

Brussels, 20/08/2015

## Tender Specifications attached to the Invitation to tender

### Invitation to tender N° SRB/NEG/1/2015 for the provision of legal advice for bridge financing

#### SUMMARY

Awarding authority	The Single Resolution Board hereinafter referred to as "SRB".
Purpose	The objective of this tender is the signature of a Framework Service Contract for the provision of legal consultancy to the SRB for setting up a facility agreement with the SRM Member States on a financing arrangement for the Single Resolution Fund (SRF) which is owned by the SRB. The facility agreement between the Member States and the SRB shall contain the terms and conditions which will follow to a major extent common market standards for similar types of transactions between commercial banks and would include special provisions which reflect the peculiar nature of the SRB and the requirements of the Member States for concluding the financing arrangement for the SRB. Aside the relevant provisions in the SRM Regulation, the Intergovernmental Agreement (IGA) as of 21 May 2014 on the SRF must be complied with.
Lots	n/a
Volume (indicative)	The maximum budget available for this contract is 60,000 Euro excluding VAT.  It should be stressed that framework contracts involve no direct commitment and, in particular, do not constitute orders per se. Instead, they lay down the legal, financial, technical and administrative provisions governing the relationship between the SRB and the contractor during their period of validity.
Contracts	The SRB will sign a framework service contract with the successful tenderer. A draft framework contract is included.
Submission of offers	Each tenderer can only submit <u>one</u> offer.
Duration of framework contract	1 year.
Main places of delivery	The tasks shall be performed mainly extra muros (at the Contractor's premises). However, it is possibility that certain tasks shall be performed intra muros (at the SRB offices in

	Brussels).
Variants	Not permitted.
Joint offers	Permitted.
Subcontracting	<p>Subcontracting is permitted to subcontractors proposed in the offers submitted in reply to the call for tenders.</p> <p>Additional subcontracting (either at the level of a Specific Contract or at the level of the Framework Contract) during the execution of the contract will only be possible after prior written authorisation from the SRB.</p> <p>Furthermore, additional levels of subcontracting (e.g. subcontracting of subcontracts) will not be allowed during the execution of the contract.</p>
Eligibility for participation	<p>Participation as tenderers in this tendering procedure shall be open on equal terms to all natural and legal persons coming within the scope of the Treaties and to all natural and legal persons in a third country which has a special bilateral agreement with the Union in the field of public procurement under the conditions laid down in that agreement.</p>
Exclusion & Selection criteria	Set in point 13 of the Tender Specifications
Award criteria	Set in point 14 of the Tender Specifications.

## **1. Introduction**

The Single Resolution Board (SRB) is the central decision-making body of the Single Resolution Mechanism (SRM) and the European resolution authority as part of the Banking Union. Its mission is to ensure that credit institutions and other entities within its remit, which face serious financial difficulties, can be resolved orderly and effectively with minimal costs to taxpayers and the real economy. The SRB is responsible for the preparation of resolution plans and, where required, will from 1 January 2016 carry out resolution activities for credit institutions under its remit. It is responsible for managing the Single Resolution Fund, 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 Single Resolution Board is a self-financed independent agency of the European Union, which has its seat in Brussels, Belgium. It works in close cooperation with the national resolution authorities of participating Member States.

The SRM is a key part of the European Banking Union. It complements the Single Supervisory Mechanism (SSM), under which since November 2014, the European Central Bank (ECB) has direct supervisory powers over the significant banks in the Euro area and in other countries which decide to join the Banking Union.

Established by Regulation (EU) No 806/2014 on the Single Resolution Mechanism (SRM Regulation), the Single Resolution Board is operational since 1st January 2015 and has started work on developing resolution plans for credit institutions. It will be fully operational, with a complete set of resolution powers, as of 1 January 2016.

## **2. Objective, scope and description of the contract**

### **2.1 Objective of the tender:**

The objective of this tender is the signature of a Framework Service Contract for the provision of legal consultancy to the SRB for setting up a facility agreement with the SRM Member States on a financing arrangement for the Single Resolution Fund (SRF) which is owned by the SRB. The facility agreement between the Member States and the SRB shall contain the terms and conditions which will follow to a major extent common market standards for similar types of transactions between commercial banks and would include special provisions which reflect the peculiar nature of the SRB and the requirements of the Member States for concluding the financing arrangement for the SRB. Aside the relevant provisions in the SRM Regulation, the Intergovernmental Agreement (IGA) as of 21 May 2014 on the SRF must be complied with.

## 1.2 Scope of the work:

The SRB currently negotiates with the Member States on a sizeable credit line facility to cover any financing shortfall of the SRF at the early phase of the transitional period between 2016 and 2023. The SRB has developed a term sheet which sets out the cornerstones of the facility agreement, including, inter alia, the target size, the drawing mechanism, the applicable interest rate, the repayment mechanism and the applicable law. The facility agreement shall be governed by Luxembourg law. Depending on the final solution with the Member States, the SRB will conclude either one joint facility agreement with the SRM Member States or separate but identical facility agreements with each Member State, which are based on a template facility agreement and are all governed by Luxembourg law.

The SRB is looking for a highly qualified firm that shall provide legal support and advice to the SRB in the performance activities specified below and should be able to work and communicate in excellent English.

## 1.3 Description of tasks:

It is expected that the legal support and advice shall cover the following tasks:

- Transformation of an existing and agreed Term Sheet for a Credit Line Facility between the 19 Member States and the SRB into a joint Facility Agreement or 19 separate identical facility agreements, governed by Luxembourg Law.
- Legal Advice to the SRB on the terms and conditions of the facility agreement under Luxembourg Law and possibly changes to the facility agreement subsequent to remaining comments by Member States after the transformation of the term sheet into a facility agreement.
- Participation in internal and external meetings with representatives from Member States on a case-by-case basis, where necessary.

## 1.4 Professional Profiles

Tenderers shall present the following profiles to perform the related tasks:

- Junior lawyer
- Senior lawyer

## 1.5 Availability

The Contractor shall ensure that the availability of the assigned lawyers or their substitutes during the entire duration of the Contract.

### **3. Contract management responsible body.**

The Single Resolution Board in charge of Corporate Services will be responsible for managing the contract.

### **4. Deliverables and place of performance**

#### 4.1 Deliverables

The Contractor shall provide legal advice within the timeframes specified in the Specific Contract. Below are the estimated timeframes for the deliverables as specified in point 2.3 of the Tender Specifications:

- Facility agreement in the English language: mid-Sept to beginning of October 2015.
- Ongoing legal advice and preparation of notes and memos on selected issues also, when necessary, upon request on an ad-hoc basis: beginning of October to End-November 2015.

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

#### 4.2 Place of performance

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.

### **5. Duration and Timetable**

### 5.1 Duration

The estimated date for signature of the contract is early September 2015 and the duration of the Framework Service Contract is 1 year as of the date of its signature.

### 5.2 Timetable

The below timetable is indicative and in no way binding on the SRB.

Activity	Date	Comments
Launching of tender	20/08/2015	
Site visit	n/a	
Deadline for requesting clarifications	28/08/2015	
Deadline for submission of offers	31/08/2015	17:00 Brussels time
Opening session	n/a	
Evaluation of offers	2 days	Estimated
Signature of Contract	Mid September	Estimated

## 6. Estimated Value of the Contract

The maximum budget available for this contract is 60,000 Euro excluding VAT.

## 7. Terms of payment

Payment will be made in accordance with the provisions of the draft framework service contract under the call to tender SRB/NEG/1/2015 on the SRB website ([www.srb.europa.eu](http://www.srb.europa.eu)).

## 8. Terms of contract

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

The Framework Service Contract will be implemented through Specific Contracts that may be issued over the period of validity of the Framework Service Contract. Specific Contracts will describe in detail the particular tasks and services needed as well as the duration of their performance.

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.

## 9. Subcontracting

If the tenderer intends to either sub contract part of the work or realise the work in co-operation with other partners he shall indicate in his offer which part will be subcontracted, as well as the name and qualifications of the subcontractor or partner. (NB: overall responsibility for the work remains with the tenderer).

The tenderer must provide required evidence for the exclusion and selection criteria on its own behalf and when applicable on behalf of its subcontractors. The evidence for the selection criteria on behalf of subcontractors must be provided where the tenderer relies on the capacities of subcontractors to fulfil selection criteria<sup>1</sup>. The exclusion criteria will be assessed in relation to each economic operator individually. Concerning the selection criteria, the evidence provided will be checked to ensure that the tenderer and its subcontractors as a whole fulfil the criteria.

## 10. Requirements as to the tender

Bids can be submitted in any of the official languages of the EU. The working language of the SRB is English. Bids must include an English version of the documents requested under point 13.5 & 14 of the present tender specifications.

The tenderer shall complete Tenderer's checklist.

If the tenderer intends to either sub contract part of the work or realise the work in co-operation with other partners (Join Offers) he shall indicate in his offer by completion of the form – Information regarding joint offers and subcontracting.

The tender must be presented as follows and must include:

**Signed cover letter** indicating the name and position of the person authorised to sign the contract/Purchase Order and the bank account on which payments are to be made.

**Financial Form** completed, signed and stamped;

**Legal Entity Form** completed, signed and stamped and requested accompanying documentation.

Tenderers are exempt from submitting the Legal Entity Form and Financial Form requested if such a form has already been completed and sent either to SRB or any EU Institution previously. In this case the tenderer should simply indicate on the cover letter the bank account number to be used for any payment in case of award.

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<sup>1</sup> To rely on the capacities of a subcontractor means that the subcontractor will perform the works or services for which these capacities are required.

**Part A:** all the information and documents required by the contracting authority for the appraisal of tenders on the basis of the points **9, 12, 13.2, 13.3** of these specifications (**Exclusion criteria**)

**Part B:** all the information and documents required by the contracting authority for the appraisal of tenders on the basis of the **Economic and Financial capacity** (part of the Selection criteria) set out under point **13.4** of these specifications;

**Part C:** all the information and documents required by the contracting authority for the appraisal of tenders on the basis of the **Technical and professional capacity** (part of the Selection Criteria) set out under point **13.5** of these specifications.

**Part D:** all the information and documents required by the contracting authority for the appraisal of tenders on the basis of the **Award Criteria** set out under point **14** of these specifications;

**Part E:** setting out **prices** in accordance with **point 11** of these specifications.

## 11. Price

- Price must be quoted for the provision of legal advice for bridge financing 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:**
  - **an all-inclusive hourly fixed rate for services provided intra-muros** (on SRB premises in Brussels) for a junior and a senior lawyer (traveling and other expenses must be included in the price);
  - **an hourly fixed rate for services provided extra-muros** (on the premises of the Contractor) for a junior and a senior lawyer
- Prices must be fixed amounts and non-revisable.
- Prices must be quoted in euro.
- Under Article 3 and 4 of the Protocol on the privileges and immunities of the European Union and Article 151(1)(aa) of Directive 2006/12/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.

## 12. Joint Offer

Groupings, irrespective of their Procurement form, may submit bids. Tenderers may, after forming a grouping, submit a joint bid on condition that it complies with the rules of competition. Such groupings (or consortia) must specify the company or person heading the



project and must also submit a copy of the document authorising this company or person to submit a bid.

Each member of the consortium must provide the required evidence for the exclusion and selection criteria. The exclusion criteria will be assessed in relation to each economic operator individually. Concerning the selection criteria, the evidence provided by each member of the consortium will be checked to ensure that the consortium as a whole fulfils the criteria.

If awarded, the contract will be signed by the person authorised by all members of the consortium. Tenders from consortiums of firms or groups of service providers, contractors or suppliers must specify the role, qualifications and experience of each member or group.

### **13. Information concerning the personal situation of the service provider and information and formalities necessary for the evaluation of the minimum economic, financial, technical and professional capacity required**

#### **13.1. Legal position – means of proof required**

When submitting their bid, tenderers are requested to complete and enclose the **Legal Entity Form**.

#### **13.2. Grounds for exclusion – Exclusion criteria**

To be eligible to participate in this contract award procedure, tenderers must not be in any of the following exclusion grounds:

- (a) 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;
- (b) they have been convicted of an offence concerning their professional conduct by a judgement which has the force of res judicata;
- (c) they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;
- (d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the Procurement 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;

- (e) they have been the subject of a judgement which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other Procurement activity detrimental to the Communities' financial interests;
- (f) following another procurement procedure or grant award procedure financed by the Community budget, they have been declared to be in serious breach of contract for failure to comply with their contractual obligations.

### **13.3. Evidence to be provided by the tenderers**

For this purpose the Declaration on Honour shall be completed and signed.

### **13.4. Economic and financial capacity – Selection criteria**

Requirements:

- The tenderer must be in stable financial position and the economic and financial capacity to perform the contract

Evidence:

Proof of economic and financial capacity shall be furnished by the following documents:

- Annual financial statements for the last three years for which accounts have been closed.
- Statement of overall turnover and turnover relating to the relevant services for the last three financial years.
- If, for some exceptional reason which SRB considers justified, a tenderer is unable to provide one or other of the above documents, he may prove his economic and financial capacity by any other document which SRB considers appropriate. In any case, SRB must at least be notified of the exceptional reason and its justification in the tender. SRB reserves the right to request any other document enabling it to verify the tenderer's economic and financial capacity.

### **13.5. Technical and professional capacity – Selection criteria**

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 financing arrangements which are governed by Luxembourg law, preferable with public bodies and in particular on advising EU-related agencies. Experience with the SRM Regulation, in particular with issues related to the SRF, and with the Intergovernmental Agreement are advantageous

- Capacity and expertise relevant to the tasks described. The tenderer shall identify a team of junior and senior lawyers to be involved with the activities covered by the contract and shall describe for each member of the team his/her skills. Team members must have knowledge and solid experience with EU-related agencies and/or negotiations on multinational contracts (e. g. IGA) preferable.
- The proposed lawyers should be bound to a work contract with the tenderer for the duration of the Framework 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 Luxembourg Law and attesting drafting and presentation skills as well as covering work experience, education and training and fluency in English:
  - junior lawyer with at least 3 years of professional experience
  - senior lawyer with at least 5 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.

#### **14. Award criteria**

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

The contract will be awarded to the tenderer who submits the most economically advantageous bid (the one with highest score) based on the following quality criteria and their associated weightings:

1. Quality criterion 1 ( $W_1 = 40\%$ ), Professional merit of the proposed team.
2. Quality criterion 2 ( $W_2 = 30\%$ ), Availability during the entire duration of the Framework Service Contract.

and the price criterion and associated weighting:

3. Price of the bid ( $W_{Price} = 30\%$ ).

The tenderer must indicate:

- an all-inclusive hourly fixed rate for services provided intra-muros (on SRB premises in Brussels) for a junior and a senior lawyer (traveling and other expenses must be included in the price);
- an hourly fixed rate for services provided extra-muros (on the premises of the Contractor) for a junior and a senior lawyer

Price will be calculated with regards to the following scenario:

Total Price offer (for the purpose of calculation of award criterion) = ((50hrs \* junior lawyer extra muros) + (20 hrs \* senior lawyer extra muros) + (8 hrs \* junior lawyer intra muros + 2hrs \* senior lawyer intra muros)).

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 Framework 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

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

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.

**15. Contracts will not be awarded to tenderers who during the procurement procedure:**

- (a) are subject to a conflict of interest
- (b) are guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the contract procedure or fail to supply this information.

**16. False declarations**

Without prejudice to the application of penalties laid down in the contract, tenderers and contractors who have been guilty of making false declarations concerning situations referred to in points 12 and 13 above or have been found to have seriously failed to meet their contractual obligations in an earlier procurement procedure or grant shall be subject to administrative and financial penalties set out in Article 145 of 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.

**17. Intellectual Property Right (IPR)**

Please consult the contract for IPR related clauses.

If the results are not fully created for the purpose of the contract this should be clearly pointed out by the tenderer in the tender. Information should be provided about the scope of pre-existing rights, their source and when and how the rights have been or will be acquired.

In the tender all quotations or information originating from other sources and to which third parties may claim rights have to be clearly marked (source publication including date and place, creator, number, full title etc.) in a way allowing easy identification.

## **18. Negotiations**

Once the bid has been evaluated with respect to the exclusion, selection and award criteria stated in the Tender Specifications, the SRB may negotiate the bid to adapt it to the requirements set out in the specifications. Please note that the negotiations may cover both the technical and the financial aspects of the tender, but may not concern the minimum (compulsory) technical or administrative specifications outlined in the tender documents. The negotiations shall be conducted formally in writing, more informally on the basis of an exchange of postal or electronic correspondence or orally.

Once the negotiation phase is completed, the candidate(s) shall submit a modified offer, taking into account any amendment agreed upon by both parties, within a time limit specified by the SRA. The final evaluation will then take place and the Framework Service Contract will be awarded to the candidate which offers the best quality price ratio, as described under Section 14 above.