

Request for Proposal (RfP)

Drafting of Transfer Pricing Agreements and Legal Advisory Services October 2024

The Deadline for offer submission was EXTENDED by 24th October 2024 at noon (12:00 PM – CEST)

1. Context

EIT Manufacturing (KIC) is focused on promoting entrepreneurship, innovation and education in the domain of Manufacturing. EIT Manufacturing brings together leading organisations along the entire value chain from smaller companies to larger industry, excellent academic and research institutions, as well as public sector organisations, to promote the transformation of manufacturing towards the digital economy, towards the circular economy and the decarbonisation of industry, by removing barriers to innovation, promoting talent and education, leveraging enabling technologies and exploiting big data.

EIT Manufacturing is an association under the law 1901 created in 2019. Headquartered in Paris, it currently has six regional innovation hubs. Along with the EIT Manufacturing there are 8 (eight) other KICs with the aim to lead the action and create services across Europe, improving the competitiveness of European companies.

2. Service Description and Background

2.1. Introduction

EIT Manufacturing is undergoing a significant restructuring process. As part of this restructuring, we are seeking a reputable and experienced law firm with an international presence across Europe to provide essential legal services. These services will include the drafting of new Transfer Pricing Agreements (TPAs) and legal advice on the implications of various models we are considering as part of our new organizational structure.

2.1. Scope of Work

The selected law firm will be responsible for the following:

- a) Drafting Transfer Pricing Agreements:
 - o Develop new TPAs that align with the new financial and accounting structure adopted by EIT Manufacturing*.
 - o Ensure compliance with international and European tax regulations, as well as local laws applicable in the countries where EIT Manufacturing operates**.



- Tailor agreements to reflect the operational, financial, and legal considerations emerging from the restructuring.
- b) Legal Advisory and Support:
 - Provide ongoing legal advice on the implications of different Transfer Pricing models.
 - Advise on the legal risks and considerations associated with the restructuring process.
 - Collaborate closely with EIT Manufacturing's legal department to ensure alignment with internal legal policies and procedures.

2.2. Requirements

The law firm must demonstrate:

- Proven Expertise in Transfer Pricing: Strong experience in drafting and advising on Transfer Pricing Agreements in accordance with international standards and the applicable legislation.
- International Presence in Europe: A robust presence across multiple European countries, including key markets such as France, Italy, Germany, Austria, Spain, Sweden, and Greece, with the ability to navigate cross-border legal matters effectively.
- Experience with Corporate Restructuring: Expertise in providing legal support for organizations undergoing restructuring, particularly related to tax and corporate law.
- Collaboration with External Consultants: Ability to collaborate effectively with third-party consultancy firms and integrate their recommendations into legal agreements.
- Client-Centric Approach: A commitment to working closely with EIT Manufacturing's legal department and understanding the nuances of our organization's structure and objectives.

2.3. Deliverables

1. Drafted Transfer Pricing Agreements for EIT Manufacturing's new structure.
2. Legal Memorandums outlining the implications of different Transfer Pricing models and their alignment with the restructuring process.
3. Ongoing Legal Advice to ensure that the drafted agreements are compliant, enforceable, and aligned with EIT Manufacturing's operational and legal strategy.

2.4. Timeline

The restructuring process is scheduled to progress over the coming months. A detailed timeline will be developed in collaboration with the chosen supplier.

2.5. Additional Information

*An extensive audit report, previously prepared by an international consultancy for EIT Manufacturing, is available for review by the selected firm. This report can be utilized as a foundation or guidance for drafting the tax ruling. Consequently, the services required under this RfP will not entail starting from scratch; rather, the primary task will be to advise on which elements from the audit report should be incorporated into the final ruling.

**In this RfP, please note that the services being procured will be applied exclusively to EIT Manufacturing's Headquarters. These services may also have potential implications for one additional subsidiary or company within the group, which will be confirmed at a later stage. However, not all subsidiaries of EIT Manufacturing, known as Innovation Centers (ICs), are included in the scope of this RfP.



Therefore, the services will be directed solely to the HQ and one additional corporate branch, pending confirmation.

2.5 Proposal Requirements:

Interested Suppliers should include the following information in their proposals:

Interested suppliers must submit the signed “Tenders Declaration of Honor” (Annex I) along with their proposals. Failure to provide this declaration, or submitting it incomplete, incorrect, or after the deadline, will result in automatic disqualification of the supplier for non-compliance with an essential requirement.

Additionally, the absence of any required information in the RfP may lead to the disqualification of the supplier. Therefore, it is imperative that all requested information is provided in full and in accordance with the specifications outlined in this document.

3. Timeline

The deadline to submit the offer was extended by **24/10/2024 at noon (CEST)** and the awarded tenderer shall provide services as described in this RfP.

The indicative timeline for the call for proposals is as follows:

Activity	Responsible	Date
RFP opening	EIT Manufacturing	04/10/2024
Offer submission	Supplier	19/10/2024
Extended deadline for offer submission	Supplier	24/10/2024 at noon (12:00 PM – CEST)
Evaluation and notification of award	EIT Manufacturing	23/10/2024
Contract signature	EIT Manufacturing & selected supplier	28/10/2024

All offers shall be submitted within the above-mentioned deadline to the following link: <https://eit-manufacturing.prioritize.linksquares.com/new-task?token=eqfghK7TdycO3ZdVaPfVqgS5gx2LiEf2lmaueYxnGfUzCJhpKHMNjUwW1oN-KF7i>

To start your application, please follow the outlined “step-by-step”:

1. Click on the link above and fill out the Task Name with this description: “RfP -Drafting of Transfer Pricing Agreements and Legal Advisory Services”.
2. Fill out the Requestor Name with your name.
3. Fill out the Requestor E-mail with your e-mail address.
4. Leave the following fields blank since they are not mandatory: Task type, Deadline and Priority.
5. Fill in the field "Describe Task" with the message you wish to convey to our team and/or any details and comments you have regarding your proposal. If you have none, simply write the name of the “RfP - Drafting of Transfer Pricing Agreements and Legal Advisory Services”.
6. Click on attachments and upload your Commercial Proposal as an attachment.
7. After completing the above-mentioned information, click on “Submit Task” to finalise your application. Please note that you will not receive any confirmation in your e-mail. However, you should ensure that this message appears to you on the screen after submitting your proposal: “Task created successfully”.



If you have any questions, please contact us at the following email address:
procurement@eitmanufacturing.eu

Disclaimer of Liability for Technical Failures:

EIT Manufacturing shall not be held liable for any technical failures, interruptions, or glitches occurring in its digital tool designated for receiving proposals in the Request for Proposals (RfP) as mentioned in the link above, irrespective of the underlying reasons. EIT Manufacturing assumes no responsibility for any loss or damage resulting from such technical issues.

Verification of Proposal Receipt:

In case of any doubt or uncertainty regarding the submission status, the supplier is obligated to take appropriate measures to confirm the receipt of their proposal, utilising the communication channels and tools made available by EIT Manufacturing for such verification. It is the supplier's sole responsibility to verify the successful submission and receipt of their proposal through the available means provided by EIT Manufacturing. By participating in the proposal submission process, the supplier acknowledges and accepts that EIT Manufacturing disclaims any liability related to technical failures affecting the digital tool and that the supplier is accountable for ensuring the successful transmission and receipt of their proposal.

4. Evaluation Criteria and Award Notification

Timely received proposals submitted by the tenderers will be examined, evaluated and compared in accordance with the following criteria and the contract shall be awarded to the highest ranked tenderer. The decision will be made according to the "Best Value for Money" principle. The award criteria will be the following:

- a) Expertise in Transfer Pricing and Corporate Restructuring. (20% of decision weight)
- b) International presence and ability to handle cross-border legal matters. (20% of decision weight)
- c) Previous experience on the activities performed by EIT Manufacturing and / or EIT KICs and / or good knowledge of its projects and environment. (20% of decision weight)
- d) Competitive Price (40% of decision weight)

An Evaluation Committee of at least 3 people will be established. Each bid will be evaluated and ranked according to the criteria above.

The compliance with the principles of transparency, non-discrimination, equal treatment and absence of conflict of interest will be ensured.

The successful and unsuccessful tenderers will be informed in writing (via email) about the result of the award procedure. In case the winning tenderer is unable to enter the contract, EIT Manufacturing may decide to contract the supplier receiving the second highest ranking.

Upon request from the tenderer concerned, EIT Manufacturing will as quickly as possible and in any event within 15 calendar days from receipt of a written request, inform:

- any unsuccessful candidate of the reasons for the rejection of its request to participate,
- any unsuccessful tenderer of the reasons for the rejection of its tender, including, if this is the case, its decision that the works, supplies or services do not meet the performance or functional requirements,
- any tenderer that has made an admissible tender of the characteristics and relative advantages of the tender selected as well as the name of the successful tenderer or the parties to the awarded contract,



- any tenderer that has made an admissible tender of the conduct and progress of negotiations and dialogue with tenderers.

Information referred to above may be withheld where the release of such information would be contrary to the public interest, would prejudice the legitimate commercial interests of an economic operator, or might prejudice fair competition between economic operators.

Should there be a suspicion that the provider will not be able to perform according to the price offered, EIT Manufacturing has the right to ask for explanations and may reject the tender where the evidence supplied does not satisfactorily account for the low level of price or cost proposed.

Complementary Note on the Evaluation Process:

After the initial evaluation of submitted proposals, it is possible that the potential top-ranked suppliers may be shortlisted for participation in a Pitch Session or in a set of interviews. It is important to emphasise that the evaluation will be conducted in strict accordance with the criteria outlined in the published Request for Proposal (RFP).

The primary objective of the Pitch Session or Interviews is to facilitate a deeper understanding of the received proposals, provide an opportunity to elaborate on specific details and allow the EIT Manufacturing to get to know the team of professionals better. During this session, the shortlisted suppliers will have the chance to present their proposals, clarify any questions and discuss how your firm can best meet the legal consulting needs of EIT Manufacturing.

Further details regarding the Pitch Session or Interviews, including dates and logistics, will be communicated to the shortlisted suppliers following the initial evaluation of proposals.

5. Complaint procedure

Tenderers believing that they have been harmed by an error or irregularity during the award process may file a complaint. Appeals shall be addressed to EIT Manufacturing **only** via the following email address procurement@eitmanufacturing.eu. The tenderers have **5 (five)** days to file their complaints from the date of receipt of notification of the results.

In your application to EIT Manufacturing the complainant shall explain what procedural aspects they consider having been violated along with any recommendations or remarks. Such charges need to be supported with data and facts and, if possible, – documentation. An appeal whose sole purpose is to obtain a second evaluation for no reason other than that the complainant disagrees with the final award decision is to be rejected.

6. Negotiations & Clarifications

Negotiations can be held in the following cases:

- if it is identified that the scope of services issued by EIT Manufacturing is not detailed enough, incomplete or some areas are lacking crucial information to complete the procedure for direct awards;
- if EIT Manufacturing has the intention to reduce the offered prices to find the best value for money;
- if all submitted prices are above the planned budget and it is everyone's interest to finish the procedure with success – in that case, price negotiation can take place. During a price negotiation, all tenderers are called to lower their prices by the same deadline in a written form.

EIT Manufacturing can organise as many rounds of negotiation as it is needed during the procedure in order to reach the highest quality of proposals and the best price.



Whenever possible, the negotiations should be carried out in writing, however, in special cases, video conference or even live negotiation can be organised. EIT Manufacturing also reserves the right to invite the tenderers to an individual meeting before the final award of contract in order to clarify details and ambiguities.

In case of obvious or perceived errors or omissions in the RfP, Tenderers can request additional information or clarifications by the deadline provided in the above timeframe through email at procurement@eitmanufacturing.eu.

Upon receipt of the bids, they will be reviewed and additional details will be requested from the tenderers as needed. The requests as well as the answers are to be submitted written by e-mail. Where information or documentation to be submitted by tenderers is incomplete or erroneous or where specific documents are missing, EIT Manufacturing staff may request the party concerned to submit, supplement, clarify or complete the relevant information or documentation within 3 day(s).

Bid preparation costs are not reimbursable and must be borne by the tenderers.

EIT Manufacturing owns all bids received in this RFP. Proprietary information of vendors in the bids will be kept strictly confidential. The offers as well as the contract may be submitted for audits.

7. Contract

The final award does not yet constitute the Contract. The Contract will be concluded at the time of signature by the Supplier and EIT Manufacturing. The winning supplier will be sent the contract to be signed (indicating the deadline by which the signed contract should be returned to EIT Manufacturing).

The invoicing will be based on a mutually agreed schedule; it will be detailed in the contract. The contract is estimated to be signed in **October 2024 and will have a maximum duration of 3 (three) months with the possibility of renewal by mutual agreement between the parties.**

8. GDPR Compliance

EIT Manufacturing is fully compliant with the General Data Protection Regulation (GDPR) throughout this selection procedure. Our Privacy Notice is available on our website for your review (available at <https://www.eitmanufacturing.eu/who-we-are/legal-documents/>).

The selected Service Providers will be required to adhere to standard contractual clauses concerning privacy and data protection, which will be provided in relation to the contract. These clauses are part of our Standard Terms and Conditions, which will be sent and communicated to the Selected Suppliers.

The awarded supplier will be requested to sign Standard Contractual Clauses (SCC) if no other GDPR compliant safeguards exist, and the supplier is located in a country for which the EU commission has not issued an adequacy decision.

9. Confidentiality Obligation

All information, whether written or oral, exchanged between the parties involved in this Request for Proposals (RfP) process, hereinafter referred to as the "Parties" shall be considered confidential and proprietary.

The Parties agree not to disclose, provide access to, or otherwise make available any confidential information to any third parties, including but not limited to individuals, companies, or organisations, who are not directly involved in the RfP process, without the express written consent of the disclosing Party.



“Confidential Information” shall encompass, without limitation, all data, documents, proposals, discussions, designs, specifications, financial information, technical data, trade secrets and any other information disclosed by one Party to the other during the RfP process.

The obligations of confidentiality shall not apply to information that is:

- a) Publicly available at the time of disclosure or subsequently becomes publicly available through no fault of the receiving Party.
- b) Already in the possession of the receiving Party prior to disclosure and not subject to an existing confidentiality obligation.
- c) Disclosed to the receiving Party by a third party with the legal right to do so without breaching any confidentiality obligations.
- d) Required to be disclosed by law, court order, or governmental regulation, provided that the disclosing Party is promptly notified and given the opportunity to seek a protective order.

Any Party found in breach of this confidentiality clause shall be subject to legal measures, including but not limited to litigation, injunctive relief and monetary damages, as deemed appropriate by the disclosing Party.

The obligations of confidentiality as set forth in this clause shall survive the termination or completion of the RfP process and shall remain in effect for a period of 5 (five) years, unless both Parties mutually agree in writing to terminate this confidentiality agreement.

This confidentiality clause shall be governed by and construed in accordance with the laws of France. Any legal action arising out of or in connection with this clause shall be subject to the exclusive jurisdiction of the courts of Paris, France.

10. Cancellation of the proposal procedure

In the event of cancellation of the proposal procedure, EIT Manufacturing will notify tenderers of the cancellation. In no event shall EIT Manufacturing be liable for any damages whatsoever including, without limitation, damages for loss of profits, in any way connected with the cancellation of a proposal procedure, even if EIT Manufacturing has been advised of the possibility of damages.

The tenderer shall take all measures to prevent any situation where the impartial and objective implementation of the contract is compromised for reasons involving economic interest, political or national affinity, family or emotional ties or any other shared interest (‘conflict of interests’). The tenderer should inform the EIT Manufacturing team immediately if there is any change in the above circumstances at any stage during the implementation of the tasks.

The supplier cannot be a EIT Manufacturing Partner or Activity Partner. Any bid from such an economic operator will be rejected.

Tenderers will be excluded if:

- a. they are being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations; they have been convicted of an offence concerning their professional conduct by a judgment which has the force of res judicata.



- b. they have been guilty of grave professional misconduct proven by any means which the EIT Manufacturing can justify.
- c. they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or any other country of the EU.
- d. they have been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the EU' financial interests.
- e. following a procurement procedure or grant award procedure financed by the EU budget, they have been declared in serious breach of contract for failure to comply with their contractual obligations.

The tenderers must not be in a situation of a conflict of interest, and they have sufficient economic and financial capacity, technical and professional capacity and legal and regulatory capacity to perform the requested services. Additional evidence or declarations might be requested by the contracting authority.

EIT Manufacturing reserves the right to suspend or cancel the procedure, where the award procedure proves to have been subject to substantial errors, irregularities, conflict of interest or fraud. If substantial errors, irregularities, conflict of interest or fraud are discovered after the award of the tender, EIT Manufacturing may refrain from concluding the Contract.

This RfP confers no entitlement or expectation for tenderers to enter into a contract with EIT Manufacturing. Consequently, EIT Manufacturing is not obliged to sign a contract with the chosen supplier, whether at present or in the future.

ANNEX I - Tenders Declaration of Honor

[Place and Date]

[Name of the Legal Entity and/or Signatory]

I, [Full name of the supplier's representative], hereby declare the following in connection with my application for the Request for Proposal (RfP) [title of the RfP]:

- a) I will commit to take all measures to prevent any situation where the impartial and objective implementation of the contract is compromised for reasons involving economic interest, political or national affinity, family or emotional ties or any other shared interest ('conflict of interests'). I will inform the EIT Manufacturing immediately if there is any change in the above circumstances at any stage during the implementation of the tasks.
- b) I accept that during the implementation of the contract and for five years after the completion of the contract, the supplier must keep confidential any data, documents or other material that is identified as confidential at the time it is disclosed ('confidential information').
- c) I accept that during the implementation of the contract and for five years after the completion of the contract, the EIT Manufacturing has the right for the purposes of safeguarding its financial interests, the offer and the contract of the supplier may be transferred to internal as well as external audit services.
- d) I confirm that I or the entity represented by me is not currently experiencing any of the following situations. If any situation applies, details are provided in an annex to this declaration along with a brief explanation.
 - The entity is not bankrupt, subject to insolvency or winding up procedures, and its assets are not being administered by a liquidator or by a court. It is not in an arrangement with creditors, and its business activities are not suspended, nor is it in any analogous situation arising from a similar procedure under national legislation or regulations.
 - There is no final judgement or final administrative decision establishing a breach of obligations related to the payment of taxes or social security contributions.
 - There is no final judgement or final administrative decision establishing guilt of grave professional misconduct, including but not limited to fraud, violation of applicable laws or regulations, ethical standards, distorting competition, violating intellectual property rights, attempting to influence EU Bodies' decision-making processes, attempting to obtain confidential information, or any other wrongful conduct impacting professional credibility.
 - There is no final judgement establishing guilt of fraud, corruption, participation in a criminal organization, money laundering or terrorist financing, terrorist-related offences, child labor, or other forms of trafficking in human beings.
 - The entity has not shown significant deficiencies in complying with the main obligations in the performance of a contract, a grant agreement, or a grant decision financed by the European Union's budget, leading to early termination, application of liquidated damages, or other contractual penalties, discovered through checks, audits, or investigations.



- There is no final judgement or final administrative decision establishing that the entity has committed an irregularity within the meaning of Council Regulation (EC, Euratom) No 2988/95.
- There is no final judgement or final administrative decision establishing that the entity has created an entity in a different jurisdiction with the intent to circumvent fiscal, social, or any other legal obligations.
- In the absence of a final judgement or final administrative decision in the cases mentioned above, or in the case of point (e), I acknowledge that the Applicant may be subject to:
 - i) Facts established in the context of audits or investigations by EPPO, the Court of Auditors, OLAF, or the internal auditor, or any other check, audit, or control performed under the responsibility of the authorizing officer.
 - ii) Non-final administrative decisions, including disciplinary measures taken by the competent supervisory body responsible for the verification of the application of standards of professional ethics.
 - iii) Facts referred to in decisions of persons and entities implementing Union funds.
 - iv) Information transmitted in accordance with the Financial Regulation.
 - v) Decisions of the Commission or national competent authority relating to the infringement of Union or national competition law.

I hereby declare the accuracy and truthfulness of the above statements.

Yours faithfully,

[Signature of the Supplier's representative]

