



## **CALL FOR TENDERS**

SRB/NEG/3/2016

# PROVISION OF LEGAL ADVICE FOR IRREVOCABLE PAYMENT COMMITMENTS & CASH COLLATERAL

## **TENDER SPECIFICATIONS**



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## **1. INFORMATION ON TENDERING**

### **1.1 PARTICIPATION**

Participation in this tender procedure is open to economic operators established within the European Union as the contract is not covered by the WTO Agreement on Government Procurement (GPA).

### **1.2 VOLUME OF THE MARKET**

The estimated maximum amount for the execution of the services referred to in this call for tenders is EUR one hundred and thirty five euro (€135,000) thousand for the full duration of the contract (i.e. 12 months). This amount is all inclusive and includes travel, accommodation expenses and daily subsistence allowances.

### **1.3 DURATION**

The contract resulting from the present call for tenders will have a duration of twelve (12) months from the date of its signature by the last contracting party.

### **1.4 CONTRACTUAL CONDITIONS**

The purpose of this tender procedure is the selection of a tenderer for the provision of legal advice for irrevocable payment commitments (IPC's) and cash collateral. The technical specifications are explained in point 3 of the Tender Specifications.

In drawing up a bid, the tenderer should bear in mind the terms of the draft Service Contract.

The SRB may, before the contract is signed, either abandon the procurement or cancel the award procedure without the tenderers being entitled to claim compensation. Tenderers are expected to examine carefully and respect all instructions and standard formats contained in these specifications and the invitation to tender. An offer which does not contain all the required information and documentation may be rejected.

### **1.5 LOTS**

Not applicable to the present invitation to tender.

### **1.6 COLLABORATING WITH OTHER COMPANIES**

Companies can consider two ways of collaborating in an offer: either as joint partners in the offer or through subcontracting. Unless stated otherwise in the contract notice and/or the tendering specifications, both **joint offers** and **subcontracting** are allowed in response to a call for tenders issued by the SRB. Offers may also combine both approaches.

In any case, the bid must specify very clearly whether each company involved in the offer is acting as a partner in a joint offer or as a subcontractor (this also applies where the various companies involved belong to the same group, or even where one is the parent company of the others).

The implications of these two modes of collaboration are radically different. They are outlined below.

## **1.7 JOINT TENDERS**

A Joint tender is a situation where a tender is submitted by a group of economic operators (consortium). Joint tenders may include subcontractors in addition to the joint tenderers.

All economic operators in a joint tender assume **joint and several liability** towards the SRB for the performance of the contract as a whole. Nevertheless, tenderers must designate a single point of contact for the SRB.

Statements saying, for instance:

- that one of the partners of the joint offer will be responsible for part of the contract and another one for the rest , or
- that more than one contract should be signed if the joint offer is successful,

are thus incompatible with the principle of joint and several liability. The SRB will disregard any such statement contained in a joint offer, and reserves the right to reject such offers without further evaluation on the grounds that they do not comply with the tendering specifications.

### **1.7.1 JOINT OFFERS WILL BE ASSESSED AS FOLLOWS:**

- The exclusion criteria (see point 2.2 "Exclusion Criteria" of the Tender Specifications) will be assessed in relation to each company individually.
- The selection criteria for economic, financial, technical and professional capacity (see point 2.3 "Selection Criteria" of the Tender Specifications) will be assessed in relation to the tendering group as a whole.
- The evaluation criteria (see point 2.4 "Award Criteria" of the Tender Specifications) will be assessed in relation to the tender in its entirety.

**1.7.2 SHOULD TENDERERS WISH TO TENDER WITH A PARTNER AND HAVE ALREADY SET UP A CONSORTIUM** or similar entity to that end, this should be mentioned in the offer, together with any other relevant information in this respect.

Should tenderers intend to submit a joint offer, it should be noted that, if awarded the contract, the SRB will require the tenderer to give a formal status to the proposed association before the contract is signed. This can take the form of:

- an entity with legal personality recognised by a Member State; or
- an entity without legal personality but offering sufficient protection of the SRBs contractual interests (depending on the Member State concerned, this may be, for example, a consortium or a temporary association); or
- the signature by all the partners of a "power of attorney" based on the model laid down by the SRB, which provides for a form of cooperation.

After the award, the Contracting Authority will sign the contract either with all members of the group or with the member duly authorised by the other members via a power of attorney (model provided under Annex 4 of the Tender Specifications).

## 1.8 SUBCONTRACTING

Subcontracting is defined as the situation where a contract has been or is to be established between the Contracting Authority and a contractor and where the contractor, in order to carry out that contract, enters into legal commitments with other legal entities for performing part of the work.

Subcontracting is permitted in the tender but **the main contractor will retain full liability towards the Contracting Authority for performance of the contract as a whole**. The Contracting Authority has no direct legal commitment with the subcontractor(s).

Accordingly:

- The SRB will treat all contractual matters (e.g. payment) exclusively with the main contractor, whether or not the tasks are performed by a subcontractor.
- Under no circumstances can the main contractor avoid liability towards the SRB on the grounds that the subcontractor is at fault.
- Subcontracting is permitted to subcontractors proposed in the offers submitted in reply to the call for tenders.
- One-person companies may be authorised as subcontractor and added to the list of subcontractors at any time during the execution of the contract.
- Additional subcontracting to other than one-person companies (or freelancers) during the execution of the contract will be accepted for specialised technical expertise required for the provision of the services.
- Furthermore, additional levels of subcontracting (e.g. subcontracting of subcontracts) are not allowed during the execution of the contract unless a prior written authorisation has been granted by the SRB.
- If your offer envisages subcontracting, your file must include:
  - (i) a document
    - mentioning the reasons why you are envisaging subcontracting;
    - stating clearly the roles, activities and responsibilities of subcontractor(s), and;
    - specifying the volume / proportion for each subcontractor.

Tenderers are required to identify the subcontractor(s) whose share of the contract is above 20% and document their willingness to accept the tasks and the terms and conditions set out in the tender specifications via a letter of intent (model provided under Annex 5).
  - (ii) a letter of intent by each subcontractor whose share of the contract is above 20% stating its intention to collaborate with you if you win the contract.

### **Offers involving subcontracting will be assessed as follows:**

- The exclusion criteria (see point 2.2 "Exclusion Criteria" of the Tender Specifications) will be assessed in relation to the tenderer and each proposed subcontractor.
- The economic, financial, technical and professional selection criteria (see point 2.3 "Selection Criteria" of the Tender Specifications) will be assessed in relation to the tenderer and possible subcontractor(s) as a whole.



- The evaluation criteria (see point 2.5 "Technical Offer" & point 2.6 "Financial Offer" of the Tender Specifications) will be assessed in relation to the tender.

During execution of the contract, the contractor will need the SRB's express prior written authorisation to replace a subcontractor with another and/or to subcontract tasks for which subcontracting was not envisaged in the original offer.

Full details of such subcontractors must also be provided in Annex 2 "Letter of submission of the Tender" of the Tender Specifications.

During contract execution, the change of any subcontractor identified in the tender will be subject to prior written approval of the Contracting Authority.

Freelancing, drawing on the activities or staff of any other entirely different legal entity than the contractor, independently of its exact legal form (and independently of the applicable national law), does qualify as subcontracting.

If your offer envisages subcontracting to freelancers, your file must include:

- list of all freelancers;
- a letter of intent by each freelancer stating its intention to collaborate with you if you win the contract.

## **1.9 CONTENT OF THE TENDER**

The tenders must be presented as follows:

- Section 1: Identification of the tenderer (see point 1.10 of the Tender Specifications)
- Section 2: Evidence for exclusion criteria (see point 2.2 of the Tender Specifications)
- Section 3: Evidence for selection criteria (see point 2.3 of the Tender Specifications)
- Section 4: Technical offer (see point 2.5 of the Tender Specifications)
- Section 5: Financial offer (see point 2.6 of the Tender Specifications)

### **1.10 IDENTIFICATION OF THE TENDERER: LEGAL CAPACITY AND STATUS**

To identify himself, the tenderer must include a duly signed letter of submission of tender (see Annex 2 "Letter of submission of the Tender" of the Tender Specifications) presenting the name of the tenderer (including all entities in case of joint offer) and identified subcontractors if applicable, and the name of the single contact person in relation to this tender.

If applicable, the letter of submission of tender must indicate the proportion of the contract to be subcontracted.

In case of joint tender, the letter of submission of tender must be signed by a duly authorised representative for each tenderer, or by a single tenderer duly authorised by other tenderers with power of attorney (model provided under Annex 4 "Model of Power of Attorney" of the Tender Specifications).

Subcontractors whose share of the contract is above 20% must provide a duly signed letter of intent (model provided under Annex 6 "Letter of Intent" of the Tender



Specifications) stating their willingness to provide the service foreseen in the offer and in line with the present tender specifications.

In order to prove their legal capacity and their status, all tenderers and identified subcontractors must provide a **signed Legal Entity Form with the supporting evidence** indicated in the form. This Legal Entity Form is to be signed by a representative of the tenderer authorised to sign contracts with third parties. The form is available for individuals, private entities and public entities on:

[http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/legal\\_entities/legal\\_entities\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm)

Tenderers and identified subcontractors that are already registered in the Contracting Authority's accounting system (i.e. they have already been direct contractors) must provide the form but are not obliged to provide the supporting evidence.

Tenderers must provide the following information if it has not been included with the Legal Entity Form:

- For legal persons, a **legible copy of the notice of appointment of the persons authorised to represent the tenderer in dealings with third parties** and in legal proceedings, or a copy of the publication of such appointment if the legislation which applies to the legal entity concerned requires such publication. Any delegation of this authorisation to another representative not indicated in the official appointment must be evidenced.
- For individuals, where applicable, a **proof of registration** on a professional or trade register or any other official document showing the registration number.

The tenderer (or the single point of contact in case of joint tender) must provide a **Financial Identification Form** and supporting documents. Only one form per offer should be submitted (no form is needed for subcontractors and other joint tenderers). The form is available on: [http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/financial\\_id/financial\\_id\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/financial_id/financial_id_en.cfm)

## **2. EVALUATION AND AWARD**

### **2.1. EVALUATION STEPS**

The evaluation is based on the information provided in the submitted tender. It takes place in three steps:

- Verification of non-exclusion of tenderers on the basis of the exclusion criteria;
- Selection of tenderers on the basis of selection criteria;
- Evaluation of tenders on the basis of the award criteria (technical and financial evaluation).

Only tenders meeting the requirements of the procedures will pass on to the next step.

### **2.2. EXCLUSION CRITERIA**

The tenderers shall provide a declaration of honour (see Annex 3 "Declaration of Honour on exclusion and selection criteria" of the Tender Specifications), **duly signed and dated** by an authorised representative, stating that they are not in one of the situations



of exclusion listed in this Annex. In the case of a joint tender, the declaration on the honour shall be provided by each member of the group. The declaration on honour is also required for identified subcontractors whose intended share of the contract is above 20%.

The contracting authority reserves the right to verify all information contained in the declaration by requiring the supporting documents listed in Annex 3.

Upon request and within the time limit set by the contracting authority the person shall provide information on the persons that are members of the administrative, management or supervisory body, as well as the following evidence concerning the person or the natural or legal persons which assume unlimited liability for the debt of the person:

For situations described in (a), (c), (d) or (f), production of a recent extract from the judicial record is required or, failing that, an equivalent document recently issued by a judicial or administrative authority in the country of establishment of the person showing that those requirements are satisfied.

For the situation described in point (a) or (b), production of recent certificates issued by the competent authorities of the State concerned are required. These documents must provide evidence covering all taxes and social security contributions for which the person is liable, including for example, VAT, income tax (natural persons only), company tax (legal persons only) and social security contributions. Where any document described above is not issued in the country concerned, it may be replaced by a sworn statement made before a judicial authority or notary or, failing that, a solemn statement made before an administrative authority or a qualified professional body in its country of establishment.

If the person already submitted such evidence for the purpose of another procedure, its issuing date does not exceed one year and it is still valid, the person shall declare on its honour that the documentary evidence has already been provided and confirm that no changes have occurred in its situation.

The Contracting Authority reserves the right to check the information on the Declaration.

## **2.3. SELECTION CRITERIA**

Tenderers must prove their economic, financial, technical and professional capacity to carry out the work subject to this call for tender. The evidence requested should be provided by each member of the group in case of joint tender and subcontractor whose intended share of the contract is above 20%. However a consolidated assessment will be made to verify compliance with the minimum capacity levels.

The tenderer may rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the Contracting Authority that it will have at its disposal the resources necessary for performance of the contract, for example by producing an undertaking on the part of those entities to place those resources at its disposal.

The candidate who does not provide the documentation specified, or who is judged, on the basis of the documentation provided, not to have fulfilled the criteria specified below, will be excluded.

### **2.3.1. ECONOMIC AND FINANCIAL CAPACITY CRITERIA AND EVIDENCE**

Tenderers will provide sufficient information and proof to satisfy the Contracting Authority of their financial standing and that they and any subcontractors have the



necessary resources and financial means to carry out the work that is subject of the tender.

The tenderers must prove their economic and financial capacity by a turn-over equal or higher than the double of the volume of the market mentioned in article 1.2.

The contracting authority shall analyse the adequacy of tenderers' financial standing. Where it considers this insufficient the contracting authority shall have the right either to reject any offer or to accept it subject to conditions or to any interim payments being deferred until the work has been completed. Submission of a tender implies acceptance that the contracting authority's decision will be final and that it will not enter into negotiations with tenderers on this subject.

The following evidence should be provided:

- Copy of the profit & loss account and balance sheet for the last two years for which accounts have been closed;
- Failing that, appropriate statements from banks;

If, for some exceptional reason which the contracting authority considers justified, a tenderer is unable to provide one or other of the above documents, it may prove its economic and financial capacity by any other document which the contracting authority considers appropriate. In any case, the contracting authority must at least be notified of the exceptional reason and its justification in the tender. The contracting authority reserves the right to request any other document enabling it to verify the tenderer's economic and financial capacity.

### **2.3.2. TECHNICAL AND PROFESSIONAL CAPACITY CRITERIA AND EVIDENCE**

Technical and professional capacity shall be assessed on the basis of experience, knowledge and expertise in the following areas:

Requirements:

- The legal advisors shall have a long-standing experience with legal advice on collateral contractual management in guarantees on first demand and, on financial collateral (cash and securities), law of signature governed by **main Eurozone Member States as well as the United Kingdom**, preferable with public bodies and in particular on advising EU-related agencies.
- Capacity and expertise relevant to the legal issues related to the responsibilities of the SRB under applicable domestic law in **all Eurozone Member States as well as the United Kingdom**. The tenderer shall identify an associate and a partner to be involved with the activities covered by the contract and shall describe for each member of his/her skills.
- The proposed lawyers should be bound to a work contract with the tenderer for the duration of the Contract.

Evidence:

Tenderers are required to prove that they have sufficient technical and professional capacity to perform the contract. To that end the following documents or information



shall be presented as evidence of compliance with respect to the technical and professional capacity criteria:

- 1) Organisational structure to allow the delivery of the required services;
- 2) Professional accreditations or references held by the tenderer and relevant subcontractors;
- 3) Curriculum Vitae of the following profiles as well as their replacements demonstrating the extensive knowledge and experience with EU Law and attesting drafting and presentation skills as well as covering work experience, education and training and fluency in English:
  - Associate with at least 5 years of professional experience
  - Partner with at least 10 years of professional experience;
- 4) Certificates proving that the proposed team is composed of lawyers currently registered in a bar association located in the EU;
- 5) A list of similar activities delivered in the past three years.

## 2.4. AWARD CRITERIA

Only the tenders meeting the requirements of the exclusion and selection criteria will be evaluated in terms of quality and price.

The Service Contract will be awarded to the tenderers who submit the most economically advantageous bid (those with the highest score) based on the quality criterion and their associated weightings:

There are 4 quality criteria:

1. Quality criterion 1 (Q1) ( $W_1 = 20\%$ ): Methodology to carry out quality assurance and control checks. In this respect, the tenderers should include in their offer the mechanisms for checking and controlling the quality of the work (e.g. systems of double checking, quality checks etc).
2. Quality criterion 2 (Q2) ( $W_2 = 10\%$ ): Quality of the proposed approach. The tender should include a clear proposal of how the work will be performed as well as a timeframe for delivering the services accompanied by a Gantt chart.
3. Quality criterion 3 (Q3) ( $W_2 = 10\%$ ): Availability of the team during the entire duration of the Service Contract;
4. Quality criterion 4 (Q4) ( $W_2 = 10\%$ ): Detailed information on the methodology to update the data and the proposed frequency of checks and updates.
5. Price criterion and associated weighting: Price of the bid ( $W_{Price} = 50\%$ ): The tenderers are requested to provide a fixed hourly rate to perform the tasks specified in point 3 of the Tender Specifications by the associate and partner. More details regarding the financial offer are specified in point 2.6 of the Tender Specifications.

The price will be calculated based on the following scenario:

Total price offer (for the purpose of calculation of the award criterion) = ((50hrs\*hourly rate of an associate)+(20hrs\*partner)).



Please note that this simulation is not in any case a commitment of the SRB as regards the amount of flexible support it may require during the course of the Service Contract.

For all bids evaluators will give marks between 0-10 (half points are possible) for each quality criterion.

The score is calculated as

$$S = SQ + SP$$

where:

The average quality for quality criterion  $i$  is

$$Q_i = \frac{1}{\text{number of evaluators}} * \sum_{\text{evaluator}} \text{mark of the evaluator for quality criterion } i$$

The overall weighted quality is

$$Q = \sum_i Q_i * W_i$$

The score for quality is

$$SQ = \frac{Q}{Q \text{ of the bid with highest } Q} * 100 * \sum_i W_i$$

The score for price is

$$SP = \sum_i \frac{\text{lowest Price}_i \text{ of all bids}}{\text{Price}_i} * 100 * W_{\text{Price}_i}$$

Only bids that have reached a minimum of 60 % for  $Q_1$ , a minimum of 60 % for  $Q_2$ , etc. will be taken into consideration when calculating the score for quality  $SQ$ , score for price  $SP$  and score  $S$ .

Only bids that have reached a minimum of 60 % for the score  $S$  will be taken into consideration for awarding the contract.

## 2.5. TECHNICAL OFFER

The technical offer must cover all aspects and tasks required in the technical specifications and provide all the information needed to apply the award criteria. Offers deviating from the requirements or not covering all requirements may be excluded on the basis of non-conformity with the tender specifications and will not be evaluated.

## 2.6. FINANCIAL OFFER – PRICE

Price must be quoted for the provision of legal advice and shall be inclusive of all costs involved in the performance of the contract (e.g. to include travel, subsistence etc). No expenses incurred in the performance of the services will be reimbursed separately by SRB.

- The tenderer must indicate a fixed hourly price for the services for an:
  - Associate
  - Partner



- Prices must be fixed amounts and non-revisable.
- Prices must be quoted in euro even for tenderers from countries outside the euro zone. The price quoted may not be revised in line with exchange rate movements. It is for the tenderer to assume the risks or the benefits deriving from any variation..
- Under Article 3 and 4 of the Protocol on the privileges and immunities of the European Union and Article 151 of Directive 2006/112/EC, SRB is exempt from all duties, taxes and other charges, including VAT. This applies to SRB pursuant to the Regulation (EU) 806/2014. These duties, taxes and other charges can therefore not enter into the calculation included in the bid. The amount of VAT must be shown separately.



## **3. TECHNICAL SPECIFICATIONS**

### **3.1 GENERAL BACKGROUND**

#### **3.1.a GENERAL BACKGROUND OF THE SINGLE RESOLUTION BOARD**

In response to the financial crisis of 2008, the European Commission pursued a number of initiatives to create a safer and sounder financial sector for the single market. The Single Resolution Mechanism (SRM) is one of them. It is the second pillar of the Banking Union. Its legal basis are the Bank Recovery and Resolution Directive (BRRD), Directive (EU) No 59/2014 and the SRM Regulation (SRMR), Regulation (EU) No 806/2014.

Together with the Single Supervisory Mechanism (SSM), for which the European Central Bank is responsible, the Single Resolution Board (SRB) is one of the corner stones of a new architecture in banking supervision and resolution within the Euro Area and beyond. Its creation represents a major step towards ending the toxic cycle of too-big-to-fail of the past and towards re-establishing the principles of the market economy in the banking sector.

The SRB is therefore the central decision-making body of the SRM and the European resolution authority as part of the European Banking Union. Its mission is to ensure an orderly resolution of failing banks with minimum impact on the real economy and public finances of the participating Member States and beyond. The SRB is a self-financed independent agency of the European Union, which has its seat in Brussels, Belgium. It works in close cooperation in particular with the national resolution authorities of participating Member States, the European Commission and the European Central Bank. The SRB is made up of 6 permanent Board Members and the SRB conveys decisions in its executive and plenary sessions. Any resolution decisions will be taken by the executive session.

The SRB is responsible for the preparation of resolution plans and, where required, is from 1 January 2016 carrying out resolution activities for credit institutions under its remit. It is responsible for managing the Single Resolution Fund (SRF), which was established as a pool of money financed by the banking sector in order to ensure that medium-term funding support is available in case a credit institution is restructured. The SRF will be built up during the first eight years (2016-2023) to act as a buffer for the taxpayer in case of a bank failing or likely to fail. The target volume of the SRF is measured in proportion to client deposits held at all the banks in the Euro Area. The SRF shall reach at least 1 % of these so-called covered deposits (deposits of up to 100,000 for each client at any bank) which could lead to final size of the SRF of EUR 55bn. It will only be used as last resort once shareholders and creditors have fully contributed to the resolution measures.

The SRB is operational since 1st January 2015 and has started to work on developing resolution plans for credit institutions. As of 1 January 2016, it is fully operational, with a complete set of resolution powers.

#### **3.1.b GENERAL BACKGROUND FOR THE IRREVOCABLE PAYMENT COMMITMENTS**

In accordance with Article 103(3) of the Banking Resolution Recovery Directive (BRRD), "the available financial means to be taken into account in order to reach the target level specified in Article 102 may include irrevocable payment commitments (IPCs) which are



fully backed by collateral of low risk assets unencumbered by any third party rights, at the free disposal and earmarked for the exclusive use by the resolution authorities for the purposes specified in Article 101(1)".

Article 70(3) of the Single Resolution Mechanism Regulation (SRMR) specifies that "the available financial means to be taken into account in order to reach the target level specified in Article 69 may include irrevocable payment commitments which are fully backed by collateral of low-risk assets unencumbered by any third-party rights, at the free disposal of and earmarked for the exclusive use by the Board for the purposes specified in Article 76(1) [...]".

For the purpose of this tender, it is assumed that only cash is accepted as collateral.

The SRB is established by the SRMR. This Regulation shall be applicable in principle from 1 January 2016 (Article 99).

In 2015, before the entry into force of the SRM Regulation, some National Resolution Authorities (NRAs) allowed the institutions within their jurisdictions to settle part of their contributions with IPCs. In that respect, those NRAs are drafting for this year Payment Commitment and Financial Collateral Arrangement under their national laws.

These arrangements were based on common requirements. They especially foresaw that:

- Until 31 December 2015, the concerned NRA (or national resolution financing arrangement) were the beneficiary of the arrangement. From 1 January 2016, the beneficiary is the SRB/SRF;
- The cash posted as collateral has been transferred to a current cash account opened in the name of the SRB.

From 2016 onwards, the SRB wishes to establish contractual arrangements under one common applicable law for each of the 4,000 institutions under its remit. This solution is intended to guarantee a level playing field and facilitate contract management.

### **3.2. SCOPE OF THE WORK & DESCRIPTION OF THE TASKS**

This tender seeks the provision of legal consultancy from a highly qualified legal firm, able to work and communicate in excellent English, in the below areas:

- Drafting under the laws of Luxembourg the Payment Commitment and Financial Collateral master arrangement template to be used from 2016 onwards between the SRB and the contributing institutions, and of related documents under the same applicable law:
  - o the notification template informing the Institution of the amount of its annual contribution and specifying the maximum share of irrevocable payment commitments;
  - o the notification template concerning the payment of interest for the cash posted as collateral;
  - o the request template by which the SRB will call for IPCs in case of a resolution action involving the SRF.



- Drafting of the documents related to the Payment Commitment and Financial Collateral master arrangements concluded in 2015 between the SRB, the NRAs and the contributing institutions concerned:
  - o the notification template concerning the payment of interest for the cash posted as collateral in 2015;
  - o the request template by which from January 2016 the SRB will be able to call for the IPCs provided in 2015 in case of a resolution action involving the SRF.
- Legal advice with respect to the above matters.

### 3.2.a Scope of the works

- ❖ The legal consultants should produce templates compliant with:
  - The Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms;
  - The Regulation (EU) 806/2014/EU establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund;
  - The Council implementing regulation 2015/81/EU specifying uniform conditions of application of Regulation (EU) No 806/2014 of the European Parliament and of the Council with regard to ex ante contributions to the Single Resolution Fund;
  - The Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements;
  - The common requirements agreed on by the NRAs and the SRB in July 2015.

The drafting of the Payment Commitment and Financial Collateral master arrangement template from 2016 onwards should leverage on the contractual arrangements established for 2015.

It should foresee the possibility for the SRB to outsource all or part of the IPC and cash management to a third-party service provider (National Central Bank, commercial banks, non-bank service provider), where possible.

The master Financial Collateral arrangement template should specify that only cash is accepted as collateral. However, it should leave open the possibility of accepting low-risk securities in the coming years.

The scope of the work does not include the translation of the different templates into local languages.

### 3.2.b Description of tasks:

- It is expected that the legal support and advice shall cover the following tasks:
  - Legal advice to the SRB on the legal precautions to take, for example, should the SRB decide to use electronic means for the signature of the contractual arrangements and the transmission of the documents related:
    - o the notification template concerning the payment of interest for the cash posted as collateral;
    - o the request template by which the SRB will call for IPCs in case of a resolution action involving the SRF.
  - Drafting under the Luxembourg law of the Payment Commitment and Financial Collateral master arrangement template to be used from 2016 onwards between the SRB and the contributing institutions, and of the related documents as specified in point 2.1;

- Development of a questionnaire regarding the impact (or absence thereof) of resolution, reorganisation or winding up procedures in each participating Member State (including confirmation of absence of any other issue);
- Analysis of the responses received and communication of the results to the SRB;
- Drafting of the documents related to the Payment Commitment and Financial Collateral master arrangements made in 2015 between the SRB, the NRAs and the contributing institutions concerned and the SRB;
- Participation in internal and external meetings or telephone calls with the SRB and/or representatives from NRAs on a case-by-case basis including legal advice on the above , where necessary.

### **3.3. PLACE OF WORK**

The tasks required shall be performed:

- Mainly extra-muros: when the contractor will work on its own premises. Communication with the contractor in this case will be done via e-mail, videoconferences, telephone meetings or with any other device;
- Occasionally intra-muros: when the contractor will be asked to work on the premises of SRB in Brussels, Belgium. The cost for travel and accommodation will be covered by the contractor.

For the kick-off meeting at the premises of SRB in Brussels, the cost for travel and accommodation will be covered by the contractor.

### **3.4. DELIVERABLES**

#### 3.4.1 Timeframe for deliverables in 2016:

The Contractor shall provide legal advice within the estimated timeframes for the deliverables as specified in point 3 of the Tender Specifications:

- Drafting of the documents related to the Payment Commitment and Financial Collateral master arrangements concluded in 2015 between the SRB, the NRAs and the contributing institutions concerned:
  - Week 7
- Legal advice to the SRB on the legal precautions to take, should the SRB decide to use electronic means for the signature of the contractual arrangements and the transmission of the documents related as specified in point 2.1:
  - Week 8

- Drafting of the Payment Commitment and Financial Collateral master Arrangement template from 2016 onwards between the SRB and the contributing institutions under the Luxembourg law, and of the related documents as specified in point 2.1:
  - Week 8
- Development of a questionnaire regarding the impact (or absence thereof) of resolution, reorganisation or winding up procedures in each participating Member State (including confirmation of absence of any other issue);
  - Week 8
- Identification of suitable legal counsel in SRMR jurisdictions (offices of coordinating law firm or correspondents) and request for replies. The cost of the analyses by local law firms are part of the overall budget. The allocation of this cost shall be the responsibility of the coordinating law firm;
  - Week 8
- Analysis of the responses received and communication of the results to the SRB;
  - Week 9
- Amending the aforementioned draft Payment Commitment and Financial Collateral master Arrangement templates if required:
  - Week 10

In case the contractor does not meet the terms agreed, including the timeframes, it will be considered as "breach of contract".

#### 3.4.2 Details on deliverables and quality requirements

- Each deliverable will be submitted in in electronic format compatible with Word in English, and upon the request of the contracting authority, in paper version.
- The contractor will have all deliverables verified by a person with a perfect knowledge of the English language.

The contractor will ensure that all the deliverables are in conformity with the rules on citation of existing work and, as stipulated in article II.13 of the draft contract, with the ownership of intellectual and industrial property rights, in particular with the licencing of pre-existing rights, if applicable.

- Where information that is not publicly available is provided by other institutions, associations or firms, the accuracy of this information, as expressed in the deliverable will have to be approved by those who have provided it to the contractor.

### **3.5. INDICATIVE TIMETABLE**

The estimated date for signature of the contract is mid to late February 2016.



ANNEX 1 – DRAFT SERVICE CONTRACT

ANNEX 2 - LETTER OF SUBMISSION OF TENDER

ANNEX 3 - DECLARATION OF HONOUR ON EXCLUSION & SELECTION  
CRITERIA

ANNEX 4 - MODEL OF POWER OF ATTORNEY

ANNEX 5 – MODEL OF LETTER OF INTENT FOR SUBCONTRACTOR