



**“TECHNICAL CONSULTANT SERVICES FOR
THE ATHENS METRO PROJECTS”**

**RFP-318/17
A.Σ. 67696**

CONDITIONS OF CONTRACT

**TITLE OF THE TENDER: “TECHNICAL CONSULTANT
SERVICES FOR THE ATHENS METRO
PROJECTS”**

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ARTICLE 1 INTRODUCTION

This document entitled “Conditions of Contract” specifies the general framework and the special terms for the implementation of the Contractor’s contractual obligations. The special issues related to the awarding procedure are included in the document entitled “Invitation to Tender”.

Article 2 EXECUTION OF THE CONTRACT

2.1 Execution of the Contract

Further to the review of the Back Up Documentation, the selected Contractor will be invited, within a twenty (20)-calendar day deadline following the said invitation by AM, to sign the Contract, in accordance with article 6 of the Invitation.

2.2 Location and Duration

2.2.1 Contractor’s location of works: AM offices in Athens as well as the worksites of the project in Athens and/or the temporary offices of AM adjacent to the worksites for the execution of all kinds of works. Adequately equipped offices for the provision of the Consultant’s services shall be made available to the Contractor’s personnel by AM. Moreover, in special occasions and further to AM’s approval, it may be required for the Contractor’s executives to work in the Contractor’s offices too.

The Contractor is obliged, on the basis of an advance notification given in due time by the competent bodies to attend meetings, provide written or verbal information or advice to the Services concerned and their bodies, participate in visits to the area where the works are planned to be constructed and generally provide any relative assistance deemed useful by AM.

2.2.2 The contractual duration for the execution of the contract is the overall deadline for the completion of the Contract scope as defined in the Invitation to Tender. The commencement of the deadline coincides with the day that follows the signature of the Private Agreement, if not specified otherwise therein.

If the date for the enactment of the contractual deadline for the provision of services is shifted without the Contractor being liable, then the Contractor shall be entitled to a respective extension of the deadline.

2.3 Supervision of the Contract

AM shall determine the persons who shall supervise the execution of the works of the contract and shall notify the Contractor accordingly. The competence and

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responsibilities of the supervising persons are defined in Article 183 of Law 4412/16.

2.4 Submittal of Reports by the Contractor

Within the first ten days of each calendar month, the Contractor shall undertake the obligation to include in the report that he submits concerning the provision of his Services information related to the actions that have been taken and the progress of works executed at various sections of the Project during the previous month, including an analysis concerning the employed Personnel. The aforementioned reports shall be signed by a representative of the Contractor to AM.

ARTICLE 3 PERSONNEL OF THE CONTRACTOR

- 3.1** The Contractor is obliged to have sufficient and suitably qualified personnel for the execution of the services which have been assigned to him, and in accordance with the commitments he undertook with the submittal of his Offer. The experience and the general qualifications of this personnel are subject to the specific and/or tacit approval of AM. If not expressing its objections in writing, the MD is assumed to accept these persons.
- 3.2** The Contractor **is obliged to use for the execution of the Contract the team stated during the procedure of the Tender** and to immediately announce the departure of any member whatsoever from the team. The M.D. will examine the reasons for departure and is able to approve their replacement with an equivalent employee who possesses minimum an equivalent experience. If the departure was instigated by the Contractor and it is not considered justified, it is punishable by forfeiture (Article 188, Para. 3 of Law 4412/16).
- 3.3** If a member has left the team without a good reason, he shall not be allowed to take part in the personnel of another company and he shall not be entitled to participate individually in various tenders for a time period of six (6) months from the issuance of a MD Resolution concerning his replacement. If his departure was made under the Contractor's responsibility and is not considered justified, then this member may be declared forfeited.
- 3.4** In its judgment, AM shall be entitled to require - on a well-justified basis and within thirty (30) calendar days upon the relevant written notice to the Contractor - the replacement of any person proven to be insufficient or a person whose professional behavior was not the proper one or a person who did not meet the provisions of the Contract, the applicable laws and regulations and the directions of AM's competent bodies. All the expenses relating to the replacement of the personnel (including replacements for reasons of health or for any other reason) shall be borne exclusively by the Contractor.

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- 3.5** The Consultant has to make available two groups (categories) of personnel, according to the Table Listing the Experience, contained in the Document entitled “Technical Data of the Personnel and Consultant’s Services”.

Group K1 includes specialized executives, possessing special technical and professional competence, who shall cover the basic positions.

Basically, Group K2 includes executives possessing general experience, who shall cover positions as needed by the progress of the works.

It is pointed out that AM reserves its right to modify the man-months of employment of its executives belonging to Group K1, as well as of the executives of Group K2, according to the actual needs and the time schedule of the works. The Contractor is obligated to meet these requirements immediately and, in case of increase-decrease of his personnel, no later than one (1) month following the relevant written notification of AM. The increase or decrease of the Contractual Scope shall be defined based on the Contractual Unit Prices per man-month and specialty of the personnel, as defined in the Financial Offer of the Consultant.

- 3.6** The Consultant shall act as an independent Contractor in the sense of articles 681 ff. of the Civil Code and not as a representative or agent of AM, maintaining the full control on his personnel and his partners and suppliers in general.

Article 4 FEE - WITHHOLDINGS

4.1 Value of the Contract

The estimated value of the Contract includes the number of estimated man-months for each executive and their pre-estimated fees. The estimated value of the Contract includes fifteen per cent (15%) as contingencies, in accordance with the stipulations of paragraph 4, Article 186 of Law 4412/2016.

Upon signing of the private agreement of the Contract for the provision of services, the total amount of the Contract is set as equal to the amount presented in the Contractor’s document entitled “Financial Offer”, while 15% of the contingencies is added therein.

4.2 Contractor’s Fee

- 4.2.1** The contractual fee of the Contractor shall be the amount stated in the Financial Offer.

- 4.2.2** The contractual price of the Contractor shall include in an converted form the overall cost and all expenses for the workmanlike fulfillment of his contractual obligations, i.e. salaries, leaves, leave bonus, employer’s contributions, remunerations, personnel bonuses, any over-time employment, operating

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costs, travel expenses, expenses related to the personnel insurance, and, in general, any type of expenses not explicitly referred to, the overhead and his profit. In general, the LSP shall include all expenditures on the part of the Consultant, directly or indirectly associated with the provision of his services, except the VAT. In addition, the LSP shall include any type of expenses relating to the scientific support of the personnel to work in AM's offices.

- 4.2.3 No revision of prices shall be foreseen for the Contractor's fee and for the 60-month validity period of the Contract.

4.3 Amendments of the Contract

As regards amendments of the Contract during its execution, applicable are the stipulations of article 337, Law 4412/16.

In particular, it is allowed to increase/decrease by 10% the overall contractual fee (VAT and revision of prices excluded) following the preparation and approval of the Comparative Table, according to article 186, para. 3-9 of Law 4412/2016.

4.4 Details of Contractor's Fee

The payments of the Contractor shall be carried out on the basis of monthly analytical payment certificates for which the Contractor shall submit for approval to AM, which shall present the monthly fee (or proportionally in case of month fraction) of the Contractor's entire personnel engaged each time in their task. The monthly certificates shall be divided on the basis of the work the Consultant's personnel will be engaged in.

The Contractor's overall fee shall be finally calculated on the basis of the actual employment of his personnel during the 60-month validity period of the Contract. The monthly reports that the Contractor is required to submit, as specified in article 2 herein, and the remaining deliverables shall be checked by AM, as regards their completeness and timely submission, and shall constitute the precondition for the paying-off of his payment certificates.

AM shall check the account within ten (10) working days as of the date of his receipt and, having verified the executed works, it shall certify the account.

After the certification of the account by AM, the Consultant shall submit the Lawful Back Up Documents Foreseen each time. The Contractor shall also submit Back-Up Documents for the amount approved by AM for the services that have been approved, including the Value Added Tax (VAT).

Any payment to the Contractor on the basis of the Contract shall be made only on condition that the Invoices he submits have been issued on the basis of the Tax Code Transaction (ΚΦΑΣ). AM shall pay to the Contractor the amount included in the Invoice within thirty (30) working days upon its receipt on

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condition that this Invoice is accompanied by the aforementioned required Lawful Documentation.

The actual employment period of the Contractor's personnel in AM shall be proven by the attendance system (in/out card) valid each time in AM. It is assumed that the Contractor shall provide his services on a daily basis, having exhausted the 8-hour employment per working day (except weekends and holidays stipulated in the Greek Legislation). Any kind of absences from work shall be borne by the Consultant and shall not be added to the services to be paid. In case "overtime" work, as well as work during Saturdays, Sundays and Holidays of the Personnel of the Contractor is required, it is assumed that it shall be covered by the contractual prices of his Offer and is not compensated additionally by AM (included in a converted form in the price of his offer). If so required by AM and the Contractor has to work in his offices in order to deliver specific reports and tasks, then he shall be compensated on the basis of the man-months to be required for the implementation of these specific tasks.

Following approval of the Certificate, the Contractor is obliged to provide the following supporting documents to receive the payment:

- I. Invoice on the basis of the Tax Code Transaction (ΚΦΑΣ)
- II. Tax Clearance Certificate
- III. Social Security Contributions Certificate in case of a physical entity, or the social security obligations towards those employed full-time (EFKA – Single Social Security Entity, etc.), in case of a legal entity. A Joint Venture or Consortium should provide evidence of social security contributions of all their members.

The following expenses shall be borne by the Contractor:

- A retention of 0.06%, which is calculated on the basis of the value of each payment before contract taxes and withholdings, for the purpose of covering the operational needs of the Unified Independent Public Procurement Authority; this amount shall be borne by the Contractor (paragraph 7, article 375, Law 4412/16, as applicable each time). It is clarified that the subject retention is burdened with stamp duty equal to 3% and stamp duty in favor of OGA, calculated to 20% on the stamp duty.
- A retention of 0.06% calculated on the basis of the value of each payment before taxes and withholdings imposed on the initial value, as well as of each supplementary contract in favor of the Authority examining preliminary appeals. The subject retention is burdened with the equivalent stamp duty and the stamp duty in favor of OGA,
- A retention of 0.02%, in favor of the Greek State, calculated on the basis of the value –VAT excluded– of the initial contract, as well as of each supplementary contract. This amount is withheld from each payment by the

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Awarding Authority in the name of and on behalf of the Directorate General of Public Contracts and Procurements. The subject retention shall be charged with the equivalent stamp duty and the stamp duty in favor of OGA, The time, place and procedure related to the retention of the aforementioned amounts, as well as any other issue necessary for the application of the subject retention shall depend on the issuance of a joint ministerial decision to be made by the Minister of Economy, Development and Tourism and Finance, as stipulated in paragraph 6, article 36 Law 4412/16.

- Any other lawful retention in favor of third parties which results according to the Law.

The Contractor is also obliged to provide at the request of AM any other supporting document required by Greek law for the payment of the request.

It is clarified that:

- (a) The Contractor is fully and solely responsible for all contributions, sums due, duties and other payments to the Social Security Funds, Health Insurance and Pension Funds of Professionals, Public or other parties..
- (b) The Contractual Fee does not include Value Added Tax. This tax shall be added on and paid to the Contractor with each Payment Certificate.

All payments shall be effected within one month of approval (explicit or tacit) of the Payment Certificate, on condition that all the aforementioned supporting documents will have been submitted. If there is a delay in payment surpassing one month, at no fault of the Contractor, then the stipulations of Article 187, paragraph 7 of Law 4412/2016 shall apply.

The Contractor shall bear:

- a) The overall employer's contributions for providing social security to his personnel in Greece and abroad; in addition - if so required by the respective Greek and/or foreign legislation for social security - he shall see to the withholding and returning of the respective labour contributions too, to securing the relevant residence and work permits of his foreign personnel in Greece.
- b) The insurance - of any nature - of his personnel.
- c) The taxes - both direct and indirect ones - and the duties that, according to the Greek Legislation or other provisions about taxation, concern the provision of services by any means by the Consultants, as well as all expenses and costs for their compliance with their obligations, which shall be covered in their entirety by the Consultants, who shall be exclusively responsible for their payment.

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- d) The travelling expenses for the arrival of his foreign executives in Greece and their transportation / return, for their annual vacation or other type of leave of absence or any health related problems or final departure, as well as all expenses pertaining to their installation and staying in Greece.

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4.5 Currency of the Contractor's Fee

The invoices of the Contractor for his fee, in addition to the payments to be made by AM, shall be expressed in EURO and in accordance with legislation in effect.

ARTICLE 5 GUARANTEES

5.1 Good Performance Guarantee

The Good Performance Letter of Guarantee of this contract shall cover - in total and without any distinctions - the implementation of all contract terms and all requirements of the Project Owner regarding the good and in due time execution of the contract.

- 5.1.1 The Contractor shall guarantee that he possess the experience, the necessary qualifications, permits and the organization required for the services duly provided.

For this reason and in view of securing the good performance and excellent quality of the Works and in view of ensuring AM's requirements against the Contractor due to the non-due execution of the Contract, as well as any other violation on the part of the Contractor of the Contract terms, a Good Performance Letter of Guarantee for an amount corresponding to 5% of the contract value, VAT excluded. This Letter of Guarantee shall be issued in accordance with the Sample attached to the Invitation.

- 5.1.2 A sample of this Letter (in Greek and English) is included in Appendix A, Samples A3 & A4 of the Invitation to Tender.

- 5.1.3 All the aforementioned Letters of Guarantee shall be issued in favour to the Contractor at his sole cost and expense by TMEDE or by Credit Institutions, which are lawfully operating in the Member States of the European Union and are entitled to issue Letters of Guarantee, in accordance with the Legislation of the Member States in force, as foreseen in article 157 of Law 4281/2014. In case of a consortium / joint venture, it is possible to issue more than one Letters of Guarantee, which cover the total summed amount of the guarantee, provided that **these Letters of Guarantee are issued on behalf of all the members of the consortium / joint venture and not on behalf of separate individual members.**

These guarantees shall cover all AM's claims against the Contractor, either for any violation of Contract's terms or for the non-due execution of the Contract. At any time, AM is entitled to require, through its written statement towards the issuing Banks, the forfeiture of the entire amount of guarantees or part thereof in view of satisfying its claims against the Consultant. However, these guarantees do not exhaust the Consultant's responsibility for compensating AM

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in case the latter sustains any damage greater than the amount foreseen by the guarantees. **It is stressed that the letters of guarantee that have not been drafted in accordance with the samples attached to the Invitation to Tender shall not be accepted.**

In the event of contract amendment as per article 132, Law 4412/2016, leading to an increase of the contract value, prior to the amendment, the Contractor shall submit a supplementary guarantee whose amount will rise to a percentage of 5% of the increase, VAT excluded.

5.2. General Conditions for Guarantees

The Guarantees of Paragraph 5.1 herein cover in their entirety and indiscriminately, the reliable implementation by the Contractor of all the terms of the Contract and any request made by AM to the Contractor which ensues from the fulfillment of his services.

If deemed necessary, the forfeiture of all or, depending on the request, some of the Guarantees will be decided. Once the decision has been issued, AM may cash the Guarantee with a declaration in writing to the Guarantor.

The forfeiture of all the Guarantees does not waive the responsibility of the Contractor to compensate AM in the case the latter suffers damages greater than the amount of the Guarantees.

The Good Performance Letter of Guarantee shall be returned to the Contractor after the acceptance of the overall scope of the contract.

ARTICLE 6 LIABILITY OF THE CONTRACTOR

- 6.1 The Contractor shall execute the Contract in accordance with its terms, the applicable specifications and the rules of science and technology; he shall bear full responsibility for the completeness of the scope of the services he provides.
- 6.2 The Contractor is liable for errors or omissions during the execution of his contractual obligations. The claims of AM against the Contractor, due to defective fulfillment of his obligations during the execution of the Contract, are statute-barred after the lapse of six years from the acceptance of the scope or the termination in any way whatsoever of the Contract.

ARTICLE 7 GENERAL DUTIES, RESPONSIBILITIES, OBLIGATIONS OF THE CONTRACTOR

7.1 General obligations and responsibilities of the Contractor

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- 7.1.1 The Contractor is obliged to make use of the data made available to him by AM. In the event of inaccurate, ambiguous or, in general, insufficient data, affecting the completeness of his work, the Contractor must notify AM in writing and without any further delay.
- 7.1.2 The Contractor commits himself unconditionally & explicitly to fulfill his obligations, as they are specified in the “Technical Data of Services and of the Contractor’s Personnel” document which accompanies the Invitation to Tender, as well as the responsibilities emanating from the Contract with skill, diligence and professional judgment.
- 7.1.3 If the Contractor is called by AM to intervene in an issue between the latter (AM) and a third party, he is obliged to act in accordance with the Contract. If the Contract does not elucidate clearly how he should intervene, then he shall seek relative instructions from AM.
- 7.1.4 Upon the termination of the Contract, the Contractor is obliged to return to AM all the documents or data he received in order to fulfill his contractual obligations, as well as anything else which may belong to him.
- 7.1.5 The Contractor is obliged to inform AM in writing about cases of conflict of interests and he is not permitted to engage at the same time in any other form of work from which such a conflict results.

As regards the companies participating in the group of companies of the Contractor and the executives of these companies, forming part of the technical personnel of the Contractor, as this Contractor will arise from this Tender and will be nominated as the Contractor of the relevant Contract, it is noted that the **irreconcilable** principle applies as to the assignment of works or the participation in works, which are directly or indirectly related with the scope of the provision of services stipulated in this Contract. With regard to the above, the clarifications presented below apply:

- a. the principle of the irreconcilable also applies in the case that the bidder participating in this Tender (natural or legal entity, the personnel/executives of the group proposed as personnel of the Consultant inclusive) already participates in an engineering or contracting group, which has undertaken assisted by the natural or legal entity in question, works for AM included in the scope of this Contract. In this case, should he be selected, the bidder, in order to be appointed as the Contractor of this tender, must cease the continuation of the execution of other works related with works or designs of AM, otherwise, the bidder who comes next in the Tender Committee's classification order shall be nominated as the Contractor.
- b. the principle of the irreconcilable applies as regards the participation of each natural or legal entity of the Consultant and only if the natural or legal entity in question has undertaken or intends to undertake works or to participate on behalf of another natural or legal entity in works directly or indirectly related with the Metro designs or construction works, as these are

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described in the contract document “Technical Data of Services and of the Contractor’s Personnel”.

- c. There is no conflict of interests and, thus, irreconcilable as regards the participation of a legal entity in the Consultant’s group to arise from this Tender and, in parallel, as regards the participation of same legal entity in the Consultant’s group to arise from other Tenders of AM. It is clarified that in no case whatsoever the same personnel can participate in different contracts of Consultants.
- d. Breaching of the obligation to comply with the above shall result in the implementation of all lawful penalties, among which forfeiture of the Contractor, as per para. 1, article 191 of Law 4412/16.

7.2 Undertaking of responsibilities by the Contractor

The Contractor is obliged to undertake his lawful responsibilities, relieving AM and its personnel respectively and protecting AM against all types of claims or responsibilities that may arise on account of accidents or death which may occur to the Contractor’s personnel.

7.3 Concession of Rights or Obligations

It is forbidden for the Contractor to concede to any third party a part or all of his rights and obligations emanating from the Contract, apart from the instances foreseen in Article 195 of Law 4412/16. Substitution in these instances is made based on an A.A. Resolution, following judgment of the responsible Technical Council.

7.4 Confidentiality

Throughout the whole duration of the Contract, and also after its termination or cancellation, the Contractor (and his employees) undertakes the responsibility not to disclose to third parties (including representatives of the Greek and foreign press), without prior written consent of AM, any documents or information which may come to his knowledge during the execution of his services and the fulfillment of his obligations.

7.5 Ownership of Drawings and Documents

- 7.5.1 All documents (drawings, designs, data, etc.), which shall be compiled by the Contractor in the framework of the execution of the Contract, shall be the property of AM, shall always be at the disposal of his legal representatives during the period of the validity of the Contract and they shall be handed over to the Employer in the time frame foreseen by the Law and the Contract or otherwise during whichever procedure of termination or cancellation of the Contract.

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- 7.5.2 The Contractor is obliged to deliver data in an electronic form; the data in question shall be accompanied by the printed equivalents, with instructions about retrieval / management.

7.6 Documentation of data in electronic form

Each and every type of calculation or any data which shall result from computer processing by the Contractor or from the services of AM with assistance / guidance from the Contractor, shall be necessarily accompanied by a detailed Memorandum which shall include:

- The type of the Computer used.
- The name of the software used and the details of the writer and owner, and
- In the case of calculations, a description of the methods, assumptions of calculation, method of completing data, so that the respective calculations can be verified with other traditional methods or other programs.

7.7 Ownership and Use of the Contractor's Software

- 7.7.1 The Contractor is obliged to make available to AM, whenever he is requested to do so, the Computer programs (software) which shall be used by the Contractor for the execution of his services and the fulfillment of his obligations.
- 7.7.2 The ownership of these programs remains with the Contractor, however AM has the right to use them, free of charge and without any restrictions for issues related to the Technical Scope of the present Contract.

7.8 Tax Obligations of the Contractor

- 7.8.1 The Contractor (and in the case of a Joint Venture all its members) is obliged to fulfill according to the existing stipulations, his tax obligations and **by way of example:**

- the obligation to register at the Tax Authority (DOY) concerned and submit the necessary documentation, such as Income Tax Declaration, VAT, etc.;
- the keeping of books in accordance with Greek Tax regulations;
- the payment of income tax or other taxes or duties and the fulfillment of his obligations for the payment of social security contributions for his workers.

AM bears no responsibility for the above taxes, contributions, duties and fees of any kind. The Contractor is obliged to pay these surcharges, even if they are levied upon AM, and is held responsible before AM for any cost or damage AM may incur due to the Contractor's omission to fulfill his aforementioned obligation.

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- 7.8.2 In order to avoid the double taxation of income of any likely foreign companies of the Contractor, the latter undertakes to provide AM with all the supporting documentation requested by the responsible Greek Public Services.

7.9 Contractor's Insurance Obligations towards his Personnel

The Contractor is obliged to fulfill his obligations stemming from the applicable social security legislation of EFKA - Single Social Security Entity as regards his personnel to be employed in the execution of the Contract.

7.10 Publications – Announcements in the Press

The Contractor is not entitled to make public or press announcements, directly or indirectly, regarding the Contract or AM, without prior written consent from AM.

7.11 Correspondence between the Contractor and AM

The documents which shall be exchanged between the Contractor and AM should first be sent by telefax, and the originals shall then be sent by registered post or by courier and be composed in the Greek language.

7.12 Health and Safety

The Contractor is exclusively and unreservedly responsible before AM to ensure that his personnel shall comply, throughout the time period they are engaged in the implementation of the Contract scope, in all respects with the applicable legislation, the provisions and regulations governing Health, Safety and Fire Safety and that he shall comply with AM's regulations.

The Contractor is exclusively responsible for the Health and Safety of his employees, their training on Health and Safety issues, the supervision of the works, as well as for the provision of the necessary Personal Protection Equipment (PPE) to his personnel.

The Contractor shall execute the works in a manner always ensuring the Health and Safety of his employees and of AM's employees.

AM shall not be held responsible in case of labor accident to the Contractor's employees. The Contractor is exclusively responsible in case of labor accidents or damage to third party properties, which are due to his own activities or omissions.

AM is entitled to request the removal from the area of works of any individual who, in its documented opinion, systematically violates the Health and Safety procedures. This personnel cannot return to the area of works without AM's written permission.

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The Contractor shall announce to the Labor Inspection Authority a properly qualified representative who shall act as Safety Engineer on the spirit of the Law 3850/10; this Engineer, apart from his other duties, shall also participate in Health and Safety related meetings with AM.

ARTICLE 8 OBLIGATIONS OF ATTIKO METRO S.A.

8.1 Provision of existing data

AM is obliged to provide the Contractor, free of charge, with all information concerning the Contract, provided it is available and there is no obstacle for AM to provide it.

8.2 Contract Administration

The Contract is administered by AM by means of the monitor and control exercised with the Managing Department and its purpose is the strict fulfillment of the contractual terms on the part of the Contractor, on the basis of the rules of good workmanship and science. Supervision of contract execution does not remove or mitigate the legal and contractual responsibilities of the Contractor.

8.3 Expenses to be borne by AM

Any accommodation and subsistence expenses on the part of the Contractor's executives to be incurred away from the base of operations that may be required in view of providing their services shall be covered by AM as follows:

- a) The cost for flight tickets (economy class) and any other fares, upon submission of the original stub and proof of purchase;
- b) The total of accommodation and daily reimbursement expenses in Greece (except Athens) will be maximum 82€/day.
- c) The total of accommodation and daily reimbursement expenses abroad will be maximum 95€/day. Reimbursement for accommodation shall be provided for a 4-star hotel category;
- d) The aforesaid expenses shall be reimbursed upon submission of monthly invoices accompanied by the necessary back-up documentation.

ARTICLE 9 DIFFERENCES – DISPUTES – FORCE MAJEURE

9.1 Bona Fide Implementation of the Contract

AM and the Contractor are obliged to undertake their respective obligations and their rights in a *bona fide* manner and will engage in all efforts to resolve their differences in a spirit of co-operation and solidarity. Nonetheless, the

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settlement of any dispute whatsoever shall be resolved according to the Law and the subject document.

9.2 Errors / Discrepancies in Contractual Documents or in the Contractor's Offer

9.2.1 The Contractual documents complement each other. In the event that there are contradictory clauses or terms in the Contractual documents, then the stipulations contained in the document with the highest order of precedence shall prevail each time, as stipulated in the Invitation to Tender.

9.2.2 Errors or omissions in the Contractual Documents may be corrected before the signature of the Contract, if this does not go against the legitimate trust of the candidates and the obligation of the Assigning Authority not to unilaterally change its conditions which were taken into account by the candidates to prepare their offer.

9.3 Force Majeure

9.3.1 If during the execution of the Contract, acts or incidents of “force majeure” occur, which are clearly and proven to be beyond the control and responsibility of the contractual parties, each party is entitled to suspend the fulfillment of their contractual responsibilities, provided that the occurrences or incidents hinder their fulfillment. The above right exists only in cases where the consequences of these incidents are not regulated by Law 4412/2016 or the Contract.

9.3.2 The non-fulfillment of the Contractual obligations during the suspension does not create the right or claim in favor of or against the other contracting party. The fulfillment of obligations or payment of fees due before the occurrence of the above acts or events are not suspended.

9.4 Execution of the Contract despite the existence of a dispute

Differences, discrepancies and disputes which may arise during the execution of the Contract do not entitle the Contractor to refuse to provide his services or exercise his duties as foreseen by the Contract, unless this is strictly foreseen by Law 4412/2016 or the Contract. If, despite the fact that this right does not exist, the Contractor refuses to execute the Contract, AM may declare the Contractor forfeited, according to the respective stipulations of the Law.

Article 10 FORFEITURE OF CONTRACTOR – TERMINATION OF CONTRACT

10.1 Forfeiture of the Contractor

If the Contractor does not meet his obligations emanating from the Contract, or does not comply with the written instructions of the Service which are in

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accordance with the Contract or the subject provisions, he is declared forfeited, as specified in detail in Article 191 of Law 4412/2016.

If the clauses of Para. 2 of Article 191 of Law 4412/2016 do apply, then the procedure for forfeiture is obligatorily initiated.

Following the finalization of the forfeiture, the Contract is settled and the Good Performance Guarantee becomes payable in favor of the Employer.

10.2 Termination of the Contract

10.2.1 The Employer is entitled to terminate the Contract during its execution without compensation to the Contractor in the cases mentioned in article 338 of Law 4412/16.

10.2.2 The Employer is entitled to stop the execution of a Contract and terminate it, apart from the provisions of paragraph 1, article 192, of Law 4412/16, as per para. 2, article 192, Law 4412/16.

In this case, the Contractor is entitled to compensation only for the services/designs provided in accordance with the Contract, while any other claim for services not provided or not in accordance with the Contract, as well as for direct or indirect damage, is strictly excluded.

10.2.3 The Contractor is entitled to terminate the Contract in the following cases:

- a) If he exceeds the contractual deadline without being liable for it;
- b) If he suspends the provision of services at the Employer's instruction for more than three (3) months upon notification of the relevant instruction.
- c) If due to various facts which actually constitute a delay on the part of the Employer, the Contractor is forced either not to start providing his services on the date specified by the Contract, or he has to stop providing his services after their commencement for more than three (3) months. As regards the commencement of the deadline, the Contractor submits to the Managing Department a Special Statement, as per the stipulations of paragraph 4 of Law 4412/16.
- d) If at least two (2) months elapse from the submittal of the Special Statement by the Contractor to the Employer, due to the elapse of the deadline for the payment of the Payment Certificate.

As to the remaining items, applicable are the stipulations of article 192 of Law 4412/2016.

CONDITIONS OF CONTRACT

10.3 Substitution of the Contractor

AM is entitled unilaterally and without damages on his part to denounce the Contract if he does not approve the substitution of the Contractor according to Article 195 of Law 4412/16, or if the latter goes into liquidation or into compulsory administration. Bankruptcy of the Contractor signifies the *ipso jure* termination of the Contract, while the bankruptcy of one of the members of a Joint Venture or Consortium signifies the possibility of substituting the bankrupt member following approval by the A.A.

10.4 Termination of the Contract

The termination of the Contract is certified with the Completion Certificate of the services provided by the Contractor, to be issued by the Managing Department, where the submission of all deliverables by the Contractor is certified, as well as that the Contractor has fulfilled all his contractual obligations within the period of validity of the Contract. The Good Performance Letters of Guarantee shall be returned to the Contractor in accordance with Article 5 of these C.C., upon the issuance of the Completion Certificate of the Contractor's services and the acceptance of the overall scope of the contract.

Article 11 ADMINISTRATIVE AND LEGAL SETTLEMENT OF DISPUTES

Any disputes between AM and the Contractor are settled as stipulated in detail in Article 198 of Law 4412/16. The administrative and legal procedures shall not suspend the execution of the Contract, unless otherwise specified by the Law.

Article 12 GOVERNING LAW AND LANGUAGE OF COMMUNICATION**12.1 Legislation**

The Contract is governed exclusively by the provisions of its documents, Law 4412/16 and the Greek Law.

12.2 Language of Communication

12.2.1 The Contract shall be drawn up in the Greek language.

12.2.2 All communication (verbal and written) between the Contractor and AM or other Greek authorities or parties shall be in the Greek Language. Wherever and whenever, throughout the period of validity of the Contract, an interpretation or translation from and/or into Greek is requested, this shall be undertaken by the Contractor and at his own cost.

12.2.3 In all cases of uncertainty or disparity, the Greek text shall prevail over the foreign language text.