



REPUBLIC OF BULGARIA
MINISTRY OF FINANCE

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GENERAL STANDARDS AND RULES
FOR ASSIGNING THE REPRESENTATION OF THE
BULGARIAN STATE
IN INTERNATIONAL ARBITRATION CASES

MINISTRY OF FINANCE

Sofia

2024

RULES FOR CONDUCTING A PROCEDURE FOR THE SELECTION OF A LEGAL REPRESENTATIVE FOR A SPECIFIC INTERNATIONAL ARBITRATION CASE:

These general standards and rules contain the general conditions and requirements for assigning representation of the state in international arbitration cases on investment disputes. In the event that there is a need to hire a legal consultant for procedural representation and legal services for a specific international arbitration case, the Ministry of Finance (hereinafter referred to as "the Contracting Authority") conducts an open competitive procedure according to the following rules:

I. GENERAL PROVISIONS

1. The procedure for concluding an Engagement Letter is initiated by an order of the Minister of Finance, which specifies the specific conditions and deadlines for its conduct, as well as the date, hour, and place for the opening and announcement of the participants' proposals. The application deadline is at least 30 days from the announcement of the order. In case of extraordinary circumstances or in investment disputes covered by these rules, the term cannot be shorter than 7 days, counted from the announcement date of the procedure;

2. Participants are required to observe the deadlines and conditions specified in the order and in these standards and rules for participation in the procedure for concluding an Engagement Letter;

3. Expenses related to the preparation and submission of offers are borne by the participant. The Contracting Authority, under no circumstances, participates in these expenses, regardless of the method of conduct or the outcome of the procedure.

4. Law Firms that fully accept all requirements and conditions specified in these rules and meet these requirements and conditions are admitted to participate in the procedure.

5. The Contracting Authority announces in an appropriate manner on the Contracting Authority's website the Minister of Finance's order to open the procedure, along with these general standards and rules and the contract template, if there is one. The announcement may also be distributed through various specialized electronic sites and publications related to international arbitration.

6. If deemed appropriate, the Contracting Authority may send a notification and invitation to participate in the procedure in accordance with these standards and rules to law firms listed in the Legal 500 United States/UK, International Arbitration or another practice area from the Legal 500 classification, depending on the case's subject, or to other law firms with established reputation in international investment arbitration, including firms that participated in previous procedures of the Contracting Authority with a similar subject in the last three years, as well as to all those who participated in market consultations with a similar subject conducted by the Contracting Authority.

II. REQUIREMENTS FOR PARTICIPANTS

1. Any law firm that meets each of the following requirements may participate in the procedure for concluding an Engagement Letter:

1.1. Has proper registration as a law firm according to its national legislation;

The legal form under which participants practice law depends on their national law. Participants registered outside the Republic of Bulgaria may not be law firms in the sense of Bulgarian law.

This circumstance is proven at the time of concluding the contract with the winning participant.

1.2. Presents a team from its staff as follows:

(a) A "Partner" attorney, who will lead the law firm's team on the specific case and will be responsible for representing Bulgaria – must have participated as a lead counsel in at least 7 (seven) successfully concluded investment cases, in 4 (four) of which must have represented a state.

(b) One partner/attorney from the proposed team with experience as a lead counsel in at least 5 (five) successfully concluded investment cases, in at least 3 (three) of these cases must have represented a state.

(c) The remaining members of the legal team, along with a brief description of their relevant experience.

Attorneys under points (a) and (b) should be members of the firm, i.e., are partners or have a contractual relationship with it, which creates a relationship of exclusivity. This circumstance is proven upon concluding the contract with the winning participant.

1.3. Has valid insurance against "Professional Liability" risk worth no less than 25 (twenty-five) million euros or the equivalent amount in another currency.

This circumstance is proven through an insurance policy or another certificate from the insurer according to applicable law.

2. For the purposes of this section, the following clarifications should be considered:

2.1: What constitutes an investment case.

Cases are considered investment cases in which claims are made based on a multilateral or bilateral investment treaty, regardless of the arbitration rules under which the case is considered (for example, the Arbitration Rules of the International Centre for Settlement of Investment Disputes (ICSID), the rules of the ICSID Additional Facility, the rules of the United Nations Commission on International Trade Law (UNCITRAL), etc.).

2.2: When is it considered that the partner/attorney has participated as a lead counsel in a case.

If a lawyer has participated in more than one phase of the same case (objections to jurisdiction and admissibility; dispute on the merits; proceeding to determine the amount of damages; annulment proceeding), this will be considered participation in one case.

For the purposes of the procedure, it is considered that the attorney participated in a specific case if there is evidence that they represented the state and appeared in open sessions before the

arbitration tribunal. This can be proven through arbitration decisions; transcript of records; powers of attorney; parts of contracts, certificates from the arbitration institution, etc.

An attorney's participation in a proceeding for the annulment of an arbitration decision is considered as experience only if he participated in the main proceeding according to the previous paragraph.

Participation as arbitrators in cases will not be considered as experience for the proposed partners.

2.3: When is a case considered won.

In all cases, a case is considered successfully concluded when all claims are upheld and all claimed damages are awarded (for the Claimant) or all claims are rejected (for the Respondent).

Also, the Contracting Authority will consider a case successfully concluded under the following circumstances:

(a) if a partner/attorney defended the claimant, and the claims were upheld for at least 40% of the value of the claimed damages;

(b) if a partner/attorney defended the respondent, and the claims were rejected for at least 60% of the value of the claimed damages.

(c) if the above quantitative criteria are not met, the case may be considered successfully concluded in special situations, in which case participants should explain in detail why they consider the respective case a significant success. Special situations are those where the outcome of the case has significantly influenced the economic or social factors in a particular country/region considering the tribunal's conclusions, the decision has set a valuable precedent, or has permanently changed established caselaw. In these cases, the final decision, whether the case is successful or not, is taken by the committee reviewing the submitted offers, based on the internal conviction of its members for each specific case.

If the case is terminated due to withdrawal of the claim or due to an agreement between the parties – these cases will not be recognized as experience.

To establish the above circumstances, the participating law firm must present the decision and explanation why it considers it successful for the points (a) - (c).

2.4: Final conclusion of a case.

All presented cases should be finally concluded, including the periods for their annulment have expired.

2.5: Tabular presentation.

Each participant presents a report in the form of a table with the following view:

Name of the participating partner/attorney	Name of the parties and case number	Claim value	Outcome of the case	Activities performed by the participating partner/attorney in the case	Brief explanation why the case is considered successful
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The report should contain accurate and systematized information on what constitutes the participation of the partner/attorney in the case; the material interest of the case; the outcome of the case; the amount of the accepted or rejected part of the claim, etc. If necessary, participants can provide additional materials and explanations as an appendix to the table.

Separately from the above table, each of the proposed attorneys under II.1.2., letters “a” and “b” should present a list of all international arbitration proceedings they have participated in over the last 10 years with an indication of their outcome.

2.6: Confidentiality.

The Contracting Authority commits to maintaining the confidentiality of documents provided from arbitration cases. Participants commit to keeping confidential any information regarding the specific international arbitration case that may be provided to them by the Contracting Authority during the procedure, which is not publicly accessible.

2.7: Citing Public Documents

If any of the documents proving the relevant circumstances are publicly available online, the participant may provide a link.

2.8: Team Changes

Participants are obligated, by the contract, to change the proposed team outlined in II.1.2 only based on valid reasons, which will be consulted with the Contracting Authority. The withdrawal of a team member will occur with the consent of the Contracting Authority, which cannot be unreasonably withheld. Upon the withdrawal of a team member, the firm is obligated to propose a person with experience and qualifications equivalent to the person being replaced, unless this is impossible. The replacement person is subject to approval by the Contracting Authority, and the approval cannot be unreasonably withheld.

3. Participants meeting any of the following conditions **cannot participate in the procedure:**

3.1. The participant has been declared insolvent or is undergoing insolvency proceedings, or has entered into an extrajudicial agreement with its creditors as per Article 740 of the Commercial Law of the Republic of Bulgaria, or is in liquidation, or has ceased operations, or if the candidate or participant is a foreign entity – is in a similar situation resulting from a similar procedure according to the legislation of the country in which it is established;

3.2. The person(s) representing the participant, and the members of the proposed team are related parties as defined in § 1, items 13 and 14 of the Additional Provisions of the Public Offering of Securities Act of the Republic of Bulgaria with the Contracting Authority or with managerial staff in its administration;

3.3. A participant, who at the date of submission of the offer is in a conflict of interest. A participant is considered to be in a conflict of interest if representing a party in a legal or arbitration case against the Republic of Bulgaria, a Bulgarian state authority or agency, or a Bulgarian state-owned company (a company in which Bulgaria or a Bulgarian state authority or agency directly or indirectly owns more than 50% of the shares or interests), or if there is a conflict of interest according to the rules of the bar association applicable to the participant, as well as if providing legal services to the opposing party in the international arbitration case subject to the contracting procedure, and related persons, for whom there is information. A conflict of interest is also presumed to exist when a participant has represented or advised a party in or in relation to a legal or arbitration case against the Republic of Bulgaria, a Bulgarian state authority or agency, or a Bulgarian state-owned company within one year before the announcement date of the procedure for concluding an Engagement Letter.

The circumstances referred to in point II.3 shall be proved by template declarations signed by the person(s) representing the tenderer. When signing and declaring the absence of the circumstances referred to in point II.3.2, the person(s) representing the tenderer shall have firstly ensured that the members of the proposed team do not have a conflict of interest.

III. INSTRUCTIONS FOR PREPARING THE OFFER

The offer must be submitted only on an electronic medium – by email to the address announced in the order for the opening of the procedure.

Due to the large volume of files, they should be uploaded to a secure file-sharing platform, and a corresponding link for downloading and accessing should be sent to the Contracting Authority. The offers must meet the following requirements:

- Be submitted within the deadline set by the Contracting Authority;
- Be in English;
- Have a validity period of at least 90 days;
- A participant has the right to submit only one offer;
- Be provided in two parts, according to the instructions below. The offer should consist of two archive files (7zip or similar), each protected with a separate password and should contain the following content:

File 1: Selection documents

Selection documents include all documents that prove the requirements in II.1 and 3. The file must be password-protected, which participants should provide upon request from the Contracting Authority, after the offer submission deadline.

File 2: Price offer

The price offer is a file in pdf format containing the following information:

Hourly rates for the following persons:

- Partner.....;
- Associate.....;
- Legal assistant.....

It also indicates the binding cap for the provided services for one calendar month.

The price of the offered services must be stated in euros and be final, i.e., include all direct and indirect taxes and other public or private claims, including but not limited to value-added tax, which the law firm should legally charge.

The participant is solely responsible for any mistakes or omissions in the calculations of the price offered. In case of discrepancy between the numerical and written price, the written word will be considered.

The file with the price proposal must be password-protected, which will be requested only from participants meeting the eligibility criteria.

Passwords for accessing File 1 and File 2 should not be provided when submitting the offer.

Submitting Inquiries for Clarifications

If necessary, within the offer submission period, participants may send inquiries to the Contracting Authority and request respective clarifications to the address specified in the order for opening the procedure. The responses are published on the Contracting Authority's website.

Certificate of good standing and Authorization

Documents must be signed by a person authorized to represent the participant. Evidence of the signatory's authority to represent the participant, legal capability, registration, and the right to practice law are required and provided only by the participant ranked for contract conclusion. Failure to present this within a reasonable period and non-conclusion of a contract results in the contract being concluded with the next ranked firm.

Changes to the Offer

Until the deadline for submitting offers, every participant may change, supplement, or withdraw their offer. Withdrawing the offer terminates further participation in the procedure. The offer cannot contain conditions different from those agreed in the Engagement Letter template when such is announced.

IV. REVIEW OF OFFERS

1. Appointment and Operation of the Commission

The Contracting Authority appoints a commission to review, evaluate, and rank the offers ("the Commission"), defining its composition and alternate members. The members of the Commission should have a legal education and capability, at least 5 years of legal practice, and be

employees of the Contracting Authority and/or have experience in international arbitration. The Commission's decisions are made by a majority of its members. When a commission member disagrees with the decision taken, they sign the protocol with a dissenting opinion and provide their reasons in writing.

2. Admission Stage of Participants

The Commission reviews the selection documents in File 1 and assesses their compliance with the criteria set by the Contracting Authority, drafting a protocol. The Commission has the right at any time to verify the data and facts stated by the participants. When obvious errors, ambiguities, missing specified attachments, or technical issues with the files are identified, the Commission allows the participant to submit the documents within 2 calendar days from the notification.

A participant is disqualified from the procedure if, after the expiration of the additional term in the cases provided for in the previous paragraph:

- a) they have not provided some of the required participation documents;
- b) they have submitted an incomplete offer or one that does not meet the conditions of these rules;
- c) circumstances under II.3 exist;
- d) the Commission has found that false information has been provided to prove compliance with the Contracting Authority's announced selection criteria.

3. Opening of Price offers

The Contracting Authority announces on its website the list of candidates who meet the requirements and the date, place, and time for opening the price offers, by which time participants should provide their passwords. The price offer in File 2 of participants whose offer does not meet the Contracting Authority's requirements is not opened and considered by the Commission. If any participant does not provide their password in time, they are removed from participation in the procedure.

4. Unusually Advantageous Price Offers

If a participant has proposed hourly rates and a binding cap for the provided services for one calendar month, each of which is more than 40 percent lower than the average price of the other offers, the Commission will require from him a detailed written justification for the proposed price. The deadline for submitting the justification is 3 calendar days after receiving the Commission's request. The Commission may accept the written justification and not propose the offer's removal when objective circumstances related to:

- 1. An original solution for performing the work;
- 2. The presence of exceptionally favourable conditions for the participant;
- 3. Economical execution of the work;

If the participant does not submit the written justification within the deadline or the Commission deems the stated circumstances are not objective, the Commission proposes the participant's removal from the procedure.

5. Unusually Low Number of Anticipated Hours

The Commission also checks the ratio between the proposed binding cap for the provided services for one calendar month and the average value of the hourly rates proposed by the participant. If the result obtained for a participant is more than 40 percent lower than the average result of the other offers, the Commission will require a detailed written justification for the proposed price from him. The deadline for submitting the justification is 3 calendar days after receiving the Commission's request. The Commission may accept the written justification and not propose the offer's removal when objective circumstances related to:

1. An original solution for performing the work;
2. The presence of exceptionally favourable conditions for the participant;
3. Economical execution of the work;

If the participant does not submit the written justification within the deadline or the Commission deems the stated circumstances are not objective, the Commission proposes the participant's removal from the procedure.

Examples of standards for objective circumstances under IV.3 and 4. include the use of different technologies, experience in the respective field of law, knowledge regarding the applicable legal framework, respectively the absence of a need for additional research related to it.

6. Conditions for Terminating the Procedure

The Contracting Authority terminates the procedure by order when:

1. No offers have been submitted, or there is no participant who meets the requirements of the current documentation;
2. All offers do not meet the conditions previously announced by the Contracting Authority.

The Contracting Authority may terminate the procedure by order:

1. When only one offer has been submitted,
2. When there is only one participant who meets the requirements, or only one offer meets the conditions previously announced by the Contracting Authority;
3. When the participant ranked first refuses to sign the Engagement Letter and the participants ranked thereafter also refuse to sign the Engagement Letter.
4. In the presence of other circumstances or at the discretion of the Contracting Authority.

7. Selection of the Contractor

Among the participants admitted to the opening of price proposals, the one with the highest score according to the methodology - Appendix No. 1 to these rules is selected, adhering to the following principles:

Relative weight of the proposed total sum of hourly rates – 60%;

Relative weight of the binding cap for the provided services for one calendar month - 40%.

The ranking of the participants is final and is not subject to appeal or review by the Contracting Authority.

V. CONCLUDING AN ENGAGEMENT LETTER

The Engagement Letter will be concluded with the participant ranked first within a period not longer than 20 days from the issuance of the Contracting Authority's decision to select the contractor.

Before signing the Engagement Letter, the selected participant must have provided:

A) Document proving registration and good standing as per II.1.1.

B) Documents certifying the legal capability of the proposed attorneys to practice law.

C) Documents certifying the absence of circumstances under II.3.1 - 3.3 of these rules, issued by a competent authority or an excerpt from a judicial register, or an equivalent document from a judicial or administrative authority from the country where they are established.

If the respective foreign country does not issue documents for any of the circumstances under II.3.1 –3.3, the participant presents a sworn declaration if such declaration has legal significance according to the law of the country where it is established.

An Engagement Letter will not be concluded with a participant designated as the contractor who, at the time of its signing:

1. Does not present a document proving registration as per II.1.1.

2. Does not present a document certifying the absence of circumstances under II.3.

3. Is in a conflict of interest regarding the opposing party in the specific international arbitration case, and related individuals for which there is information, which will be verified within an additional short period provided by the Contracting Authority.

If an Engagement Letter is not concluded with the participant designated as the contractor, the Engagement Letter will be concluded with the next firm in the final ranking.

Despite the above, the Contracting Authority reserves the right, at its discretion or in the presence of other circumstances beyond those mentioned in the previous paragraph, not to conclude an Engagement Letter.

METHODOLOGY

for

evaluation of bids for participation in a procedure for concluding a contract for hiring a law firm for procedural representation and legal advice on an international arbitration case

1. The calculation for the comprehensive evaluation is based on the Price offer presented by the participant. Price offers are checked to ensure they are prepared and presented in accordance with the requirements of the documentation for participation in the procedure.

Detected arithmetic errors are corrected according to the following rule: in case of discrepancies between amounts expressed in figures and words, the word expression of the amount is considered correct.

If participants do not agree with these corrections, they are removed from participation in the procedure.

Each offer will be evaluated based on 2 (two) indicators:

- **A** – the binding cap for the services provided for one calendar month offered by the participant – **with a coefficient of relative weight of this indicator in the comprehensive evaluation – 40%**;
- **B** – the individual prices of fees per worked hour (hourly rate) by Partner, Associate, and Legal assistant offered by the participant – **with a coefficient of relative weight of this indicator in the comprehensive evaluation – 60%**.

2. Evaluation of the offer

The evaluation of each offer is performed by the members of the Commission, in accordance with the evaluation indicators and their relative weight, according to the specified formulas and is reflected in a table for evaluating the results.

2.1 The evaluation of the offer according to indicator A is based on the Price offer presented by the participant for the binding cap for the services provided for one calendar month.

The evaluation of all participants according to this indicator will be calculated using the following formula:

Aimin

$A = \frac{A_i}{A_{min}} \times 40$, where:

Ai

- **Aimin** is the lowest binding cap for the services provided for one calendar month, indicated by any of the participants.

- **Ai** is the binding cap for the services provided for one calendar month, indicated by the specific law firm.

2.2 The evaluation of the offer according to indicator B is based on the Price offer presented by the participant for individual prices of fees per worked hour (hourly rate) for Partner, Associate, and Legal assistant.

The evaluation of all participants according to this indicator will be calculated using the following formula:

Bmin

$B = \frac{B_i}{B_{min}} \times 60$, where:

Bi

- **Bmin** is the lowest sum of individual prices of fees per worked hour (hourly rate) for Partner, Associate, and Legal assistant, indicated by any of the participants.

- **Bi** is the total sum of the individual prices of fees per worked hour (hourly rate) for Partner, Associate, and Legal assistant, indicated by the specific law firm.

$B_i = p_i + a_{si} + l_{ai}$, where

p_i – the price for 1 hour of work performed by a partner (Partner);

a_{si} - the price for 1 hour of work performed by an associate (Associate);

l_{ai} - the price for 1 hour of work performed by a legal assistant (Legal assistant).

2.3 Comprehensive evaluation

The overall comprehensive evaluation of the proposal is determined by the sum of the evaluations for each of the two indicators according to the following formula:

$$F_i = A + B$$

3. Final ranking of the participants

3.1. The final ranking of the participants is based on the number of points each participant has received.

3.2. The participant with the highest overall – comprehensive evaluation is ranked first.

3.3. If there are participants with equal scores, the Commission ranks higher the participant whose partners have a greater total number of won investment arbitration cases.

3.4. Upon completing its work, the Commission's chairperson presents the report signed by all members for approval by the Contracting Authority. An integral part of the report is the evaluation table.

