

Annex I

Tender no: Frontex/OP/1039/2021/RS

Tender Specifications

**Nautical Charts Web Map Service Design, Transition
& Operation**



1. General Information

1.1. General information on Frontex

The European Border and Coast Guard Agency - Frontex (hereinafter referred to as “Frontex” or “Contracting authority”) is governed by Regulation (EU) 2019/1896 of 13 November 2019 on the European Border and Coast Guard (OJ L 295, 14.11.2019, p. 1).

The above-mentioned regulation provides the Agency with a reinforced mandate and increased competences compared to Regulation (EU) 2016/1624, such as the European Border and Coast Guard Standing Corps (the EU’s first uniformed service).

One of Frontex’ principle tasks is situation monitoring. For that purpose Frontex uses a set of IT systems that allow to compile and maintain the situational picture. These systems are built on the Microsoft and ESRI technology stack and their main applications are based on the ESRI Silverlight API and JavaScript. These systems are used within the EU Member States (MS) and Schengen Associate Countries (SAC) border guard community.

The seat of Frontex is Warsaw, Poland, as laid down in Article 93(5) of Regulation (EU) 2019/1896. A Headquarters Agreement has been concluded between Frontex and the Republic of Poland.

Further information about Frontex can be found on the Agency’s web site 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: 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.

1.3. Eligibility

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

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

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

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

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 III*) 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 referred to in point III.3, shall be subject to the financial penalties set out in Article 135 and 138 of the above mentioned Regulation No 2018/1046.

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.

All members of the consortium shall meet the eligibility and exclusion criteria given in points 1.3, 3.1 and 3.5

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 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 subcontractors shall meet the exclusion criteria given in points 3.1 and 3.5.

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:

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;

Regulation (EC) No. 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

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

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

2. Specific information

2.1. Contractual information

2.1.1. Subject of the tender

Frontex is seeking to establish a contract for the provision of the externally hosted nautical chart OGC compliant web map and web map tile service (WMS/WMTS) that can be integrated into Frontex applications allowing to display maritime information on their natural background. The service provided shall include the regular updates. The required map service is for planning purposes only and will **not** be used for navigational purposes.

The contract is meant to cover the provision of services as defined in *Annex II* - Terms of Reference (*Annex II*) which shall become an integral part of the contracts that may be awarded as a result of this open tender procedure.

All the information delivered in this document, its annexes and other referred documents shall be taken into consideration by the Tenderers in preparation of their offer and by the Contractor during the contract's implementation.

2.1.2. Type of the contract

The envisaged contract is a fixed-price service contract as described in the Terms of Reference (*Annex II*). Frontex may conclude the contract 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 are subject to minor modifications prior to the signature.

2.1.3. Duration of the contract

The duration of the contract is 1 year. The overall duration may in no event exceed three years (one year + potential extension of another 1+1 years). The contract is renewed automatically for the additional period(s) of up to 2 years, unless one of the parties receives formal notification to the contrary at least three months before the end of the ongoing duration. Renewal does not change or postpone any existing obligations.

2.2. Form and content of the tender

The tender shall be clear and concise so as to constitute a coherent whole. 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 services 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. Frontex will accept potential alignments of the contractual conditions to match specific payments conditions under systemic schemes of payments used by the tenderers.

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 required services shall be prepared in accordance with the template in *Annex IV* - Financial Proposal.

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.

Prices shall be quoted in Euro and shall be all inclusive. If the Tenderer is subject to VAT the offer should clearly show the price excluding VAT, as indicated on the compulsory template (*Annex IV* - Financial proposal).

VAT amount shall 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*).

3. Evaluation of offers

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

Tenderers or in case of consortium all members of consortium (as well as all subcontractors) will declare on their honor, by completing and signing Annex V that they are not in any of the situations excluding them from the participation in this tender. The Tenderer which will be selected for the award of the contract shall provide in due time, preceding the signature of the contract, the evidence confirming fulfilment of the Exclusion Criteria, as requested by the contracting authority.

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 criterion:

- 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 contract as follows:

- The Tenderer shall provide 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 Tenderer shall provide Frontex with a free-format declaration of the company's total turnover from the past three financial years for which accounts have been closed (information shall be provided separately for each year). The average annual turnover over the period indicated above must be greater than 130,000 EUR.

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 shall prove that is authorised to perform the contract under its national law and must demonstrate its technical ability to deliver required services in this call for tenders;

- The tenderer must have at least three years' experience in providing similar in subject and scope services.

Evidence required

The following documents or information shall be presented as evidence of compliance with the legal, 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 period of last three years from the submission deadline of the offer. The list should indicate dates, values and recipients. The proper performance of contracts shall be documented in a form of **at least three** reference letters concerning contracts presented on the list issued and signed by the authorised persons of the particular tenderer's clients.

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 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 only award criterion is the price. A tenderer presenting the cheapest financial proposal will be awarded the contract. The price proposals used for the comparison of financial offers will be taken from the table presented in *Annex IV*.

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. Assessment of joint tenders and tenders involving subcontracting

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 economic operator individually¹.
- a) The selection criteria for technical and professional capacity shall be assessed in relation to the combined capacities of all members of the consortium, as a whole.
- b) The award criteria shall be assessed in relation to the tender, irrespective of whether it has been submitted by a single legal or natural person or by a tendering group.

Joint tenders in the stage following the award:

If the Tenderer submits a joint tender but has not yet set up an entity with a legal form, and if he is awarded the contract, the contracting authority may require the Tenderer to give a formal status to his collaboration before the contract is signed, if this change is necessary for proper performance of the contract. This can take the form

¹ For the criteria that are deemed to be achieved above a certain level, e.g. overall turnover or turnover with the respect to the specific procurement, a consolidated assessment of all members of consortium together shall be made.

of an entity with or without legal personality but offering sufficient protection of Frontex contractual interests (depending on the Member State concerned, this may be, for example, a consortium or a temporary association).

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

Tenders involving subcontracting shall be assessed as follows:

- a) The exclusion criteria and the selection criteria for economic and financial capacity shall be assessed in relation to each company individually².
- b) The selection criteria for technical and professional capacity shall be assessed in relation to the combined capacities of the Tenderer and the subcontractor, as a whole, to the extent that the subcontractor puts its resources at the disposal of the Tenderer for the performance of the contract.
- c) The award criteria shall be assessed in relation to the tender. Subcontracting as such cannot be an award criterion.

² For the criteria that are deemed to be achieved above a certain level, e.g. overall turnover or turnover with the respect to the specific procurement, a consolidated assessment of a Tenderer plus subcontractor together shall be made, to the extent that the subcontractor puts its resources at the disposal of the Tenderer for the performance of the contract.