TENDER SPECIFICATIONS

Purchase of aerial border surveillance service for the EU external land borders

Ref. No: Frontex/OP/122/2013
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I. GENERAL INFORMATION

I.1 General Information on Frontex
The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) was established by the Council Regulation (EC) 2007/2004 of 26 October 2004 (hereinafter-called Regulation) with a view to improve the integrated management of the external borders of the Member States of the European Union.

Frontex started to be operational on 3 October 2005 with its seat in Warsaw, Poland. As of March 2013, Frontex staff consists of just about 300 persons.

The activities of Frontex are intelligence driven. Frontex complements and provides information to the national border management systems of the Member States, whilst fully respecting the principle that the main responsibility of the control and surveillance of the external borders still lies with the Member States.

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 organization and performance, Frontex is in constant need of goods and services. Tendering is the structured way to consult the market for the purchase of these goods and services.

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

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

The procurement procedure is governed by the following legal provisions:

a) Part 1, Title 5 of Regulation (EU, Euratom) No 966/2012 of 25 October 2012 on the financial rules applicable to the general budget of the Union;


I.3 Eligibility
The participation in tender procedures is open on equal terms to all firms under the condition that:

a) They are not in any of the situations excluding them from participation listed in point III.3, which is confirmed by the Tenderers’ Declaration of

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Honour (Annex IV) 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 145 of Commission Delegated Regulation (EU) No 1268/2012 of 29/10/2012 (OJ L 362 of 31/12/2012).

I.5 Joint Tenders
No special legal form is required but, in the event a group of Contractors submits an acceptable offer, it shall be necessary to provide an undertaking that each company shall be jointly and severally responsible for the due performance of the contract. In the case of a consortium bid, the Contractor shall be required to act on behalf of the consortium.

Statements saying, for instance, that:

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 tendering specifications.

I.6 Sub-contracting
Sub-contracting is allowed, provided that the subcontractor(s) and his scope of work shall be clearly indicated in the tender. Nevertheless, the responsibility for the full execution of the contract rests with the Contractor, as Frontex has no direct legal commitment with the subcontractor(s).

Accordingly:

a) Frontex shall treat all contractual matters (e.g. payment) exclusively with the main Contractor, whether or not the tasks are performed by a subcontractor;

b) Under no circumstances the main Contractor can avoid liability towards Frontex on the grounds that the subcontractor is at fault.
If subcontracting is envisaged in the tender it shall include a complete documentation that:

a) defines clearly the roles, activities and responsibilities of subcontractor(s);

b) specifies the volume / proportion of the tender being subcontracted for each subcontractor; and

c) contains a letter of intent by each subcontractor stating its intention to collaborate in case the contract is awarded.

All members of the consortium and subcontractors shall meet the eligibility and exclusion criteria given in points I.3 and III.3.

I.7 Cost of preparing tenders

The invitation to participate in a tender procedure does not constitute any commitment on behalf of Frontex for award of the contract to a company. Frontex shall not reimburse any costs incurred by Tenderers in preparing and submitting offers.

I.8 Misrepresentation and corruptive practices

The contract shall not be awarded to Tenderers who, during the procurement procedure:

a) are subject to a conflict of interest;

b) are guilty of misrepresentation in supplying the information required by Frontex as a condition of participation in the contract award procedure or fail to supply this information;

c) attempt to obtain confidential information, enter into unlawful agreements with competitors or influence the evaluation committee or Frontex during the process of examining, clarifying, evaluating and comparing tenders.

All the above-mentioned circumstances shall lead to the rejection of this offer and may result in administrative penalties.

I.9 Confidentiality and public access to documents

In the general implementation of its activities and for the processing of tendering procedures in particular, Frontex observes the following EU regulations:

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

b) Regulation (EC) No. 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data;

II. SPECIFIC INFORMATION

II.1. Scope and contractual information

II.1.1 Subject of the tender

The purpose of this tender is to purchase of aerial border surveillance service - aircraft equipped with multi-intelligence sensors, radio communication means, ground station and personal equipment, in order to perform aerial surveillance at the external EU land border between Greece and Turkey.

II.1.2 Type of contract

Frontex may conclude contract with the selected Tenderer for provision of the aerial border surveillance service (fulfilling the requirements listed in the Annex II - Terms of Reference), offered at the lowest price, on the basis of the draft contract included in the Annex VI to the Tender Dossier.

II.1.3 Location and duration

The contractual tasks will be performed in 30 day time slot within the period July - September 2013 over the land border Greece-Turkey. The exact dates will be communicated to the Contractor upon the signature of the contract by Frontex. However, all Tenderers are required to provide a free-format declaration within their offers confirming their readiness to start performing the assigned services within the shortest possible time, and not later than maximum 80 calendar days counted from the prospective contract signature by its last party.

II.2. Form and content of the tender

The tender shall be clear and concise, with continuous page numbering, and assembled so as to constitute a coherent whole (e.g. bound or stapled, etc.). Since Tenderers will be judged on the content of their written offers, these must clearly state that the Tenderer is able to fully meet all the requirements of the 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 awarding criteria, and in accordance with these specifications, in the absence of which, Frontex may decide to exclude the tender from the awarding procedure for the contract.

II.2.1 Documents to be included in the offer

The offer shall include the following documents:

a) Technical Proposal

The Technical Proposal shall be consistent with the Terms of Reference (Annex II), and contain the fulfilled Declaration of the Tenderer, provided in the Appendix 1 of the Annex II.

b) Financial Proposal
The Financial Proposal shall be prepared in accordance with the template provided in the Financial Offer (Annex III).

In preparing the Financial Proposal, the Tenderer should take into account that Frontex is, in general, exempt from all taxes and dues pursuant to the Protocol on the Privileges and Immunities of the European Communities annexed to the Treaty, signed in Brussels on 8 April 1965 (OJ no. 152 of 13 July 1967), establishing a Single Council and a Single Commission of the European Communities.

The Contractor 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. 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).

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 three elements:

1. Tenderer’s Declaration of Honour (Annex IV).
2. Tender Submission Form - duly filled and signed by the authorized representative of the Tenderer (Annex V).
3. Selection criteria documentation (all documentation requested in point III.4).
III. EVALUATION OF OFFERS

Offers are opened and evaluated by the Evaluation Committee, possessing the technical and administrative capacities necessary to give an informed opinion on the offers. The Evaluation Committee members have equal voting rights.

III.1 Opening Session

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

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

III.2 Evaluation Session

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

a) Eligibility: will be verified against the exclusion criteria described in point III.3. If one of the relevant criteria is not positive, the offer may not be further evaluated.

b) Verification of the selection criteria as described in point III.4.

c) Evaluation against the award criteria as described in point III.5.

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

III.3 Exclusion Criteria

In line with Articles No. 106, 107 and 109 (1) 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).

The Tenderer or in case of consortium all members of consortium 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 IV - Tenderer’s Declaration of Honour).

The Tenderer which will be selected for the award of the contract shall provide in due time, preceding the signature of the contract, evidence confirming the Declaration of Honour.

The following documents shall be accepted:

1. Frontex shall accept, as satisfactory evidence that the Tenderer is not in one of the situations described in point III.3 (a), (b) or (e), a production of a recent extract from the judicial record or, failing that, a recent equivalent document issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied.

2. Frontex shall accept, as satisfactory evidence that the Tenderer is not in the situation described in point III.3 (d), a recent certificate issued by the competent authority of the State concerned. Where no such certificate is issued in the country concerned, it may be replaced by a declaration made by the Tenderer before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.

3. Frontex shall accept, as satisfactory evidence that the Tenderer is not in the situation described in point III.3 (c), (f) or (g), a signed and stamped self-declaration. Frontex reserves the right to verify this information.

In addition, The Tenderer which will be selected for the award of the contract, shall also be aware, that the contract shall not be awarded to the Tenderer, who, during the procurement procedure for that Contract:

i) Is subject to a conflict of interest;

ii) Is guilty of misrepresenting the information required by the contracting authority as a condition of participation in the procurement procedure or fail to supply such information;

iii) Finds itself in one of the situations of exclusion, referred to in Article 106 of the Regulation (EU, Euratom) No 966/2012 of 25 October 2012 on the financial rules applicable to the general budget of the Union, for the procurement procedure concerned.

III.4 Selection Criteria
The tenders 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. Each offer shall be verified against the criteria specified below. Incomplete Tenders shall be rejected. However, Frontex may, at its discretion, request that missing formal documents are submitted by fax (normally these are to be submitted within 48 hours following the request).

III.4.1 Economic and financial capacity
The Tenderer shall provide evidence of its economic and financial capacity to perform the contract as follows:

- The Tenderer must prove its stable financial position for the past three financial years - 2010, 2011, 2012. Evidence of that must be provided by submission of self-declarations of the total annual turnovers and of the turnovers on the services similar to specified in the contract, carried out over the past three years. The annual turnovers must indicate a substantial amount (i.e. minimum 30% of the total yearly amount) of similar business contracted in each of the past three years by the Tenderer.

- The Tenderer must prove its financial reliability for the past three financial years - 2010, 2011, 2012. Evidence of that must be provided by submission of relevant balance sheets (provided that the publication of balance sheets is stipulated by the legislation on firms in the country where the Tenderer is established), which show the obtained Tenderer’s positive financial balance (profit) for each of the last three years. If the Tenderer is not required to publish its balance sheets, an explanation should be provided.

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.4.2 Technical and professional capacity
The Tenderer shall provide evidence of its technical and professional capacity to perform the contract as follows:

- The Tenderer must have at least three years’ experience in providing similar equipment/services. Evidence of that must be provided by submission of a list of contracts performed or deliveries executed in the years 2010, 2011 and 2012, with indicated sums, dates and recipients. The proper performance of the contracts listed above shall be documented in a form of a reference letter issued and signed by the authorised person of the particular Tenderer’ client (submission of a minimum of 3 reference letters regarding contracts above the net financial value of 100,000 EUR is required).
The Tenderer must be registered in a relevant commercial or trade register. Evidence of that must be provided by submission of a certificate of professional or commercial registration imposed by the country in which the Tenderer is established. If the Tenderer is not required or permitted to enrol in such a register for reasons of his statute or legal status, an explanation should be provided.

The Tenderer shall possess the ISO certificate 9001:2000. Evidence of that must be provided by submission of a copy of the ISO certificate 9001:2000 - quality management system certificate, or an equivalent certificate.

The Tenderer must demonstrate its technical ability to provide all the services and products required in this call for tenders. Evidence of that must be provided by submission of a detailed description of the technical equipment and material available to the Tenderer for the provision of services and products required by this call for tenders. Furthermore, the Tenderer has to provide a list of services which he can provide directly, as well as a list of services which the Tenderer intends to subcontract (if applicable, with indication of the share of the prospective contract scope by the proposed subcontractors).

The Tenderer must prove its relevant personnel capacity to fulfil the tasks required under the prospective contract. Evidence of that must be provided by submission of a free-format Tenderer’s declaration of the number of the managerial staff of the company (minimum 5 persons) as well as of the overall number of the employees (minimum 30 persons), all of them employed on permanent basis.

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

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

III.5 Award Criteria

Once the Tenderer has demonstrated the appropriate capacity to perform the contract on the grounds of the selection criteria, the offer shall be assessed on the basis of the award criteria.

This stage of evaluation will consist of 2 steps: technical evaluation and financial evaluation.

III.5.1 Technical evaluation

Technical quality of each offer will be evaluated in accordance with the technical requirements expressed in the Terms of Reference (Annex II).
The offers which are not entirely fulfilling all of the requirements stipulated in the Annex II, will be eliminated from further consideration.

III.5.2 Financial evaluation

Offers that have been positively evaluated during the technical evaluation will be subject of the financial evaluation. The total price excluding VAT expressed in the financial offer provided fully in accordance with the required template (Annex III) will be taken into account.

The contract will be awarded to the fully technically compliant offer with the lowest price proposed.

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

Joint tenders shall be assessed as follows:

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

b) The selection criteria for technical and professional capacity shall be assessed in relation to the combined capacities of all members of the consortium, as a whole.

c) The award criteria shall be assessed in relation to the tender, irrespective of whether it has been submitted by a single legal or natural person or by a tendering group.

Joint offers in the stage following the award:

If the Tenderer submits a joint offer but has not yet set up an entity with a legal form, and if he is awarded the contract, the contracting authority may require the Tenderer to give a formal status to his collaboration before the contract is signed, if this change is necessary for proper performance of the contract. This can take the form of an entity with or without legal personality but offering sufficient protection of Frontex contractual interests (depending on the Member State concerned, this may be, for example, a consortium or a temporary association).

The contract shall be signed by all members of the group, or by one of the members, which has been duly authorised by the other members of the group (a power of attorney or sufficient authorisation has to be provided and shall be attached to the contract as Annex III), when the Tenderers have not formed a legal entity.

Tenders involving subcontracting shall be assessed as follows:

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

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.

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3 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.

4 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.
resources at the disposal of the Tenderer for the performance of the contract.

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