

## Volume B

### Terms of Reference

#### 1. BACKGROUND OF THE EUROPEAN INVESTMENT BANK

The European Investment Bank (“**EIB**”, or the “**Bank**”) is the bank of the European Union (**EU**). Created by the Treaty of Rome in 1958, its shareholders are the Member States of the EU, and its Board of Governors is composed of the ministers of these States. The EIB enjoys its own legal personality and financial autonomy within the EU system.

The mission of the EIB is to contribute, by financing sound investment, to the policy objectives of the EU, as laid down in its statute and in decisions of the European Council.

The EIB contributes towards the integration, balanced development and economic and social cohesion of the Members of the EU. To this end, it raises on the markets substantial volumes of funds that aim at financing capital projects according to the objectives of the EU with the most favourable financial terms. Outside the EU the EIB implements the financial components of agreements concluded under European development aid and cooperation policies.

More background information about the EIB may be found on the website [www.eib.org](http://www.eib.org).

Pursuant to the Protocol on the Privileges and Immunities of the European Union, the EIB enjoys within the territory of the Member States the privileges and immunities necessary to accomplish its mission (in particular its premises and buildings are inviolable; they cannot be searched, requisitioned, confiscated or expropriated).

The EIB Group was created in 2000 when the EIB and the European Investment Fund (**EIF**) decided to join forces to mobilise financing to support the attainment of the objectives of the European Union. The EIF is a specialist provider of risk finance to benefit small and medium-sized enterprises across Europe. The EIF carries out its activities using either its own resources or those provided by the EIB, the European Commission, by EU Member States or other third parties. More background information about the EIF can be found on the website [www.eif.org](http://www.eif.org).

##### 1.1 The Building and Logistics Department

The Building and Logistics Department (**BLD**) is part of the Corporate Services Directorate of the EIB. BLD’s role within the Bank is the essential function of providing professional, reliable and cost-effective services to EIB’s workforce with a view to supporting the day-to-day operations of business within the EIB. BLD does so by integrating the key elements of facilities management (**FM**): people, process and place. The provision of many facilities-related services is outsourced and the in-house staff of BLD are mainly responsible for strategic planning, procurement, management, and other supervision activities.

BLD is composed of 4 divisions as follows:

- The *BLD Buildings Management Office Division*, in charge of the overall coordination of FM operations, procurement, contracts and quality management, transversal program management and financial control as well as of the management of the External Offices projects and logistics.
- *FM Security, Mobility & Space Management Division*, in charge of workspace management, security and safety, mobility and travel management.
- *FM Building Projects and Services Division*, in charge of facilities management services (including building maintenance, technical projects, and ‘soft services’ such as catering/concierge services, mail services, cleaning, parking) in Luxembourg. The division also manages leases for rented building in Luxembourg.

- *The Building Task Force (BTF)*, in charge of the construction of an additional building, such as the New Building Project.

## 2. BACKGROUND OF THE EIB KIRCHBERG CAMPUS

The Kirchberg campus of the EIB, comprising the WKI (West Kirchberg) and EKI (East Kirchberg) buildings, is located on the Kirchberg Plateau, in Luxembourg's Quartier Européen Nord.

The EIB is also planning to create a new headquarters building that continues their campus on the north side of the Avenue Konrad Adenauer in the Plateau de Kirchberg. This is to take the form of a new building linked to the existing WKI and EKI buildings (the "**New Building Project**").

### 2.1 The EIB Kirchberg Campus

#### 2.1.1 The site

The land is bordered to the east by the boulevard Konrad Adenauer, along which run the buildings of the EIB (WKI and EKI), and to the north-west by a wooded area. Building sites were chosen in such a way as to preserve vast gardens, in order to benefit from the landscape offered by the site.

#### 2.1.2 The Buildings

##### **WKI**

The WKI is composed of:

- A main building having 9 levels (levels 0 to 8, level 8 corresponds to the technical roof level). placed into service in 1980;
- An extension of 4 levels (levels 0 to 3), placed into service in 1995.
- Underground car parks: 4 levels on the main building side and 3 levels on the extension side.

The main building of the WKI consists of:

- Four (4) wings mainly used as office space.
- One (1) central area distributing the wings and housing the main vertical circulations, toilets, specific rooms and support spaces.

The WKI's "extension" building consists of office space organised around an interior courtyard. The building also houses:

- Technical premises (including the Data Centre).
- The former bar, remodelled into fitness rooms.
- Sports facilities (gymnasiums, squash courts, swimming pool).
- Shops and services (banks, travel agency, newsstand, concierge service).

The WKI's car parks are located outside the land of the main building and the extension.

The "main building" car park contains 583 parking spaces distributed over 4 storeys which connect to each other by one-way ramps for vehicles, and 2 staircases for pedestrians. The car park is accessible by these ramps from the square and by a tunnel leading from the EKI car park, serving it on each floor. The "extension" car park contains 307 parking spaces distributed over 3 levels and served by 2 stairwells. It does not have ramps for vehicles. Access is via the "main building" car park by means of a connection on each floor.

### **EKI**

The EKI is composed of:

- A building of eleven levels (levels 0 to 10), including eight above ground (level 10 corresponds to the technical roof level), placed into service in August 2008.
- An underground car park with three (3) levels.

The building has a capacity of between 950 and 1,050 work stations, and contains:

- Six (6) interior patios (atrium) mainly enclosed by office space.
- Four (4) blocks containing the stairwells, toilets and other technical premises.
- Eight (8) lifts located in 3 atriums.

It also contains:

- A conference centre.
- Subcontractors' infrastructures.
- The restaurant (level 2) and the campus cafeteria (level 3).

This building has a gross total area of approximately 71,500 m<sup>2</sup>, of which 42,000 m<sup>2</sup> are above ground.

It is envisaged that over the term of the framework agreement, there will be works/adaptations in the connection between the New Building and EKI, and other EIB Campus buildings (tunnel, corridor, etc), including studies/or works in relation of the renovation of the WKI building.

## **2.2 New Building Project**

### **2.2.1 The New Building**

The New Building of approximately 63,500 m<sup>2</sup> (gross area) is intended to accommodate 1,500 working stations and supply areas, and shall provide for an efficient allocation of working places (offices), traffic areas and technical storage rooms, as well as the new main entrance for the campus. The proposed construction site occupies approximately 13,500m<sup>2</sup>. Its total surface is estimated, according to the current design studies, of about 45,000 m<sup>2</sup> above ground and 18,500 m<sup>2</sup> underground. The location of the building and its tower respect the planning guidelines prepared by the Luxembourg authorities.

The New Building Project shall respond to future requirements with respect to low energy consumption and low emissions and its design has been certified as BREEAM Excellent. It shall be at the forefront of sustainable development, provide for the best satisfaction of needs – total costs ratio and an efficient ratio of usable area to gross area, a work environment adequate to the EIB's vision of a new approach for future work places and work methods.

### **2.2.2 Project Objectives**

The objectives of the New Building Project are as follows:

- Provide a building to replace the "West Kirchberg" (WKI) building.
- House up to 1,500 workstations and the tasks necessary required for the correct operation of the organisation.
- Provide a "nearly zero-energy building", so as to meet future public building requirements by the Luxembourg Government and the European Union regarding energy consumption and greenhouse gas emissions.
- To achieve the best overall value for money.
- To provide a building that offers a good ratio of usable area to gross floor area.

- To provide a working environment that fulfils the EIB's vision with regard to its work culture on the 2020-2050 horizon.
- To realise a building configuration based on 3 independent entities that will allow the EIB to modify its occupied surface as its needs evolve.
- To obtain a BREEAM "Excellent" environmental certification for buildings (or equivalent).

### **2.2.3 Current Status**

In 2014 an integrated design & project team (**IDPT**) was appointed by the EIB following international architecture competition for the design of a new office building in Luxembourg (Plateau de Kirchberg) to become the third building of the EIB campus. The IDPT prepared the preliminary and detailed designs, and part of the developed design which has enabled EIB to apply for and obtain permits and other authorisations required by the Luxembourg Authorities, including the building permit and the Commodo/Incommodo.

The contract for the IDPT ended in 2016 and the EIB is currently engaged in the award of two separate contracts for the appointment of a Construction Project Manager (**CPM**) and an Execution Design Team (**EDT**) to complete all phases of the New Building Project, including detailed design, procurement and works supervision, and handover of works:

- The CPM will have all project management responsibilities and will take the New Building Project to completion. During the construction, the CPM will carry out the Engineer's role under FIDIC White Book, supervising and directing (planning, cost, methods and technical) the Site construction by the contractor(s). Further information about this competition can be found [here](#).<sup>1</sup>
- The EDT will be responsible for all developed design, execution design, work tender documents and construction follow-up capabilities that will take the Project to completion. This EDT shall have a single representative in order to ensure a correct coordination among all its Project Participants. Further information about this competition can be found [here](#).<sup>2</sup>

The CPM and EDT contracts, which are based on the FIDIC model agreement, were signed in March 2018.

In addition, the Bank has ongoing contracts with project consultants, such as Value Engineering Controller, Technical Control Office, Environmental Assessor, and it is envisaged to procure and sign a contract in due course with the General Contractor (GCO) for the main works (under FIDIC red book contract).

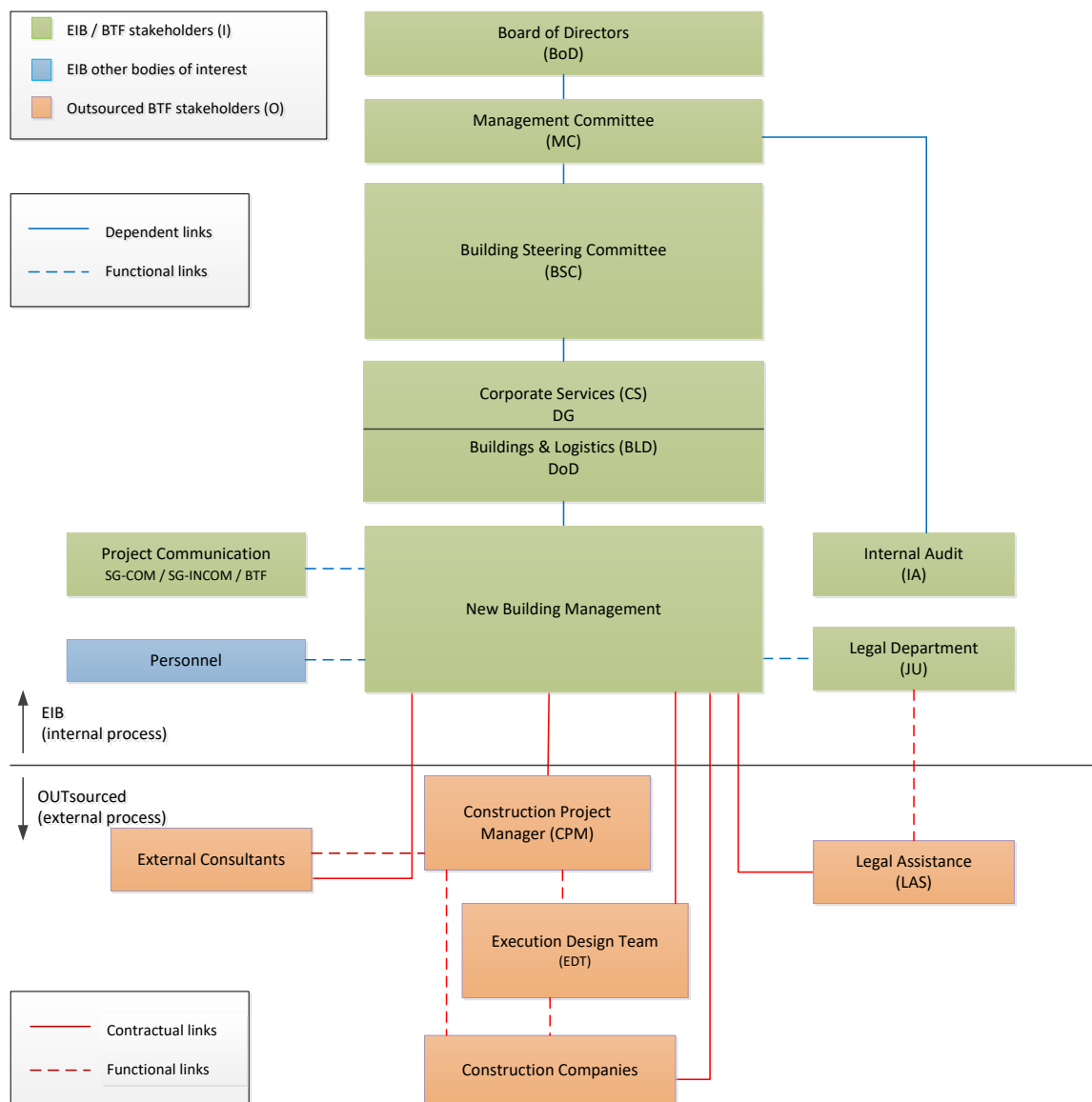
In the meantime, the bulk of the enabling works (excavation, preparations) for the New Building Project has been finalised and the technical acceptance of works has been done on July 3rd, 2017– being the basis for the construction works for the main building.

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<sup>1</sup> <https://etendering.ted.europa.eu/cft/cft-display.html?cftId=2902>

<sup>2</sup> <https://etendering.ted.europa.eu/cft/cft-display.html?cftId=2901>

## 2.2.4 Project Organisation Chart



### 3. SCOPE OF SERVICES REQUIRED UNDER THE FRAMEWORK AGREEMENT

#### 3.1 Objective

Establishment a multi-operator framework agreement (“**FWA**”) with up to two legal firms (each, the “**Legal Advisor**”) for the provision of legal advisory services to the EIB in respect of the design, procurement, building and contract management phases of the building projects at the EIB Campus in Luxembourg and, in particular, the New Building Project.

#### 3.2 Services Required

The range of legal services required by the EIB will cover, *inter alia*, those listed below.

The main jurisdiction for state court proceedings will be Luxembourg, whereas arbitration proceedings shall mainly be settled under the Rules of Arbitration of the International Chamber of Commerce (ICC). Should state court proceedings arise in other jurisdiction(s), or *ad hoc* legal advice and assistance be necessary under another law, the Legal Advisor will be required to secure and appoint such legal advisor with the prior approval of the EIB.

References to ‘contracts’ in the above list should be read as any supply, works or service contract related to the realisation of the New Building Project, or another building project at the EIB Campus, and concluded under Luxembourg law. Contracts may be based on both the International Federation of Consulting Engineers (**FIDIC**) standard forms of contract and on non-FIDIC contractual documents.

Range of services (non-exhaustive list):

- assistance, advice, and monitoring of existing contractual documents (e.g. contracts/agreements, amendments, settlement agreements, etc.);
- assistance, advice, drafting, and monitoring of future contractual documents, (e.g. contracts/agreements, amendments, settlement agreements, etc.);
- advice and assistance for any and all phases of tendering procedures in accordance with the EIB’s *Corporate & Technical Assistance Procurement Guide*<sup>3</sup>, which is largely based on Directive 2014/24/EU on public procurement, including drafting procurement documents, responding to supplier queries, tender evaluation, etc.;
- integration of standards defined by the European Union into the contracts (e.g. Socially Responsible Public Procurement, Green Public Procurement; ethics);
- advice and assistance on property and construction law;
- legal advice on authorisation procedures and permits where necessary;
- legal risk analysis, strategy and monitoring of contracts;
- legal risk management, e.g. guarantee deposits, insurance policies;
- assistance and legal advice for contract negotiations;
- legal advice and assistance in the context of dispute resolution or litigation, e.g. claim management, conciliation, representation in national courts and / or arbitration proceedings;
- advice and legal assistance for the termination of contracts;

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<sup>3</sup> A copy of the EIB Guide can be found at <http://www.eib.org/infocentre/publications/all/guide-for-procurement-of-services-supplies-and-works-by-the-eib-for-its-own-account>

- assessment, comments, advice and assistance in addressing documents submitted by the service providers and works contractors, e.g. letters, schedules, specifications; and
- legal advice for the definition and application of contractual procedures, e.g. payment, insurance policies, guarantees, and bankruptcy and insolvency.

### 3.3 Required Roles

The Legal Advisor shall nominate for the FWA a minimum of one and a maximum of two lawyers under the following profiles, which reflect the required level of responsibility necessary for the complexity of the tasks:

- Partner,
- Counsel (7 years Post-Qualification Experience (**PQE**) or more),
- Senior Associate (5-7 years PQE or more),
- Associate (3-5 years PQE), and
- Junior Associate (1-2 years PQE).

In addition, one back-up person for the partner position must be nominated.

### 3.4 Contact persons

The Legal Advisor will work closely with the Building and Legal Directorates of the EIB and, where necessary, other Directorates and Divisions of the EIB.

The Legal Advisor is required to appoint, from among the Partners proposed in Volume A (Annex A5), a Partner with overall responsibility for managing and administering the framework agreement, including assignment requests, proposals and call-off contracts concluded with the Bank, as they may arise (the “**Primary Contact**”). (S)he will be supported by the back-up partner nominated above (the “**Back-Up Contact**”).

In the case of joint tenders or sub-contracting, the Primary Contact and Back-Up Contact shall belong to the firm acting as the Joint Representative in order to ensure a prompt and reliable service to the Bank in the delivery of Luxembourg legal services.

### 3.5 Working languages

Construction-related contracts under the FWA will be drafted in either English or French and therefore excellent English and French legal drafting skills are required from those proposed to deliver this element of the service.

In addition, the Primary Contact and Back-Up Contact must have excellent English and French language skills in order to adequately communicate with EIB staff.

### 3.6 Quality Performance

Activities carried out under the FWA shall meet the highest professional standards for legal services and include:

- Effective project management: seeking agreement on objectives, resources, timing and deliverables, adjusting them when needed.
- Compliance with the schedule of execution of deliverables.
- Reliable and efficient document management.
- Transparent reporting: any technical deviation (such as change of resource, scope, schedule, planning) or administrative deviation (such as change of legal representative, address, bank details, contact person, composition of consortium and/or of subcontracting) must be reported immediately to the EIB.



### 3.7 File management

The Legal Advisor shall ensure soft and hard copy management of files attributed and ensure periodic (no less than once a month) transfer of such data to EIB.

For confidentiality purposes, access to EIB's internal databases and software (such as intranet, internal functional mailboxes, etc) is not granted to Legal Advisor's staff during the execution of the tasks. However, the EIB keeps the discretion of updating this requirement and request from the Legal Advisor (s) staff to use any tool that the EIB is using for management of files.

### 3.8 Reporting Requirements

The EIB requires the Legal Advisor to provide comprehensive and regular reporting on all services being delivered under the FWA. At a minimum, the Legal Advisor shall provide the following:

- Brief Status Reporting, to be conducted monthly via phone from the Primary Contact and followed by written minutes,
- Detailed Status Reporting, to be conducted every 3-months via a meeting at the EIB HQ in Luxembourg and to be attended at a minimum by the Primary Contact, to be followed by written minutes, and
- Invoices shall at all times be accompanied by detailed timesheets showing time spent by each lawyer per assignment and activity.

### 3.9 Responsiveness to Bank requirements

At a minimum, the EIB requires from the Legal Advisor:

- Timely responses to EIB queries within the specific parameters of each request, and
- Attendance to meetings at EIB Luxembourg within 48 working hours' notice.

### 3.10 Place of performance

While in principle the Legal Advisor will work from its usual professional premises, the EIB may require their participation from time to time at meetings and negotiations, mainly in Luxembourg and possibly in other jurisdictions with the prior approval of the Bank.

With prior notice, the EIB may require the Legal Advisor to place lawyers on secondment at the Legal Department of the EIB for any period of time (generally no longer than 12 months). Maximum hourly rates applicable to secondees will be as quoted under Annex A6.

### 3.11 Framework Duration and Maximum Value

Continuity of legal advice is required for all phases of the New Building Project until the issuance of the Taking-Over Certificate (currently estimated for March 2023). The duration of the FWA will thus be of 5 years, with an option to extend at the sole discretion of the EIB for 2 additional periods of 1 year each in order to cater for any potential delays and/or contractor claims in the New Building Project.

The maximum cumulative value of services procured under the FWA will be far in excess of EUR 750,000 (excluding VAT but including expenses) over the potential 7-year lifetime of the FWA. It is emphasised however there is no guaranteed expenditure under the FWA.