refer to this issue:</p> |

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| | | | | <p>brutto (podstawa składek na ubezpieczenie społeczne): ~8.915 zł brutto Pracownik C: osoba objęta 2 progiem podatkowym - kwota brutto (podstawa składek na ubezpieczenie społeczne): ~12.010 zł brutto Powyższy przykład obrazuje w sposób bezsporny, iż przy tak przyjętym modelu równania wynagrodzeń (kwoty netto), różnice w kwotach brutto mogą wynosić nawet ponad 30%, a takie składniki jak: - podstawa składki na ubezpieczenie emerytalno rentowe - odprowadzane składki emerytalne i rentowe po stronie pracownika - składka chorobowa po stronie pracownika - składka emerytalno-rentowa odprowadzana za pracownika przez pracodawcę - PPK po stronie pracownika i pracodawcy</p> | <p>paragraphs that refer to this issue: (16) In order to cope in a flexible way with the diversity of labour markets and industrial relations, Member States may allow the social partners to define working and employment conditions, provided that the overall level of protection for temporary agency workers is respected. (17) Furthermore, in certain limited circumstances, Member States should, on the basis of an agreement concluded by the social partners at national level, be able to derogate within limits from the principle of equal treatment, so long as an adequate level of protection is provided.</p> |

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| 10 | 27/08/2019 12:24 | 04/09/2019 13:47 | Questions about the preferences and expectations of the contracting authority | Does the contracting authority expect / prefer a certain form of employment of interim employees by a partner, e.g. a fixed-term employment contract, an order agreement, a business to business cooperation agreement? | 04/09/2019 The Agency foresees that the contractor will engage interim personnel fully in line with the Polish Interim Employment Regulation (Ustawa z dnia 9 lipca 2003 r. o zatrudnieniu pracowników tymczasowych, z późniejszymi zmianami). This Regulation provides applicable legal framework with regards to delivery of interim employment services. In this context, Frontex will play the role of so called "employer-receiver" with all its rights and obligations. |
| 11 | 26/08/2019 14:09 | 04/09/2019 13:48 | subject of the tender | Within the framework of this procedure will you require personnel as a replacement staff or as a temporary staff provided by an external company (staff leasing). | 04/09/2019 According to the Terms of reference, the Agency will request support of interim personnel in the following situations: - to replace staff absent due to maternity leave, parental leave, longer-term sickness or other similar reasons; - to cope with peak periods which require additional workforce; - to carry out, on a temporary basis, certain tasks resulting from specific projects, which are additional to the ordinary ones. |

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| 12 | 28/08/2019 20:35 | 04/09/2019 13:50 | discrimination on grounds of the pension system | In response to the previous questions, you have indicated the principle of equal treatment of assigned staff in terms of net remuneration. What type of the retirement security system is used for Frontex permanent employees and whether the coverage of employees referred under this procedure will not lead to unequal treatment in this respect? | 04/09/2019 Taxation and salary reductions related to social contributions (pension scheme) and health care of the remuneration of the statutory staff of Frontex is calculated according to the applicable legal framework, which is Staff Regulations and CEOS. Deduction related to taxation and social contributions of salaries of interim employees should be done on the basis of Polish Labour Law as interim employees will be engaged locally, under the conditions of Polish Labour Regulation. In our understanding there is no possibility of unequal treatment between statutory and interim staff as the salaries of these both groups will be deducted accordingly to the applicable legal framework |
| 13 | 28/08/2019 19:58 | 04/09/2019 14:24 | legal basis for the employment of interim staff delegated to Frontex | Will the employment and referral of employees under the contract be based on the provisions of the Polish Act of 9 July 2003 on the employment of temporary employees (as amended), in particular whether Frontex will enter into the rights and obligations of the User Employer within the meaning of / in the Act | 04/09/2019 In order to provide clear legal compliance with PL legal provisions, the applicable framework for services provided by interim workers will be the Polish Interim Employment Regulation of 9th July 2003. Accordingly, Frontex will play role of so called "employer-receiver" with all its rights and obligations. |

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| 14 | 04/09/2019 15:22 | 05/09/2019 09:50 | dyskryminacja ze względu na system emerytalny #2 | Frontex answer for last question was „...salaries of these both groups will be deducted accordingly to the applicable legal framework”. This is exactly what is a problem in this Tender specification - actual employee salary is not NET salary, but GROSS salary from which employer have to deduct adequate tax/social security amounts. That's why, Frontex should require to guarantee certain gross salary not net salary. | 05/09/2019 Once again we would like to quote Directive 2008/104/EC: 16) In order to cope in a flexible way with the diversity of labour markets and industrial relations, Member States may allow the social partners to define working and employment conditions, provided that the overall level of protection for temporary agency workers is respected. (17) Furthermore, in certain limited circumstances, Member States should, on the basis of an agreement concluded by the social partners at national level, be able to derogate within limits from the principle of equal treatment, so long as an adequate level of protection is provided. The Member States of the EU have different regulatory framework related to labour law and taxation and as the result there is no totally harmonised legal approach in the EU. Therefore, the main aim of the ‘derogation within limits from the principle of equal treatment’ is to ensure at least the (minimum) NET pay of temporary agency workers is equal to the NET pay of respective EU staff (for the same work) as a measure to ensure that “the overall level of protection for temporary agency workers” is respected. Expressing the remuneration in gross value would not |

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| | | | | | remuneration in gross value would not comply with this rule as taxation, social and health care contributions and allowances are calculated differently for the staff employed by the EU than according to Polish regulatory framework. Further information about EU pension scheme could be found in Staff Regulations, Annex VIII. As the interim personnel will be employed by the provider under the conditions of Polish labour law (and not by Frontex under the respective EU staff rules) there is no possibility to include such personnel under the EU pension scheme. Additionally please note that the deadline for submitting questions has passed and we cannot reply to the new questions. |

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| 15 | 06/09/2019 16:00 | 06/09/2019 16:49 | informacja o wynagrodzeniu brutto pracowników | Zgodnie z tym co sami Państwo podali, niniejsze zamówienie odbywa się na podstawie polskiej ustawy o pracy tymczasowej. Jak wynika z ustawodawstwa a nawet wyroków sądowych (przykładowa teza z wyroku SN została zacytowana w odrębnej wiadomości), wynagrodzeniem jest kwota brutto, a nie netto. Zgodnie z Art.9 Ustawy z dnia 9 lipca 2003 r. o zatrudnianiu pracowników tymczasowych, ust. 2: "Pracodawca użytkownik informuje agencję pracy tymczasowej na piśmie o wynagrodzeniu za pracę, której wykonywanie ma być powierzone pracownikowi tymczasowemu, oraz o wewnętrznych regulacjach dotyczących wynagradzania obowiązujących u danego pracodawcy użytkownika, a na wniosek agencji pracy tymczasowej przedstawia do wglądu treść tych regulacji". Reasumując, najpóźniej po zawarciu umowy z wykonawcą/wykonawcami, a przed powierzeniem pracy pracownikom tymczasowym, są Państwo zobowiązani | 06/09/2019 According to point 9b) of Invitation to tender letter "Requests for additional information received less than five working days before the deadline for receipt of tenders will not be processed (for practical reasons)" |

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| | | | | <p>Państwo zobowiązani do podania kwoty brutto wynagrodzenia oraz do zatrudnienia pracowników tymczasowych na tożsamy warunkach (co do kwoty brutto). Mając powyższe na uwadze, ponownie wskazujemy, że oferowanie w przetargu marży do kwoty netto wynagrodzenia stwarza warunki uniemożliwiające zgodne z przepisami realizowanie umowy i wymusza kalkulowanie oferty w oparciu o hipotezy a nie fakty, co prowadzi do złożenia nieporównywalnych ofert - czego przykładem było poprzednie unieważnione postępowanie.</p> | |

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