



EUROPEAN CENTRAL BANK

DIRECTORATE GENERAL ADMINISTRATION
NEW ECB PREMISES PROJECT-OFFICE

RESTRICTED

To: New ECB Premises Procurement Committee
Via: [REDACTED]
From: [REDACTED]
Cc: [REDACTED]
Ref: DG-A/NEP/201/2008/INT
Date: 11 December 2008
Subject: **INITIATION OF A TENDER FOR CONSTRUCTION MANAGEMENT SERVICES
(TENDER T109)**

FINAL

In the course of discussions on the future of the New ECB Premises (NEP) Project it was agreed that a new stakeholder, the Construction Manager (CM), should take over coordination and supervision tasks that were previously assigned to the general contractor [REDACTED]

[REDACTED] recommended that this CM should be taken on board during the tendering of construction works in order to reduce risks in the interface between the different tender packages, and to support the NEP-PO in negotiations with the construction companies.

On 1st December 2008, the ECB decided to continue the NEP Project by way of tendering construction works in work-packages. This decision also implies the ECB must install the CM as quickly as possible to ensure the successful set-up and continuation of the Project.

The present document describes the scope of services of the CM, and seeks the NEP-PRC's approval to conduct a public negotiated tender procedure in line with Article 13 of the ECB Procurement Decision.²

Consequently, the NEP-PRC is requested to

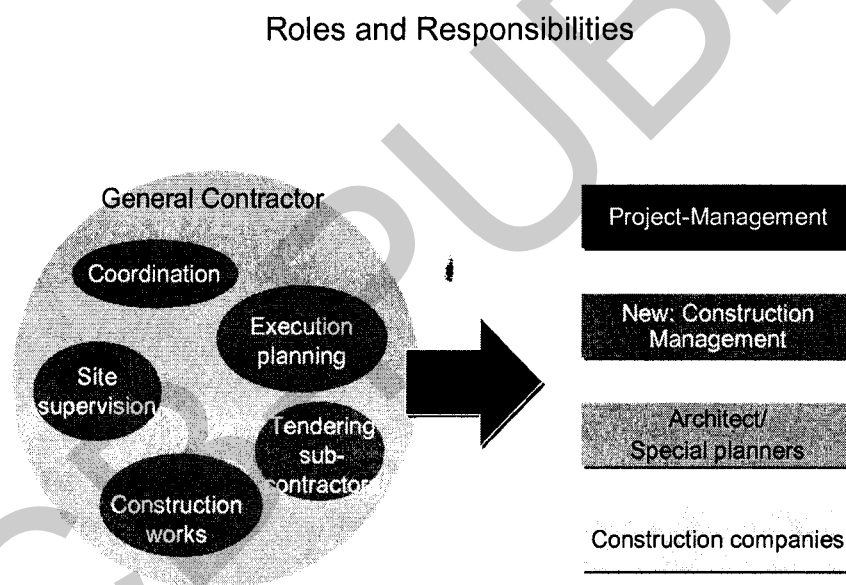
- **Approve the initiation of a tender procedure for a construction manager; and**
- **Approve the conduct of a negotiated tender procedure in line with Article 13 of the ECB Procurement Decision.**

[REDACTED]
² Decision of the European Central Bank of 3 July 2007 laying down the Rules on Procurement (ECB/2007/5) (2007/497/EC).

1. Business Case

The tender in packages strategy poses a challenge with regard to the project: contrary to the previous model where the general contractor had all the construction contracts in his hand, now based on the new strategy these are under the control of the ECB/NEP-PO. Therefore, throughout the internal discussions on the way forward it was agreed that having an experienced CM is essential for the successful realisation of the project.³ As construction management services - in line with the common practice - are necessary for a project with a magnitude comparable to that of the NEP, a strong CM role is proposed. First, the work-package tender strategy requires the management and coordination of multiple construction companies. Second, the CM is the responsible player for the overall supervision of the construction site.

Figure 1 Roles and responsibilities under the general contractor model and the tender in packages strategy



- Tasks

The services of the CM are necessary for the following phases of the project: tendering phase (second half of 2009; Phase 1), construction phase (2010-2013, Phase 2) and warranty phase (2013 until 2018).

Regarding **Phase 1**, the CM shall prepare the construction phase, assist the award process of tenders, and

provide necessary input regarding the requirements of the construction process and the feasibility of the project.

During the **construction phase**, the CM shall manage and supervise the execution of construction works, and coordinate all relevant stakeholders involved in the construction process. In general, in this stage the CM performs the coordination and supervision services that were assigned to the general contractor under the previous contract model (General Contractor).

The main responsibility of the CM is to provide site management, coordination and supervision for the NEP project in line with Performance Phase 8, § 15 HOAI⁴ to ensure that the construction works are carried out properly. To facilitate smooth collaboration of various project participants, the CM coordinates and integrates the site supervision of technical experts and the aesthetic input of the architects (CHBL). The CM ensures the interdisciplinary coordination of all trades within the complete construction and control process.

Furthermore, the CM is responsible for drawing management; the coordination of building logistics including supply and waste disposal; health and safety issues; contract and claim management; performance verification; the management of acceptance (vertragliche und behördliche Abnahmen), handover (Uebergabe) and warranties (Gewährleistung); as well as the organisation of shop drawing checks in coordination with the architects.

During the **warranty phase** the CM oversees the removal of defects by the responsible construction companies.

- Interfaces to other contractors

The **CM** is solely responsible for everything at the site related to the construction process (including cost and time supervision, coordination and organisation of all stakeholders on the site, and the quality control of works). He reports to the ECB/NEP-PO and the external project manager. The CM is in charge for the implementation of the required building works carried out by construction companies, and for finding solutions, if technical difficulties arise. As mentioned earlier, he integrates the site supervision of the planning team (technical and aesthetic). In this function, he has the power to issue binding instructions to the construction companies and the planning team. Having a CM for site supervision is common in practice. However, the CM for the NEP project is handling all organisational aspects at the site.

Compared to the CM, the **external project manager** operates on a higher level. He is responsible for the control and monitoring of the CM and the overall contract and claim management. In this function he

⁴ Honorarordnung für Architekten und Ingenieure (Official Scale of Fees for Services by Architects and Engineers).

enforces the interests of the ECB vis-à-vis all parties and serves as first level of escalation when frictions between the CM and the architects or the construction companies occur. Furthermore, he accounts for the overall cost management, time scheduling and organisation.

The **architects** are responsible for aesthetic monitoring/design supervision and checking of shop drawings.

The special planners are responsible for the supervision of building works within their respective trade (e.g. façade, technical infrastructure etc.).

Figure 2

Roles & Responsibilities: Interfaces of CM services to main stakeholders

	Project-Management	Construction Management	Architectural planning	Special planners
Core Responsibilities:				
• Execution planning	From 11/08 • Managing execution planning	From 05/09 • Integration into the Project	• Phase 5 (Execution Planning)	• Phase 5 (Execution Planning)
• Procurement	• Cost management • Time schedule + Organisation • Managing procurement of works	• Participation in tender negotiations	• Phase 6+7 (Tendering and Award)	• Phase 6+7 (Tendering and Award)
• Execution of construction works	• Ensuring Quality/ Quantity • Overall Contract/ Claim Management • Overall Monitoring	• Phase 8 • Site supervision • Overall coordination • Integration of special planners	• Aesthetic Monitoring • Checking of shop drawings	• Phase 8 (Construction Supervision)

- Estimated value

The estimated value of the construction management services amounts to approx. EUR 20 million. Thereof EUR 0.6 million relates to the tendering phase until January 2010. Since the value of these service contracts exceeds the threshold of EUR 211,000 in Article 4 of the ECB Procurement Decision a public procurement procedure should be conducted.

- Budget availability

With the approval of the Governing Council on 20 December 2008 to execute Option 1, the Overall Investment Costs for the project were approved. They include a budget for the CM.⁵

2. Type of procedure

a) Negotiated procedure

The CM's services should be tendered through a negotiated tender procedure in line with Article 13 of the ECB Procurement Decision. Under Article 13 (1), *"the ECB may apply a negotiated procedure in the following exceptional cases:*

(a) When the nature of works, supplies, or services or the risks attaching thereto do not permit prior overall pricing; or

(b) When the nature of the services is such that specifications cannot be established with sufficient precision to permit the award of contract by selection of the best tender according to the rules governing open or restricted procedures.

These conditions are fulfilled here. The nature of the CM services, and the risks attached thereto, do not permit overall pricing. The CM services are very complex in nature and must be executed over a long period of time. The number of participants in the construction process requires a high coordination effort and creates risks for the parties involved. Candidates cannot easily price these risks.

Furthermore, the CM services are so complex and diverse in nature that the ECB cannot establish the specifications (scope of services, interfaces etc.) with the required very high degree of precision so that the candidates could calculate and submit fully comparable tenders. Accordingly, the ECB cannot simply select the best tender as in an open or restricted tender, i.e. without negotiations. Most likely, a clarification, negotiation and further refinement of the scope of services will be necessary.

Therefore, CM services can be tendered through a negotiated procedure without major legal risks, as was confirmed by the external legal counsel. [REDACTED] Negotiated tenders are often used in case of complex building projects,⁷ and the NEP-PRC has considerable experience in negotiated tenders.

⁵ [REDACTED]
⁶ See [REDACTED] "Legal Opinion regarding the tender for construction manager services (03.12.2008), Reg. Nr. 01104-07/23/1106.

⁷ Recent references include the British Embassy, Berlin; the Hôtel de police and the extension of the Palais de justice in Le Havre (France); the Trave tunnel near Lübeck, Germany; the renovation of the Olympiastadion in Berlin; the Commerzbank Arena (Frankfurt am Main), the new BBI airport in Berlin (Germany), Terminal 1 at the Airport Hamburg and the construction of a public hospital in Hamburg-Eppendorf (Germany).

They require higher organisational efforts, since the ECB should conduct negotiations with the tenderers regarding the scope of services/works/supplies and price. On the other hand, the ECB can take full advantage of its negotiating power.

The choice of procedure for the CM tender was internally discussed between NEP-PO, CPO, DG-L and [REDACTED]. The possibility of tendering CM services in a five quote procedure under the exception clause in Article 6 of the ECB Procurement Decision (reasons of extreme urgency)⁸ was rejected, as the cumulative conditions set out in the derogation were not considered to be met in the current case. In addition, it would have been also difficult to argue that the time limits of a negotiated procedure could not have been complied with; particularly, when the ECB were planning to conduct a five-quote procedure with a pre-qualification phase from the outset.⁹

On the other hand, the possibility of an accelerated procedure according to Article 18 (8) of the Decision was also refused due to the higher risks of future legal actions; the given factual circumstances could not have been considered to justify the restrictive interpretation of the term “urgency”.¹⁰

b) Pre-qualification phase

In order to allow adequate competition in the selection phase, it is proposed to conduct a pre-qualification procedure to find the most suitable companies to participate in the subsequent award phase of the tender process.

The pre-qualification will be done using (i) the standard ECB eligibility criteria (Art. 24 of the Procurement Decision) as well as (ii) the following minimum standards:

- Execution of at least two high-rise building construction projects in the area of project supervision/construction management with construction costs of at least EUR 150 million within the past ten years. At least one project must have been completed during this period (proof of overall acceptance date).
- At least one completed high-rise building construction project applying the German Construction Contract Procedures (“Vergabe- und Vertragsordnung für Bauleistungen” (VOB), parts B and C, in the area of project supervision/construction management with construction costs of at least EUR 50 million within the past ten years (proof of overall acceptance date).

⁸ Article 6 (1) (b) allows deviations from specific procedural requirements when the time limits for the procurement procedures cannot be complied with “for reasons of extreme urgency brought about by events unforeseeable for the ECB”.

⁹ [REDACTED] p. 2-3.

- Accumulated total net turnover of at least EUR 10 million in the last three financial years. Temporary groupings may add the turnover of the members.
- Capability for provision of a site manager (“Bauleiter”) according to the Hessian Building Regulations (Hessische Landesbauordnung).

According to the analysis of D&S, NEP-PO, GFP und CPO, the number of qualified companies both in the areas of site supervision/construction management and of project management is sufficient. However, in the potential market, it is not typical for one single company to cover all services in question. Therefore, applications of temporary groupings should be allowed and encouraged, which is also important for experienced, but smaller companies to reach the turnover threshold set out in the eligibility criteria.

The applications of companies/temporary groupings shall be evaluated under the selection criteria listed below.

- Experience of the candidate in the area of project supervision/construction management in comparable, complex construction projects; to be evidenced on the basis of up to five reference projects carried out in the last ten years, including a presentation of the respective internal project organisation (organisational chart);
- Number of staff working in the area of project supervision/construction management;
- Experience in the area of project supervision/construction management in public construction projects; to be evidenced on the basis of up to 5 reference projects carried out in the past ten years;
- Experience in drawing management as evidenced by reference projects;
- Compliance with health and safety regulations as evidenced by reference projects;
- Quality management system.

Companies who are expected to apply for the CM tender are mainly architectural and project management companies specialising in construction monitoring and organisation. A preliminary research conducted by NEP-PO and D&S identified a sufficient number of possible applicants.

c) Award criteria

The key elements defining “best value for money” are the price and quality of the offer. Between these the price should prevail as the pre-qualification phase should ensure that only suitable and experienced companies are invited to submit a bid. The following award criteria are proposed in order to select the most suitable applicant and ensure best value for money for the money:

- 60% for price;

- 35% for quality; e.g. project organisation (concept for provision of services including team size and proof of qualifications of individual staff members in terms of the designated positions);
- 5% for contractual terms.

d) Time schedule for the tender procedure

The Contract Notice shall be dispatched after the approval of this document at the NEP-PRC meeting on 16th December 2008, which starts the pre-qualification phase.

The finalisation of the pre-qualification phase and the decision on the “short-listed” companies which will be invited to tender by the NEP-PRC is scheduled for February 2009.

The invitation to tender shall be dispatched in March 2009. Offers shall be received in May 2009. The negotiations are foreseen to be conducted in June/July 2009, and the award of contract is in August 2009 (please refer to Annex 1).

In order to facilitate his successful integration to Phase 1 and preparation of Phase 2, as well as to avoid major delays, the CM should begin his services at the latest in August 2009. As a prerequisite for the successful execution of the tasks the CM must as early as possible

- review the execution planning,
- review the tender documents for construction tenders including the bill of quantities,
- assess the contractual deadlines and terms of contract,
- assist the award process of the construction tenders, and thereby ensure the successful implementation of the construction phase.

Annexes

- Annex 1 Steering time schedule 072 for the procurement of the CM, status 4 December 2008

