



EUROPEAN  
COURT  
OF AUDITORS

## **Open call for tenders No AO 779**

**“Provision of external expertise in the field of banking supervision and resolution”**

**European Court of Auditors**

### **ANNEX 2**

### **TENDER SPECIFICATIONS**

**September 2021**

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<b>PART A. ADMINISTRATIVE PROVISIONS</b>
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**1. PRELIMINARY INFORMATION CONCERNING THE CALL FOR TENDERS**

This call for tenders is issued by the European Court of Auditors (hereinafter referred to as "the Court"), who will sign the contracts and monitor their implementation.

**1.1 Subject of the call for tenders**

The purpose of this call for tenders is to conclude competitive multiple framework contracts with reopening of competition (hereinafter referred to as "the FWC") with maximum five (5) contractors for the following services:

- To assist and provide expert advice to the Court in the context of its mandate consisting in conducting an annual performance audit on the use of the Single Resolution Fund (hereinafter referred to as "Fund") in the context of bank resolutions managed by the Single Resolution Board (hereinafter referred to as "the Board" or "the SRB"). The mandate includes verifying whether (i) the Fund was used with due regard to economy, efficiency and effectiveness, in particular as regards the requirement to minimise its use, and whether (ii) the European Commission's (hereinafter referred to as "the Commission") assessment of Fund aid was efficient and rigorous<sup>1</sup>. This might entail, *inter alia*, analysing and assessing resolution plans, impediments to resolvability and the application of resolution measures, analysing and validating the valuation of bank assets and liabilities, and analysing and evaluating a bank's legal structure, business model and viability.
- To assist the Court in special performance audits of the Single Resolution Mechanism (hereinafter referred to as "the SRM")<sup>2</sup>, which can focus on specific questions of efficiency and effectiveness.
- To assist the Court in special performance audits of the European Central Bank (hereinafter referred to as "the ECB") with regard to its supervisory activities conferred within the Single Supervisory Mechanism (hereinafter referred to as "the SSM")<sup>3</sup>, which can focus on specific questions of operational efficiency and effectiveness.

The technical specifications detailing the scope of the contracts and the conditions for their implementation are provided in part B of the tender specifications.

**1.2 Lots: is this call for tenders divided into lots?**

This call for tenders is divided into two (2) lots:

Lot 1	<b>SRB</b> resolution planning and execution/actions, <b>Fund</b> aid assessment/ state aid assessment
Lot 2	<b>ECB</b> supervisory activities

<sup>1</sup> Article 92 of the Regulation (EU) No 806/2014 of the European Parliament and the Council of 15 July 2014, ("the SRM Regulation"), available at the following link: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32014R0806>

<sup>2</sup> Article 287(4) of the Treaty on the Functioning of the European Union ("TFEU"), available at the following link: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012E/TXT>

<sup>3</sup> Idem.

Tenders may be submitted for one or two lots. Each lot will be assessed independently of the other lot. Tenders, which cover only part of one lot or are declared as being conditional on the award of the other lot are not permitted.

### **1.3 Duration of the contract: how long do we plan to use the contract?**

The tender procedure will lead to the conclusion of FWCs for a period of maximum four (4) years according to the model contract in Annex 1 to the invitation to tender.

The FWCs shall enter into force on the date on which they are signed by the last contracting party. The FWCs are expected to be signed in January 2022.

Under no circumstances may implementation commence before the date on which the respective FWC enters into force. Provision of the services may under no circumstances begin before the date on which the respective specific contract enters into force.

### **1.4 Nature of the contract: how will the contract be implemented?**

The procedure will result in the conclusion of maximum five (5) FWCs with reopening of competition for each lot.

The FWCs will be concluded in the form of separate but identical contracts with maximum five (5) contractors at most per lot provided that there are enough tenderers whose tenders are retained after the evaluation.

An FWC establishes a mechanism for future repetitive purchases by the Court to be awarded in the form of specific contracts (purchase orders). The signature of FWCs does not impose an obligation on the Court to conclude specific contracts with a FWC contractor.

Multiple FWCs with reopening of competition are implemented through specific contracts (purchase orders) for which all contractors are invited to compete on the basis of the same or, if necessary, more precisely formulated terms laid down in these tender specifications. A specific contract shall be awarded to the contractor who has submitted the most economically advantageous specific tender on the basis of the award criteria set out in points 11 and 12 of this document.

Tenderers need to take full account of the provisions of the draft contract as the latter will define and govern the contractual relationship(s) to be established between the Court and the successful tenderer(s). Special attention is to be paid to the provisions specifying the rights and obligations of the contractor, in particular those on payments, performance of the contract, conflict of interests, confidentiality, and checks and audits.

### **1.5 Volume and estimated value of the contract: how much do we plan to buy?**

An indicative estimate of the volumes to be ordered for each lot over the whole duration of the FWC is the following: Lot 1: EUR 900 000, and Lot 2: EUR 100 000. These volumes are estimates only and there is no commitment as to the exact quantities to be ordered. The actual volumes will depend on the quantities which the Court will order through specific contracts. In any case, the FWC ceiling, i.e. the maximum amount to be spent under the FWC, for each lot shall not be exceeded. The FWC shall end when the maximum value is reached.

The amounts of Lot 1: EUR 900 000, und Lot 2: EUR 100 000 constitute the FWC ceiling for each lot.

## 2. GENERAL INFORMATION ON TENDERING

### 2.1. Legal basis: what are the rules?

The legal framework for the tendering procedure and the performance of the FWCs is constituted by the provisions of the invitation to tender, the tender specifications and the model contract, the terms of which are not negotiable.

The submitted tender is binding on the successful tenderer. It is incorporated into the contract as Annex II. Bids from companies will be drawn up in strict compliance with these tender specifications.

Options or variants are not permitted and will not be taken into account.

In addition, the tendering procedure and the performance of the FWC are governed by Regulation (EU, Euratom) No 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012<sup>4</sup> (hereinafter referred to as “Financial Regulation or FR”).

This procurement procedure is an open procedure pursuant to Article 164 (2) of the Financial Regulation and a competitive tender. As such, any tenderer attempting to obtain confidential information, to contract unlawful agreements, to collude or make arrangements with other contractors, to solicit the support of the staff of the Court or to influence the evaluation committee or its members in any way whatsoever during the procurement procedure shall be excluded forthwith.

The Court may reject any tender, and apply administrative and financial penalties, in the event that the tenderer meets one of the exclusion grounds described in Articles 136 and 141 of the Financial Regulation, provided that it has been so decided by the panel referred to in Article 143 of the same Regulation.

Tenderers are reminded that the European Anti-Fraud Office (OLAF) may in particular carry out, within the framework of this procurement procedure and during execution of the FWC, controls and checks at their premises and at those of the Court, in accordance with Council Regulation (EC, Euratom) No 2185/96<sup>5</sup> and Regulation (EU, Euratom) No 883/2013<sup>6</sup> of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999.

Tenders, which do not satisfy all the essential requirements set out in the documents making up this invitation to tender shall be eliminated.

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<sup>4</sup> Available at the following link: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2018:193:TOC>

<sup>5</sup> Available at the following link: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31996R2185&qid=1611672988409>

<sup>6</sup> Available at the following link : <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R0883&qid=1611673193221>

The Court may decide to cancel the procedure for awarding the contract or refuse to award the contract without the tenderers or the contractor being entitled to claim any compensation.

## **2.2. Rules on access to procurement: who may submit a tender?**

Participation in this invitation to tender is open on equal terms to any natural and/or legal persons coming within the scope of the Treaties of the European Union, as well as to international organisations.

It is also open to all natural and legal persons established in a third country, which has a special agreement with the European Union in the field of public procurement on the conditions laid down in that agreement. Where the Agreement on Government Procurement<sup>7</sup> concluded within the World Trade Organisation applies, the participation to this call for tenders is open to all natural and legal persons established in the countries that have ratified this Agreement, on the conditions laid down therein.

The rules on access to procurement do not apply to subcontractors. Subcontracting may not be used with the intent to circumvent the rules on access to procurement.

To enable the Court to verify the access, each tenderer must indicate its country of establishment (and in case of joint tender – the country of establishment of each group member) in the cover letter and must present the supporting evidence normally acceptable under the law of that country/-ies at the contract's award stage. The same document(s) could be used to prove country/-ies of establishment and proof of entry on the professional or trade register.

## **2.3. Ways to submit a tender: how can economic operators organise themselves to submit a tender?**

Economic operators can submit a tender either as a sole economic operator (sole tenderer) or as a group of economic operators (joint tender). In either case subcontracting is permitted.

For more details see point 15 in part A below.

## **3. TENDER DOCUMENTS**

This procedure is governed by the following documents:

1. Contract notice
2. Invitation to tender
3. Draft contract (Annex 1 of the invitation to tender)
4. Tender specifications (Annex 2 to the invitation to tender)
  - A. Administrative provisions
  - B. Technical Specifications
5. Model offer (Annex 3 to the invitation to tender)

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<sup>7</sup> [https://www.wto.org/english/tratop\\_e/gproc\\_e/gp\\_gpa\\_e.htm](https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm).

#### 4. DESCRIPTION OF THE PROCUREMENT PROCEDURE

The procurement procedure will be carried out according to the phases described below:

##### 4.1. Evaluation phase

During this phase, the Court will verify administrative compliance (see point 6) and check on the basis of the requested documents if the tenderers are not in the exclusion situation listed in the declaration on honour (see point 7) and if the tenderers meet the selection criteria indicated below (see point 8).

##### 4.2. Contract award phase

During this phase, the Court will evaluate, on the basis of the requested documents, the tenders as regards the conformity of the proposed tenders with the requirements of the specifications and as regards their price and quality (see points 9 and 10). The procurement procedure is concluded by a contract signed between the successful tenderer and the ECA or by a decision not to award the contract. If the contract cannot be concluded with the successful tenderer, the contract will be awarded to the second ranked tenderer.

##### 4.3. Information phase

The Court will inform tenderers of decisions reached concerning the award of the contract, including the grounds for any decision not to award a contract or to recommence the procedure.

If a written request is received, the Court will inform all rejected tenderers of the reasons for their rejection and all tenderers submitting an admissible tender of the characteristics and relative advantages of the selected tender and the name of the successful tenderer.

However, certain information may be withheld where its release would impede law enforcement or otherwise be contrary to the public interest, or would prejudice the legitimate commercial interests of economic operators, public or private, or might prejudice fair competition between them.

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The Court will evaluate the abovementioned elements in the order that it considers to be the most appropriate. If the evaluation of one or more elements demonstrates that there are grounds for rejection, the tender will be rejected and will not be subjected to further full evaluation. The unsuccessful tenderers will be informed of the ground for rejection without being given feedback on the non-assessed content of their tenders. Only tenderer(s) for whom the verification of all elements did not reveal grounds for rejection can be awarded the contract.

The evaluation will be based on the information and evidence contained in the tenders and, if applicable, on additional information and evidence provided at the request of the Court during the procedure. If any of the declarations or information provided proves to be false, the Court may impose administrative sanctions (exclusion or financial penalties) on the entity providing the false declarations/information.

**The tenderers' attention is drawn to the fact that at the tender submission stage only selected administrative documents and the "*Declaration on honour on the exclusion criteria and selection criteria*" (see: [Annex 3 – Form 5](#)) shall be provided.**



**The remaining administrative documents and supporting documents to the "*Declaration on honour on the exclusion and selection criteria*" shall always only be requested from the tenderers to whom the award of the service contract might be proposed. The tenderers shall have one (1) week to provide them.**

**If the documents are not sent to the Court within that period or if they do not confirm the "*Declaration on honour on the exclusion criteria and selection criteria*", the Court reserves the right to refuse the signature of the contract and to award the contract to another tenderer or to cancel the procedure.**

**Nevertheless, if necessary, the Court reserves the right to request the documents mentioned above during the tendering procedure. If requested, the tenderers shall have one (1) week to provide them.**

## **5. FORM, CONTENT AND STRUCTURE OF THE TENDER**

Annex 3 contains all standard reply forms and lists all the documents that must be supplied in order to tender, the stage of the procurement procedure at which they have to be submitted and indicates in which part of e-submission system they have to be included.

Information on the general requirements and on how to submit the tender is provided in the invitation to tender.

Please note that the tenders must be submitted exclusively **via the electronic submission system (e-Submission)** available from the website<sup>8</sup> indicated in the invitation letter and accessible on the Funding and Tenders Opportunities portal (F&T portal)<sup>9</sup>. Tenders submitted in any other way (e.g. e-mail or by letter) will be disregarded.

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<sup>8</sup> For detailed instructions on how to submit a tender please consult the e-Submission Quick Guide available at: [https://webgate.ec.europa.eu/digit/opsys/esubmission/assets/documents/manual/quickGuide\\_en.pdf](https://webgate.ec.europa.eu/digit/opsys/esubmission/assets/documents/manual/quickGuide_en.pdf)  
The supported browsers, file types, size of attachments and other system requirements can be consulted at: <https://webgate.ec.europa.eu/fpfis/wikis/x/f6dqEg>. In case of technical problems, please contact the e-Submission Helpdesk (see contact details in the e-Submission Quick Guide) as soon as possible.

<sup>9</sup> <https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/home>

The table below summarises milestones relating to this procedure.

Action/event	Date/period	Remarks
Publication of the contract notice in TED.	Saturday, 25 September 2021 - foreseen	
Submission of tenders	Friday, 5 November 2021	Submission exclusively <b>via the electronic submission system (e-Submission)</b> .
Opening of tenders	Monday, 8 November 2021, 11:00 a.m.	Tenderers must announce their presence not later than 12 noon the working day before (i.e. Friday 5 <sup>th</sup> November).
Entry into force of the contract	January 2022	Provided that the contract has been signed by both parties.

## 6. ADMINISTRATIVE INFORMATION

The first part of the tender must contain the administrative information relating to the tenderer. The table below lists the administrative documents that shall be submitted by tenderers, and at which stage.

Name of document	Which model form to use from the Model Offer?	When to be submitted?
A <b>covering letter</b> signed by an authorised representative of the tenderer, including name, address, trade register number, fax number and e-mail address of the contact person responsible for submission of the tender and the information whether the tender company or one of the partner companies of a joint offer is a small or medium-sized enterprise (SME) <sup>10</sup> .	<b>No model form available</b>	With the tender (to be submitted only once)
<b>Financial identification form</b> filled in and signed by an authorised representative of the tenderer. The form must be accompanied by a copy of the bank account identification issued by the bank or a copy of a bank statement.	Annex 3 – Form 1	Shall be requested from the tenderers to whom the award of the contract might be proposed.
The <b>completed form for identification</b> of the tenderer	Annex 3 – Form 2	Shall be requested from the tenderers to whom the award of the contract might be proposed.
In case of joint offer (see section 15.1) A <b>declaration</b> based on the model agreement on the "Power of Attorney" signed by the authorised representatives of <b>all</b> the partners of the joint offer including the:	Annex 3 – Form 3	With the tender (to be submitted only once)

<sup>10</sup> Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124 of 20.5.2003, p. 36) pursuant to which "(t)he category of micro, small and medium-sized enterprises (SMEs) is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million." (Annex, Article 2).

<ul style="list-style-type: none"> <li>• recognition of joint and several liability by all the partners of the joint offer for the performance of the contract;</li> <li>• power of attorney for one of the partners of the joint offer (co-ordinator) to represent the other parties to sign and administrate the contract.</li> </ul>		
<p>in case of subcontracting (see section 15.2)</p> <p>The <b>questionnaire for subcontracting</b> must be provided signed by an authorised representative of the tenderer and of the subcontractor.</p>	Annex 3 – Form 4	With the tender (to be submitted only once)

## 7. EXCLUSION CRITERIA

Tenderers that are in one of the situations described in Articles 136 and 141 of the Financial Regulation shall be excluded from participation in this open call for tenders and not be awarded the contract.

In this connection, tenderers are required to provide a formal declaration on honour (Annex 3 of the invitation to tender – Form 5), dated and duly signed by an authorised representative of the tenderer, stating that they are not in one of the situations described in Articles 136 and 141 of the Financial Regulation.

Upon request, and within 1 (one) week before the signature of the contract, the successful tenderers shall provide the following evidence confirming the details of the formal declaration on honour:

- For the situations described in (a), (c), (d), (f), (g) and (h) of the formal declaration on honour the tenderers shall provide a recent extract from the tenderer's judicial record or, failing that, an equivalent document recently issued by a judicial or administrative authority in the tenderer's country of establishment showing that the necessary requirements have been satisfied;
- For the situations described in point (a) or (b) of the formal declaration on honour the successful tenderers shall provide, recent certificates issued by the competent authorities of the State concerned. These documents must provide evidence covering all taxes and social security contributions for which the tenderers are liable, including for example: VAT, income tax (natural persons only), company tax (legal persons only) and social security contributions. Where any document described above is not normally issued in the country concerned, it may be replaced by a sworn statement made before a judicial authority or notary or, failing that, a solemn statement made before an administrative authority or a qualified professional body in the tenderer's country of establishment.

The authorising officer responsible shall waive the obligation of a tenderer to submit the documentary evidence referred to above:

- if he or she can access such evidence on a national database free of charge;
- if such evidence has already been submitted for the purposes of another procedure and provided that any submitted documents are still valid and that the time that has elapsed since the issuing date of the documents does not exceed one year;
- if he or she recognises that there is a material impossibility to provide such evidence.

The table below lists which documents shall be submitted by tenderers, and at which stage.

Name of document	Which model form to use from the Model Offer?	When to be submitted?
Declaration on honour concerning exclusion and selection criteria	Annex 3 – Form 5	With the tender (to be submitted only once)
Recent extract from the judicial record	No model form available	Shall be requested from the tenderers to whom the award of the contract might be proposed.
Recent certificate issued by the competent authorities of the State, confirming payment of taxes.  When such document is not issued in the country concerned, it may be replaced by a sworn statement made before a judicial authority or notary, or failing that, a solemn statement made before an administrative authority or a qualified professional body in the country of establishment.	No model form available	Shall be requested from the tenderers to whom the award of the contract might be proposed.
Recent certificate issued by the competent authorities of the State, confirming payment of social security contributions.  When such document is not issued in the country concerned, it may be replaced by a sworn statement made before a judicial authority or notary, or failing that, a solemn statement made before an administrative authority or a qualified professional body in the country of establishment.	No model form available	Shall be requested from the tenderers to whom the award of the contract might be proposed.

## 8. SELECTION CRITERIA

The objective of the selection criteria is to assess whether the tenderer has the legal, regulatory, economic, financial, technical and professional capacity to carry out the tasks set out in the tender specifications throughout the duration of the contract. The selection criteria for this call for tenders, including the minimum levels of capacity, the basis for assessment and the evidence required, are specified in the following subsections.

Tenders submitted by tenderers not meeting the minimum levels of capacity will be rejected.

Tenders may be submitted individually or in association with third parties (see part A, point 15).

Tenderers may, where appropriate, rely on the capacities of other entities, regardless of the legal nature of their links with those entities. In such cases, they must prove to the Court that they will have the resources needed to perform the contract, for instance by providing assurance of an undertaking by another entity to make the resources available.

With regard to technical and professional criteria, an economic operator may only rely on the capacities of other entities where the latter will perform the services for which these capacities are required.

Where an economic operator relies on the capacities of other entities with regard to criteria relating to economic and financial capacity, the Court may require that the economic operator and those entities be jointly liable for the performance of the contract.

The Court shall be entitled to refuse an application or a tender if it has doubts about the undertaking entered into by a third party or about that party's financial capacity.

Without prejudice to the list of documents indicated in the paragraphs below, the Court may ask tenderers at any moment during the procedure to submit an updated declaration or all or part of the supporting documents where this is necessary to ensure the proper conduct of the procedure.

### 8.1. Legal and regulatory capacity

Tenderers must prove that they have legal capacity to perform the FWC and the regulatory capacity to pursue the professional activity necessary to carry out the work subject to this call for tenders.

Tenderers' legal and regulatory capacity will be evaluated on the basis of the documents listed in the table below.

Name of document	Which model form to use from the Model Offer?	When to be submitted?
Declaration on honour on the exclusion and selection criteria	Annex 3 – Form 5	With the tender (to be submitted only once)
Proof of entry on the professional or trade register under the conditions laid down by legislation in the country in which the tenderers reside.	No model form available	Shall be requested from the tenderers to whom the award of the contract might be proposed.
A legible copy of the notice of appointment of the person(s) authorised to represent the tenderer in concluding contracts, if it is not included in the abovementioned document.	No model form available	Shall be requested from the tenderers to whom the award of the contract might be proposed

### 8.2. Economic and financial capacity

Tenderers must have the necessary economic and financial capacity to perform the FWC in compliance with the contractual provisions, taking into account its value and scale.

In respect of the FWC, which is the subject of this invitation to tender, the Court requires tenderers to have the following minimum levels of economic and financial capacity:

#### Lot 1

Criterion F1	
Minimum level of capacity	Average yearly turnover of the last two financial years above EUR 500 000.
Basis for assessment	This criterion applies to the tenderer as a whole, i.e. a consolidated assessment of the combined capacities of all <i>involved entities</i> will be carried out.

**Lot 2**

Criterion F1	
<b>Minimum level of capacity</b>	Average yearly turnover of the last two financial years above EUR 50,000.
<b>Basis for assessment</b>	This criterion applies to the tenderer as a whole, i.e. a consolidated assessment of the combined capacities of all <i>involved entities</i> will be carried out.

The table below lists the evidence, which tenderers will be required to submit in order to demonstrate their economic and financial capacity, and at which stage.

Name of document	Which model form to use from the Model Offer?	When to be submitted?
Formal declaration on honour on the exclusion and selection criteria.	Annex 3 – Form 5	With the tender (to be submitted once only).
F1 - Copy of the profit and loss accounts and balance sheets for the last two years for which accounts have been closed from each concerned <i>involved entity</i> , or, failing that, appropriate statements from banks. The most recent year must have been closed within the last 18 months.	No model form available	Will be requested from tenderers to whom the award of the contract might be proposed.

If, on exceptional grounds that the Court considers justified, a tenderer is unable to provide the above evidence, economic and financial capacity may be proved by any other means that the Court considers appropriate.

**8.3. Technical and professional capacity**

Tenderers must have the necessary technical and professional capacity to enable them to perform the FWC in compliance with the contractual provisions, taking into account its value and scale.

In respect of the FWC, which is the subject of this invitation to tender, the Court requires tenderers to have the following minimum levels of technical and professional capacity:

**Lot 1: SRB resolution planning and resolution execution/actions, Fund aid assessment/state aid assessment**

Criterion T1 – Projects in the Lot area	
<b>Minimum level of capacity</b>	<p>Extensive international experience (in at least two EU Member States), obtained by providing relevant services to the banking sector, resolution authorities and/or banking supervisors in at least three of the following areas:</p> <ul style="list-style-type: none"> <li>- restructuring and recapitalisation of a bank, including assessment of its legal and operational structure, critical functions, core business lines and how they could be separated, and monitoring of the implementation of the restructuring plan;</li> <li>- assessment whether a bank can be wound up under normal insolvency proceedings;</li> <li>- evaluation/ assessment of a bank's risk management;</li> </ul>

	<ul style="list-style-type: none"> <li>- preparation of financial and economic valuations of bank's assets and liabilities and off-balance sheet positions;</li> <li>- auditing the financial statements of banks;</li> <li>- assessment of a bank's performance, short- and long-term viability, and solvency;</li> <li>- assessment of a bank's capital and funding structures;</li> <li>- write-down and conversion of capital instruments (e. g. debt/ equity swap, write-down of liabilities, bail-in of creditors).</li> </ul> <p>At least three projects completed in the last five years preceding the tender submission deadline.</p>
<b>Basis for assessment</b>	This criterion applies to the tenderer as a whole, i.e. the combined capacities of all <i>involved entities</i> .

**Lot 2: ECB supervisory activities**

Criterion T1 – Projects in the Lot area	
<b>Minimum level of capacity</b>	<p>Extensive international experience (in at least two EU Member States), obtained by providing relevant services to the banking sector, resolution authorities and/or banking supervisors in the area of bank crisis management in at least three of the following areas</p> <ul style="list-style-type: none"> <li>- evaluation/ assessment of a bank's risk management;</li> <li>- implementation and monitoring of supervisory/early intervention measures;</li> <li>- restructuring and recapitalisation of a bank;</li> <li>- assessment of a bank's performance, short- and long-term viability, and solvency;</li> <li>- assessment of a bank's capital and funding structures.</li> </ul> <p>At least three projects completed in the last five years preceding the tender submission deadline.</p>
<b>Basis for assessment</b>	This criterion applies to the tenderer as a whole, i.e. the combined capacities of all <i>involved entities</i> .

**Lots 1 - 2:**

Criterion T2 – Educational and professional qualifications to perform the contract	
<b>Minimum level of capacity</b>	<p>The tenderer must demonstrate to have sufficient technical and professional capacity in terms of available human resources to guarantee continuous and satisfactory performance throughout the envisaged lifetime of the contract. To comply with the minimum requirement, the tenderer must demonstrate that it has the capacity to present as a minimum at least one professional per profile fulfilling the mandatory minimum requirements as per part B, point 4 of the tender specifications necessary for delivering the services in question.</p> <p>If the tenderer decides to participate in the second Lot, it can do so with the same pool of experts if they have sufficient technical capacity and fulfil the mandatory minimum requirements as per part B, point 4 of the tender specifications necessary for delivering the services in question.</p>
<b>Basis for assessment</b>	This criterion applies to the tenderer as a whole, i.e. the combined capacities of all <i>involved entities</i> .

	The basis for assessment will be the pool of consultants for the performance of the respective Lot (please provide the number of consultants and their profiles, as described in part B, point 4 of the tender specifications).
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The table below lists the evidence, which shall be submitted by tenderers in order to demonstrate their technical and professional capacity, and at which stage.

Name of document	Which model form to use from the Model Offer?	When to be submitted?
Declaration on honour on the exclusion and selection criteria	Annex 3 – Form 5	With the tender. (to be submitted only once)
<p>T1 - A list of projects meeting the minimum levels of capacity indicated above. The list shall include details of their start and end date, total project amount and scope, role and amount invoiced. In case of projects still ongoing only the portion completed during the reference period will be taken into consideration.</p> <p>As supporting documents for each project reference, the Court may request statements issued by the clients and take contact with them.</p>	Annex 3 – Form 6	With the tender.
<p>T2 – List of CVs – at least one CV of professional per profile fulfilling the mandatory minimum requirements as per part B, point 4 of the tender specifications.</p> <p>The Court may require evidence of the qualifications and/or professional experience declared in any CV (e.g. copies of diplomas, employment contracts, employer references).</p> <p>If possible, the tenderers shall use CV model in form of <a href="#">Europass</a>.</p>	No model form available	With the tender.

A tenderer, which is in a situation of conflict of interests that might impair the performance of the Contract is considered as not having the required technical and professional capacity. Possible conflicts of interests are assessed based on information in the possession of the Court or requested by the Court from the tenderer. The tenderer will have the right to be heard before a decision on the exclusion from this tendering procedure for conflict of interests is taken.

## 9. AWARD CRITERIA FOR THE FWC

The objective of the award criteria is to evaluate the tenders with a view to choosing the most economically advantageous tender.

The FWCs will be awarded to the tenderers who submits the **most economically advantageous tenders** with the **best quality-price ratio** as determined in point 10 ('Final evaluation'), which takes into consideration both the **Technical Offer** and the **Financial Offer** that the tenderers must include in their replies to this call for tenders.



### 9.1. Technical Offer for Lot 1

The tenderers applying for Lot 1 shall provide a Technical Offer, which shall contain the mandatory components as indicated below in the second column of the table. The Technical Offer will be assessed against criteria presented in the third column.

The Technical Offer is to be prepared under the following assumptions:

- the estimated time commitment should be 30 calendar days, this being the estimated minimum duration of a real assignment;
- the Fund is used (funds paid out) for the orderly resolution of a significant credit institution based in Country A within the euro area. The credit institution is also present in Country B (also in the euro area), in Country C (an EU Member State outside the euro area), and in Country D (outside the EU but a member of the Financial Stability Board). The parent company is an operating, listed and privately-owned stock corporation participating in a deposit guarantee scheme in Country A.

Tenderers should state how they would approach the assignment in the given timeframe, which actions they would carry out (and in what order), which documents and resources they would need for their analysis, and how they would address any uncertainties or challenges. This needs to be done for the following four scenarios: the chosen resolution tool is (1) the bail-in tool (after write-down and conversion of capital instruments), (2) the sale of business tool, (3) the bridge institution tool, and (4) the asset separation tool.

No	Technical Offer – Lot 1 – mandatory components The analysis must include the following aspects:	Sub-criteria The Court will assess:	Maximum points	Threshold
1.	Outline of the proposed approach and methodology, including the type of consultancy services the tenderer expects to render, likely areas of focus and concerns raised during the project, and interaction with third parties and the Court.	The appropriateness of the methodology and approach: the tenderer should demonstrate a thorough understanding of the task by proposing a comprehensive methodology that adequately takes into account all aspects of the Court's mandate to audit the use of the Fund, and should foresee any uncertainties or challenges and propose how they can be managed effectively.	40	20
2.	List of documents/resources that the tenderer expects to analyse to perform the tasks, including sources.	The tenderer's understanding of the scope of the task and capacity to identify which documents/resources will be required.	10	5
3.	Outline of a human resources plan analysing the needs (staff profiles, numbers and hours) at all stages of the approach/methodology.	The appropriateness of HR organisation.	20	10

4.	Description how the requested services will be structured organisationally to ensure quality deliverables and appropriate treatment of sensitive data.	The suitability of quality assurance and control measures to ensure that quality advice and services are delivered and that sensitive data is handled appropriately (e.g. quality assurance certificates, other conformity mechanisms).	10	5
5.	Description of internal conflict of interests checks that the tenderer will perform and measures put in place for the future vis-à-vis the tenderer's clients.	The effectiveness of internal conflict of interests checks and measures.	10	5
6.	Timeline showing how the services will be delivered within the given timeframe, including key milestones and interaction with the Court.	The timeline (including all milestones): is it thorough and realistic?	10	5
<b>Total number of points</b>			<b>100</b>	<b>50</b>

The Technical Offer for Lot 1 must be presented in the form of a note not exceeding **ten (10) A4** pages (minimum font size 11, minimum line spacing 1) including annexes. Any additional pages will be disregarded.

The points obtained as a result of the evaluation of each sub-criterion will be added together. Only tenders obtaining at least 50 points will be considered for the award of the contract.

**The details of proposals which go beyond the minimum requirements described in the technical specifications shall be considered binding if the tenderer concerned is awarded the contract.**

## 9.2. Technical Offer for Lot 2

The tenderers applying for Lot 2 shall provide a Technical Offer, which shall contain the following mandatory components as indicated below in the second column of the table. The Technical Offer will be assessed against criteria presented in the third column:

No	Technical Offer – Lot 2 – mandatory components	Sub-criteria	Maximum points	Threshold
	The analysis must include the following aspects:	The Court will assess:		

1.	Organisation of the work: management and coordination of the work for delivery of the expertise (i.e. description of arrangements for participation in specific contracts; organisation of responsibilities for the tasks indicated in part B for Lot 2 of the tender specifications; relationship management, communication lines, etc.).	Effective organisation of management and work coordination (e.g. clear schedule, setup of quality objectives; clear and timely communication; efficient division of roles and responsibilities; clear documentation process).	30	15
2.	Organisation of the resources: description of arrangements to ensure availability of experts for specific contracts, continuity of the service in case of absence of a member of the team.	The appropriateness and feasibility of the proposed HR organisation (e.g. mechanisms and policies for assigning, managing and retaining sufficient competent staff throughout the period of the FWC).	30	15
3.	Quality control measures: description of the quality control system applied to the task foreseen in this tender specification (part B, Lot 2) as regards the quality of deliverables. The description should include how the tenderer ensures appropriate treatment of sensitive data.	The appropriateness of the quality control system in place (e.g. quality assurance of deliverables, treatment of sensitive data, effective use of control tools and data analysis tools).	20	10
4.	Handling of conflict of interests: description of internal conflict checks that the tenderer will perform in the context of the task and measures put in place for the future vis-à-vis the tenderer's clients.	The effectiveness of internal conflict of interests checks and measures.	20	10
<b>Total number of points</b>			<b>100</b>	<b>50</b>

The Technical Offer for Lot 2 must be presented in the form of a note not exceeding **ten (10) A4 pages** (minimum font size 11, minimum line spacing 1) including annexes. Any additional pages will be disregarded.

The points obtained as a result of the evaluation of each sub-criterion will be added together. Only tenderers obtaining at least 50 points will be considered for the award of the contract.

**The details of proposals which go beyond the minimum requirements described in the technical specifications shall be considered binding if the tenderer concerned is awarded the contract.**

### 9.3. Financial Offer for Lot 1 and Lot 2

For the financial offer, the tenderer must provide hourly rates in the annexed price list (Annex 3 – Form 7) for the following profiles:

<b>Mandatory minimum profiles (6 levels)</b>
Partner
Managing Consultant
Principle Consultant
Senior Consultant
Consultant
Junior Consultant

These hourly rates shall represent the maximum rates that the successful tenderers will be authorised to charge, by profile, for each specific contract.

The Financial Offer must meet the following requirements:

- the hourly rate must be fixed for the entire duration of the contract;
- **prices must be all-inclusive**, calculated to cover **all the expenditure** borne by the contractor, associated with the completion of the work, including overheads such as translation costs, administration costs, etc. but excluding travel expenses;
- **prices must be expressed in euro**;
- prices shall be expressed to a **maximum of two (2) decimal places**;
- **prices shall be quoted free of all duties, taxes and other charges, i.e. also free of VAT**, as the European Union is exempt from such charges in the Member States under Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union of 8 April 1965 (OJ C 83 of 30 March 2010). Exemption is granted to the Commission by the governments of the Member States, either through refunds upon presentation of documentary evidence or by direct exemption.

For those countries where national legislation provides an exemption by means of a reimbursement, the amount of VAT is to be shown separately. In case of doubt about the applicable VAT system, it is the tenderer's responsibility to contact his or her national authorities to clarify the way in which the European Union is exempt from VAT.

If travel is required as part of an assignment under a specific contract, the related expenses shall be reimbursed according to Article 5 of the General Conditions (draft contract in Annex 1).

Costs incurred in preparing and submitting tenders shall be borne by the tenderer and cannot be reimbursed.

During the evaluation phase, the Financial Offer will be verified for fulfilment of the above-mentioned requirements. For evaluation purposes only, the total hourly rate will be calculated using the following weightings:

Partner:	10 %
Managing Consultant:	15%
Principle Consultant:	35%
Senior Consultant:	25%
Consultant:	10%
Junior Consultant:	5%

**Total: 100%**

**Total hourly rate price = (price for a Partner \* 10%) + (price for a Managing Consultant \* 15%) + (price for a Principle Consultant \* 35%) + (price for a Senior Consultant \* 25%) + (price for a Consultant \* 10%) + (price for a Junior \* 5%)**

The percentages reflect the estimated involvement of the various profiles in the team. It should be noted that the actual use of profiles during the execution of the multiple FWC (i.e. for a given specific contract) may differ from this indicative distribution.

The lowest price quoted shall be awarded 40 points, and the remaining tenders shall be awarded points in proportion to the amount bid in line with the formula in section 10.

**No amendments to the financial offer form will be permitted.** The financial offer must be completely filled in (no fields marked 'null', 'zero', '0', or 'none'), dated and signed, failing which the tender will be disqualified. Any omission or amendment to the initial financial offer may render it invalid.

#### 10. FINAL EVALUATION OF THE FWC

In order to identify the tender with the best quality-price ratio, quality will be given a weighting of 60% and price will be given a weighting of 40% in accordance with the following formula, using only data from tenders that have reached the final evaluation stage:

$$\text{Score for tender X} = \frac{\text{cheapest price}}{\text{Price of tender X}} * 40 + \frac{\text{Total quality score of tender X (out of 100)}}{100} * 60$$

In case the outcome of this exercise would lead to tenders with the same result (two (2) digits after the comma, with standard rounding (round half up), the market will be awarded to the tender with the lowest price (financial evaluation).

The contract shall be awarded to the first five (5) ranked tenders per lot, which comply with the minimum requirements specified in the procurement documents and are submitted by tenderers with access to procurement, not in an exclusion situation and fulfilling the selection criteria. The ranking will determine who will be invited to compete for specific contracts during the implementation of the FWC.

#### 11. AWARD CRITERIA FOR SPECIFIC CONTRACTS (REOPENING OF COMPETITION)

The purpose of the award criteria for specific contracts is to allow a choice to be made among tenders submitted by the contractors for the reopening of competition.

Each specific contract shall be awarded to the contractor submitting the most economically advantageous tender as determined in section 12, taking into consideration both the Technical Offers and the Financial Offers that must be included in replies to a call for tenders in the context of the reopening of competition.

### 11.1. Technical Offer

The Technical Offer award criterion will be used to assess the quality of tenders based on the contractors' proposals with regard to an assignment that is the subject of a specific contract. The criterion shall be the suitability of the human resources proposed for the assignment and the way in which the tenderer plans to use the human resources to provide the service (balance of profiles and breakdown of tasks).

To this end, contractors must provide a chart showing how the tasks, responsibilities and workload will be divided among the staff in question, as well as all CVs. The Court may require evidence of the qualifications and/or professional experience declared in any CV (e.g. copies of diplomas, employment contracts, employer references).

The resources proposed for the specific contract must satisfy at least the minimum requirements in part B, section 4 of the tender specifications ("Consultant profiles") of these specifications. Tenderers will be awarded 50 points if they meet these requirements for all members of the team.

The maximum possible score will be 100 points. Only tenders obtaining at least 50 points will be admitted for the assessment of the financial criteria.

### 11.2. Financial Offer

For each assignment, contractors will be required to submit a Financial Offer with details of the total hours to be worked by staff corresponding to each job profile, together with the respective hourly rates, which may not exceed the rates given in the Financial Offer for the FWC (see section 9.3 above).

The Financial Offer must meet the following requirements:

- the hourly rate must be **fixed** for the entire duration of the specific contract;
- **prices must be all-inclusive**, calculated to cover **all the expenditure** borne by the contractor in the performance of the contract, including translation costs, costs of database consultation, etc. but excluding travel expenses;
- **prices must be given in euro**;
- prices should be given to a **maximum of two (2) decimal places**;
- **prices must be quoted free of all duties, taxes and other charges, i.e. also free of VAT**, as the European Union is exempt from such charges in the Member States under Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union. Exemption is granted to the Court by the governments of the Member States, either through refunds upon presentation of documentary evidence or by direct exemption.

Where the national legislation in the tenderer's country provides for exemption by means of a reimbursement, the amount of VAT must be shown separately. In case of any doubt about the applicable VAT system, it is the tenderer's responsibility to contact the relevant national authorities to clarify how the European Union is exempted from VAT.

If travel is required as part of an assignment under a specific contract, the related expenses shall be reimbursed according to Article 5 of the General Conditions (draft contract in Annex 1).

Costs incurred in preparing and submitting tenders shall be borne by the contractor and cannot be reimbursed.

During the evaluation phase, the Financial Offer will be verified for fulfilment of the above-mentioned requirements.

## 12. FINAL EVALUATION OF SPECIFIC CONTRACTS

Each specific contract will be awarded to the contractor offering the best value for money. Tenders will be weighted 70% for quality and 30% for price in accordance with the following formula, using only data from tenders considered for the final evaluation:

$$\text{Score for tender X} = \frac{\text{Lowest price}}{\text{Price of tender X}} * 30 + \frac{\text{Total quality score of specific tender X}}{100} * 70$$

## 13. CHECK OF THE SUPPORTING DOCUMENTS

The first five (5) tenderers whose tenders offer the best value for money following the final evaluation as outlined in point 10 will be requested to provide the supporting documents for the "Declaration on honour on the exclusion criteria and selection criteria".

Within one (1) week following the request the tenderers shall provide:

- administrative documents (see point 6);
- documents confirming absence of exclusion (see point 7);
- documents related to the legal capacity (see point 8.1);
- documents related to the economic and financial capacity (see point 8.2).

**If a tenderer does not react or provides the requested documents within the time-limit set out above, the tenderer may be rejected.**

In the above situation, tenderers whose tenders offered the next-best value for money will be required to submit the mentioned above documents.

## 14. INFORMATION FOR TENDERERS

The Court will inform tenderers of decisions reached concerning the award of the contract, including the grounds for any decision not to award a contract or to recommence the procedure.

If a written request is received, the Court will inform all rejected tenderers of the reasons for their rejection and all tenderers submitting an admissible tender of the characteristics and relative advantages of the selected tender and the name of the successful tenderer.

However, certain information may be withheld where its release would impede law enforcement or otherwise be contrary to the public interest, or would prejudice the legitimate commercial interests of economic operators, public or private, or might prejudice fair competition between them.

## 15. JOINT OFFERS AND SUBCONTRACTING

This point only applies for tenders involving joint tenders or subcontracting.

Where a tender involves several legal entities, they may choose between:

- making a joint offer, in which case all the economic operators must be considered as partners and, if theirs is the successful tender, as contractors (in this case, one of the partner's must be put forward as co-ordinator to manage the contract); and
- making a tender in the name of only one tenderer, who is then the sole contractor if the tender is successful, the other legal entities being considered as subcontractors.

### 15.1. Joint offer

Partners in a joint offer assume joint and several liabilities towards the Court for the performance of the contract as a whole. Statements saying, for instance:

- that one of the partners of the joint offer will be responsible for 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.

The Court will disregard any such statement contained in a joint tender, and reserves the right to reject such tenders without further evaluation on the grounds that they do not comply with the Tendering Specifications.

In the case of a joint offer, one of the partners of the joint offer (co-ordinator) shall be given power of attorney to represent the other parties to sign and administrate the contract.

If the joint tender is selected, partners may be required to adopt a given legal form after they have been awarded the contract if this change is necessary for proper performance of the contract.

It is not allowed for a tenderer who tenders alone or as part of a consortium, to tender again for the same lot, alone or as part of a consortium.

### Documents to submit – joint offer

In the case of a joint offer, the following documents must be provided:

#### Administrative information

1. A **declaration** based on the model agreement on the "Power of Attorney" attached in Annex 3 - Form 3, signed by the legal representatives of all the partners of the joint offer including the:
  - recognition of joint and several liability by all the partners of the joint offer for the performance of the contract;
  - power of attorney for one of the partners of the joint offer (coordinator) to represent the other parties to sign and administrate the contract.
2. If the partners of the joint offer have already set up a consortium or similar entity to that end, they should state this in their tender, together with any other relevant information and connected documentation.
3. The **form for identification** (Annex 3 – Form 2) of the tenderer will be requested from each partner of the joint offer once the contract award is proposed to this tenderer.

*Only the co-ordinator must return the financial identification form.*



**Exclusion criteria**

4. Each partner of the joint offer must fill in and return the **declaration of honour** (Annex 3 – Form 5). Each partner of the consortium to whom the contract is to be awarded shall provide, within ten (10) days preceding the signature of the contract, the evidence referred to in point 7, confirming the declaration of honour.

**Selection criteria**

5. If the contract is proposed to the tenderer making a joint offer, each of the partners of the joint offer will be requested to provide the documents regarding the legal capacity, as specified in point 8.1.

6. If the contract is proposed to the tenderer making a joint offer, each of the partners of the joint offer will be requested to provide the documents regarding the economic and financial capacity, as specified in point 8.2.

The documents concerning the professional and technical capacity have to be completed once for all the partners of a joint offer, but it must be indicated to which partner the described capacities belong.

**Award criteria**

The documents relating to the award criteria shall be provided once by the coordinator representing the *consortium*.

**15.2. Subcontracting**

If certain tasks provided in the contract are entrusted to subcontractors, the contractor retains full liability towards the Court for performance of the contract as a whole. Accordingly:

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

During execution of the contract, the contractor will need the Court's express authorisation to replace a subcontractor with another and/or to subcontract tasks for which subcontracting was not envisaged in the original tender.

The responsible authorising officer reserves the right to accept or reject the proposed subcontractor. In order to do so he *may demand* the requisite proof to establish whether the subcontractor(s) complies/comply with the requisite criteria. The Court's authorisation will always be granted in writing.

The Court is entitled to reject any subcontractor who does not comply with the exclusion and/or selection criteria.

If the contract is awarded to a tenderer who proposes a subcontractor in his tender, this equates to giving consent for the subcontracting.

**Documents to submit – subcontracting**

If the tender envisages subcontracting, it must include the following.

**Administrative information**

The **questionnaire for subcontracting** provided in Annex 3 – Form 4, including a letter of intent signed by a legal representative of the tenderer and of subcontractor. Please provide one questionnaire per contractor.

**Exclusion criteria**

Subcontractors must provide the duly signed **declaration of honour** (Annex 3 – Form 5). In case of doubt on this declaration of honour, the Court will request the evidence referred to in paragraph 7.

**Selection criteria**

During the contract award procedure or performance of the contract the Court reserves the right to require tenderers to supply information about the legal, financial, economic, technical and professional capacity of the proposed subcontractor(s).

However, in case the tenderer relies on the capacities of subcontractors/freelancers for fulfilling the selection criteria, the documents related to the economic and financial and/or professional and technical capacity as defined in point 8.2 and/or 8.3 shall be provided.

**Award criteria**

The documents relating to the award criteria shall be provided only by the tenderer.

**PART B. TECHNICAL SPECIFICATIONS****1. CONTEXT AND OBJECTIVES**

In its capacity as external auditor of the European Union, the Court is mandated to carry out performance audits in the context of the European Banking Union, and in particular of the SRM and the ECB/SSM.

**1.1 Single Resolution Mechanism (SRM)**

The SRM Regulation<sup>11</sup> established the SRM and the Fund to support this mechanism. The purpose of the mechanism is to ensure the orderly resolution of banks failing or likely to fail at minimal costs. The Fund is managed by the SRB and is financed by all banks in the euro area through ex-ante contributions. In addition, ex-post contributions and lending facilities can be used.

Pursuant to Article 92 of the SRM Regulation, once the Fund has been used by the Board or a Fund aid assessment has been made, the ECA has to perform an audit on this use, and in particular to examine whether:

- a) sufficient regard was had to economy, efficiency and effectiveness with which the Fund has been used, in particular the need to minimise the use of the Fund;
- b) the Commission's assessment of Fund aid was efficient and rigorous.

Based on its findings, the Court will produce a report for each 12-month period, starting on 1 April each year, which will be made public. The contract may be triggered if a bank resolution requiring the use of the Fund becomes necessary and the Court has to report on this within its remit.

In addition, in accordance with Article 287(4) TFEU, which authorises it to submit observations on specific questions, the Court may decide to produce a special report on the SRM. The Court published already two special reports in this domain<sup>12</sup>.

As the external auditor of the European Union, the Court is mandated to issue audit reports and recommendations; however, it cannot either review or overturn the Board's decisions.

To prepare these reports, the audit team may need to consult experts and obtain their opinion regarding the assessment of resolution plans, of the valuation of bank assets and liabilities, of resolution measures and tools applied by the Board, and other issues, specific or general, relating to the Court's assessment of the Fund's use.

**1.2 European Central Bank/Single Supervisory Mechanism (ECB/SSM)**

In accordance with Article 287(4) TFEU, which authorises the Court to submit observations on specific questions, it may decide to produce a special report on the ECB's supervisory activities

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<sup>11</sup> Regulation (EU) No 806/2014 of the European Parliament and the Council of 15 July 2014, ("the SRM Regulation"), available at the following link: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32014R0806>

<sup>12</sup> [ECA SR 23/2017 Single Resolution Board: Work on a challenging Banking Union task started, but still a long way to go](#), and [ECA SR 01/2021: Resolution planning in the Single Resolution Mechanism](#).

with regard to conferred tasks within the SSM. The Court published already two special reports in this domain<sup>13</sup>.

## 2. TASKS TO BE PERFORMED BY THE CONTRACTOR

The contractor might be asked to provide the following advisory services:

### **Lot 1: SRB resolution planning and resolution execution/actions, Fund aid assessment/state aid assessment**

**Resolution planning:** An assessment of resolution plan(s). This can include the strategic business analysis of a bank, the chosen resolution strategy, the resolvability assessment including the determination of significant impediments, and the MREL assessment.

**Resolution actions:** An assessment of the chosen resolution scheme, which can include the failing or likely to fail ("FOLTF") assessment, the public interest test (whether normal insolvency or resolution could have been used), and the resolution tools chosen. It can also include comparison with the resolution strategy selected in the resolution plan and whether it is compliant with the Single Rulebook.

**Fund aid assessment/state aid assessment:** An assessment of the Fund aid decision to underpin any resolution with use of the Fund. This can include (1) an assessment of the appropriateness of the resolution tools and/or an assessment of the valuation(s) underpinning resolution (incl. key assumptions, data used, the "no creditor worse off" principle, compensation to shareholders or creditors from the Fund), and the need to minimise the use of the Fund, and (2) an assessment of the efficiency and rigour of the Commission's actions in this regard, and compatibility with the legal framework and other guidance in place.

### **Lot 2: ECB supervisory activities**

An assessment could include the supervisory actions undertaken by the ECB in the context of early intervention or crisis management. These can include an assessment of the specification of indicators and thresholds, breaches or potential breaches of regulatory requirements, early intervention measures and their follow up, and FOLTF decisions.

The above list of tasks for each Lot is not exhaustive and may include specific issues arising in connection with a special performance audit<sup>14</sup> of the SRM and/or the ECB. Similarly, depending on the circumstances, some tasks may not be necessary.

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<sup>13</sup> [ECA SR 29/2016 Single Supervisory Mechanism – Good start but further improvements needed](#), and [ECA SR 02/2018 Single Supervisory Mechanism – The operational efficiency of the ECB's crisis management for banks](#).

<sup>14</sup> Article 287(4) TFEU.

### 3. CONFLICT OF INTERESTS

Without prejudice to Article 4 of the General Conditions for Supply, Service and Works Contracts of the European Court of Auditors (draft contract in Annex 1 to the invitation to tender), specific tenders may not be submitted if the contractor is in a situation of conflict of interests. Such situations that could impair the performance of a specific contract may include (*inter alia*): the contractor has advised or is advising the bank under resolution that is concerned by the audit; or the contractor has advised or is advising a national or European authority or body, in particular the SRB or the ECB, that is concerned by the subject matter of the specific contract. However, operators awarded a FWC in one of the SRB's tenders, but not selected for the specific contract, are not precluded *per se* from applying for this tender and are not in a conflict of interests.

If tendering for a specific contract, the contractor (each member of the proposed team) shall be required to sign a formal declaration on honour to the effect that there is no conflict of interests that might impair the performance of the contract.

In case of any doubt, the Court shall be entitled to request information about the potential for a conflict of interests and may reject a tender on the basis that such a situation could impair the performance of the contract if there is no other remedy.

The Court is at the disposal of tenderers/contractors should they have any questions about conflicts of interests.

### 4. CONSULTANT PROFILES

**The following elements define the minimum requirements to be fulfilled by all tenders for each Lot during the selection phase.**

In order to be admitted to the award phase, each tenderer shall demonstrate to have sufficient technical and professional capacity in terms of available human resources matching the profiles described below for the performance of the FWC (see part A, point 8.3 – Criterion T2).

Once an invitation to a specific tender is issued (see part A, point 11), the contractor shall propose a specific team of consultants for each specific contract, giving the number of team members and the corresponding profiles. There shall be no restriction as regards team size. Team members must have expertise and international experience relevant to the subject matter of the specific contract.

The consultants must have at least the educational and professional qualifications set out below.

Profile	Mandatory minimum experience
Partner	<ul style="list-style-type: none"> <li>- Extensive experience of at least 15 years relevant to the subject matter of the lot, leading major, complex and critical projects, delivering genuine strategic insight and in-depth knowledge of financial services and the financial regulation sector.</li> <li>- Previous experience in project management: at least 7 major projects in the banking sector relating to restructuring, recapitalisation, valuation or bank crisis management and involving the coordination of a high profile team of at least 10 staff members.</li> <li>- A Master's degree (MBA/MSc) or equivalent.</li> </ul> <p>The Partner will be responsible for supervising and coordinating the project, reporting directly to the designated contact persons at the Court; the quality of all deliverables, including the successful performance of the contract as a whole; the execution of each assignment on time and in accordance with the specifications.</p>

Managing Consultant	<ul style="list-style-type: none"> <li>- Substantial experience of at least 12 years relevant to the subject matter of the lot.</li> <li>- A Master's degree (MBA/MSc) or equivalent.</li> <li>- Previous experience in project management: at least 5 major projects in financial services relating to restructuring, recapitalisation, valuation or bank crisis management, involving the coordination of a high profile team of at least 10 staff members.</li> </ul>
Principal Consultant	<ul style="list-style-type: none"> <li>- Substantial experience of at least 10 years relevant to the subject matter of the lot.</li> <li>- A Master's degree (MBA/MSc) or equivalent.</li> <li>- Previous experience in project management: at least 3 major projects in financial services relating to banking crisis management, involving a high profile team of at least 5 staff members.</li> </ul>
Senior Consultant	<ul style="list-style-type: none"> <li>- Substantial experience of at least 7 years relevant to the subject matter of the lot.</li> <li>- A Bachelor's degree or equivalent.</li> <li>- Previous experience in project management: at least 2 projects in financial services relating to banking crisis management.</li> </ul>
Consultant	<ul style="list-style-type: none"> <li>- In-depth experience of at least 5 years relevant to the subject matter of the lot.</li> <li>- A Bachelor's degree or equivalent.</li> <li>- Proven ability to conduct interviews, draft reports, produce templates, etc.</li> </ul>
Junior Consultant	<ul style="list-style-type: none"> <li>- Experience of at least 2 years relevant to the subject matter of the lot.</li> <li>- A Bachelor's degree or equivalent.</li> <li>- Proven ability to conduct interviews, draft reports, produce templates, etc.</li> </ul>

**Collective expertise:** In addition to the above requirements, where necessary for the performance of a specific contract some team members must possess:

- a minimum of 4 years' expertise in the analysis and evaluation of a bank's legal structure, business model, and/or the restructuring of a bank registered in two EU Member States (relevant for **Lots 1 and 2**);
- a minimum of 4 years' expertise in the valuation of bank assets and liabilities (relevant for **Lot 1**).

For each specific contract, the contractor shall provide the CVs of the proposed team members (see part A, point 11.1). The Court may require evidence of the qualifications and/or professional experience declared in any CV (e.g. copies of diplomas, employment contracts, employer references).

The team members who will take responsibility for the consultancy, drafting or advisory work covered by the specific contract must be able to work and communicate in excellent English. This shall be considered a minimum requirement.

All team members proposed for the specific contract must be available from the start of the specific contract period.

Team members must have expertise and international experience relevant to the subject matter of the specific contract.

## **5. PLACE OF DELIVERY OR PERFORMANCE**

The place of performance of each assignment shall be the contractor's premises or any other place indicated in the tender. To ensure information security and confidentiality where bank-specific information provided by the auditee is to be assessed, the contractor shall be required to work in a secure data room and on computers provided at the Court's premises or at those of the auditee in order to ensure information security and confidentiality. With regard to other confidential documents and information, it remains at the Court's discretion to determine the level of security and confidentiality as regards their handling. The contractor shall be available for teleconferences, meetings and debriefings at the Court's premises in Luxembourg, and for meetings to discuss and clarify pending issues and examine documents at the ECB in Frankfurt, at the Board or at the Commission in Brussels.

## **6. IMPLEMENTATION OF THE FWC**

The FWC will be implemented through specific contracts (purchase orders). A model purchase order is attached to the model contract. The General Conditions for Supply, Service and Works Contracts of the European Court of Auditors apply to the performance of each specific contract (including conditions on confidentiality, property rights, etc.) as well as the FWC.

The contractors will receive an invitation to submit a specific tender, containing information about the tasks to be performed and the rules for carrying them out, as well as deadlines and a blank declaration concerning the absence of any conflict of interests. Specific tenders will be evaluated according to the provisions set out in part A, sections 11 and 12.

## **7. PROJECT DELIVERABLES**

Mandatory deliverables will depend on the specific assignment and will be further defined in each specific contract. The project outcomes, to be provided in paper and electronic format, will be (i) an interim report followed by (ii) a final report, both addressed to the designated contact persons at the Court. In particular, the reports will contain answers to specific questions posed by the Court, supported by the appropriate data and evidence, and advice to the Court if required.

### **7.1 Interim Report:**

Draft reports, with supporting arguments, shall be submitted to the Court within the deadline set in the documentation for the award of the specific contract. Given the time constraints imposed by the deadlines for delivering audit reports, the interim report deadline might be rather short. However, depending on the scope of the specific contract it should be at least one month.

### **7.2 Final Report:**

The Court will check whether the deliverables meet the requirements set out in the specific contract and reach the expected quality level. If necessary, the Court will provide comments specifying where improvements are needed before the final report is finalised. The final report shall be submitted no later than fourteen (14) days after receipt of the Court's comments on the interim report.

The Court reserves the right to request any additional supporting documents produced by the contractor in the context of a specific assignment. Research material produced by or otherwise made available to the consultants to support the advice and answers in the report should be annexed to it (in paper or electronic format).

The copyright for reports shall belong to the Court.

The Court may use the final report as a basis for drafting and communicating its audit findings to the Board, the ECB, the Commission and/or the Council under its own responsibility.

All reports must be drafted to a high standard of English

## **8. CONFIDENTIALITY**

For the purpose of the application of Article 12 of the General Conditions for Supply, Service and Works Contracts of the European Court of Auditors (draft contract in Annex 1 to the invitation to tender), any facts, information, knowledge, documents or other matters which may have been communicated to or obtained by the contractor in the context of the specific contract shall be deemed confidential *per se*.

The Court shall ensure that its contractors are bound by the same level of duty as its officials regarding confidentiality, and shall carry out due and detailed scrutiny to determine that they are reliable and not in a situation of conflict of interests. Where access to bank-specific data is needed for the performance of a specific contract, this access shall exclusively be granted in a secure environment. With regard to other confidential documents and information, it remains at the Court’s discretion to determine the level of security and confidentiality as regards their handling.