



ATTIKO METPO A.E.

“International Tender based on the Open Procedure for the Conclusion of a PPP Contract concerning the Operation and Maintenance of Thessaloniki Metro Network”

RFP-427/22, A.Σ.: 164503

TENDER TERMS AMENDMENT DOCUMENT

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The Tender Terms Amendment Document complements the Contract conclusion Documents, it is integrated therein and constitutes an integral part of the Invitation to Tender.

A.1. Amendments to the Invitation to Tender

2.2.1 Eligible to participate

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2. The Economic Operators can participate either individually or as a Member of an Association of Persons or of Economic Operators. Associations of Persons or Associations of Economic Operators shall not be obliged to be vested with a specific legal form in order to submit their Offers. In case an Offer is submitted by an Association of Persons or of Economic Operators, all Members of the subject Association shall be jointly and severally liable before ATTIKO METRO S.A. If the Contract is awarded to an Association of Persons or of Economic Operators, the Members of the subject Association are under the obligation to set up a societe anonyme, in line with the provisions of article 1, paragraph 4 Law 3389/2005; ~~in any case.~~ In cases there is no invocation to borrowed experience, in line with the stipulations of term 2.2.8.1 herein, as regards the technical and/or professional competence criteria for the operation of the Thessaloniki Metro, the Members fulfilling the technical competence related criteria, as regards the operation of the Thessaloniki Metro, shall keep a participation percentage of at least twenty five per cent (25%) in the share capital of the Special Purpose Company.

3. If an Offer is submitted by an Association of Persons or of Economic Operators, and on condition that there is no invocation to borrowed experience, in line with the stipulations of term 2.2.8.1 herein, the Member of the subject Association that fulfills the technical competence criteria, as regards the operation of the Thessaloniki Metro (in line with term 2.2.6.1 herein) must hold a percentage of participation in the Association equal to twenty five per cent (25%) and shall appoint the Common Representative. The Common Representative shall be lawfully authorized by the remaining members of the Association to represent the latter before ATTIKO METRO S.A. throughout the duration of the Tender. This Member ought to keep a participation percentage of at least twenty five per cent (25%) in the share capital of the Special Purpose Company, throughout the Contract duration. Moreover, any transfer of the aforesaid percentage shall require the approval of ATTIKO METRO S.A., which shall check whether the technical competence of the new shareholder of the Special Purpose Company fulfills the criteria required by term 2.2.6 herein. In case there is an invocation to borrowed experience, in line with the stipulations of term 2.2.8.1 herein, the Common Representative shall be appointed by the Member of the Association that holds a participation percentage of at least twenty per cent (20%) in it.

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2.2.6 Technical and professional competence

As regards the technical and professional competence related to the Contract conclusion procedure, the Bidder is required to possess experience in the operation and maintenance of Metro networks, in accordance with the paragraphs 2.2.6.1 and 2.2.6.2, as well as the additional requirements of paragraph 2.2.6.3, as follows:

2.2.6.1 Experience in the operation of Metro networks with fully automated driverless trains

For at least three (3) consecutive years for the last ten (10) years until the Offer Submission Date, the Bidder must have provided operation services in a Metro Line(s) with the following characteristics:

- i. The Project Line(s) must be at least ten (10) km long.
- ii. At least ten (10) stations must be underground.
- iii. The train fleet consists of at least twenty (20) trains.
- iv. The ridership is at least twelve thousand (12,000) passengers/hour/direction.
- v. The Project’s entire network must operate based on a fully automated driverless system, a Train Control System of CBTC type, including also the operation of the electromechanical and railway systems.

In case the aforementioned experience derives from the Bidder’s participation in previous Association of Persons or of Economic Operators, the subject participation must be at least ~~50%~~ 25%.

In case of Association of Persons or Economic Operators, the aforesaid required experience must be fulfilled by at least one member of the association.

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2.2.8 Relying on third party competence – Subcontracting work

2.2.8.1 Relying on third party competence

Bidders can, as regards the economic and financial (credibility) criteria and the technical and/or professional competence rely on the capacities of other economic operators, as per article 307 of Law 4412/16, regardless of the legal nature of the existing relationships between the candidates and these operators. In this case, they shall prove that they will have available the necessary resources, via submission of the relevant commitment, on behalf of the operators, on whose capacity they rely. An economic operator cannot provide its technical and/or professional competence to more than one Bidders.

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~~As regards the criterion related to the technical and professional capacity, reliance on the capacities of other operators is not permitted in view of fulfilling the criterion for the operation of Metro networks, as this is specialized in term 2.2.6.1 herein. On the contrary, it is allowed for the participating bidders to rely on the capacity of other operators in view of fulfilling the criterion related to the experience in maintaining metro networks, as specialized in term 2.2.6.2 herein. In this case, they must prove that the necessary resources will be available to them, by submitting the relevant commitment, on the part of the operators on the capacity of whose they rely.~~

In case the Bidders rely on the capacities of other operators, as regards the technical and/or professional competence criteria, the economic operators lending the experience, ought, on the one hand, to provide their own competence and/or experience while they cannot provide the competence and/or experience of other operators (indirect lending), and, they ought, on the other hand, to provide – themselves – the services requiring the specific competence, while the option for awarding the subject services to other economic operators shall be excluded.

In case the Bidders rely on the capacities of other operators, as regards the economic and financial (credibility) criteria, the subject economic operators, as well as those operators on whom they rely shall be jointly liable for the execution of the contract.

Under the same terms, an Association of Persons or of Economic Operators can rely of the capacities of those participating in the Association or on other economic operators.

In case an economic operator relies on the competence of other entities, those entities, on whose competence the economic operator relies, must prove that the reasons for disqualification mentioned in term 2.2.4 herein are not valid and that they meet the selection criteria on a per case basis.

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2.2.8.2 Sub-contracting work

~~The sections of the contract that may be assigned to subcontractors are referred to in article 14.1.5 of the Partnership Contract.~~

The Bidder states in his Offer the part of the Contract that he intends to award in the form of sub-contracting work to third parties, as well as the sub-contractors that he proposes, in case he is aware of it in the current phase.

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A.2. Primacy of the Invitation to Tender, as amended via this Amendments Document

The Invitation to Tender, as amended via this Amendments Document, prevails over any contradicting term that may be included in the remaining Documents of the Contract conclusion procedure.

B. Amendments to the Partnership Contract

DEFINITIONS – INTERPRETATION OF THE CONTRACT TERMS

Definitions

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“Entities related to the Contractor”:

- (a) all Contractor’s executives, employees, sub-contractors, or other persons, regardless of the legal relation they have with the Contractor, who act in the framework of their services, as well as any executives, employees, sub-contractors, or other persons of any third party that lends its experience to the Contractor, in line with the Invitation to Tender and in line with the Offer of the latter, regardless of the legal relation of these persons with the third party that lends its experience to the Contractor, who act in the framework of their services.
- (b)

ARTICLE 4 STATEMENTS AND GENERAL OBLIGATIONS OF THE CONTRACTOR

4.1 Contractor’s and the Initial Shareholders’ Statements

The Contractor and each one of the Initial Shareholders – one of whom shall proceed to the following statements under his/her additional capacity as the entity possessing the technical and professional competence, as required by the Invitation to Tender – on condition that no corresponding borrowed experience is provided by a third party, in line with the Invitation to Tender and the Offer - shall state and guarantee before AM, as the case may be, that:

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- 4.1.12 The Initial Shareholder – out of all Initial Shareholders – possessing the technical and professional competence, required by the Invitation to Tender, shall retain same throughout the Contract Period, subject to the stipulations of term 42.4.

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4.4 General Obligations of the Contractor

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4.4.1 Should he becomes aware that a judicial, arbitration or administrative proceedings or mediation or other similar proceedings are pending or about to take place before a court of law, arbitrator or other competent authority against the Contractor or against the Subcontractor or against one of the Initial Shareholders, possessing the technical and professional competence as required by the Invitation to Tender, or against any third party borrowing the Contractor his technical and professional competence, as required by the Invitation to Tender (~~with regard to the maintenance of Metro networks~~), which could have a material adverse effect on the Contractor's ability and/or reliability to perform his obligations under the PPP Contract, he shall notify AM thereof in writing and within ten (10) days as of the time he became aware that such proceedings are pending or about to take place.

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ARTICLE 14 SUBCONTRACTING AND CONTRACTS FOR THE PROVISION OF SERVICES

14.1 SUBCONTRACTING

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14.1.5 The Contractor shall be entitled to subcontract part of the Contractor's Services, only subject to the prior approval of the AM ~~and exclusively and only for the Maintenance Services, stipulated in paragraph 1.2(B) herein and for the Contractor's Services, stipulated in paragraph 1.3 herein, as specified in the document entitled "Technical Description and Specifications".~~

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14.2 Basic principles of the Contracts for the Provision of Services

14.2.1 The contracts for the provision of services concluded with subcontractors, which, ~~in accordance with the terms and conditions stipulated in 14.1, may concern~~ maintenance, may cover either all or any part of the activities related to Preventive and Corrective Maintenance, as determined under term 14.1.5 on the Contractor's Services, including the services related to the supply of spare parts and consumables.

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14.2.3 In the contracts for the provision of services concerning maintenance it shall be specified that the contractors for the provision of services shall carry out the Preventive and Corrective maintenance works within the common framework of the Maintenance Plan that the Contractor shall submit and that AM shall approve, in accordance with the term 5.1.2 of the document entitled “Technical Description and Specifications”.

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14.2.5 The Contractor undertakes specifically to notify AM of the contracts relating to the materialization of the provision of borrowed experience, in accordance with the details of his Offer and the relevant terms of the Invitation, and any document or information relating to their development (for example, any amendments to any individual terms thereof, termination, ~~renewal, extension,~~ regulation or other special agreement or unilateral action or incident) and to the existence or not of the grounds for disqualification, as described in the Invitation, as well as to the existence of any fact due to which not satisfied in their entirety are the criteria and requirements for technical and professional competence or for economic and financial competence, as the case may be, as these criteria are required by the Invitation to Tender. If the aforementioned check reveals existence of grounds for disqualification or non-fulfillment in their entirety of the criteria and requirements for technical and professional competence or for economic and financial competence, as the case may be, as these criteria are required by the Invitation to Tender, then AM will require the Contractor to substitute the specific experience lender by another lender, who shall fulfill the aforesaid, and shall demand non-existence of the grounds for disqualification, per the Invitation to Tender and the Applicable Legislation.

14.2.6 Should the technical and/or professional competence, required by the Invitation to Tender, in relation to the operation of Metro networks (fully automated driverless system) and/or in relation to the maintenance of Metro networks is covered by the provision of corresponding borrowed experience to the Contractor by a third party, in line with the Invitation to the Tender and the Offer, these operators lending the experience ought, on the one hand, to provide their own competence and/or experience while they cannot provide the competence and/or experience of other operators (indirect lending), and, they ought, on the other hand, to provide – themselves – the services requiring the specific competence, while the option for awarding the subject services to other economic operators shall be excluded.

14.2.67 Any violation of the individual obligations hereunder shall constitute a Case of Contractor’s Liability.

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**ARTICLE 16 ACCESS GRANTING BY AM TO THE CONTRACTOR TO THE PROJECT
AREAS – DELIVERY-ACCEPTANCE**

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16.9 Subject to the Contractor’s right to allow himself the access of third parties to the Project Areas, by virtue and for the purposes of executing relevant subcontracting agreements, and under the conditions and constrains and the obligations stipulated in term 14, the access to be granted by AM to the Contractor is agreed to be exclusive vis-à-vis third parties (excluding passengers), except for AM and third parties Related to AM, regardless of whether or not it concerns purposes related to the Contract (assuming, indicatively and not limited to, AM’s actions associated with commercial activities, procedures regarding the conduct of inspections for imposing fines and their collection either by AM or other third party, procedures pertaining to the monitoring of the execution of this Contract and to checking adherence to the obligations, deriving hereunder).

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ARTICLE 19 EQUIPMENT

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19.2 Cleaning Equipment

Upon signing of the Delivery – Acceptance Protocol and in view of the Commercial Revenue Services Availability Date, the Contractor shall specify the equipment to be required for the cleaning works (vacuum cleaners, floor cleaning machines, wheeled trolleys, brooms, mops, buckets, high pressure water cleaners for special uses, etc.). The relevant List of the aforementioned materials and equipment shall be submitted by the Contractor and shall be approved by AM; then, the Contractor shall purchase them from the market at his own expenses, whose cost has already been taken into account in the determination of the determined amount of the Monthly Availability Payments; thus, upon payment of the relevant Monthly Availability Payments (regardless of whether there are reasons for their deduction), this equipment and the related materials shall be considered as belonging exclusively to AM, on whose behalf they are hereby deemed to have been purchased by the Contractor. The same is valid for the procurement of the new items of equipment, during the performance of this Contract, in replacement of the items of equipment that have been worn or destroyed in the framework of their normal use.

The procurement of consumables (detergents, cleaning products, dusters, sponges, etc.) shall also be borne by the Contractor throughout the execution of the Contract.

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The aforesaid apply also in case a cleaning services sub-contractor is utilized, in line with the provisions of article 44 14 herein.

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ARTICLE 31 RESOLUTION OF DISPUTES

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31.3 Three-Member Dispute Resolution Committee

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31.3.3 Two lists of Experts shall be compiled; the first one shall be in effect during the Preparatory Period A' ("List of Experts for the Preparatory Period A'") and the second one shall be in effect during the Commercial Revenue Period ("List of Experts for the Commercial Revenue Period"). The persons to be included in the aforementioned Lists shall be fully independent from the Contractor, AM, the Subcontractors, third parties lending their experience to the Contractor and from critical competitors of the Contractor or the Subcontractors or those providing their borrowed experience to the Contractor.

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ARTICLE 42 CHANGE IN THE SHAREHOLDER COMPOSITION OF THE CONTRACTOR

42.1 In case of Offer submission by an Association of Persons¹, the one out of the Initial Shareholders considered to fulfill the technical competence criteria, especially as regards the operation of Metro networks (fully automated driverless system) – on condition that no corresponding borrowed experience is provided by a third party, in line with the Invitation to Tender and the Offer - with a percentage of participation of at least twenty five percent (25%) in the Contractor's scheme, based on the terms of the Invitation, ought to maintain a participation percentage of at least twenty-five per cent (25%) in the shareholder composition of the Contractor throughout the duration of the Contract, subject to the special provision of term 42.4, and in any case, the subject Initial Shareholder ought to maintain its participation in the Contractor's scheme free of any Encumbrance, ~~throughout the duration of the Contract~~. Any change in the shareholder composition of the Contractor shall be notified to AM beforehand, at least five (5) days before the change occurs. Within five (5) days upon implementation of the change, the relevant lawful proof of evidence shall be

¹ To be finalized accordingly during the Contract signing.

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notified to AM (as an example: a certified copy of the relevant documentation in the Book of Shareholders of the Contractor).

- 42.2** In case of Offer submission by a physical entity² – on condition that no corresponding borrowed experience is provided by a third party, in line with the Invitation to Tender and the Offer, as regards the technical competence for the operation of Metro networks (fully automated driverless system) - and provided that the Tender is awarded to it, the subject entity must participate in the Societe Anonyme to be established and to assume the obligations of the Contractor, with a percentage of twenty five percent (25%), as a minimum, and maintain a percentage of participation in the shareholder composition of the Contractor of at least twenty five per cent (25%) ~~throughout the duration of the Contract~~, subject to the special provision of term 42.4, and, in any case, he ought to maintain his participation in the Contractor’s scheme free of any Encumbrance ~~throughout the duration of the Contract~~. For any change, in general, in the shareholder composition of the Contractor, the provisions and obligations, foreseen in para. 42.1 shall be in effect.
- 42.3** In case of Offer submission by a legal entity³ – on condition that no corresponding borrowed experience is provided by a third party, in line with the Invitation to Tender and the Offer, as regards the technical competence for the operation of Metro networks (fully automated driverless system) - and provided that the Tender is awarded to it, the subject entity must participate in the Societe Anonyme to be established and assume the obligations of the Contractor, with a percentage of at least twenty five percent (higher than 25%) and maintain a percentage of participation in the shareholder composition of the Contractor of twenty five per cent (25%) as a minimum ~~throughout the duration of the Contract~~, subject to the special provision of term 42.4, and, in any case, he ought to maintain his participation in the Contractor’s scheme free of any Encumbrance ~~throughout the duration of the Contract~~. For any change, in general, in the shareholder composition of the Contractor, the provisions and obligations, foreseen in paragraph 42.1, shall be in effect.
- 42.4** Any succession, by any means, of the Initial Shareholder in the entire participation of the latter in the Contractor’s scheme deemed to meet the criteria of the technical competence, as regards the operation of Metro networks (fully automated driverless system), especially and/or in relation to the maintenance of Metro networks [should no corresponding borrowed experience has been declared in the framework of the Tender] shall be subject to prior approval by AM, in order to verify and ensure that the successor – by any means - shareholder meets the relevant corresponding criteria and other requirements/conditions required by the Invitation to Tender and that there are no facts constituting grounds for disqualification under the Invitation to Tender and the Applicable Legislation.
- 42.5** If any permitted transfer/acquisition of shares is effected prior to the full payment and/or handing over of the Committed Investment, the transferring Initial Shareholder shall continue to be subject to the obligations set out in term 37, unless/until the institution that issued the Good Performance Letter of Guarantee

² To be finalized accordingly during the Contract signing.

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informs AM in writing that the existing Good Performance Letter of Guarantee is in favor of the acquiring shareholder.