



ANNEX A

D-SE-15-T01

Biometric data in large IT borders, visa and asylum databases

TENDER SPECIFICATIONS





1. Description of the tender

The overall objective of the contract is to analyse the broader fundamental rights implications of inserting, storing and searching biometric data in large-scale IT databases in the areas of asylum, borders and visa.

With this project the FRA intends to complement the eu-LISA reports on functioning of VIS, Eurodac and SIS II which do not have a fundamental rights focus. This project also complements the work of the European Data Protection Supervisor (EDPS) and the Supervisory Coordination Groups for Eurodac, SIS II, and VIS, for which EDPS functions as the Secretariat, as it takes a broad fundamental rights perspective and does not focus only on data protection issues.

The project 'Biometric in large IT databases' had an initial preparatory phase. During the preparatory phase of the project - which covered all EU 28 Member States - an extensive mapping of relevant administrative practices and procedures as well as their fundamental rights implications took place (end 2014 to first half 2015). It also included an overview of case law, publications, and main providers of legal assistance to asylum seekers and irregular migrants. This phase was carried out by FRANET, FRA's research partners in the EU Member States.

The project – which will cover six EU Member States - is based on fieldwork research which includes:

- quantitative and qualitative data collection with authorities and professionals as well as third country nationals enrolled in VIS, EURODAC and SIS II;
- observations of procedures in practice; and the collection and analysis of available statistics.

The contract notice for the present call for tenders was published on 17/07/2015 with reference number 2015/S 136-250040.

2. Division into lots

This tender is not divided into lots. Submission of a tender for only some of tasks to be performed under the contract will lead to the rejection of the tender.

3. Purpose of the tender

The purpose of this invitation to tender is to award a Direct Services contract for the provision of Biometric data in large IT borders, visa and asylum databases.

4. Place of delivery or performance

The place of performance of the tasks shall be the contractor's premises or any other place indicated in Annex A.1 Technical Specifications.

5. Duration

The contract(s) resulting from the present call for tenders shall enter into force the date on which it is signed by the last contracting party.



The duration of the tasks shall not exceed thirteen (13) months from the date of signature. The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses.

Implementation of the contract(s) may not start before the date on which the contract enters into force.

6. Volume

The contract amount has been estimated at € 590.000,00 excluding VAT. The contracting authority may exercise the option to increase the estimated contract amount at a later stage via negotiated procedure with the successful tenderer(s) in accordance with Article 134 (1) (e) and (f) of the Rules of Application of the Financial Regulation.

7. Terms of payment

The payment arrangements governing the contracts resulting from the present call for tenders are detailed in the relevant articles of Annex B – Draft Contract. Tenderers are strongly advised to carefully read those articles before submitting their tenders.

8. Financial guarantees

No tender guarantee is required.

Based on a risk assessment, the contracting authority may request a pre-financing guarantee in the amount of the pre-financing and in the form set out in Annex C.

No performance guarantee will be required.

9. Participation in the tendering procedure

Participation in tendering procedures is open on equal terms to all natural and legal persons coming within the scope of the Treaties and to all natural and legal persons established in a third country which has a special agreement with the Communities in the field of public procurement on the conditions laid down in that agreement¹.

10. Consortia or group of service providers

Joint tenders submitted by several economic operators (a consortium or a group of legal or natural persons) are allowed. In such cases, one of the members must be designated as the group leader or group manager. All members of a consortium or a group of legal or natural persons (i.e. the leader and all other members) are jointly and severally liable towards the contracting authority. Changes in the composition of the consortium or group of companies must be expressly authorised by the contracting authority.

¹ Please note that the European Union Agency for Fundamental Rights is not part of the Agreement on Government Procurement (GPA) concluded within the World Trade Organisation. Therefore, the Agency's procurement procedures are not open to tenderers from GPA countries.



Tenderers submitting joint bids shall describe how their cooperation will be organised in order to perform the tasks specified in Annex A.1 Technical Specifications.

Joint tenders will be assessed as follows:

- The exclusion criteria will be assessed in relation to each economic operator individually. The Declaration of Honour with respect to the Exclusion Criteria and Absence of Conflict of Interest included in Annex C, duly signed and dated, stating that the tenderer is not in one of the exclusion situations, must be provided by each member of the consortium or the group.
- The selection criteria for economic and financial capacity will be assessed in relation to each economic operator individually. However, economic and financial criteria that shall be achieved above a certain minimum threshold (as specified in the selection criteria mentioned below) will be assessed in relation to the consortium or group of companies as a whole.
- The selection criteria for technical and professional capacity will be assessed in relation to the consortium or group of companies as a whole.

11. Subcontracting

Any intention to subcontract part of the contract must be clearly stated by the tenderer in Annex C. Tenderers must indicate the maximum percentage of the contract they intend to subcontract and the identity of those subcontractors they intend to work with, and clearly state the nature of their links to those subcontractors.

For each subcontractor identified in the tender, tenderers must provide a Letter of Intent signed by the subcontractor stating their unambiguous undertaking to collaborate with the tenderer.

Offers involving subcontracting will be assessed as follows:

- The exclusion criteria of all identified subcontractors whose intended share of the contract is above 10% will be assessed. The Declaration of Honour with respect to the Exclusion Criteria and Absence of Conflict of Interest included in Annex C, duly signed and dated, stating that the subcontractor is not in one of the exclusion situations, must be provided by each identified subcontractor.
- Where the tenderer relies on the economic, financial, technical and professional capacity of the identified subcontractor(s) to meet the selection criteria, subcontractors shall be treated as if they were partners in a consortium or a group of companies for the purposes of the evaluation of the selection criteria, and therefore, they shall provide proof of economic, financial, technical and professional capacity as well.

Tenderers must inform the subcontractor(s) and include in their Letter of Intent that the provisions referring to checks and audits included in the Draft Contract (Annex B) may be applied to them.



Once the contract has been signed, the provisions regarding subcontracting included in the Draft Contract will apply. The contracting authority retains the right to approve or reject the proposed subcontractors.

If the tender includes subcontracting, it is recommended that contractual arrangements with subcontractors include mediation as a method of dispute resolution.

12. Visits to premises

A visit to the premises is not foreseen.

13. Date and place of opening of the tenders

Tenders will be opened at 10:30 hrs on 17/09/2015 at the contracting authority's address. An authorised representative of each tenderer may attend the opening of the bids. Companies wishing to attend are requested to notify their intention by sending a fax or e-mail at least 72 hours in advance to the fax or e-mail. This notification must be signed by an authorised officer of the tenderer and specify the name of the person who will attend the opening of the bids on the tenderers behalf.

14. Contacts between the tenderer and the contracting authority

In principle, no contact is permitted between the contracting authority and the tenderers during the tendering procedure.

However, in exceptional circumstances contact may be made on the tenderers initiative before the final date for the submission of bids, in order (and only for this reason) to clarify the nature of the contract.

Such requests for further information may be made by fax, e-mail or to the address below:

European Union Agency for Fundamental Rights Invitation to tender No: D-SE-15-T01 Administration Schwarzenbergplatz 11 Vienna 1040 – Austria Fax: +43 (0)1 580 30 691 ; e-mail: procurement@fra.europa.eu
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Insofar as it has been requested in good time, the additional information will be sent simultaneously to all economic operators who requested the tender documents or who have expressed interest in submitting a tender, as soon as possible and no later than six calendar days before the deadline for the submission of tenders or, in the case of requests for information received less than eight calendar days before the deadline for the submission of bids, as soon as possible after the request for information has been received. The contracting authority will not process any request for additional information made less than five working days before the deadline for submission of tenders.



The answers to the requests for additional information will also be posted on <http://fra.europa.eu/en/about-fra/procurement>. The website will be updated regularly and it is the tenderers' responsibility to check for updates and modifications during the tendering period.

Similarly, contact may in exceptional circumstances be made on the contracting authority's initiative:

- a. before the final date for the submission of bids, in order to inform interested parties of an error, a lack of precision, an omission or any other material shortcoming in the drawing up of the documents of the invitation to tender; or
- b. after the opening of bids, where a bid requires clarification or in order to correct material errors made in drawing up a bid.

Please note that in any event such contact may not result in a modification of the terms of the bid.

15. Alteration or withdrawal of tenders

Tenderers may alter or withdraw their tenders by written notification prior to the deadline for submission of tenders. No tender may be altered after the deadline for submission. Withdrawals must be unconditional and will end all participation in the tender procedure.

Any such notification of alteration or withdrawal must be prepared and submitted in accordance with the instructions on how to submit tenders included in the Invitation to tender, and the envelope must also be marked with "alteration" or "withdrawal" as appropriate.

16. Variants

Variant solutions are not allowed and will not be taken into consideration.

17. Assessment of the tenderers

Tenderers will be assessed on the basis of the exclusion (Phase I) and selection (Phase II) criteria described below.

17.1 Exclusion criteria (Phase I)

The aim of this phase is to assess if tenderers fall in any of the exclusion situations listed below and therefore, cannot take part in the tender procedure.

17.1.1 Exclusion situations

Tenderers shall be excluded from participation in the present procurement procedure if:

- 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 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, and
- f. following another procurement procedure or grant award procedure financed by the Union's budget, they have been declared to be in serious breach of contract for failure to comply with their contractual obligations.

Tenderers shall be excluded from the award of the contract if, during the present procurement procedure:

- g. are subject to a conflict of interest, and
- h. are guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the contract procedure or fail to supply this information.

17.1.2 Documentary evidence

At the tendering stage, tenderers shall declare that they are not in one of the situations listed above by submitting a signed Declaration of Honour and Absence of Conflict of Interest, in accordance with the form included in Annex C.

In addition, the tenderer to whom the contract is to be awarded (including all members of the consortium or group of companies and identified subcontractors whose intended share of the contract is above 10%) shall provide, within fourteen (14) calendar days and preceding the signature of the contract, the following documents as proof that the tenderer is not in one of the situations described above:

- for points (a), (b) and (e) above, recent extract(s) from the judicial record or, failing that, an equivalent document(s) recently issued by a judicial or



administrative authority in the country of origin or provenance showing that those requirements are satisfied

- for points (a) or (d) above, a recent certificate issued by the competent authority of the State concerned.

Where the document or certificate referred to in the first two bullet points is not issued in the country concerned and for points (c) and (f) above, 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 its country of origin or provenance.

Depending on the national legislation of the country in which the tenderer is established, the document referred to above shall relate to legal persons and/or natural persons including, where considered necessary by the contracting authority, company directors or any person with powers of representation, decision-making or control in relation to the tenderer.

The contracting authority may waive the obligation of a tenderer to submit the documentary evidence referred to above if such evidence has already been submitted to it for the purposes of another procurement procedure and provided that the issuing date of the documents does not exceed one year and that they are still valid. In such a case, the tenderer shall declare on its honour that the documentary evidence has already been provided in a previous procurement procedure and confirm that no changes in its situation have occurred.

Administrative or financial penalties may be imposed by the contracting authority on tenderers who are in one of the exclusion situations after they have been given the opportunity to present their observations.

These penalties are detailed in Article 109 of the Financial Regulation No 966/2012 of 25 October 2012 (OJ L 298 of 26 October 2012) and Article 145 of the Commission Delegated Regulation No 1268/2012 of 29 October 2012 on the rules of application of the Financial Regulation (OJ L 362 of 31 December 2012).

17.2 Selection criteria – Phase II

The aim of this phase is to assess if tenderers have sufficient economic and financial capacity and sufficient technical and professional capacity to perform the contract.

17.2.1 Economic and financial capacity

Proof of economic and financial capacity of the tenderers shall be furnished by the following documents and minimum requirements:

- (a) Copy of the financial statements (balance sheets, and profit and loss accounts) for the last two (2) financial years for which accounts have been closed, where publication of the accounts is required under the company law of the country in which the economic operator is established. In case of a consortium, each consortium member shall present their own financial statements.



If the tenderer is not obliged to publish its accounts under the law of the state in which it is established, a copy of audited accounts for the last two (2) financial years should be presented. In case of a consortium, audited accounts for each consortium partner shall be presented.

(b) A statement of the annual average turnover for the last two (2) financial years for which accounts have been closed. The minimum average annual turnover of the tenderer shall be of 1,200,000,00 EUR. In case of a consortium, the annual average turnover for each of the partners shall be presented. The sum of the annual average turnovers of each partner will be taken into account to reach the minimum annual average turnover of 1,200,000,00 EUR.

If for some exceptional reason which the contracting authority considers justified, the tenderer is unable to provide the documentary evidence requested above, it may prove its economic and financial capacity by any other means which the contracting authority considers appropriate.

The contracting authority may waive the obligation of a tenderer to submit the documentary evidence referred to above if such evidence has been submitted to it for the purposes of another procurement procedure and still complies with the requirements above.

An economic operator may, where appropriate and for a particular contract, rely on the economic and financial capacities of other entities, regardless of the legal nature of the links it has with them. It must in that case prove to the contracting authority that it will have at its disposal the resources necessary for the performance of the contract, for example by producing an undertaking on the part of those entities to place those resources at its disposal. The contracting authority may require that the economic operator and the entities referred to above are jointly liable for the execution of the contract.

17.2.2 Technical and professional capacity

Proof of the technical and professional capacity of the tenderers shall be furnished by the following documents and minimum requirements:

(a) The educational and professional qualifications of the service provider or contractor and/or those of the firms managerial staff, in particular, those of the person or persons responsible for providing the services or carrying out the works. The tenderer is requested to include the CVs in Europass format of the profiles described in Annex A.1 Technical Specifications.

At a minimum the project team should consist of the following profiles, plus additional members as necessary:

- one (1) Project Coordinator
- Country Managers to cover the six Member States included in the research (3-6 country managers)
- Interviewers (2-6 per Member State), and

- Research Experts (2-3).

The proposed CVs must possess the minimum educational and professional requirements stated in Annex A.1.

(b) A list of the principal services provided and supplies delivered in the past three (3) years, with the sums, dates and recipients. Tenderers are required to prove that they have performed at least 2 projects of an amount, nature or scope similar to the services to be carried out under this tender.

(c) A statement of the annual average manpower and the number of managerial staff of the tenderer in the last three (3) years.

The minimum annual average manpower in the last three (3) years shall be of at least 10.

The minimum annual average managerial staff in the last three (3) years shall be of at least of 1.

An economic operator may, where appropriate and for a particular contract, rely on the technical and professional capacities of other entities, regardless of the legal nature of the links it has with them. It must in that case prove to the contracting authority that it will have at its disposal the resources necessary for the performance of the contract, for example by producing an undertaking on the part of those entities to place those resources at its disposal. The contracting authority may require that the economic operator and the entities referred to above are jointly liable for the execution of the contract.

18. Assessment of tenders – Phase III

The aim of this phase is to evaluate from the technical and the financial points of view the offers submitted by the tenderers. The award method is based on the best value for money.

18.1 Technical evaluation

Tenderers' technical offer will be evaluated on the basis of the following technical award criteria and their corresponding weightings:

Technical Award criteria/sub-criteria	Weighting in %
(a) Project management	35
(a.1) Work programme	20
(a.2) Composition of the project team	50
(a.3) Understanding of the fundamental rights issues	30





involved	
(b) Project methodology	65
(b.1) Research methodology, outline of sampling approaches, including ways to access interviewees	25
(b.2) Number of interviews and questionnaires (number of interviews/questionnaires corresponding to the minimum number requested in Annex A.1 – Technical Specifications will receive 50% of the available points, higher number of interviews/questionnaires - provided that they can realistically be carried out and, that the added value to the project is explained - will receive higher points)	20
(b.3) Outline of interviewer selection and training methodology	25
(b.4) Outline of the quality assurance plan	15
(b.5) Outline of how to analyse the qualitative as well as the quantitative data, including use of software	15
TOTAL	100

For each criterion (and sub-criterion) a number of points in a range between 0 to 100 points will be given. A tender can reach a maximum of 100 points per criterion and a maximum of 100 points in total. After the application of the corresponding weightings per criterion and sub-criterion as per the grid above, tenders scoring less than 60% in the total overall points or less than 50% in the points awarded for a single criterion will be excluded from the rest of the assessment procedure.

18.2 Financial evaluation

18.2.1 Financial award criteria

Tenderers financial offers will be evaluated on the basis of the following financial award criterion: The tender with the lowest number of points will receive 100 points in the financial evaluation. The remaining tenders will receive their financial score in accordance with the following formula:

$$\text{financial score for tender X} = (\text{lowest price} / \text{price of tender X}) * 100$$



18.2.2 Information concerning prices

The financial evaluation of the offers will be based on the prices quoted by the tenderers in their financial proposals. Tenderers must fill in the Financial Offer Form included in Annex C.

When filling in the Financial Offer Form, tenderers must take into consideration that prices shall be:

- expressed in euro. For tenders in countries which do not belong to the euro zone, tenderers shall quote their prices in euro and the price quoted may not be revised in line with exchange rate movements. It is for the tenderer to select an exchange rate and assume the risks or benefits deriving from any variation.
- inclusive of all costs and expenses, directly and indirectly connected with the goods and/or services to be supplied/provided and including all the charges (travel and subsistence), unless otherwise stated in the tender documents.
- free of all duties and taxes (in particular VAT). According to Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities, the European Union Agency for Fundamental Rights is exempt from all charges, taxes and dues, including value added tax; such charges may not therefore be included in the calculation of the price quoted; the VAT amount must be indicated separately.

Prices are fixed and not subject to revision.

19. Contract award – Phase IV

The contract will be awarded to the tenderer offering the best value for money, on the basis of the following quality-price ratio:

Score for tender X = (financial score of tender X * 30 /100) + (total quality score (out of 100) for all award criteria of tender X * 70 / 100)

20. Information to tenderers on the outcome of the tender

The contracting authority 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.

The contracting authority will inform as soon as possible all tenderers whose tenders are rejected of the reasons for their rejection. If a written request is received, the contracting authority will inform, within not more than 15 calendar days from the date on which the written request is received, all tenderers who meet the exclusion and selection criteria, of the characteristics and relative advantages of the successful tender and the name of the tenderer to whom the contract is awarded.

However, certain details may not be disclosed where disclosure would hinder application of the law, would be contrary to public interest or would harm the legitimate commercial interests of public or private undertakings or could distort fair competition between those undertakings.

21. No obligation to award the contract

The tendering procedure shall not involve the contracting authority in any obligation to award the contract.

No compensation may be claimed by tenderers whose tender has not been accepted, including when the contracting authority decides not to award the contract.

22. Cancellation of the tender procedure

In the event of cancellation of the tender procedure, tenderers will be notified of the cancellation by the contracting authority. If the tender procedure is cancelled before the outer envelope of any tender has been opened, the unopened and sealed envelopes will be returned to the tenderers.

In no event shall the contracting authority be liable for any damages whatsoever including, without limitation, damages for loss of profits, in any way connected with the cancellation of a tender procedure even if the contracting authority has been advised of the possibility of damages.

23. How to submit the tender

All tenders must be presented in three parts:

Part 1 – Administrative Proposal

In the Administrative Proposal, tenderers must include all the information and documents required by the contracting authority for the assessment of tenderers on the basis of the exclusion and selection criteria described above. For that purpose, tenderers must fill and sign the following documents using the forms included in Annex C:

Section A: Tenderers Identification

- Tenderers identification form (administrative details). If the tenderer is a consortium or a group of companies, only the leader must fill in the form.
- Legal Entities Form, to be signed by a representative of the tenderer authorised to sign contracts with third parties. There is one form for individuals, one for private entities and one for public entities. If the tenderer is submitting a joint offer, a Legal Entities Form must be submitted by each consortium or group member. It also has to be submitted by each identified subcontractor whose intended share of the contract is above 10% of the total contract value.
- Bank Identification Form filled in and signed by an authorised representative of the tenderer and its banker. In case of a joint offer, only one of the members of the consortium or group of companies, usually the leader, must complete the Bank Identification Form.



- Power of Attorney (in case of joint offers). In case of a joint offer, the power of attorney has to be signed by the leader and all consortium partners, preferably in a single document.
- Statement on Subcontracting, indicating the intention of the tenderer to subcontract part of the contract and the percentage of subcontracting per identified subcontractor.
- Letter of Intent of identified subcontractors (only if the tenderer intends to subcontract part of the contract).

Section B: Exclusion Criteria information

- Declaration of Honour with respect to the Exclusion Criteria and Absence of Conflict of Interest. To be submitted by each consortium or group member in case of joint offers and by each identified subcontractor whose intended share of the contract is above 10% of the total contract value.

Section C: Selection Criteria (Economic and Financial capacity)

- Copy of the financial statements (balance sheets, and profit and loss accounts) for the last two (2) financial years.
- Statement on the annual average turnover for the last 2 years.

Section D: Selection criteria (Technical and Professional Capacity)

- Educational and professional qualifications of the profiles requested in Annex A.1 Technical Specifications.
- List of principal services performed or supplies delivered in the last three (3) years.
- Statements on annual average manpower and managerial staff.

Part 2 – Technical proposal

In the Technical Proposal, tenderers must include all the information required by the contracting authority for the evaluation of tenders on the basis of the technical award criteria described in the corresponding sections of these Tender Specifications. Tenderers should elaborate on all points addressed in Annex A.1 Technical Specifications in order to obtain as many points as possible. The mere repetition of mandatory requirements set out in Annex A.1, without going into details or without giving any added value, will only result in a low number of points. In addition, if certain essential points of Annex A.1 are not expressly covered by the tender, the contracting authority may decide to give a zero mark for the relevant qualitative award criteria.

The technical offer must be written with a lay person in mind. The style and presentation must, as far as is possible, be simple and clear, and free of jargon that obscures rather than promotes meaning to readers unfamiliar with it.



The technical proposal must be included in a separate envelope clearly marked as "Technical Offer". Please note that there is no specific form to present your Technical Offer. However, it should be drawn up following the instructions above.

Part 3 – Financial Proposal

In the Financial Proposal tenderers must indicate their financial offers by completing the Financial Offer Forms included in Annex C (Section F). Prices must be included in accordance with the instructions given in the corresponding sections of these Tender Specifications. The Financial Proposal must be included inside a separate envelope clearly marked as "Financial offer".

24. Data protection

Processing your reply to the invitation to tender will involve the recording and processing of personal data (such as your name, address and CV). Such data will be processed pursuant to Regulation (EC) No 45/2001 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. Unless indicated otherwise, your replies to the questions and any personal data requested are required to evaluate your tender in accordance with the specifications of the invitation to tender and will be processed solely for that purpose by the contracting authority. You are entitled to obtain access to your personal data on request and to rectify any such data that is inaccurate or incomplete. If you have any queries concerning the processing of your personal data, you may address them to contracting authority's Data Protection Officer. You have the right of recourse at any time to the European Data Protection Supervisor for matters relating to the processing of your personal data.

25. Intellectual Property Rights (IPR)

The tenderer is strongly advised to carefully read the IPR clauses included in Annex B Draft Contract regarding modes of exploitation of the results and ownership and transfer of pre-existing rights.

In the tender, all quotations or information originating from other sources and to which third parties may claim rights have to be clearly marked (source publication including the date and place, creator, number, full title, etc.) in a way allowing easy identification.