

Annex II to the Invitation to Tender

Frontex/OP/59/2019/MS

Terms of Reference

**Framework contract for the provision of
professional insurance brokerage services**

1. Acronyms, Terms and Definitions	3
2. Introduction to Frontex	4
3. Subject	5
4. Description of services to be provided - mandatory requirements	6
4.1. Professional insurance brokerage	6
4.2. Placement and/or renewal of Frontex insurances	6
4.3. Function as a central paying agent	7
4.4. Definition of responsibilities	7
4.5. Reporting	8
4.5.1 Annual reports	8
4.6. Proposing insurance policies (minimum contents requirements)	8
4.7. Terms of Payment	10
5. Implementation of FWC Requirements	11
5.1. Ordering process	11
5.2. Contract management (Customer Service)	11
5.3. Means of communication	11
5.4. Transfer and handover period	12

1. Acronyms, Terms and Definitions

Acronym, Term	Definition
Claim	Means any (i) written demand or (ii) civil or administrative proceeding, which seeks damages from wrongful acts.
Bodily injury	Means any damage to a person's body or physical well-being.
Damages	Means any amount that an insured will be legally liable to pay to a third party in respect of judgements rendered against an insured, or for settlements negotiated by the insurer with the consent of either the insured.
EU	European Union
Frontex	European Border and Coast Guard Agency
FCM	Frontex Contract Manager
FWC	Framework Contract
MS	Member State
Liability insurance	Liability insurance is a part of the general insurance system of risk financing to protect the purchaser (the "insured") from the risks of liabilities imposed by lawsuits and similar claims. It protects the insured in the event he or she is sued for claims that come within the coverage of the insurance policy.
Order form	A simplified form of specific contract by which the contracting authority orders services under this FWC.
Personal injury	Personal injury (including slander or libel) is damage to a person's or business entity's reputation or basic rights, such as the right to be free from interference and to have privacy.
SAC	Schengen Associated Countries
Specific contract	A contract implementing the FWC and specifying details of a service to be provided.
Third Party	Means any legal entity or natural person; provided, however third party does not mean: (i) any insured; or (ii) any other entity or natural person having a financial interest or executive role in the operation of the policyholder or any subsidiary.
ToR	Terms of Reference (ToR) means the document which explains the objectives, scope of coverage, clauses, tasks to be performed, terms and conditions of Frontex and expected results as well as the deliverables of the work to be performed by the insurance company pursuant to the Contract.
VMM	Vehicle for Migration Management support
Operational Premises	Temporary containers mostly used by Frontex or permanent buildings which might be used in the future, located within EU territory and potentially in third Countries.

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.

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

The objectives of this single Framework Contract are:

- to establish optimal insurance coverage for Frontex specific activities in the most economically advantageous way; bearing in mind that the priority is given at the beginning of the contract for the following insurance coverage: a. Public Liability for Frontex operational premises b. comprehensive motor vehicle insurance for specialized vehicles (VMM), deployed in Frontex operational areas;
- to deliver high level support and advice to maintain the optimal level of insurance coverage taking into consideration the specific role of Frontex;
- to assist Frontex in dealing with changing factors, such as legislation, and thus limiting these services are needed to ensure that Frontex has in place the best insurance coverage to minimize its Frontex risk exposure.

The services shall be provided in accordance with the conditions set out by these Terms of Reference and Tender Specifications.

This document defines in the following chapters the minimum requirements and conditions in terms of the establishment of a single Framework Contract signed with an economic service provider for the provision of professional brokerage services.

This document defines in the following chapters the minimum requirements for the following insurance coverage:

- a. Public Liability applicable in Frontex operational premises.

The Public Liability insurance refers to visitors guests, public persons visiting Frontex operational premises as well as open areas/spaces (including the adjacent to the premises) rented under Frontex mandate. Those structures are occupied by Frontex staff/teams as offices or as accommodation facilities. The structures are fully equipped with all necessary offices or accommodation equipment and used by Frontex staff/teams for interaction with different actor's clients (e.g. immigrants, visitors, etc...).

- b. comprehensive motor-vehicle insurance for Vehicles for Migration Management (VMM) support.

The comprehensive motor-vehicle insurance will refer to specialized vehicles that Frontex is acquiring which will be used in its operation within EU territory and potentially in third Countries.

These ToR shall become an integral part of the contract that may be awarded as a result of this tendering procedure. All the information delivered in this document, 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 contract implementation.

4. Description of services to be provided - mandatory requirements

4.1. Professional insurance brokerage

Frontex needs to secure the services of an insurance broker with experience, expertise and capacity to act as an intermediary between Frontex and the insurance market.

The successful tenderer is expected to use its knowledge of the insurance market and its professional experience to deliver best value for money with regard to insurance coverage for Frontex bearing in mind the objectives set under point 5.1.

The Tenderer shall comply with applicable law of the EU, in particular the EU Directive¹ 2016/97 and shall have a valid Business License for brokering of insurance services.'

No later than four months before an insurance policy currently in place is about to expire or within 10 working days of an ad hoc request by Frontex, the Contractor shall conduct market research to find the most suitable and cost effective insurance policies for the Agency. The Contractor shall submit to Frontex at least three alternative insurance policy proposals from three different insurers provided there are a sufficient number of market operators available. All three policies have to be suitable and meet the Agency' needs. It is the Contractors responsibility to verify that all insurers, whose policies have been proposed to Frontex, are in a financially stable position.

Since the aim is for Frontex insurance policies to expire on 31st December of each year, the Contractor shall propose insurance policies as described above alongside the presentation of the annual report or send them to the Agencies in advance. Frontex will approve or reject in writing the solutions proposed by the Contractor. The Contractor shall not be entitled to take decisions without Frontex prior written approval. If requested by Frontex, the appointed Project Manager shall be available to attend meetings upon request of Frontex at Frontex premises (in Warsaw) or via video conferencing to discuss the proposed policies; however no travel, accommodation or subsistence expenses incurred will be reimbursed by Frontex.

4.2. Placement and/or renewal of Frontex insurances

Once a proposed insurance policy is approved in writing by Frontex the Contractor shall take out that policy with the insurer. No insurance policies can be renewed automatically for the next period without Frontex written approval and it is the Contractor's responsibility to notify insurers about non-renewal of the policy within the deadlines. Frontex reserves the right not to pay for policies renewed automatically without its written approval. By giving the written approval Frontex also accept the terms and conditions set in the insurance policy.

The Contractor shall ensure that no gaps occur in the insurance coverage of Frontex. The Contractor is under the duty to report immediately in any case the Agency interests are at risk such as a risk of interruption in policy for any reason. The Contract or shall strive to align the expiry dates of all insurance policies to 31st December.

¹ Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast)Text with EEA relevance.

4.3. Function as a central paying agent

The Contractor shall issue and submit all invoices concerning premiums to Frontex. Invoices for premiums shall only be submitted after Frontex has approved and received the corresponding insurance policies.

Invoices shall be submitted exclusively by the Contractor to Frontex and all payments shall be made only to the Contractor and not to the insurer. All premiums shall be invoiced to Frontex net of any brokerage, commissions, Insurance Services Brokerage (ISB) and work transfer payments.

Any amount applicable for insurance tax should be displayed separately. Frontex will require full commission disclosure after each policy is placed or renewed. If a Contractor cannot avoid receipt of commissions from an insurer (such as centrally paid ISB's etc.) then these must be declared to Frontex and deducted from the relevant broker fee.

4.4. Definition of responsibilities

In addition to the above, the Contractor will be required to carry out all the following services:

1. Independent professional insurance advice, i.e.:
 - Conduct risk analysis regarding insurance coverage in respect to Frontex needs, regarding changes incurred in policies, insurance market, national legislation and any other issues affecting the Agency insurance policies in force;
 - Procurement of market quotations from the local and international insurance market;
 - Liaison with markets of insurance providers;
 - Benchmark of terms of insurance policies;
 - Client discussions on options available;
 - Suitability and status of all proposed insurance providers.
2. Marketing of Frontex's insurance coverage requirements;
3. Placement of Frontex's insurance coverage requirements with suitable insurance providers. Reporting as described in point 4.5. of this document;
4. Ongoing management of Frontex's insurance coverage and outstanding claims handling, ensuring their follow-up until their settlement:
 - Handling queries;
 - Recovery negotiations on old claims;
 - Full Reports/Quarterly;
 - Statistical Claims Compilation;
 - Liaison with overseas and local insurance markets on claim recoveries.

Frontex requires that any insurance claim addressed to Frontex is professionally and quickly dealt with by the Contractor. It is expected that professional advice is given as to how to reduce Frontex's risk exposure beyond the contracted insurance coverage, e.g. information about useful insurance services not yet contracted or advice on process to lower Frontex's risk exposure. For these reasons, Frontex requires to:

5. Provide innovative solutions to Frontex for consideration;
6. Monitor market trends and advise Frontex accordingly.

4.5. Reporting

4.5.1 Annual reports

In the first week of September each year, the Contractor shall present to Frontex a written report on the state of play as of 1st September of the current year. The report shall include:

1. A list of all current insurance policies in place.
2. A list of all claims made under each policy.
3. An overview regarding each insurance policy containing at least:
 - a. what is insured under each policy including amounts insured and amounts which can be claimed and amounts of deductibles/own risk;
 - b. the conditions for policy cancellations (e.g. notice period);
 - c. an evaluation regarding coverage. (e.g. are Frontex needs all covered, are there duplications in coverage and any recommendation regarding coverage);
 - d. the amount of annual premium paid by Frontex for the current year and in comparison to year N -1;
4. Any developments in the insurance market that could affect Frontex. Any changes incurred in policies, including overview of changed current and upcoming new legislation affecting Frontex insurance portfolio, and any other issues affecting Frontex insurance policies in force and proposed action if any needed;
5. Any proposed improvements on the current insurance portfolio.

Additional information may be requested as part of the annual report either added on the Contractor's or Frontex initiative.

4.5.2. Final report

The final report has to be submitted in writing at the latest one month before the end date of contract. The final report shall contain at least the same information as requested in above point of this document and in addition a short description of achievements including problems encountered during the contract duration and recommendations.

The final report will comprise combined information for the previous year and the current year.

4.5.3. Submission of reports

The reports shall be submitted by e-mail or in hard copy to all Frontex Contract Manager identified in the contract. The reports must be written in English.

Frontex has the exclusive right to approve deliverable(s) or report(s) and the payment request(s) submitted by the Contractor.

4.6. Proposing insurance policies (minimum contents requirements)

4.6.1. Public Liability Insurance (general coverage)

The Public Liability Insurance shall cover the financial consequences of claims against Frontex arising from bodily injury and/or property damage to any person not being Frontex employee, during Frontex duty activities in Frontex premises carried out as professional business or activity.

4.6.2. Public Liability Insurance (specific coverage)

The public liability insurance shall indemnify legal liability in respect of accidental death, bodily injury, personal injury, supplementary payments (such as medical payments), illness or loss or damage to property of third parties including defence and legal costs.

The insurer's Public Liability Policy shall also cover Frontex from damages to the public property occurred whilst visiting counterparts/clients/immigrants during business. In such case, Frontex shall be covered for the cost of compensation owed to counterparts/clients/immigrants/public person, up to the limit of the agreed policy. The estimate number of third-party visitors per month, in the above mentioned locations, varies roughly from 70 to 3,000 people. Up to date, Frontex had not faced any claim.

The Public Liability Insurance shall include but not be limited to the below listed total or partial damages as result of (minimum required cover):

- a. Fire and/or smoke - Explosions of any kind - Gas - Steam;
- b. Electrical Hazards;
- c. Falling equipment of air or space transport;
- d. Damages from water;
- e. Labour disputes and attacks - Riots - Popular Movements - Acts of terrorism - Sabotage - Vandalism - Malevolence;
- f. Theft and/or attempted theft;
- g. Broken windows;
- h. Machinery breakdown;
- i. Consequential damage;
- j. Atmospheric conditions (rain, etc.);
- k. Storms (incl. Lightning strike), flood, earthquake (incl. landslide) and other extreme weather conditions.

In case if some of the disasters are excluded from Public Insurance Policies, the additional umbrella of insurance shall be determined/suggested by the Contractor. The number of claims payable in any single policy year shall be unlimited.

4.6.3. Contents of Public Liability Insurance (Countries)

Actually, Frontex is running operations in various European countries mainly in Italy, Greece, Bulgaria and Spain, and in the future it might extend its operations in EU neighbouring countries. The gross rented operational premises in field locations in September 2018 was approximately the follow²:

- Bulgaria: 150 m2
- Italy: 210 m2
- Spain: 25 m2
- Greece: 48 m2

The policy shall be able to provide coverage for different locations (mainly in EU countries and neighbouring third countries).

Exclusions from coverage: Please note that Frontex ICT equipment and premises (containers) are already covered by insurance.

4.6.4. Comprehensive Motor vehicle insurance for specialized Vehicles for Migration Management (VMM) support (coverage)

² Frontex Programming Document 2018 - 2020 (10 December 2017)
https://frontex.europa.eu/assets/Key_Documents/Programming_Document/2018/Programming_Document_2018_2020.pdf

VMM will be used for activities within Frontex Joint Operations/Pilot projects³, such as: identification and registration of irregular migrants, debriefing, documents check and transportation of Frontex and law enforcement officers deployed to the operation area. The first prototype is estimated to be deployed by June 2019 and Frontex expects to deploy other ten (10) VMM by 2021. The cost of each of those specialized vehicles is estimated to 120,000 EURO. The total sum insured is estimated to 2 million euros.

Usage scenario of VMMs

The VMM will be used as a mobile office for identification and registration of irregular migrants. This vehicle will also provide technical and space capacity for documents check and office works by using the equipment installed (fixed and mobile assets) inside. Furthermore, it will serve transportation purposes of Frontex and law enforcement staff involved in operations (officers). The VMM will be used at day-and-night time, under any weather conditions throughout the year. The VMM will be used as a stationed vehicle for minimum 8-hour long operations. The VMM will have the capacity to be used as a mobile office to perform the tasks described above by minimum 3 persons at the same time.

The risks and coverage by insurance shall be but not limited to:

- Third Party motor vehicle
- Third Party liability
- Employer's liability and workers' compensation
- Professional liability
- Loss or damage to equipment and property

4.7. Terms of Payment

As regards the annual all-inclusive brokerage fee the contractor shall be paid directly and twice a year. Every six (6) months from the day of signature of the FWC by the last party the contractor shall submit an invoice for no more than fifty (50) percent of the annual brokerage fee as offered in the contractor's financial proposal. The second invoice for the annual all-inclusive brokerage fee must be accompanied by the annual report as described in the chapter 4.5.1.

Invoices concerning insurance premiums shall be submitted exclusively by the contractor to the contracting authority and all payments shall be made exclusively to the contractor and not to the insurer and only after receipt of the insurance policy. Invoices concerning insurance premiums shall display apart from the net insurance premium the amounts applicable for insurance tax and any other fee(s) charged to the contracting authority.

The annual fee for any additional policies will be paid directly and annually alongside the payment made for the particular additional insurance policy.

Pre-financing is not applicable to this FWC.

³ The VMMs will be used in the following operational areas: Europe; North and West part of Africa such as: Mauritania, Morocco, Algeria, Tunisia, Libya, and Egypt.

5. Implementation of FWC Requirements

5.1. Ordering process

The FWC will be implemented by the means of Specific Order Forms and it will be awarded to the Tenderer that meets all the technical mandatory requirements and clearly demonstrates required capacity in terms of experience, ability and competency in the provision of public liability insurance for private companies or public institutions.

5.2. Contract management (Customer Service)

Contractor's personnel

During the implementation of the FWC, The Contractor shall provide customer service to Frontex during Frontex working hours (8:30hrs to 17.30 hrs CET), Monday to Friday. For this purpose the Contractor shall appoint a Contract Manager (CM). The Contract Manager will represent the single contact point for all administrative and operational communication with Frontex on the designated levels.

For business continuity, the Contractor shall also ensure sufficient back-up of the Contract Manager. The Contract Manager will address and exchange communication and information in writing via email and by telephone with the contact persons designated by Frontex. The Contract Manager shall respond to Frontex requests immediately or at latest the next working day.

For requests related to insurance coverage, changes in policies and/or the services carried out by the insurance broker, the Contract Manager shall provide Frontex with an immediate written confirmation of receipt and within maximum 2 working days from the date of the request - specifying the measures to be undertaken.

Please note that Frontex working language is English and all the documents/communication related to contract and contract implementation shall be in English and be addressed to the Contract Manager and to the contact persons designated within Frontex respectively.

During holidays or other periods of planned or unplanned absence of Contract Manager, the Contractor's appointed back up person shall provide an adequate replacement. It is Contractor's responsibility to ensure continuity of services in the high quality.

Frontex's personnel

For the proper implementation of the FWC, reciprocally, Frontex will establish a Frontex Contract Manager (FCM) and will 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. FCM shall regularly assess the Contractor's performance of the services provided according to the contract.

5.3. Means of communication

Any communication relating to the FWC or to its performance shall be made in writing and shall bear the FWC number, and if applicable the Specific Contract/Order Form number. Any communication shall be deemed to have been made when it is received by the receiving party unless otherwise provided for in the FWC. Electronic communication shall be deemed to have been received by the parties on the day of dispatch of that communication provided it is sent to the addressees listed in the Specific Contract/Order Form. Without prejudice to the preceding, if the sending party receives a message of

non-delivery to or of absence of the addressee, it shall make every effort to ensure the actual receipt of such communication by the other party.

Electronic communication shall be confirmed by an original signed paper version of that communication if requested by any of the parties provided that this request is submitted without unjustified delay. The sender shall send the original signed paper version without unjustified delay. Mail sent using the postal services is deemed to have been received by Frontex on the date on which it is registered by the department responsible. Any formal notification shall be made by registered mail with return receipt or equivalent, or by equivalent electronic means.

5.4. Transfer and handover period

After expiry of the framework contract the incumbent Contractor shall continue execution of Specific Orders regarding policies taken out by the Contractor until the end date of each specific policy, particularly the following tasks:

- Continuous management and administration of insurance policies (e.g. the Contractor shall report immediately in any case Frontex interests are at risk);
- Handling of all claims, ensuring their follow up until settlement;
- Providing customer service as described in point 5.2. of this document;
- Providing any additional information to Frontex that may be required and is not included in the final report.