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Thursday, 12nd January 2017.

Subject: Clarifications to the interested parties regarding the Call of Tender for the award of Services of Independent Engineer - **Part II.**

Following the previous clarifications regarding the questions received until Tuesday, 3rd of January 2017, in relation to the "CALL OF TENDER FOR THE AWARD OF SERVICES OF INDEPENDENT ENGINEER IN ACCORDANCE WITH THE PROVISIONS OF THE CONCESSION AGREEMENT BETWEEN THE HELLENIC REPUBLIC (HR) AND PIRAEUS PORT AUTHORITY SA (PPA S.A), REGARDING THE USE AND EXPLOITATION OF CERTAIN AREAS AND ASSETS WITHIN THE PORT OF PIRAEUS" that were published on our website on Thursday 5th January 2017, the below replies refer to the questions received from the 4th until 11th January 2017. The replies are provided with a consecutive numbering following the numbering of the previous clarifications document. Interested parties are kindly requested to refer to all clarifications published provided by PPA since the said replies constitute an integral part of the Call.

Please, note that capitalized terms not defined herein shall be used as defined in the Call.

27. **Question:** (Section 2.2.1) Reference is made to IE's responsibilities and rights under the latest Concession Agreement (2016 HRCA) - we kindly request for a copy of the relevant sections of the 2016 HRCA.

Answer: The (2016 HRCA) is publicly available. Please refer to our previous answer No 8.

28. **Question:** (Section 2.3.2) Subcontracting is only permitted to one or more Affiliates as per Greek Company Law 2190/20 - kindly clarify if work can be subcontracted to companies that are not (strictly-speaking) affiliated to the Lead Consultant.

Answer: Please, refer to our previous answers (No 14).

29. **Question:** (Section 2.3.3) Lending technical and financial experience of the Candidates will only be evaluated if it derives from an Affiliate -

- i) kindly clarify if work can be subcontracted to companies that are not affiliated to the Lead Consultant.
- ii) Also in the case of an Unincorporated Joint Venture or Consortium, will the technical experience of both entities be taken into account?
- iii) In case that a Consortium is not accepted, then, can a JV be accepted, or even an SPV Firm formed by the two Companies where, at least one of the Companies, complies with the Eligibility Criteria of Sections 5.1 and 5.2 of the Request for Proposal document?

Answer:

- i) Please, refer to our previous answers (No 14).
- ii) Please, refer to our previous answers (No 7)
- iii) As far as consortiums are concerned, please, refer to our previous answers (No 7).

As far as SPVs are concerned, please note that generally an SPV Company should be considered as a common company and therefore an SPV Company can be considered as an Affiliate in the sense of this Call. Therefore, the experience can be lent by the affiliated company to the SPV Company which will participate in the Tender as a Candidate.

30. **Question:** (Section 2.3.4) This Clause states that a Sub-Contractor and/or Affiliate should satisfy all eligibility criteria of Sections 5.1 and 5.2. We were surprised to see this requirement - in our experience it is common practice to use specialized subcontractors to meet only specific tender requirements. Kindly confirm that a Sub-Contractor/Affiliate does not have to meet all eligibility criteria, specifically those mentioned in 5.1.3 (economic and financial standing criterion), 5.1.4 (tender bank guarantee), 5.2.2 (Previous Experience), 5.2.3 (Similar Projects) and 5.2.4 (PI insurance requirements).

Answer: It is correct that a Subcontractor and/or Affiliate should satisfy all criteria of Sections 5.1 and 5.2 as they were Candidates themselves. However, this provision refers **not** to the obligation to submit a Tender Bank Guarantee (para. 5.1.4.1). The Candidate should submit just one Tender Bank Guarantee or equal according to the provisions of para. 5.1.4.1. In case of a Consortium the said guarantee should however cover all of it's members.

31. **Question:** (Section 2.4.) Kindly advise on the time phasing foreseen between Priority I and Priority II of the First Mandatory Enhancements.

Answer: There is no time phasing foreseen between Priority I and Priority II of the First Mandatory Enhancements. Please refer to the HRCA-2016.

32. **Question:** (Section 2.4.2) Kindly advise the (generic) scope of the Second Mandatory Enhancements.

Answer: Please refer to the HRCA-2016.

33. **Question:** (Section 3.1.1.a) Kindly advise the status of the Master Plan and the Draft Detailed Designs - have they already been completed by the PMD and/or the SCS or are these roles still to be awarded? Is there a Draft Master Plan of the Port already implemented, and if yes, can it be provided to the IE bidders?

Answer: PPA intends to launch the tenders for the award of the relevant services of a PMD and a SCS shortly.

34. **Question:** (Section 3.1.1.a.ii) Reference is made to the Design Standards in Section 7 of the 2016 HRCA - kindly provide this Section.

Answer: Please refer to our previous answers (Nr. 8).

35. **Question:** (Section 3.1.1.b) This section refers to supervision of the First Mandatory Enhancements, irrespective of the time required by the PPA to complete them. Considering the uncertainty in the duration of the construction works, we kindly request for PPA to accept an offer based on reimbursable monthly rates for our site staff.

Also is it foreseen that complete supervision duties of the Construction Works for the First Mandatory Enhancements will be assigned to / required by the IE? Kindly please clarify.

Answer: Please refer to the Scheme of Billing described in the Call.

36. **Question:** (Section 3.1.1.b) Kindly confirm that for all Construction Works the Detailed Designs will be prepared by others (i.e. the PMD) and that our Supervision will be based on a Construction Only Contract (FIDIC Red Book or similar).

Answer: Please refer to the scope of works, as described in detail in para. 3 of the Call as well as to the HRCA-2016.

37. **Question:** (Section 3.1.1.i) Reference is again made to the 2016 HRCA in relation to other rights and obligations of the IE - kindly provide us this document so that we can assess these other rights and obligations.

Answer: Please refer to our previous answers (Nr. 8).

38. **Question:** (Section 3.1.3) This section refers to IE's remuneration for the second CAPEX Period (in case the contract is extended). It is stated that it will be 'proportionate' to IE's remuneration for the first CAPEX Period. Kindly elaborate on this statement - should it be interpreted as a percentage of the construction costs? If this is indeed the case, kindly take into account that such a percentage is dependent on the type and magnitude of the construction works that will be carried out. Kindly confirm that there will be room to discuss the remuneration of the second CAPEX Period.

Answer: We confirm that there will be room for discussions regarding the remuneration for the services provided by the IE within the second CAPEX period, in any case within the framework set out by the Call.

39. **Question:** (Section 4.1.1) It is understood that the IE will need to work together with the PMD and SCS. Kindly confirm our understanding of the following general scope split:

- PMD: Master planning and Design and overall Project Management. Kindly clarify if in the duties of the PMD supervision of the Construction works (on behalf of the PPA) is also included?
- IE: Independent Reviewer of Master Plan and the Design as well as Site Supervision of all Construction Works and Contract Administration of the CAPEX Plan
- SCS: Preparation of all Technical Specifications on behalf of the PMD. Please elaborate on the "Supervisor" duties when referring to the SCS.

Answer: We confirm that the IE will need to work together with the PMD and the SCS. The scope of work of the IE is clearly stated in para 3.1 & 3.2. The scope works for the other two Consultants are subjects of entirely different tender procedures.

40. **Question:** (Section 4.2) Reference is made to a duty of care of the IE. Kindly elaborate what such duty entails.

Answer: Please, refer to the HRCA-2016.

41. **Question:** (Section 5.1.4.1) Tender bond needs to be from a specific Greek bank - counter guarantee needed. PBG of 10% required. Are other Banks than the ones referred in the RFP, eligible? (i.e. HSBC, RBS, Barclays etc.) Can a Tender Bond/ PBG be from TSMED (Greek Engineers' Pension Fund)?

Answer: As it is clearly stated in the Call (para. 5.1.4.1 in conjunction with definition under i) as eligible banks are not considered exclusively Greek banks. Please, refer to the relevant definition in the Call. If TSMED, according to its Articles of Associations/bylaws and the Greek law is in

accordance with the definition of the Eligible Bank then a Tender Bond issued by TSMEDE can be accepted.

42. **Question:** (Section 5.2.1) Kindly confirm that it is allowed for a foreign Consultant to team up with a local Consultant as a Sub-Contractor / Affiliate to fulfill the qualification to work as engineering consultant in Greece (article 14 of Law 3316/2005).

Answer: Please, refer to our previous replies (No 14).

43. **Question:** (Section 5.2.1) It is understood that the Bidders will need to provide their own assessment of the Team requirements for the Project. Especially with regards to the Site Team, this is very much dependent on the precise scope of work of the Mandatory Enhancements as this will determine the required technical expertise on site. Based on the information provided in the Call of Tender, it will be difficult to assess the actual Team Requirements. Can the PPA provide a minimum Team that they require on site for pricing purposes? Alternatively, can the PPA provide the existing pre- (or Draft) Master Plan from which it may become evident the layout of the works foreseen in the Mandatory Enhancements?

Answer: PPA shall not provide the minimum Requires of the Project Team since this should be considered as part of the Candidate's understanding of the projects. In relation to the necessary information and the data related to the layout of the works foreseen in the Mandatory Enhancements and following the similar comments from various interested parties PPA has prepared a brief technical description of the Mandatory Enhancement Projects which you can find attached.

44. **Question:** (Section 5.4.2) Is there any quantitative criterion regarding the definition of "excessively high" or "alarmingly low" financial offer? (i.e. $\pm 50\%$ of the average of the financial proposals submitted)?

Answer: Please, refer to our previous replies (No 10).

45. **Question:** (Section 5.4.7, Important Note 3) It is mentioned that 10% will be paid after completion of tasks under 3.1.1. Kindly confirm that this excludes the supervision activities under 3.1.1 (i.e. 3.1.1.b to 3.1.1.i). Kindly also consider to increase this amount to 25% at the expense of the final payment.

Answer: It is clearly stated in important note 3 that the 10% will be paid after the completion of tasks under para 3.1.1.a.

We are sorry to say that we cannot reconsider.

46. **Question:** (Section 5.4.7, Important Note 3) It is mentioned that 70% will be paid during the construction works, at monthly bills proportionate to the progress of the works. Kindly reconsider this payment scheme and revise to monthly payments based on actual site presence by our staff (supported by timesheets). Our Team cannot be held responsible for the progress and/or delay by the Contractors.

Answer: We are sorry to say that we cannot reconsider.

47. **Question:** (Section 5.4.7, Important Note 3) It is mentioned that 20% will be paid after approval by PPA of the final report and IE statement. Kindly consider lowering this amount to 5% in view of the resulting negative cash flow (taking into account that such a completion statement will not be submitted until 5 years from 10th August 2016).

Answer: We are sorry to say that we cannot reconsider.

48. **Question:** (Section 6.3.2.iii) Kindly advise if project references without any certificates as referred to in 6.3.2.iv will be discarded by PPA. Kindly also advise if Client Completion Certificates and/or relevant pages of a signed Agreement are considered sufficient evidence that the Bidder carried out a specific reference project.

Answer: References to previous projects should in any case be supported by relevant certificates. We do confirm that only Client Completion Certificates are considered sufficient evidence for the purposes of this Call.

49. **Question:** (Appendix B) It is understood that one lump sum amount is requested for the full scope of work. We kindly request PPA to reconsider this approach as follows:

- A lump sum price for review of the master plan and the Draft Detailed Designs.
- A reimbursable price for site presence and technical back-office support during the construction stage.

Answer: We are sorry to say that we cannot reconsider.

50. **Question:** No (draft) Conditions of Contract were included in the RFP. Kindly provide these.

Answer: Please, refer to our previous replies (No 3).

51. **Question:** Are joint ventures between international and Greek Companies allowed, and if so what are the specific requirements/eligibility criteria for each such joint venture party?

Answer: As soon as all the parties of the joint venture meet the criteria set out in the Call as if they were Candidates themselves, the candidature of the joint venture in the tendering procedure do not pose any problem.

52. **Question:** Are company unions (Enosi Eterion) between international and Greek companies allowed, and if so what are the specific requirements/eligibility criteria for each union party?

Answer: Please refer to our previous answer (No 51).

53. **Question:** On Suitability to Pursue the Professional Activity (art. 5.2.1): Qualification to work as engineering consultant in Greece, according to the provisions of article 14 of Law 3316/2005, is also applicable to foreign engineers with qualifications (in terms of years of experience and sector involvement) corresponding to the "Greek" classification system (Meletitika Ptychia). Please, confirm.

Answer: Candidates who are allowed to work as engineering consultants in Greece pursuant to the provisions of law 3316/2005 shall be deemed to fulfill the said requirements as clearly stated in para 5.2.1 of the Call.

54. **Question:** In case that Greek engineers are included as a support team, is there a specific requirement on their classifications grade?

Answer: No, there is no specific requirement on classification grade. Please, note though that the term "support team" does not exist in the Call.

55. **Question:** In case that Greek engineers are included as a support team (article 5.2.2, 5.2.2 & 5.2.3), can these engineers be provided by a legal entity not affiliated with the candidate?

Answer: Please refer to answer No14.

56. **Question:** In clause 3.1.1 of the Call for Tenders it is stated that the IE services include: "...c. inspection of the works and ensuring of compliance with applicable standards, laws and time schedules....". Compliance with applicable standards, laws and time schedules falls within the full control of the contractor/s who will be assigned to implement the Mandatory Enhancements works. The IE is not authorized to force the contractor how to work or how to organize his resources. The IE can't, for instance, instruct the contractor to suspend the works because they are not compliant, or to order acceleration of the works because there are delays. The IE can't ensure the good performance of the contractor. The IE can only identify non-compliance issues related to standards, laws and time schedules and advise accordingly PPA. Enforcement of the obligations of the contractor can only be done by the PPA who have a contractual relationship with the contractor. Please confirm that the IE fulfills his obligation of "ensuring of compliance with applicable standards, laws and time schedules" by advising PPA of any non-compliance with applicable standards, laws and time schedules.

Answer: We clarify that the IE scope of works as described above does not include any obligation for enforcement of the contractors obligations.

57. **Question:** Please clarify which one of the following statements is correct.

- a. the scope of the IE services includes the monitoring of the works without supervision
- b. the scope of the IE services includes the supervision and the monitoring of the works
- c. Clause 3.1 of the Invitation "An overview of the tasks to be carried out" makes reference to supervision while Clause 3.2 ". A more detailed descriptions of the tasks to be carried out by the IE" makes reference to monitoring only.

Answer: The description of the tasks described in clause 3.2 is complimentary and explanatory to the description of the tasks included in clause 3.1 so you can conclude that (b) is the correct answer.

58. **Question:** In order to be able to quantify the staff deployment, and thus to estimate the fees to be proposed a bidder would need information about the envisaged duration of each one of the Mandatory Enhancement projects. Please advise of the estimated durations of construction works and their sequence. This information will allow a bidder to better optimise the structure of the project team and the durations of deployment of each team member, while PPA will benefit from a more competitive price as the risks to be considered will be less. If such an information is not known today, could you suggest a concise time schedule to be used only for the needs of this tender, allowing all bidders to submit their proposal on a common basis?

Answer: Following the similar comments from various interested parties PPA has prepared a brief technical description of the Mandatory Enhancement Projects which you can find attached.

59. **Question:** It is the first time in our long local and international experience that a tender bond is required without the bidder been aware of the Agreement that he will be invited to sign if awarded the contract. In the answer you gave in question No3 of your email dated 05/01/2017 when you were asked by a bidder to provide the bidders with the draft IE Agreement you replied:

Answer: The main terms and conditions of the IE's Agreement are described in the Call of Tender which together with the IE's Offer, annexed, shall constitute the final and binding for the counterparties agreement, which shall also be countersigned by the HR as it is foreseen by the 2016 HRCA.

It is not possible the IE Agreement to be just parts of the Call for Tenders. It is never heard of. There are plenty of issues that have to be agreed between the contracted parties and inserted in the IE Agreement which are not part of the Call for Tender. We mention indicatively

- Liability of the IE (third party liability, cap on IE liabilities)
- Reliance issues
- Order of precedence of contractual documents
- Liquidated damages
- Termination and/or suspension of the IE services
- Dispute resolution
- Assignment
- Confidentiality
- Obligations of PPA
- Intellectual property rights

In your email dated 05/01/2017 you have excluded terms related to the above issues to be proposed by a bidder (if this alternative was accepted submission of a tender bond would have a meaning as the bidder would be bound to accept those terms in the IE Agreement). Please consider to eliminate from the requirements the submission of a Tender Letter of Guaranty.

Answer: The requirement for a Tender Letter of Guaranty remains. The participants must have in mind that the contract terms will follow similar projects common practice adjusted to the 2016 HRCA requirements, including the terms set in the Call for Tender and incorporating the bidder's offer.

60. **Question:** In case the requirement for a Tender Letter of Guaranty remains (which we hope you will reconsider) please clarify when the tender bond can be called upon. For instance will the bond be called upon in case the successful bidder doesn't accept to sign the IE Agreement because he disagrees with a term that was not mentioned in the Call for Tenders?

Answer: The Tender Bank Guarantee will be called upon noncompliance of the Candidate with the terms and conditions applicable to their participation in the process including to non signing of the IE agreement without prejudice to the conditions set with the above answer to question 59.

61. **Question:** Please provide us with the detail scope of work on the Mandatory Enhancement work (Sr. No. 1 to 11) to be undertaken by PPA, as this will form as a basis of our proposal pricing.

Answer: Please find attached a brief technical description of the Mandatory Enhancement Projects.

62. **Question:** We would like to request for a response to the following clarifications:

A. Reference: Table 2.4.2 – The 2016 HRCA Mandatory Enchantments

1. Sr. No. 6 - Supply of Equipment – Please kindly advise on the type of Equipment (e.g Container cranes, Bulk & Breakbulk cranes and cruise terminal passenger boarding bridge)
2. Sr. No. 8 – Studies – Please specify the “studies” by providing a feasible set of examples.

B. Section 5.1.4 Tender Bank Guarantee

1. Please advise if the Tender Bank Guarantee shall be valid for 90 days from the closing date of the bid.
2. Bank Guarantee Format.

Current Language:

7. Subject to paragraph 8 below, this letter of guarantee is of indefinite duration and in any case shall remain in full force and effect until the earlier of: (a) the date on which all amounts available hereunder have been fully and actually drawn and paid to you; (b) upon receipt of your confirmation in writing or by authenticated SWIFT to the effect that you finally and irrevocably release us from any obligations hereunder.

Proposed Language:

7. This guarantee shall remain in force up to expiry of the guarantee April 18, 2017, which is 92 days from the current tender submission date of January 16, 2017. Any demand in respect thereof must reach the Bank not later than the aforesaid date.

3. Please advise if the guarantee can be submitted via email first (per the tender deadline), followed by a hard copy a week after the bid closing date.

C. PPA Letter regarding “Extension of offers submission date, regarding the Call of Tender for the award of Services of Independent Engineer”

1. We sincerely and humbly request for an extension of bid submission until 23rd January 2017, as procuring a Bank Guarantee in this time frame (even via email) has been rejected by our banks.

Answer:

- A1. The type of equipment will be determined in the Future PPA Strategic and Development plan and may include all type of equipment operating in terminals.

- A2. Primarily, studies refer to all necessary projects for CAPEX I.
- B1. Please refer to answer no. 25 published by PPA SA on 5th of January 2017.
- B2. Please refer to:
- APPENDIX A: FORM OF TENDER BANK GUARANTEE included within the Call of Tender for the Award of Services of Independent Engineer (pages 33-34).
 - Answer no. 25 published by PPA SA on 5th of January 2017.

Alternatively, according to clause 5.1.4 you can "... *provide the necessary documentation that an equal, to the Tender Bank Guarantee, amount of one hundred thousand (100,000 €) has been deposited, transferred and was made available as guarantee (hereinafter: the Guarantee Amount) for the participation of the Candidate in the Tender, in one of the following PPA's bank accounts:*"

- B3. Please refer to answer no. 24 (and more specifically to 24.b) published by PPA SA on 5th of January 2017.
- C1. No further extension of bid submission can be granted.

Important note

Please visit regularly PPA SA website <http://www.olp.gr/> in order to be promptly informed about the "CALL OF TENDER FOR THE AWARD OF SERVICES OF INDEPENDENT ENGINEER IN ACCORDANCE WITH THE PROVISIONS OF THE CONCESSION AGREEMENT BETWEEN THE HELLENIC REPUBLIC (HR) AND PIRAEUS PORT AUTHORITY SA (PPA S.A), REGARDING THE USE AND EXPLOITATION OF CERTAIN AREAS AND ASSETS WITHIN THE PORT OF PIRAEUS".