

TENDER CONDITIONS

1 DESCRIPTION OF THE CONTRACTING AUTHORITY

1.1 The contracting authority

Finansiel Stabilitet (The Financial Stability Company) ("FS")
Sankt Annæ Plads 13, 2. tv.
1250 København K

1.2 FS

FS was established as a public limited company in October 2008 as part of an agreement between the Danish State and the Danish financial sector (the Private Contingency Association) in order to secure financial stability in Denmark as a consequence of the international crisis and the impact hereof on the financial sector.

At 1 June 2015, FS was converted into an independent public company. The conversion took place in connection with the adoption of the Act on Restructuring and Resolution of Certain Financial Enterprises.

The object of FS is to contribute to ensuring financial stability in Denmark, including in particular by winding-up of distressed financial institutions, which cannot comply with the capital adequacy requirements pursuant to the Danish Financial Business Act.

The activities of FS are governed by the Act on Financial Stability and the Financial Business Act and executive orders issued in pursuance thereof. Effective 1 June 2015, the activities of FS is also governed by the Act on Restructuring and Resolution of Certain Financial Enterprises, which grants FS new responsibilities and powers in relation to winding-up of distressed financial institutions. In addition, FS is also managing the Danish Depositor and Investor Guarantee Scheme pursuant to Act on a Depositor and Investor Guarantee Scheme.

Until 31 December 2010, the activities of FS also included entering into agreements for the provision of individual government guarantees for existing and new unsubordinated, unsecured debt and for the provision of supplementary collateral (junior covered bonds) with a maturity of up to three years by institutions issuing covered bonds. This period was prolonged to 31 December 2013 and FS entered into a few additional agreements for the provision of individual government guarantees. The guarantees have subsequently been repaid and the last guarantee was repaid in February 2015.

1.3 Subsidiaries

At the issue of this tender, FS has the following subsidiaries that together with their subsidiaries must be covered by the policy.

- Broinstitut I A/S (incl. subsidiary FS Finans V A/S (activities from "Andelskassen J.A.K. Slagelse under control"))
- FS Ejendomsselskab A/S (incl. subsidiary Objekt Windpark Sitten Verwaltungs UG)
- FS Finans I A/S (formerly "Sparebank Østjylland af 2012 A/S")
- FS Finans II A/S (formerly "Max Bank af 2011 A/S")
- FS Finans III A/S (formerly "Amagerbanken af 2011 A/S")
- FS Finans IV A/S (formerly "Fjordbank Mors af 2011 A/S")

An organisation chart is enclosed as Tender Appendix 1.

Annual reports and further information about FS can be found on www.finansielstabilitet.dk, which also has an English version.

1.4 **Present insurance policy**

A directors and officers liability insurance ("D&O insurance") is in force with a current limit of liability of EUR 85,000,000. The first inception date of said policy is 17 December 2009. The policy covers FS and all FS subsidiaries.

The ownership of Roskilde Bank was transferred to FS on 10 August 2009. Effective 9 June 2011, Roskilde Bank was transformed into FS Finans A/S, which has been merged into FS. Prior to 10 August 2009, Roskilde Bank was covered by an individual policy with first inception 1 September 2008. This policy had a one year run off cover which expired on 31 December 2010. None of the other distressed banks have been covered by individual insurance cover. A retroactive date per 1 September 2008 applies for the cover of this subsidiary.

1.5 **Claims history**

In 2011, Amagerbanken A/S went into bankruptcy. Two members of the supervisory board of the company were covered by the ODL cover of the policy and following the bankruptcy a series of complaints were made against the former management of the entity. These have been reported to and accepted by the insurance carriers as circumstances. No claim has yet been made against any covered persons.

In February 2014 a circumstance has been reported. This circumstance relates to a potential claim against an insured person in his capacity of member of the board outside the entity, Ejendomsselskabet Odense - Slagelse - Aabenraa A/S (OSA). Another minority shareholder of this entity, Kristiansen & Holmsberg A/S went into bankruptcy in 2012, and the management of this entity have been met by a claim for personal liability relating to this bankruptcy. They have reserved their right to serve notice to the insured person of FS based on the argument that he had important knowledge of the economic situation of OSA, which he failed to give to the board members representing the ownership of Kristiansen & Holmsberg in due time and which had influence on the bankruptcy of Holmsberg & Kristiansen A/S.

The insured person has attended the proceedings as a witness in 2016, but no claim has been made and no loss has been suffered at this stage.

1.6 **Primary layer insurance policy**

On 4 August 2017, FS has initiated a tender for a primary layer D&O insurance policy with worldwide coverage for FS and subsidiaries and a limit of liability of EUR 20,000,000 for each and every claim and in the annual aggregate. The policy period runs from 1 March 2018 to 28 February 2019, both days included, and with option of renewal for additional 12 months after expiry of the initial policy period. The contract for the primary layer D&O insurance policy has not yet been concluded, but will be enclosed the invitation to submit an offer for the excess layer D&O insurance policies. The contract will be [Tender Appendix 2](#).

2 **THE OBJECT OF THE CONTRACT**

The object of the tendered contract is to obtain excess layer D&O insurance policies with worldwide coverage for FS and subsidiaries. The tendered contract is divided into 11 excess layers, each covering one excess layer with a limit of liability of EUR 5,000,000 or 10,000,000 for each and every claim and in the annual aggregate. The excess layers are to have an aggregated overall limit of liability of max. EUR 70,000,000 in excess of the primary layer D&O insurance policy of EUR 20,000,000. The policy period runs from 1 March 2018 to 28 February 2019, both days included. Tenderers will have the option of offering renewal of the policy for additional 12 months after expiry of the initial policy period. This is voluntary, but it will be a factor in the evaluation of the overall offer, cf. Section 11.

Each of the 11 excess layers is divided into 2 lots, each lot covering 50 % of the excess layer.

FS may for each layer award one or two policies covering one or both lots, depending on which constellation of offers shall be considered the most economically advantageous pursuant to the award criterion, cf. Section 11. However, FS requires full coverage for each excess layer. Accordingly, an offer

for partial coverage - i.e. an offer for one lot of 50 % - will only be awarded a policy if this offer in combination with other offers for partial coverage equals 100 % for the particular excess layer and this combination is the most economically advantageous offer, cf. Section 11.

Insofar FS decides to award more than one policy for an excess layer, all policies form a coinsurance for the full layer, meaning that the risk is jointly assumed by all policy issuers. In the event a claim is made, each policy issuer will be liable for a percentage of the claim corresponding with its respective percentage of the excess layer. E.g. if two insurance companies are each awarded a policy covering one lot, each insurance company will be liable for 50 % of the claim pertaining to the relevant excess layer.

The excess layer D&O insurance policies are subject to the Marsh Excess Layer conditions which are enclosed as Tender Appendix 3.

2.1

The overall structure of FS' planned insurance programme

FS is planning to take out D&O insurance with an overall limit of liability of EUR 55,000,000 – 90,000,000 for the period of 1 March 2018 to 28 February 2019, both days included.

The D&O insurance will consist of a primary layer and up to 11 excess layers. The contract subject to this tender procedure is for the excess layers. The primary layer contract has been subject to a separate tender procedure, cf. Contract Notice 2017/S 146-301834.

Overall, it is the intention of FS to obtain quotes for the following layers:

Total limit MEUR 50-90	11. excess MEUR 5 xs 85
	10. excess MEUR 5 xs 80
	9. excess MEUR 5 xs 75
	8. excess MEUR 5 xs 70
	7. excess MEUR 5 xs 65
	6. excess MEUR 5 xs 60
	5. excess MEUR 5 xs 55
	4. excess MEUR 5 xs 50
	3. excess MEUR 10 xs 40
	2. excess MEUR 10 xs 30
	1. excess MEUR 10 xs 20
	Primary layer MEUR 20

3 TENDER DOCUMENTS

The tender documents include the following:

- The contract notice
- The tender conditions with appendices
 - Appendix 1: Organisation Chart
 - Appendix 2: Primary Layer D&O insurance policy
 - Appendix 3: Marsh Nordic FINPRO Excess Layer conditions
 - Appendix 4: Claims description and declaration
 - Appendix 5: ESPD file

The tender documents are available at <https://www.finansielstabilitet.dk/Default.aspx?ID=1808>. Upon receipt of the documents, the tenderer is recommended to ensure that the copy received is complete.

4 WRITTEN QUESTIONS

If any part of the tender material is unclear, if any policy terms or conditions seem unreasonable or uncommon, or if any circumstances should give rise to uncertainties, FS requests that any questions are submitted as early as possible.

All questions will be answered provided that the question can be answered no later than six days before the deadline for submission of the First Offer, cf. Section 7.1 below.

Questions will be answered on an ongoing basis.

Questions must be forwarded in writing by email to FS' Contact Point, Pernille.Palsby@marsh.com. Questions forwarded by any other means or posed orally will not be answered.

All questions and answers will be depersonalized and published at the following website: <https://www.finansielstabilitet.dk/Default.aspx?ID=1808>.

5 THE TENDER PROCEDURE

The tender will be completed as a negotiated procedure with prior publication of a contract notice pursuant to Section 61(1)(a) and (c) in the Danish Procurement Act (the "Procurement Act").

The tender procedure will be carried out in two phases:

- Phase 1: Prequalification of tenderers
- Phase 2: Tender phase, including negotiations

Only applicants being prequalified during phase 1 will be invited to submit a tender during phase 2.

Section 7.2 below provides for an overview of the negotiated procedure from announcement in The Supplement to the Official Journal of the European Union to the signing of the contract.

Tenderers are advised that FS is bound by the principles of equal treatment and transparency.

6 PHASE 1: PREQUALIFICATION

6.1 Deadline and Contact of Point for submission of request to participate

The deadline for submission of the request to participate is **30 November 2017 at 22:00 (CET)**.

The request to participate must be submitted by email to FS' Contact Point, Pernille Palsby, at Pernille.Palsby@marsh.com in accordance with the requirements set forth below.

FS prefers that the email in which the application is submitted refers to "Tender for Directors and Officers Liability Insurance - Excess Layer".

6.2 Requirements to form and content

The European Single Procurement Document ("ESPD") must be completed and submitted as preliminary evidence that the requirements set out below are met. As Tender Appendix 5 is enclosed an XML-file, which comprise the ESPD document to be completed by the applicant.

The XML-file is a special file, which can only be accessed and opened through the European Commission's website and can be found here: <https://ec.europa.eu/growth/tools-databases/espd/filter?lang=en>.

Please observe the following steps:

- a) Accesses the Commission's website
- b) Choose the relevant language
- c) On the next page, press "I am an economic operator"
- d) Press "Import ESPD"
- e) Upload the XML-file enclosed as Tender Appendix 5.
- f) Choose the country of origin and press "next" to access the ESPD

The following parts of the ESPD shall be completed:

- Part II.A-C
- Part III.A-C
- Part IV.a
- Part VI

After having completed the ESPD, press "Export" and remember to save the XML-file. The XML-file must be submitted to FS' Contact Person, Pernille Palsby, as part of the request for participation.

For further guidance on completion of ESPD, please refer to the Danish Competition and Consumer Authority's guide which can be downloaded at <http://www.kfst.dk>.

6.3 Grounds for exclusion

The applicant must observe the mandatory grounds for exclusion as stated in sections 135-136 of the Procurement Act. The applicant must state in part III.A-C of the ESPD whether or not the applicant observes each of the mandatory grounds for exclusion.

6.4 Financial capacity

It is a requirement that the applicant's financial rating is at least A- (Standard & Poor's) or equivalent. The applicant must state in part IV.a of the ESPD whether or not the applicant meets this requirement.

6.5 Agents, joint applications, consortiums etc.

If the applicant acts as an agent for an insurance company implying that the insurance company will eventually be party to the contract with FS and thus the final issuer of the insurance policy, it is the insurance company on whose behalf the application is submitted that must complete the ESPD in accordance with above. The agent, on the other hand, shall not complete an ESPD.

If a group of insurance companies - either directly or through an agent acting on behalf of the insurance companies - apply for prequalification and intend to submit an offer as a group, if qualified, each of the insurance companies shall complete an ESPD in accordance with above. In case the group of insurance companies acts through an agent, the agent shall not complete an ESPD.

There are no specific requirements regarding the legal form to be taken by a group of insurance companies in order to be eligible for prequalification.

7 PHASE 2: THE TENDER PHASE

7.1 Offer Submission Deadlines and Contact Point for submission of offers

All applicants who meet the requirements for prequalification will be invited to submit an offer.

The deadline for submission of the First Offer is **3 January 2018 22:00 (CET)**.

FS will notify the Tenderers of the deadline(s) for submission of Revised Offers and additional Revised Offers (if applicable), cf. Section 7.2.

Offers must be submitted by email to FS' Contact Point, Pernille Palsby, at Pernille.Palsby@marsh.com in accordance with the requirements to form and content of the offers set forth in Section 8.

7.2 Details of procedure

All Tenderers will have the opportunity to submit a First Offer and a Revised Offer and to participate in at least one round of negotiations. The Revised Offer will be considered the Tenderers' Best And Final Offer ("BAFO"), unless FS decides that one or more additional round(s) of negotiations are necessary.

Accordingly, tenderers are urged to submit their best possible offer as early in the process as possible, as they will not necessarily be given the opportunity to submit additional Revised Offers.

The BAFO is the final offer submitted by the tenderers and, accordingly, the offer which will be the subject of the final evaluation (leading to award of contract).

The procedure can be illustrated as follows:

- **Submission of First Offers**

First Offers must be submitted to the Contact Point before the Offer Submission Deadline, cf. Section 7.1.

- **Initial negotiations**

After review of the First Offers, all tenderers that have submitted timely First Offers will be invited to participate in initial negotiations. The negotiations have three purposes; (i) to present the tenderers with the opportunity to present their offer; (ii) to clarify any misunderstandings and/or uncertainties with regard to either the tenderers' interpretation of the Tender Documents or the FS' understanding of e.g. the tenderers' offer; and (iii) to negotiate the terms and conditions set forth in the Tender Documents. If FS receives offers for partial coverage - i.e. for a share (lot) of 50% of the excess layer concerned - FS will include the possibility of negotiating a coinsurance in the initial negotiations, cf. Section 2.

- **Submission of Revised Offers**

Following the negotiations, tenderers will have the opportunity to submit a Revised Offer. The Revised Offer must be submitted to the Contact Point, cf. Section 7.1, before the deadline for the submission of Revised Offers stipulated by FS after the initial negotiations have been completed. The Revised Offer will be considered the tenderers' BAFO, unless FS decides that an additional round of negotiations with some or all tenderers is necessary.

- **Additional round(s) of negotiations (if applicable)**

If FS considers it necessary, it may call for one or more additional rounds of negotiations. FS reserves the right to nominate a short list of tenderers for the additional negotiations. The short list will be comprised of the tenderers whose offers at the time are considered the most economically advantageous pursuant to the award criteria listed in Section 11. Accordingly, not all tenderers will necessarily be invited to participate in the additional negotiations.

- Submission of additional Revised Offers (if applicable)

Following the additional round(s) of negotiations, tenderers will have the opportunity to submit additional Revised Offers. The final Revised Offer will be the tenderers' BAFO. The BAFO must comply with the formal requirements set forth in these Tender Conditions.

- Tender Evaluation and verification of information in the ESPD

After submission of the BAFO, FS will complete the Tender Evaluation pursuant to the award criteria listed in Section 11 and in accordance with the evaluation method in Section 12. The tenderer with whom FS intends to enter into a contract will be requested to provide FS with documentation for the information in the ESPD. The documentation is listed in Section 13.

- Award of Contract

After having received the relevant documentation from the tenderer with whom FS intends to enter into a contract, FS will announce a decision on the award of the contract. All tenderers will receive a notice of FS' decision and a brief explanation of the reasons for the decision.

- Standstill

FS may not sign the contract with the selected tenderer until after expiry of the standstill period which is ten (10) calendar days from the day after FS has sent the award decision.

8 REQUIREMENTS TO FORM AND CONTENT OF THE OFFERS

8.1 Requirements applicable to all offers

The tenderers must provide an offer for the excess layer D&O insurance (as described in Section 2).

Tenderers may in their offers offer coverage for a full excess layer and/or a share (lot) of 50% hereof. However, FS highly encourages tenderers to state the premium of the full layer.

If a group of tenderers choose to submit a joint offer in a coinsurance FS request that the group appoints a representative with whom FS can negotiate on behalf of the other participants in such group.

It must appear from the offer which insurance company/companies will be party/parties to contract with FS, i.e. the issuer(s) of the insurance policy.

The offer must be drawn up in English. Attachments must be in the *.doc, *.docx or *.pdf formats.

FS prefers that the email in which the offer is submitted refers to "Tender for Directors and Officers Liability Insurance - Excess Layer".

Any costs entailed in the drawing up of the offers are of no concern to FS, and the tenderers cannot expect to have the offers returned after the tender procedure.

The tenderers must abide by their offers until 3 months after the deadline for submission of each offer.

8.2 First and Revised Offers

Offers must be submitted prior to the stipulated deadline for the offer in question in the form of an email to Pernille.Palsby@marsh.com. The offer shall contain a quote and the full wording of the terms and conditions for the D&O insurance policy.

The minimum requirements are listed in Tender Appendix 2 (with the exception described below) and Tender Appendix 3. With respect to First Offers and Revised Offers, provided that the latter is not the BAFO, such offers will not be rejected on grounds of non-compliance with the requirements.

All minimum requirements must be fulfilled in the BAFO. Reservations shall be listed separately and enclosed as Exhibit A.

With respect to Tender Appendix 2, it is minimum requirement that the terms and conditions of the primary layer D&O insurance policy are fully complied with except for the option of renewal for additional 12 months after expiry of the initial policy period. Thus, as stated in section 2 above, tenderers will have the option of offering renewal of the policy for additional 12 months after expiry of the initial policy period. This is voluntary, but it will be a factor in the evaluation of the overall offer, cf. Section 11.

8.3 **The BAFO**

Following the final round of negotiations, FS will towards each tenderer individually stipulate, which of the minimum requirements the tenderer has not fulfilled in the First and/or Revised Offer. If the BAFO does not meet these and all other minimum requirements at the deadline, it will be rejected.

8.4 **Agents, joint offers and offers by consortiums**

Tenderers are advised that only offers from prequalified insurance companies will be taken into consideration by FS. This means that if the tenderer acts as an agent for an insurance company - implying that the insurance company will eventually be party to the contract with FS and the final issuer of the insurance policy - the insurance company on whose behalf the offer is submitted must be identical with the prequalified insurance company. Otherwise, FS will be required to reject the offer.

Furthermore, Tenderers should be aware if they have been prequalified as part of a group or consortium of insurance companies. If the group/consortium submitting an offer is different from the prequalified group/consortium, e.g. by including a non-prequalified insurance company, FS will be required to reject the offer submitted by the group or consortium.

9 **VARIANTS (ALTERNATIVE OFFERS)**

Each tenderer can submit one offer. Variants/alternative offers will not be accepted.

10 **RESERVATIONS**

Reservations are allowed in the First and Revised Offer provided that the latter is not the BAFO. Reservations shall be listed in Exhibit A.

With respect to the tenderers' BAFO, the following applies:

If the BAFO contains reservations regarding the tender conditions and/or contract documents and the reservations relate to a fundamental aspect of the tender conditions and/or contract documents, FS is obligated to reject the offer.

Any deviations or reservations regarding the minimum requirements to the terms and conditions for the policy issued by FS following the final round of negotiations will not be accepted in so far as the offer does not meet the minimum requirements, and if deviations or reservations are included, the offer will be rejected.

Otherwise - and provided that the reservation relates to a non-fundamental part of the tender documents and/or contract - FS is entitled to reject the offer, but may instead choose to convert the reservation to monetary value and add this amount to the price (premium) of the offer. However, if the reservation cannot be converted to monetary value with sufficient certainty, the offer will be rejected.

11 **CONTRACT AWARD CRITERIA**

11.1 **The most economically advantageous offer**

The contract will be awarded to the most economically advantageous offer based on the criterion "best ratio between price and quality" on the basis of the following sub-criteria :

- **Premium** **55 %**

The received offers will be evaluated in relation to the offered premium quote.

- **Coverage** **45 %**

It will have a positive impact on the evaluation of an offer if that offer exceeds the minimum requirements regarding terms and conditions. It will also have a positive impact if the offer includes an option for renewal of the policy for 12 months after the expiry of the initial policy period.

If FS receives multiple offers for a layer, FS may award either one single policy covering both lots of that layer or two policies each covering one lot, depending on which constellation of offers shall be considered the most economically advantageous pursuant to the award criterion.

12 EVALUATION METHOD

FS will evaluate all compliant offers. FS will evaluate the offers on an individual basis meaning that each offer is subject to an individual assessment based on the content of the offer.

The contract will be awarded the tenderer who has obtained the highest weighted average point score (the total sum of the awarded points for each criterion multiplied with the above stated weight) and thus has submitted the most economically advantageous offer

12.1 Evaluation of premium

Primary model: FS will evaluate the premium on a point scale from 0-5, where the tenderer submitting the lowest premium will be given the highest score (5 points) and the tenderer submitting a premium that is 50% higher than the lowest premium will be given the lowest score (0 points). Prices in between this interval will be awarded points by linear interpolation between those two fix points. Mathematically, the model can be expressed as follows:

$$\begin{aligned} \text{Awarded points for premium}_i \\ = 5 - \frac{(\text{Premium}_i - \text{lowest premium submitted})}{(\text{lowest premium submitted} * 1,5 - \text{lowest premium submitted})} \times 5 \end{aligned}$$

Secondary model: If one or more premiums are more than 100% higher than the lowest premium offered, FS will expand the interval so that the tenderer submitting the lowest premium will be given the highest score (5 points) and the tenderer submitting a premium that is 100% higher than the lowest premium will be given the lowest score (0 points). Prices in between this interval will be awarded points by linear interpolation between those two fix points.

Mathematically, the model can be expressed as follows:

$$\begin{aligned} \text{Awarded points for premium}_i \\ = 5 - \frac{(\text{Premium}_i - \text{lowest premium submitted})}{(\text{lowest premium submitted} * 2 - \text{lowest premium submitted})} \times 5 \end{aligned}$$

12.2 Evaluation of coverage

FS will evaluate the coverage criteria on a point scale from 0-5 in accordance with the table below:

- 5 points Very good
- 4 points Good
- 3 points Satisfactory
- 2 points Less satisfactory
- 1 point Poor
- 0 points Very poor

13 VERIFICATION OF INFORMATION IN ESPD

As mentioned in Section 7.2 above, prior to the award decision the tenderer with whom FS intends to enter into the contract shall provide FS with documentation for the information in the ESPD.

As documentation that neither the company nor any member of the management has been caught by the exclusion grounds in section 135 of the Procurement Act within the last four years an extract from the relevant register or similar document issued by a competent legal or administrative authority showing that the company nor any member of the management has been caught must be submitted.

For Danish tenderers, the documentation can be in the form of a service certificate from the Danish Business Authority. The service certificate may function as documentation for both the company and the members of the management (both its Danish and non-Danish members) provided that each member makes a declaration of consent for the criminal record check. A template for such declaration can be found at the Danish Business Authority's website www.erhvervsstyrelsen.dk

If the tenderer is not domiciled in Denmark and the country in which the tenderer is domiciled does not issue such certificates or documents, or if these do not cover all exclusion grounds mentioned in section 135 of the Procurement Act, they can be replaced by a declaration under oath. If declaration under oath is not a possibility in the country in question, a solemn declaration can be provided instead in accordance with section 153 (2) of the Procurement Act.

As documentation that the tenderer has a financial rating of least A- (Standard & Poor's) or equivalent, the tenderer shall provide either an extract from the relevant register or a link to the website where information about the tenderer's financial rating may be found.

OVERVIEW OF THE NEGOTIATED PROCEDURE

