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European Commission

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Please quote when replying.

Warsaw, 07 January 2021

Subject: Written question number E-006321/2020: Procurement of lachrymatory agents and batons by Frontex

Dear Mr Oel,

In reference to your letter (Ref.:Ares(2020)7684753) dated 17/12/2020 regarding the Written Question [E-5785/20], submitted by MEP Özlem Demirel to the Commission, please find below the Agency's answers.

QUESTION 1: From what manufacturers has Frontex been procuring lachrymatory agents, batons and bulletproof vests, and what are the products concerned?

To acquire non-lethal weapons and passive protection equipment for the statutory staff (Category 1) of the standing corps Frontex launched three separate procurement procedures. The procurement procedures were focused on the products specified in the Terms of Reference and Technical Specification and not on exact manufacturers, in line with the applicable legal framework.

After evaluation of the submitted offers Frontex awarded the following contractors:

- BISTROL TRUST OU, Gonsiori 10A, 10117 Tallin, Estonia - delivery of lachrymatory agents;
- BISTROL TRUST OU, Gonsiori 10A, 10117 Tallin, Estonia - delivery of telescopic batons;
- OPTICOELECTRON GROUP JSCo. Industrial Park "Opticoelectron"4500 Panagyurishte, Bulgaria - delivery of rubber elastic batons;
- JSC Defensus registered at Daugeliskio 32A, 09300 Vilnius, Lithuania - delivery of bullet proof vests.

QUESTION 2: How many items of equipment have been purchased in each category, and what has been the cost, including on the basis of any framework contracts concluded?

Here below is a detailed breakdown of the purchased items:

- Ruber batons - full capacity of the contract - 975 pieces, overall cost 14 995.50 €;
- Telescopic baton 50 cm length - 240 pieces, overall cost - 14 880 €;
- Telescopic baton 40 cm length - 460 pieces, overall cost - 28 520 €;
- Liquid jet type OC lachrymatory agent for outdoor use - 1700 pieces, overall cost - 16 670 €;
- Gel type OC lachrymatory agent for indoor use - 1700 pieces, overall cost - 15 820 €;
- Long range lachrymatory OC spray, designed for longer range and longer time of operation to be used against multiple threats - 400 pieces, overall cost - 17 800 €;

- First-Aid spray solution - Isotonic spray, designated to reduce pain and wash lachrymatory spray from eyes and face - 1200 pieces, overall cost - 20 400 €;
- Bulletproof vests - 300 pieces, overall cost - 80 292 €;

QUESTION 3: By what Frontex staff are the lachrymatory agents and batons to be used, and what is the legal basis allowing Frontex to own, store or transport that equipment in Poland?

Pursuant to Art. 55 (7) of the European Border and Coast Guard Regulation (hereinafter the ‘Regulation’¹), the Agency’s statutory staff deployed as members of the teams shall be able to perform, in accordance with Article 82, the following tasks requiring executive powers, in accordance with the profiles of staff and relevant training:

- a) the verification of the identity and nationality of persons, including consultation of relevant Union and national databases;
- b) the authorisation of entry where the entry conditions, as laid down in Article 6 of Regulation (EU) 2016/399, are fulfilled;
- c) the refusal of entry in accordance with Article 14 of Regulation (EU) 2016/399;
- d) the stamping of travel documents in accordance with Article 11 of Regulation (EU) 2016/399;
- e) the issuing or refusing of visas at the border in accordance with Article 35 of Regulation (EC) No 810/2009 of the European Parliament and of the Council (40) and introducing relevant data in the Visa Information System;
- f) border surveillance, including patrolling between border crossing points to prevent unauthorised border crossings, to counter cross-border crime and to take measures against persons who have crossed the border illegally, including interception or apprehension;
- g) the registering of fingerprints of persons apprehended in connection with the irregular crossing of an external border in Eurodac in accordance with Chapter III of Regulation (EU) No 603/2013 of the European Parliament and of the Council (41);
- h) liaising with third countries with a view to identifying and obtaining travel documents for returnees;
- i) escorting third-country nationals subject to forced-return procedures.

The legal basis for acquisition of service weapons is based on the following:

1. The fact that the Agency is a decentralised body of the European Union established by the Regulation.
2. The provisions of the Headquarters Agreement between the Republic of Poland and the Agency;
3. The provision of Article 93 of the Regulation and the Article 2 of the Headquarters Agreements under which the Agency has the legal personality and legal capacity accorded to legal persons under the Polish law;
4. The fact that the Agency’s tasks include, inter alia, the deployment of the Category 1 standing corps to operational areas;
5. Article 55 (7) of the Regulation which provides that Category 1 staff must be able to perform tasks requiring executive powers;
6. Article 82 of the Regulation which provides inter alia, that Category 1 staff can be authorised by the host Member State (or host Third Country) to exercise powers requiring executive powers, including to carry and use weapons where duly authorised by the Executive Director in accordance with the rules adopted by the Management Board, in line with Article 55(5)(b) of the Regulation;
7. Annex V to the Regulation;

¹ Regulation (EU) 2019/1896 of 13 November 2019 on the European Border and Coast Guard

8. The provisions of the Regulation imposing an obligation on the Agency to equip its own staff with weapons, which also implies the need to obtain them by purchasing.
9. The fact that the term "technical equipment" is not defined in the provisions of the Regulation. The interpretation that in the absence of a legal definition, it is difficult to identify provisions of the Regulation that would contradict the interpretation leading to the recognition of weapons (firearms) purchased by the Agency as "technical equipment".
10. The fact that the Regulation has direct effect and is directly and uniformly applicable in the territory of all Member States, taking into account the principle of the supremacy of European Union law in relation to the provisions of national law;
11. That fact that the supremacy of EU law in the Polish legal system is regulated by Article 91(3) of the Constitution of the Republic of Poland of April 2, 1997, according to which, the EU law has priority in the event of a conflict with national laws.

The Agency has not only the right, but also the obligation to acquire its own weapons, in order to equip authorised members of its staff accordingly. Having legal personality, the Agency may conclude contracts for the acquisition of such weapons, as well as ammunition to which members of the Agency's statutory staff are entitled maintaining the requirements of EU law in the field of public procurement, applicable to the Agency as a decentralised body of the EU.

In relation with the legal basis on storage, transportation and registration, considering that where there are provisions in the Regulation that conflict with provisions in the national legislation, the Regulation prevails, the provisions of national law are applicable only if they allow simultaneous application in an effective manner of the provisions of the Regulation and ensure the proper implementation of the Agency's tasks.

The issues related to the transport and storage of weapons owned by the Agency for the purpose of arming its own personnel are subject to internal regulations of the Agency, and the provisions of Polish acts in this matter may only be applied to the extent that they enable the actual and effective implementation of the provisions of the Regulation granting the right for the Agency's staff to carry service weapons for the execution of their tasks.

Yours sincerely,



Fabrice Leggeri
Executive Director