



ATTIKO METPO A.E.

**TITLE OF THE TENDER: LINE 4 – SECTION A’
“ALSOS VEIKOU – GOUDI”
RFP-308/17**

CLARIFICATIONS DOCUMENT 3

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This Clarifications Document 3 is issued in accordance with paragraph 6.3 of the Invitation to Express Interest. It contains responses to the questions that have been raised by the Bidders until 16.06.17, as well as clarifications on the Tender Documents.

The content of the Clarifications Document 3 are considered to be an integrated part of the Invitation to Express Interest.

A. RESPONSES TO QUESTIONS

Question 1

With regard to the Invitation to Express Interest in the aforementioned Project and the clarifications given in the Clarifications Document 1, kindly provide us your response to the following question:

As you are well aware of, through paragraph 5a, article 119, Law 4472/2017, the following paragraph was added to article 76, Law 4412/2016 "4. In addition to the Companies registered in Registries classes, any Company fulfilling the selection criteria of article 75, Law 4412/16, can participate in procedures for the award of public contracts, designs or the provision of technical and other related scientific services, regardless of its registration in classes. Any reference contrary to previous clause is abolished". The justification report on the interpretation of the aforementioned provision states as follows: "paragraph 5, case a', sets a sentence as a general – formal wording of the will of the legislator, i.e. that the classification in Registries classes, as regards the competence to exercise the professional activities, set forth in paragraph 2, article 75, Law 4412/2016, and not the registration itself in these registries does not constitute the qualitative selection criterion stipulated in article 75 (paragraph 1 cases (b) and (c)) of Law 4412/2016. The wording in the subsequent cases (b') up to (f) follows the same spirit of the legislator". By virtue of this provision, it is concluded that the companies already registered in a specific class reserve the evidence of the technical competence (they do not have to prove their competence); however, the option is given for the companies not registered in classes to participate in procedures for the conclusion of public contracts, on condition that they prove they fulfill the selection criteria, as foreseen, for foreign companies not registered in recognized contractors lists. Kindly clarify whether an economic operator not registered in class 7 of MEEP or in an equivalent class of a foreign registry, is eligible to participate in this tender, by submitting evidence proving that he fulfills the selection criteria based on the provisions of articles 5.2.3.1, 5.2.3.2, in combination with articles 10.4.3.1 and 10.4.3.2 of the Invitation, as dictated by the principle of fair treatment and in view of serving the need for securing the widest possible competition.

Thank you in advance for your attention; kindly proceed with all necessary actions.

Response 1

In line with article 75, paragraph 2, Law 4412/2016, awarding authorities may require economic operators to be registered in one of the Professional or Commercial Registries kept in the member-state where they are seated, as described in Annex XI of Appendix A of the subject Law. In Greece this Professional Registry is MEEP, in which the registration of Greek Contracting Firms is mandatory. Moreover, as regards public contracts, article 76 of

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Law 4412/2016 specifies the criteria on the basis of which Contracting Firms registered in MEEP are selected.

AM specified its requirements with regard to the competence, on the part of those eligible to participate in the tender, for exercising the professional activities in the framework of the aforementioned provisions of the Law.

The terms for participating in the subject tender remain as they are, taking into consideration that Law 4472/2017 was put in force after the commencement of the procedure for the conclusion of this contract.

Question 2

The Bank certificate that must be provided makes reference to article 729 of the Greek Civil Code. Given that the majority of foreign Credit Institutions and Organizations find this reference strange, is it possible to just refer to the content of the subject Article without making reference to the specific article 729 of the Greek Civil Code?

Response 2

Article 729 of the Greek Civil Code specifies that "If a person has given an advice or has made a recommendation he shall not be liable for any loss resulting therefrom except of he had assumed responsibility by contract or acted fraudulently". Advice means expressing an opinion on a specific matter that interests the party to whom it is addressed and seems to be to his benefit. Recommendation is more than an opinion, since it includes also a suggestion for compliance with it. Equal to the advice/recommendation is considered to be the information provided, i.e. the description of a specific, current or future, actual or legal status.

The negative wording of paragraph 5, Sample A1 of the Invitation to Express Interest, namely "This certificate shall not serve as letter of guarantee or advice or suggestion, in line with the provisions of article 729 of the Civil Code" means that the Bank, by providing its certificate, does not assume responsibility either in the form of guarantor liability or in the form of any contractual obligation for the provision of advice, etc., for any eventual loss suffered by the recipient of the certificate, in our case by AM, due to absence of correctness or accuracy thereof.

Therefore, the content of paragraph 5, Sample A1 of the Invitation to Express Interest remains as is.

Question 3

Given that in the relative community directives there is no legal basis prohibiting the awarding authority of an EU member-state to accept the participation of a third country in a public tender and, on the other hand, a third country to participate in a public tender of an EU member-state, it lies in the discretion of each awarding authority in Greece to accept or not the participation of natural or legal entities established in a third country. Therefore, kindly confirm whether your Company will accept companies specialised in the required type of works and services that are established in Turkey and are willing to participate in the pre-qualification process in the form of Associations with Greek and European Construction Companies.

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Response 3

Article 2.5.5 of Law 4412/16 and Directive 2014/25/EU set those entities eligible to participate in the Tender as specified in detail in article 5 of the Invitation to Express Interest. Therefore, it does not lie in the discretion of each awarding authority to accept or not the participation of natural or legal entities established in a third country.

Therefore, each interested party ought to examine whether it fulfils the preconditions for participating in the tender, in line with article 5 of the Invitation to Express Interest.

Question 4

In Clarification B.1.2 of Clarifications Document 1 concerning article 5 of the Invitation, you mention the following as regards the required qualifications of the rolling stock companies: *"As regards the competence for exercising the business activity of Rolling Stock Candidate Companies, these must be registered in one of the Professional or Trade Registries kept in the member where they are established". This clarification is in accordance with the nature of the activities of these economic operators that cannot be and are not required to be registered in Professional Registries of Contracting Companies and, therefore, are not required to demonstrate compliance with the criteria for classification in Class 7 of MEEP.*

From the above clarification we understand, for the sake of coinciding legal language and in order to respect the principle of equal treatment and proportionality, that the same applies for all other economic operators who will participate in a joint venture or who will dispose to a participant (as third economic operators) the special technical competence mentioned in article 11.3.1, paragraph h, taking into account that exercising activities in the specific fields directly and technically linked to the work for Metro trains commissioning is not exclusively interwoven with the Contractor's profession, while companies not required to be registered in the Registry of Contracting Companies are activated in these fields exactly as the case is for rolling stock companies. Based on the above, kindly confirm that, as regards the suitability of signalling companies to exercise the professional activity, these companies are required to be registered in one Professional or Commercial Registries in the country where they are established, but it is not required for them to be registered in a Registry of recognized contracting companies and they are not required to demonstrate that they fulfil the same typical and essential requirements based on which the contracting companies registered in the Greek registries become eligible to participate in this tender.

Response 4

Signalling Systems (as well as the remaining systems that must be executed in the framework of the subject project) are included in the electromechanical works that constitute one of the basic works categories, in which contracting firms are classified. Therefore, with regard to these systems, in terms of the competence for exercising professional activities, applicable is the content of articles 5.2 (paragraphs 5.2.1-5.2.3) and 10.4 of the Invitation to Express Interest. Rolling Stock is not included in the aforesaid categories of works. Thus, the aforementioned requirements, which are applicable for the contracting firms, do not apply to rolling stock companies, as regards the competence for exercising professional activities. Rolling Stock Companies are only required to be registered in one of the Professional or Commercial Registries kept in the state where they are seated.

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Question 5

As regards article 11.4.2 of the Invitation, in Response 1 in the Clarifications Document 2 you state the following: "The requirement for a minimum cross-section of 100m², referred to in item (b), concerns underground tunnel excavation in urban environment using conventional mechanical means. The sections of the Stations constructed by the underground method shall be also taken into account". We understand from the above clarification that, by association, the same applies for demonstrating the experience of the candidate mentioned in article 11.3.1, case b, of the Invitation, i.e. the Candidate, in order to satisfy the subject criterion, can invoke experience in underground station construction in urban environment using conventional mechanical means, with a minimum cross-section of 100m².

Please confirm.

Response 5

Confirmed.

Question 6

As regards Clarification B.1.1 and B.1.5 of Clarifications Document 2 concerning article 5.2.3.1 of the Invitation, we understand that, due to an error, you make reference to stipulations that were in force before Law 4313/2004 came into force, which in article 70 Amendment of stipulations regarding the Codification of the Public Works Legislation (Law 3669/2008) reads as follows: "Total liabilities is defined as the sum of short-term and long-term liabilities of a company, with the exception of the long-term liabilities not related to Bank loans, as these liabilities are defined based on a Chartered Accountant Certificate, less the invoiced liabilities certified by a Chartered Accountant. In point ii, case e, paragraph 8 of article 100, L. 3669/2008, is replaced as follows: *"The viability indices of companies classified in Classes 4, 5, 6 and 7 must be I.K./Σ.Y.>0.4 and K.E./B.Y.>0.6"*.

You are kindly asked to reinstate the original indices and to adopt a wording that is in agreement with the current regulatory framework, given that the financial data of foreign companies originating from countries where not official Contracting Company Registries are kept, for which article 5.3.2.1 and 10.4.3.1 of the Invitation exclusively apply, should be evaluated on the basis of criteria corresponding and equivalent to the current ones for registration and classification in Class 7 of MEEP of the Greek Contracting Companies.

Response 6

See Addition B.1, Chapter B of this Clarifications Document 3.

Question 7

According to article 18 of the Invitation: *"The Courts of Athens are the only competent authorities for the settlement of any dispute that may arise during the execution of the Contract, in line with the Greek Law"*. However, taking into consideration the size of the Project, its importance and complexity, as well as the anticipated difficulties that may be encountered due to the fact that it is constructed in an urban environment, we believe that it is necessary to provide for a dispute settlement procedure, which shall be short and shall provide the possibility to examine purely construction and technical disputes by ad hoc

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specialized persons. The swift and oriented to the Project specificities dispute resolution procedure is finally to the benefit of the Project. In view of the above, you are kindly requested to examine the possibility of having disputes resolved by arbitration, taking advantage of the possibility provided by article 176, paragraph 1, L. 4412/16, which is also applied complementarily to the conventions of Volume 2 of the same Law, as specifically set forth in article 3.3.4 of the same Law, as amended and currently in force.

Response 7

Article 18 of the Invitation to Express Interest remains as is.

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B. CLARIFICATIONS/ADDITIONS TO THE TENDER DOCUMENTS

B1. Clarification on item B1.5 (Article 5.2.3.1) of Clarifications Document 2

v. Sustainability Indicator:
Total of Equities / Total of Liabilities > 0,6 *0.4*

.....
vi. Sustainability Indicator:
Current Assets /Current Liabilities > 0,8 0.6, where

.....
B1.1 Clarification on item B1.1 (Article 5.2.3.1(v)) of Clarifications Document 2

5.2.3.1

Total of Liabilities means the sum up of the current and long-term liabilities of the Company, with the exception of the long-term liabilities not relating to bank borrowing, as these are defined in the chartered accountant certificate, minus the invoiced receivables certified by the chartered accountant ~~from public procurement contracts.~~

B1.2 Article 11.4.3.1 of the Invitation

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- Legal Statement of the legal representative of each engineering company/firm that participates in the Design Team of the Candidate proving its cooperation with the Candidate. The subject Legal Statement should state the following:
 - a) ~~the composition of the engineering company/firm and~~ the engineering works that ~~each team member~~ *the engineering company/firm* shall cover.