



## TENDER SPECIFICATIONS

**Ref. Frontex/OP/809/2016/JL**

**Mobile telecommunication services and equipment**

## **I. GENERAL INFORMATION**

### **I.1 General Information on Frontex**

The European Border and Coast Guard Agency (Frontex) was established by the European Parliament and the Council Regulation 2016/1624 of 14 September 2016, OJ. L 251 of 16.09.2016 (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 became operational on 3 October 2005 with its seat in Warsaw, Poland. As of November 2016, Frontex staff consists of approximately 450 persons.

Further information about Frontex can be found on the Agency’s web site [www.frontex.europa.eu](http://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 Regulation (EU, Euratom) No 966/2012 of 25 October 2012 (with all amendments) on the financial rules<sup>1</sup> applicable to the general budget of the Union;
- b) Part 1, Title 5 of Commission Delegated Regulation<sup>2</sup> (EU) No 1268/2012 of 29 October 2012 (with all amendments) on the rules of application of Regulation (EU, Euratom) No 966/2012 of 25 October 2012 on the financial rules applicable to the general budget of the Union.

### **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 point III.3, which is confirmed by the Tenderers’ Declaration of Honour (Annex IV) and that they have no conflict of interest in connection with this contract; and
- 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 Commission Delegated Regulation (EU) No 1268/2012 of 29/10/2012 (OJ L 362 of 31/12/2012).

### **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:

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<sup>1</sup> Regulation (EU, Euratom) No 966/2012 of 25 October 2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union

<sup>2</sup> Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of the Regulation (EU, Euratom) No 966/2012 of 25 October 2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union

- 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 tender 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.3.**

#### **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) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;

- b) 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;
- c) 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 Subject of the tender**

The subject of the prospective framework contract shall be performance of mobile telecommunication services and data transfer services, as well as delivery of mobile telecommunication equipment, for Frontex HQ in Warsaw, Poland, according to the requirements of the tender dossier and the offer of the winning tenderer.

#### **II.1.2 Type of contract**

Frontex may conclude a framework contract with the selected Tenderer (fulfilling the requirements of the tender dossier) on the basis of the draft framework contract (Annex VI). The contract will be signed for two years. There is a possibility of extension of the contract for 3 months or for another two years. In order to extend the contract, at least 6 months before completion of the first two-year contract period, prices of the packages and unit prices will be subject of revision with a purpose of adapting them to the changes that have taken place on the mobile telephony market. If both sides would not agree on new prices in the period of up to 3 months before the expiry of the first two-year contract period, the contract will not be extended for another two years, but only for three months. In case of mutual lack of will by both sides to initiate the negotiations on price revisions at least 6 months before completion of the first two-year contract period, the contract expires.

### **II.2. Form and content of the tender**

The tender shall be clear and concise, with continuous page numbering, and assembled so as to constitute a coherent whole (e.g. bound or stapled, etc.). Since Tenderers will be judged on the content of their written offers, these must clearly state that the Tenderer is able to fully meet all the requirements of the tender dossier and is capable of carrying out the work foreseen.

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 the requirements of the tender dossier, 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 and Financial Proposal**

The Technical and Financial Proposal prepared by the Tenderer must be consistent with the Annex III and contain all information as requested therein.

The Tenderers are not allowed to refuse or disregard any mandatory requirements presented in the tender dossier. Any reservations, assumptions, or constraints that limit the requirements, or make them conditional, will be considered as causing non-compliance by default.

The technical proposal of the Tenderer must clearly contain the information required in the Annex III, grouped and titled in exactly the way as required in there. If required, please repeat the same information in more than one template.

The proposal must address all requested items. No partial proposals are allowed. Lack of completeness of the proposal or lack of clarity that enables assessment of its completeness will result in non-eligibility of the proposal.

Please note that:

- The unit price of each product and/or service must be fixed and shall be inclusive of all costs and expenses directly and indirectly related to the delivery of the product or service,

- prices should be expressed in Polish currency (PLN) and quoted as net prices (without VAT). The rate (%) of applicable VAT shall be indicated separately, if applicable,
- All prices referring to the delivery of products shall include all the costs of DDP logistical services (Delivered Duty Paid, see Incoterms 2010).

If required, please:

- Repeat the same information in more than one field of the form,
- Extend the size of the relevant field in Annex III in order to place all necessary information, and print the form in A3 format if needed for clarity.

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 Communities annexed to the Treaty, signed in Brussels on 8 April 1965 (OJ no. 152 of 13 July 1967), establishing a Single Council and a Single Commission of the European Communities.

The Contractor, if registered outside Poland, 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.

**VAT amount shall also not be taken into consideration in the financial evaluation.**

#### b) 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 of Honour (Annex IV).
2. Tender Submission Form - duly filled and signed by the authorized representative of the Tenderer (Annex V).
3. Selection criteria documentation.

### III. EVALUATION OF OFFERS

Offers are opened and evaluated by the Evaluation Committee, possessing the technical and administrative capacities necessary to give an informed opinion on the offers.

#### III.1 Opening Session

The main aim of the Opening Session is to check whether the offer received is compliant with the following formal requirements:

- a) Not submitted later than the submission deadline, and
- b) The envelope containing the offer is sealed.

The Opening Session shall take place at the premises of Frontex, Plac Europejski 6, 00-844 Warsaw, Poland - phone: +48 22 2059500, fax: +48 22 2059501. Tenderers wishing to attend the opening session shall send a confirmation e-mail or fax to the Procurement team ([procurement@frontex.europa.eu](mailto:procurement@frontex.europa.eu)). A maximum of one representative per Tenderer may attend the Opening Session. Their participation shall be restricted to an observer's role.

#### III.2 Evaluation Session

Offers complying with the formal requirements checked during the Opening Session shall be considered admissible and shall be evaluated in three stages:

- a) **Eligibility:** will be verified against the exclusion criteria described in point III.3. If one of the relevant criteria is not positive, the offer may not be further evaluated.
- b) **Verification of the selection criteria** as described in point III.4.
- c) **Evaluation against the award criteria** as described in point III.5.

The Evaluation Committee's deliberations are held in closed sessions and its decisions are collective. The members of the Evaluation Committee are bound to secrecy.

#### III.3 Exclusion Criteria

In line with the Regulation (EU, Euratom) No 966/2012 of 25 October 2012 (with all amendments) on the financial rules applicable to the general budget of the Union, Tenderers shall be excluded from participation in a procurement procedure if they are in any of the situations as described therein.

In order to fulfil the eligibility criteria, the Tenderer or in case of consortium all members of consortium (and also all subcontractors, if applicable) shall provide within their bids the European Single Procurement Document (ESPD) or, as long as the ESPD is not available for EU institutions, a declaration on their honour, duly signed and dated stating that they are not in one of the situations referred the above (Annex IV - Tenderer's Declaration of Honour).

The Tenderer which will be selected for the award of the contract shall provide in due time, preceding the signature of the contract, the evidence confirming fulfilment of the Exclusion Criteria, as requested by the contracting authority.

#### III.4 Selection Criteria

Each offer will be verified against the Selection Criteria specified below. Tenders which are incomplete will be rejected. However, Frontex may request that missing formal documents are submitted by fax/post and prior to that submission delivered as scans attached to an e-mail (normally these are to be submitted within 48 hours following the request).

The tenderers must prove that they have all the necessary knowledge, experience, human resources as well as adequate technical economic and financial capacity to perform the required services.

III.4.1 Personal situation of economic operators, including requirements relating to enrolment on professional or trade registers.

Information and formalities necessary for evaluating if the requirements are met:

Required proof that the tenderer is authorized to perform the contract under a national law, as evidenced by inclusion in a trade or professional register (in Poland: KRS), or a sworn declaration or certificate or membership of a specific organization.

#### III.4.2 Economic and financial capacity

To prove the financial and economic capacity to perform the contract, the Tenderer's overall yearly turnover in 2014 and in 2015 must be more than 25,000,000.00 EUR (separately for each year). The tenderer shall provide a statement on the company's a.m. turnover in 2014 and 2015.

#### III.4.3 Technical and professional capacity

The Tenderer must have the following technical and professional capacity to perform the contract:

- The Tenderer must demonstrate at least 3-year experience in delivery of mobile voice and data communication services. Evidence must be provided by submission of a short description of the company's experience on the telecommunication market and information concerning network coverage in Poland;
- The Tenderer must possess the economic and technical resources to implement the contract - a free-format self-statement will be accepted as evidence;
- The Tenderer shall present a list of concluded contracts with the value over 250,000.00 EUR, and reference letters for minimum 3 of these contracts;
- The tenderer shall currently provide services to minimum 5 million active SIM cards. The number of currently active SIM cards shall be declared in a free-format self-statement.

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

The obligation of a Tenderer to submit the documentary evidence referred to in this point is waived for particular year if such evidence has already been submitted to Frontex for that year for the purposes of another procurement procedure and still complies with requirements of this point. The Tenderer is however obliged to indicate the reference number of that procurement procedure.

#### III.5 Award Criteria

##### Technical Evaluation

Offered equipment shall meet or exceed the minimum requirements as described in Annex III, sheet "Devices". Offers that do not meet these minimum requirements shall not be considered for further evaluation. The selected Tenderer must ensure delivery of the proposed models during the first two-year period of the framework contract duration.

The Tenderer must present his offer in according to the following matrix:

**Simple mobile phone** (any operating systems excluding iOS, Android and Windows systems) - 10% of mobile phone devices pool to be ordered.

**Smartphones**, being the newest model available on local market, having the newest version of operating system iOS or possibility to upgrade the system on the producer's webpage or directly in the device:

- **low model** - with Flash memory up to and including 32 GB - 20% of mobile phone devices pool to be ordered.
- **medium model** - with Flash memory over 32 GB and up to and including 128 GB and a screen size up to 5 inches - 35% of mobile phone devices pool to be ordered.
- **medium model** - with Flash memory over 32 GB and up to and including 128 GB and a screen size over 5 inches - 5% of mobile phone devices pool to be ordered.
- **medium model** - with Flash memory over 128 GB and a screen size up to 5 inches - 25% of mobile phone devices pool to be ordered.
- **medium model** - with Flash memory over 128 GB and a screen size over 5 inches - 5% of mobile phone devices pool to be ordered.

Regarding the data transfer services the successful contractor will have to provide iOS tablets in promotional prices in number of maximum half of active data transfer SIM cards, which now stands for 286 numbers (i.e. 143 devices). The devices will be divided into:

- Standard (size of screen to be about 9,5 - 10 inches) - 60% of tablet devices to be ordered;
- Mini (size of screen to be about 7,5 - 8 inches) - 40% of tablet devices to be ordered.

**Tablets**, being the newest model available on local market, having the newest version of operating system iOS or possibility to upgrade the system on the producer's webpage or directly in the device, will be ordered in both sizes according to the split given below:

- Standard model - with Flash memory not below 32 GB - 70% of tablet devices pool to be ordered;
- Superior model - with Flash memory not below 64 GB - 30% of tablet devices pool to be ordered.

## **Financial Evaluation**

The offer's reference price will be calculated in accordance with the following formulas:

Financial proposal for SERVICES = contract scenario for Tarrif plan 1 (Annex III, sheet "Service models") + contract scenario for Tarrif plan 2 (Annex III, sheet "Service models") + contract scenario for Other services (Annex III, sheet "Detailed price list"), all multiplied by the growth rate for services.

Financial proposal for EQUIPMENT = cost of smartphones and standard mobile phones (Annex III, sheet "Devices") + cost of tablets (Annex III, sheet "Devices"), multiplied by the growth rate for equipment.

The contract will be awarded to the offer with the best financial service/equipment ratio, with a 30/70 weighting between equipment financial score and service financial score.

This will be achieved by multiplying:

- the financial proposal for EQUIPMENT score (Annex III, sheet “Financial scenario”) by 0.30;
- the financial proposal for SERVICES score (Annex III, sheet “Financial scenario”) by 0.70.

### **III.6 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.<sup>3</sup>
- b) The selection criteria for technical and professional capacity shall be assessed in relation to the combined capacities of all members of the consortium, as a whole.
- c) The award 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 as Annex III), when the Tenderers have not formed a legal entity.

Tenders involving subcontracting 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<sup>4</sup>.
- b) The selection criteria for technical and professional capacity shall be assessed in relation to the combined capacities of the Tenderer and the subcontractor, as a whole, to the extent that the subcontractor puts its resources at the disposal of the Tenderer for the performance of the contract.

The awarding criteria shall be assessed in relation to the tender. Subcontracting as such cannot be an awarding criterion.

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<sup>3</sup> 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.

<sup>4</sup> 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 a Tenderer plus subcontractor together shall be made, to the extent that the subcontractor puts its resources at the disposal of the Tenderer for the performance of the contract.