

## **Annex I to the Invitation to Tender**

**Frontex/OP/810/2018/RS**

# **Tender Specifications**

**Framework Contract for provision of Vehicles for Migration  
Management support**

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## 1. General Information

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### 1.1. General information on Frontex

The European Border and Coast Guard Agency - Frontex (hereinafter referred to as “Frontex”) 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](http://www.frontex.europa.eu)

### 1.2. Procurement procedures

The purpose of competitive tendering for awarding contracts is two-fold:

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

The procurement procedure is governed by the following legal provisions:

- Part 1, Title 5 of 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;
- Part 1, Title 5 of Commission Delegated Regulation (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.

### 1.3. Eligibility

This procurement procedure is open to the natural or legal person wishing to bid for the contract and registered in the European Union and Schengen Associated Countries.

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

- a) They are not in any of the situations excluding them from participation listed in point 3.1, which is confirmed by the Tenderers’ Declaration of Honour (*Annex VII*) 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.

### 1.4. 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 of their companies 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), as last amended.

### 1.5. 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 tender specifications.

### 1.6. 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 the tenderer 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. Subcontracting is permitted in the tender but the tenderer will retain full liability towards Frontex for performance of the contract as a whole and clearly indicates in the tender which parts of the work will be subcontracted and to which subcontractor.

Subcontractors must satisfy the eligibility and exclusion criteria applicable to the award of the contract.

The contractor may be supported by associated partners providing local expertise and logistical support. If such local support is perceived by the contractor as needed for the interest of Frontex in the scope of a specific order, a prior authorisation from Frontex must be received and reflected in the specific order. The contractor remains the sole party which is contractually liable. Where no subcontractor is given, the work will be assumed to be carried out directly by the tenderer.

**All members of the consortium and subcontractors shall meet the eligibility and exclusion criteria given in points 1.3 and 3.1.**

### 1.7. 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 in the preparation and submission of a tender. Any such costs must be paid by the tenderer.

### 1.8. 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.

## 1.9. 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.

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## 2. Specific information

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### 2.1. Subject and contractual information

#### 2.1.1. Subject of the tender

The objective of this tender is to establish a Framework Contract (hereinafter called “FWC”) for buying of vehicles needed within Frontex operational activities in Europe and North and West part of Africa and to ensure that the services carried out during the implementation comply with Frontex requirements.

The FWC is meant to cover the provision of services as defined in *Annex II* - Terms of Reference.

#### 2.1.2. Type of the contract

The envisaged contract is a single FWC as described in the Terms of Reference (*Annex II*). Frontex may conclude contracts with selected Tenderer on the basis of the draft contract included in *Annex V* to the Invitation to Tender. The provisions of the draft contract is subject to minor modifications prior to the signature.

#### 2.1.3. Duration of the contract

The duration of the FWC is two years. The overall duration may in no event exceed four years (two years + two potential extensions for one year). The FWC provisions shall continue to apply to the SOs after its expiry, but no longer than 6 months. The FWC provisions concerning warranty conditions and obligations of the Contractor as specified in the ToR Art. 4.7.8. ‘Warranty’ shall continue to apply to the SOs after the expiry of the FWC.

#### 2.1.4. Indicative budget

The maximum indicative budget of the FWC is 2,000,000 EUR (two million EUR) over a maximum total duration of 4 years.

However, Frontex reserves the right to conduct exceptional negotiated procedure in accordance with Art.134.1(e) of Rules of Application to increase the ceiling with the contractors, if such a need occurs.

### 2.2. 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 also 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 Terms of Reference 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 award criteria, and in accordance with these specifications, in the absence of which, Frontex may decide to reject the tender from the awarding procedure for the contracts.

In drawing up a tender, tenderers should bear in mind the provisions of the draft Contract (see *Annex V* to the invitation to tender) which specifies the rights and obligations of the contractor, particularly those on payments, performance of the contract, confidentiality, and checks and audits.

On exceptional basis, Frontex may agree using offerer’s template of the contract, but the following firm clauses from Frontex template must be included: Order of priority/definitions, Subject/Duration, Maximum budget/Payments/invoices/price revision and reduction, Amendments/Termination, Applicable law, Confidentiality/ processing of personal data/ checks and audits, Subcontracting, Force majeure and Liquidated damages. Moreover, no contractor’s clauses being in contradiction with Frontex ToR or other Annexes to Invitation to tender will be accepted. As this procedure does not foresee negotiations, offers not being in compliance with ToR or other Annexes or not including Frontex firm clauses will be automatically rejected.

In submitting their bids the tenderers shall clearly indicate their capacity to provide the services in accordance with the scope of tender stipulated in the Terms of Reference.

#### **2.2.1. Documents to be included in the proposal**

The proposal must comprise the documents mentioned below and related to the exclusion criteria, selection criteria, technical proposal and the financial proposal. The offer shall be submitted to Frontex in accordance with the instructions given in the Letter of Invitation.

The offer shall include the following documents:

##### **a) Technical Proposal**

Technical Proposal shall be consistent with the Terms of Reference (*Annex II*) and shall include:

- Short descriptive presentation of the contractor and description of the services to be delivered;
- fully filled in *Annex III* - Technical Proposal and if necessary supported by separate sheets for details.

##### **b) Financial Proposal for the services proposed;** Financial Proposal shall be prepared in accordance with the template in *Annex IV* - Financial Proposal.

Note: when preparing the Financial Proposal the Tenderers shall bear in mind the following:

- Prices shall be quoted in EUR,
- Include all the costs and associated fees and charges,
- Be presented in net and gross values.

In preparing the Financial Proposal, the Tenderers 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 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 Community.

**Prices shall be quoted in Euro and shall be all inclusive. 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 price excluding VAT, as indicated on the compulsory template (*Annex IV* to the invitation to tender).**

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

##### **c) Supporting documentation**

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

1. Tenderer's Declaration of Honour - duly filled and signed by the authorized representative of the Tenderer (*Annex VII*);
2. Tender Submission Form - duly filled and signed by the authorized representative of the Tenderer (*Annex VI*);
3. Selection Criteria documentation (all documentation requested in point 3.2 of *Annex I*).

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### 3. Evaluation of offers

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

#### 3.1. Exclusion criteria

In line with Articles No. 106 and 107 of the Regulation (EU, Euratom) No 966/2012 of 25 October 2012 on the financial rules applicable to the general budget of the Union, Tenderers shall be excluded from participation in a procurement procedure if:

- a) They are bankrupt or being wound down, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- b) They or persons having powers of representation, decision making or control over them have been convicted of an offence concerning their professional conduct by a judgment of a competent authority of a Member State, which has the force of *res judicata*;
- c) They have been guilty of grave professional misconduct proven by any means, which the contracting authority can justify, including by decisions of the EIB and international organisations;
- d) They are not in compliance with their obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;
- e) They or persons having powers of representation, decision making or control over them have been the subject of a judgment, which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation, money laundering or any other illegal activity, where such illegal activity is detrimental to the Union's financial interests;
- f) They are subject to an administrative penalty referred to in Article 109 (1) ) of that Regulation
- g) They are guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the contract procedure or fail to supply this information;
- h) They are subject to a conflict of interest.

The Tenderer shall provide a declaration on their honour, duly signed and dated stating that they are not in one of the situations referred the above (*Annex VII* - 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.

#### 3.2. Selection criteria

Each offer will be verified against the criteria specified below. Tenders, which are incomplete, will be rejected. However, Frontex may request that missing formal documents are submitted by 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. Tenderers must submit evidence of their legal, economic, financial, technical and professional capacity to perform the contract.

### 3.2.1. Economic and financial capacity

#### Requirement

The tenderer's economic and financial capacity will be evaluated using the following criteria:

- The tenderer must have the economic and financial capacity to perform the contract.

#### Evidence required

Proof of economic and financial capacity shall be furnished by the following documents:

- The Tenderer shall provide evidence of its economic and financial capacity to guarantee continuous and satisfactory performance throughout the envisaged lifetime of the Framework Contract as follows:  
the Tenderer shall provide Frontex with a free-format declaration of the company's total turnover from the past three years - 2015, 2016 and 2017 (information shall be provided separately for each year); the average turnover over the period indicated above must be greater than 1,000,000 (one million) EUR.

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.

### 3.2.2. Technical, legal and professional capacity

#### Requirements

The tenderer's technical, legal and professional capacity will be evaluated using the following criteria:

- A tenderer is asked to prove that is authorised to perform the contract under its national law and must demonstrate its technical ability to deliver vehicles as required in this call for tenders;
- The tenderer must have at least three years' experience in providing similar services.

#### Evidence required

The following documents or information shall be presented as evidence of compliance with the technical and professional capacity criteria:

- evidence that the company is authorised to perform the contract under the national law and that it is established as a recognised legal entity and is registered in a relevant professional or trade register.
- Evidence of experience must be provided by submitting a list of similar contracts in scope and volume performed in the last three years form the deadline for the submission of offers. The list should indicate dates, values and recipients. The proper performance of contracts shall be documented in a form of reference letters issued and signed by the authorised persons of the particular tenderer's clients. At least three such reference letters concerning contracts presented on the list are required to be submitted in the offer.

Frontex may reject tenderers at selection stage in case of presence of professional conflict of interest that may negatively affect the performance of the contract.

Only the offers that clearly demonstrate that they meet the Selection Criteria shall pass to the second 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.



### 3.3. Award criteria

Once the Tenderer has demonstrated the appropriate 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 awarding of the contract will be based on best price-quality ratio where quality weighting is 60% and price weighting is 40%.

The technical score will be calculated on basis of the total number of points obtained during the technical evaluation per its technical proposal.

The financial score will be calculated in accordance with the following formula:

$\text{FINANCIAL SCORE} = \text{LOWEST REFERENCE PRICE} / \text{REFERENCE PRICE OF EVALUATED OFFER} \times 100$

The final score will be calculated using the following formula:

$\text{FINAL SCORE} = 0.6 \times \text{TECHNICAL SCORE} + 0.4 \times \text{FINANCIAL SCORE}$

All prices must be all-inclusive of all fees, costs and expenses related to the performance of the requested services.

#### 3.3.1. Technical evaluation

The assessment of the offers will be made according to the technical award criteria and the associated weighting detailed in the table below.

Table 1

TECHNICAL AWARD CRITERIA		
CRITERION	MAX POINTS	CALCULATION
<b>1. Size or dimensions</b>	<b>21</b>	
1.1 External width (excluding side mirrors)	7	Between 1880 and 2050mm - 6 points; More than 2050 mm - 7 points.
1.2 External length	7	Between 5900 and 6100mm - 6 points; More than 6100 mm - 7 points.
1.3 Internal height at the sliding door	7	Between 1750 and 1800mm - 5 points; Between 1801 and 1900mm - 6 points; More than 1900 mm - 7 points.
<b>2. Engine and transmission</b>	<b>17</b>	
2.1 Category of emissions of exhaust	6	Minimum required (Euro 5) - 4 point; Euro 6 - 6 points.
2.2 Engine power (kW)	6	Between 100kW and 119kW - 5 point; More than 119kW - 6 points.
2.3 Gearbox	5	Minimum required (manual) - 4 point; Automatic gearbox - 5 points.
<b>3. Safety and security</b>	<b>8</b>	
3.1 Tyre pressure monitoring system or similar	1	No - 0 points; Yes - 1 point
3.2 Power retractable exterior mirrors (side mirrors);	1	No - 0 point; Yes - 1 point
3.3 Automatic headlamp adjustment	1	No - 0 point; Yes - 1 point
3.4 Front parking sensors	1	No - 0 point;

TECHNICAL AWARD CRITERIA		
CRITERION	MAX POINTS	CALCULATION
		Yes - 1 point
3.5 Rear parking sensors	1	No - 0 point; Yes - 1 point
3.6 Headlamp washers	1	No - 0 point; Yes - 1 point
3.7 Rain sensors	1	No - 0 point; Yes - 1 point
3.8 Tempomat/cruise control	1	No - 0 point; Yes - 1 point
<b>4. Interior comfort specifications - driving cabine</b>	<b>9</b>	
4.1 Air conditioning system	3	Manual air conditioning - 2 points; Automatic air-conditioning - 3 points.
4.2 Radio	2	Radio - 1 point; CD and Radio - 2 points
4.3 Number of ergonomic seats adjustable in terms of height and depth	2	Driver seat only - 1 point; Driver and passenger(s) - 2 points
4.4 Any additional interior equipment proving comfort	2	
<b>5. Interior comfort specifications - working compartment</b>	<b>7</b>	
5.1 Air conditioning system (if the compartment is separated from the driving compartment with a wall)	3	Manual air conditioning - 2 points; Automatic air-conditioning - 3 points. (if there is only 1 system for the driving and working compartment covering the needs points under 4.1 will be multiplied by 2)
5.3 Number of seats with integrated heating system	2	Non of them - 0 point; All of them - 2 points.
5.2 Any additional interior equipment proving comfort	2	
<b>6. Communication capacity</b>	<b>17</b>	
6.1 Maximum range of radio and battery properties based on technical description of the system	2	Min. 3 km range - 1 point; More than 3 km range - 2 points
6.2 Satellite system	9	Between 130 and 140 kbps - 7 points; More than 140 kbps - 9 points
6.3 Internet device	6	Fulfil all minimum requirements - 4 points; Exceding the minimum requirements - 6 points
<b>7. Technical equipment provided by the Contractor</b>	<b>11</b>	

TECHNICAL AWARD CRITERIA		
CRITERION	MAX POINTS	CALCULATION
7.1 Number of provided handheld lamps and battery properties based on technical description of the system	2	Minimum 3 - 1 point; More than 3 - 2 points.
7.2 Monitor	2	24 inches - 1 point; More than 24 inches - 2 points.
7.3 Electrical winch (installed on the vehicle) with remote control	2	No - 0 point; Yes - 2 point
7.4 Awning roof	5	Manual - 3 points; Automatic - 5 points
8. Warranty	10	Minimum required (36 months) - 7 points; Between 36 and 42 months - 8 points; More than 42 months - 10 points
TOTAL SCORE	100 points	

### 3.3.2. Financial evaluation

The financial proposal should:

- address the total cost for Frontex of the providing the service as described in *Annex II* - Terms of Reference;
- be presented in the format found in *Annex IV* Financial proposal.

Price must be quoted in Euro and be fixed amount with indication on net value and VAT if applicable.

### 3.4. No obligation to award

Completing the procedure of the call for tenders in no way imposes on Frontex an obligation to award the contract. Frontex shall not be liable for any compensation with respect to tenderers whose offers have not been accepted, nor shall Frontex be liable when deciding not to award the contract.

### 3.5. Notification of outcome

Each tenderer will be informed in writing about the outcome of the call for tender. If tenderers are notified that a tender has not been successful, tenderers may request additional information by fax or mail. This information can be given in a follow-up letter providing further details in writing, such as the name of tenderers to whom the contracts are awarded and a summary of the characteristics and relative advantages of the successful tenders in comparison to the unsuccessful offer of the tenderer requesting such further information.

### 3.6. Assessment of tenders involving subcontracting

Joint tenders shall be assessed as follows:

- The exclusion criteria and the selection criteria for economic and financial capacity shall be assessed in relation to each company individually;
- 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.

Tenders involving subcontracting 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 company individually<sup>1</sup>.
- d) 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>1</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..