

Multiple Framework Contract in cascade for the provision of legal/consultancy services

Annex II Terms of Reference

Frontex/OP/1068/2019/MS

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Terms and Definitions

The terms in the table below, appearing either in complete or in the abbreviated form, when used in this document and its appendices, shall be understood to have the following meaning:

Term	Abbreviation	Meaning
Provision of legal/consultancy services	Provision of legal/consultancy services	Advice covering any of the following subject areas (lots): 1) Polish law (law firms); 2) EU law on public procurement (law firms); 3) Advice to comply with Polish building rules, regulations and procedures (law firms or consultancy services); 4) HR advice (law firms or consultancy services); 5) Exceptional operational matters advice - related to pioneering concepts on border management (law firms or consultancy services).
Shall, Should, May, Shall Not		The terms shall be used in specification of requirements in line with RFC2119 ¹ .
Legal Services Sector	LEG	The Legal Services Sector of the Legal and Procurement Unit (in Frontex).
European Border and Coast Guard Regulation 2.0	EBCG 2.0	Regulation (EU) of the European Parliament and of the Council on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624, not yet published in the Official Journal of the European Union.
Member States	MS	Member States of the European Union.
Schengen Associated Countries	SAC	Countries being associated members of the Schengen Area but not members of the European Union.
Framework Contract	FWC	Framework Contract laying down the terms for issuance of future Order Forms.
Human Resources and Security Unit	HRS	The Human Resources and Security Unit (in Frontex).

¹ <https://www.ietf.org/rfc/rfc2119.txt>

1. General Information

1.1. Frontex

The European Border and Coast Guard Agency (Frontex) was established by Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard (*OJ L 251, 16.9.2016, p. 1*). Frontex promotes, coordinates and develops European border management in line with the EU fundamental rights charter and the concept of Integrated Border Management.

1.2. Contract Type and Place of Performance

This procurement procedure aims to conclude a multiple FWC in cascade for the provision of legal/consultancy services to Frontex.

Any tasks carried out by a contractor under an Order Form shall in principle be performed “Extra muros” at the Contractor’s premises. All meetings should take place:

- (i) at Frontex’s headquarters located in Warsaw, Poland;
- (ii) by remote videoconference sessions; or
- (iii) by conference call.

1.3. Working Environment and Conditions

Frontex will provide to the Contractor the following resources:

- Access to all necessary information to conduct the tasks;
- Access to all necessary documentation and information in its possession that are necessary to conduct the tasks.

2. Subject and Background

2.1. Subject

The FWC is divided into the following lots:

1. Polish law (law firms);
2. EU law on public procurement (law firms);
3. Advice to comply with Polish building rules, regulations and procedures (law firms or consultancy services);
4. HR advice (law firms or consultancy services);
5. Exceptional operational matters advice - related to pioneering concepts on border management (law firms or consultancy services).

The FWC will be organized according to a cascade system with up to 3 contractors per lot.

The objectives of the FWC are as follows:

- For a contractor to deliver advice on the above-mentioned subject areas (lots);
- Following that order, the advice is necessary to:
 - (i) Understand Polish law on a given matter;
 - (ii) Understand EU procurement law to guide Frontex on a given matter;
 - (iii) Guide Frontex under Polish building and property regulations, principally in areas such as obtaining permits, zoning and land use, construction and environmental obligations;
 - (iv) Understand the Staff Regulations (SR) and Conditions of Other Servants of the European Union (together with its related case-law) to guide Frontex on a given matter;
 - (v) Understand EU border management (incl. law) to guide Frontex on a given matter.

Provision of legal/consultancy services aim to protect Frontex and improve the manner in which it functions. The aim of this FWC is not the provision of litigation advice, but rather consultations in general. In short, there is a need for provision of legal/consultancy services delivered with high quality on often short deadlines, to a large and dynamic EU Agency that is expanding rapidly.

2.2. Description of Lots

Lots 1 and 2 are open to law firms only². Lots 3, 4, and 5 are open to law firms and consultancy service providers.

Lot 1. Polish law (law firms)

Frontex requires advice on matters where Polish law is the governing law of a contract, for instance, in debt actions. Conversely, where Polish law is not the governing law of a contractual arrangement e.g. in staff matters. In that case advice may be needed on the constitutional limits of Polish law and where EU law, for example prevails. Further examples, are non-contractual liability.

Lot 2. EU law on public procurement (law firms)

Frontex procures services and goods worth many millions of EUR every year. However, some procurement procedures may be very involved, complex and of key political importance. For example, Article 38 of the European Border and Coast Guard Regulation³ provides that the Agency may acquire, either on its own or as a co-owner with a MS, or lease technical equipment to be deployed during operational activities. Of particular note is 'major technical equipment'. These may be very expensive and complex assets. It is vital that the procurement of such assets is achieved with maximum efficiency.

² Indicative definition: an entity that involves itself in the business of law, composed of a qualified lawyers being members of the relevant bar association that work together under a specific firm name. A law firm might focus itself on certain kinds of law, or deal with various general law cases. Additionally, administrative/support functions such as litigation secretaries, data entry specialists, and case file managers are also often necessary members of a law firm.

³ Regulation (EU) 2016/1624 of 14 September 2016 on the European Border and Coast Guard (OJ L 251, 16.9.2016, p. 1).

Lot 3. Advice to comply with Polish building rules, regulations and procedures

In accordance with the Frontex Headquarters Agreement, the Republic of Poland transferred to the Agency the ownership of a plot of land on Ractawicka Street 132b for the establishment of the headquarters of the Agency. The Agency will plan, design and construct, at its own cost, its headquarters building(s) on this land area in accordance with Polish law and regulations. In addition other property development projects are planned in the frame of the Agency's new regulations i.e. EBCG 2.0 and ETIAS.

During the entire process, (from planning to construction) Frontex will likely require ad hoc advice from experts in a number of different areas of Polish building and property regulatory context. For the plot for instance on (i) zoning and land use obligations; (ii) establishment or, potentially, removal of a servitude on the land the HQ building is built on (a servitude is the right to use the land for a specific purpose e.g., an access road); (iii) or on environmental matters - such as environmental regulation on soil contamination and vegetation removal and provisions of the environmental permit assessing applicable parameters such as noise and vehicle pollution, etc.

For the other property projects there can be a need of assessing the legal property status of the real estate and describing the requirements and formalities to fulfil to obtain the desired permits (training facilities, warehousing, research facilities).

The Contractor does not necessarily need to be a qualified lawyer⁴ (although tenders from law firms are also welcome) but needs to be an expert on compliance with Polish technical regulations, in all these areas.

Lot 4. HR advice (law firms or consultancy services)

Frontex also requires advice on matters related to Human Resources ('HR'). The mandate of the Agency will change in 2019. In addition to the staff currently engaged (over 700 - the number of which will continue to increase) Frontex is projected to engage 3000 Category 1 staff under the EBCG standing corps by 2027, in order to meet the demands included in the Agency's new mandate. These staff will be governed by the SR. Frontex has different types of staff e.g. Liaison Officers in third countries and staff members holding independent functions (where the appointing authority is its Management Board). Specific advice is needed on a variety of related subjects. With the new mandate, the need of reassessing HR legal framework for alignment with EBCG 2.0 needs will arise, also in the light of possible derogations to the implementing rules to the SR and possible necessity of developing "home grown" rules under art. 110(2) of the SR.

Following the reassessment of the legal framework in view of EBCG 2.0, also the HR processes will need specific adaptations.

The Contractor does not necessarily need to be an entity composed of qualified lawyers (although tenders from law firms are also welcome) but needs to be an entity composed of experts on the SR, related case-law and its practical application or, in specific cases, on the HR processes.

Lot 5. Exceptional operational matters advice - related to pioneering concepts on border management (law firms or consultancy services)

Finally, Frontex requires advice on operational matters which may relate to pioneering concepts on border management. In addressing border management issues numerous EU instruments such as the European Border and Coast Guard Regulation 2.0, the Schengen Borders Code (2016/399), the Sea Rules (656/2014) and numerous international instruments such as SOLAS etcetera, may be relevant. The Contractor does not necessarily need to be a lawyer (although tenders from law firms are welcome) but needs to be an expert on EU border management issues, related case-law and its practical application.

2.3. Stakeholders

This contract has three primary stakeholders, and two categories of secondary stakeholders who should directly benefit from and support its implementation:

Primary

⁴ Being registered with a bar association within a European Union Member State.

- Frontex's Human Resources and Security Unit (HRS);
- Frontex's Task Force for Permanent Premises for Frontex Headquarters (TF BUILD);
- Frontex's Legal Services Sector (LEG) - LEG will be a major beneficiary under this FWC.

Secondary

- Other business entities;
- Border and coast guard authorities from MS and SACs.

2.4. Current Situation

At present, LEG is the main initiator for any advice requested under this FWC. However, particularly concerning advice on HR matters, on constructing Frontex's new headquarters, and on operational issues, LEG may not be the (only) initiator or beneficiary. Namely, it is foreseen that other entities in Frontex (e.g. HRS and TF BUILD) could also act as initiator and therefore be able to request broader support, under the definition of Provision of legal/consultancy services.

2.5. Declaration of Confidentiality

Performance of the FWC (and any Order Forms), in principle, does not require access to any documentation marked as EU classified.

The Contractor involved in the execution of this FWC shall sign a Declaration of Confidentiality as attached to the Order Form, prior the start date of their direct involvement therein. The Contractor shall also respect the COMMISSION DECISION (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission and COMMISSION DECISION of 16 August 2006 C(2006) 3602 concerning the security of information systems used by the European Commission adopted by analogy by Frontex.

2.6. Target Situation

Provision of legal/consultancy services shall allow a given requestor within Frontex the possibility to get rapid, pinpointed advice to minimise risk or maximise opportunities for the Agency. The advice should be targeted, practical, non-academic and implementable by the Agency. **It does not entail litigation advice.**

3. Acceptance and payments

3.1. Acceptance Criteria

Any future Order Forms awarded on the basis of this FWC will be considered accepted upon Frontex's written acceptance of all the deliverables.

The acceptance of all the deliverables shall be confirmed by handing over of an acceptance form signed by a Frontex representative. The model form is available in **Appendix 2 - Model of Task / Deliverable Acceptance Form**.

In addition to the task specific acceptance criteria Frontex will monitor the general quality of the services provided by the Contractor. Elements that will be monitored include:

- i. The speed and agility of responding to orders;
- ii. Proficiency in Provision of legal/consultancy services;
- iii. The adherence to deadlines;
- iv. Overall quality of the Tenderer's work results;
- v. Adherence to Entity policies and work standards relevant to this contract;
- vi. Communicativeness, ability and willingness to cooperate with team members and stakeholders;
- vii. Ability to document his work;
- viii. In case the Contractor underperforms in one or more of the quality criteria described above, then Frontex might decide to terminate the FWC with that respective Contractor.

3.2. Reporting and payments

The contractor shall document all services performed under the Order Forms and, after final delivery of all services (or any other time if requested), shall provide the Agency with short factual reports in English detailing the service(s) provided under the contract, substantiated by detailed timesheets of the contractor's staff involved in the execution of the contract. The reports are to be submitted to the Agency's Project Manager identified in the contract who is responsible for approving them. An acceptable report is a precondition for having the corresponding invoice approved and thus enabling payment of the balance.

If the duration of the Order form exceeds 2 month an interim payment/s may be introduced (in total up to 50% of the total value of that Order Form).

Where an interim payment is expressly provided for in the Order Form the Contractor shall submit a relevant detailed invoice, indicating the reference number of the Contract, of the Order Form and related financial commitment number to which they refer, accompanied by:

- if required, an interim/progress report or any other document as may be required by, and in accordance with the instructions laid down in the relevant Order Form;
- the breakdown of services provided;
- relevant timesheets of the Contractor's staff involved in the performance of the Contract for the tasks subject to interim payment;
- any other substantiation as may be required in the Order Form.

If an interim/progress report or other document is foreseen in the Order Form, the Agency shall make the interim payment within 30 days from receipt of the invoice. The Contractor shall have seven working days in which to submit additional information or corrections, a new interim/ progress report or other documents if it is required by the Agency.

4. General Requirements

4.1. Duration and Schedule

The FWC will be concluded for an initial period of 2 years (with a possible extension no more than two times, each time for a period of one (1) year and on the same conditions). It shall enter into force on the day of its signature by the last contracting party. The contractor shall start executing tasks immediately after the signing of any Order Form, or at a later date if so agreed in writing.

4.2. Deliverables and Place of Performance

The deliverables shall meet the quality criteria and levels and all the terms and conditions, as well as goals and approaches are to be followed and respected in any Order Form. The tasks requested in any Order form shall be performed in professional manner in the way and at the quality and performance levels not lower than offered by the Contractor in its Technical Proposal.

Activities required for completing the tasks shall in principle be performed by the Contractor at their premises. Communication/collaboration with Frontex can be done via technical means like online working spaces, web-meetings and email. If necessary, the Contractor may be required to attend a number of meetings with Frontex in Warsaw, Poland. Reimbursement of travel, accommodation and subsistence costs of the contractor's teams is not foreseen and shall be included in the price per hour.

4.3. Language

All the communication and documentation, both in paper and electronic form and any other deliverables, shall be in English and adhere to a high standard appropriate for technical documentation, ideally without ambiguities and no mistakes in grammar or spelling. All members of the Contractor's staff allocated to the execution of any Order Form shall speak and write in English at C2 level, according to the Common European Framework of Reference for Languages:

(http://www.coe.int/t/dg4/linguistic/Manuel1_EN.asp).

4.4. Documentation

All applicable tools and standards shall be mutually agreed between Frontex and the Contractor.

Frontex requires that all documents created maintain a high quality by:

- Using a document structure, i.e. the organisation of the document into chapters, sections, subsections etc. in a clear way;
- The compliance with standards and a writing style that supports a consistent structure, form and style of documents;
- The completeness of documents, i.e. the complete presentation of the entire scope of the described issue without clear and evident omissions;
- The consistency and coherence of documents, i.e. ensuring mutual accordance of all types of information and lack of logical contradictions of information between the submitted documents or between parts of the same document;
- Proper identification of its title, scope, authors, reviewers, related dates, status, versions, history log, audience, quality or acceptance criteria (if the document is subject to acceptance);

The documentation shall be delivered in editable electronic (and printed format in case necessary). Editable source files for all files shall be supplied.

4.5. Insurance

Tenderers/Contractors are required to have a valid professional risk indemnity insurance during the period between submission of offers and award of the FWC, and the maximum duration of the FWC. Further conditions on the required professional risk indemnity insurance can be found in Article III 4.2 of the Technical Specifications.

4.6. Replacing team members

As described in Article III 4.3 of the Technical Specifications, at the stage of submission of offers, Tenderers are required to propose a team of professionals to be involved in delivering the services under the FWC, and provide the accompanying CV's. These team members should in principle be the ones to carry out any services under Order Forms.

However, there may be a need to replace certain team members (e.g. due to staff turn-over). In such a case, the Contractor shall notify the Contracting Authority in writing and propose a replacement, by providing a new CV which corresponds to the same profile in line with the requirements of the tender documentation. In such a case, the Contracting Authority may either accept the replacement, or request the Contractor to provide alternative CV's to the one proposed.

5. Implementation of the FWC

5.1. Requests for services

Whenever provision of legal/consultancy services is required, Frontex will send the request for services by e-mail to the first ranked framework contractor at least 10 working days prior to the foreseen start date, with a possibility of a shorter deadline in particularly urgent cases.

The request for services will indicatively specify the required profiles and a maximum of working hours.

When sending out a request for services (prior to signing an Order Form), Frontex will also predefine an indicative time-schedule.

However, Tenderers are also invited to propose in writing, the required profiles, maximum of working hours, and time-schedule according to their methodologies and best experiences. The following criteria shall be taken into account:

- Frontex's expectation to effectively deploy the solution rapidly;
- Subsequent implementation of the improvements and components that require further development.

5.2. Ranking procedure

The first ranked framework contractor must provide a positive reply to the request for services, which is also to be acceptable to Frontex, within a maximum 5 working days of receiving the request, with a possibility of a shorter deadline in particularly urgent cases.

In case the first ranked framework contractor does not provide a positive reply, which is also to be acceptable to Frontex, within the required deadline, the request for services will be sent to the second ranked framework contractor. In case the situation repeats with the second ranked framework contractor the request for services will be forwarded to the third ranked framework contractor.

5.3. Ordering process

The services will be contracted by Frontex via Order Forms. For the Order forms Contractors may not exceed the hourly rates proposed to enter the FWC, but may offer discounts.

Each order will specify:

- The required profiles;
- The matter to be advised upon;
- Time-schedule;
- Hourly rate;
- Maximum amount of working hours;
- Use of interim payments.

Within maximum three (3) working days of an order being sent by Frontex to the contractor, Frontex shall receive it back, duly signed and dated. The period allowed for the execution of the tasks shall start to run on the date indicated in the order. On taking up the duties each individual shall be required to sign the declaration on confidentiality annexed to the FWC.

Each framework contractor must be able to carry out in parallel several individual specific orders.

The contractors must also be capable of providing the services rapidly and with a high quality.

Appendices

The following Appendices are included:

Appendix 1: Declaration of Confidentiality

Appendix 2: Model of Task/Deliverable Acceptance Form