



JAVNO PREDUZEĆE ELEKTROPRIVREDA SRBIJE, BEOGRAD
Carice Milice 2
Number: ~~12.01~~ 2621/ ~~16~~ -15
Belgrade, ~~03-08-2015~~

Subject: additional clarifications no. 1 in accordance with Article 63 paragraph 3 of Public Procurement Law ("Official Gazette of the Republic of Serbia" number 124/12 & 14/15) in an open public procurement procedure for the procurement services "Financial advisor for acquisitions" - PP number 46/15/DEFP, for which Invitation to Tender was published on Public Procurement Portal on 21.07.2015.

Five and more days prior to expiry date foreseen for submission of tenders in subject public procurement procedure, interested party has submitted to the Employer via e-mail request for additional information, i.e. clarifications, regarding which the Employer, i.e. Public Procurement Committee, in accordance with provision of Article 54 paragraph 12 item 1) of the Law shall provide the following information i.e. clarifications within three days from the day of the receipt of the request:

Question 1:

Exclusivity (Articles 24 and 25): The exclusivity provisions contained in the model contract are drafted much too broadly, both in terms of scope and duration, and are not acceptable by any international advisor. The purpose of article 24 is further unclear.

As a consequence, article 24 should be deleted and article 25 redrafted as follows: "During the term of this Contract, Service Provider shall not represent or advise any other party in relation with the Acquisition, without the prior written consent of Employer." The model contract should further provide for a definition of Acquisition.

Answer 1:

Provision of Article 24 of Model Contract is standard provision included in all consulting contracts that the Employer has concluded both with domestic as well as with all foreign consultants, aiming at prevention of potential conflict of interest on the side of the selected Service Provider during possible future implementation of activities for acquisition of ownership or managing rights over the property of the Employer and/or consulting the potential acquirer of these rights.

Unlike provision of Article 24 of Model Contract, which primarily takes into account possible future engagement of Service Provider during execution of activity for acquisition of ownership or managing rights over property of the Employer, the provision of Article 25 regulates the liabilities of Service Provider during execution of services from the Public Procurement Contract and Terms of Reference:

"Selected Tenderer shall:

- 1. Provide assistance and advise the Employer on the identification and selection of the potential **acquisition** opportunity(-ies) for PE EPS, which shall also include the assistance and advisory services on the definition of the global time table and*

*necessary steps for the selected **acquisition** project(s), including the allocation of the responsibilities and tasks*

2. *Provide assistance, advisory services and coordination in process of implementation of the required analysis (economic, financial, legal) that would be performed on the selected companies for **acquisition**, and to perform analysis of valuation of target companies for **acquisition** based on the available information*
3. *Assess the impact analyses of the merger of PE EPS and the selected target company(/ies), including the valuation of potential synergies*
4. *Advise on and recommend the most appropriate transaction structures (and potential alternatives), including the most appropriate financing source for the selected **acquisition** project(s)*
5. *Assist the company in the discussions with the relevant local and international authorities in relation to the selected **acquisition** project(s)”*

Beside the above mentioned, the Employer will appropriately amend the provisions of Article 25 of Model Contract according to the given proposal of interested person.

Question 2:

Indemnity (Article 26): The language “and to which any third party contributes” should be deleted so as to clarify that Employer not only indemnifies Service Provider against third party claims, but further agrees that Service Provider has no liability vis-à-vis Employer (in each case, except in case of bad intention, gross negligence, intentional misuse or breach of existing laws).

Answer 2:

The quoted part of provision of Article 26 paragraph 2 of Model Contract will be deleted.

Question 3:

Governing law, applicable jurisdiction and prevailing language (Articles 3, 27 and 28): In line with international as well as Serbian practice in cases where international advisors are selected, ***** requests that the engagement letter refers to a governing law and applicable jurisdiction commonly used by the international business practice. In past assignments of Serbian clients, ***** has for instance accepted Swiss law and ICC arbitration rules with a seat of arbitration in Zurich. Disputes should be conducted in English.

Answer 3:

Provisions of Article 3, 27 and 28 of Model Contract are standard provisions included in all consulting contracts that the Employer has concluded with both domestic as well as with all foreign consultants.

Therefore, the given proposal of interested person is not acceptable.

Question 4:

Replacement of team members (Article 13): Employer should only be allowed to request Service Provider to replace any team members for cause.

Consequently the language “, as well as for any other reason, without specific justification” should be removed.

Answer 4:

The Employer does not accept the given proposal for deletion of quoted text of the provision of Article 13 paragraph 4 of Model Contract.

Question 5:

Confidentiality (Article 15): The confidentiality obligations should apply not only to Service Provider but also to Employer.

As a consequence, article 15 paragraph 2 should be redrafted as follows: "Information, data and documents that either party has made available to the other party during the execution of the Contract, cannot be made available the other party to any third parties without the prior written consent of the party who has made available such information, data and documents."

Answer 5:

The provision of Article 15 paragraph 2 of Model Contract shall be amended in accordance with the given proposal of interested person.

These additional clarifications are submitted by email to the applicant and are published on Public Procurement Portal and web site of the Employer.

PUBLIC PROCUREMENT COMMITTEE 46/15/DEFP



Attachment:

- Additional clarifications No.1 in Serbian/English language

Attn:

- Records Management Office
- Public Procurement Committee e-mail delivery