

Multiple Framework Contract with reopening of competition for the Provision of Consultancy Services

Terms of Reference

**Annex II to invitation to tender no
Frontex/OP/561/2019/MS**

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1. Acronyms and Definitions

Acronym, Term	Definition
ATLM	Acquisition and Through-Life Management
CADE	Capability Development
CBD	Capacity Building Division
Frontex	European Border and Coast Guard Agency
EU	European Union
FWC	Framework Contract
JO	Joint Operations
MS	A Member State of the European Union
REPOOL	Resources Pooling
PRU	Pooled Resources Unit
ToR	Terms of Reference
TS	Tender Specifications

2. Background

2.1. Introduction

The European Border and Coast Guard Agency (hereinafter referred to as “Frontex”) was established by Regulation 2016/1624¹ in order to ensure European integrated border management at the external borders with a view to managing the crossing of the external borders of the European Union (EU) efficiently.

The key role of Frontex is to establish a technical and operational strategy 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 Member States (hereinafter referred to as MS) through Joint Operations (JO) and rapid border interventions and to ensure the practical execution of measures in a situation requiring urgent action at the EU external borders, to provide technical and operational assistance in the support of search and rescue operations for persons in distress at sea; and to organise, coordinate and conduct return operations and return interventions.

2.2. Frontex Capacity Building and Pooled Resources activities

The role of the Capacity Building Division (CBD) has been significantly expanded by the introduction of the Regulation (EU) 2016/1624¹ which increased the Agency’s mandate and gave Frontex capacity to acquire and lease its own assets (Art. 38).

CBD ensures that relevant, robust and resilient resources provided by EU MS, and complemented by Frontex’ own capacity are available for timely and safe deployment into operations. To achieve this objective, CBD cooperates with MS in the framework of a series of negotiations and high-level meetings held throughout the year, aiming at agreeing on resources put at disposal of Frontex and deployed in Frontex-coordinated operations. These resources are then grouped into so-called pools, depending on their character and role foreseen in the operations. The entire process and the pools themselves are managed by the Division which regularly informs Member States about the planned and current operational needs. Such close cooperation ensures the exchange of up-to-date information concerning JO and fosters a closer multilateral cooperation.

Under the new status quo extended with the introduction of Regulation (EU) 2016/1624¹, actually under revision, PRU has become responsible for developing Frontex’ own capability to purchase and lease different types of technical equipment for border control, and return activities as well as for providing logistical support in operational areas and hot spots. The Unit is also in the process of consolidating a model for managing fleets of equipment by setting up processes and establishing rules related to the through-life management processes, like registration, insuring, storage, refuelling, maintenance and disposal of Frontex own equipment.

3. Subject

This Terms of Reference (ToR) define the minimum requirements for the establishment of a Multiple Framework Contract (hereinafter called “FWC”) for the provision of consultancy services.

¹ Regulation (EU) 2016/1624 of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC.

The ToR will become an integral part of the Framework Contract that may be awarded as a result of this open tender procedure. All the information delivered in this document, its annexes and other related documents shall be taken into consideration by the Tenderers in their offers and by the Contractor during the contract's lifecycle.

3.1. Subject

The subject of this Multiple Framework Contract is the provision of consultancy services, which are expected to be delivered as listed in the following *Chapter 4. Description of the services/Lots* and summarized in (non-exhaustive list):

- a. Fully-fledge consultancy services starting with ad hoc market researches on a wide range of technical equipment and related logistical services;
- b. Review and propose effective and efficient Logistic models, processes, and tools customised to Frontex needs;
- c. Perform any other related activities that will enhance the implementation of the Logistic models as Frontex may reasonably request;
- d. Provide whole-of-life requirements, for example, servicing, maintenance and possible future upgrades or enhancements.
- e. Provide quantitative and relevant system design recommendations based on performance expectations and Frontex operational scenarios. Prepare a roadmap outlining a phased implementation approach of recommended system design changes (if applicable).
- f. Collect quantitative and qualitative information through: desk research, experts groups, case studies, etc.

4. Description of the services/ Lots

The FWC is divided in two lots below encompasses potential areas (products and services) where the selected Tenderer will be expected to provide their expertise:

Lot 1 Project Management Consultancies

The services to be provided shall include, but not be limited, to the following:

- Initiation of projects and definition of project objectives, concepts and design (e.g. aircrafts, vessels, ferries, remotely piloted aerial systems, aerostatic systems for aerial surveillance, aerial surveillance services systems, mobile surveillance systems, vehicles for migration management, biometric systems, light equipment, containers, arms, uniforms, etc.);
- Assisting Frontex in understanding the market conditions and the practical feasibility of its incoming engagements to reduce risks and ensure cost effectiveness.
- Creation, maintenance and controlling of project plans and other documentation necessary for the project implementation (e.g. work breakdown structure, expenses, resource management, appointments, schedules, budget planning etc.);
- Monitoring of project goals as regards deadlines, costs and quality;
- Support to the creation of an adequate system of reporting (templates, documents and various reports);
- Support to the introduction, implementation and maintenance of a change management process;
- Support to the introduction, implementation and maintenance of a quality management process;
- Support to the introduction, implementation and maintenance of a configuration management process;
- Supporting the co-ordination of specific project related teams;
- Assist in drafting the budget, taking into account the life cycle costs;

- Supporting the establishment of the project implementation flow chart, planning and range of resources needed;
- Product inspections conducted at various stages of the manufacturing process to safeguard the quality of the delivered products.
- Quality assessments to monitor the compliance with the defined quality system processes.

Lot 2 Integrated Logistic Support Consultancies

The Consultancy services shall include, but not be limited to, the following:

- Logistic Support Analyses;
- Life-Cycle Cost;
- Logistic Management and Modelling;
- Logistics Engineering;
- Engineering support and maintenance services;
- Emergency response planning services;
- Assisting in the assessment of logistical risks;
- Reporting - providing regular updates and consultation to Frontex.

Please note that all tasks to be carried out by the contractor shall be done in close cooperation and with the express agreement of the Agency.

5. Minimum Requirements

The minimum requirements refer to both lots. The assignment is expected to be conducted by a Consultancy Company, with considerable experience in requirements analysis and preparation, logistic and supply chain management and with personnel possessing adequate qualification and experience in logistics of technical equipment and services, within EU public procurement.

Consultancy Team is expected to be composed with specific profiles to cope with services/tasks as described under the above chapter 4.

5.1. Profiles of specialists

According to Frontex needs, the minimum profiles of specialists currently envisaged are:

1. Aeronautical (technical and/or law) Specialist;
2. Naval (technical and/or law) Specialist;
3. Maintenance Specialist (Air, Naval, Terrestrial equipment);
4. Configuration Management Specialist;
5. Risk Management Specialist;
6. ICT Management Specialist;
7. Integrated Logistics Support Specialist;
8. Quality Management Specialist;
9. Automotive Specialist;
10. Mechatronic Specialist;
11. Logistics & Asset Management Specialist;
12. Inventory Management Specialist;
13. Environmental Specialist;
14. Warehousing Specialist;
15. Software Development Specialist;
16. Health & Safety Specialist;
17. Fleet Management Specialist.

The above list of minimum profiles is not exhaustive and might be modified upon the operational situation. The Tenderer shall proof the capacity to deliver consultancy services in the tasks specified previously, and within the lots that it will tender for.

5.2. Compliance with environmental, social and labour law

The contractor must respect the applicable obligations under environmental, social, labour law established by Union law, national law, and collective agreements or by the international environmental, social and labour law.

5.3. Activity reporting and language requirements

The working language of implementation of that FWC is English and all the deliverables produced by the Contractor shall be produced in English. All documents shall be delivered in editable electronic form in MS Word (please note that all the accompanying drawings, tables, graphics and supporting data shall be provided in an editable source format agreed with Frontex).

The Contractor shall report directly to the appointed Frontex Project/Contract Manager on the progress of the work.

The deliverables required for each Specific Contract (SC) will be defined in the relevant SC. The contractor will deliver to Frontex a report accompanying each invoice.

In addition, the contractor will submit report(s) on the services delivered as detailed in the relevant SC.

As a minimum, the report will take the form of a timesheet presenting the dates of services related to the order, the consultants that delivered the services, duration of the services and their location (remote or on-site).

5.4. Meetings

At least 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);
- SC kick-off meeting. Frontex may request a kick-off meeting, within the deadline fixed by the SC, to discuss how implementing the SC and about the expected outcome.
- Meetings (optional) upon progress of the tasks in case Frontex requires additional clarification on the provided documents (to be held at Frontex premises in Warsaw or via a video conference if otherwise agreed).

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 the follow-up of the SC, on the basis notably of the activity reports.

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

5.5. Other business interest of the Consultancy Services Provider

The Consultancy Services Provider shall devote sufficient time and attention to permit the proper performance of the services. Frontex Project/Contract Manager will monitor all deliverables and the quality of the consultancy services. Frontex reserves the right to demand physical presence in its premises in Warsaw.

Nothing in this framework contract shall prevent the Consultancy Services provider from being engaged concerned or having a financial interest in any other business, trade or profession or occupation provided that the experts shall not undertake any activity or be involved with any other business, trade, profession or occupation which in any way would or might constitute a conflict of interest with Frontex and or its activities.

Upon request of Frontex the Contractor must replace the consultant. The Contractor shall give enough notice to Frontex of any change in the composition of the working team. The prior Frontex agreement must be obtained.

In case of “*force majeure*” or if the consultant assigned is no longer able to carry out the work, the Contractor shall inform Frontex and must provide a replacement with adequate training in order to guarantee the continuity of the service provided to Frontex. Any such replacement will be carried out with no additional cost to Frontex. The substitute team member must meet all the requirements as stated in Terms of Reference and must meet the applicable selection criteria as described in Annex I Tender Specifications.

Upon Frontex request, during holidays or other period of planned absence of the consultant assigned, the Contractor will be required to provide an adequate replacement. The replacing consultant will receive adequate training by the Contractor and will be provided with all information necessary to guarantee the continuity of the service provided to Frontex. Such training and handover work will be carried out at the Contractor’s expense.

In case of replacement, the Contractor must propose a minimum of 2(two) replacement persons with the required qualifications and experience for the profile.

5.6. Place of performance

The place of performance of the tasks shall be the Contractor’s premises or any other place indicated in the Specific Order. The tasks shall be performed in part or totally remotely upon agreement with Frontex and as specified in the Specific Order.

The services will be delivered:

- On site in Frontex Headquarter (Warsaw, Poland)
- In Frontex operational areas that means the rest of Europe including third countries accordingly to the specific services to be delivered. In which case, the services will be invoiced as full days (more than 4 hours of work on-site or half days (up to 4 hours of work on-site),

On-site services and services in Frontex operational areas are expected to represent around 50% of the services delivered, as specified in Annex IV (Financial Form).

- Consultancy services can also be delivered remotely, for example analytical work, preparation of reports and recommendations or via conference calls or other technological solutions if agreed with Frontex. Remote services are expected to represent around 50% of the services delivered, as specified in Annex IV. Remotely, in which case the remote services of less than 8 hours will be paid as a fraction of a full day (i.e. 1 hour = 1/8 of a daily fee, half an hour = 1/16 of a day, etc.). Remote services are services not delivered on-site and can include for example preparation with

project teams done on-line or via phone calls or conference calls, and preparation of written documents, project designs, etc.

Services can include a mix of both on-site and remote work. For example, a SC may cover both an exploratory phase which may involve on-site meetings, while analysis and production/implementation of deliverables is carried out remotely.

The price per working day to be provided in Annex IV A to the Invitation to Tender - Financial proposal template for FWC must include all costs of the service (travel and accommodation as well). No costs will be reimbursed.

With regard to the security situation, the contracting authority reserves the right to request background security checks for personnel of the contractor providing services which require regular access to Frontex premises or any other location.

5.7. Contractor's point of contact

The Contractor shall designate one interface or point of contact who will liaise with Frontex for the implementation of the framework contract.

(S)He shall ensure that the service delivered to Frontex remains excellent through the contract duration. His/her main responsibilities are to:

- Handle on behalf of the Contractor all contractual matters vis-à-vis Frontex (e.g. concerning payments, whether or not the tasks are performed by subcontractor);
- Organize ad-hoc meetings on a short notice with Frontex as requested by either party in case of specific issues;
- Resolve all issues related to the provision of the service that are escalated to him/her;
- He/she is responsible for all administrative aspects related to the contract execution: specific contracts, invoicing, payments. His/her main responsibilities are to:
 - i. Process request for services according to the framework contract;
 - ii. Every month, provide Frontex with accurate timesheets for approval and any other requested report, if needed.

6. Implementation of the Framework Contract

The FWC shall be implemented by means of Specific Contracts issued over the period of validity of the framework contract.

These SCs shall be awarded based on the specific offers submitted by the framework Contractors in response to Requests for Services within a specific Lot, issued by the contracting authority under the reopening of competition.

Each time the competition is reopened, the framework Contractors for the Lot concerned shall be invited to submit specific offers for the specific assignment described by the contracting authority in the Request for Services outlining the scope of the project, deadlines, deliverables, etc.

Frontex reserves the right to fix the financial ceiling for each SC. Specific offers exceeding the fixed ceiling will be rejected.

6.1. Ordering Process (Issuing the Specific Contract)

Every service to be provided under the framework contract must be covered by a SC form prepared in advance, that specifies the terms of performance. No service can be provided without a SC, 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 SC form that should clearly indicate the following conditions of execution of the order:

- The references to the framework contract;
- The purpose of the services requested and a description of the work required, including the deliverables required and the reporting requirements if this goes beyond the minimum defined in 6.2. above;
- Profile and seniority of consultant;
- Type of work (on-site or remote);
- Location of services in the case of on-site working,
- The timing for delivery of the services, including intermediate milestones;
- The name and contact details of the official responsible for administrating the SC form.

That deadline will not be shorter than 7 working days calculated from the e-mail notification to the framework Contractors for the Lot concerned. There will be a possibility to submit financial offers in electronic version (pdf format preferred for the text files) to the functional e-mail address of the Contracting Authority.

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 FW 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 modification of the initial request for services, the deadline for submitting proposals shall not be extended.

Specific Contracts can be launched until the expiry of the framework contract and include work 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 SC. The Contractor is required to:

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

The contractor shall submit a financial offer, including, at least the following:

- Proposed Project Team (from the list submitted with the offer to enter the FWC);
- Financial offer including: a number of man days needed to complete the tasks as described in the Requests for Services, a fixed fee per man day (the same as proposed with financial offer to enter the FWC) and the total price.

Each SC shall be awarded on the basis of the lowest total price proposed.

Once the offer is accepted, Frontex will prepare a SC and send it in (paper format) to the contractor for signature. Within 5 working days, the contractor must either:

- Send the SC back to the contracting authority signed and dated; or
- Send an explanation of why it cannot accept the SC.

If the contractor repeatedly refuses to sign the specific contracts 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. Indicative Budget

The maximum amount covering all purchases under this FWC, including all renewals, is EUR 600,000 (six hundred thousand) EUR over a maximum total duration of four (4) consecutive years. However, this does not bind the contracting authority to purchase for the maximum amount.

8. Payments Terms

The Contractor may request the final payment for an amount equal to 100% of the price indicated in the SC (if intermediate payments are not foreseen). The payment arrangements are laid down in the Annex III - draft framework contract for services (Article 1.6).

During the implementation of the framework contract, service will be invoiced as follows:

- On-site services will be either invoiced as full days (if more than 4 hours), or 50% of a full day price (if less or equal to 4 hours).
- Remote services of less than 8 hours will be paid as a fraction of a full day (i.e. 1 hour = 1/8 of a daily fee, half an hour = 1/16 of a daily fee, etc....).

Payments will be made after receipt of the corresponding invoices in accordance with the arrangements set out in the contract, and the calendar set up in the SC.

Each invoice must be accompanied by the relevant report required by the contracting authority.

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

Intermediate payments are allowed only if specified in the SC. The intermediate payments are linked to specific deliverables/ tasks and deadlines that are parts of the SC

8.1. 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 & SC and commitment number to which they refer.
- Relevant breakdown of the services provided and timesheet for each used profile.
- Final amount to be paid in EURO (gross and net amount).

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

9. Administrative informa

9.1. Confidential Information and property

It is acknowledged that to enable the Contractor to provide the Services, Frontex will provide the Contractor with information of confidential nature which is Frontex's property or which Frontex is obliged to hold confidential including, without limitation, all information related to the working of any project carry out or used by Frontex, research projects, tenders, know-how, etc.

The Consultancies provider will be required to sign a Declaration of Confidentiality (as presented in Appendix 1 to the present ToR). These signed Declarations will remain valid and kept in Frontex' files during the whole duration of the contract.

10. List of Appendixes

Appendix 1 - Declaration of confidentiality

.....
[name of the person]

.....
[signature]

.....
[place, date]

Appendix 1 - Declaration of confidentiality

DECLARATION OF CONFIDENTIALITY

Contract No.: Frontex/OP/561/2019/MS

I,(full name),
in my function of(full function name), working
for.....(full company name), hereby declare that I will
treat the information and/or documents that are received from Frontex in the
context of the execution and/or performance of the above mentioned contract with
the strictest secrecy. No information and/or documents will be divulged to third
parties.

I am aware that tasks carried out in view of the execution and/or performance of this
contract also are governed by this principle of secrecy.

I am also aware of the fact that the principle of secrecy pointed out in the first
paragraph will continue to apply after the completion of the above mentioned
contract.

All information and documents received will be used solely for the execution and/or
performance of this contract.

.....
[name of the person]

.....
[signature]

.....
[place, date]