

Annex I

Tender Specifications

Frontex OP/286/2016/RS

Purchase of the Digital Surface Model along the EU borders

I. GENERAL INFORMATION

I.1 General Information on Frontex

The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) was established by the Council Regulation (EC) 2007/2004 of 26 October 2004 as subsequently amended, (hereinafter called “Frontex Regulation”) with a view to improving the integrated management of the external borders of the Member States of the European Union.

Frontex started to be fully operational on 3 October 2005 with its seat in Warsaw, Poland. As of January 2014, Frontex has approx. 300 staff members.

Responsibility for the control of external borders of the Member States of the European Union lies with the Member States. Frontex strengthens border security by ensuring the coordination of Member States’ actions in the implementation of Union measures relating to the management of the external borders.

Frontex is a key player in the implementation of common EU policy for Integrated Border Management and it actively promotes the gradual development and the effective functioning of the EU Integrated Border Management System.

Further information about Frontex can be found on the Agency’s web site at www.frontex.europa.eu

I.2 Procurement procedures

For its fast growing organization and performance, Frontex is in constant need of goods and services. Tendering is the structured way to consult the market for the purchase of these goods and services. The purpose of competitive tendering for awarding contracts is two-fold:

- To ensure the transparency of operations;
- To obtain the desired quality of services and supplies at the best possible price.

The procurement procedure is governed by the following legal provisions:

- a) Part 1, Title 5 of the Regulation (EC, Euratom) of the European Parliament and of the Council of No 966/2012 of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L298 of 26/10/2012) as amended;
- b) Commission delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L362 of 31/12/2012) as amended.

I.3 Eligibility

The participation in tender procedures is open on equal terms to all firms under the condition that:

- a) They are not in any of the situations excluding them from participation listed in Declaration on honour on exclusion criteria and selection criteria (*Annex III*) and that they have no conflict of interest in connection with this contract;
- b) They have all the necessary knowledge and experience as well as technical and human resources to implement the contract; and
- c) They possess adequate economic and financial capacity to perform the required services;

I.4 Penalties

Without prejudice to the application of liquidated damages laid down in the contract, Tenderers and Contractors who have been guilty of making false declarations concerning situations referred to in point III.3 or have been found to have seriously failed to meet their contractual obligations in an earlier procurement or grant shall be subject to the administrative and financial penalties set out in Article 145 of the above mentioned Commission delegated Regulation No 1268/2012 of 29/10/2012 as amended.

I.5 Joint Tenders

No special legal form is required but, in the event a group of Contractors submits an acceptable offer, it shall be necessary to provide an undertaking that each company shall be jointly and severally responsible for the due performance of the contract. In the case of a consortium bid, the Contractor shall be required to act on behalf of the consortium.

Statements saying, for instance, that:

- a) “...one of the partners of the joint tender shall be responsible for part of the contract and another one for the rest...” or
- b) “...more than one contract shall be signed if the joint tender is successful...”

are thus incompatible with the principle of joint and several liability.

Frontex shall disregard any such statement contained in a joint tender, and further reserves the right to reject such tenders without further evaluation on the grounds that they do not comply with the tendering specifications.

I.6 Sub-contracting

Sub-contracting is allowed, provided that the subcontractor(s) and his scope of work shall be clearly indicated in the tender. Nevertheless, the responsibility for the full execution of the contract rests with the Contractor, as Frontex has no direct legal commitment with the subcontractor(s).

Accordingly:

- a) Frontex shall treat all contractual matters (e.g. payment) exclusively with the main Contractor, whether or not the tasks are performed by a subcontractor;
- b) Under no circumstances the main Contractor can avoid liability towards Frontex on the grounds that the subcontractor is at fault.

If subcontracting is envisaged in the tender it shall include a complete documentation that:

- a) defines clearly the roles, activities and responsibilities of subcontractor(s);
- b) specifies the volume / proportion of the tender being subcontracted for each subcontractor and

- c) contains a letter of intent by each subcontractor stating its intention to collaborate in case the contract is awarded.

All members of the consortium and subcontractors shall meet the eligibility and exclusion criteria given in points I.3 and III.1.

I.7 Cost of preparing tenders

The invitation to participate in a tender procedure does not constitute any commitment on behalf of Frontex for award of the contract to a company. Frontex shall not reimburse any costs incurred by Tenderers in preparing and submitting offers.

I.8 Misrepresentation and corruptive practices

The contract shall 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 Frontex as a condition of participation in the contract award procedure or fail to supply this information;
- c) attempt to obtain confidential information, enter into unlawful agreements with competitors or influence the evaluation committee or Frontex during the process of examining, clarifying, evaluating and comparing tenders.

All the above-mentioned circumstances shall lead to the rejection of this offer and may result in administrative penalties.

I.9 Confidentiality and public access to documents

In the general implementation of its activities and for the processing of tendering procedures in particular, Frontex observes the following EU regulations:

- a) Regulation (EC) No. 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data;
- b) Regulation (EC) No. 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

II. SPECIFIC INFORMATION

II.1. Scope and contractual information

II.1.1 Scope of contract

Frontex intends to purchase a set of Digital Surface Model (DSM) spatial data which can be used for analyse and visualisation. The subject of the tender is described in *Annex II - Terms of Reference*.

II.1.2 Type of contract.

The envisaged contract is a service lump sum contract. Frontex will conclude the contract with the selected Tenderer (on basis of the draft contract included in *Annex VI*).

II.1.3 The execution of the contract

The deliverables shall be provided according to the schedule provided in *Annex II* - Terms of Reference.

II.1.4 Invoicing

The contractor will be entitled to issue an invoice for the delivered services after satisfactory completion of all requested tasks. The payment will be made within 30 days from receipt of the invoice by Frontex.

II.2. Form and content of the tender

The tender shall include all the information and documents required by Frontex for the appraisal of tenders on the basis of the exclusion, selection and awarding criteria, and in accordance with these specifications, in the absence of which, Frontex may decide to exclude the tender from the awarding procedure for the contract.

II.2.1 Documents to be included in the offer

The offer shall include the following documents:

a) Technical proposal

The Technical Proposal shall be consistent with the Terms of Reference (*Annex II*) and shall present the following information:

- a brief description of the Tenderer's economic activity relating to the subject of this tender (provision of Digital Surface Models);
- description of the proposed tasks and how the Tenderer intends to complete the contract deliverables by the due date including detailed explanation (i.e. fit for purpose) for the data selection;
- proposal of the quality assurance measures;
- information which allow for the verification of the technical requirements presented in Appendix I to Annex II.

b) Financial offer in accordance with the template provided in *Annex IV*.

Prices in the Financial Proposal shall be all inclusive.

In preparing the Financial Proposal, the Tenderer should take into account that Frontex is, in general, exempt from all taxes and dues pursuant to the Protocol on the Privileges and Immunities of the European Union, annexed to the Treaty on the Functioning of the European Union¹.

The Contractor shall take the necessary steps in order to obtain, from the competent national authorities, exemption from VAT in respect of the services to be provided under the contract concluded with Frontex. Frontex may assist the Contractor by issuing "VAT and excise Duty Exemption Certificate" used for this purpose by the European Union.

Prices shall be quoted in Euro. If the Tenderer is subject to VAT (which is the case in Poland) and is required to pay that tax, the offer should clearly show the rate of VAT and the price excluding VAT, as indicated on the compulsory reply form.

Nevertheless, the VAT amount shall not be taken into consideration in the financial evaluation.

Before the signature of the contract the winning Tenderer shall be also required to submit the Legal Entity and Bank Account identification forms.

¹ OJ C 83, 30.03.2010, p.266 - 272).

c) Supporting documentation

The supporting documentation is an important part of the offer and shall be complete to guarantee that the technical proposal shall be evaluated. The supporting documentation shall contain the following elements:

1. Tenderer's Declaration on honour on exclusion criteria and selection criteria (*Annex III*).
2. Tender Submission Form - duly filled and signed by the authorized representative of the Tenderer (*Annex V*).
3. Documents in regard to the selection criteria (all documentation requested in point III.2).

III. EVALUATION OF OFFERS

III.1. Exclusion Criteria

Tenderers will declare on their honour, by completing and signing *Annex III* that they are not in any of the situations excluding them from the participation in this tender.

III.2. Selection Criteria

Each offer shall be verified against the criteria specified below. Incomplete Tenders shall be rejected. However, Frontex may request that missing formal documents are submitted by fax (normally these are to be submitted within 24 hours following the request).

The Tenderer shall provide evidence of its technical and professional capacity to perform the contract by providing Frontex with:

- a) The evidence that the Tenderer is already established as a recognised legal entity and is registered in a relevant professional or trade register.
- b) The list of contracts similar to the subject of this tender of the net value above 300 000 EUR performed in the past three years (in 2013, 2014 or 2015). The list should state the following: dates, recipients and brief description of the project's activities.
- c) At least 2 reference letters from the clients confirming good quality of provided services indicated on the above mentioned list of contracts.

Only the offers that meet the Selection Criteria shall pass to the next stage of the evaluation.

III.3 Award Criteria

Once the Tenderer has demonstrated the capacity to perform the contract on the grounds of the selection criteria, the offer will be assessed on the basis of the award criteria.

The contract will be awarded to the tenderer which fulfills all the technical requirements presented in Appendix I to Annex II and provides the cheapest total net price (presented in *Annex IV* - Financial offer).

III.4 Assessment of Joint tenders and tenders involving sub-contracting

Joint tenders shall be assessed as follows:

- a) The exclusion criteria and the selection criteria for economic and financial capacity shall be assessed in relation to each company individually.²
- b) The selection criteria for technical and professional capacity shall be assessed in relation to the combined capacities of all members the consortium, as a whole.
- c) The awarding criteria shall be assessed in relation to the tender, irrespective of whether it has been submitted by a single legal or natural person or by a tendering group.

Joint offers in the stage following the award:

If the Tenderer submits a joint offer but has not yet set up an entity with a legal form, and if he is awarded the contract, the contracting authority may require the Tenderer to give a formal status to his collaboration before the contract is signed, if this change is necessary for proper performance of the contract. This can take the form of an entity with or without legal personality but offering sufficient protection of Frontex contractual interests (depending on the Member State concerned, this may be, for example, a consortium or a temporary association).

The contract shall be signed by all members of the group, or by one of the members, which has been duly authorised by the other members of the group (a power of attorney or sufficient authorisation has to be provided and shall be attached to the contract), when the Tenderers have not formed a legal entity.

² For the criteria that are deemed to be achieved above a certain level, e.g. overall turnover or turnover with the respect to the specific procurement, a consolidated assessment of all members of consortium together shall be made.