

**TENDER SPECIFICATIONS**  
**ATTACHED TO THE INVITATION TO TENDER**

**Invitation to tender No. HOME/2012/EBFX/PR/1001 concerning a study on the feasibility of the creation of a European System of Border Guards to control the external borders of the Union**

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## **I. SPECIFICATIONS**

### **I.1. Introduction**

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 Council Regulation (EC) No 2007/2004<sup>1</sup>, adopted on 26 October 2004. The Agency became operational in October 2005.

The Agency aims to improve the integrated management of the external borders of the Member States of the European Union by facilitating and render more effective the application of existing and future Community measures related to the management of external borders.

The main tasks of Frontex are described in articles 2 to 14 of its founding Council Regulation (EC) No 2007/2004, and can be summarised as following:

- coordinate operational cooperation between Member States in the field of management of external borders;
- assist Member States on training of national border guards, including the establishment of common training standards;
- carry out risk analysis;
- follow up on the development of research relevant for the control of external borders;
- assist Member States in circumstances requiring increased technical and operational assistance at external borders;
- provide Member States with the necessary support in organising joint return operations;
- evaluate, approve and coordinate proposals for joint operations and pilot projects made by Member States;
- launch, in agreement with the Member States concerned, initiatives for joint operations and pilot projects;
- set up and keep centralised records of technical equipment for control of external borders belonging to the Member States (also know as Central Record of Available Technical Equipment – CRATE);
- take all necessary measures to facilitate the exchange of information relevant for its tasks with the Commission and the Member States;
- facilitate operational cooperation with Ireland and the United Kingdom to the extent required for the fulfilment of its tasks, including the organisation of joint return operations;
- cooperate with Europol and international organisations competent in matters covered by Regulation 2007/2004;

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<sup>1</sup> OJ L 349, 25.11.2004, p. 1.

- in matters covered by its activities, facilitate the operational cooperation between Member States and third countries in the framework of the European Union external relations policy;
- conclude working arrangements with the authorities of third countries competent in matters covered by Regulation 2007/2004;
- deploy, for a limited period one or more Rapid Border Intervention Teams to Member States in accordance with Regulation 863/2007, at the request of a Member States faced with a situation of urgent and exceptional pressure, especially at the arrival at points of the external borders of large numbers of third-country nationals trying to enter the territory of that Member State illegally.

It should be noted from the outset that the primary responsibility for the control of external borders lies with the Member States. As a result, the Agency has been established to ensure the coordination of Member States' actions in the implementation of Community measures, thereby contributing to an efficient, high and uniform level of control on persons and surveillance of the external borders of the Member States.

As requested by the Hague programme the Commission adopted on 13 February 2008 a Communication on the evaluation and future development of the Frontex Agency (COM(2008) 67 final).

The Communication issued recommendations for the short to medium term and launched ideas for the future development of the Agency in the longer term. For the longer term perspective the crucial role of Frontex in the development of the European Union's integrated border management system was underlined.

On 24 February 2010 the Commission adopted a proposal to amend Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex).

Against this background the Agency's mandate was amended in 2011 to enable it to respond to the new challenges and to meet the expectations of the Commission, the Council and the Parliament. The amended Frontex Regulation<sup>2</sup> places new and increased obligations on the Agency, entails new tasks for the Agency, and specifies that certain tasks have to be carried out by certain categories of the Agency staff. Some of the new tasks were introduced by the legislative Authority during the adoption procedure of the regulation.

The most important changes are in the following areas of the Agency's core activities:

#### **Creation of European border guard teams**

The legal provisions of on the one hand the Rapid Border Intervention Teams and on the other hand the joint support teams (joint operations, pilot projects) are becoming part of one single set of provisions under the heading: European Border Guard Teams.

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<sup>2</sup> Regulation (EU) No 1168/2011, OJ L 304, 22.11.2011, p.1.

The European Border Guard Teams will consist of national border guards assigned or seconded by Member States to the Agency for joint operations, rapid interventions and pilot projects.

### **Strengthened focus on Fundamental rights**

The visibility of fundamental rights obligations and the respect of various international law instruments is clarified and increased:

- In case of a breach of human rights, Frontex missions have to be suspended or terminated in whole or in part.
- The office of a Fundamental Rights Officer has to be created in the Agency to assist in matters having implications for fundamental rights.
- A Consultative Forum on Fundamental Rights has to be set up also involving relevant international organisations and NGOs.
- A Code of Conduct has to be established to guarantee respect for fundamental rights.
- Frontex-funded return operations have to be monitored on the basis of objective and transparent criteria. The Commission will draw up an annual report on the monitoring.
- The tasks of the Agency will include possible assistance to Member States in situations that may involve humanitarian emergencies and rescue at sea
- Fundamental rights have to be included in the training curricula of Frontex personnel and border guards participating in Frontex operations.

### **Strengthening of the Agency's operational capacity**

The putting at the disposal of the Agency by Member States of human and technical resources to be used in joint operations at the external borders is further developed, as well as the creation of the possibility for the Agency to have its own technical equipment. This is achieved by:

- a quasi compulsory mechanism for technical and human resources i.e. once Member States agree to assign their national border guards or second them to the Agency as guest officers to take part in joint operations or put technical equipment in the pool at the disposal of the Agency, they will be legally bound to honour their commitments.
- allowing Frontex to purchase, lease, own and co-own its own technical assets.

Frontex will also have the mandate to process personal data obtained during operations to use them in the fight against criminality, human trafficking and irregular immigration. Data may also be transmitted to Europol, albeit on a case-by-case basis.

The coordinating role of the Agency is substantially enhanced through the obligation on the Agency to appoint a coordinating officer for all joint operations. Furthermore there is an obligation to evaluate all operations.

The cooperation with relevant authorities of third countries is also enhanced. The basis remains the conclusion of a working arrangement with the competent authorities regarding border control of a third country. The Agency will have the possibility to provide technical

assistance and to deploy its liaison officers to relevant third countries to increase the level of cooperation.

Regarding training, an Erasmus-style exchange programme for national border guards will be created.

Finally the Agency has also received a general mandate to support the development of the European Border Surveillance System (Eurosur).

## **I.2. The context of the study**

The study is to be undertaken in the context of the Stockholm programme where the longer term development of the Agency is addressed. The Stockholm programme of 2010 invites the Commission *"to initiate a debate on the long-term development of Frontex. This debate should include, as was envisaged in the Hague programme, the feasibility of the creation of a European system of border guards."*

In addition, during the policy discussions on the aforementioned amendment of the Frontex Regulation several calls were launched towards the Commission to examine in more detail the feasibility of the creation of a European System of Border Guards.

To that end the Commission made the following declaration:

### ***"COM Declaration on the creation of a European system of border guards***

*The Commission undertakes to launch a feasibility study regarding the creation of a European system of border guards, as referred to in the Stockholm programme, within one year from the adoption of this Regulation. The outcome of the study will feed into the evaluation foreseen by Article 33(2a) of this Regulation. .".*

The revised Article 33 of Regulation (EU) No 1168/2011 foresees that the next independent evaluation of the Agency (in 2014) will also analyse the needs for further increased coordination of the management of the external borders of the Union, including the feasibility of the creation of a European system of border guards. Therefore the current study should collect the elements and provide the different scenarios in a complementary manner in order to provide the necessary building blocks for a thorough discussion with the competent authorities.

In general the current legal framework in which the Frontex Agency operates puts limitations to the activities of the Agency by the following principles:

- Border management is a shared competence between the EU and its Member States; Member States are responsible for controlling their part of the external border of the Schengen area;
- Frontex cannot impose any activity on the territory or at the border of a Member State without the consent of that Member State;
- Any border guard operating in another Member State shall be subject to instructions by the authorities of that Member State;

- Any decisions on refusal of entry of a person in accordance with the Schengen Borders Code shall be taken only by border guards of the Member State whose territory the person is seeking to enter; any appeals or allegations of misconduct shall be addressed to the relevant public authorities of that same Member State;
- Any decisions related to the return of an individual can only be taken by a national authority of a Member State; any appeals or allegations of misconduct shall be addressed to the relevant public authorities of that same Member State.

Also important to note is that since the entry into force of the Treaty of Amsterdam in 1999, a number of common measures have been adopted to manage better the external borders of the European Union in accordance with Article 62 (1) and (2) of the EC Treaty.

Built around the core elements of common legislation, common operations and financial solidarity, key steps have been taken with the adoption of the Schengen Borders Code<sup>3</sup>.

The study shall also take into account the state of play and eventual outcome of the discussions on the legislative proposals tabled by the Commission regarding the establishment of Eurosur and the new Schengen evaluation mechanism.

The study to be conducted shall deal with the feasibility to create a European System of Border Guards to control the external borders of the Union. It should take into account the results of an earlier performed study on behalf of the Commission on the Conferring of Executive powers to border officers operating at the external borders of the Union of January 2006.

### **I.3. Purpose of the contract**

The purpose of the study is to identify three models of what a European System of Border Guards could be composed of.

In that context develop for each model:

- if the creation of a European System of Border Guards is feasible from a legal and operational point of view; if necessary identify and describe the different steps that could in the longer term lead to the gradual creation of such a system;
- determine what legal provisions are necessary to create a European corps of border guards under the control and command of the Frontex Agency in order to perform border control duties at the external borders of the Union building upon an earlier study on the "Conferring of Executive powers to border officers<sup>4</sup>";
- find out the main aspects that are necessary to build a European System of Border Guards (tasks, powers, budget, human or other resources etc.);

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<sup>3</sup> Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 105, 13.4.2006, p. 1).

<sup>4</sup> Unisys for the European Commission, 2005.

- determine the boundaries of such a system and provide information on the needs that such a system would require and provide different scenarios in this context;
- define the added value of the creation of a European System of Border Guards, also in terms of saving budgetary means, including a rough estimation of the necessary EU budget that such a European System would require;
- provide the necessary elements to determine the role of the Frontex Agency to operate a European System of Border Guards;
- analyse if changes are necessary to the Schengen Borders Code if such a European System of Border Guards is created, and which role such system might have in relation to Eurosur and the Schengen evaluation mechanism.

The study shall cover all kinds of external borders (land, air and sea) and all Member States and Schengen Associated Countries.

The Contractor is requested to perform the following tasks:

1. Gather all documentation of a legal, political, strategic and operational nature that may be related to the possible establishment of a European System of Border Guards;
2. Collect all necessary information from the Member States and Schengen Associated Countries relevant for the study.
3. Conduct interviews with the appropriate stakeholders, including interviews with Frontex, the Members of the Frontex Management Board, and representatives of Member States, the European Parliament, relevant NGOs and DG HOME staff.
4. Find out the main aspects of added value at the European level and determine what is needed to establish a European System of Border Guards (organisational structures, tasks, powers, budget, human or other resources etc.).
5. Establish a listed overview of the different steps that are needed to establish a European System of Border Guards, including a tentative timetable.

## **I.4. Content and graphic requirements of the final deliverables**

All studies produced for the European Commission and Executive Agencies shall conform to the corporate visual identity of the European Commission by applying the graphic rules set out in the European Commission's Visual Identity Manual, including its logo<sup>5</sup>.

The Commission is committed to making online information as accessible as possible to the largest possible number of users including those with visual, auditory, cognitive or physical disabilities, and those not having the latest technologies. The Commission supports the [Web Content Accessibility Guidelines 2.0](#) of the W3C.

For full details on Commission policy on accessibility for information providers, see: [http://ec.europa.eu/ipg/standards/accessibility/index\\_en.htm](http://ec.europa.eu/ipg/standards/accessibility/index_en.htm)

Pdf versions of studies destined for online publication should respect W3C guidelines for accessible pdf documents. See: <http://www.w3.org/WAI/GL/WCAG20-TECHS/pdf.html>

### **I.4.1. Content**

1. A **kick-off meeting** will take place in Brussels, at the latest 15 days following the signature of the contract, in order to discuss the preparation of the study and the presentation of the methodology as proposed by the contractor in the tender.
2. Taking into account the discussion with the Commission, within six week of the kick-off meeting, the Contractor shall do a complete presentation of the methodology to be used during the study, including the levels and types of contributions expected from Member States, the Commission and possible other stakeholders, the different phases of the work and the progress expected to be achieved during the implementation of the study. The methodology shall also include the draft selection of Member States involved, the field visits, the use of surveys, questionnaires and interviews.
3. Together with the submission of the interim report, the Contractor shall do a presentation of the findings to the Commission in Brussels.
4. Together with the submission of the draft final report, the Contractor shall do a presentation of the report to the Commission in Brussels.

#### **I.4.1.1. Interim report**

The **interim report** showing progress of the work done and summarizing the preliminary findings obtained and any problems or bottlenecks encountered that might require some action shall be submitted to the Commission at the latest five (5) months after the date of signature of the contract.

The Contractor shall have 20 days in which to submit additional information or a new interim report if required by the Commission.

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<sup>5</sup> The Visual Identity Manual of the European Commission is available upon request. Requests should be made to the following e-mail address: [comm-visual-identity@ec.europa.eu](mailto:comm-visual-identity@ec.europa.eu)

### **I.4.1.2. Final report**

The contractor shall submit a final report with an executive summary to the Commission at the latest eight (8) months after the signature of the contract.

The Contractor shall have 20 days in which to submit additional information or a new final report if required by the Commission. Should the Commission still not consider the report acceptable, the Contractor shall be asked to amend the report until the Commission is satisfied.

Two (2) copies of the final reports shall be supplied in English in paper form and one copy in electronic form ( MS Word).

The final report shall contain at least the following descriptions:

1. type of methodology used;
2. different steps that could lead to the gradual creation of such a system;
3. legal provisions that are necessary to create a European corps of border guards under the control and command of the Frontex Agency;
4. main aspects that are necessary to build a European System of Border Guards (tasks, powers, budget, human or other resources etc.);
5. needs that such a system would require and the different scenarios in this context;
6. added value at EU level, including saving budgetary means, and an estimation of the necessary EU budget that such a European System would require;
7. conclusions and recommendations for follow-up.

The final report shall include:

- an abstract of no more than 200 words and an executive summary of maximum 6 pages, both in English and French;
- the following standard disclaimer:  
*“The information and views set out in this [report/study/article/publication...] are those of the author(s) and do not necessarily reflect the official opinion of the Commission. The Commission does not guarantee the accuracy of the data included in this study. Neither the Commission nor any person acting on the Commission’s behalf may be held responsible for the use which may be made of the information contained therein.”*
- specific identifiers which shall be incorporated on the cover page provided by the Contracting Authority.

### **I.4.1.3. Publishable executive summary**

The publishable executive summary shall be provided in both in English and French and shall include:

- the following standard disclaimer:  
*“The information and views set out in this [report/study/article/publication...] are those of the author(s) and do not necessarily reflect the official opinion of the Commission. The*

*Commission does not guarantee the accuracy of the data included in this study. Neither the Commission nor any person acting on the Commission's behalf may be held responsible for the use which may be made of the information contained therein."*

- specific identifiers which shall be incorporated on the cover page provided by the Contracting Authority.

#### **I.4.2. Graphic requirements**

For graphic requirements please refer to the template available in Annex 8. The cover page shall be filled in by the contractor in accordance with the instructions provided in the template. For further details you may also contact [comm-visual-identity@ec.europa.eu](mailto:comm-visual-identity@ec.europa.eu).

#### **I.5. Duration of the tasks**

The duration of the tasks shall not exceed ten (10) months. This period is calculated in calendar days. Execution of tasks begins on the date on which the contract enters into force.

#### **I.6. Place of performance**

The tasks will be performed on the Contractor's premises and in other locations relevant for performing visits in the Member States. However, meetings between the contractor and the Commission shall be held on Commission premises in Brussels.

#### **I.7. Estimate of the amount of work involved**

The total value of the contract has been estimated at 300 000 EUR.

## **II. TERMS OF CONTRACT**

In drawing up his offer, the tenderer should bear in mind the provisions of the draft contract attached to this invitation to tender (Annex 7). Any limitation, amendment or denial of the terms of contract will lead to automatic exclusion from the procurement procedure.

The Commission may, before the contract is signed, either abandon the procurement procedure or cancel the award procedure without the tenderers being entitled to claim any compensation.

### **II.1. Terms of payment**

Payments shall be made in accordance with the provisions specified in Annex 7, the draft service contract.

### **II.2. Subcontracting**

If the tenderer intends to subcontract part of the service, he shall indicate in his offer which part will be subcontracted and to what extent (% of the total contract value).

Tenderers must ensure that Article II.17 of the contract (Annex 7) can be applied to subcontractors.

### **II.3. Legal form to be taken by the grouping of service providers to whom the contract is awarded (if applicable)**

Groupings, irrespective of their legal form, may submit bids. Tenderers may, after forming a grouping, submit a joint bid on condition that it complies with the rules of competition. Such groupings (or consortium) must specify the company or person heading the project and must also submit a copy of the document authorising this company or person to submit a bid. If awarded, the contract will be signed by the company of the person heading the project, who will be, vis à vis the Commission, the only contracting party responsible for the performance of this contract. Tenders from a consortium of firms or groups of service providers, contractors or suppliers must specify the role, qualifications and experience of each member of the consortium or group. Each member must provide all the necessary documents for assessing the bid as a whole with regard to the exclusion criteria, selection criteria (all of them) and award criteria.

### III. FORM AND CONTENT OF THE TENDER

#### III.1. General

Tenders must be written in **one of the official languages** of the European Union.

Tenders must be clear and concise, with continuous page numbering, and assembled in a coherent fashion (e.g. bound or stapled, etc...). Since tenderers will be judged on the content of their written bids, they must make it clear that they are able to meet the requirements of the specifications (including submission of the reports in English).

#### III.2. Structure of the tender

All tenders must include three sections:

- 1) Administrative information and documents related to the exclusion and selection criteria;
- 2) Technical proposal;
- 3) Financial proposal.

##### *III.2.1. Section One: Administrative proposal*

###### a) **Administrative information**

This section must provide the following information, set out in the standard identification forms attached to these tender specifications (Annexes 1, 2 and 3):

- 1) Tenderers' identification (Annex 1)
  - All tenderers must provide proof of **registration**, as prescribed in their country of establishment, on one of the **professional or trade registers** or provide a declaration or certificate.
  - If the tenderer is a natural person, he/she must provide a copy of the identity card/passport or driving licence and proof that he/she is covered by a social security scheme as a self-employed person.

Each tenderer (including subcontractor(s) or any member of a consortium or grouping) must complete and sign the identification forms in Annex 1 and also provide above-mentioned documents.

However, the subcontractor(s) shall not be required to fill in or provide those documents when the services represent less than 20% of the contract.

- 2) Financial identification (Annex 2)

The **bank identification form** must be filled in and signed by an authorised representative of the tenderer and his/her banker. A standard form is attached in Annex 2 and a specific form for each Member State is available at the following Internet address:

[http://ec.europa.eu/budget/execution/ftiers\\_en.htm](http://ec.europa.eu/budget/execution/ftiers_en.htm)

In the case of a grouping, this form must only be provided by the person heading the project.

- **3) Legal entities (Annex 3)**

The legal entity form in Annex 3 must be filled in and should be accompanied by a number of supporting documents, available on the Web site:

[http://ec.europa.eu/budget/execution/legal\\_entities\\_en.htm](http://ec.europa.eu/budget/execution/legal_entities_en.htm)

In the case of a grouping, this form must only be provided by the person heading the project.

The Commission reserves the right, however, to request additional evidence in relation to the bid submitted for evaluation or verification purposes within a time-limit stipulated in its request.

**b) Information regarding exclusion and selection criteria:**

For the exclusion criteria the tenderer is request to submit:

1. Declaration of honour (see Annex 4 below)
2. Documents certifying economic and financial capacity (see IV.2.1)
3. Proof of technical and professional capacity (see IV.2.2)

***III.2.2. Section Two: Technical proposal***

This technical section is of great importance in the assessment of the bids, the award of the contract and the future execution of any resulting contract.

The attention of tenderers is specially drawn to the award criteria, which define those parts of the technical proposal to which the tenderers should pay particular attention. The technical proposal should address all matters laid down in the specifications and should include models, examples and technical solutions to problems raised in the specifications. The level of detail of the tender will be extremely important for the evaluation of the tender. Tenderers must present in their bids a proposal on the methodology and the organisation of the work to carry out in the framework of the study.

The technical proposal must provide all the information needed for the purpose of awarding the contract.

***III.2.3. Section Three: Financial proposal***

All tenders must contain a financial proposal to be submitted **according to the form attached in Annex 6.**

The tenderer's attention is drawn to the following points:

- Prices must be quoted in **euros**, including the countries which are not in the euro-area. As far as the tenderers of those countries are concerned, they cannot change the amount of the bid because of the evolution of the exchange rate. The tenderers choose the exchange rate and assume all risks or opportunities relating to the rate fluctuation;
- **Prices must be fixed, not subject to the revision** during the performance of the contract and include all expenses, such as travel expenses and daily allowances;
- **Prices should be quoted free of all duties, taxes and other charges, i.e. also free of VAT**, as the Communities are exempt from such charges in the EU under Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965 (OJ L 152 of 13 July 1967). Exemption is granted to the Commission by the governments of the Member States, either through refunds upon presentation of documentary evidence or by direct exemption. For those countries where national legislation provides an exemption by means of a reimbursement, the amount of VAT is to be shown separately. In case of doubt about the applicable VAT system, it is the tenderer's responsibility to contact his or her national authorities to clarify the way in which the European Community is exempt from VAT.

## IV. ASSESSMENT AND AWARD OF THE CONTRACT

The assessment will be based on each tenderer's bid.

All the information will be assessed in the light of the criteria set out in these specifications. The procedure for the award of the contract, which will concern only admissible bids, will be carried out in three successive stages.

The aim of each of these stages is:

- 1) to check on the basis of the exclusion criteria, whether tenderers can take part in the tendering procedure;
- 2) to check on the basis of the selection criteria, the technical and professional capacity and economic and financial capacity of each tenderer;
- 3) to assess on the basis of the award criteria each bid which has passed the exclusion and selection stages.

### IV.1. Exclusion criteria (exclusion of tenderers)

#### *IV.1.1. Exclusion criteria (Article 93 Financial Regulation<sup>6</sup>)*

To be eligible for participating in this contract award procedure, tenderers **must not be** in any of the following situations:

- (a) they are bankrupt or being wound up, 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 have been convicted of an offence concerning their professional conduct by a judgement 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;
- (d) they have not fulfilled 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 have been the subject of a judgement which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests<sup>7</sup>;

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<sup>6</sup> Council Regulation (EC, Euratom) n° 1605/2002 of 25 June 2002 on the Financial regulation applicable to the general budget of the European Communities, OJ L 248 of 16 September 2002, p. 1, amended by Council Regulation (EC, Euratom) n° 1995/2006 of 13 December 2006, OJ L 390 of 30 December 2006, p.1.

<sup>7</sup> a) cases of fraud as referred to in Article 1 of the Convention on the protection of the European Communities' financial interests established by the Council Act of 26 July 1995 (OJ/C 316 of 27.11.1995, p. 48);

b) cases of corruption as referred to in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, established by the Council Act of 26 May 1997 (OJ/C 195 of 25.6.1997, p. 1);

c) cases of involvement in a criminal organisation, as defined in Article 2(1) of Joint Action 98/733/JHA of the Council (OJ/L 315 of 29.12.1998, p. 1);

d) cases of money laundering as defined in Article 1 of Council Directive 91/308/EEC (OJ/L 166 of 28.6.1991, p.77).

- (f) they are currently subject to an administrative penalty referred to in Article 96(1) of Financial Regulation.

#### ***IV.1.2. Other cases of exclusion (Article 94 Financial Regulation)***

**Contracts will not be awarded** to tenderers who, during the procurement procedure:

- a) **are subject to a conflict of interest;**

Tenderers must declare:

- that they do not have any conflict of interest in connection with the contract; a conflict of interest could arise in particular as a result of economic interests, political or national affinities, family or emotional ties, or any other relevant connection or shared interest;
- that they will inform the contracting authority, without delay, of any situation constituting a conflict of interest or which could give rise to a conflict of interest;
- that they have not made and will not make any offer of any type whatsoever from which an advantage can be derived under the contract;
- that they have not granted and will not grant, have not sought and will not seek, have not attempted and will not attempt to obtain, and have not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, constituting an illegal practice or involving corruption, either directly or indirectly, as an incentive or reward relating to the award of the contract.

The Commission reserves the right to check the above information.

- b) **are guilty of misrepresentation** in supplying the information required by the contracting authority as a condition of participation in the procurement procedure or fail to supply this information;

#### ***IV.1.3. Evidence to be provided by the tenderers***

1. When submitting their bids, each tenderer (including subcontractor(s) or any member of a consortium or grouping) shall provide a declaration on their honour, duly signed and dated, stating that they are not in one of the situations mentioned above (cf. IV.1.1 and VI.1.2). **For that purpose, they must complete and sign the form attached in Annex 4.** Where the tenderer is a legal entity, they shall, whenever requested by the Commission, provide information on the ownership or on the management, control and power of representation of the legal entity.
2. The tenderer to whom the contract is to be awarded (including any member of a consortium or grouping) shall provide, within 14 calendar days after notification of the results of the procurement procedure and in any case before the signature of the contract, the following evidence, confirming the declaration referred to above:

The Commission shall accept, as satisfactory evidence that the tenderer is not in one of the situations described in point IV.1.1 (a), (b) or (e) above, a recent extract from the judicial record or, failing that, an equivalent document recently issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied.

The Commission accepts, as satisfactory evidence that the tenderer is not in the situation described in point IV.1.1 (d) above, a recent certificate issued by the competent authority of the State concerned.

Where no such document or certificate is issued in the country concerned, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.

3. Depending on the national legislation of the country in which the candidate or tenderer is established, the documents referred to in paragraph 1 and 2 above shall relate to legal and/or natural persons including, if applicable with regard to points b) and e), company directors or any person with powers of representation, decision-making or control in relation to the tenderer.
4. When the subcontracted part is above 20% of the contract value, the subcontractor(s) must also provide the above-mentioned declaration on honour. In case of doubt on this declaration on the honour, the contracting authority may also request the evidence referred to in paragraphs 2 and 3 above.
5. The Commission reserves the right to request any other document relating to the proposed tender for evaluation and verification purpose, within a delay determined in its request.

**Remark:**

The tenderers will be waived of the obligation to submit the documentary evidence above mentioned if such evidence has already been submitted for the purposes of another procurement procedure launched by Directorate Home Affairs provided that the documents are not more than one year old starting from their issuing date and that they are still valid. In such a case, the tenderer shall declare on his honour that the documentary evidence has already been provided in a previous procurement procedure, specifying the reference of the call for tender for which the documents have been provided, and confirm that no changes in his situation have occurred.

**IV.2. Selection criteria (Selection of tenderers)**

To be eligible, the tenderers must have the economic and financial capacity as well as the technical and professional capacity to perform the tasks required in this call for tender.

#### ***IV.2.1. Economic and financial capacity – References required***

Tenderers must provide proof of their financial and economic capacity by means of the following documents:

- the balance sheets or extracts from balance sheets for the last three financial years,
- a statement of overall turnover and turnover relating to the relevant services for the last three financial years.
- completed "Simplified balance sheet" and "Simplified Profit & Loss Account" (Annex 5), filled in for 3 years

This rule applies to all service providers, regardless of the percentage of tasks they intend to execute, once they have chosen to submit a tender. However, if the tender includes subcontractors whose tasks represent less than 20% of the contract, those subcontractors are not obliged to provide evidence of their economic and financial capacity.

#### ***IV.2.2. Technical and professional capacity – References required***

**The tenderer must comply with the following criteria:**

- a. Proven knowledge and expertise in the field of justice and home affairs. Qualifications of personnel: senior expert with at least 5 years and junior expert with at least 2 years experience **in one or more of the following areas:** management of migratory flows, visa policy, fight against illegal immigration and/or trafficking in human beings, law enforcement and/or fight against cross-border crimes, **EU external border control**. Senior experts must have a university degree (master level), and have experience in evaluation, opinion survey, interview, case studies or in a related field. Junior expert must: have a university degree (master level) and have experience in evaluation, opinion survey, interview, case studies or in a related field.
- b. Demonstrated ability to work with representatives of different Member States and to work in more than five EU official languages.

**The Contracting Authority shall accept the following as evidence of compliance with the above criteria:**

- 1) Tenderers should provide with their offer detailed curriculum vitae of each staff member responsible for carrying out the work, including his or her educational background, degrees and diplomas, professional experience, research work, publications and linguistic skills. The CV's shall be presented, preferably, in accordance to the Commission Recommendation on a common European format for curricula vitae, published in OJ L79 of 22 March 2002, p. 66.
- 2) A list of the principal services of the same type provided in the past five years, with the sums, dates and recipients, whether public or private, of the services provided, together with certificates issued or countersigned by public authorities or by private clients or, failing this, simply declared by the service provider to have been effected.
- 3) Part of the contract which the service provider intends to subcontract.

**Remark:** If several service providers/subcontractors are involved in the bid, each of them must have and show that they have the professional and technical capacity to perform the tasks assigned to them.

### IV.3. Evaluation of tenders – Award criteria

The contract will be awarded according to the criteria given below, on the basis of the economically most advantageous tender.

Only bids that have reached a total score of a minimum of 70% and a minimum score of 60 % for each criterion will be taken into consideration for awarding the contract.

#### a) Technical evaluation criteria in their order of importance as weighted by percentage

The quality of the tender will be awarded a score out of 100. The qualitative criteria will be weighted as follows:

N°	Award Criteria	Weighting
1	Quality and clarity of the approach, methodology and working methods proposed for this assignment, including a breakdown of tasks (such as gathering documentation, conducting interviews, case studies and on-site visits etc.), a time table and delivered products with inputs, estimated effort, project milestones and expected outcome.	40
2	Understanding of the environment in which the assignment is being carried out: ability to understand the political context, objectives, challenges, and the operational problems and needs as regards integrated border management, as well as the tasks to be performed and results to be achieved under this assignment.	35
3	Composition and quality of the organisation of the proposed team and the description of the role of the team within the assignment. Here you should give details, <i>using the form in Annex VI</i> , of the composition of the proposed team (total number of people directly involved in working on the study, number of days for each task, each person/grade/level of experience), including the level of direct participation by experienced ( <i>senior</i> ) staff within the organisation, but only for the purpose of the requested service.	25
<b>Total number of points</b>		<b>100</b>

#### Remarks:

*Tenderers' attention is drawn to the fact that the Commission will be in a position to make a proper assessment of the tenders on the basis of the above qualitative criteria only if they contain full particulars relating to all aspects of this specification. Lack of detail and vague and perfunctory information will be penalised.*

*As the tenders will be evaluated on the basis of the quality of the services proposed, they should fully explore all the points included in this specification so as to obtain the best possible mark.*

*Simply repeating the guidelines given in the specification of this invitation to tender without going into detail or expanding on them will result in a very poor mark.*

*Furthermore, if any essential points of this specification are not expressly covered by the tender, the Commission may decide to give a zero mark for the relevant quality award criteria.*

## **b) Financial criteria**

The contract will be awarded to the tender which offers the **best value for money**.

The evaluation will be made by awarding each tender a number of points calculated as follows:

$$\frac{\text{Number of "quality" points} * 10000}{\text{Price of the tender}}$$

## **V. INFORMATION FOR TENDERERS**

The Commission will inform tenderers of decisions reached concerning the award of the contract, including the grounds for any decision not to award a contract or to recommence the procedure.

If a written request is received, the Commission will inform all rejected tenderers of the reasons for their rejection and all tenderers submitting an admissible tender of the characteristics and relative advantages of the selected tender and the name of the successful tenderer.

However, certain information may be withheld where its release would impede law enforcement or otherwise be contrary to the public interest, or would prejudice the legitimate commercial interests of economic operators, public or private, or might prejudice fair competition between them.

## **VI. ADMINISTRATIVE AND FINANCIAL PENALTIES**

Without prejudice to the application of penalties laid down in the contract, candidates or tenderers and contractors who have been found guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the procurement procedure or have failed to supply this information or have been declared to be in serious breach of their obligations under contracts covered by the Community budget may be subject to administrative or financial penalties, in accordance with Article 96 of the Financial Regulation and Articles 133a and 134b of the Implementing Rules.<sup>8</sup>

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<sup>8</sup> Commission Regulation (EC, Euratom) n° 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities,

## **VII. ANNEXES**

1. Identification of the Tenderer
2. Financial Identification
3. Legal Entity Form
4. Declaration by the Tenderer (relating to the exclusion criteria)
5. Simplified balance sheet Form + profit & loss account Form
6. Financial offer Form
7. Draft Service Contract
8. Template of the Cover page