

Volume A

Instructions to Tenderers

DISCLAIMER

The information set out in this Call for Tenders (**CfT**) is made available for the sole purpose of preparing Tenders for the establishment of a framework agreement. Applicants must make their own investigations to form their own view as to the accuracy and completeness of the statements contained herein and to satisfy themselves as to the commercial value of entering into the framework agreement.

Applicants are recommended to read the documents thoroughly. While all reasonable steps have been taken to ensure that the information set out in the CfT is accurate and up to date, no representation or warranty, express or implied, is or will be made or given in relation to the accuracy or the completeness of any information contained in the ITT or otherwise provided by or on behalf of the EIB (in writing or otherwise) to any interested party or its advisers. No responsibility or liability for any loss or damage arising as a result of reliance on these documents, or for the information contained in these documents or for any omission is or will be accepted by the EIB or by any of its officers, employees, agents or professional advisers. No officer, employee, agent, or professional adviser of the EIB has any authority to give or make any representation or warranty, express or implied, in relation to such information. The EIB's officers, employees, agents and professional advisers expressly disclaim any and all liability arising out of such documentation or information and any errors or omissions in or from the documents and information.

This CfT does not constitute a contract with EIB. By participating in the process, each economic operator that has submitted a tender (a "**Tenderer**") acknowledges that there are no contractual or quasi-contractual relationship between the EIB and that Tenderer, save insofar as such Tenderer enters into a framework agreement with EIB.

The EIB reserves the right to cancel this award procedure at any time. Applicants should only participate on the understanding that they would not be entitled to any form of compensation if the EIB decides to cancel before the framework agreement is signed.

1 INTRODUCTION

The European Investment Bank ("**EIB**" or the "**Bank**") is conducting an open procurement procedure in order to establish a multi-operator framework agreement ("**FWA**") 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.

A description of the EIB, the New Building Project and the range of services required under the FWA can be found in Volume B 'Terms of Reference' of this CfT.

This CfT comprises the following procurement documents, which are available in unrestricted and full direct access, free of charge, at the Official Journal of the European Union's eTendering platform <https://etendering.ted.europa.eu/cft/cft-display.html?cftId=3479>:

- Contract Notice,
- Volume A - Instructions to Tenderers, with its appendices,
- Volume B - Terms of Reference, with its appendices, and
- Volume C - Model Framework Agreement, with its appendices.

Any clarifications published by the EIB at the above-mentioned eTendering platform before the closing date for receipt of tenders shall also be deemed an integral part of the procurement documents.

If an applicant considers that any Volume or an annex thereof are missing, they should contact the EIB immediately in accordance with the procedure set out in section 4 herein.

2 FRAMEWORK AGREEMENT - CASCADE

The purpose of this CfT is to establish a FWA with two (2) service providers, subject to the receipt of a sufficient number of valid tenders. Service providers will be admitted to the FWA in the ranking order arising from this CfT.

As and when the Bank decides to procure services under the FWA, it may award a call-off contract (“**Assignment**”) to the first-ranked framework member. In the event that the first-ranked framework member does not or cannot accept the Assignment, or if it is in a situation of conflicting interests (as determined by the Bank) that may negatively affect the performance of the Assignment, the Bank may issue the Assignment to the next-ranked framework member seeking their acceptance. The award process may be terminated at the discretion be repeated until a framework member has accepted the Assignment or the Bank terminates the award procedure.

Where the Bank requires a second opinion on advice already provided by the first-ranked framework member, the Bank may award a contract directly to the second-ranked framework member.

There is no obligation upon the Bank to award any Assignments nor to consult the framework members in relation to such requirements. Furthermore, the Bank at its sole discretion reserves the right to engage in a separate procurement procedure to source any services that would otherwise fall within the scope of the FWA.

Further information regarding the operation of the FWA is contained in Volume C - Model Framework Agreement.

3 TENDERING PROCEDURE

This procurement procedure is conducted in accordance with the provisions of the EIB’s *Corporate & Technical Assistance Procurement Guide* (the “**EIB Guide**”), which is largely based on Directive 2014/24/EU on public procurement.

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>.

3.1 Procedure

The services covered by the proposed FWA are legal services within the meaning of Annex XIV of Directive 2014/24/EU. As the total estimated value of services is far in excess of EUR 750,000, this award procedure has been published at the Official Journal of the European Union.

The EIB is following a bespoke open procedure in accordance with point 7.1 of the EIB Guide whereby any interested economic operator may submit a tender in response to this CfT.

In the first instance, the administrative requirements set out in section 6.1.1 will be reviewed, following which tenders received will be assessed against exclusion and selection criteria and rules set out in sections 6.1.2 – 6.1.3 herein. These criteria will be assessed on a pass/fail basis, and those tenders receiving one or more “fail” scores will be rejected.

Only tenders who have passed the administrative requirements, and the exclusion and selection criteria will be examined under the award criteria and rules set out in section 6.1.4 herein.

It is envisaged that the top 2 scoring Tenderers arising from this assessment will be appointed to the FWA, subject to the successful verification of their absence of grounds for exclusion and their fulfilment of the selection criteria.

3.2 Tenderer Profile

Applicants may consider submitting a tender as a single entity or may decide to collaborate with other service providers to present a tender: either as a group or with subcontractors, or a combination of both.

While it is not required that applicants have a specific legal form in order to submit a tender, their group composition and proposed legal form (if successful) should be clearly set out in the tender (see Annex A1 herein).

The Bank will require that the Tenderer replaces a member/subcontractor which does not meet a relevant selection criterion, or in respect of which there are grounds for exclusion. Any proposed replacement will be assessed under the same conditions.

Subject to the provisions of Volume C, the Bank shall make payments to the contractual counterpart only, and against invoices submitted by the contractual counterpart only.

Groups

A group is where a tender is submitted by a group of economic operators (natural or legal persons). In order to ensure a satisfactory performance of the FWA, Tenderers must indicate in their tenders

- i. the group member who will act as a single point of contact for the EIB and who will have all the powers needed to execute and perform the FWA (the “**Joint Representative**”), and
- ii. the proposed legal form for the eventual execution of the FWA.

The above information will be reflected in Annex A1.

It is expressly prohibited for any legal or natural person to simultaneously apply within different groups, or within one group and as subcontractor of other group(s). However, subcontractors may participate in different groups as subcontractors unless there is a risk of influencing competition and/or confidentiality between the Tenderers. Further, undertakings linked by a relationship of control or of association may participate in different Tenders unless there is a risk that their Tenders are not drawn up completely independently and therefore a risk of influencing the competition between the Tenderers. EIB reserves the right to require appropriate evidence that such risks do not exist.

Subcontracting

Where the Tenderer intends to subcontract some of the services to another legal entity, the tender must set out in Annex A1 the share of the FWA which the Tenderer intends to subcontract and the identity of such subcontractors.

3.3 Procedure Timelines

Key milestones in this open procedure are set out below:

Deadline for receipt of queries	10 May 2018 23:59 CET TIME
Deadline for receipt of tenders	28 May 2018 23:59 CET TIME

4 REQUEST FOR CLARIFICATIONS

Any requests for additional information should be addressed in writing by no later than **10 May 2018 at 23:59 CET** exclusively via the eTendering platform at the link indicated in the Contract Notice, section I, “Electronic access to information”. Requests not submitted via the eTendering platform will not be considered.

The eTendering platform contains a questions/answers section permitting applicants to send questions within the specified deadline and consult the EIB’s replies. The EIB will publish its replies on this platform at least 6 calendar days before the deadline for submission of tenders.

The successful Tenderer cannot subsequently invoke any error, inaccuracy or omission in its tender to call the FWA into question or to attempt to have it amended.

5 CONTENT AND SUBMISSION OF TENDERS

5.1 Language

Tenders must be submitted in writing in English only (offers in other languages will not be accepted). Any third-party certificates/documents (if required) whose original language is not English should be submitted in its original language together with an English translation.

5.2 Contents

Tenders shall be divided in three separate sealed envelopes according to their content: ‘Envelope I — Administrative information’, ‘Envelope II — Technical offer’ and ‘Envelope III — Financial offer’.

Tenders must include and submit all required *I-n* documents for Envelope I, *II-n* documents for Envelope II and *III-n* documents for Envelope III, as listed below. Tenderers shall follow the index list (by same order and numbering) when compiling their tender.

Documentation submitted must be recent, valid and not more than 12 months old (unless otherwise permitted). Where documents would become obsolete during the tender process, the EIB reserves the right to request such document again.

The EIB reserves the right to obtain further information by any necessary means in order to verify that the Tenderer is not in a situation where it is excluded from participating, or to check the references provided.

Below is the index list of submission documents for all three envelopes, which combined will comprise the tender:

ENVELOPE I — Administrative information		
Criteria	Name of the document	Annex Number
Administrative Requirements		
I-1.1	Tenderer's Letter of Application	Annex A1
I-1.2	Subcontractor's Letter of undertaking (<i>where applicable</i>)	Annex A2
I-1.3	Deed of undertaking	Annex A3
Exclusion Criteria		
I-2	Declaration on honour (sections I-VII)	Annex A4

Selection Criteria		
I-3	Declaration on honour (sections VIII-IX)	Annex A4
ENVELOPE II — Technical offer		
Criteria	Name of the document	Annex number
Award Criteria		
II-1	Technical Merit of Proposed Team	Annex A5
II-2	Methodology for service delivery	N/A
II-3	Interview	N/A
ENVELOPE III — Financial offer		
Criteria	Name of the document	Annex number
Award criteria		
III-1	Total Notional Price	Annex A6

The information contained in each envelope must be presented as one (1) original tender marked “Certified Original Offer”, one (1) hard-copy marked “Copy”, and one (1) electronic version. Electronic copies of the offer may be provided in the form of either CD/DVDs or USB devices but **MUST NOT** be password protected.

All paper (original or copy) and electronic versions must be identical. In case of conflict, the version marked “Certified Original Offer” will take precedence.

Each page of the Certified Original Offer must be initialled by the Tenderer, and all signatures (where required) must be made in ink.

5.3 Submission of Tenders

Tenders must be submitted using the double envelope¹ system – i.e. one outer envelope and three inner envelopes - in order to guarantee the confidentiality and integrity of data.

Each of the three inner envelopes must be sealed and bear a label identifying the envelope number, the name of the Tenderer and the CfT reference.

The three sealed inner envelopes shall be inserted in one sealed outer envelope marked

<p align="center">DO NOT OPEN</p> <p align="center">Ref: LZ-1479</p> <p align="center">Subject: Legal Services for the New Building Project</p> <p align="center">Deadline for receipt of tenders: 28 May 2018 at 23:59hrs CET</p>
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and received either by registered post or hand-delivery **only** to:

EUROPEAN INVESTMENT BANK
For the attention of CS PROCUREMENT

¹ Appropriate packages may be used (e.g. boxes) if necessary

Ref.: LZ-1479
Procurement and Purchasing Division
98-100 boulevard Konrad Adenauer
L-2950 LUXEMBOURG

by no later than **28 May 2018 at 23:59hrs CET**, as evidenced by the postmark (registered post) or by a receipt dated and signed by the officer at the EIB Reception Desk (open 24 hours/day) who receives the tender (hand-delivery).

Tenders will not be accepted if (i) do not conform to the provisions of this CfT, or (ii) are received late (as evidenced by the postmark or receipt signed and dated by the officer at the reception desk).

If foreseen under the Assessment Criteria, selected Tenderers may be invited to make an oral presentation. Tenderers will not be permitted to modify the terms and conditions of their Tender during their presentation or at any other time after the tender has been submitted to the Bank.

5.4 Privacy Statement

The personal data provided by Tenderers will be processed in accordance with Regulation (EC) 45/2001 of the European Parliament and of the Council of 18 December 2000 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. The information requested in the CfT is necessary in order to assess the tender and will be used solely for that purpose under the authority of the EIB purchasing division (CS/IMP/PROCUR), in accordance with the Corporate Procurement Guide, approved by the Management Committee of the EIB. Please note that for your tender to be considered, it may be mandatory to answer some or all of the questions in the declaration to be made by the Tenderer. The mandatory/optional nature of these questions is outlined in the CfT. In order to assess the tender, the personal data provided by you will be accessed by members of the Selection Panel and the Directorate which requested the CfT. Upon request, access to this data may be granted to the EIB's Office of the Chief Compliance Officer, the legal service or the Inspectorate General. The data of the successful candidate shall be retained for the duration of the FWA, plus two years in the central archives, unless these are needed in the context of litigation or claims. The data of unsuccessful Tenderers shall be retained for four years, unless these are needed in the context of litigation or claims. You have the right to access and rectify or update your data. You can exercise these rights by contacting the Head of the CS/IMP/PROCUR division (CS-procurement@eib.org). You also have the right to have recourse at any time to the European Data Protection Supervisor.

5.5 Acceptance of this CfT

By submitting a tender, the Tenderer shall be deemed to have accepted the terms of this CfT (Contract Notice, Volumes A, B and C with their appendices, and any published clarifications).

5.6 Outcome Notification

Tenderers will be informed in writing of the outcome of their tenders. Any dispute concerning a procurement procedure conducted by the EIB would fall under the jurisdiction of the European Court of Justice.

6 ASSESSMENT CRITERIA

In the first instance, the administrative requirements set out in section 6.1.1 will be reviewed, following which tenders received will be assessed against exclusion and selection criteria and

rules set out in sections 6.1.2 – 6.1.3 herein. These criteria will be assessed on a pass/fail basis, and those tenders receiving one or more “fail” scores will be rejected.

Tenders who have passed the administrative requirements, and the exclusion and selection criteria will be examined under the award criteria and rules set out in section 6.4 herein.

6.1 Administrative Requirements

The applicable administrative requirements will be:

Criterion Ref	Criterion Name	Pass/Fail Rule
I-1.1	Tenderer's Letter of Application	The Tenderer must complete, initial and sign Annex A1.
I-1.2	Subcontractor's Letter of Undertaking	Each subcontractor proposed (if any) must complete, initial and sign an Annex A2.
I-1.3	Deed of Undertaking	The Tenderer must complete, initial and sign Annex A3.

The evidence required will be the submission of the above-mentioned Annexes with the tender.

6.2 Exclusion criteria

The *Declaration on honour* (Annex A4) contains a list of exclusionary criteria in sections I-VII inclusive.

As part of the tender submission, the Tenderer (including **each** group member and **each** subcontractor) must complete, initial and sign Annex A4 stating that they are not in one of the situations of exclusion listed therein.

The exclusion criteria will be assessed in relation to the Tenderer (including each group member and each subcontractor).

While submission of Annex A4 with the tender will serve as preliminary evidence, the Bank reserves the right to verify, before the signature of each FWA and within a deadline specified by the Bank, whether the successful Tenderers (including group members, and subcontractors) are in one of the situations of exclusion by requiring the supporting documents listed in Annex A4.

6.3 Selection Criteria

As part of the tender submission, the Tenderer (including **each** group member, and **each** subcontractor being relied upon to fulfil the selection criteria) must complete, initial and sign the *Declaration on honour* in Annex A4 (sections VIII-IX inclusive) declaring that they fulfil the following selection criteria, rules and evidence required as applicable to them:

While submission of Annex A4 with the tender will serve as *preliminary evidence*, each successful Tenderer (including **each** group member and **each** subcontractor being relied upon to fulfil the selection criteria) will be required to provide the evidence mentioned below before signature of the FWA and within a deadline given by Bank.

I-3.1 Eligibility to deliver legal services in Luxembourg

Pass/Fail Rule: the Joint Representative of the Tenderer must be authorised to deliver legal service under Luxembourg law. All other group members and/or subcontractors are not required to meet this rule.

Evidence: membership of the Luxembourg Bar of either the firm, or of the Primary Contact and Back-up Contact, as applicable.

I-3.2 Professional Risk Indemnity Insurance

Pass/Fail Rule: Tenderers must have in place professional risk indemnity insurance of at least EUR 5,000,000 covering the provision of legal services in Luxembourg.

Where a Tenderer is relying on the capacities of other entities (group members and/or subcontractors) to fulfil this criterion, the Bank will require the Tenderer and those entities to be jointly and severally liable for the execution of the FWA and any contract awarded thereunder. In such cases, the pass/fail rule may be satisfied under a consolidated assessment.

Evidence: relevant professional risk indemnity insurance certificate(s).

I-3.3 General Turnover

Pass/Fail Rule: Tenderer's turnover must exceed EUR 800,000 during any of the previous 3 financial years.

Where a Tenderer is relying on the capacities of other entities (group members and/or subcontractors) to fulfil this criterion, the Bank will require the Tenderer and those entities to be jointly liable for the execution of the FWA and any contract awarded thereunder. In such cases, the pass/fail rule may be satisfied under a consolidated assessment.

Evidence: a statement of overall turnover for a maximum of the last three financial years available, depending on the date on which the Tenderer was set up or started trading, as far as the information on this turnover is available.

The original statement of overall turnover must be approved by an independent source in accordance with the applicable legal provisions of the country of the Tenderer (or the group member, or subcontractor as the case may be).

If the turnover is not expressed in EUR in the original statement, the Bank will apply the foreign exchange reference rates published by the European Central Bank on www.ecb.int/stats/exchange/eurofxref/html/index.en.html on the date that the verification evidence is submitted to the Bank.

I-3.4 Previous Experience

Pass/Fail Rule: Tenderers must demonstrate prior experience within the last seven years of delivering services of a similar nature, range, scale and complexity to the required services under the FWA.

Where a Tenderer is relying on the capacity of other entities (group members and/or subcontractors) to meet this rule, such entities must (i) be proposed to perform those services for which these capacities are required and (ii) submit a letter of commitment in the tender to that effect. In such cases, the pass/fail rule may be satisfied under a consolidated assessment.

Evidence: a list of the main services provided over the past seven years, with the sums, dates and recipients, whether public or private, involved.

6.4 Award Criteria

The FWA will be established with the 2 most economically advantageous tenders as determined by the following award criteria, minimum scores and weightings:

	AWARD CRITERIA	Max Score Available	Min Score Required ⁽²⁾
II-1	Technical Merit of Proposed Team	400	200
II-2	Methodology for Service Delivery	300	150
II-3	Interview	100	n/a
III-1	Total Notional Price	200	n/a
	TOTAL	1,000	n/a

Tenderers must submit with their tenders detailed information for assessment against each of the award criteria in order to enable the Bank to assess all tenders fully and score them appropriately. In the case of groups or sub-contracting, assessment will be made on the basis of the tender as a whole.

The EIB reserves the right to reject any tender that fails to comply with the technical specifications contained in Volume B.

II-1 Technical Merit of Proposed Team

Tenderers must indicate in Annex A5 the proposed team who will deliver the services under the FWA together with the provision of comprehensive CVs demonstrating the expertise and experience of the proposed team to deliver the required services including Luxembourg construction law, FIDIC contract reviews and management, public procurement, and dispute resolution.

Tenderers must nominate a minimum of one and a maximum of two lawyers per required position, as well as a back-up for the partner position.

This information will enable the Bank to assess the quality of the resources allocated to deliver services.

II-2 Methodology for Service Delivery

Tenderers must describe their proposed approach and methodology to deliver the range of services required under the FWA, demonstrating quality and adequacy of the proposed organisational and applied processes to fulfil tasks including:

- reporting mechanisms internally within the Tenderer's team,
- reporting mechanisms externally with the Bank,

² Tenders which do not meet one or more of the indicated minimum scores will be deemed invalid and will therefore be eliminated from the competition

- approach to the allocation of tasks, responsibilities and coordination of team members, responsibilities and tasks including continuity of service in case of short/long absences (replacement of key staff),
- approach to conflict management, and
- approach to ensure effective file management, review and administrative support.

II-3 Interview

Tenderers who have passed the Exclusion and Selection criteria, including the minimum score required in award criteria II-1 and II-2, will be invited to an interview at EIB's premises in Luxembourg estimated to take place on week beginning **02 July 2018**. Invitations will issue one week prior and it will be mandatory that the following profiles attend the interview in person: partner and counsel (up to a maximum of 5 persons in total) as nominated under Annex A5.

The interview will last approximately one hour and the Tenderer will be required to present (max. 30 mins) their aggregate and cohesive approach to delivering the following services to the EIB: Luxembourg construction law, FIDIC contract reviews and management, public procurement, and dispute resolution. This will be followed by a 30 mins Questions & Answers session.

Tenderers will be assessed on the quality and approach to the presentation and service delivery, strategic thinking, their awareness of the specificities, challenges and risks of public procurement procedures and of contract management for high volume and high-value construction contracts, and the merit of the answers provided.

III-1 Total Notional Price

Tenderers are required to complete Annex A6 setting out the maximum hourly rates for the delivery of services under the FWA.

The rates submitted in Annex A6 shall be

- fixed and non-revisable during the potential 7-year term of the FWA,
- quoted in EURO,
- free of taxes and duties (the EIB enjoys exemption from VAT under Article 3 of Protocol No 7 on the Privileges and Immunities of the European Communities),
- inclusive of any obligations arising from the technical specification (Volume B), the terms and conditions of the FWA (Volume C), as well as any clarifications published before the deadline date for submission of tenders, and
- exclusive of VAT but inclusive of all billing elements and general expenses connected with the services to be rendered, including attendance at meetings at the EIB Headquarters in Luxembourg.³

In order to arrive at a single comparative figure for evaluation purposes (Total Notional Price), the Bank will apply notional volumes as set out in Annex A6 to the maximum hourly rates quoted. These volumes will be used for tender evaluation purposes only and shall not be construed as a confirmation of services to be procured by the Bank under the FWA.

³ Non-general expenses for travel and/or accommodation outside of Luxembourg at the prior request of the Bank will be reimbursed separately but only after prior written approval and upon submission of original supporting documents, including receipts and used tickets.

Only those tenders that have met the minimum scores required as set out in the award criteria table above will be eligible to have their Total Notional Price assessed. The tender with the lowest valid Total Notional Price will be awarded the maximum score achievable (200) and all other Total Notional Prices submitted by the other valid tenders will be scored using the following formula:

$$S1 = (P_{min} / P) \times 200$$

where: S1 = score obtained
 P = Tenderer's Total Notional Price
 Pmin = the lowest valid Total Notional Price

7 ANNEXES

The annexes are provided solely for the purpose of allowing Tenderers to insert the required information. Under no circumstances should Tenderers modify any other text apart from the information that Tenderers are required to insert.

Annex A1	Tenderer's Letter of application
Annex A2	Subcontractor's Letter of undertaking
Annex A3	Deed of undertaking
Annex A4	Declaration on honour
Annex A5	Proposed Team
Annex A6	Framework Rates (inc. total Notional Price)