

Brussels, 22/01/2016

Ex-ante publicity notice in negotiated procurement procedure

Subject: **PROVISION OF LEGAL ADVICE FOR IRREVOCABLE PAYMENT COMMITMENTS & CASH COLLATERAL**
Procurement Ref.: **SRB/NEG/3/2016**

Description of the technical specifications:

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) will allow 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 are based on common requirements. They especially foresee that:

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

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.



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.

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.

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:
 - the notification template concerning the payment of interest for the cash posted as collateral;
 - 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 made in 2015 between the SRB, the NRAs and the contributing institutions concerned;
- 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);
- 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;
- Analysis of the responses received and communication of the results to the SRB;
- Amending of the draft Payment Commitment and Financial Collateral master arrangement template to be used from 2016;
- 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.

Description of the selection criteria:

a) 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.

b) 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 expertise 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 on legal issues related to the assignments and responsibilities of the SRB under applicable domestic laws 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 with a European Union bar association,
- 5) A list of similar activities delivered in the past three years.

Description of the procedure:

Ex-ante publicity is the first stage of a negotiate procurement procedure below the Directive threshold with a minimum 5 candidates, through which the Agency may award the abovementioned contract.

The aim of this notice is to support the SRB in the selection of the tenderers who will be invited to submit a tender for the contract that shall not exceed €135 000.

Economic operators interested in taking part in this tender should send an email declaring their interest by **27/01/2016, 17:00 Brussels time** to SRB-PROCUREMENT@ec.europa.eu. Further specific information will be published on the website and interested economic operators are invited to consult the webpage regularly.

It should be noted that the SRB reserves the right not to launch the negotiated procedure. This decision shall be communicated accordingly.

SRB Procurement