

Framework Contract for the provision of fresh fruit and vegetables to Frontex premises Tender Specifications

Annex I to Invitation to tender no
Frontex/OP/1123/2019/DT

I. GENERAL INFORMATION

I.1 General Information on Frontex

The European Border and Coast Guard Agency - Frontex (hereinafter referred to as “Frontex” or “Contracting authority”) was established by the Council Regulation (EC) Regulation (EU) 2016/1624 with a view to improve the integrated management of the external borders of the Member States of the European Union.

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

I.2 Procurement procedures

For its fast growing organisation 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: Title VII of Regulation (EU, Euratom) 2018/1046 on the financial rules applicable to the general budget of the Union (Financial Regulation), repealing Regulation (EU, Euratom) No 966/2012 and Annex I to the same regulation.

I.3 Eligibility

Participation in this call for tenders is open on equal terms to all natural and legal persons coming within the scope of the Treaties, as well as to international organisations.

It is also open to all natural and legal persons established in a third country which has a special agreement with the European Union in the field of public procurement on the conditions laid down in that agreement, including the following:

- Under the Stabilisation and Association Agreements (SAA) economic operators established in North Macedonia, Albania, Montenegro, Serbia, Bosnia and Herzegovina and Kosovo have been granted access to procurement procedures of the Union institutions, agencies and bodies regardless of the value of the purchase.
- Under the EEA Agreement, economic operators established in Iceland, Norway and Liechtenstein have full access to procurement procedures of the Union institutions, agencies and bodies regardless of the value of the purchase.

The rules on access to procurement do not apply to subcontractors. Economic operators are free to choose their subcontractors from any country. Thus, in principle all economic operators can act as subcontractors of other economic operators who have themselves access to the EU procurement procedures. Subcontracting may not be used with the intent to circumvent the rules on access to procurement.

For tenderers established in the United Kingdom:

Please be aware that after the UK’s withdrawal from the EU, the rules of access to EU procurement procedures of economic operators established in third countries will apply to tenderers from the UK depending on the terms of any Withdrawal Agreement. In case such access is not provided by legal provisions in force tenderers from the UK could be rejected from the procurement procedure.

Participation is open to all natural and legal persons as defined above, under the condition that:

- a) They are not in any of the situations excluding them from participation 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, shall be subject to the financial penalties set out in Article 135 and 138 of the above mentioned Regulation No 2018/1046.

I.5 Joint Tenders

No special legal form is required but, in the event a group of Contractors submits an acceptable tender, 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 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 tenders.

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 tender and may result in administrative penalties.

I.9 Confidentiality of tenders: what information and under what conditions can be disclosed?

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) 2018/1725 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC;
- 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.

Once the Contracting authority has opened a tender, it becomes its property and shall be treated confidentially, subject to the following:

- For the purposes of evaluating the tender and, if applicable, implementing the contract, performing audits, benchmarking, etc., the Contracting authority is entitled to make available (any part of) the tender to its staff and the staff of other Union institutions, agencies and bodies, as well to other persons and entities working for the Contracting authority or cooperating with it, including contractors or subcontractors and their staff provided that they are bound by an obligation of confidentiality.
- After the signature of the award decision tenderers whose tenders were received in accordance with the submission modalities, who have access to procurement, who are not found to be in an exclusion situation referred to in Article 136(1) of the Financial Regulation, who are not rejected under Article 141 of the FINANCIAL REGULATION, whose tenders are not found to be incompliant with the procurement documents, and who make a request in writing will be notified of the name of the tenderer to whom the contract is awarded, the characteristics and relative advantages of the successful tender and the price of the offer and/or contract value. The Contracting authority may decide to withhold certain information that it assesses as being confidential, in particular where its release would prejudice the legitimate commercial interests of economic operators or might distort fair competition between them. Such information may include, without being limited to, confidential aspects of tenders such as unit prices included in the financial offer, technical or trade secrets.
- For the specific case of framework contract in cascade, the second ranked in the cascade may ask for comparative advantages of the tender ranked first, but not about the tender ranked third and so forth if there are more than three contractors in the cascade. For specific contracts awarded following reopening of competition, the unsuccessful contractors can ask for the name of the winning contractor but not for the characteristics and relative advantages of the winning tender and the price paid, since the receipt of such information by parties to the same framework contract each time competition is reopened might prejudice fair competition between them.
- The Contracting authority may disclose the submitted tender in the context of a request for public access to documents, or in other cases where the applicable law requires its disclosure. Unless there is an overriding public interest in disclosure, the Contracting authority may refuse to provide full access to the submitted tender, redacting the parts (if any) that contain confidential information, the disclosure of which would undermine the protection of commercial interests of the tenderer, including intellectual property.
- The Contracting authority will disregard general statements that the whole tender or substantial parts of it contain confidential information. Tenderers need to mark clearly the information they consider confidential and explain why it may not be disclosed. The Contracting authority reserves the right to make its own assessment of the confidential nature of any information contained in the tender.

II. SPECIFIC INFORMATION

II.1. Scope and contractual information

II.1.1 Scope of contract

The subject of the contract is the provision of mix of good quality fresh fruit and vegetables (bananas, apples, carrot batons, seasonal fruits), as described in Technical Specification (Annex II).

II.1.2 Contractual information

Frontex will conclude a single framework service contract with the selected candidate on the basis of the draft contract included in Annex VI to the Invitation to tender.

II.1.3 Duration of the contract

The duration of the contract is 12 months with the possibility to prolong it maximum 3 times for a period of 12 months and on the same conditions unless one of the parties informs the other of its intention not to extend the framework contract and such notification is received by the party to which it is addressed, no later than three months before the contract expires. The overall duration of the framework contract may in no event exceed four (4) years.

II.1.4 Volume of the contract

The maximum value (excluding VAT) estimated for the whole duration of the framework contract is EUR 250,000.00 [two hundred fifty thousand Euro]

Frontex reserves the right to conduct negotiated procedure without prior publication of a contract notice based on point 11.1 (e) of the Annex I to Financial Regulation to increase the ceiling, if such a need occurs and the respective conditions apply.

II.1.5 Implementation of the contract

The supplies will be delivered upon receipt and signature by the contractor purchase orders issued by Frontex via e-mail throughout the duration of the contract (*Appendix 1 to Annex VI Contract draft*). Orders will be issued quarterly and will specify the exact quantities to be delivered as well as the delivery schedule.

II.1.6 Additional information

The contractor shall designate a contract manager that will be responsible for the execution of the contract and that will be the contact person for Frontex.

II.2. Form and content of the tender

The tender for this Contract shall be submitted according to the rules set out in the Invitation to Tender submitted exclusively via the electronic submission system (e-Submission).

II.2.1 Documents to be included in the tender

The tender shall be clear and concise and shall include all the information and documents required by Frontex for the appraisal of tenders on the basis of the award criteria, and in accordance with these specifications and the relevant Terms of Reference. In the absence of these documents/information Frontex may decide to reject the tender from the award procedure for the contract.

a) Technical Proposal

The Technical Proposal shall be consistent with the Technical Specifications (Annex II) and provide:

- 1) Anti-quality-deterioration policy - in the document the Tenderer shall describe its actions to be taken in order to prevent the quality decrease of offered fruit and vegetables as well as steps to be taken in case of quality deterioration.

- 2) Method statement on dealing with complaints - the Tenderer shall provide a method statement detailing how the Tenderer would work with Frontex to minimise and resolve any complaints within 48 hours throughout the duration of the contract. The response should make a reference to at least delivery failure, delivery inaccuracy, substitution of products.
- 3) List of seasonal fruit and vegetables to be supplied each month of a year using 12-month timeline (Annex VII).
- 4) Copies of organic certification, if any.
- 5) Copies of Integrated Production certification, if any.
- 6) Short descriptive presentation of the Contractor.

b) Financial proposal

Financial proposal shall be submitted using the form in Annex IV. The financial evaluation will be based on the total reference price indicated therein.

Prices shall be indicated in Euro, net amount (excluding VAT) and be all inclusive, i.e. include all costs aligned with the services. Not completing all the fields of the Annex IV may result in rejecting the offer.

In preparing the Financial Proposal, the Tenderer should take into account that Frontex is, in general, exempt from all taxes and dues, including VAT, pursuant to the Protocol on the Privileges and Immunities of the European Union, annexed to the Treaty on the Functioning of the European Union. Therefore, VAT will not be taken into account in evaluation of tenders.

The Contractor, if established outside of 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 will assist the Contractor by issuing "VAT and excise Duty Exemption Certificate - 1510 form" used for this purpose by the European Union.

c) Supporting documentation

The supporting documentation is an important part of the tender 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 V),
2. Tender Submission Form - duly filled and signed by the authorised representative of the Tenderer (Annex VI),
3. Documents confirming fulfilment of legal, economic and financial, and technical and professional capacities as requested in points III.4.1, III.4.2 and III.4.3.

III. EVALUATION OF TENDERS

Tenders are opened and evaluated by duly designated opening board and evaluation committee, possessing the technical and administrative capacities necessary to give an informed opinion on the tenders.

III.1 Tender opening session

The main aim of the public opening session is to check whether the tender received is compliant with the following formal requirements:

- a) Not submitted later than the submission deadline, and
- b) the integrity and structure of the tender is maintained.

The tender opening session will take place on the date indicated in the Invitation to tender at the premises of Frontex, Plac Europejski 6, 00-844 Warsaw. Tenderers wishing to attend the opening session shall send a confirmation e-mail to the Procurement Sector (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 Tender evaluation session

Tenders complying with the formal requirements checked during the tender opening session shall be considered eligible and will be evaluated against the following criteria:

- a) Exclusion criteria
- b) Selection criteria
- c) Award criteria

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.

Frontex may on its own discretion decide to change the order of the evaluation stages.

III.3 Exclusion criteria

Tenderers or in case of consortium all members of consortium (as well as all subcontractors) will declare on their honor, by completing and signing Annex V that they are not in any of the situations excluding them from the participation in this tender. 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 tender shall be verified against the criteria specified below. Incomplete Tenders shall be rejected. However, Frontex may request that missing formal documents are submitted by email (normally these are to be submitted within 48 hours following the request).

III.4.1 Legal capacity

Requirement

The tenderer is asked to prove that is authorised to perform the contract under the national law.

Evidence required

- A copy of an official document (Company Register, Official Gazette, etc.) confirming that the Tenderer is already established as a recognised legal entity and is registered in a relevant professional or trade register.

III.4.2 Economic and financial capacity

Requirement

The tenderer shall provide evidence of its sufficient economic and financial capacity to guarantee continuous and satisfactory performance throughout the envisaged lifetime of the contract.

Evidence required

- a) a declaration of the company's total turnover from the past three years for which accounts have been closed (information shall be provided separately for each year); the average turnover over the last 3 years must be greater than EUR 180 000; If the currency of the tenderer's accountancy is other than Euro, the equivalent will be calculated on the basis of the exchange rates applicable for the month of tender submission published by the European Commission at: http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm

The obligation of a tenderer to submit the documentary evidence referred to in this point is waived for a 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 in such cases obliged to indicate the reference number of that procurement procedure.

Frontex reserves the right to request any additional documentary evidence it deems necessary or useful in order to verify a tenderer's economic and financial standing.

III.4.3 Technical and professional capacity

Requirement

The tenderer must have at least three years of professional experience in providing similar services.

The Tenderer must demonstrate its technical ability to provide all the services required in this call for tenders.

Evidence required

- a) Provision of the company's portfolio confirming the tenderer's experience;
- b) Provision of a list of contracts performed during the last 3 years which correspond to the services required within this call for tenders, indicating their customers, financial volume, scope and complexity; at least 2 of the contracts should be for the value exceeding EUR 60 000;
- c) Provision of at least 2 reference letters from the customers specified in the abovementioned list confirming satisfactory quality of the services provided; e-mails or self-declarations by the tenderers shall not be accepted.

Only tenders meeting the Selection Criteria will pass to the next stage of the evaluation.

III.5 Award criteria

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

The award criteria serve to identify the most economically advantageous tender. The quality of each tender will be evaluated, in accordance with the award criteria and the associated weighting. No other award criteria and sub-criteria apart from those detailed below will be used to evaluate the tender.

The contract shall be awarded to the tenderer offering the best value for money, with 60/40 ratio for the technical quality and price.

III.5.1 Technical evaluation

Technical quality of the tender will be evaluated in accordance with the following Technical Evaluation criteria:

Criterion	Maximum number of points
Diversity of the seasonal fruit listed in Annex VII: <ul style="list-style-type: none"> less than or equal to 20 different kinds of fruit - 5 points between 21 and 28 different kinds of fruit - 15 points more than or equal to 29 different kinds of fruit - 25 points 	25
Certification: <ul style="list-style-type: none"> No certification - 0 points bananas: integrated production - 5 points/ organic - 15 points apples - integrated production - 5 points/ organic - 15 points carrots - integrated production - 5 points/ organic - 15 points 	45
Anti-quality-deterioration policy <ul style="list-style-type: none"> No policy - 0 points Policy that is not satisfactory - max 5 points Policy that is satisfactory but not all aspects are covered/solved - max 10 points Policy that fully provides excellent information/ explanation - max 15 points 	15
Method statement on dealing with complaints <ul style="list-style-type: none"> no approach - 0 points approach which fails to satisfactorily answer the entire remit - max 5 points approach which answers the remit indicating good information/explanation but could be enhanced in one or two aspects - max 10 points fully detailed response indicating excellent information/ explanation answering the entire remit - max 15 points 	15
Total:	100

Tenders scoring less than 50% for any criterion will be deemed to be of insufficient quality and eliminated from further consideration.

TOTAL SCORING must be higher than the minimum threshold of 60%. Tenders scoring, in total for all criteria, less than 60% will be deemed to be of insufficient quality and eliminated from further consideration.

The tender which receives the highest number of points at the Technical Evaluation will receive score 100 of the Individual Technical Score.

Individual Technical Score for the remaining tenders will be calculated as follows:

$$\text{Technical score} = \frac{\text{Total points received by the evaluated tender}}{\text{The highest number of points earned in the tender}} \times 100$$

III.5.2 Financial evaluation

The points will be awarded to the tenders eligible to participate in the financial evaluation on the basis of the following formula (based on the total reference price offered indicated in Annex IV - Financial proposal):

The tender with the lowest reference price will receive score 100;

The financial score of the remaining tenders will be calculated by using the following formula:

$$\text{Financial score} = \frac{\text{Lowest total Price of an eligible proposal}}{\text{Total Price of the evaluated proposal}} \times 100$$

III.5.3 Final evaluation

The contract will be awarded to the tenderer offering most economically advantageous tender. The most economically advantageous tenders will be established by weighting technical quality against price on 60/40 basis.

It will be established by the application of the following formula:

Final Score = 0,6 x Technical score + 0,4 x Financial score

The contract will be awarded to the tenderer, who submitted tender with the highest Final Score.

III.6 Assessment of joint tenders and tenders involving sub-contracting

Joint tenders shall be assessed as follows:

- c) The exclusion criteria and the selection criteria for economic and financial capacity shall be assessed in relation to each economic operator individually¹.
- a) 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.
- b) 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 tenders in the stage following the award:

If the Tenderer submits a joint tender 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 an annex), 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 individually².
- 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.
- c) The award criteria shall be assessed in relation to the tender. Subcontracting as such cannot be an award criterion.

Other annexes:

Annex II - Technical specification
Annex III - Declaration on honour concerning exclusion criteria
Annex IV - Financial proposal template
Annex V - Tender submission form
Annex VI - Contract draft
Annex VII - List of seasonal products

¹ 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.

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 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.