

# Provision of interim staff services for Frontex

## Tender Specifications

Annex I to the Invitation to Tender no Frontex/OP/447/2019/KM -  
Relaunch

# I. GENERAL INFORMATION

## I.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).

## 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 FYROM, 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. 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 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 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 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.

## 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 prime 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, protection of personal data 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) 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.

For the purpose of performing the services the Contractor and its staff engaged in the implementation of the contract may be required to sign the Declaration of Confidentiality.

## II. SPECIFIC INFORMATION

### II.1. Scope and contractual information

#### II.1.1 Scope of contract

The subject of the contract is provision of interim staff services for Frontex, as described in the Terms of Reference (Annex II to the Invitation to Tender).

#### II.1.2 Contractual information

Frontex will conclude a multiple framework contract in cascade, with minimum two and maximum five selected tenderers on the basis of the draft contract included in Annex III to the Invitation to Tender.

This framework contract will establish the terms governing specific orders to be awarded during a given period. Signature of the framework contract imposes no obligation on Frontex to order services. Only the implementation of the framework contract through specific orders is binding for Frontex.

#### II.1.3 Duration of the contract

The duration of the contract is 12 months with the possibility to prolong it maximum 3 times, each time 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 5 000 000.

Frontex reserves the right to conduct exceptional negotiated procedure based on Point 11 e) of Annex 1 to the Financial Regulation to increase the ceiling, if such a need occurs and the respective conditions apply.

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

#### II.2.1 Documents to be included in the offer

The tender shall be clear, 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 awarding procedure for the contract.

##### a) Technical Proposal

The Technical Proposal shall be consistent with the Terms of Reference and shall contain the following information:

- 1) Detail description concerning human resources - proposed team (including composition, balance of profiles and languages) designated to provide the services; how the staff will be organised in order to guarantee efficiency and continuity of the services (including leaves and unforeseen absences);
- 2) Detail description concerning the contractor's approach and methodology that will be used for providing the services described in the Terms of reference:
  - Overall methodology and working tools including IT and online tools that will be used for engagement of interim staff, access to interim staff databases & their volume, including possibility of quick engagement of staff
  - quality control of services

##### b) Financial Proposal

Financial proposal shall be submitted using appropriate form in Annex IV to the Invitation to Tender.

The price (fee) should be quoted in the form of a fee (percentage) of the net salary applied (in EUR). The fee must include all costs related to the services, indicatively the following:

- costs related to the candidates research,
- costs related to the engagement of interim personnel (social security contributions, income tax etc, applicable both to an employer and an employee) imposed by the labour law applicable in the tenderer's country of residence and the country of provision of services. Please be aware that the requested under this FWC interim personnel remains staff of the contractor and the contractor will be obliged to engage interim staff in line with the local labour law and pay all taxes and social security contributions in line with

the applicable laws and regulations. The interim personnel under this FWC is not Frontex staff. On the contrary, Frontex staff is employed based on the [Staff Regulations of officials and the Conditions of Employment of other servants of the European Union](#).

- costs of contract management, contractor's profit, "crediting" factor of covering payments to the interim staff, bank transfers, exchange rate variations, and all other costs necessary to provide the services in line with the Terms of reference (Annex II).

All payments related to the services covered by the contract will be made in Euro;

When 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 offers.

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.

#### 1) 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 V to the Invitation to Tender),
2. Tender Submission Form - duly filled and signed by the authorised representative of the Tenderer (Annex VI to the Invitation to Tender),
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 OFFERS

Offers 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 offers.

#### III.1 Offer opening session

The main aim of the public opening session is to check whether the tenders received are 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 letter at the premises of Frontex, plac Europejski 6, 00-844 Warsaw. Tenderers wishing to attend the offer 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 two representatives per tenderer may attend the opening session. Their participation shall be restricted to an observer's role.

#### III.2 Offer evaluation session

Offers complying with the formal requirements checked during the offer 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 will declare on their honor, by completing and signing Annex V to the Invitation to Tender that they are not in any of the situations excluding them from the participation in this tender.

### III.4 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 email (normally these are to be submitted within 48 hours following the request).

#### III.4.1 Legal capacity

The tenderer shall provide evidence that is authorised to perform the contract under the national law by provision of the evidence that the Tenderer is already established as a recognised legal entity and is registered in a relevant professional or trade register.

#### III.4.2 Economic and financial capacity

Tenderers shall provide evidence of their sufficient economic and financial capacity to guarantee continuous and satisfactory performance throughout the envisaged lifetime of the contract as follows:

- a) profit and loss accounts and balance sheets for the past three financial years for which accounts have been closed, on condition that the publication of profit and loss account and balance sheets is stipulated by the legislation on firms in the country where the tenderer is established; the profit and loss accounts and balance sheets must confirm good financial standing of the tenderer, sufficient to fulfil commitments related to this framework contract;
- b) 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 annual turnover over the last 3 years must be greater than EUR 500 000;

#### III.4.3 Technical and professional capacity

Tenderers should provide evidence of their technical and professional capacity to perform the contract as follows:

- A. the Tenderer must have at least three years of professional experience in providing similar services, i.e. provision of temporary and/or outsourcing employment services;**

Evidence of that must be provided by:

- Provision of the company's portfolio confirming the tenderer's experience;
- 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 (including international clients of a similar needs);
- Provision of at least 2 reference letters from the customers specified above confirming good quality of the services provided; e-mails or self-declarations by the tenderers shall not be accepted;
- The tenderer must confirm and be able to provide the proof of engagement of at least 50 interims/outsourced staff within one year (reference letters, copies of contracts, orders, agreements that indicate number of staff engaged or any other documents that would confirm this requirement; all details related to the personal data can be deleted or hidden);

- B. the Tenderer must prove and demonstrate its relevant personnel capacity and technical ability to provide all the services required under the prospective contract;**

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

- CV of the staff (contract manager and its support team) dedicated to provide the services under the contract (short notes will not be accepted) with the indication of the possessed level of knowledge of languages and professional qualifications to perform the services.

Only offers 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 offer will be assessed on the basis of the award criteria defined below.

The award criteria serve to identify the most economically advantageous tenders. The quality of each offer will be evaluated in accordance with the award criteria and the associated weighting. No award criteria and sub-criteria others than those detailed below will be used to evaluate the offer.

**The contract shall be awarded to minimum two and maximum five tenderers offering the best value for money, with 60/40 ratio for the technical quality and price.**

#### III.5.1 Technical evaluation

Technical quality will be evaluated according to the following criteria:

	Criterion	Maximum number of points
1.	Composition and suitability of the proposed team (including composition, balance of profiles and languages), how the staff will be organised in order to guarantee efficiency and continuity of the services (including leaves and unforeseen absences) in response to the requirements listed in Annex II Terms of Reference.	50
2.	The relevance, clarity and quality of the methodology proposed to perform the services described in Terms of reference - overall methodology including IT working tools and access to interim staff databases & their volume;	50
	<b>Total:</b>	<b>100</b>

Offers scoring less than 50% for any criterion (1 or 2) will be deemed to be of insufficient quality and eliminated from further consideration.

The offer which receives the highest number of points at the technical evaluation, will receive 100 points of the Individual Technical Score.

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

Total technical score of the evaluated tender

Individual Technical score = ----- x 100%

The highest technical score awarded by the best tender

#### 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 fee indicated in the Financial offer):

The offer with the lowest reference fee will receive 100 points;

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

The lowest reference fee offered

Individual Financial score = ----- x 100

Reference fee of the evaluated proposal

#### III.5.3 Final evaluation

The contract will be awarded to minimum two and maximum five tenderers offering most economically advantageous offers. The most economically advantageous offers are 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

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

III.6.1 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 (*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*)
- 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 an annex), when the Tenderers have not formed a legal entity.

III.6.2 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 (*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*)
- 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 to the Invitation to Tender:**

Annex II - Terms of reference

Annex III - Draft contract

Annex IV - Financial offer template

Annex V - Declaration on honour concerning exclusion criteria

Annex VI - Tender submission form