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**Conduct of negotiated public procurement without publication of a contract notice "Framework Procurement of Self-service kiosk for Border Control Points" (reference number 248377)**

The Information Technology and Development Centre of the Ministry of the Interior (hereinafter referred to as SMIT or the Contracting authority) organises a negotiated public procurement procedure without prior publication of a contract notice "Framework Procurement of Self-service kiosk for Border Control Points" (Ref. 248377) on the grounds of subsection 49 (1) 2) and subsection 72 of the Public Procurement Act and proposes to submit a tender in accordance with the conditions contained in this invitation to tender and its annexes (hereinafter referred to as all together as *PEE*).

1. **Annexes**
   1. Annex 1 – Draft framework contract and public contract;
      1. Annex 1.1 – General terms and conditions of SMIT sale contracts;
      2. Annex 1 - General Conditions of SMIT Authorisation Agreements;
   2. Annex 2 – Technical specifications (within the procurement, the document is submitted in English to ensure that the procurement terms and conditions are understood in the same way by all, as the standards applied to the verification of the documents are in English and there is no generally recognised Estonian terminology);
   3. Annex 3 - Confirmation of grounds for exclusion (Procurement register);
   4. Annex 4 – Tender suitability criteria (Procurement register);
   5. Appendix 5 – Award criteria (Procurement register).
   6. Annex 6 – Confidentiality agreement (the document will be submitted in English in the procurement, as the document will be signed in English;
   7. The translations of documents listed in this clause into English are made available to interested economic operators in the e-procurement environment;
   8. In case of a conflict in the documents in Estonian and English versions, the Estonian version shall prevail.
2. **Subject-matter of the Contract, subdivision of public procurement**
   1. The subject-matter of the Framework contract is the procurement of Self-service kiosk for Border Control Points. The technical specifications and the terms and conditions of the Framework contract and the Public Contract have been specified in the PEE and its annexes.
   2. Source of funding: The state budget and/or external resources (the exact source of funding shall be specified in each order and/or procurement contract), incl. Resources for the project ISFB-31 “Establishment of an automated border control system” of the European Union Internal Security Fund and the Ministry of Internal Affairs of the Republic of Estonia
   3. The maximum cost is EUR 1,000 000 excluding VAT.
   4. The Contracting authority does not subdivide the public procurement into parts, because due to the nature of the item, it is not possible to subdivide the procurement into parts, because the subject-matter of the Contract is functionally interacting and necessary for the same purpose, the provision of which shall be the right of one tenderer. The Tenderer has provided the Contracting authority with a proof of granting an exclusive right.
3. **Procurement terms and conditions**
   1. The procurement procedure is carried out in the Procurement register.
   2. The information about the contents of the procurement procedure is included in the PEE and its annexes constituting an integrated whole.
   3. Clarifications about the contents of the PEE may be obtained from the Contracting authority by a written query through the electronic communication worksheet in the e-procurement environment.
   4. The Contracting authority shall respond to questions within three working days as of the receipt of a request for clarification, by providing answers into the electronic communication worksheet of the e-procurement environment. The e-procurement environment sends an automatic notification about the provision of the reply.
   5. A tenderer is required to bear any and all costs related to drawing up and submitting the tender and entering into the Contract. A tenderer shall not be compensated for any damage or costs related to participation in the procurement procedure.
   6. Only tenderers or candidates who are resident or established in Estonia, another Member State of the European Union, another contracting party of the European Economic Area or a country that is party to the World Trade Organisation Agreement on Government Procurement can participate in the public procurement.
   7. Making a joint tender is not allowed
4. **Formalisation and submission of the tender** 
   1. The Contracting authority shall open the tender submitted by the term and verify its compliance with the terms and conditions set out in the procurement documents.
   2. The data provided in the tender must be true, submitted in a manner and with sufficient detail to enable the Contracting authority to verify its compliance with the terms and conditions set out in the procurement documents.
   3. The costs shall be presented in euros to an accuracy of two decimal places.
   4. The amounts recorded in the value of a tender are final for the Contracting authority, including fees or other taxes, excluding VAT, which are recognised separately, and no additional payments or expenses are added to the amounts stated therein. 0 or costs with negative value are not allowed to be used and the Contracting authority has the right to declare such a tender non-compliant and reject it.
   5. If documents to be submitted include documents signed in writing by any third party, the document must be submitted in a scanned form and the original document is only required if the Contracting authority has any doubts about the document.
   6. Alternative solutions are not allowed.
   7. A tender is confidential until the decision to declare the tender successful is made. The tenderer must specify in the tender what information in the tender is the tenderer’s trade secret and justify the designation of the information as a trade secret. This information may not include the value of the tender or a part thereof where these are taken account of upon assessment of the tenders or other numerical indicators characterising a tender meeting the award criteria. The Contracting authority will not disclose the contents of the tenders in the part of the trade secrets.
5. **Verification of the absence of grounds for exclusion of a tenderer**
   1. The Contracting authority does not enter into a Framework contract with a tenderer who or a member of the administrative, management or supervisory body or other legal or contractual representative related to the public procurement in question has, to the Contracting authority's knowledge, [the grounds for exclusion provided for in subsection 95 (1)](https://www.riigiteataja.ee/akt/108072020008?leiaKehtiv#para95) of the Public Procurement Act. Before awarding the contract, the Contracting authority demands, where necessary, that the successful tenderer submit the required documents, unless the data are available to the Contracting authority free of charge on the basis of data in a database or the Contracting authority has the data on the basis of data or documents previously existing.
   2. Only candidates, joint candidates, tenderers, joint tenderers, subcontractors whose place of residence or domicile is in a country specified in subsection 3 (2) of the Public Procurement Act (Estonia, another European Union Member State, another contracting party of the European Economic Area or a country party to the Government Procurement Agreement of the World Trade Organisation) can participate in the public procurement. Pursuant to subsection 95 (4) 12) of the Public Procurement Act, the Contracting authority may exclude from the procurement procedure candidates or joint candidates, tenderers or joint tenderers who do not have the right to submit an application or a tender. If the subcontractor has the grounds provided for in subsection 95 (4), the Contracting authority may require the tenderer to replace such subcontractor.
6. **Confirmation, Evaluation and Success of the Tender**
   1. The Contracting authority shall open the tender submitted by the term and verify its compliance with the terms and conditions set out in the procurement documents.
   2. A tender is declared suitable if it is in compliance with all the terms and conditions set out in the PEE or if there are no substantial deviations from the terms and conditions established.

At the request of the Contracting authority, a tenderer must explain, delimit or specify the information set out in its tender.

* 1. The Contracting authority shall have the right to reject a tender if it does not meet the conditions laid down in the PEE.
  2. A tenderer whose tender has been rejected shall not participate in the further procurement procedure.
  3. Tenders declared to be in conformity shall be evaluated by the Contracting authority on the basis of the evaluation criteria published in the procurement documents in the 100-value point system.
  4. The most economically advantageous tender shall be declared successful on the basis of the evaluation criteria set out in the procurement documents.
  5. The Contracting authority shall have the right to discuss all aspects of the tender at any time before the conclusion of the Contract and, if necessary, to request clarification and modifications to the submitted tender.

1. **Rejection of tenders. Annulment of public procurement**
   1. The Contracting authority has the right to reject the tender at any time prior to the conclusion of the Framework contract, if:
      1. the tender has not been declared suitable or cannot be declared suitable due to the different needs of the Contracting authority;
      2. the values of all tenders received exceed the estimated value of the procurement and financial possibilities of the Contracting authority to such an extent that the award of the public contract with such a value is unacceptable;
      3. the conditions on the grounds of which a public contract is carried out have changed significantly and it therefore proves unnecessary or impossible to conclude a framework contract;
      4. it is not possible to eliminate the inconsistencies that have arisen in public procurement and therefore to complete the procedure in a lawful manner;
      5. in the absence of agreement on the terms of the Framework contract during the negotiations;
      6. for unforeseeable objective reasons independent of the Contracting authority, if the Contracting authority has, during the process of the public procurement procedure, become aware of such new circumstances that exclude the completion of the procurement procedure on the terms and conditions established in the PEE or make it unreasonable for the Contracting authority (incl. amendments to laws or other legislation).
   2. If justified, the Contracting authority may, on its own initiative, annul the procurement procedure. In particular, but not limited to, justifiable needs are:
      1. the need for substantial changes to the subject-matter of the Framework contract;
      2. the conditions on the grounds of which a public contract is carried out have changed significantly and it therefore proves unnecessary or impossible to conclude a Framework contract;
      3. it is not possible to eliminate the inconsistencies that have arisen in public procurement and therefore to complete the procedure in a lawful manner;
      4. it is decided not to provide funding from the European Union funds and the state budget for the Contracting authority's framework procurement of a self-service kiosk.
2. **Negotiation and conclusion of the contract**
   1. The Contracting authority and the tenderer have the right to negotiate all the terms of the tender and/or the contract, if necessary, except for the following points:
      1. The Contractor shall send to the Contracting authority e-invoices in accordance with the Estonian e-invoicing standards or, in the case of a foreign Contractor, in a PDF format into the e-mail address at arved@smit.ee. In addition to the data specified in the standard, the e-invoice must contain the surname of the contact person of the Contracting authority and the public procurement reference number and the number of the Framework contract, order reference number and the number of the procurement contract and external funds project ID. The e-invoice must be sent via the e-invoicing solution of the operator and is deemed to have been received from the date of receipt of the recipient's e-invoicing system.
      2. The payment term of the invoice is 21 calendar days, unless a different (longer or shorter) term is specified in the order and in the terms and conditions of the Contract.
   2. If, after examining the tender, the Contracting authority discovers that there are no open questions answered, the Contracting authority shall not start negotiations.
   3. Negotiations can take place either at the Contracting authority's seat or electronically (e-mail, Skype, e-procurement environment, etc.). Oral and electronic negotiations shall be recorded in the minutes. The Contracting authority may ask the tenderer to adjust the tender.
   4. The framework contract and the contracts awarded on the basis thereof shall be concluded in English.
   5. The Contracting authority shall forward to the tenderer who has submitted a successful tender a framework contract for signing, the terms and conditions of which comply with the terms of the PEE and the successful tender and the terms and conditions agreed during the negotiations (if they took place).
   6. The Framework contract shall enter into force upon its conclusion. The Framework contract shall be deemed to have been concluded from the date of its latest signature.
   7. The tenderer shall sign the public contract submitted to the tenderer for signature and return it to the Contracting authority within no later than five working days from the day the Contracting authority’s submission of the contract to the tenderer. The Contracting authority may extend the term for signing the contract with good reason, notifying the successful tenderer thereof in a format that can be reproduced in writing.

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| Sincerely yours, |
| *(digitally signed)* |
| Agne Aija |
| Deputy Director-General for Support Services |
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