

Annex II to the Invitation to Tender

Frontex/OP/947/2019/JL

Terms of Reference

**Short notice chartering of aircraft for Frontex
operational activities**

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1. Acronyms and Definitions

Acronym	Definition
AOC	Air Operator's Certificate
CAA	Civil Aviation Authority
CEPOL	The European Police College
CM	Contract Manager for all contractual matters
CTOT	Calculated Take Off Time
EASO	The European Asylum Support Office
EEA	European Economic Area
ERP	Emergency Response Plan
ETOPS	Extended-range Twin-engine Operational Performance Standards
EU	European Union
Eurojust	The European Union's Judicial Cooperation Unit
Europol	The European Police Office
FCM	Frontex Contract Manager
FOM	Frontex Operational Manager
FPoC	Flight Point of Contact
FRA	The European Union Agency for Fundamental Rights
Frontex	European Border and Coast Guard Agency
FWC	Framework Contract
IATA	International Air Transport Association
ICAO	International Civil Aviation Organisation
ILS	Instrument Landing System
IOSA	IATA Operational Safety Audit
Level 1 finding	Significant non-compliance detected which lowers safety or seriously hazards flight safety as defined in Regulation (EC) No 216/2008 Annex II point ARO.GEN.350 "Findings and corrective actions – organisations".
Low visibility for landing in CATII	Category II for landing means a precision instrument approach and landing operation with Decision Height below 200 ft. but not lower than 100 ft., and RVR down to 300m.
Low visibility Take-Off RVR150	Take-off in bad weather condition in which aircraft will be able for take-off even if the runway visibility falls to 150m.
MEL	Minimum Equipment List (is a list which provides for the operation of aircraft, subject to specified conditions, with particular equipment inoperative)
MS	A Member State of the European Union
RO	Return Operations
RVR	Runway Visual Range
SAC	Schengen Associated Countries
SARPS	ICAO Standards and Recommended Practices
SC/SCs	Specific Contract/Specific Contracts
ToR	Terms of Reference
TS	Tender Specifications
Wet lease agreement	Agreement between air carriers pursuant to which the aircraft is operated under the AOC of the lessor

2. Introduction to Frontex

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.

While fulfilling its mandate, Frontex liaises closely with other EU partners involved in the development of the area of Freedom, Security and Justice such as Europol, EASO, Eurojust, FRA or CEPOL, as well as with customs authorities in order to promote overall cohesion.

Frontex also works closely with the border-control authorities of non-EU/Schengen countries – mainly those countries identified as a source or transit route of irregular migration – in line with general EU external relations policy.

In pursuit of this goal, Frontex plans, coordinates, implements and evaluates joint operations conducted using Member States’ staff and equipment at the external borders of European Union. This includes the Return Operations (RO), which are organised jointly between Frontex and MS for the sake of removal from the territory of EU MS of third-country nationals who are subjects of individual removal orders (Council Decision of 29.04.2014 2004/573/EC). The Common Guidelines on security provisions for joint removals by air, contain specific legal provisions on operational procedures and regime of responsibilities to be applied to all RO (art.8 (5) of directive 2008/115/EC).

The possibility to charter dedicated aircraft to carry out RO is conditional to an express authorisation by the (Third) Country(-es) of Origin.

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

3. Subject

This document defines terms and conditions for acquisition of aircraft chartering and related services for short notice Frontex operational activities, including RO.

The scope of this document is to describe the minimum requirements for the requested services and to ensure that the services carried out during the implementation comply with Frontex requirements.

The Terms of Reference will become an integral part of the Framework Contract (hereinafter called "FWC") that may be awarded as a result of the 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 Contractors during the contract's lifecycle.

3.1. Current Situation

At present, Frontex is chartering aircraft only to carry out RO. Whenever charters are needed they are organised in cooperation with Member States and are based either on MS' contracts or using Frontex FWC established through Frontex/OP/343/2017/JL/AG.

Frontex FWC was meant to cover the provision of charter aircraft split in 2 different lots:

- *Lot 1 - planned missions* (at the moment of the signature of a SC under this lot all variables concerning the contracted charter flight are known, such as departure and destination airports, planned stop-overs, number of passengers, etc.);
- *Lot 2 - short notice missions* (under this lot Frontex shall acquire a defined number of flying hours to cover fully-fledged services for carrying out the flights for which the variables are not known at the moment of the signature of the SC).

For the period of last five years (2014 - 2018) Frontex in cooperation with MS has organised 1029 return charter flights to the following geographical areas (by priority):

- Southeastern Europe (Balkans);
- West Africa (Nigeria, Gambia, Ghana, Congo (DRC), Ivory Coast, Togo, etc.);
- Caucasus Region (Georgia, Armenia and Russia mainly);
- North and East Africa (Tunisia, Egypt, Somalia, Sudan, etc.);
- South and Central Asia (Pakistan, Afghanistan, Uzbekistan, Sri Lanka, Bangladesh, etc.);
- South and Central America (Ecuador, Colombia, Dominican Republic, Peru, etc.);

The most used categories (from these mentioned under #4.2.) within the abovementioned period were the following:

- Category 2 for short distance flights (Balkans, Caucasus),
- Category 1 for long distance flights (Africa, America, Asia).

3.2. Target Situation

As an addition to the current solution Frontex is looking to establish a FWC for chartering aircraft and related services for short notice which will ensure the continuity of such services when the existing capacity under Frontex/OP/343/2017/JL/AG (Lot 2 - Short notice missions) is exhausted.

This will include the flight for return operations (approx. 90%) and other needs (e.g. transfer of Frontex officers to the operational areas). The overall duration of the contract may not exceed four (4) years.

The estimated quantity of services is as follows:

- 1st year: ≈10 - 25 flights;
- 2nd year: ≈15 - 30 flights;
- 3rd year: ≈20 - 35 flights;
- 4th year: ≈35 - 55 flights.

The information given in #3.1. and #3.2. of this document is indicative and cannot be considered as automatically constituting any form of commitment by Frontex unless otherwise specified.

3.3. Guidelines for all participants in return activities

Contractor and its subcontractor(s) in charge of the transportation of passengers, and any other staff involved in the organisation and implementation of the activity:

- Must promptly and diligently follow the instructions by Frontex;
- Must behave in accordance with public order, full respect for fundamental rights as enshrined in the EU Charter of Fundamental Rights and in other relevant international instruments;
- Must apply the maximum discretion and confidentiality in relation to the activity;
- Without prejudice to the further confidentiality provisions of the main body of the contract, must not document or share information on the activity by any means such as photo, video, commenting or sharing in social media, or equivalent.
- Must not allow on board any passengers which are not participants in the activity and which have not been expressly authorised by Frontex.

Failure to follow the abovementioned instructions may lead to the termination of the contract by Frontex.

4. Description of the assignment

4.1. Objective and tasks

The objective of this contract is to provide Frontex with chartered aircraft, properly manned, maintained, equipped, fuelled and fully insured, in order to carry out mainly RO.

All services provided under this contract to implement RO shall be carried out in full compliance with international human rights law and standards as set out by the Charter of Fundamental Rights of the European Union¹, the European Border and Coast Guard Regulation², the EU Return Directive³ and the Directive on assistance in cases of transit for the purposes of removal by air⁴, as well as the 1951 Refugee Convention⁵ and its 1967 Protocol⁶, the European Convention on Human Rights⁷, and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment⁸.

4.2. Type of contract

The services shall be acquired by establishing a FWC with reopening of competition with at least 3 and up to 10 contractors. The provision of specific charter will be organised following the calls for competition for establishment of the SCs under this FWC. Detailed procedure and time limits in this regard as well as for implementing each SC are described in #7.4 of these Terms of Reference and graphically presented in Appendix 1 to Annex II.

Moreover, terms and conditions for acquisition of the services are described here below. Thus, under the abovementioned FWC, Frontex shall acquire a defined number of flying hours to cover fully-fledged services for carrying out the flights for which the variables are not known at the moment of the signature of the SC.

The services delivered under this FWC will be used mainly for organising emergency return flight(s), which means that variables of each flight will be communicated to the contractor latest 7 days⁹ before the expected day of the service.

The requests for services will be related to the following categories:

- Category 1 - aircraft two aisles from 201 to 300 seats (e.g. Boeing 767 - Airbus 330 or similar);
- Category 2 - aircraft from 180 to 200 seats (e.g. Airbus 321-320 or similar);
- Category 3 - aircraft from 101 to 179 seats (e.g. Airbus 319 or similar);
- Category 4 - aircraft up to 100 seats (e.g. Embraer - ATR or similar).

Each time Frontex will order a specific flight, the contractor will indicate in the Reply Form the number of flight hours needed to carry out the flight.

“Flight hour” costs shall be inclusive of all ancillary services as described in the Terms of Reference.

¹ Charter of Fundamental Rights of the European Union (2000/C 364/01);

² Regulation (EU) 2016/1624 of the European Parliament and of the Council 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;

³ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third country nationals, OJ L 348/98, 24.12.2008;

⁴ Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air;

⁵ Convention relating to the Status of Refugees adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950;

⁶ Protocol Relating to the Status of Refugees of 31 January 1967;

⁷ Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No. 005;

⁸ European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, ETS No. 126.

⁹ Unless specified otherwise in the present Terms of Reference, “day” means a calendar day (not a working day)

The flight hours shall be counted from the moment when the plane is changing its parking place at any departure airport for the requested flight for the purpose of taking off (Block - off) until the moment it comes to rest on the designated parking position at the next airport¹⁰ (Block - on).

Hours on the ground between flights will not be counted.

Flight hours for positioning/repositioning aircraft for the purpose of the requested flight will not be counted.

4.3. Contractor's responsibilities

The Contractor shall carry out the services with all due care, skill and diligence and in the appointment, monitoring and retention of its employees and subcontractors so to ensure maximum safety level of all flight operations conducted.

The Contractor shall be responsible for the professional and technical competence of its employees and will select reliable individuals who will perform effectively in the implementation of the SCs, respect the local customs, and conform to a high standard of moral and ethical conduct, including but not limited to:

- Providing the services within agreed timeframes;
- Treating all information acquired in the course of the FWC as confidential;
- Observing absolute impartiality;
- Advising Frontex of any conflict of interest in relation to the services.

4.4. Contract management personnel

4.4.1. Contractor's personnel

The Contractor shall be responsible for providing all necessary personnel to ensure the satisfactory performance of its obligations under the FWC and shall supervise and be fully responsible and liable for all the services performed by its personnel and for their compliance with the terms and conditions of the FWC.

During the implementation of the FWC and its SCs the Contractor shall nominate:

- Contract Manager (CM) for all contractual matters and
- Flight Point of Contact (FPoC) for each chartered flight, who shall be available and reachable by phone and e-mail during the implementation of the whole operation.
- Representative on board of each chartered flight.

CM will act as a single contractual contact point. All the correspondence related to the FWC (including the implementation of the SCs) will be addressed to him.

The CM shall be able to provide in a timely manner a response to any request regarding, but not limited to:

- reception of invitations to tender for SCs;
- submission of bids to invitations to tenders;
- effective request and timely submission of clarifications as requested by Frontex;
- reception and submission of signed SCs;
- be included in all communication concerning the implementation of the contract.

The FPoC will be contacted by Frontex for any issue during the service and shall be entitled by the Contractor to take any decision regarding the individual service as regards of the:

- coordination with Frontex for all related service details;
- coordination with Frontex and liaison with third parties during the chartered flight execution;

¹⁰ Flight time shall include reasonable taxi time but no more than 30 minutes taxi time accommodated

- management of the service provided according to the defined conditions and flight design;
- management of any unexpected events at the airports or airplane and minimise the impact in the operation.

4.4.2. Frontex personnel

For the proper implementation of the FWC and its SCs Frontex will nominate:

- Frontex Contract Manager (FCM), who will act as a single contact point for all the matters related to the FWC implementation, including the implementation of the SCs;
- Frontex Operational Manager (FOM) for each flight. The FOM or the designated Frontex representative on board the flight will be responsible contact during the flight for all in-flight and ground handling issues.

5. Minimum technical requirements

All services rendered for the execution of the chartered flights shall meet the minimum technical requirements set out within the present Terms of Reference.

The provision of these services will require:

- aircraft that are serviced, fully certified and have the required capabilities including but not being limited to range, seating capacity, cargo payload, configuration, speed, as may be required so as to provide the charter;
- experienced, qualified, licensed and certified flight crew, ground crew - for maintenance, payload management, communications, etc. - needed to ensure the reliability and availability of the charters;
- access to ground handling equipment, services and facilities;
- fuel and all maintenance services;
- insurances and liabilities.

5.1. Chartered aircraft requirements and certification

The aircraft shall be properly equipped for the purposes for which it is being chartered and its condition be conform to applicable national and international air navigation laws and regulations.

Under no circumstances the Contractor will provide the aircraft from an airline banned in the European Union. Frontex may consult the list of European Union banned airlines¹¹ at any time at its sole discretion.

Any aircraft shall be registered/certified by EEA or Switzerland carriers and operated/maintained to the highest international standards of safety and airworthiness. Only aircraft that are operated and maintained in accordance with International Civil Aviation Organisation (ICAO) Standards and Recommended Practices (SARPS) shall be used.

The aircraft provided under the FWC shall carry valid Certificates of Registration issued by the appropriate air authority of the country of registration of the aircraft showing, inter alia, the nationality or common mark and registration mark, the manufacturer, the serial number and the owner of the aircraft. The Certificates of Registration shall be issued under laws and regulations which conform to applicable international regulations, rules, standards and recommended practices, in particular, Annex 7 ("Certification of Registration") to the Convention of International Civil Aviation¹².

The aircraft provided shall also carry valid Certificates of Airworthiness issued by or rendered by the appropriate air authority of the country of registration of the aircraft showing that the aircraft complies with all appropriate airworthiness requirements. The certificates of airworthiness shall be issued or rendered valid under laws and regulations which conform to applicable international regulations, rules, standards and recommended practices, in particular, Annex 8 ("Certificate of Airworthiness") to the Convention of International Civil Aviation.

The Contractors shall immediately inform Frontex, in writing, in the event that:

- relevant authorities withdraw, remove, suspend or place significant conditions on the abovementioned certificates, as well as any other document which could affect the Contractors' activities in relation with the FWC;
- the relevant National Civil Aviation Authorities would no longer be considered as competent for the safety overview of the aircraft as a result of an audit performed and recognised by competent international organisations.

¹¹ https://ec.europa.eu/transport/modes/air/safety/air-ban/search_en

¹² Convention on International Civil Aviation signed at Chicago on 7th December 1944

5.2. Crew and staff requirements

The Contractor shall be responsible for providing all necessary pilots, co-pilots, cabin-crew and other personnel to ensure the satisfactory performance of all the services under this FWC.

All flight crew and maintenance personnel for the aircraft shall possess valid Certificates of Competency and Licenses issued or rendered valid by the licensing authority in accordance with the Aviation Regulatory Framework and in particular, Annex 1 ("Personnel Licensing") to the Convention of International Civil Aviation.

The flight crew, maintenance and other personnel shall, inter alia, be medically fit and possess the necessary training, know-how, skill and experience to perform the duties under this FWC, and shall be appropriately and uniformly attired at all times while on duty.

The number of crew to be deployed shall be determined by the Contractor taking into account the flight schedule requested and the crew duty time.

The crew selected for the flight shall be informed of the fact that the flight is a return flight and instructed accordingly.

A Contractor' representative and, where possible, the captain or the head of cabin crew shall be available to attend a preliminary operational meeting with Frontex few days prior to the return operation, if needed.

In case of RO flights captain and cabin crew shall have a briefing with Escort Leader, Head of Operation and/or Frontex representative on-board, prior to embarkation, in order to establish final security rules and prepare the embarkation and procedure on-board.

5.3. Flight design

The chartered aircraft shall be for the exclusive use of Frontex in terms of passengers and cargo and shall be suitable and serviced with the required range, seating capacity and configuration as described in the Request Form(s) for services under each SC of the FWC.

It is unacceptable to offer seats on scheduled commercial flights.

The routing will be at the discretion of the Contractor, in close consultation with Frontex. Routing shall be the most efficient and direct route available and shall avoid technical stops unless otherwise requested or authorised by Frontex or under emergency situations.

The aircraft seat assignment to passengers must be configured by Frontex in order to fulfil security requirements. Frontex may change the flight seats assignment for security reasons at any moment, including during the flight.

The flight seats layout shall be consistent with the needs of each SC. In no case the seat pitch shall be less than 28 inches.

Except for diplomatic clearance, the Contractor will be responsible for requesting and obtaining all flight licences and over-flight clearances to overfly sovereign states on route, as well as all landing permits necessary, unless otherwise stated by Frontex at the time of ordering a particular flight.

Furthermore, where doubt exists as to the approval of required over flight clearances, the Contractor is required to route flights to avoid passage through such unauthorised airspace.

The Contractor shall ensure that all clearances are obtained at least twenty-four (24) hours before scheduled departure dates.

For diplomatic clearances, the Contractor shall assist Frontex in the process to obtain them by providing all the technical information needed.

5.4. Ground handling services

The Contractors shall provide all ground handling services (e.g. ground administration and supervision, passenger handling, baggage handling, ramp handling, aircraft services, etc.) required to operate the charter(s).

For security reasons, whenever possible, the Contractors shall provide covered stairs at both front and back aircraft's doors.

The Contractors shall be responsible of the handling of passengers' baggage, including its loading and unloading at origin, transit and destination airports. All baggage shall arrive safe to the destination airport.

For security checks Frontex shall have access to the aircraft a minimum of one hour prior to boarding of persons. During security check contractor maintenance or crew representative should be available for any needed assistance.

5.5. In-flight services

For security reasons the use of the toilettes and services provided on-board by the crew (such as catering, announcements, position of crew during the boarding/in-flight, etc.) shall be provided in agreement with the Contractor/captain of the aircraft, according to the operational instruction included in the implementation plan for the specific return flight.

A catering service shall be provided during the flight:

- Outbound flights under 2 hours duration: a cold meal and soft cold drinks;
- Outbound flights over 2 hours duration: a warm substantial meal and soft cold drinks;
- Inbound flight: a substantial hot meal plus hot and cold beverages;
- All flights: soft cold drinks and light snacks;
- All flights: enough water to compensate for dehydration produced in the cabin.

Specific hours for serving catering shall be set in consultation with Frontex 'representative on board.

Frontex may request the Contractor to provide special dietary requirement meals (e.g. vegetarian, gluten-free, lactose-free, diabetics, etc.) up to 24 hours before the first scheduled time of departure.

Alcoholic beverages shall not be served at any time. Metallic cutlery, glass or harmful objects shall not be used in the individual catering service.

5.6. Unforeseen and emergency situation

The Contractor shall demonstrate organizational and technical capacity and professional expertise for responding in an effective and timely manner to unforeseen and emergency situations either before or during the operation.

FOM or the designated Frontex representative on board shall be informed about any unforeseen and emergency situation.

Except if otherwise is agreed with FOM or the designated Frontex representative on board, the flight shall resume to the maximum optimal flight plan point as soon as the emergency is solved.

5.6.1. Flight Delays

In case of flight delay, the Contractor shall re-schedule the affected flight trying to reduce as much as possible the impact on the initial flight plan.

If at any time prior to the Scheduled Departure Time or during the flight, the aircraft and/or its air-crew become unavailable or unserviceable, the Contractor shall replace and provide a suitable aircraft and/or crew within the least possible time and in any case within a maximum of:

- 12 hours if the incident is in a Third Country airport;

- 6 hours if the incident is in an EU airport.

During the delay, the Contractor shall take care of the needs of each passenger at the airport regarding:

- Meals and refreshment in a reasonable relation to the waiting time.
- Hotel accommodation at a reasonable standard in cases where a stay of one or more nights becomes necessary.
- Transport between the airport and place of accommodation.

In case of flight delay, the Contractor shall bear any additional expense incurred as a result of this delay, including any additional costs incurred for the aircraft and/or crew replacement.

In case the flight delay is under Frontex responsibility, the additional costs incurred by the Contractor and not covered by the SC, can be claimed. The claim shall be duly justified, documented and accepted by Frontex.

5.6.2. In-flight emergencies

The captain in command of the aircraft shall retain the right to make decisions as to the feasibility of a flight in the light of weather and other conditions, for the safety of the passengers.

In the event that it is necessary, at the captain's sole discretion, to divert the flight in order to solve an emergency, the captain shall adopt all the possible measures to reduce the impact on the initial flight plan.

5.7. Flight cancellation

Frontex may, subject to the conditions below, cancel any flight covered by SC by giving notice of cancellation to the Contractor:

- If notice of cancellation is given more than five (5) days before time of departure, Frontex shall not be subject to any cancellation penalty and the Contractor shall not be entitled to any part of the contract price attributable to the scheduled flight;
- If notice of cancellation is given less than five (5) days prior to departure, but more than forty-eight (48) hours, the Contractor shall be entitled to 10 % of the price¹³ of the flight;
- If notice of cancellation is given less than forty-eight (48) hours prior to departure, the Carrier shall be entitled to 90 % of the price¹⁴ of the flight.

5.8. Insurances and liabilities

Frontex shall not be liable for any damages sustained by the Contractor in the performance of the Contract except in the event of wilful misconduct or gross negligence on its part.

The Contractor must be insured up to an adequate level to ensure that all persons entitled to compensation receive the full amount to which they are entitled in accordance with applicable regulations¹⁵. Frontex may require to be provided with evidence of insurance cover at any moment.

¹³ The flight price will be counted based on the number of flight hours indicated by the Contractor in his Reply Form, multiplied with the (contractual) value of a flight hour for the respective aircraft category;

¹⁴ Ibid.

¹⁵ Regulation (EC) No 889/2002 of the European Parliament and of the Council of 13 May 2002 amending Council Regulation (EC) No 2027/97 on air carrier liability in the event of accidents and Regulation (EC) No 785/2004 of the European Parliament and of the Council of 21 April 2004 on insurance requirements for air carriers and aircraft operators

6. Quality and acceptance criteria

All the services which are part of this ToR are subject to the Frontex 'acceptance. Frontex will monitor the quality of the services provided by the Contractor. Elements that will be monitored include:

- (i) Full compliance with the minimum technical requirements stipulated in this ToR;
- (ii) Adherence to deadlines;
- (iii) Communication skills and ability to cooperate with users;
- (iv) Ability to document the work. It relates, but not limited to copy of journey logs, ICAO Flight Plan, Loadsheet, flight crew and cabin crew reports about details of any incidence/occurrence during flight, proof of serviceability of equipment, MEL restriction used during the operations, etc.

Upon completion of the services which are part of the SC(s), Contractor shall notify Frontex of the completion of service delivery. Frontex evaluates the quality and the completeness of the service rendered. In this regard the Acceptance Form (presented in Appendix 5 to Annex II) shall be filled-in during each flight delivered under the FWC, shall be signed by the representatives of both contractual parties and shall contain information on the provided services. The Contractor will be immediately informed in case the performance standards are not up to expectations in any of the criteria.

In the event Frontex provided notice of partial or non-acceptance to Contractor, it shall have the continuing right, at its sole option, to:

- (i) refuse to pay any fees or other amounts associated with such services;
- (ii) accept such services on the condition that any fees or other amounts payable with respect thereto shall be reduced or discounted to reflect, to Frontex' satisfaction, the deficiencies present therein or the costs likely to be incurred by Frontex to correct such deficiencies; or
- (iii) terminate the contract and/or seek any and all available remedies, including damages.

While issuing the acceptance form for the execution of each SC, Frontex will monitor the quality according with the following acceptance criteria:

- timeliness;
- conformity of the services to the minimum technical requirements;
- service orientation.

7. Implementation of FWC

7.1. Indicative implementation plan for the FWC

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

- First SCs are scheduled to start within max 2 months from the moment of FWC signature;
- Estimated number of SCs per year - 1 to 5.
- Possibility of multiple services performed at the same time: it is envisaged that several flights might be delivered in parallel.

7.2. Reopening of competition

The FWC shall be implemented by means of SCs. These SCs shall be awarded based on the specific proposals submitted by the Framework Contractors in response to Frontex' requests for services.

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.

Frontex shall establish and communicate to the Framework Contractors the deadline for submitting the specific proposals and relevant award criteria for their evaluation.

In general, each SC shall be awarded on the basis of the most economically advantageous specific proposal, using the evaluation criteria contained in # 3.2 of the Annex I - Tender Specifications and the price/quality ratio (40/60).

7.3. Specific Contracts establishment process

For each service execution Frontex will release to all Framework Contractors a pre-filled Financial Proposal (see Annex IV - Financial Proposal template), containing information on the amount of flying hours required within each category from those defined under #4.2 of these ToR.

If, after the receipt of Frontex request for services, one of the 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 5 (five) days 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.

Contractors shall submit to Frontex within the given deadline indicated in the call for their offers, which shall comprise:

- Safety and Compliance Questionnaire (Appendix 2 to Annex II) filled-in for each AOC holder,
- List of aircraft proposed¹⁶ (see Appendix 3 to Annex II);
- Valid certification/registration (Air Worthiness Certificate and Aircraft Registration Certificate) of the offered aircraft (copy);
- Documents of aircraft equipment and configuration;
- Financial Proposal (Annex IV),
- Additional paper pages, if needed for preparing a particular offer.

Frontex evaluates the offers and awards the SC following the evaluation procedure and based on award criteria.

Frontex and awarded contractor sign the SC. All the forms used for entering and implementing the SC shall automatically become annexes to the Contract.

¹⁶ The list will contain information for minimum 2 aircraft per category (from those defined under #4.2 of these ToR) and maximum 5 aircraft per category

The Contractor must sign the SC within 5 (five) working days of its receipt. Once the SC is signed by both parties, the provision of the service shall start within the timeframe indicated therein.

7.4. Specific Contracts implementation process

Step	Activity	Remarks (if any)
1	SC signed by both parties.	
2	Each time the variables for carrying out a specific flight are known, Frontex will issue a Request Form A.2 (Appendix 4.1 to Annex II) for services including the details of the requested flight.	Not later than 7 days before the requested start of the service
3	<p>The Contractor has an obligation to submit the details of the flight offered in form of Reply Form B.2. (Appendix 4.2 to Annex II). The offer shall clearly indicate the number of flight hours needed to carry out the flight.</p> <p><u>NOTE:</u> If other aircraft than those offered when entering the FWC is proposed by the Contractor to be used to implement the requested flight the copies of valid certification/registration (Air Worthiness Certificate and Aircraft Registration Certificate) of the offered aircraft, as well as documents of aircraft equipment and configuration shall be submitted.</p> <p>The new proposed aircraft shall meet the same technical requirements as the one originally proposed when entering the SC.</p> <p>Moreover, the Contractor shall inform in written about the proposed changes and shall provide the necessary data underlying the replacement decision.</p>	The offer shall be submitted within 48 h
4	Requested flight is implemented.	
5	The contractor notifies Frontex about the completion of service.	
6	The Contractor issues the invoice corresponding to the service rendered (number of flight hours within given category consumed) and send it to Frontex together with the supporting documents (Acceptance Form signed by the representatives of both parties, copy of the journey log confirming the exact flight hours).	
7	Frontex payment of the service rendered (in line with #7.6 of the Terms of Reference).	
8	Steps 2 to 7 may be repeated as many times as necessary until the budget allocated to the SC is consumed.	

7.5. Acceptance & Evaluation

For any SC, the official evaluation of the service delivered will take place at pre-defined milestones, at the start, during the implementation, and at the completion of each SC. It shall be conducted against the quality and/or acceptance criteria. The findings may be consigned in written form, approved by both parts.

7.6. Payment

All prices shall be in Euro, excluding VAT.

All payments shall correspond to the consumed number of flying hours for specific category. The sum of the payments cannot exceed the total value of the SC.

Interim-payment:

- After acceptance of all services rendered for the execution of each specific flight, reception and acceptance of the corresponding invoice, Frontex will execute the payment within 30 days.

Final payment:

- After acceptance of all services rendered for the execution of the last specific flight and reception of the final invoice, Frontex will execute the final payment within 30 days.

7.7. Underperformance

The conclusion of the FWC does not impose on the FW Contractor the obligation to submit a proposal in reply to each request for services; however, Frontex reserves the right to terminate the FWC in the following cases:

In case one of the Contractors:

- is not respecting its contractual obligations;
- is not responding to request for services (fails to submit a proposal for the third time in a row);
- is not submitting compliant proposals against the request for services (its proposals are evaluated to be below the minimum required technical levels for the third time in a row);

it will be recognized as a breach of the Contractor's obligations under the FWC, in which case Frontex may consequently terminate the FWC with this particular Contractor, in line with the provisions of the contract.

7.8. Language

All the documentation delivered within the contract shall be in English. Moreover all communication, whether written or spoken, shall be in English. The Contractors shall ensure that its personnel as defined in the Terms of Reference, and in particular the air crew nominated to provide chartering are fluent in English.