

# Framework Contract for the provision of Mobile office containers and associated services

## Tender Specifications

Annex I to the Invitation to Tender no  
Frontex/**OP/1057/2018/AG**

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## 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 (EU) 2016/1624<sup>1</sup> 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 provision

- Title VII 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;

### I.3 Eligibility

The participation in tender procedures is open on equal terms to any natural or legal person established in the European Union and/or Schengen Associated Countries under the condition that:

- a) They are not in any of the situations excluding them from participation which is confirmed by the Tenderer’s Declaration of Honour 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 I.3 or II.3 shall be subject to the administrative and financial penalties set out in Article 135 and 138 of the above mentioned Regulation.

### 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) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) 863/2007 of the European Parliament and of the Council, Council regulation (EC) No 2007/2004 and Council Decision 2005/267/EC.

- 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;
- 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.**

Where no subcontractor is given, the work will be assumed to be carried out directly by the tenderer.

### **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) No. 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 will be required to follow the General Data Protection Regulation. 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. Subject and contractual information

#### II.1.1 Subject of the tender

The subject of this tender is to establish single Framework Contract, one for each Lot (FWC) for the provision of Mobile office containers and associated services as described in Annex II to the Invitation to Tender (Terms of Reference). The FWC(s) shall ensure that the services provided comply with Frontex requirements.

The tender is divided into two (2) Lots per geographical locations as described below:

- Lot 1 - Provision of Mobile office containers and associated services in Spain (without Ceuta, Melilla and the Canary Islands).
- Lot 2 - Provision of Mobile office containers and associated services Ceuta, Melilla and the Canary Islands

Each Tenderer is invited to submit offers for one or both Lots.

Frontex reserves the right to reject any offer without further evaluation on the grounds that it does not comply with the tender specifications.

#### II.1.2 Type of the contract

Frontex will conclude a single Framework Contract with one selected Tenderer for each Lot on the basis of the draft contract presented as the Annex V to the Invitation to Tender. One Tenderer may be awarded a contract for one or both Lots.

#### II.1.3 Duration of the contract

The Framework Contract will be concluded for two (2) years with possibility of extension for another period of two (2) years. In case one of the parties does not wish to extend the Framework Contract, it shall notify in writing the other party, no later than one (1) month before the contract expires.

The maximum duration of the Framework Contract is four (4) years, including extension. The Framework contract shall continue to apply to the Specific Contracts after its expiry, but no longer than six (6) months.

#### II.1.4 Indicative budget

The maximum indicative budget available for the Framework Contract over a period of two (2) years is:

- 256,000.00 EUR (two hundred fifty six thousand euros) for Lot 1- Spain (without Ceuta, Melilla and the Canary Islands)
- 81,500.00 EUR (eighty one thousand and five hundred euros) for Lot 2 - Ceuta, Melilla and the Canary Islands

The maximum indicative amount covering all purchases under the Framework Contract including all renewals (if applicable) for four (4) years is:

- 512,000.00 EUR (five hundred twelve thousand euros) for Lot 1 - Spain (without Ceuta, Melilla and the Canary Islands)
- 163,000.00 EUR (one hundred sixty-three thousand euros) for Lot 2 - Ceuta, Melilla and the Canary Islands

However, this does not bind the contracting authority to purchase for the maximum amount.

However, Frontex reserves the right to conduct an exceptional negotiated procedure in accordance with the Financial Regulation to increase the ceiling of the contract up to 50%, if such a need occurs.

#### **I.1.5 Period of validity of the tender**

Tenderers must provide a confirmation that the tender is valid for four (4) months from the date of submission of the tender.

### **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 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 tasks foreseen.

The tender shall include all the information and documents required by Frontex for the evaluation 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 contract.

In drawing up a tender, Tenderers should bear in mind the provisions of the draft contract (attached 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 & audits.

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

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 Invitation to Tender.

For each lot the offer shall include the following documents:

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

Technical Proposal shall be prepared in accordance with point 4 of Terms of Reference (Annex II to the Invitation to Tender). The Technical Proposal shall be consistent with Terms of Reference and must be signed by the Tenderer. It shall include:

- Detailed description of each service enumerated in Annex II (Terms of Reference) points 4.1 to 4.4. This description should contain plans with measurement indication, layouts and colour pictures of the facilities proposed; the description should as well include manufacturer information (descriptions, brochures, pictures) of proposed furniture and technical equipment.
- Minimal delivery periods for each service.

##### **b) Financial proposal**

The Financial proposal for Lot 1 and Lot 2 shall be prepared in accordance with the template provided in Annex IV to the Invitation to Tender.

In preparing the financial proposal, the Tenderers shall take into account that Frontex is, in general, exempt from all taxes and dues pursuant to the Protocol on the Privileges and Immunities of the European Union, annexed to the Treaty.

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 - 1510 form” used for this purpose by the European Union.

**Prices shall be quoted in Euro. If the Tenderer is subject to VAT (which is the case in Poland) and is required to pay that tax, the offer should clearly show the price excluding VAT, as indicated on the compulsory template (Annex III 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 complete to guarantee that the technical proposal shall be evaluated. The supporting documentation shall contain the following elements:

1. Tenderer's Declaration of Honour (annexed to the Invitation to Tender),
2. Tender Submission Form - duly filled and signed by the authorised representative of the Tenderer (annexed to the Invitation to Tender),
3. Documents confirming fulfilment of selection criteria (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 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 offer opening session shall take place on 01/04/2019, 11.00 (Warsaw time) 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, Fax: +48222059501). A maximum of one representative per tenderer may attend the opening session. Their participation shall be restricted to an observer's role.

#### **III.2 Offer evaluation session(s)**

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, referred to in point III.3
- b) Selection criteria, as described in point III.4
- c) 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.

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

### III.3 Exclusion criteria

In line with the Financial Regulation, 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 member 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 above (see Annex - 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 criteria specified below. Tenders, which are incomplete, will be rejected. However, Frontex may request that missing formal documents are submitted by 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). 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.

#### Economic and financial capacity

Tenderers must provide Frontex with sufficient proof of their financial standing, and more importantly that they have the necessary resources and financial means to carry out the work involved. Tenderers must prove they are viable for the duration of the contract.

The tenderer must have the necessary economic and financial capacity to perform the contract until its end. In order to prove his/her capacity, the tenderer must comply with the following selection criterion:

- The average annual turnover of the tenderer during the past 3 years must be not lower than:
  - 250.000 EUR (five hundred twenty thousand euros) for Lot 1- Spain (without Ceuta, Melilla and the Canary Islands).
  - 80.000 EUR (two hundred forty thousand euros) for Lot 2 - Ceuta, Melilla and the Canary Islands.

Evidence on compliance with the economic and financial capacity requirement must be provided by the following documents:

- Tenderers (including each member of the group in case of joint tender) and subcontractors whose capacity is necessary to fulfil the selection criteria must provide the Declaration on Honour (see Standard Submission Forms), signed and dated by an authorised representative, stating that they fulfil the selection criteria applicable to them. In case of joint tender or subcontracting, the criteria applicable to the tenderer as a whole will be verified by combining the various declarations for a consolidated assessment.

This declaration is part of the declaration used for exclusion criteria so only one declaration covering both aspects should be provided by each concerned entity.

- The tenderer, who according to the law of the country in which it is established is required to publish the balance sheet, shall complete and include in the offer a statement "Economic and financial capacity" as presented in the Standard Submission Forms. It should be presented in original and certified by means of a signature of the chief accounting officer of the tendering organisation. The tenderer which according to the law of the country in which it is established is not required to publish the balance sheet shall provide the extract from the budget.

In the case of a consortium submitting an offer, the consortium may rely on the capacities of members of the consortium. It must prove in its offer that it will have their resources at its disposal.

The statements of Economic and financial capacity should be included in the offer for all consortium partners.



In the case of a physical person the financial statement should be included into the offer for where only two lines on Turnover need to be filled in and the financial statement can be signed by the physical person only.

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.

#### Legal and regulatory capacity

- Tenderers must demonstrate that they are enrolled in a relevant trade or professional register or, to hold a particular authorisation proving that it is authorised to perform the contract in its country of establishment in relation to the subject of the contract. The Tenderer is asked to prove that is authorised to perform the contract under its national law.

Evidence on compliance with the legal and regulatory capacity requirement must be provided by the following documents:

- Duly filled in and signed Legal Entity Form (see Standard Submission Forms) accompanied by the documents requested therein.
- The tenderer is asked to confirm that they are authorised to perform the contract under the national law as evidenced by inclusion in a trade or professional register, or a sworn declaration or certificate, membership of a specific organisation, express authorisation or entry in the VAT register.
- Tenderers (including each member of the group in case of joint tender) must provide the Declaration on honour on exclusion criteria and selection criteria.

#### Technical and professional capacity

- The Tenderer must have at least three years' experience in providing similar services. Reference list (including contact details) of minimum three current and past customers to whom the tenderer has supplied the core services, in the past three years; specifying the tenderer's share (at least 50%) in provision of the services and if subcontractors were used for any of the services.
- Evidence of experience must be provided by submitting a list of contracts performed or services executed on the subject in the past three years. The proper performance of the contracts listed shall be documented in the form of a reference letter issued and signed by an authorised person of that particular Tenderer's client. At least three such reference letters are required to be submitted within the offer.
- The Tender should appoint a Contract Manager (CM) and an alternate one who will be assigned to support the framework contract implementation, clearly defining their roles and responsibilities. In complying with this section, the Tenderer shall assure that the personnel being nominated are available to fulfil the demands of the Contract during its stated full term. The Curricula Vitae (CVs), preferably in a common European format, of the two proposed members of the team must be enclosed and must clearly show evidence of the experience and skills required. The minimum relevant requirements of the profile of staff members proposed by the Tenderer are:
  - Advanced Diploma in Logistics, Supply Management or equivalent qualification;
  - At least 3 years of experience of working as a client account manager in companies providing transportation/shipment services;

- The above minimum requirements for the profile of the staff shall be maintained during the whole duration of the contract, i.e. any replaced staff must have equivalent qualification and experience.

The technical and professional capacity of the tenderers to provide the services required will be assessed with regard to their know-how, efficiency, effectiveness, experience, reliability in providing the required expertise.

Only the offers that clearly demonstrate that they meet the selection criteria shall pass to the next stage of the evaluation.

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

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 Technical compliance check**

All offers will be verified against requirements included in the Annex I (Technical Specifications) and Annex II (Terms of Reference) to the Invitation to Tender. Only offers satisfying the requirements will be allowed for further evaluation.

### **III.6. Assessment of tenders at the award criteria stage**

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 contract will be awarded to the tender that fulfils the selection criteria and minimum technical requirements set in the Annex II (Terms of Reference) and offering the lowest reference price presented in Annex IV (Financial Proposal).

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

### **III.7 No obligation to award**

Completing the procedure of the Invitation to Tender in no way imposes on the 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.

### **III.8 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 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.

### **III.9 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.
- 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.

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>2</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.
- 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 proposal template

Annex V - Declaration on honour concerning exclusion criteria

Annex VI - Tender submission form

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<sup>2</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.