**Republic of Serbia**

**The Serbia Railway Sector Modernization Project (SRSM)**

# Project ID No. P170868

# TERMS OF REFERENCE

# LEGAL CONSULTING SERVICES

**DISPUTES ANALYSIS OF SERBIAN RAILWAY COMPANIES**

1. **Background**

The International Bank for Reconstruction and Development (IBRD) launched the Multiphase Programmatic Approach (MPA) to support the Government of Serbia in continuation of institutional, physical and operational modernization of the railway sector in an integrated manner through providing financial support to Serbia Railway Sector Modernization Project as part of the Multiphase Programmatic Approach to be implemented in three overlapping phases over the ten-year period.

For the purpose of financing Serbia Railway Sector Modernization Project, Phase 1 of the MPA, IBRD and the Agence Francaise de Développement (AFD), jointly, granted to the Republic of Serbia EUR 102 million loan to support enhancing the efficiency and safety of existing railway assets and improving governance and institutional capacity of the railway sector.

The Project includes following components:

* Component 1: Infrastructure Investments and Asset Management
* Component 2: Institutional Strengthening and Project Management
* Component 3: Railway Modernization Enablers

Project will be managed by the Ministry of Construction, Transport and Infrastructure (MoCTI) through the Project Implementation Unit (PIU) supplemented by the Project Implementation Teams (PITs) in railway companies. PIU has primary responsibility for Project execution ensuring that the Project development objectives are met.

MoCTI intends to engage a highly qualified consultant firm to provide required services more closely described below.

1. **Objective of the assignment**

There are four State owned railway companies – company for public railway infrastructure management "Serbian Railway Infrastructure", freight operator “Serbia Cargo”, a passenger operator “Serbia Voz” and JSC Železnice Srbije (all four entity herein further: **Railway companies**), as the former integrated railway company. The Railway companies, established in August 2015, report to Ministry of Construction, Transport and Infrastructure (herein further: **MoCTI**) and, in line with the national legislation, produce International Financial Reporting Standards compliant annual financial reports.

These four legal entities have over 24,000 proceedings against them by former and current employees, on a range different basis. Mostly these are related to unpaid allowances for meals, vacation, nightshifts and shift work, all of which are legal requirements according to the Serbian Labor Law. Legal claims are made for the period dating up to 2018, when new collective labor agreements have been signed reintroducing payment of these allowances. Lawsuits are geographically disbursed over all Basic Court jurisdictions in the country.

So far, 4.3bn RSD have been collected from the Railway companies by Public Enforcement Agents (hereinafter: **PEA**) on basis of court ruling in favor of plaintiffs. This is done through a process over which companies have no control, and in most instances result in assets of the Railway companies being confiscated and auctioned to collect amounts prescribed by court rulings against them. It is estimated that up to 45% of collected amounts relate to penalty interest, court fees, plaintiff's legal fees and PEA fees. According to the management of the Railway company’s amounts expected to be lost in the remaining ongoing cases will be more than 3.5bn RSD over next several years.

1. **Scope of Work**

Having in mind the number of disputes and the exposure of the Railway companies, MoCTI is to make considerable savings by resolving legal claims made by current and former employees before they get to the stage where enforceable judgments are executed by PEAs, therefore asserting more control over the process while making considerable savings.

For this purpose, MoCTI would hire an external Consultant (hereinafter: **Consultant**), who would perform a case analysis with recommendations for further action and instructions on how to implement the proposed solutions, with the following objectives:

* Providing a legal analysis of all ongoing labor lawsuits in four Railway companies;
* Estimating on case-by-case basis the probability of trial outcomes;
* Proposing a strategy on how to resolve the issue through mechanisms such as out of court/court settlement;
* Providing advice on how to create a robust implementation process for the proposed strategy;
* Estimate expected cost savings in term of court fees, plaintiff's legal fees and PEA's fees;
* Support to railway companies in validation of the proposed process with all relevant stakeholders including but not limited to State Attorney's Office, State Audit Institution etc.
  1. *Providing a legal analysis of all ongoing labor lawsuits in four state-owned railway companies*

The primary goal of consulting services is to provide a professional and impartial analysis of labor disputes, in order to find the most optimal modality of their termination, with a minimum cost for the Railway companies.

At the beginning, the Consultant will prepare the General Report with work plan in which they will describe present state with detailed analysis of disputes and steps for acting. It is necessary to identify group of cases and observe on which way he will manage process of identification and categorization.

It is necessary for the consultant to observe each of the railway companies separately and prepare plan for each of them.

* 1. *Estimating on case-by-case basis the probability of trial outcomes*

In order to achieve the desired goals, the Consultant will analyze for each Railway Company each case individually based on which he will give his expert and objective opinion on the potential outcome of the dispute, using a gradation scale with the following meaning:

* *Positive*, with the meaning that the Consultant estimates that the dispute will be resolved in favor of the Railway companies,
* *Probably positive,* with the meaning that the Consultant estimates that there is a solid chance that the dispute will be resolved in favor of the Railway Companies,
* *Uncertain*, with the meaning that the Consultant cannot predict the outcome of the proceedings based on the available data at a particular stage of the dispute,
* *Probably negative*, with the meaning that the Consultant estimates that there is no solid chance that the dispute will be resolved in favor of the Railway Companies,
* *Negative,* with the meaning that the Consultant estimates that the dispute will be resolved to the detriment of the Railway companies.
  1. *Proposing a strategy on how to resolve the issue through mechanisms such as out of court/court settlement*

Depending on the assessment of the potential outcome of the dispute, the Consultant is obliged to present a proposal for resolving a specific dispute or group of disputes based on the same legal ground. After determining all the relevant circumstances, the Consultant will suggest whether it is in the best interest of the Railway companies to continue the litigation or to terminate it (either through a court or out-of-court mechanism), all with a specific intent to minimize costs.

It is necessary that a special part of the report be to determine the exact number of cases that have already been lost before the court. The Consultant should identify the number, type, and values of the lost disputes, and prepare mechanism for managing these cases, with the aim of minimizing costs and preventing the work of public enforcement officers.

* 1. *Providing advice on how to create a robust implementation process for the proposed strategy*

Through thorough analysis, the Consultant will, based on the assessment of the outcome of the dispute/group of disputes and the proposed strategy with roadmap, explain step by step how the proposed mechanism for resolving the dispute/group of disputes should be implemented, i.e. what the outcome of the dispute will depend on, if the proposal is to continue the procedure.

* 1. *Estimate expected cost savings in term of court fees, plaintiff's legal fees and PEA's fees*

After analyzing each specific dispute, the Consultant will outline the expected savings in the case of acting in accordance with the Consultant's proposal, which relate to court fees, plaintiff’s legal fees and PEA's fees.

* 1. *Support to Railway companies in validation of the proposed process with all relevant stakeholders including but not limited to State Attorney's Office, State Audit Institution etc.*

Bearing in mind that the Railway companies report to MoCTI and that their business is subject to periodic supervision by the State Auditor, the Consultant will provide support to the Railway companies and MoCTI in correspondence with supervisory state institutions, in purpose of proper and legal implementation of the proposed solutions that are an integral part of the legal analysis.

1. **Deliverables and Reporting**

Against all four railway companies, there are approximately 15,000 active disputes in cities across Serbia, of which the largest number, over 80%, is concentrated in the following eight cities: Nis, Belgrade, Subotica, Uzice, Kragujevac, Novi Sad, Zajecar and Kraljevo.

Having in mind the number and physical location of cases, and the percentage share in the total number of active court proceedings, the legal analysis will refer to cases conducted before the courts in these eight mentioned cities, in phases, by legal entities - Railway Companies.

The activities of the consultant will begin with the analysis of disputes and services related to the company Srbija Voz, after which they will work successively on the disputes of other companies.

In accordance with the above, the consultant is obliged to deliver the following:

| **Deliverables** | **Description** | **Due date** | **payment** |
| --- | --- | --- | --- |
| General Report with general work plan | Describing present state of active disputes with work plan with program and time schedule for activities for and Railways companies | 20 days after contract signing | 10% |
| Report with clasification and Strategy for resolving with road map for Srbija Voz | Report summarizing the activities under task 3.2, 3.3, 3.4. and 3.5 for Serbia Voz | 4 month after Contract signing | 20% |
| Report with clasification and Strategy for resolving with road map for Serbia Cargo | Report summarizing the activities under task 3.2., 3.3, 3.4. and 3.5 for Serbia Cargo | 5 month after Contract signing | 20% |
| Report with Clasification and Strategy for resolving with road map for Serbian Railway Infrastructure | Report summarizing the activities under task 3,2 3.3, 3.4. and 3.5 for Serbian Railway Infrastructure | 6 month after Contract signing | 20% |
| Report with Clasification and Strategy for resolving with road map for Serbian Railway | Report summarizing the activities under task 3,2, 3.3, 3.4. and 3.5 for Serbian Railway | 7 month after Contract signing | 20% |
| Final report | Summarzing all work done under the Assignment, not longer than 50 pages | 8 month after Contract signing | 10% |

The consultant shall prepare work plan and program for the period of 8 months, describing precisely how they will manage whole process for four railway companies.

Consultant will submit partial analyses periodically (as noted at table above) after the completion of each group of cases separately for railway companies, and accordance with their Work plan and program.

After initial analysis, depending on the exact number of cases before a specific court and Company, a time frame for submitting reports for that group of cases will be determined within the General report with work plan. Upon completion of the analysis of all disputes that are the subject of the analysis, the Consultant will be required to submit to the MCoTI a final report, which will contain all the parameters that are the subject of the ordered legal services.

1. **Duration of the assignment**

The intended commencement date is September 2022, but the actual commencement date will be defined with the signature of the Contract. The period of implementation of the contract will be 8 months starting from the commencement date.

# Qualifications and Experience

* 1. *Corporate capability*

The Consultant will be selected in accordance with Consultant Qualification Selection (CQS) method set out in the World Bank’s Procurement Regulations for IPF Borrowers (July 2016, revised November 2017, August 2018 and November 2020). The Consultant that obtains the highest score during evaluation of expressions of interest will be invited to submit technical and financial proposals.

The assignment will require a qualified consulting firm that can demonstrate extensive experience in Labor disputes in accordance with Serbian legislation.

The following shortlisting criteria will be applied to all consulting firms that have submitted EoI:

1. The Consultant must be Law Firm, with Team at least of 10 attorneys at law,
2. The Consultant must have at least three senior attorneys with minimum eight years of experience in the field of Labor Law, at least two attorneys specialized in labor disputes and one advisor specialist with not less than six years of experience in labor law relations,
3. The Consultant – Law office or its members must be registered in The Register of Bidders on the Serbian Business Registers Agency,
4. The Consultant provided labor law services for at least 5 legal entities that employ more than 50 employees in past 10 years,
5. The Consultant provided legal services of representing employers in at least 200 labor disputes,
6. The Consultant provided legal services of representing employers in at least 5 collective labor disputes.

As a proof, the Consultant firm shall prepare: necessary certificates, list of proposed Team with qualifications of proposed experts (with necessary certificates from Serbian Bar Association and signed statements) and representative list of clients in the form of table, listing following information: type of service provided to the client with year of providing services (and other data if it is possible).

* 1. *Personnel*

The Consultant shall establish his Team in accordance with the needs and requirements of this ToR. The Team shall consist of minimum:

| **Title** | **Qualifications/Experience** | **Other Skills** |
| --- | --- | --- |
| Team Leader - Senior attorney | Education:   * Minimum a M. Sc. Degree of Laws - Attorneys at Law, with state licence and bar exam passed   Relevant professional experience:   * At least 15 years of general professional experience of which at least 8 years' experience in the field of Labour Law * Experience in providing labour law * Experienced in negotiation with unions | Knowledge of Serbian language is mandatory;  Knowledge of English language shall be considered as an advantage |
| Senior Attorneys (specialised for Labour disputes)  Deputy team leader | Education:   * Minimum a M.Sc. Degree of Laws - Attorneys at Law, with state licence and bar exam passed   Relevant Professional Experience:   * At least 15 of general professional experience of which at least 8 years in Labour disputes, * Have a professional experience in labour law with state legal entities | Knowledge of Serbian language is mandatory;  Knowledge of English language shall be considered as an advantage |
| Attorneys (specialised for Labour disputes) | Education:   * Minimum a M.Sc. Degree of Laws - Attorneys at Law, with state licence and bar exam passed   Relevant Professional Experience:   * At least 10 of general professional experience of which at least 6 years in field of Labour disputes | Knowledge of Serbian language is mandatory;  Knowledge of English language shall be considered as an advantage |
| Attorneys (specialised for Labour law relations) | Education:   * Minimum a M.Sc. Degree of Laws - Attorneys at Law, with state licence and bar exam passed   Relevant Professional Experience:   * At least 10 of general professional experience of which at least 6 years in field of labour law relations | Knowledge of Serbian language is mandatory;  Knowledge of English language shall be considered as an advantage |

Consultants are expected to include in their proposals other positions that they consider necessary for the assignment. If selected, the CVs for non-key experts should be submitted in the proposal, however they would not be subject of evaluation.

The Consultant is obliged to ensure adequate staff in terms of expertise and time allocation, as well as needed equipment in order to complete the activities required under the scope of work and to achieve the objectives of this Contract in terms of time, costs, and quality.

The Team Leader with qualifications and skills will lead the Team. He/she will be the main contact for the Team and will interface with the MoCTI, and other interested stakeholders. He/she should be responsible for ensuring high quality performance of the main outputs and deliverables and the timing implementation of the activities during the Contract execution. He/she will be supported by the Deputy Team Leader, who will replace the Team Leader when necessary.

All experts shall be independent and free from any conflicts of interest in the responsibilities they take on.

The Consultant shall provide adequate administrative staff (secretary, translators, drivers etc) needed to support the Team.

1. **Office accommodation**

Office accommodation for each expert working on the Contract is to be provided by the Consultant.

The Consultant shall ensure that experts are adequately supported and equipped. In particular, it shall ensure that there is sufficient administrative, secretarial, interpreting and any other support to enable experts to concentrate on their primary responsibilities.

# Evaluation of Expressions of Interest

## Consultant will be selected using the Consultant Qualification Selection (CQS) method.

## Expressions of interest will be evaluated by applying the following criteria with allocated points:

General experience – 10 points

Specific experience related to the assignment – 40 points

Qualifications of key experts – 50

Key experts will be evaluated based on the following criteria and points:

1. General Qualifications – 30
2. Adequacy for the assignment – 70

# Contracting Arrangements

The Contract will be the Standard World Bank Lump Sum Contract. The payments for services will be based on the deliverables / reports approved by the Project Manager and Project Coordinator. The Contract costs will include remuneration and reimbursable costs referring to the assignment.