

A guidebook for tenderers

Submitting a tender in response to a procurement procedure launched by the Single Resolution Board

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DISCLAIMER

This document is designed to help tenderers to submit their tenders in the framework of a procurement procedure launched by the Single Resolution Board (SRB).

The information contained in this document is of a general nature only and is not intended to address the specific circumstances of any particular individual or entity and therefore SRB accepts no responsibility or liability whatsoever with regard to it.

Tenderers are requested to note that any information, questions or observations, of whatever kind, contained in this document can in no way be regarded as a commitment on the part of SRB to enter into any contract. No binding commitment will be entered into until a procurement procedure is completed and the relevant contract is signed.

In case of a framework contract, the signature does not impose any obligation on SRB to purchase. Only the implementation of the framework contract through either specific contracts or order forms is binding on both SRB and the contractor.

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I LEGAL FRAMEWORK

This section lists the main legal provisions applicable to calls for tenders launched by the Single Resolution Board (hereinafter SRB).

The procurement procedure is governed by the following provisions, more particularly:

- a) Financial Regulation adopted on 25th March 2015 applicable to the budget of the Single Resolution Board;
- b) Title V of the Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (hereinafter: Financial Regulation (FR));
- c) Title V of the Commission Delegated Regulation of 29.10.2012 on the rules of application of Regulation (EU) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (hereinafter Rules of Application (RAP)).
- d) The World Trade Organisation's Agreement on Government Procurement, which the European Community joined following Council Decision of 22 December 1994 concerning the conclusion of the Protocol amending the GATT Agreement on Government Procurement

In addition to the above-mentioned legislation, it is worth noting that:

- a) the provisions mentioned at Ia and Ib above are largely similar to those contained in the European Union's public procurement directive, namely European Parliament and Council Directive 2004/18/EC of 31 March 2004, which is applicable to the Member States; this Directive entered into force on 30 April 2004 and replaced former legislation in this field, namely Council Directive 93/36/EEC of 14 June 1993 and Council Directive 92/50/EEC of 18 June 1992.
- b) Principles arising from the Court of Justice of the European Union case law in the field of procurement are binding on SRB;
- c) Prospective tenderers are legitimately entitled to expect SRB to manage its calls for tenders in accordance with principles arising from the European Ombudsman decisions.
- d) The SRB's staff is bound by a "Code of Good Administrative Behaviour" in their relations with the public. This includes the management of calls for tenders, subject to the restrictions laid down in the above-mentioned legal provisions.

II BASIC INFORMATION ABOUT THE PROCUREMENT PROCEDURES LAUNCHED BY SRB

II.1 PRINCIPLES

The conclusion of all public contracts by SRB follows the principles of transparency, proportionality, equal treatment, non-discrimination and sound financial management.

II.2 THRESHOLDS

The choice of the procurement procedure depends mainly on the threshold amounts:

Estimated value of the contract (C)	Minimum procedure	Special procedures
$C \leq \text{€ } 1000$	Simple payment against invoice	In exceptional cases the negotiated procedure with or without a contract notice published in the Official Journal may be used
$\text{€ } 1001 > C \leq \text{€ } 15,000$	Negotiated procedure with at least 1 candidate	
$\text{€ } 15,001 > C \leq \text{€ } 60,000$	Negotiated procedure with at least 3 candidates	
$C > \text{€ } 60,000$	open or restricted procedure	
$\text{€ } 60,000 > C < \text{€ } 130,000$ <i>(service contracts under Annex IIA to Directive 2004/18/EC, except for research and development contracts in category 8)</i>	Restricted procedure following a call for expressions of interest (CEI/AMI) , or if considered appropriate open or restricted procedure	
$\text{€ } 60,000 > C < \text{€ } 200,000$ <i>(research and development contracts in category 8 in Annex IIA to Directive 2004/18/EC)</i>		
$C \geq \text{€ } 130,000$ <i>(service contracts under Annex IIA to Directive 2004/18/EC, except for research and development contracts in category 8)</i>	Open or restricted procedure	
$C \geq \text{€ } 200,000$ <i>(research and development contracts in category 8 in Annex IIA to Directive 2004/18/EC)</i>		
$C > \text{€ } 60,000$ <i>(Service contracts under Annex IIB to Directive 2004/18/EC)</i>	Negotiated procedure following publication of a contract notice in the Official Journal Restricted procedure following a call for expressions of interest	

Use of the open or restricted procedure with publication of a contract notice in the Official Journal is always an option. The other procedures are the minimum to be followed in each case.

The thresholds set out for work contracts and service contracts under Annex IIA and IIB to Directive 2004/18/EC (Articles 170 RAP) are updated every two years on 1 January.

II.3 NEGOTIATED PROCEDURE

The procedure is conducted according to general rules until the submission of offers and then, where appropriate, a negotiation may take place in order to allow tenderers to adapt their offers to the tender specifications at a second stage.

A distinction is made between low value negotiated procedures and exceptional negotiated procedures.

Low value negotiated procedure

Low value negotiated procedures are used for contracts with a threshold below 60,000 EUR, which can be subdivided according to the amount of their threshold. For the contracts in the negotiated procedure the tender documentation is published on the external webpage of SRB (www.srb.europa.eu) (Article 104 FR and Articles 127-129 and 137 RAP)

Exceptional negotiated procedure

Exceptional negotiated procedures are used in certain types of procurements and can be either with or without a publication of a contract notice. (Article 104 FR and Articles 127 and 134-135 RAP)

See Annex I for schemes of the different types of negotiated procedures.

II.4 OPEN OR RESTRICTED PROCEDURE

For contracts above 60,000 Euro, SRB uses Open or Restricted procedures. Contracts are awarded to the tenderer either submitting the most economically advantageous offer ("best value for money") or to the lowest bid (automatic award procedure).

The contract notice and/or the tender specifications shall explicitly mention the procedure and award method used for the procurement procedure concerned.

SRB publishes all tender documentation in the Open procedure and all tender documentation in the first stage of procedure in the Restricted procedure on its webpage (www.srb.europa.eu). If the mandatory publication takes place in the Official Journal of the European Union (OJ) publication on the SRB website will occur at the date of the publication in the OJ. SRB may also advertise its procurement procedure in other media, following publication in the OJ.

See Annex II for schemes of the Open and Restricted procedures.

II.5 PHASES OF A PROCUREMENT PROCEDURE

It is important to be aware of the differences between the various phases of a procurement procedure and of the stages associated to it. Four phases can be distinguished in each type of procurement procedure:

1. Preliminary phase
2. Tendering phase
3. Evaluation phase
4. Award phase

II.5.1 The preliminary phase

The procurement procedure may start with the publication of a prior information notice in the OJ, in which SRB announces its intention to initiate a procurement procedure at a

later date and gives basic information about the subject matter of a possible future contract award.

It should be noted that the publication of a prior information notice is not mandatory for SRB. The aim is to give potential tenderers an advance notice that a procurement procedure is going to be initiated and to allow them to prepare for it.

Prior information notices can be global or specific:

- Global prior information notices are published during the first quarter of each year (until 31st of March) and contain a list of all the calls for tenders which SRB plans to issue during the calendar year;
- Specific prior information notices relate to a specific future call for tender.

The preliminary phase does not occur in all types of procurements.

II.5.2 The tendering phase, evaluation phase and award phase

A. Open tender procedure

- (1) The tendering phase starts with the publication of a contract notice in the OJ. This notice contains detailed information about the procurement and triggers the application of a certain number of deadlines, which are binding on both SRB and the tenderers.
- (2) SRB publishes the tender documentation on its webpage (www.srb.europa.eu) and may send additionally an electronic copy to all tenderers who have requested it in writing (via e-mail, fax or letter) immediately after the contract notice was published in the OJ.
- (3) In the stage of the tender submission, tenders have to be submitted before a set deadline. A tender may be submitted in one of the three following ways: delivery by hand, through a recognised postal service (registered post) or a courier service.
- (4) In the opening stage an Opening Committee will open all the tenders on the date and at the time and place indicated in the contract notice and/or in the Invitation to Tender. Each tenderer may send one representative to the opening session.
- (5) The evaluation phase starts with the consideration of the tenders by an Evaluation Committee. During this stage, SRB assesses the tenders received against the published exclusion, selection and award criteria stated in the contract notice and/or tender specifications.
- (6) The award phase starts with the signature of the award decision by the authorising officer. This is followed by the notification of the results to all tenderers, both successful and unsuccessful simultaneously. Once the contract is signed with the successful tenderer, an award notice is published in the OJ. This publication closes the procurement procedure.

B. Restricted tender procedure

- (1) The tendering phase starts with the publication of a contract notice in the OJ. This notice contains detailed information about the procurement and triggers the application of a certain number of deadlines, which are binding on both SRB and the tenderers.

- (2) Candidates will be invited to express their wish to participate by providing documentation in relation to the first stage of the evaluation only, namely the pre-qualification stage or evaluation of the exclusion and selection criteria.
- (3) In the stage of the tender submission applications have to be submitted before a set deadline. An application may be submitted in one of the three following ways: delivery by hand, through a recognised postal service or a courier service.
- (4) Once the first stage has been completed, a shortlist is established of the most suitable candidates to be invited to submit a full tender. A minimum of five and a maximum of 20 candidates may be shortlisted. Normally 5-10 candidates will be invited to tender. Only to these shortlisted candidates the full tendering specifications will be dispatched with an Invitation to tender.
- (5) In the stage of the tender submission tenders have to be submitted before a set deadline. A tender may be submitted in one of the three following ways: delivery by hand, through a recognised postal service or a courier service.
- (6) In the opening stage a session for opening tenders is organised after a sufficient lapse of time following the closing date for submission to allow for the fact that some requests sent by post may arrive after the closing date despite being sent before the expiry of the time limit. The opening session is not public.
- (7) In the evaluation phase tenders are considered and evaluated against the pre-established award criteria.
- (8) The award phase starts with the signature of the award decision by the authorising officer. This is followed by the notification of the results to all tenderers, both successful and unsuccessful simultaneously. Once the contract is signed with the successful tenderer, an award notice is published in the Official Journal of the European Union. This publication closes the procurement procedure.

C. Low value negotiated tender procedures

- (1) The tendering phase starts with the selection of a shortlist of a minimum number of candidates. The selected candidates will be invited to submit an initial tender. Additionally, SRB may also publishes the procurement on the webpage of SRB (www.SRB.europa.eu), by which potentially interested economic operators are invited to send an initial tender.
- (2) In the stage of the tender submission tenders have to be submitted before a set deadline. A tender may be submitted electronically to the dedicated email address, or by hardcopy. If submitted by hardcopy, submission may be done in one of the following three ways: delivery by hand, through a recognised postal service or a courier service.
- (3) The evaluation phase starts with the assessment of the initial tenders according to the exclusion, selection, if applicable and award criteria set out in the tender documentation.

- (4) Subsequently SRB may negotiate the initial tenders to adapt them to the requirements set out in the specifications in order to find the tender offering the best value for money, while ensuring that tenderers are treated equally.
- (5) After negotiations, the selected tenderers may send an ultimate modified tender, which shall be considered and evaluated against the pre-established award criteria.
- (6) The award phase starts with the signature of the award decision by the authorising officer. This is followed by the notification of the results to all tenderers, both successful and unsuccessful simultaneously, and the signing of the contract with the successful tenderer. Before the end of June of the following year the awarded contractor shall be listed in an annual list of contractors, which shall be published on the website of SRB.

D. Special negotiated tender procedures

D.1 Negotiated procedure without publication of a contract notice

- (1) The tendering phase starts with the selection of a minimum of 3 candidates in accordance with the conditions laid down in the tender documentation and the conditions for using the special negotiated procedure without a contract notice. The shortlist of candidates shall be invited to submit a first initial tender.
- (2) In the stage of the tender submission tenders have to be submitted before a set deadline. A tender may be submitted in one of the three ways: delivery by hand, through a recognised postal service or a courier service.
- (3) The evaluation phase starts with the assessment of the initial tenders according to the exclusion and selection criteria, and with the evaluation of the tenders according to the award criteria lowest price or best value for money. After negotiations the selected candidates are requested to submit a modified tender, which will be again evaluated against the pre-established award criteria.
- (4) The award phase starts with the signature of the award decision by the authorising officer. This is followed by the notification of the results to all tenderers, both successful and unsuccessful simultaneously. Only after the publication of an award notice in the Official Journal the contract shall be signed for the contracts above Directive thresholds.

The negotiated procedure without publication of a contract notice is to be used when no (suitable) offer was submitted; with the only possible economic entity because of its exclusive rights or for technical/artistic reasons; in cases of extreme urgency; following a contest; for necessary additional procurement; for repetition of services; for additional delivery; for products for research, study, experiment or development; for building contracts; for legal services or for secret subjects (*Article 134 RAP*)

D.2 Negotiated procedure with publication of a contract notice

- (1) The tendering phase starts with the publication of a contract notice in the OJ. This notice contains detailed information about the procurement and triggers the application of a certain number of deadlines, which are binding on both SRB and the tenderers.

- (2) Candidates will be invited to express their wish to participate in the negotiations by providing documentation in relation to the first stage of the evaluation only, namely the pre-qualification stage or evaluation of the exclusion and selection criteria.
- (3) Once the first stage has been completed, a shortlist is established of the most suitable candidates to be invited to submit a full tender. A minimum of three candidates need to be shortlisted. Only to this shortlist of candidates the full tendering specifications will be dispatched with an invitation to tender.
- (4) In the stage of the tender submission tenders have to be submitted before a set deadline. A tender may be submitted in one of the three following ways: delivery by hand, through a recognised postal service or a courier service.
- (5) The initial tender shall be evaluated according to the award criteria stated in the tender specifications. The selected tenderers are requested to submit a modified tender, which will be again evaluated on the basis of the award criteria laid down in the tender specifications. In the evaluation phase tenders are considered and evaluated against the pre-established award criteria.
- (6) The award phase starts with the signature of the award decision by the authorising officer. This is followed by the notification of the results to all tenderers, both successful and unsuccessful simultaneously. Once the contract is signed with the successful tenderer, an award notice is published in the Official Journal of the European Union.

The negotiated procedure with publication of a contract notice is to be used in cases of special difficulty with prior pricing; impossibility of precise description of financial or intellectual services; works performed for research, testing or development; hotel and restaurant, detective, transport, law, HR, education, health or cultural services; research and development services; broadcasting materials and time. (*Article 135 RAP*)

III CONTACTS BETWEEN SRB AND TENDERERS

III.1 QUESTIONS ABOUT SPECIFIC ISSUES ARISING FROM THE TENDER DOCUMENTATION

During the tendering phase, tenderers may ask questions (including requests for further information) about specific issues arising from the tender specifications.

To this effect tenderers should:

- formulate their questions in writing, within the applicable deadline stipulated in the Invitation to tender (SRB will not reply to questions arriving after the applicable deadline); and
- send their questions by letter, fax or e-mail to the dedicated e-mail address indicated in the invitation to tender. SRB will not reply to questions which are not submitted in writing.

It should be noted that this additional information is solely for the purpose of clarifying the tender documentation.

Answers to questions of general interest and any other important information about the procurement procedure arising during the tendering period shall be published on the website of SRB.

The answers provided by SRB should be regarded as an integral part of the tender documentation.

III.2 FURTHER COMMUNICATION BETWEEN TENDERERS AND SRB

All other contacts between SRB and tenderers outside of the above requirements are in general prohibited.

In exceptional cases and under the following conditions contacts are allowed:

Before the final date of submission:

In this phase SRB may, on its own initiative, inform tenderers of any error, inaccuracy, omission or other clerical error in the contract notice or the tender documentation.

After the opening of the tenders:

Once the tenders have been opened, SRB may contact tenderers in writing to obtain further clarification on specific points of a tender or to correct obvious clerical errors. Tenderers should be prepared to reply to such requests for clarification within a very short deadline as stated in the request for clarification.

Such contacts must not lead to any alteration of the terms of the tender. More particularly:

- Tenderers must not modify a tender or add any new elements to it (other than purely administrative documentation). The reply must therefore make clear reference to the relevant information already present in the file.
- Where the financial quotation is concerned, tenderers must not add any new prices, but only explain the quotation on the basis of elements already present in the file, which should be explicitly mentioned (e.g. in case of a lump sum price, tenderers are required to include, in a separate sheet, a price breakdown for the various services and deliverables).

If tenderers fail to observe these restrictions, their reply may be disregarded. If the reply plainly contradicts the original tender, SRB may reject the tender.

IV CONSIDERING WHETHER OR NOT TO SUBMIT A TENDER

This section contains important information which will help tenderers to take a decision on whether or not to commit resources to the submission of a tender in response to a procurement procedure.

IV.1 HOW TO UNDERSTAND THE EXACT SCOPE OF THE CONTRACT

The subject matter of the contract is mentioned in the prior information notice, if published, and in the contract notice, published in the OJ and described more fully in the tender specifications. In order to understand the exact scope of the contract, the aspects mentioned below should be considered by the tenderer.

IV.1.1 Volume of the contract

To guide the tenderer in preparing a tender, the tender specifications contain certain indications on the foreseeable volume of goods, services and/or works required under the contract.

For framework contracts SRB aims to give its best estimate in good faith. Tenderers should be aware that any information on volume is purely indicative and shall not be binding on SRB. It should not be considered as a warranty as to the probable value of the contract. The total value of the framework contract will ultimately depend on the orders which SRB may place through either order forms or specific contracts, but will never exceed the original estimated total value.

IV.1.2 Lots

When a procurement procedure is divided into lots, this is explicitly mentioned in the contract notice and the tender specifications. In this case, unless stated otherwise in the tender specifications, tenderers may submit tenders for one lot only, or any combination of lots, or for all the lots.

Each individual lot is assessed independently of any other lot and considered only in its entirety. Tenderers may therefore not submit a tender that:

- covers only part of a lot, or
- is declared as dependent, or being conditional, on the award of any other lots within the particular procurement procedure.

SRB will disregard any statement to this effect contained in a tender and may reject such tenders without further evaluation on the grounds that they do not comply with the tender specifications.

IV.1.3 Variants

Variants are departures from any technical or financial requirements of the tender, or from any contractual conditions, described in a procurement procedure.

Unless stated otherwise in the contract notice and the tender specifications, variants are not permitted.

SRB will disregard any variants described in a tender and may reject such tenders without further evaluation on the grounds that they do not comply with the tender specifications.

IV.1.4 Product names and trademarks

Unless stated to the contrary, whenever the tender documentation mentions a specific product name or trademark and a sufficiently precise and a fully intelligible description using generic language is not possible, such mention should be understood as referring to the product belonging to the trademark owner in question, or its equivalent fulfilling the required specifications.

IV.2 IMPLICATIONS OF SUBMITTING A TENDER

IV.2.1 Implications

Submitting a tender in response to a procurement procedure launched by SRB shall be deemed to imply that tenderers:

- accept all the terms and conditions as stipulated in the tender specifications and all other documents related to the procurement; and
- waive their own terms of business such that any resultant contractual relationship shall be governed exclusively by the terms of the tender.

SRB will disregard any qualification, disclaimer or intention to the contrary contained in a tender and may reject such tenders without further evaluation on the grounds that they do not comply with the tender specifications.

IV.2.2 Period of tender validity

Unless the tender specifications stipulate a different time period, tenderers shall be bound by their tender for ninety days from the deadline for submission of tenders.

IV.3 NO OBLIGATION TO AWARD

When awarding a contract, SRB undertakes to compare the tenders in the light of the criteria laid down in the contract notice and the tender specifications.

However, the fact of publishing a prior information notice and/or contract notice does not oblige SRB to award the contract to a tenderer simply because its tender fulfils those criteria. It may decide not to award the contract to any tenderer and to cancel the procedure at any time before awarding the contract.

SRB is not liable to pay any compensation in such circumstances. The decision not to award a contract shall be substantiated and shall be brought to the attention of the tenderers.

IV.4 NATURE OF THE CONTRACTUAL RELATIONSHIP RESULTING FROM THE AWARD OF THE CONTRACT

When preparing a tender, tenderers should take full account of the contract details, the draft contract and any other document included in the tender specifications, as they will define and govern the contractual relationship to be established between SRB and the successful tenderer

The tender documentation shall clearly indicate the type of contract that SRB is seeking to enter into and its duration. SRB shall establish either a direct contract or a framework contract which can be single or multiple. In case SRB chooses to procure under a multiple framework contract, the contract will be either in cascade or with reopening of competition.

Whereas direct contracts stipulate the parties, the subject, and the precise volume and timing of the delivery, framework contracts only stipulate the parties, the duration, the subject and the way of implementation.

It should be stressed that framework contracts involve no direct commitment and, in particular, do not constitute orders as such. Instead, they only lay down the legal, financial, technical and administrative provisions governing the relationship between SRB and the contractor during their period of validity and should orders be placed thereunder.

Actual orders will be placed only after the framework contract is signed, in the form of specific contracts or order forms concluded in pursuance of the framework contract.

The tender specifications will include:

- A draft version of the framework contract, which, on completion of the tendering procedure, will be modified as necessary in line with the successful tender (e.g. contact data, prices);
- In some cases, additional documents will be annexed to the framework contract (e.g. service level agreements, others).

SRB may indicate that it wishes to conclude a multiple framework contract in cascade with a certain number of contractors. In such case, when specific contracts will be awarded, the economic operator whose tender for the award of the framework contract

was considered the best will be contacted first, as he has priority above the other contractors. When the first contractor is unavailable or unable to fulfil the demands of the contracting authority the second contractor on the list will be contacted, and so on. SRB may also conclude multiple framework contracts with a number of contractors where not all the terms are laid down in the framework contract and without a system of priority being established. In such cases SRB may re-open competition and ask the parties to compete on the basis of more precisely formulated terms. SRB will consult the contractors in writing, fixing a time limit which is sufficiently long to allow tenders to be submitted in writing. SRB will then award each specific contract to the contractor which has submitted the best tender on the basis of the award criteria set out in the specification.

IV.5 TAX EXEMPTION

SRB is exempt from all duties and taxes pursuant to the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965 (OJEC L 152 of 13 July 1967) particularly under Articles 3 and 4 of the Protocol.

The Governments of the Member States grant this exemption either through refunds upon presentation of documentary evidence, or by immediate exemption. The European Commission will give the successful tenderer instructions regarding this point.

V COLLABORATING WITH OTHER COMPANIES

Companies may consider two ways of collaborating in a tender procedure: either as joint partners in the tender, or through subcontracting. Unless stated otherwise in the contract notice and/or the tender specifications, both the joining of tenderers and the subcontracting are allowed in response to a procurement procedure. Tenders may even combine both approaches.

In any case, the tender must specify clearly whether each company involved in the tender is acting as a partner in a joint tender or as a subcontractor. The document 'Statement of subcontracting/joint offer' shall be then completed. This also applies where the various companies involved belong to the same group or where one is the parent company of the others.

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

V.1 JOINT OFFER

V.1.2 Liability of joint tenderers

Partners in a joint tender shall be required to assume joint and several liability towards SRB for the performance of the contract as a whole.

Statements, for instance,

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

are thus incompatible with the principle of joint and several liability. SRB will disregard any such statement contained in a joint tender, and may reject such tenders without further evaluation on the grounds that they do not comply with the tender specifications.

V.1.2 Evaluation of joint tenders

Joint tenders will be assessed as follows:

- the exclusion criteria and the selection criteria for economic and financial capacity will be assessed in relation to each company individually;
- the selection criteria for technical and professional capacity will be assessed in relation to the combined capacities of all members of the consortium as a whole;
- the award criteria will be assessed in relation to the tender, irrespective of whether it has been submitted by a single legal or natural person or by a tendering group.

V.1.3 JOINT OFFERS IN THE STAGE FOLLOWING THE AWARD

The contract has to be signed by the member which has been duly authorised by the other members of the group (a power of attorney or sufficient authorisation has to be provided and will be attached to the contract).

V.2 SUBCONTRACTING

V.2.1 General Information

Certain operational tasks provided for in the contract may be entrusted to subcontractors. Subcontracting is the situation where a contract has been or is to be established between SRB 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, service or supply. However, SRB has no direct legal relationship with the subcontractor(s).

Accordingly:

- SRB will treat all contractual matters (e.g. payment) as being exclusively with the main contractor, whether or not the tasks are performed by a subcontractor;
- Under no circumstances the main contractor can avoid liability towards SRB on the grounds that the subcontractor is at fault.

V.2.2 Submission of tender envisaging subcontracting

If subcontracting is envisaged in the tender it must include:

- (1) The document 'Statement of subcontracting/joint offer' duly completed
 - stating clearly data of subcontractor(s), and;
 - specifying the volume / proportion of the tender being subcontracted for each subcontractor;
- (2) a letter of intent by each subcontractor stating its intention to collaborate if the tenderer is awarded the contract.

V.2.3 Evaluation of tenders envisaging subcontracting

If the tenderer relies on the capacities of subcontractors to fulfil selection for technical and professional capacity than tenders involving subcontracting will be assessed as follows:

- The exclusion criteria and the selection criteria for economic and financial capacity will be assessed in relation to each company individually;
- The selection criteria for technical and professional capacity will be assessed in relation to the combined capacities of the candidate/tenderer and the subcontractor, as a whole, to the extent that the subcontractor puts its resources at the disposal of the candidate/tenderer for the performance of the contract;
- The award criteria will be assessed in relation to the tender. Subcontracting as such cannot be an award criterion.

To rely on the capacities of a subcontractor does not mean that the contractor has to use deliveries or services of another company but that this company and its special capacity is central to the capacity of the contractor to fulfil the contract and that it cannot be easily changed or replaced

V.2.4 New subcontractor

If the contractor proposes a new subcontractor which was not included in the initial tender, SRB may, in accordance with the contract, restrict or even exclude subcontracting to the extent that this is necessary for the satisfactory performance of the contract or for other imperative reasons (e.g. security), provided that the law applicable to the contract does not oppose such limitations.

VI PREPARING A TENDER

This section describes how a tender should be prepared.

VI.1 DRAWING UP A TENDER

VI.1.1 Language

A tender may be drawn up in any of the official languages of the European Union. However, SRB appreciates to receive documentation in English, especially regarding technical and financial proposals.

VI.1.2 Confidential information

SRB undertakes to protect commercial interests by treating all the information contained in a tender as confidential.

In particular, SRB will not disclose any information where such disclosure would hinder application of the law, be contrary to public interest, harm tenderers' legitimate business interests or distort fair competition.

SRB has a general obligation to disclose documents in accordance with the Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents. The provisions of this Regulation provide with exhaustive list of exceptions from this general obligation which enables SRB to respect fully the confidentiality of information as described above.

VI.1.3 Protection of personal data

In certain cases, the follow-up of tenderers' responses to the procurement procedure will require the recording and further processing of personal data (e.g. name, address or CV

of natural persons). Such data will be processed in accordance with the Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Except if mentioned otherwise, replies to questions and personal data requested are necessary for the purpose of assessing a tender according to the tendering specifications. These data will only be processed by an Evaluation Committee for the described purpose on a need-to-know basis.

Tenderers may, upon request, obtain the details of any personal data previously submitted by it and rectify any inaccurate or incomplete personal data. Should a tenderer have any queries concerning the processing of a tenderer's personal data, he should address his concern to the appointed contact person for that tender, as indicated in the tender documentation.

VI.1.4 Formal aspects

The following guidelines lay down a minimum standard which must be met in all cases. As far as possible, the tender should be drawn up and submitted in hard copy using word-processing or desktop publishing software, in a font size giving a legible result on paper. If in the tender specifications SRB additionally requested the submission of an electronic copy of the tender (i.e. CD-ROM), this must also be included. However, where there is any doubt or conflict arising within the content and between the mediums, the original hard copy version of the tender signed by the tenderer will prevail over the electronic one.

If the tender, or any part of it, is hand-written, it should be legible, so as to rule out any doubt whatsoever as to the words or figures used.

In case of a procurement procedure with a threshold above 60,000 Euro a hard copy is mandatory and it is not permitted to submit the whole or any part of a tender only by electronic mail. Such submission will lead to an automatic exclusion from the procedure.

In case the threshold is equal to or lower than 60,000 Euro the tender can be submitted electronically. The total size of the electronically submitted tender may however not exceed 12 megabytes.

VI.1.5 Specific requirements for the financial quotation

Financial quotations must be drawn up on any ad-hoc form which might be annexed to the tender specifications.

Prices must be quoted:

- in Euro (unless indicated otherwise in the tender specifications);
- free of all duties and taxes (VAT can be quoted separately), for the reasons stated in IV.5;
- inclusive of all costs and expenses directly and indirectly connected with the goods and/or services to be supplied (unless indicated otherwise in the tender specifications).

The financial quotation should be completely unambiguous. A tender will be excluded if it contains any statements preventing an accurate and complete comparison of the tenders (such as "To be discussed", "Depending on x", etc.) or referring to external circumstances or external documentation (such as an already existing but separate contract).

VI.2 PREPARING A TENDER FOR SUBMISSION

VI.2.1 Number of copies

A tender must be submitted in fourfold (one original and three copies), unless indicated otherwise. The original version must be clearly labelled "Original" and the three copies "Copy 1", "Copy 2" and "Copy 3".

VI.2.2 Cover letter

The tender must include a covering letter signed by the tenderer or by the person(s) empowered to represent the tenderer and entitled to sign the contract if their tender is successful.

VI.2.3 Sealing the tender

Tenders must be submitted in two envelopes, one inside the other. Both envelopes are to be sealed.

The inner envelope must be marked as follows:

Call for tender No. SRB .../.../... (insert reference) NOT TO BE OPENED BY THE INTERNAL MAIL DEPARTMENT To the attention of ...

The outer envelope must be marked as follows:

The outer envelope must indicate the name of the tenderer (submitted by.....) and read exactly as follows: Submitted by:.....

Call for tender No. SRB .../.../... (insert reference) To the attention of ...

If self-adhesive envelopes are used, they must be closed with adhesive tape with the sender's signature written across it.

Boxes may be used instead of envelopes if the size or weight of the tender so requires.

VII SUBMITTING A TENDER

The deadline for submitting tenders will be indicated in the relevant contract notice and/or the covering letter sent with the tender documentation.

A tender may be submitted in three ways: by registered mail; by hand-delivery; by private courier service. Tenderers should be aware that each of these ways has different implications as regards the observance of deadlines.

In case the threshold of the estimated value of the contract is equal to or lower than 60,000 Euro the tender can also be submitted electronically to the email address indicated in the tender documentation.

In whichever form the tender is submitted, the following address should be used:

Single Resolution Board (name of the indicated SRB contact point) Rue de la Science 27 B-1049 Brussels, Belgium
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VII.1 REGISTERED MAIL

If sent by registered mail the tender must be posted in time not later than the final time and date for the submission of tenders. For this purpose the stamp of the post-office will be accepted as evidence.

The postmark will form the proof of compliance with the deadline. Exceptionally, if no postmark has been stamped or if the postmark is not legible, SRB may accept alternative evidence, such as a receipt issued by the postal service, provided that this clearly indicates the date and has been filled in by the post office and not by the tenderer.

VII.2 DELIVERY BY HAND

The tenderer (or an authorised representative) may deliver the tender in person at SRB's premises. The tender must be delivered at SRB's premises during the opening hours and no later than the final time and date for the submission of tenders. A dated and signed receipt issued by a staff member of SRB has to be requested by the person delivering the bid as proof of delivery of the bid.

SRB's opening hours are from Monday to Thursday from 09:00 to 17:00, and Friday from 09:00 to 16:00, on Belgian work days. In addition SRB is closed on Belgian public holidays.

VII.3 THROUGH A PRIVATE COURIER SERVICE

If using a private courier service, the tender must be handed over to the courier service before the final date for the submission of tenders or earlier. Proof of compliance with the deadline will be the date specified on the deposit slip with the courier service.

VIII OPENING OF THE TENDERS

SRB is required to appoint an Opening Committee for all tenders exceeding the value of 60,000 EUR. The Opening Committee will open all the tenders on the date and at the time and place indicated in the contract notice and invitation to tender.

In case of the open procedure, each tenderer may send one representative to the opening session. If tenderers choose to do so, they should notify the name of that person by fax or e-mail to SRB no later than five working days before the opening session. Failing to notify before this deadline may lead to refusal of admission to the opening session.

The public part of the opening session will be strictly limited to the following aspects:

- verification that each tender has been submitted correctly (in particular, that the deadline for submission has been complied with);
- announcement of the tenders received for each lot. The names announced will be those of the companies having sent or deposited tenders, as they appear on the covering letters, envelopes, receipts and/or routing slips. Please note that these names may or may not correspond to the precise legal identity of the actual tenderers and may or may not include other companies involved in the tenders (e.g. as partners in joint tenders);
- where the contract is awarded under the automatic award procedure (lowest bid) the prices quoted in tenders satisfying the requirements will be announced.

The tenderers' representatives will be required to sign an attendance sheet. The Opening Committee will play no further role in the procedure.

IX ASSESSMENT OF TENDERERS AND TENDERS

During the assessment stage, tenderers may not contact SRB on their own initiative. SRB is required to appoint an Evaluation Committee for all tenders exceeding 60,000 EUR in value. The tenders will be assessed by an Evaluation Committee working under conditions of confidentiality. Once the assessment is completed, the Evaluation Committee will draw up a report for the competent authorising officer, who will take the final decision on the award of the contract.

Tenders will be assessed in four steps, in the light of the criteria explicitly announced beforehand in the tender documentation: exclusion, selection and award. Only tenders meeting the requirements of each step of the assessment will be admitted to the next. In addition to the information contained in the tenders, SRB reserves the right to use any other information from public or specialist sources, provided that this use complies with the general principles of transparency, proportionality, equal treatment and non-discrimination.

IX.1 PHASE 1: EXCLUSION

IX.1.1 Grounds for exclusion

Candidates or tenderers will be excluded from participation in procurement procedures if:

- (1) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or Regulations;
- (2) they have been convicted of an offence (if an individual) or judgment has been made against them concerning their professional conduct by a judgment which has the force of *res judicata*;
- (3) they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;
- (4) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;
- (5) they have been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Union's financial interests;
- (6) they are currently subject to an administrative penalty referred to in Article 109(1) FR .

A contract shall not be awarded to candidates or tenderers if, during the procurement procedure for this contract:

- (7) they are subject to a conflict of interests;
- (8) they are guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the procurement procedure or fail to supply this information;
- (9) they find themselves in one of the situations of exclusion listed under 1.1 .

Additionally to the exclusion criteria listed in articles 106 and 107 FR

IX.1.2 Proof of eligibility for exclusion criteria

All tenderers, regardless of the value of the contract, will be asked to provide a duly signed and dated Declaration of Honour (DoH) stating that they are not in any of the situations of exclusion listed above.

For tenders with a value of less than or equal to 130,000 EUR only a signed and dated DoH is required without supporting evidence, unless SRB has doubts as to whether the tenderer to whom the contract is to be awarded is in one of the situations of exclusion. In such a case SRB may require the tenderer to provide the evidence listed below which always applies for tenders with a value higher than 130,000 EUR.

SRB will consult the Central Exclusion Database (Commission Regulation 2008/1302 of 17.12.2008 on the Central Exclusion Database). Registration of the tenderer in the Central Exclusion Database would imply exclusion from the procurement procedure.

For tenders with a value of more than 130 000 EUR supporting evidence of Declaration on Honour is required.

In relation to the situations (1), (2) and (5) above, relevant extract(s) from the judicial record or, failing that, equivalent documentation issued by a judicial or administrative authority in the country where the tenderer is established showing that those requirements are satisfied should be provided. In relation to situation (4), the most recent certificates issued by the competent social security and tax authorities of the country where the tenderer is established shall be considered as satisfactory.

The extract(s) or equivalent documentation must be the most recent reasonably available. Depending on the national legislation of the country in which the tenderer is established, these documents must relate to entities with legal personality and/or natural persons; in the latter case, they must relate to the person(s) empowered to represent the tenderer and sign the contract if the tender is successful.

Where no such document or certificate is issued in a particular country, and in relation to situations (3), (6), (7) and (8) above, a sworn or solemn statement made before a judicial or administrative authority, a notary or a qualified professional body of the country in which the tenderer is established shall be used. The statement provided must be dated less than four months before the final date for submission of tenders. Depending on the national legislation of the country in which the tenderer is established, these documents must relate to entities with legal personality and/or natural persons; in the latter case, they shall relate to the person(s) empowered to represent the tenderer and sign the contract if the tender is successful.

The sworn or solemn statement shall state that:

- The tenderer has not been found liable for any professional misconduct;
- The tenderer has not been declared in serious breach of contract following a procurement procedure or grant award financed by the Union's budget;
- As far as it is aware, the tenderer is not subject to a conflict of interest; and
- The tenderer is supplying all the information required for the procurement procedure in good faith and without misrepresentation either knowingly or negligently.

This sworn or solemn statement should be signed by the person(s) empowered to represent the tenderer and sign the contract if the tender is successful and dated less than four months before the final date for submission of tenders.

IX.2 PHASE 2: SELECTION

Tenderers will be selected if they can prove that they have sufficient economic and financial capacity, on the one hand, and sufficient technical and professional capacity, on the other hand.

For tenders with a value less than 60,000 EUR SRB may dispense with the requirement for documentation in relation to selection criteria, according to its assessment of the risks involved.

IX.2.1 Economic and financial capacity

In order to prove that tenderers have sufficient economic and financial capacity to perform the contract, the tenderer's economic and financial capacity will be evaluated on the basis of the information that the tenderer will provide to SRB.

The scope of this verification is to classify their financial status and to carry out an appropriate risk assessment in order to decide upon solutions which will contractually minimise them (e.g. no pre-financing to a tenderer with a weak financial status).

If the tenderer relies on the capacities of other entities (e.g. a parent company), a written undertaking on the part of those entities confirming that they will place the resources necessary for the performance of the contract at the disposal of the tenderer for the period of the contract.

The exact requirements will be specified in either the contract notice or the tendering specifications.

IX.2.2 Technical and professional capacity

The criteria used to check whether a tenderer has sufficient technical and professional capacity to perform the contract, as well as the evidence required to that effect, will be listed in the contract notice and/or the tendering specifications. These criteria will relate to the tenderer's skill, efficiency, experience, reliability etc. of the tenderer and his staff.

Tenderers may be requested to submit proof of the minimum fulfilment of the criteria as well as related independent assessments of the quality of the performed services.

IX.3 PHASE 3: AWARD

In this phase, tenders which have satisfied the selection criteria will be compared with each other by evaluating them both from a technical and a financial point of view.

The award criteria are pre-defined in the tender documentation, and shall eventually determine to which tenderer the contract shall be awarded. Depending on the awarding system, the contract shall be awarded either to the tenderer with the lowest bid (the bid offering the lowest price) satisfying the conditions specified in the tender specifications, or to the tenderer with the most economically advantageous offer (best value for money)

In order to use the latter methodology, the Evaluation Committee will use the weightings and any methodology specified in the tender documentation.

IX.3.1 Technical evaluation (award criteria)

The technical evaluation of the tenders will be based on the criteria listed in the contract notice and/or the tender specifications.

Within the list of technical award criteria, SRB may also adopt and notify of additional provisions such as those listed below, to ensure that the technical assessment takes full account of its needs. This will entail:

- the assignment of a weighting factor to each criterion;

- the possible stipulation of a minimum threshold for each criterion and/or for the technical award criteria as a whole (tenders not reaching such thresholds will be automatically rejected).

At the end of the technical evaluation, each tender will be assigned an overall technical score.

If the automatic award procedure is used, there are no technical award criteria. The contract will be awarded to the tender which, while being admissible and satisfying the terms of the tendering specifications, quotes the lowest price.

IX.3.2 Financial evaluation (award criteria)

The financial evaluation of the tenders will be based on the prices quoted by the tenderer and the volume assumptions announced in the contract notice and/or tendering specifications.

The result of the financial evaluation will be a price representing:

- either the global price of the tender over the whole duration of the contract;
- or, in the case of a framework contract, the price of a pre-defined scenario which — although it may represent only part of the total cost— is sufficiently significant for the purposes of comparing the tenders with each other.

X OUTCOME OF THE PROCUREMENT PROCEDURE

During the assessment period, SRB will not provide any information on an ongoing procurement procedure. The only contacts allowed with tenderers are those mentioned in chapter III. If a tenderer is not contacted, this should not be regarded as either a positive or a negative sign.

Tenderers will be informed of the outcome of the procurement procedure as outlined below.

X.1 NOTIFICATION OF RESULTS

As soon as the competent authorising officer has signed the award decision, a notification letter will be sent simultaneously to all tenderers. The letters to unsuccessful tenderers will state the grounds on which the decision was taken.

Please note, however, that the dispatch of these letters does not constitute the award of the contract. This will not be completed until the contract has been signed by the successful tenderer and the representative of SRB.

In case of a contract value exceeding 60,000 EUR, SRB undertakes not to sign the contract until a period of at least two calendar weeks has elapsed following the dispatch of the notification letters, so that unsuccessful tenderers have sufficient time to react if considered appropriate.

In case of contracts to be awarded pursuant to a negotiated procedure without prior publication of a contract notice except in those cases referred to in Article 134(1)(c), (h) and (j) RAP, SRB undertakes not to sign the contract until a period of fourteen calendar days from the day following the date on which the contract award notice is published in the Official Journal of the European Union. Any contract signed before the end of this period shall be null and void. If requests or comments made by the unsuccessful tenderers or any other relevant information justify it, SRB reserves the right to suspend signing the contract to allow further examination.

X.2 ADDITIONAL INFORMATION

If tenderers are notified that a tender has not been successful, tenderers may request additional information by letter, fax or mail.

This information is given in a follow-up letter providing further details in writing, namely a summary of the characteristics and relative advantages of the successful tender and/or inadequacies, weakness and any other shortcomings found in the bid of the unsuccessful tenderer by the evaluation committee.

However, it must be stressed that SRB is not free to disclose any information affecting the commercial interests of other tenderers.

SRB shall reply within fifteen calendar days of receiving a written request at most and provide additional information about the reasons for rejection. Only the tenderers who have put forward an admissible tender, i.e. a tender that satisfied the exclusion and selection criteria may be informed about the characteristics and relative advantages of the tender accepted and the name of the successful tenderer.

X.3 AWARD NOTICE

Once the contract is signed, SRB will publish an award notice in the OJ summarising the results of the procurement procedure, where the contract value exceeds 60,000 EUR.

For contracts with a value below 60,000 EUR, SRB will publish before 30 June of each year a list of contracts concluded during the previous year with values between 25,000 EUR and 60,000 EUR on external webpage of SRB (www.srb.europa.eu).

X.4 APPLICABLE LAW

Unless the tender specifications stipulate otherwise, contracts resulting from a procurement procedure issued by SRB are governed by the law of Belgium.

XI REMEDIES

XI GENERAL COURT OF THE EUROPEAN UNION

The court responsible for hearing appeal procedures is the General Court of the European Union:

General Court of the European Union

Rue du Fort Niedergrünwald

L-2925 Luxembourg

Tel.: (352) 4303-1 Fax: (352) 4303 2100

E-mail: Generalcourt.Registry@curia.europa.eu

URL: <http://curia.europa.eu>

The time limit to lodge an appeal is within two months of notification on non-award.

XI THE EUROPEAN OMBUDSMAN

The European Ombudsman investigates complaints about maladministration in the institutions and bodies of the European Union.

The European Ombudsman

1 Avenue du Président Robert Schuman

CS 30403

FR - 67001 Strasbourg Cedex

Tel. +33 (0)3 88 17 23 13

Fax +33 (0)3 88 17 90 62

URL: <http://www.ombudsman.europa.eu/>

Abbreviations and terms used in the Guidelines for tenderers

Abbreviations

DoH	Declaration on Honour
SRB	Single Resolution Board
FR	Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) no 1605/2002
RAP	Commission Delegated Regulation of 29.10.2012 on the rules of application of Regulation (EU) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union
OJ	Official Journal of the European Union

Glossary of Terms

Application

Request to participate (the first step in two-step procedures)

Award Notice

Advertisement published in the OJ to inform interested parties that a contract has been awarded or is to be awarded

Call for tenders

- set of documents presented by the contracting authority to economic operators to enable them to submit offers; or
- a public procurement procedure

Candidate

Any economic operator who submits a request to participate in a two-step procedure (restricted or negotiated procedure)

Contract

- direct contract: contract containing all the details necessary to be implemented
- framework contract: contract establishing only the general outline of the services or goods to be delivered and requiring an additional step to make the actual purchase
- specific contract or order form: contract specifying details of a particular task based on a previously signed framework contract

Contract Notice

Advertisement launching the procurement procedure published in the OJ

Contractor

An economic operator where SRB signed a contract with

Day

Means a calendar day (not a working day) unless specified otherwise

Declaration of Honour

A document signed by candidates and tenderers stating that they are not in any of the situations of exclusion listed in Articles 106 and 107 FR

Economic operator

Any natural or legal person, public entity or group thereof that offers products, services or works on the market

Evaluation Committee

A group of persons drawn up ad hoc to evaluate the submitted tender. The Evaluation Committee assesses all offers, applying the exclusion, selection and award criteria

separately. An Evaluation Committee has to be appointed when the estimated value of the contract exceeds 60,000 Euro.

Invitation to tender

First of the tender documents, giving the necessary details and listing all other attached documents.

Opening Committee

A group of persons drawn up ad hoc to open in public the sealed tenders received for a procurement procedure.

Prior Information Notice

Advertisement in the OJ announcing the intention of launching a procurement procedure in the near future.

Tender

An offer submitted by an economic operator in a procurement procedure

Tender documentation

Set of documents presented by SRB to economic operators to enable them to submit offers. It consists of an Invitation to tender, Tender Specifications and a model contract. The Tender documentation is prepared in English.

Tenderer

An economic operator who has submitted a tender

Tender Specifications

Document or set of documents giving full details of the conditions, organisation and subject of the procurement procedure (including technical specifications)