

# **Deposit Guarantee Fund**

**APPROVED**

**by the Tender Committee Meeting  
Minutes**

**No. 545/19 of November 13, 2019**

**Chair of Tender Committee**

**S. V. Rekrut**\_\_\_\_\_

## **TENDER DOCUMENTS**

**for the procurement of services of representing the Household Deposit Guarantee Fund and/or AT Delta Bank in judicial (criminal, civil, commercial) proceedings in respect of the recovery of damage (losses) caused to AT Delta Bank and/or its creditors by its related parties (owners, managers, and/or other parties referred to in part 1, Article 52 of the Law of Ukraine ‘On Banks and Banking’), in foreign jurisdictions (and in the jurisdiction of Ukraine as necessary)**

**Kyiv 2019**

## **1. Customer (procuring entity):**

1.1. Name: **Deposit Guarantee Fund**

1.2. EDRPOU Code: **21708016**

1.3. Location: **17 Sichovykh Striltsiv Street, Kyiv, 04053**

1.4. Officers authorized to contact with bidders: Oleh Petrovych Plotnichenko, head of the Damage Recovery Division, (phone +380 44 3333-609) in respect of technical matters; Tetiana Mykolayivna Mazur, head of the procurement and contracting coordination unit of the Finance Department (phone +380 44 3333-566) in respect of organizational matters.

## **2. Information about the Procurement Item**

2.1. The procurement item: **Services of representing the Household Deposit Guarantee Fund and/or AT Delta Bank in judicial (criminal, civil, commercial) proceedings in respect of the recovery of damage (losses) caused to AT Delta Bank and/or its creditors by its related parties (owners, managers, and/or other parties referred to in part 1, Article 52 of the Law of Ukraine ‘On Banks and Banking’), in foreign jurisdictions (and in the jurisdiction of Ukraine as necessary)** (hereinafter referred to as the ‘Services’ or ‘Bidding’ as appropriate).

The procurement item does not fall within the scope of the Law of Ukraine ‘On Public Procurement’ under Article 2(3)(14).

2.2. Description of the procurement item, including the necessary technical, qualitative, and other features are **specified in Annex 1.**

2.3. **Mode of payment for the provided Services (a bidder may choose from the options below):**

2.3.1 a fee of \_\_\_\_\_% of the amount that will be actually collected by the Contractor to the benefit of the Bank and/or the DGF from related parties of the insolvent bank as recovery of losses. The accounts with the Contractor may be settled by means of securing the performance of undertakings of the Bank and/or the DGF, for instance, by means of using an escrow account contract;

2.3.2 an advance fee (fixed amount) of UAH \_\_\_\_\_ (however, not exceeding an amount in UAH equivalent to EUR 100,000.00) for the comprehensive research, the obtainment of expert opinions / reports / assessments and/or other materials required to detect and document the facts of causing damage, the performance of other acts related to generating the body of proof and developing the strategy of the Contractor’s Services related to the recovery of losses from related parties of AT Delta Bank, the performance of inception measures, such as the garnishment (seizure) of assets.

If the Contractor does not deliver the results of the provided Services and/or fails to take inception measures referred to in paragraph 1, sub-item 2.3.2, item 2.3, Section 2 of the Tender Documents within 4 months of entry into the Contract, the Contractor shall repay the Advance Fee to the DGF and/or the Bank within ten (10) business days after the DGF make a claim therefore;

- reimbursement of the Contractor for the actual cost (payable by the Bank and/or the DGF to the Contractor) of supporting litigation and representing interests of the DGF and/or the Bank in foreign jurisdictions in respect of the recovery of damage (losses) from related parties of AT Delta Bank in the amount of UAH\_\_\_\_\_ per hour of the work of lawyers involved in the litigation;

- a fee of \_\_\_\_\_% of the amount that will be actually collected by the Contractor to the benefit of the Bank and/or the DGF from related parties of the bank as recovery of losses.

Settlements with the Contractor are possible by ensuring the fulfillment of the obligations of the Bank and / or the DGF (conditional deposit), in particular under the contract of conditional storage account (escrow account contract).

The remuneration shall be paid from the amount that will actually be collected by the Contractor in favor of the Bank and / or the DGF in foreign jurisdictions in respect of damages (losses) related to AT Delta Bank is distributed in the following proportion: 50% of the amount recovered shall be credited to the DGF and / or the Bank (as compensation for the advance paid to the Contractor and compensation for actual costs, including court costs), of the remaining 50% of the amount collected - shall be deducted and paid to the Contractor.

In any case, the aggregate fee of the Contractor's total remuneration depends on the period during which the Result of the rendering of services and the size of the actual recovery of the property shortage of AT Delta Bank will be reached, with the following aggregate fee limits:

Up to 3 years		From 3 to 5 years		From 3 to 7 years		From 7 years		cash flow condition in%
remuneration, %	remuneration, UAH	remuneration, %	remuneration, UAH	remuneration, %	remuneration, UAH	remuneration, %	remuneration, UAH	
0,8	≤ 292 444 973,00	0,68	≤ 248 578 227,00	0,56	≤ 204 711 481,00	0,4	≤ 146 222 486,00	≤ 20% of the property shortage
1,6	≤ 584 889 945,00	1,36	≤ 497 156 453,00	1,12	≤ 409 422 962,00	0,8	≤ 292 444 973,00	≤ 40% of the property shortage
3,2	≤ 1 169 779 890,00	2,72	≤ 994 312 907,00	2,24	≤ 818 845 923,00	1,6	≤ 584 886 945,00	≤ 80% of the property shortage
4,0	≤ 1 462 224 863,00	3,4	≤ 1 242 891 133,00	2,8	≤ 1 023 557 404,00	2,0	≤ 731 112 431,00	≤ 100% of the property shortage

2.4. **Time for the provision of Services** shall be until the obtainment of the Result of Services as specified in the contract.

2.5. The **Result of Services** shall be understood as the crediting of the Bank and/or DGF account with funds, or the foreclosure of property and assets as part of the recovery of losses (damage) caused to AT Delta Bank and/or its creditors by related parties of the Bank (owners, managers, and/or other parties referred to in part 1, Article 52 of the Law of Ukraine 'On Banks and Banking') in foreign jurisdictions (in the Ukrainian jurisdiction, if required) as a result of the Services provided by the Contractor.

### 3. Bid Submission

3.1. Place for submissions: **17 Sichovykh Striltsiv Street, Kyiv, 04053**

3.2. Method of submission: **in-person to the DGF Clerical Office or by mail.**

3.3. Deadline for submissions: **by 10:00 AM on December 10, 2019.**

### 4. Bid Opening

4.1. Venue: **17 Sichovykh Striltsiv Street, Kyiv, 04053**

4.2. Date and time: **2:30 PM on December 10, 2019**

### 5. Additional Information

5.1. A bid shall be submitted by a bidder in writing in Ukrainian (for non-resident bidders - in Ukrainian and English. The Ukrainian text shall prevail in the case of differences between texts in English and Ukrainian) on the bidder's letterhead with a signature of the authorized officer and shall be placed in a sealed envelope (hereinafter referred to as «Envelope 1 Qualifications and other documents», «Envelope 2 Service Delivery Strategy Plan», «Envelope 3 Price Bid»).

The following data must be provided on the envelope:

- the contents of the envelope (referred to as «Qualifications and other documents» or «Service Delivery Strategy Plan» or «Price Bid»);
- full name and location of the Customer;
- procurement item;
- complete identification of the bidder, its address, identification code, contact phone numbers, and e-mail address;
- text for Envelope 1 «Do not open before \_\_\_\_\_» specifying the date and time to open the bids; for Envelope 2 «Open in case of admission to stage II»; for Envelope 3 «Open in case of admission to stage III».

5.2. A bid must contain:

In the Envelope 1:

- documents that demonstrate the conformity with qualification and other requirements as specified in Annex 3;
- a statement of the absence of the conflict of interest and a declaration of integrity in the format of Annex 4;
- a confidentiality agreement among the bidder, the Bank, and the DGF in the format of Annex 5.

In the Envelope 2:

- a Service Delivery Strategy Plan in the format of Annex 6.

In the Envelope 3:

- a quotation in the format of Annex 2.

5.3. A bid must meet all of the requirements set forth in the Tender Documents.

5.4. The DGF will select the successful bidder in the following way:

- at Stage I, the bids will be evaluated for the conformity with qualification criteria and requirements listed in Annex 3 to the Tender Documents (under the methodology in Annex 7 to the Tender Documents), and for the conformity with other requirements in Annex 3, the absence of the conflict of interest and a declaration of integrity as per the Statement referred to in Annex 4 (Envelope 1).

The DGF Tender Committee shall make a decision to reject a bid (in particular, in the case of assessment of compliance with the qualification requirements below 70%, in the manner provided in Annex 7 to the Tender Documents) or accept it for the next stage based on the evaluation of the bidder's conformity with other requirements (including no conflict of interest and a declaration of integrity) and the evaluation of the conformity with qualification criteria set in the methodology in Annex 7 to the Tender Documents; the evaluation shall be carried out by the DGF Bid Evaluation Working Group.

At the Stage II the Envelope 2 of the participants whose proposals are accepted as a result of the evaluation at the Stage 1 of the Contest is opened.

- at Stage II, the Service Delivery Strategy Plans submitted by bidders for the provision of Services of representing the Household Deposit Guarantee Fund and/or AT Delta Bank in judicial (criminal, civil, commercial) proceedings in respect of the recovery of damage (losses) caused to AT Delta Bank and/or its creditors by its related parties (owners, managers, and/or other parties referred to in part 1, Article 52 of the Law of Ukraine 'On Banks and Banking', in foreign jurisdictions (and in the jurisdiction of Ukraine as necessary) (Envelope 2) will be evaluated for their consistency with the Customer's objective of obtaining the Services.

At this stage, the bidder shall present its Service Delivery Strategy Plan to the DGF Working Group tasked with the bids evaluation for

- the efficiency of suggested measures supported with examples of applying specific provisions of substantive law and procedural law, including judicial practice;
- approaches and methods of the Service Delivery Strategy Plan;
- the comprehension of the Terms of Reference;
- the consistency of the professional level of employees with the measures listed in the Service Delivery Strategy Plan.

The DGF Tender Committee shall make a decision to reject a bid (in particular, in the case of evaluation of the bid of the participant below 70%, under the methodology in Annex 8 to the Tender Documents) or accept it for the next stage as a result of evaluating Service Delivery Strategy Plans of bidders under the methodology in Annex 8 to the Tender Documents; the evaluation shall be carried out by the DGF Bid Evaluation Working Group.

Bidder's bid that does not meet the requirements set out in the bidding documents, in particular in cases of: non-compliance with qualifications and other requirements; the presence of a conflict of interest; failure to confirm the participant's integrity; inconsistency of the Service Delivery Strategy Plan to their purpose - is rejected and is not allowed to the third stage of the Contest - opening of bids and determining the winner, which is informed by the respective participant.

- at Stage III, the bidding of participants (Envelope 3) is opened, the competitive bids of which are admitted as a result of evaluation at the first and second stages of the Contest and are fixed by the Fund in the relevant protocol of opening of the bidding.

At this Stage the DGF, holding the tender, is entitled to apply the 'price reduction' procedure. The 'price reduction' procedure will take place after the bids are open and checked for their compliance with the qualification and other criteria specified in the Tender Documents. Bidders, whose bids are compliant, will be invited to take part in the price reduction procedure (by means of the e-mail message).

During the procedure, the attendees representing bidders will be invited to voluntarily reduce the bid price by announcing the next reduced bid price until each bidder states that the bid price is final.

In the case a bidder or its authorized representative is absent during this procedure, the bid price stated in the bid or the bid price indicated by the bidder in its e-mail and marked as final before the price reduction procedure will be deemed to be final.

The final price will be entered in the price reduction record subject to signing by all the attending bidders.

The bidders, who have reduced their bid price compared to the initial price, must send a scanned copy of the adjusted quotation to the e-mail address of the officer in charge of the tender by 6:00 PM of the business day following the day of the price reduction procedure. The adjusted bid shall be subject to the requirement that item prices stated in such bid must not be higher than the corresponding item prices stated in the initial bid.

5.5. The DGF determines the winner of the Contest by a single criterion - the lowest price determined by the DGF based on the evaluation of the proposals of participants at the first, second and third stages of the Contest.

Preference will be given to the bidders who selected the Service Fee calculation option described in item 2.3.1 of the Tender Documents; in this case, bids submitted by bidders, who opted for the Service Fee calculation under item 2.3.2, will be disregarded.

If all the bidders have opted for the Service Fee calculation in line with item 2.3.2 of the Tender Documents, the successful bidder will be selected using the methodology described in Annex 9 to the Tender Documents.

5.6. The DGF will notify the bidders and the successful bidder of the tender results. Notices of bid rejection, successful bidder selection, and tender results will be sent by the Customer to e-mail addresses of the relevant bidders.

5.7. The DGF may request that bidders clarify the contents of their submissions in order to simplify their review.

5.8. The DGF may cancel (in full or in part) the tender at any stage of the tender for any reason. Notice of tender cancellation (partial cancellation) will be sent by the Customer to the e-mail addresses of the concerned bidders.

**S. V. REKRUT, Chair of the Tender Committee**

## TERMS OF REFERENCE

The procurement item is the services of performing a set of actions aimed at the recovery of damage (losses) caused to AT Delta Bank and/or its creditors, and DGF in particular, by its related parties (owners, managers, and/or other parties referred to in part 1, Article 52 of the Law of Ukraine ‘On Banks and Banking’), in foreign jurisdictions (and in the jurisdiction of Ukraine as necessary), including, but not limited to:

- arrangement for the comprehensive research, the obtainment of expert opinions / reports / assessments and/or other materials required to detect and document the facts of causing damage, the performance of other acts related to generating the body of proof and developing the strategy of the Contractor’s Services to recover losses from related parties of AT Delta Bank
- performance of measures aimed at search, garnishing (seizure), and then returning the funds (assets) of AT Delta Bank transferred away from the territory of Ukraine as a result of unlawful acts perpetrated by related parties of the Bank;
- development and submission of reasonable proposals on specific foreign jurisdictions where the core litigation (court proceedings) would be initiated for the recovery of damage from related parties of AT Delta Bank;
- support to litigation and represent interests of the DGF and/or the Bank in foreign jurisdictions in respect of the recovery of damage (losses) from related parties of AT Delta Bank;
- support to criminal investigations into the facts of the damage (losses) caused to AT Delta Bank by related parties in foreign jurisdictions (and in the Ukrainian jurisdiction as necessary);
- assurance of the enforcement of decisions made by foreign jurisdiction authorities on the recovery of the damage (losses) caused to the Bank and/or its creditors and DGF in particular by related parties of the AT Delta Bank;
- performance of other extra-judicial and judicial actions aimed at recovering damage (losses) caused to the bank and/or its creditors and DGF in particular by related parties of the AT Delta Bank.

The Contractor must represent the DGF and/or the Bank in accordance with provisions of the international law and the current legislation of Ukraine, including:

- Law of Ukraine ‘On the Household Deposit Guarantee System’;
- Law of Ukraine ‘On Banks and Banking’;
- Law of Ukraine ‘On Personal Data Protection’;
- Law of Ukraine ‘On Information’;
- other regulatory instruments applied in the case of the settlement of the relevant legal relations;
- international instruments (depending on the applicable jurisdiction).

The entry into a contract of (obtainment of a policy for) the insurance of the professional liability of the Contractor related to the damage (losses) caused to the DGF and/or the Bank for the amount of the maximum aggregate fee agreed upon among the Contractor, the Bank, and/or the DGF shall be an essential condition for the provision of Services. The Contractor must provide a copy of such contract to the DGF within twenty (20) business days after the date it is selected as the successful bidder.

Pursuant to the Resolution of the Board of the National Bank of Ukraine No. 664 of October 2, 2015, ‘On Revoking the Banking License and Liquidating AT Delta Bank’, the Executive Directorate of the Household Deposit Guarantee Fund took its Decision No. 181 of October 2, 2015, ‘On Commencing the Liquidation of AT Delta Bank and Delegating the Bank Liquidator Authority’. Currently, the AT Delta Bank liquidation procedure is ongoing, having been extended till October 4, 2020.

The liquidation pool of AT Delta Bank (subject to the latest changes approved by Decision NO. 1869 of July 25, 2019) was approved by Decision of the DGF Executive Directorate No. 895 of June 2, 2016, with the appraisal value (except for the assets in pledge that are used solely to meet claims of the pledge holder out of priority) of UAH 17,398,759,540.47.

By its decision of January 11, 2016, the DGF Executive Directorate approved the register of accepted creditor claims worth UAH 53,954,381,109.84 (as amended by Decision No. 1128 of May 8, 2019).

The shortage of the property of AT Delta Bank amounts to UAH 36,555,621,569.37.

An individual, Mr. Mykola Ivanovych Lahun, who holds 70.61% share, is the direct qualified shareholder of the Bank in accordance with the Information about the Final Key Participants in the Ownership Structure of AT Delta Bank as of March 8, 2015, posted on the official website of the National Bank of Ukraine at [https://bank.gov.ua/files/Shareholders/380236/380236\\_20150308.pdf](https://bank.gov.ua/files/Shareholders/380236/380236_20150308.pdf).

A non-resident entity, Cargill Financial Services International, Inc., with a holding of 29.39%, is another direct qualified shareholder of the Bank.

The major reason for classifying AT Delta Bank as insolvent has been the failure of the bank’s owner to take timely, effective, and sufficient measures to improve the financial standing of the bank and bring its operations into conformity with the legislation of Ukraine, as stated by the National Bank of Ukraine on its official website at [https://bank.gov.ua/control/uk/publish/article?art\\_id=15093047](https://bank.gov.ua/control/uk/publish/article?art_id=15093047). The majority shareholder and the management of the Bank opted for a high-risk strategy of rapid growth based on the acquisition of low-quality assets. In addition, the aggressive development of AT Delta Bank’s corporate business with insufficient experience in this segment resulted in the material deterioration of the loan portfolio quality and affected the bank’s liquidity. In the situation of the imminent crisis, the principal shareholders were unable to increase the capital to the appropriate level and maintain the liquidity to make sure that liabilities to depositors are met.

Noteworthy is that in early 2016 the National Bank of Ukraine (in pursuance of Resolution of the Board of the National Bank of Ukraine No. 91) granted AT Delta Bank liquidity support facilities worth UAH 4,150 million in order to avert the deterioration of the financial standing and liquidity of the bank, and protect interests of its depositors, as well as a stabilization facility of UAH 960 million after the endorsement of the bank recapitalization program in September 2014 (as per Resolution of the Board of the National Bank of Ukraine No. 327) collateralized with government guaranteed securities. These measures somewhat rectified the situation in the bank but failed to bring about a material improvement of its financial position. The anti-crisis measures taken by shareholders and management of the bank to improve this situation turned out to be insufficient, and the plan of recapitalizing AT Delta Bank by its shareholders was never implemented. In addition, the bank failed to offer high-quality collateral in order to obtain another refinancing facility from the National Bank of Ukraine. Based on the



unsatisfactory condition of the bank's assets, the regulator had to decide on the insolvency of this bank.

At the same time, the major reasons for the property (asset) shortage of AT Delta Bank were subjective, including the shoddy unlawful acts of the Bank management and the qualified shareholder that involved rapidly increasing non-performing loan transactions with high risk rates; the failure to exercise proper control over transactions with related (potentially related) parties of the Bank that resulted in a high concentration of risk; funneling foreign currency assets (funds) from Ukraine (to foreign jurisdictions) by entering into foreign currency contracts for the purchase of various goods; siphoning off funds from AT Delta Bank via foreign banks by granting property sureties (for cash funds) for the liabilities of a non-resident company potentially related to the Bank owner.

In order to detect and verify the facts of causing damage (losses) to the Bank, DGF initiated the procurement of the forensic audit of AT Delta Bank. These services were provided by Ernst and Young Auditing Services LLC.

In connection with the detected facts of causing damage to AT Delta Bank and its creditors, the DGF filed two (2) statements of claim against the bank related parties with Kyiv City Commercial Court on the basis of part 5, Article 52 of the Law of Ukraine 'On the Household Deposit Guarantee System':

Case No. 910/7186/19 against 8 defendants for the total amount of UAH 19,827,913,290.22;

Case No. 910/7338/19 against 1 defendant for the total amount of UAH 691,297,606.40.

The detailed information and necessary documents will be provided to representatives of the bidders for acquaintance once the confidentiality agreements are signed (in the format of Annex 5 to Tender Documents) from November 14, 2019, till December 9, 2019, between 10:00 AM and 5:00 PM at: 38 Druzhby Narodiv Blv., Kyiv, 01014. Bidders are requested to contact the officer in charge of technical matters in order to acquaint with the documents.

**S. V. REKRUT, Chair of the Tender Committee**

## QUOTATION

\_\_\_\_\_ submits herewith its quotation for the provision of services of representing the Household Deposit Guarantee Fund and/or AT Delta Bank in judicial (criminal, civil, commercial) proceedings in respect of the recovery of the damage (losses) caused to AT Delta Bank and/or its creditors by its related parties (owners, managers, and/or other parties referred to in part 1, Article 52 of the Law of Ukraine ‘On Banks and Banking’), in foreign jurisdictions (and in the jurisdiction of Ukraine as necessary), and agrees to deliver the aforementioned Services in accordance with requirements stated in these Tender Documents on the basis of the following quotation:

Procurement item	Calculation method	
	Fee, %	Advance fee (UAH), cost reimbursement (UAH per hour), fee (%)
Services of representing the Household Deposit Guarantee Fund and/or AT Delta Bank in judicial (criminal, civil, commercial) proceedings in respect of the recovery of the damage (losses) caused to AT Delta Bank and/or its creditors by its related parties (owners, managers, and/or other parties referred to in part 1, Article 52 of the Law of Ukraine ‘On Banks and Banking’), in foreign jurisdictions (and in the jurisdiction of Ukraine as necessary)		Advance fee of UAH ____
		Cost reimbursement of UAH ____ per hour
		Fee ____%

If the above quotation is accepted, we undertake to sign a Service Delivery Contract with the Bank and/or the DGF within 20 business days of the selection of the successful bidder and will commit to meeting all the terms and conditions of the said contract.

\_\_\_\_\_  
*(position and full name of the authorized officer of the Bidder)*  
*(signature)*

### Qualification Requirements to Bidders

Qualification Criteria	Requirements under the Criterion	Supporting Documents
<p>1. The availability of staff with relevant qualifications, necessary expertise, and experience</p>	<p>1. Bidders must be in possession of employees and/or a contractor (contractors) employed to represent the DGF and/or the Bank in foreign jurisdictions who have experience in representing Customers (corporate creditors / affected parties) for the purposes of the recovery of funds, including losses, and the enforcement of decisions of foreign jurisdiction authorities, specifically:</p> <ul style="list-style-type: none"> <li>- a lawyer (lawyers) vested with the right to represent Customers before the courts foreign jurisdictions, including member states of the European Union and the United Kingdom and the courts of Ukraine);</li> <li>- an auditor (auditors), a forensic specialist (specialists);</li> <li>- an asset tracing specialist (specialists);</li> </ul> <p>Note: Preference will be given to a bidder, whose employees and/or contractors have represented a bank institution Customer as a creditor/affected party in damage (loss) recovery proceedings in foreign jurisdictions and which has the successful experience of enforcing the decisions of foreign jurisdiction authorities.</p>	<p>1. A free-format statement signed by the bidder on the list of employees (including employees of the contractor (contractors)) who will be engaged for the Service Delivery.</p> <p>2. Copies of diplomas, certificates, other documents confirming the specialist area and legal status of employees listed in the statement. *</p> <p>3. A portfolio for each employee with an indication of the education degree, places of prior employment, the experience of performing similar assignments, and other details essential to assess the qualification of such an employee.</p> <p>4. A copy of a contract (memorandum, etc.) of cooperation (service delivery, etc.) with the contractor (contractors), on whose basis the services of representing interest will be provided in foreign jurisdictions and at the stage of the enforcement of decisions of foreign jurisdiction authorities.</p> <p>5. A copy of the valid contract (s) of professional insurance of the professional activity of the lawyer (s) empowered by the participant, which are empowered to represent interests in the courts of foreign jurisdictions, in particular in the countries of the European Union, the United Kingdom and the courts of Ukraine.</p>
<p>2. Experience in the performance of similar contracts</p>	<p>1. A bidder must have the successful experience of representing its Customers (corporate creditors / affected parties) in cases of the recovery of funds, including losses, and the enforcement of decisions of foreign jurisdiction authorities.</p> <p>Note: Preference will be given to a bidder, whose employees and/or contractors have represented a bank institution</p>	<p>1. Bidder-authenticated copies of decisions of foreign jurisdiction authorities (without disclosing personal data of the Customers) in cases involving the representation of Customers (corporate creditors / affected parties) claiming funds (including losses), where the Customers were represented by the bidder and/or the contractors*;</p> <p>a free-format statement of the bidder with a detailed description of the</p>

	Customer as a creditor/affected party in damage (loss) recovery proceedings in foreign jurisdictions and which has the successful experience of enforcing the decisions of foreign jurisdiction authorities.	litigation of the aforementioned cases of the representation of Customers (corporate creditors / affected parties) in foreign jurisdictions in terms of claiming funds (including losses), where the Customers were represented by the bidder and/or contractors, with the indication of the specific positive outcomes achieved;  a free-format statement by the bidder with a detailed description of the support to enforcement of the aforementioned decisions of foreign jurisdiction authorities (without disclosing personal data of the Customers) by the bidder and/or its contractors.
3. Impeccable business reputation	The corpus of verified information about the entity, which enables a conclusion that it operates in accordance with legislation.	Reference letters from at least three (3) Customers, to which the bidder and/or its contractors provided services *: <ul style="list-style-type: none"> <li>- representing them in foreign jurisdictions to recover funds, including losses, caused to a legal entity (bank);</li> <li>- of enforcing the decisions made by foreign jurisdiction authorities;</li> <li>- of tracing the assets used to recover losses (damage);</li> <li>- of exercising comprehensive researches required to detect and document the facts of causing losses (damage).</li> </ul>

\* Non-resident bidders shall submit documents together with their official translation into Ukrainian. The text in Ukrainian will prevail in the case of differences between the language in the document text and the language of the official translation.

### **General Requirements for Bidders \***

№	Question	Answer
Section 1. General information about the participant:		
1.1.	Full name	
1.2.	Registration Date	
1.3.	Bank details	
1.4.	Code of the legal entity - participant **	
1.5.	Tax Identification Number (Individual Tax Number) **	
Section 2. Participant Leader Information:		
2.1.	Name, position, passport data, registration number of taxpayer's account card (if any) manager **	

2.2.	Name, passport details, taxpayer's registration card registration number (if applicable) chief accountant	
2.3.	Name, position, passport data, registration number of the taxpayer's account card (if any) of the authorized person **	
Section 3. Information about the owner and beneficiaries of the participant:		
3.1.	Name, legal form and code - for legal entities / name, passport data and registration number of the taxpayer's account card (if any) - for individuals **	
Section 4. Contact information of the participant:		
4.1.	Location	
4.2.	Phone / Fax	
4.5.	E-mail	
4.6.	Website	
<p style="text-align: center;"> <u>Position</u> <span style="margin-left: 250px;"><u>Signature</u></span> <span style="margin-left: 150px;"><u>Full Name</u></span> </p>		

### Other Requirements for Bidders \*

Requirement	Supporting Documents **
1. The bidder is not a party related to other bidders in the same bidding procedure and/or a member (members) of the Committee.	A free-form statement signed by the authorized officer of the bidder to certify that the bidder in the qualification-based selection is not a party related to other bidders in the same bidding procedure and to members of the tender committee.
2. The bidder is not subject to a solvency restoration procedure initiated in accordance with the procedure prescribed by law; the bidder has not been found bankrupt and is not subject to a liquidation procedure.	An information statement from the Single Register of Enterprises in Bankruptcy Proceedings or a free-form statement signed by the authorized officer of the bidder to certify that the bidder has not been subject to the solvency restoration procedure initiated in accordance with the procedure prescribed by law, that the bidder has not been found bankrupt, and that the bidder is not subject to the liquidation procedure.
3. The bidder on no date has been a qualified shareholder of an insolvent bank or a bank in liquidation, or a member of the governing body of a corporate bidder, has not held a position for more than six months in governance and controlling bodies of a bank classified as insolvent or a bank in liquidation, or has not worked as the chief internal auditor of such bank.	A statement in any form signed by the authorized officer of the bidder to certify that the bidder has not been a qualified shareholder of an insolvent bank or a bank in liquidation and a statement in writing by a member of the governing body of a corporate bidder that he or she has not held a position for more than six months in governance and controlling bodies of a bank classified as insolvent or a bank in liquidation, or has not worked as the chief internal auditor of such bank.
4. The information about the corporate bidder has not been recorded in the Single State Register of Individuals Who Perpetrated Corruption Offences or Corruption-Related Offences.	A statement in any form signed by the chief executive officer of the corporate bidder to certify that the information about the bidder has not been recorded in the Single State Register of Individuals Who Perpetrated Corruption Offences or Corruption-Related Offences.
5. The individual bidder or the chief executive officer of the corporate bidder has not been prosecuted for perpetrating a corruption offence.	An information statement from the Single State Register of Corruption Offenders in respect of the individual bidder / the chief executive officer of the corporate bidder, or a statement in any form signed by the authorized officer of

	the bidder to certify that the individual bidder / the chief executive officer of the corporate bidder has not been prosecuted for perpetrating a corruption offence, or a print-screen from the website <a href="http://corrupt.informjust.ua/">http://corrupt.informjust.ua/</a> in respect of the individual bidder / the chief executive officer of the corporate bidder.
6. The bidder has not been prosecuted for the violations covered by clause 4, part 2, Article 6, Section 2 or clause 1, Article 50, Section 8 of the Law of Ukraine ‘On Protecting the Economic Competition’ in the form of concerted anti-competition practices over the last three years.	A statement in any form signed by the authorized officer of the bidder to certify that the bidder has not been held liable for violations covered by clause 4, part 2, Article 6, Section 2 or clause 1, Article 50, Section 8 of the Law of Ukraine ‘On Protecting the Economic Competition’ over the last three years.
7. The individual bidder / the chief executive officer of the corporate bidder has not been convicted of an offense perpetrated on mercantile motives, or any conviction has been cleared or expunged in accordance with the procedure prescribed by law.	A statement in the prescribed format (for instance, obtained online) issued by a territorial body of the Ministry of Interior of Ukraine to certify that the individual bidder / the chief executive officer of the corporate bidder has not been convicted of an offense perpetrated on mercantile motives or that his/her conviction has been cleared or expunged in accordance with the procedure prescribed by law. The statement must be issued on or after _____ 2019.
8. The information about the ultimate beneficial owner (controller) of the Ukrainian resident legal entity, which is a bidder in the qualification-based selection procedure, is available in the Single State Register of Legal Entities, Sole Traders, and Public Associations as prescribed by Article 9(2) of the Law of Ukraine ‘On State Registration of Legal Entities and Sole Traders, and Public Associations.’ Note: If the corporate bidder is not a resident of Ukraine, the information about the ultimate beneficial owner (controller) of this corporate entity must be available in a state register functioning under the laws of the bidder’s country of incorporation.	An excerpt from the Single State Register of Legal Entities, Sole Traders and Public Associations, or a print-screen from the website <a href="https://usr.minjust.gov.ua/ua/freesearch">https://usr.minjust.gov.ua/ua/freesearch</a> . If the aforementioned Register does not contain details of the ultimate beneficial owner of the bidder, the bidder must submit an explanatory statement together with the Excerpt or the print-screen to specify the grounds for the missing record in the Single State Register. This statement shall be signed by an authorized officer of the bidder. An excerpt from the appropriate state register that functions under the laws of the country of incorporation of a corporate bidder, which not resident in Ukraine. If the Register in question lacks details of the ultimate beneficial owner of the bidder, the bidder must submit an explanatory statement together with the excerpt or the screen-print to specify the grounds for not recording the information in question in the Register. This statement shall be signed by an authorized officer of the bidder.
9. The bidder does not have any debt related to the payment of taxes, duties, and fees.	A statement in the prescribed format (including in the electronic form) or a letter issued by a territorial body of the State Fiscal Service of Ukraine (or, for non-residents of Ukraine, a statement by the appropriate fiscal agency of the bidder’s country of incorporation) to certify that the bidder has no debt related to the payment of taxes, duties, or fees outstanding as of the qualification bid submission date. If a letter is submitted, its date must not be before the qualification bids submission date under this selection procedure.
10. The Bidder exercises business in accordance with provisions of its constituting documents.	A copy of constituting documents authenticated with the signature of the authorized officer of the bidder.

A bidder may discretionary provide additional materials to evidence the conformity with the above requirements. All the documents (other than original

statements, excerpts, and other documents issued to the bidder by state authorities, institutions, organizations, banks, and other entities other than the bidder) submitted by the bidder to certify the conformity with the above requirements must be signed by the authorized officer of the bidder.

\* Bidders listed in the List of Entities Selected by the Household Deposit Guarantee Fund in the stream 'Legal Councilors (including Working with Assets)' in the field 'representation of insolvent banks and banks in liquidation, and protection of their rights before courts of foreign jurisdictions and international arbitration tribunals' shall not be required to submit documents to certify their conformity with other requirements.

\*\* Non-resident corporate bidders shall submit documents required by the laws of their country of incorporation together with their official translation into the Ukrainian language. The text in Ukrainian will prevail in the case of differences between the language in the document text and the language of the official translation.

**INFORMATION STATEMENT**  
**no conflict of interest**

(name of the bidder), in connection with the intent to take part in the open bidding for the services of performing a set of actions to recover damage (losses) from the related parties of AT Delta Bank (owners, managers, and/or other parties referred to in part 1, Article 52 of the Law of Ukraine ‘On Banks and Banking’) in foreign jurisdictions (and in the jurisdiction of Ukraine as necessary), discloses hereby the absence of any conflict of interest, either actual or potential, between the private interest of (name of the bidder) and its potential powers as a representative of the DGF capable of affecting the objectivity or impartiality in the Service Delivery, or the performance or non-performance of actions in the course of the Service Delivery, as well as confirms that the bidder (including the bidder’s employees, corporate or individual contractors engaged by the bidder for the Service Delivery) does not represent any third parties in disputes or legal relations against the DGF and/or AT Delta Bank, and/or other insolvent banks, which are (were) in liquidation by the DGF (including if the aforementioned persons represent owners and/or other related parties of AT Delta Bank and other insolvent banks, which are (were) in liquidation by the DGF).

(name of the bidder) undertakes to:

- take measures aimed at the prevention of any actual or potential conflict of interest;
- notify the Customer of the detection of the actual or potential conflict of interest on the next business day of such detection at the latest;
- abstain from actions and decisions in the circumstances of the actual conflict of interest;
- take measures to settle the actual or potential conflict of interest.

(name of the bidder) undertakes not to encourage its employees in any manner to make decisions, perform actions or inaction contrary to requirements of the legislation and interests of the DGF and AT Delta Bank to the benefit of its private interests or private interests of the third parties; also, (name of the bidder) undertakes not to represent any other persons that oppose or will oppose the DGF in any disputes based on damage (loss) recovery demands/claims of the DGF.

Position

Signature

Full Name



## Covenant of Integrity

We declare and covenant that neither we nor anyone, including any of our directors, employees, agents, joint venture partners, consultants or sub-contractors, where these exist, acting on our behalf with due authority or with our knowledge or consent, or facilitated by us, has engaged, or will engage, in any Prohibited Practice (as defined below) in connection with the consultant selection process or in the execution or supply of any works, goods or services and covenant to so inform you if any instance of any such Prohibited Practice shall come to the attention of any person in our organisation having responsibility for ensuring compliance with this Covenant.

We declare and covenant that, except for the matters disclosed in this Covenant of Integrity:

- (i) we, our subsidiaries and affiliates, and all of our directors, employees, agents or joint venture partners, where these exist, have not been convicted in any court of any offence involving a Prohibited Practice in connection with any tendering or competitive selection process or provision of works, goods or services during the ten years immediately preceding the date of this Covenant;
- (ii) none of our directors, employees, agents or a representatives of a joint venture partner, where these exist, has been dismissed or has resigned from any employment on the grounds of being implicated in any Prohibited Practice;
- (iii) we, our subsidiaries and affiliates and our directors, employees, agents or joint venture partners, where these exist, are not prohibited from participation in a tendering or competitive selection procedure on the grounds of having been found by the final judgement of a judicial process or a finding by the enforcement (or similar) mechanism of another international organisation to have engaged in a Prohibited Practice;
- (iv) we, our subsidiaries and affiliates, as well as any subcontractors, or suppliers or affiliates of the subcontracts or supplier are not subject to any sanction imposed by resolution of the United Nations Security Council.

If applicable, provide full disclosure of any convictions, dismissal, resignations, exclusions or other information relevant to Articles i) ii) iii) or (iv) of this Covenant indicating details of the measures taken or to be taken to ensure that neither the disclosed organization nor its directors, employees, agents or persons involved in any prohibited conduct in connection with the selection process of the winner of the Contest.

For the purpose of this Covenant, the terms set forth below define Prohibited Practices as:

- (i) a **Coercive Practice** which means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of any party to influence improperly the actions of a party;
- (ii) a **Collusive Practice** which means an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;

(iii) a **Corrupt Practice** which means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

(iv) a **Fraudulent Practice** which means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

(v) a **Misuse of the Bank's Resources or Bank Assets** which means improper use of the Bank's Resources or Bank's Assets , committed either knowingly or recklessly;

(vi) an **Obstructive Practice** which means (1) destroying, falsifying, altering or concealing of evidence material to a Bank investigation, which impedes the Bank's investigation; (2) making false statements to investigators in order to materially impede a Bank investigation into allegations of a Prohibited Practice; (3) failing to comply with requests to provide information, documents or records in connection with a Bank investigation; (4) threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to a Bank investigation or from pursuing the investigation; or (5) materially impeding the exercise of the Bank's contractual rights of audit or inspection or access to information; and

(vii) a **Theft** which means the misappropriation of property belonging to another party.

When submitting a competitive bid to participate in the Contest, we grant the DGF the right to review the information submitted in its composition.

Position

Signature

Full Name

## Confidentiality Agreement

Kyiv \_\_\_\_\_, '\_\_\_', 2019

The HOUSEHOLD DEPOSIT GUARANTEE FUND (hereinafter referred to as the 'DGF') represented by Svitlana Valeriyivna Rekrut, Managing Director of the Household Deposit Guarantee Fund, who acts on the basis of the Law of Ukraine 'On the Household Deposit Guarantee System', as the first party and

the PUBLIC JOINT STOCK COMPANY 'DELTA BANK' (hereinafter referred to as the 'Insolvent Bank') represented by Andriy Anatoliyovych Matvienko, authorized officer of the Household Deposit Guarantee Fund in charge of the liquidation of AT DELTA BANK, who acts on the basis of the Law of Ukraine 'On the Household Deposit Guarantee System', as the second party, and

(hereinafter referred to as the 'Specialist') represented by \_\_\_\_\_, who acts on the basis of \_\_\_\_\_, as the third party (hereinafter jointly to be referred to as the 'Parties' and severally as the 'Party') have entered into this Confidentiality Agreement (hereinafter referred to as the 'Agreement') as follows:

### 1. Subject Matter of the Agreement

1.1. This Agreement governs the procedure and conditions for the use and protection of the information provided to the Specialist by the Insolvent Bank and/or the DGF.

1.2. The Parties have agreed that any information obtained by the Specialist from the Insolvent Bank and/or the DGF in accordance with terms and conditions of the Agreement shall be deemed restricted as confidential information (hereinafter referred to as the 'Confidential Information').

1.3. The Confidential Information, which is supplied by the Insolvent Bank and/or the DGF to the Specialist, can be contained in contracts, letters, reports, analytical materials, research results, diagrams, graphs, specifications, and other documents provided both on paper, and on electronic data carriers.

1.4. The Insolvent Bank and/or the DGF remain owners of the Confidential Information and owners of physical storage media containing the Confidential Information supplied to the Specialist.

### 2. Objective of the Agreement

2.1. The objective of this Agreement is to create conditions for the protection of the Confidential Information owned by the Insolvent Bank and/or the DGF when taking measures aimed at employing the Specialist for the provision of services of representing the Household Deposit Guarantee Fund and/or AT Delta Bank in judicial (criminal, civil, commercial) proceedings in respect of the recovery of the damage

(losses) caused to AT Delta Bank and/or its creditors by its related parties (owners, managers, and/or other parties referred to in part 1, Article 52 of the Law of Ukraine ‘On Banks and Banking’), in foreign jurisdictions (and in the jurisdiction of Ukraine as necessary) (hereinafter referred to as the ‘Services’).

### **3. Undertakings of the Parties**

3.1. The Insolvent Bank and/or the DGF undertake:

3.1.1. To provide the Specialist with information in amounts determined by the Insolvent Bank and/or the DGF within 5 business days of entry into this Agreement (by granting access to the premises of the Insolvent Bank and/or the DGF, or by handing over document copies directly to the Specialist);

3.2. The Specialist undertakes:

3.2.1. To make sure that the Confidential Information is not divulged to any third parties without the prior written consent of the DGF;

3.2.2. Not to provide the Confidential Information to the third parties, not to sell and dispose of it in any manner, and not to use the supplied Confidential Information for own purposes not covered by arrangements among the Parties;

3.2.3. To return the Confidential Information within five days of a written demand of the Insolvent Bank and/or the DGF to do so and not to keep any copies (including the electronic copies), reproductions or excerpts from documents, files, or data, etc. identified as Confidential Information;

3.2.4. To grant access to the Confidential Information to a limited number of the Specialist’s employees;

3.2.5. To familiarize themselves with the Confidential Information within 3 business days of the execution of the Certificate of the Transfer and Acceptance of Confidential Information.

3.2.6. The Specialist shall notify the DGF of its intents related to the continued cooperation and the provision of its services (with the indication of the type of services), offer a price for the services, or state the refusal to do so within five business days of the deadline specified in sub-item 3.1.1 of item 3.1 of the Contract.

3.3. The transfer of the Confidential Information under the Agreement shall be formalized by the signing of the Certificate of the Transfer and Acceptance of Confidential Information by authorized representatives of the Parties.

### **4. Liability of the Parties**

4.1. The Specialist shall pay the DGF a fine of UAH 100,000.00 (one hundred thousand hryvnias 00 kopecks) for the failure to perform and improper performance of item 3.2 of this Agreement.

4.2. The losses caused to the Parties by the failure to perform or improper performance of the duties under this Agreement shall be restituted in full in accordance with the procedure prescribed by the current laws.

### **5. Other Conditions**

5.1. This Agreement shall come into effect from the date of its signing by the Parties and its authentication with the seals of the Parties, and remain in effect: until the Parties enter into a contract of professional services in a specific area;

or

failure to conclude such contract within five (5) years from the date of the latest Certificate of the Transfer and Acceptance of Confidential Information.

5.2. Any differences between the Parties shall be settled in accordance with the procedure prescribed by the laws of Ukraine.

5.3. Any amendments shall be made in the Agreement by means of entry into supplementary agreements.

5.4. The Parties shall be guided by the laws of Ukraine in solving all the issues related to the performance of the Agreement by the Parties but not governed thereby.

5.5. This Agreement has been made in three authentic copies, all of them with the same legal effect, one for each Party.

## 6. Locations and Details of the Parties

### Deposit Guarantee Fund

Location:

17 Sichovykh Striltsiv Street, Kyiv,

EDRPOU code 21708016

Bank code \_\_\_\_\_

Account with the National Bank of  
Ukraine \_\_\_\_\_

Managing Director

\_\_\_\_\_ S. V. Rekrut

### Specialist

\_\_\_\_\_

Location:

\_\_\_\_\_

EDRPOU code \_\_\_\_\_

Bank code \_\_\_\_\_

Account number

\_\_\_\_\_

### Insolvent Bank:

#### AT DELTA BANK

Location:

38 Druzhby Narodiv Blv., Kyiv

EDRPOU code 09807856

Bank Code: 300001

Account with the National Bank of  
Ukraine 32078115901026

Authorized officer in charge of the  
liquidation of AT Delta Bank

\_\_\_\_\_ A. A. Matvienko

### Service Delivery Strategy Plan

<b>List of Activities to Achieve Service Delivery Results</b>					
<b>Activity</b>	<b>Actions of the Contractor (approaches and methods)</b>	<b>Regulatory/Legal Basis</b>	<b>Use of the Third Parties (yes/no) *</b>	<b>Deadline</b>	<b>Expected Result</b>

\* 'Use of the Third Parties (yes/no)' — if 'yes,' then specify the name of the third party to be used and activities, in which this party specializes.







Criterion	%	Maximum score (1)	Minimum acceptable % (of max).	Bidder 1		Bidder 2		Bidder 3		Bidder 4		Bidder 5	
				Estimate d level (2)	Score (1) × (2)	Estimat ed level (2)	Score (1) × (2)	Estimat ed level (2)	Score (1) × (2)	Estimate d level (2)	Score (1) × (2)	Estimate d level (2)	Score (1) × (2)
<i>(d) other factors:</i>		<b>30</b>	<b>0%</b>										
experience in providing services for banking institutions	100%	30.00											
		<b>100</b>			<b>0.00</b>		<b>0.00</b>		<b>0.00</b>		<b>0.00</b>		<b>0.00</b>
					<b>1</b>		<b>1</b>		<b>1</b>		<b>1</b>		<b>1</b>



**Methodology for the Successful Bidder Selection based on the Price Criterion (for the payment option referred to in item 2.3.2 of the Tender Documents) \***

The price components stated by the bidder in the quotation shall have the following weights:

Advance fee, UAH—20%

Cost reimbursement, UAH per hour—30%

Fee as percentage—50%

**Sample Calculation of the Score for the Price Criterion**

Indicator Name		Max. score	Measurement unit	Values of Indicators in Various Quotations		
				No. 1	No. 2	No. 3
1	Advance fee	5	thousand UAH	1000.00	2500.00	5000.00
			factor	1	0.4	0.2
			<b>Score</b>	<b>5.0</b>	<b>2.0</b>	<b>1.0</b>
2	Cost reimbursement	80	UAH per hour	800	500	450
			factor	0.6	0.9	1
			<b>Score</b>	<b>48</b>	<b>72</b>	<b>80</b>
3	Fee	15	%	2	3	4
			factor	1	0.66	0.5
			<b>Score</b>	<b>15</b>	<b>9.9</b>	<b>7.5</b>
	Total	100	<b>Scores</b>	<b>68</b>	<b>83.9</b>	<b>88.5</b> <b>(successful bidder)</b>

\* To be applied if all the bidders have opted for the Service Fee calculation under item 2.3.2 of the Tender Documents