

Terms of Reference

Annex II to the Invitation to Tender

Frontex/OP/91/2020/ZB

Multiple Framework Contract with reopening of competition for the provision of door-to-door transportation services for Frontex vehicles

1. Acronyms, Terms and Definitions

Acronym, Term	Definition
EU	European Union
Frontex	European Border and Coast Guard Agency
FCM	Frontex Contract Manager
FWC	Framework Contract
MS	Member State
Order form	It is an ordering form by which Frontex orders services under a FWC
SAC	Schengen associated countries
Services	The transportation and logistics services to be provided by the awarded Tenderer in accordance with the provisions of this ToR.
ToR	Terms of Reference

2. Introduction to Frontex

The European Border and Coast Guard Agency (hereinafter referred to as “Frontex”) was established by the Council Regulation (EU) 2016/1624 in order to ensure the European integrated border management at the external borders with a view to managing the crossing of the external borders of the Member States (hereinafter referred to as the “MS”) of the European Union efficiently.

The key role of Frontex is to develop technical and operational capacity for the implementation of integrated border management at the European Union level; to oversee the effective functioning of border control at the external borders; to provide increased technical and operational assistance to MS through joint operations and rapid border interventions; to ensure the practical execution of measures in a situation requiring urgent action at the external borders; to provide technical and operational assistance in the support of search and rescue operations for persons in distress at sea; and to organize, coordinate and conduct return operations and return interventions.

The Regulation (EU) 2016/1624 establishes under its Articles 38 and 39 the conditions under which Frontex:

- may acquire, either on its own or as a co-owner with a MS, or lease technical equipment to be deployed during joint operations, pilot projects, rapid border interventions, return interventions, migration management support team deployments or technical assistance projects in accordance with the financial rules applicable to the Agency;
- shall set up and keep centralised records of equipment in a technical equipment pool.

At the moment Frontex covers its operational needs mostly by deploying technical equipment provided by MS for a specific period of time - from one to twelve months per year.

In addition, some operational needs are covered by Frontex’s own operational capacity, established on a contractual basis with commercial companies. Following the amended Frontex mandate, as indicated above, as well as the need for more efficient border control, the demand for further development of Frontex’s own operational capacity becomes one of the highest priorities in the domain of the European Border and Coast Guard.

Further information about Frontex origin, organization, its mandate, fields of activities, strategy and planned activities is available on the Agency’s web site: www.frontex.europa.eu.

3. Subject

This document defines the minimum requirements and conditions in terms of the establishment of a Multiple Framework Contract (hereinafter called 'FWC') signed with minimum 3 (three) no more than 4 (four) economic operators unfolding a professional, flexible and responsive management while applying cost-efficiency for the provision of door-to-door transportation services for Frontex vehicles within and between the EU MS, Schengen associated countries (SACs) and Third Countries located in Europe, and other countries if necessary, in accordance with the laws and regulations of all countries transited. The services shall be provided in accordance with the conditions set out in these Terms of Reference (ToR).

The FWC will be implemented by the means of Order Forms (OF) following a reopening of competition limited to the shortlisted Contractors selected under the tender procedure in question.

Regardless the method of transportation the vehicles are to be transported from the pick-up area designated by Frontex to any location within EU Member States, SACs and Third Countries located in Europe. In rare occasions, the need of transportation of vehicles may occur to any other designated countries. If so, details will be provided under specific Request for Services for which Contractors will be invited.

The Contractor will be requested to provide services of land transportation and/or transportation by sea (limited to ferry transport to islands). The routing proposed by the Contractor must be prior agreed with Frontex and must include: type, model and number of trucks, loading and parking location(s), security and protection requirements, destination address and details, delivery date(s), method(s) of transportation and cost-effective transportation options and solutions.

These ToR shall become an integral part of the contract that may be awarded as a result of this tender procedure. All information provided in this document, in its annexes and other referred documents shall be taken into consideration by the Tenderers in preparation of their offer and by the Contractor during the execution of the contract.

4. Scope of the Contract

The objective of this FWC is to provide Frontex transportation services for its fleet of vehicles during the period of this FWC, according to the terms and conditions described in the below chapters. The types of vehicles which are currently at Frontex disposal are the following:

Type of vehicle	Max. Weight (in tons)	Max. Length (in meters)	Max. Width with mirrors (in meters)	Max. Height (in meters)
Land Rover Discovery Sport 2.0 TD4, pure car 5D Estate 150HP	1.80	4.60	2.20	1.80
Mercedes Sprinter model 316 CDI F 37/35 4WD	3.50	5.90	1.90	2.00
Ford Ranger Double Cab Wildtrak 2.0 TDCi 213 PS 4x4 A10	3.2	1.88	2.20	5.40
Volkswagen T6 Transporter Furgon 2.0 I TDI EU6 SCR BlueMotion 150 kW	3.40	5.50	2.30	2.50
Volkswagen Crafter Furgon 35 L3 H3 2.0 TDI 4M	3.40	5.60	2.45	2.60

5. Scope of requested services

5.1. Method of transportation

The delivery method may vary depending on the specifics of the indicated location/s. Frontex will indicate in the OF the terms and conditions for the needed transportation services and will determine relevant location(s) and addresses, details of the vehicle(s) to be delivered, designated person responsible for receiving the shipment in each location. In case of need, the date and time for loading the vehicles can be further adjusted and agreed between Frontex and the Contractor although any changes compared to the date initially indicated cannot exceed five (5) calendar days.

The Contractor will be fully responsible for providing proper equipment, qualified personnel and the necessary manpower with the experience, qualification and ability, as well as any other resources needed to provide the requested services as specified in the OF for the provision of the services.

The contractor cannot deviate from the terms of the FWC or the OF even in unforeseen circumstances without prior agreement with Frontex

The Contractor shall ensure that a GPS system is in place in order to continuously monitor and track movements, providing the actual location of the shipment. This system should provide further information on the date and time of departure of each means of transport /from/to the departure/destination.

Frontex will ensure the access of the Contractor's personnel to the designated pick-up location(s) during the loading/offloading and inspection process of Frontex vehicles, providing the details and characteristics of the sites. **The Contractor is fully responsible for all services performed by its employees subcontractors and for all acts and omissions of them.**

The Contractor shall plan the pick-up times of transportation services in advance to ensure timely delivery as agreed with Frontex. The Contractor shall provide for Frontex detailed route, loading and transportation plans together with the countersigned Order Form.

The shipment loading plans shall include the following:

- Driver(s) name(s);
- The pick-up dates for each transport;
- The number and the type of means of transport;
- Truck and trailer license numbers, make and model; **(and company's name, if a subcontractor is used)**
- The delivery dates.

The proposed route must be the most efficient in terms of cost and distance for Frontex and in line with the terms of FWC and OF.

The Contractor shall inspect each vehicle before loading it for transportation. Any findings, such as vehicle body scratches, dents or other visible damages are to be reported on the spot and mirrored in writing in the Vehicle Handover Form (Appendix II to the ToR) in presence of a Frontex representative. The Vehicle Handover Form must clearly link the vehicle registration number with the recorded findings. Damages must also be recorded in the form of high resolution digital records such as photos or videos. The Vehicle Handover Form with photographic documentation shall be signed on site by the representatives of both parties.

The Contractor is responsible for the safe and proper loading and offloading of vehicles during the entire transportation process and for ensuring utmost security during transportation.

Frontex shall guarantee that all necessary information and/or documentation requested by the Contractor to obtain clearances/permits required to execute a transport to Third Countries will be provided before commencing the loading and transportation activities. It is Contractor's duty to timely request the necessary information from Frontex. The Contractor shall guarantee that no other material other than Frontex vehicles may be carried on the trucks during the journey to or from a designated location.

If changes to the method of transportation are required during the transit, the Contractor shall implement after having informed and obtained agreement from Frontex and having ensured that the changes do not result in delays of the delivery of the vehicles to their destination.

If additional costs would be incurred due to a change of transportation method(s), route or any other reason, these shall be done at the Contractor's expense except if they are prior requested from or agreed with Frontex in written.

The Contractor shall ensure that Frontex representative at the place of delivery is informed of the date and time of delivery at the location specified by Frontex. The Contractor shall ensure that the handover takes place during working hours (8 am-5 pm) from Monday to Friday, unless otherwise agreed in written with Frontex.

The authorized recipients of the consignment are responsible for preparing the unloading space ensuring a safe parking area for the vehicles delivered.

The inspection of the delivered vehicle(s) shall be conducted by a designated Frontex representative immediately after offloading the vehicles at the specified destination address. Photos of the unloaded vehicle(s) shall be taken by the Frontex representative and attached to the Vehicle Handover Form.

The entire handing over procedure and the related documentation shall be completed on spot by the Contractor and in presence of the Frontex representative.

The Contractor shall be responsible for the delivery of the vehicles to the locations designated by Frontex. The Contractor shall provide flat racks with ramps in order to allow the loading/offloading of the vehicles by its means.

If shipments are sent to improper destinations through the fault or negligence of the Contractor, the Contractor shall be financially responsible towards Frontex for additional costs. Furthermore, the Contractor shall be responsible for completing the shipment to the right destination at its own cost. The Contractor shall take all necessary precautions and security measures to prevent pilferage of vehicles in transit at his warehouses.

5.2. Liabilities and insurance

The Contractor will be fully responsible for any accident happened during loading, transportation and offloading of vehicles and the Contractor is required to provide a full insurance of the vehicles transported and the insurance to be valid before undertaking any activities related to loading and shipment.

The Contractor shall continuously monitor and track of the movements, providing the actual date and time of departure of each means of transport to/from the departure/destination upon request of Frontex.

The Contractor must possess a copy of the insurance (liability insurance and third party liability insurance), in accordance with the provisions of the Tender Specifications. The insurance provided by

the Contractor for the transportation of Frontex vehicles must cover the pickup, the transportation and the offloading.

The Contractor is fully responsible and liable for any loss or damage to Frontex vehicles transported during pickup, transport and/or offloading in the performance of the FWC or OF.

In event of loss or damage to the vehicles transported, the Contractor is fully responsible for providing necessary documents required by the insurance company to settle the full compensation to Frontex.

The Contractor shall be responsible for taking immediate measures to recover material damage to shipments during transportation. This action shall include, but not be limited to:

- Inspect the condition of Frontex vehicles during all loading and offloading operations to ensure that those are adequately protected.
- Immediately Inform Frontex of the occurrence and of the measures that the Contractor proposes to take.
- Report to Frontex on progress of claims actions and forward any sums received in connection with these claims to Frontex.

The technical characteristics of the vehicles are provided in the table below:

5.3. Reporting

The Contractor shall immediately inform Frontex of delays and incident(s) occurred, and of the corrective action(s) that the Contractor will have to take to solve the situation.

The Contractor shall mark any discrepancies (e.g. damages) on the Vehicle Handover Form and notify Frontex within twenty-four (24) hours after delivery.

By any means, the Contractor shall avoid delays that may jeopardize the requested delivery schedule. The Contractor shall provide the following information to Frontex, upon request, for each truck while it is in transit:

- Truck routing;
- Journey status;
- Timings of border crossing;
- Actual dates of departure and arrival to the final destination;
- Proof of delivery and confirmation by the receiving person (Handover);
- Any discrepancies found during the transport and possible remarks, if necessary;
- Any other information requested by Frontex , this information must be provided in accordance with Frontex's deadlines.

6. Indicative Budget

The maximum amount covering all purchases under this FWC, including all possible renewals, is EUR 1,000,000 (one million) EUR over a maximum total duration of four (4) consecutive years. However, this does not bind Frontex to purchase for the maximum amount.

However, Frontex reserves the right to conduct an exceptional negotiated procedure in accordance with Article 11.1. (e) of the Annex I to the Regulation (EU, Euratom) 2018/1046 on the financial rules applicable to the general budget of the Union (Financial Regulation), repealing Regulation (EU, Euratom) No 966/2012 and Commission Delegated Regulation (EU) No 1268/2012, in order to increase the ceiling of the contract up to 50%, if such a need occurs and the requirements of law are satisfied.

6.1. Terms of Payment

The payment arrangements are laid down in the Annex III - Draft Framework Contract for services . and Frontex engages to pay all costs in accordance with the rates and conditions set in the FWC and the relevant OF.

Upon delivery of Frontex vehicle(s) to the final destination established by Frontex in the OF, the Contactor shall obtain a signature on the Vehicle Handover Form of the consignee (Frontex staff), confirming the quantitative and qualitative receipt of the vehicle(s). Other supporting documentation may be requested by Frontex if it deems necessary.

Payments will be made after receipt of the corresponding invoices in accordance with the arrangements set out in the Framework Contract.

The final payment is allowed only when all the documents, forming the outcome, are delivered and accepted by Frontex and also when all the tasks are performed in compliance with the OF.

Each invoice will be paid within 30 days from its receipt.

6.2. Reimbursable costs

In addition to the payments for the services requested calculated on the basis of price proposals of each individual assignment, the Contractor may claim reimbursable costs if they were accepted in written by Frontex prior to the assignment.

For this reason, the following indicative additional expenditures incurred by the Contractor can be claimed as reimbursable costs if they were accepted in written by Frontex prior to the assignment:

- motorways tolls
- ferry costs
- cost of parking /warehousing

custom clearance fees and administrative payments at border points

This will be paid separately as reimbursable costs upon receipt of appropriate fiscal documents.

No other expenditures (e.g. per diem - overnight for drivers) will be subject to a refund.

6.3. Invoicing

Invoices shall contain (as a minimum but not limited to) the following information:

- Full/correct name and address of Frontex
- Contractor's full name and bank details: including name of account holder, full IBAN and BIC/SWIFT code, name and address of account holding bank - in line with the details provided in the Financial Identification Form to be submitted as part of your offer.
- Reference number of the framework contract & OF and commitment number to which they refer.
- Final amount to be paid in EURO (gross and net amount).

Any other details as may be required by the relevant OF.

7. Implementation of FWC Requirements

Reopening of Competition

The FWC shall be implemented by means of Order Forms (OF).

These OFs shall be awarded based on the specific proposals submitted by the framework Contractors in response to Requests for Services, issued by Frontex.

Each time the competition is reopened, the framework Contractors shall be invited to submit proposals for the specific assignment described by Frontex in the request for services outlining the scope of the project, deadlines, deliverables, etc.

Every service to be provided under the framework contract must be covered by a OF prepared in advance, that specifies the terms of performance. No service can be provided without an OF, whose template is annexed to the Draft Framework Contract (Annex III to the Invitation to tender).

Frontex will issue a Request for Services by means of a draft OF form that should clearly indicate the following conditions of execution of the order:

- The description of the services requested including the quantity and type of vehicles, timings and other conditions necessary for proper estimation of costs of the transportation ;
- The name and contact details of the official person responsible for administrating the OF form.

Frontex shall establish and communicate to the framework Contractors the deadline for submitting the proposals for the Request for Services. That deadline will not be shorter than five (5) working days calculated from e-mail dispatch of the Request for Services. Offers will be submitted in electronic version (pdf format preferred for the text files) to the functional e-mail address of Frontex.

If, after the receipt of the Request for Services, one of the FW Contractors requires clarifications, these clarifications shall be prepared without delay and distributed to all Contractors. Such requests for clarifications shall not be admissible on the last 48 hours before the deadline for submitting the specific proposal. Unless the clarifications imply modifications of the initial Request for Services, the deadline for submitting proposals shall not be extended.

The cheapest eligible offer submitted in response to the specific Request for Services will be awarded the contract in a form of Order Form.

Order Forms can be launched until the expiry of the FWC and include services to be performed after the end of the contract until up to 6 months after its expiry.

The Contractor shall perform the agreed service(s), according to the schedule included in the OF. The Contractor is required to:

- Ensure that the service for which it is responsible for is properly prepared and
- Provide high-quality of services.

Each OF shall be awarded on the basis of the lowest total price proposed. The maximum prices of the services shall be proportionally calculated to the estimation provided in the Hypothetical Scenario, as listed in Annex IV lthe Financial proposal. Frontex reserves the rights to reject the proposal if the contractor does not follow this principle.

Once the offer is accepted, Frontex will prepare an OF and send it (in electronic format) to the Contractor for counter-signature. Within five (5) working days, the contractor must either:

- Send the counter-signed and dated OF back to Frontex signed and dated; or
- Send an explanation why it cannot accept the OF.

If the Contractor repeatedly refuses to sign the OFs or repeatedly fails to send them back on time (signed and dated), the Contractor may be considered in breach of its obligations under the FWC.

7.2. Language of implementation of the FWC

All correspondence and documents related to the contract implementation must be in English Language.

7.3 Contract management (Customer Service)

Contractor's personnel

During the implementation of the FWC, the Contractor shall nominate a Contractor's Contract Manager (CCM) and an alternate (non key experts), for all contractual matters. The CCM will act as a single contractual contact point throughout the entire contract implementation period. All correspondence related to the FWC will be addressed to him/her. Moreover, the CCM will play an advisory role to Frontex, providing guidance on the preparation of vehicles for transport or any other advice requested related to vehicles to be transported.

The CCM or authorized alternate shall have the appropriate authority to make prompt decisions and solve issues related to the performance of the Contract.

In accordance with this section, the Tenderer shall assure that the appointed personnel is available to fulfil the demands of the Contract during its stated full term. Frontex reserves the right to request the Contractor at any time during the term of the FWC to assign additional personnel or to replace any designated staff dealing with Frontex transportation requests, in both cases the Contractor shall promptly comply with such request.

Frontex's personnel

For the proper implementation of the FWC, Frontex will appoint a Frontex Contract Manager (FCM) and provide the contact details to the Contractor. FCM shall ensure obtaining and providing all necessary information and documents related to the implementation of the contract. (S)He shall regularly assess the Contractor's performance of the services provided under the contract through the Standard Contractor Evaluation Form (Appendix I to the ToR)

Meetings

Indicative the following meetings are foreseen during the implementation of the project:

- Contract kick-off meeting to discuss administrative and financial matters related to contract implementation (to be held at Frontex premises in Warsaw or via a video conference if otherwise agreed);
- Frontex may request a meeting, within the deadline fixed by the OF, to discuss how to implement the OF and about the expected outcome (via videoconference only).

The aim of those meetings is to:

- Ensure a shared understanding of the context and the needs related to the contract, including the ones related to the quality of services;
- Exchange learnings and feedback, for ensuring the management of the contract, including discussions on the quality of the services based on Frontex's feedback of its related requests to the contractor for improvement thereto;
- Discuss and follow-up of the OF.

All costs associated with participation in the kick-off meeting organised upon the request of Frontex are to be borne by Contractor. The minutes of any meeting will be drafted by the Contractor and sent, within 15 calendar days, to the Contractor for approval.