

Annex II to the Invitation to Tender

Frontex/OP/220/2019/JL

Terms of Reference

**Framework Contract for provision of Mobile
Surveillance Systems for Frontex operational
activities**

1. Acronyms, Terms and Definitions	3
2. Background	4
2.1. Introduction to European Border and Coast Guard Agency	4
2.2. Frontex operational capacity	4
3. Purpose and scope	4
3.1. Purpose	4
3.2. Scope	4
4. Description of services and deliverables	5
4.1. Deliverables	5
4.1.1. Mobile Surveillance Systems	5
4.2. Services	5
4.2.1. Training	5
4.2.2. Maintenance	5
4.3. Indicative implementation plan for the Framework Contracts	5
4.4. Indicative budget	6
4.5. General requirements	6
4.5.1. Duration	6
4.5.2. Place of delivery	6
4.5.3. Use scenario	6
4.6. Specific Requirements	6
4.6.1. Mobile Surveillance Systems vehicles' registration	7
4.6.2. Transportation to the place of registration	7
4.6.3. Training and training materials for multipliers and operators	7
4.6.4. Timeline for the delivery of Mobile Surveillance Systems	8
4.6.5. Drawings of the Mobile Surveillance System	8
4.6.6. Delivery of the prototype and external verification tests	8
4.6.7. Final Acceptance and Delivery Requirements	9
4.6.8. Maintenance Requirements	9
4.6.9. Documentation	10
4.6.10. Warranty	10
4.6.11. Liabilities and Insurance	11
4.6.12. Obsolescence Management	11
5. Prices and payment	12

1. Acronyms, Terms and Definitions

Acronym, Term	Definition
Frontex	European Border and Coast Guard Agency
FWC	Framework Contract
GPS	Global Positioning System
JO	Joint Operations
MS	A Member State of the European Union
MS of registration	A Member State of the European Union where the Mobile Surveillance System is registered
MSS	Mobile Surveillance System(s)
TETRA	Terrestrial Trunked Radio
ToR	Terms of Reference
TS	Technical Specifications
VHF	Very High Frequency

2. Background

2.1. Introduction to European Border and Coast Guard Agency

The European Border and Coast Guard Agency - Frontex (hereinafter referred to as “Frontex”) was established by the Council Regulation (EC) Regulation (EU) 2016/1624 with a view to improve the integrated management of the external borders of the Member States of the European Union.

In pursuit of this goal, Frontex plans, coordinates, implements and evaluates joint operations (JO) and other operational activities, conducted using Member States’ staff and equipment at the external borders of European Union.

The Regulation (EU) 1624/2016 laid down in Article 8 that the Agency shall contribute to an efficient, high and uniform level of border control and return including by setting up a technical equipment pool to be deployed in JO, rapid border interventions and in the framework of migration management support teams, as well as in return operations and return interventions.

Further information about Frontex origin, organisation, its mandate, fields of activities, strategy and planned activities can be read on the Agency’s web site: www.frontex.europa.eu.

2.2. Frontex operational capacity

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 JO, 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 own operational capacity established on 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 own operational capacity becomes one of the highest priorities in the domain of the European Border and Coast Guard.

3. Purpose and scope

3.1. Purpose

The purpose of this Tender is to acquire Mobile Surveillance Systems to be used for border surveillance within Frontex coordinated operational activities.

3.2. Scope

The scope of this tender is to establish a single Framework Contract divided into three lots with commercial providers for delivery of Mobile Surveillance Systems. A single asset delivered shall include a four-wheel-drive vehicle (a pick-up for Lot 1 and a van for Lots 2 and 3) with a system of surveillance sensors - thermal camera,

day camera and surveillance radar (surveillance radar is required only for Lot 3) installed on board, as well as a communication system, including all the necessary devices and software to control the surveillance sensors and the entire system.

Since this tender envisages three separate lots Frontex seeks to conclude a separate framework contract for each lot. These contracts will be implemented by Specific Contracts. Detailed procedure and time limits for establishing and implementing a SC are described in section 4.6 Specific Requirements.

These Terms of Reference will become an integral part of each of the Framework Contracts that may be awarded as a result of this open tender procedure.

4. Description of services and deliverables

The contract seeks to acquire Mobile Surveillance Systems (MSS) to be deployed during Frontex coordinated operational activities.

The MSS will be used for detection, identification and recognising of objects of interest e.g. human beings and/or groups of people, vehicles moving across the border, as well as vessels sailing within the coastal areas, and other objects identified as objects of interest.

MSS should be able to be utilised successfully regardless the terrain, weather conditions and time of day. In addition, the MSS will be used for management of border patrols in carrying out specific tasks stemming from their service duties.

4.1. Deliverables

4.1.1. Mobile Surveillance Systems

Mobile Surveillance Systems designed in accordance with the requirements and parameters specified in Appendix 1 - Technical Specifications to these Terms of Reference.

Lot 1: MSS with thermal camera based on pick-up vehicle.

Lot 2: MSS with thermal camera based on van.

Lot 3: MSS with thermal camera and a radar based on van.

4.2. Services

4.2.1. Training

The Contractor is required to provide training and training materials for multipliers and operators as specified in Art. 4.6.3. of this ToR.

4.2.2. Maintenance

The Contractor is required to provide maintenance and related services specified under the point 4.6.8 and 4.6.9. of this document.

4.3. Indicative implementation plan for the Framework Contracts

The list below presents the indicative plan of the implementation of the FWCs, which is not binding on Frontex and may be adapted during the contractual period.

First Specific Contracts are expected to be issued by Frontex in the Q4 2019. For the total duration of the framework contract, Frontex intends to make an indicative number of orders for:

- 20 vehicles under Lot 1;
- 30 vehicles under Lot 2;
- 15 vehicles under Lot 3.

4.4. Indicative budget

Maximum indicative budget available is as follows:

- for the FWC for Lot 1 - 8, 000,000 EUR;
- for the FWC for Lot 2 - 12,000,000 EUR;
- for the FWC for Lot 3 - 8,000,000 EUR.

The allowed maximum unit cost for MSS under Lot 1 and Lot 2: 500,000 EUR; for Lot 3: 600,000EUR. Offers with unit prices higher than the established above limitation will be rejected.

The maximum total duration of the FWC is 4 years. Frontex reserves the right to conduct a negotiated procedure without prior publication of a contract notice, in accordance with points 11.1(e)(f)(i) 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 financial ceiling of the contract up to 50%, if such a need of additional similar services (remaining in conformity with the concluded contract) occurs. Frontex will sign a relevant Amendment to the FWC with these Contractors who agree on such financial ceiling increase.

4.5. General requirements

The following requirements apply to deliverables under this FWC, adherence to these requirements shall be explicitly confirmed by the Tenderer in his offer.

4.5.1. Duration

The Framework Contract is expected to be concluded for 2 years per lot (renewable once for another 2 years) and have a maximum total duration of 4 years.

4.5.2. Place of delivery

Any delivery under this FWC, including those in the scope of any Specific Contract, should be delivered by the Contractor to an EU MS. The exact address of delivery will be provided to the Contractor prior to signing any Specific Contract within this FWC.

4.5.3. Use scenario

The Mobile Surveillance Systems will be used for terrain observation (land and/or sea - coastal surveillance), detection and recognition of objects (people, vehicles, drones, vessels), for determining a target's location, as well as own position and also for recording the results of the observation and transmission the observed image to a designated coordination centre. The Mobile Surveillance System will be used at day-and-night time, under any weather conditions around the year. The Mobile Surveillance Systems will be used for up to 12-hour long operations from a stationed vehicle. It will be operated by two persons.

During the period of exploitation it may be needed to relocate the MSS to a different operational areas. The relocation may require transportation of vehicles.

4.6. Specific Requirements

The following specific requirements shall be obligatory for the Tenderer. The Tenderer is required to declare its full compliance with the obligatory requirements in his offer. Offers with partial compliance only will be rejected without further evaluation.

4.6.1. Mobile Surveillance Systems vehicles' registration

Each Mobile Surveillance System is a Frontex asset. Therefore, each and every Mobile Surveillance System shall be registered as an asset by Frontex, ~~as a general rule~~ in Warsaw, Poland, where Frontex Headquarters is settled.

As concerns the vehicle registration (license plates) and its insurance, in case it is arranged in Poland, the Contractor shall provide all requested documentation (certificates) required to register the vehicles in accordance to Polish law. In the event that Frontex decides to register the Mobile Surveillance Systems in another EU Member State, Frontex will request the Contractor to provide the necessary documentation (certificates) required to register the vehicles in this specific Member State, unless the registration of such vehicles does not comply with the relevant national law of this specific Member State. This request will be submitted by Frontex in advance, in order to enable the Contractor to prepare the relevant documentation.

Additionally, if Frontex and the Contractor both agree to register the Mobile Surveillance Systems in the Contractor's country of origin (the particular EU Member State), it will be on the Contractor's side to undertake and complete all the necessary actions for the vehicles to be registered therein, after Frontex provides to the Contractor all necessary documentation required from its side. The registration will take place after the final acceptance.

4.6.2. Transportation to the place of registration

The Contractor shall deliver the vehicles to Frontex Headquarters in Warsaw, Poland for its registration as Frontex asset, and for training purposes. However, for the purpose of the vehicle registration (license plates) and its insurance, the delivery of vehicles may also be required to any other EU MS location (unless the vehicle is registered in the Contractor's country of origin), if it is required by the Contracting Authority. There may also be an additional vehicle delivery required (from one EU MS to another EU MS), related with relocation of its deployment place.

4.6.3. Training and training materials for multipliers and operators

The training will take place in the following phases:

- 2-day multipliers (5 persons) training, located in the EU territory, at the Contractor's premises, or at the other location indicated by the Contractor. This training will take place after the execution of the external verification test. The prototype will be used for the training as well. The travel costs and the accommodation costs for the multipliers' training will be covered by Frontex.
- 3-day training for the initial operators (8 persons) in Warsaw, Poland, after the delivery of the prototype. A classroom will be available at Frontex's premises in Warsaw for this training. Additionally, the prototype can be used for training purposes. The travel costs and the accommodation costs for the initial operators' training will be covered by Frontex.
- 3-day training for the rest of the operators (20 persons) in Warsaw, Poland, after the delivery of the first set of MSS. A classroom will be available at Frontex's premises in Warsaw for this training. Additionally, a delivered vehicle can be used for training purposes. The travel costs and the accommodation costs for the rest of the operators' training will be covered by Frontex.

The financial proposal shall include the individual cost of each of the above mentioned trainings, which are to be organised during the legal validity of the contract. The financial proposal shall also contain the costs of applicable number of sets of training materials for each of the offered trainings.

Detailed training syllabuses shall be accepted by Frontex (before starting of each of the trainings).

It is estimated that the Contractor will be required to provide various types of trainings (as specified above, i.e. for multipliers and operators) upon Frontex' request at least once per year. The trainings will be subject to a separate Specific Contract, with applicability of the unit price and all conditions for the relevant type of

the training indicated in the Contractor's financial proposal. The specific time slots will be agreed between Frontex and the Contractor prior to the issue of the Specific Contract. Such trainings shall be delivered to groups as defined above.

All the participants of trainings shall receive hard copies and electronic version of the training materials in English.

4.6.4. Timeline for the delivery of Mobile Surveillance Systems

The delivery of the first set of Mobile Surveillance Systems ordered shall happen as follows:

- Delivery of prototype as described in Art. 4.6.6. of this ToR within 180 calendar days from the day of signature of the first Specific Contract;
- Delivery of the remaining amount of the ordered in the first Specific Contract vehicles within 150 days from the acceptance of the prototype.

Any further request for delivery shall be implemented and the final products shall be delivered within 180 days after signature of the respective Specific Contract.

4.6.5. Drawings of the Mobile Surveillance System

Contractor shall submit final drawings (Preliminary Design) which indicate how the Mobile Surveillance System will be designed not later than 30 calendar days after signature of the first Specific Contract.

The Contracting Authority shall provide comments on the drawings. On this basis within 15 calendar days the Contractor shall submit to Frontex the amended drawings of the MSS for final approval.

4.6.6. Delivery of the prototype and external verification tests

After having approved the MSS drawings by Frontex the Contractor shall produce the prototype of the mobile surveillance system. The Contractor shall perform external verification test to prove the specifications of the system as provided for the technical evaluation.

The external verification tests will be done by an expert laboratory. The expert laboratory is an organization that fulfils the following conditions:

- It is accredited by a recognized accreditation body;
- it is independent from the Contractor and manufacturers of the systems to be tested (ie. cameras, laser finder, radar);
- it has test equipment needed to carry out required tests;
- it has already carried out commercially required test services for other organizations;
- it is internationally recognised as competent in the metrology of the field of expertise (such as electro-optical, radar etc).

External verification tests should be done at conditions similar to the real work conditions as follows:

- the MSS are placed in field conditions;
- all the sensors are integrated to Pan/Tilt head and fixed to the vehicle;
- wind speed is not lower than 10m/s;
- all electrical devices are powered;
- ambient temperature should differ from typical laboratory temperature 20°C by at least 10°C;
- atmosphere visibility is over 10km.

Report from external verification tests should confirm also that operational defects have not been detected during the tests (test crew has not noticed any negative feature of thermal imager, daylight camera, radar, LRF, pant/tilt platform that significantly negatively influences performance of MSS).

A certificate issued by a Certification Body, independent from the Contractor and the manufacturer is acceptable. The certificate should apply for the same part number with the delivered device(s) (i.e. Camera(s), laser finder, radar).

The Contractor shall provide the results of the external verification tests to Frontex for acceptance. The acceptance shall take place before the delivery of the MSS.

Frontex reserves the right to request the Contractor to perform additional verification tests by another expert laboratory, selected by Frontex. The transportation and other expenses related to the additional verification tests will be covered by Frontex. In this case the Contractor will be granted additional time needed for the implementation of the tests and the deadline of the delivery will be extended accordingly.

Frontex reserves the right upon prior notice with minimum 10 calendar days to visit the manufacturer's premises to monitor the assembling of the prototype during the production process, as well as to visit the relevant expert laboratory during conduction of verification tests.

4.6.7. Final Acceptance and Delivery Requirements

Each Mobile Surveillance System assembled by the Contractor within this FWC (in addition to the prototype) and delivered to Frontex shall be finally accepted for exploitation after having a field test performed by the Contracting Authority to confirm that the operational requirements are met and the technical parameters of the entire system are in compliance with the technical specification, as well as that there are no any defects in the general workmanship that reduce the performance of MSS. For the purpose of the field test Frontex may be accompanied by independent experts contracted by Frontex.

Field tests shall be performed before the transportation of the MSS to their place of destination and prior to any of the trainings provided by the Contractor.

The places and time for carrying out the field tests shall be proposed by the Contractor and approved by Frontex. *The testing procedure will be drafted and submitted to Frontex for approval by the Contractor. This testing procedure shall ensure that all the requirements described in this tender dossier are met.*

4.6.8. Maintenance Requirements

The system shall provide necessary diagnostic information without any external devices.

Scope and frequency of maintenance service and repairs shall be determined in the operational and maintenance documentation.

4.6.8.1. Maintenance of the surveillance systems and their components

During the warranty period the Contractor shall at least two times per year (in case the products require more frequent periodical maintenance the Contractor should provide related activities) perform regular periodical checks of the functionality of all the MSS components and of the systems as a whole, and to implement the necessary preventive measures to ensure the proper functioning of the surveillance system. The specific schedule for such checks shall be agreed between Frontex and the Contractor upon signature of each Specific Contract.

In the event of a system failure during the warranty period the Contractor is obliged within maximum 5 calendar days after being notified to implement *in situ* diagnostics of the MSS on its own costs. In the event that the failure can be resolved on the spot, the Contractor shall implement the repair within maximum 5 calendar days after completion of the *in situ* diagnostics. In the event that the *in situ* diagnostics find that the maintenance shall be made in the service base of the Contractor, the Contractor shall ensure transportation from the place of deployment to its service base and back to the place of deployment, all on its own costs. The failure either should be fixed or the malfunctioned part should be replaced within maximum 60 calendar days after the completion of the *in situ* diagnostics.

All in situ diagnostics, maintenance and repairs of the surveillance systems will be conducted by the Contractor in EU Member States. In the event that the vehicle operates in a 3rd country, and needs to be diagnosed,

maintained or repaired, Frontex will ensure transportation of the vehicle to the closest BCP of an EU Member State.

4.6.8.2. Maintenance of the base vehicle

During the warranty period in case of failure, the Contractor shall provide service support for the vehicles, at the locations where the vehicles operate. The reaction time of the Contractor for such support shall be maximum 5 (five) calendar days after Frontex formal request.

During the warranty period, if it is needed to change brake lining and/or timing belt of any of vehicles due to expiry of life cycle of these parts, all these changes should be done by the Contractor without any additional payment.

The Contractor shall provide a list of authorised service bases in all the EU Member States where such services are possible. Frontex will ensure that the manufacturer's required regular maintenance of the vehicles is performed by the authorised service bases throughout the warranty period.

In the event that the vehicle operates in a 3rd country and needs to be maintained or repaired, Frontex will ensure transportation of the vehicle to the closest authorised service base, indicated within the list quoted above.

4.6.9. Documentation

The Supplier shall deliver all appropriate manuals including at least the following:

- Functional description of the equipment;
- Detailed technical parameters;
- Description of installation and activation procedures;
- Description of assembly and disassembly;
- Operational and maintenance manuals;
- Procedures for failure elimination while the system is in operation and within the basic and the middle level of technical maintenance.

Maintenance documentation shall include:

- Mechanical drawings;
- Part lists for all circuits;
- Highway diagrams and wire lists (connections) for the interconnection of modules, boards and subassemblies;
- The part numbers shall include the generic Original Equipment Manufacturers (OEM) numbers besides any others.

The documentation shall be delivered in English, one set per each MSS, in a book and electronic version, plus 5 additional paper copies for Frontex. The detailed contents and scope of the documentation shall be agreed and approved by Frontex before the documentation is delivered.

4.6.10. Warranty

During the warranty period, the Contractor shall ensure permanent contact with their representatives. The representatives shall, free of charge, provide the user with information, consultation and technical support in so far as the use of the subject equipment of the contract. Communication will be in English.

6 months before the expiration of the warranty period the Contractor shall propose to Frontex a plan and to organise a complete check of the functionalities of all already delivered MSS. The purpose of this check is to ensure that MSS are operational even after the expiry of the warranty period and will not collapse or show any major hidden defects immediately after its expiration.

4.6.10.1. System warranty

A 3-year warranty, at least, shall be provided for the whole delivery (including batteries and cooler). Failure elimination (through repair or replacement in the MSS base) during the warranty period may not take longer than 60 calendar days. The warranty period shall be counted from the date of MSS final acceptance.

During the warranty period, all failures as well as effects of natural wear-out of system components shall be eliminated by the Contractor at the Contractor's expense. The warranty will not refer to the defects caused by user or *force majeure*.

During the warranty period, the time of failure elimination will be counted starting from the day following written notification of the Contractor (by a letter or an email message) and finishing on the day a failure is eliminated by repair or replacement. Warranty period for MSS shall be prolonged by the time of failure elimination.

The Contractor shall present a repair report after each resolution. The report shall provide: date of failure notification, nature and description of a failure, description of performed service/repair activities (list of replaced parts), description of verification procedures and their results, date of repair or replacement.

All correspondence referring to operation, maintenance and repair shall be in English.

The Contractor shall pay a stipulated penalty for each day exceeding the maximum repair time of 60 days. The penalty will be 0,01% of the contract value of the MSS made inoperable by a failure.

4.6.10.2. Base vehicle warranty

The Contractor shall guarantee:

- a factory warranty of at least 3 years for the vehicles which shall be counted from the date of final acceptance of an MSS. A longer warranty period may be offered but without any extra cost for Frontex.
- that the vehicles are new, unused (maximum 200 km on the odometer), of the most recent models and incorporate all recent improvements in design and materials.
- that none of the vehicles have any defect arising from design, materials or workmanship.

4.6.11. Liabilities and Insurance

All liabilities and insurance costs including transportation will be borne by the Contractor until the moment of the final acceptance of delivered MSS by Frontex.

4.6.12. Obsolescence Management

The tenderer shall declare that, after the delivery of the MSS, and for the next 10 years, in case a component or a sub-system of the MSS (for example a radar, or a camera) becomes obsolescent^[1], obsolete^[2], or unavailable^[3], he shall announce this issue to Frontex, and he shall propose a resolution, in order the MSS maintains the operability, described in the technical specifications. This proposal shall be sent in time, so that the MSS maintains its operability until the implementation of the resolution. The proposed resolution needs to be approved by Frontex

The cost of the implementation will be covered by the Contractor during the warranty period. If a component or sub-system becomes obsolete or unavailable after the expiration of the warranty period, the cost of the resolution will be covered by Frontex. The cost of the resolution shall be reasonable, and, in any case, the cost shall be less than half of the value of the obsolete / unavailable sub-system.

^[1] Obsolescent is a component which is subject to an announced future end of production date by the original manufacturer.

^[2] Obsolete is a component which is no longer available from the original manufacturer to the original specification

^[3] Unavailable in a component which is no longer available from stock, or is no longer procurable from any sources e.g. authorised aftermarket manufacturers / distributors.

5. Prices and payment

All prices shall be in Euro, excluding VAT.

- Pre-payment:

Upon signature of the Specific Contract, the Contractor may issue a pro-forma invoice for an advance payment corresponding to 30% of its overall value. Frontex shall pay the pro-forma invoice within 30 days after its receipt.

- Balance payment:

After final acceptance of all products and delivery of the accepted MSS to their first place of destination for registration (similarly for the completed trainings), the Contractor issues an invoice for balance payment corresponding to 100% of the overall value of the related Specific Contract. In case of order related to MSS, such invoice has to be delivered together with the issued performance guarantee (valued 10% of the total price of the given order), valid for the entire period of relevant commercial warranty applicable to ordered MSS. Frontex shall pay the invoice within 30 days after its receipt. In case of the pre-payment made earlier, its amount will be deducted from the balance payment. Each performance guarantee will be released by Frontex within 30 days after expiry date of commercial warranty period relevant for the ordered MSS.