



THESSALONIKI PORT AUTHORITY
SOCIETE ANONYME
(ThPA SA)
TRADE REG. No. 42807/06/B/99/30
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Subject: Clarifications to the interested parties regarding the Call for Tender for the award of Services of Independent Engineer – Part II.

Following the previous clarifications regarding the questions received until Thursday, 26th of July 2018, in relation to the “CALL FOR TENDER FOR THE AWARD OF SERVICES OF INDEPENDENT ENGINEER IN ACCORDANCE WITH THE PROVISIONS OF THE CONCESSION AGREEMENT BETWEEN THE HELLENIC REPUBLIC (HR) AND THESSALONIKI PORT AUTHORITY S.A. (THPA S.A.), REGARDING THE USE AND EXPLOITATION OF CERTAIN AREAS AND ASSETS WITHIN THE PORT OF THESSALONIKI” that were published on our website on Friday, 3rd of August 2018, the below replies refer to the questions received from July 27th until August 15th 2018. 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 ThPA S.A. since the said replies constitute an integral part of the Call.

7. **Question:** May two Companies belonging to the same Holding Company (Group of Companies) (both wholly owned by the same Holding Company) jointly submit an offer as Joint Venture, while one meeting one of them the criteria set out in par. 5.1.5.2 and the other one the criteria set out in par. 5.1.5.3?

Answer: Two Companies belonging to the same Holding Company (Group of Companies) may jointly submit an offer as a Joint Venture. However, as stated in Article 2.3.2., in case of joint ventures, the criteria described in paras 5.1.3 (economic and financial standing criterion), 5.1.5.2 (previous experience), 5.1.5.3 (similar projects) and 5.1.5.4 (ISO 9001 and professional liability insurance coverage) should be fulfilled by the Company that has a degree of participation in the joint venture of at least 51% (Joint Venture’s leader). Therefore, the Company acting as Joint Venture leader should fulfill both criteria set out in paras 5.1.5.2 and 5.1.5.3.

8. **Question:** May two Companies belonging to the same Holding Company (Group of Companies) (both wholly owned by the same Holding Company) jointly submit an offer undertaking to incorporate a special purpose vehicle in case of contract awarding?

Answer: Yes, two Companies belonging to the same Holding Company (Group of Companies) may jointly submit an offer. However, upon nomination as Temporary IE and prior to contract signing, they have to form a joint venture. A relevant solemn declaration should be included in their offer, in the sub-folder of Participation Supporting Documentation.

9. **Question:** May a single Tenderer or a Joint Venture rely on references and capacities of a member of the JV (belonging to the same Group of Companies) or an external Company, not being designated as subcontractors according to par. 2.3.4. of the Call for Tender?

Answer: A Joint Venture may rely on references and capacities of a member of the JV, as long as the Companies fulfill the criteria set out in para 2.3.2. Similarly, a single Tenderer or a Joint Venture may rely on references and capacities of a subcontractor, as long as the criteria set out in paras 2.3.3 to 2.3.5. are fulfilled. A single Tenderer or a Joint Venture may not rely on references and capacities of an external Company, not being designated as a subcontractor according to para 2.3.4. of the Call for Tender.

10. **Question:** Could you please provide an english translation of art. 14 of Law 3316/2005?

Answer: We are not authorized to provide an english translation of art. 14 of Law 3316/2005.

11. **Question:** Could you please confirm that a Company incorporated under the Law of an EU Country and authorized under the Law of incorporation to carry on the services listed in the Call of Tender can participate to the Tender without the specific qualification to work as a consultant in Greece?

Answer: A Company incorporated under the Law of an EU Country and authorized under the Law of incorporation to carry on the services listed in the Call of Tender can participate to the Tender without the specific qualification to work as a consultant in Greece, as long as it fulfills the criterion set out in para 5.1.5.1., i.e. it benefits from the services and the support of a team that includes one or more professionals that meet the criterion of evidencing qualification to work as engineering consultant in Greece, according to the provisions of article 14 of Law 3316/2005. As stated in the same para, the criterion will be accepted as the Candidate's fulfillment, only if it is directly met by a permanent and onsite member of the Project Team. This prerequisite should also be satisfied by the IE uninterruptedly throughout the term of the IE Agreement.

12. **Question:** Regarding Point 6.2.1 of the "Call for Tender" the offers have to be submitted in one (1) original (that will include only originals or dully certified copies where applicable) and one (1) copy of the original, all drafted in the English language or officially translated in the English language: could you confirm that for certified copies do you mean a self declaration made by our Company representative stating that the related documents are true copies of the originals. In addition, it's possible you accept a simple English translation of the documents required such us Status, Financial statements, Certificate of Incorporation and registration.

Answer: The certified copy must be signed by the person who is authorized by each Country's legislation to do so (for example a court clerk, solicitor, or notary public). A copy of a public

document to be used internationally also has to comply with special rules - Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents for the Countries which are party to the Convention. Otherwise, the document must be certified by the Foreign Ministry of the Country in which the document originated, and then by the Foreign Ministry of the Government of the Country in which the document will be used; one of the certifications will often be performed at an Embassy or Consulate.

If the primary document has to be translated, an additional certificate is required. The document must be translated professionally and have the professional's certificate of accuracy attached to the translation together with a copy of the primary document. Then, the primary document, the translation, and the certificate of accuracy are photocopied in the form of a certified copy.

- 13. Question:** Given the high importance and complex nature of this challenging assignment, and considering the summer vacation period which poses severe delays in the issuance of legal documents by Public Authorities, we kindly request an additional time of twelve (12) working days for the submission deadline.

Answer: An extension of twenty nine (29) calendar days has already been provided for submitting offers i.e. no later than Thursday, August 23rd, 2018, 15:00 hours (Greece time), at the Central Protocol of the Contracting Authority (THPA), at Main Administration Building, 1st Pier, 54 010, Thessaloniki, Greece. No further extension of bid submission can be granted.

- 14. Question:** Please consider accepting the following suggested changes to the text of the Tender Bank Guarantee:

- Tender document text:

4.within two (2) Thessaloniki business days following receipt of your first and simple demand in writing or by authenticated SWIFT making reference to this letter of Guarantee and stating that the Participant(s) failed to comply with the terms.

Suggested change to the text:

4. within three (3) Thessaloniki business days following receipt of your first and simple demand in writing duly signed, stating that in your absolute judgement the Candidate failed to comply with the aforementioned terms and conditions related to the Tender Process. The respect in which the Candidate is in breach is irrelevant and it will not be mentioned. It is understood that our Bank will not bear the obligation to examine the validity or well grounding of any statements included in your demand.

- Tender document text:

7. (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.

Suggested change to the text:

7. (b) upon receipt of your confirmation in writing, that you finally and irrevocably release us from any obligations hereunder.

- Tender document text:

8. This Guarantee shall be governed and construed in accordance with Greek Law. The courts of Thessaloniki, Greece shall have exclusive jurisdiction to resolve any disputes associated with this instrument.

Suggested change to the text:

8. This letter of Guarantee is not transferable or assignable. This Guarantee shall be governed and construed in accordance with Greek Law. The courts of Thessaloniki, Greece shall have exclusive jurisdiction to resolve any disputes associated with this instrument.

Answer: It is not possible to reconsider the abovementioned suggested changes to the text of the Tender Bank Guarantee.

- 15. Question:** Please clarify if there is any protocol number of the said Call of Tender according to the mentioned article 6.2.2. "The number and the title of the Call for Tender".

Answer: The number of the Tender is defined as THPA ExCo Decision Nr. 8-1/04.07.2018.

- 16. Question:** Please clarify and define the Categories for which the Tenderer must submit evidence according to article 6.3.2. xi. Moreover, article 5.1.5.1. stipulates that the Tenderer is expected to "[...] fulfill the prerequisite of evidencing qualification to work as engineering consultant in Greece [...]" according to article 14 of Law 3316/2005, which since 01.01.2018 is not in force. Please confirm if such evidence is needed and if not please amend this article accordingly.

Answer: According to article 6.3.1.xi (and not 6.3.2.xi as stated in your question), the Tenderer must evidence qualification to work as engineering consultant in Greece in the port/ marine works sector.

Article 14 of Law 3316/2005 has indeed been repealed since 08.08.2016. However, such evidence is still required based on the Annex 27.3 of the 2018 HRCA, ratified by Law 4522/2018 (Government Gazette A' 39/07.03.2018).

- 17. Question:** Please confirm if certificates for on-going similar projects will be accepted as proof of the required experience.

Answer: According to article 5.1.5.3, Candidates must have carried out at least two projects in the port/ marine works sector as construction supervisors or as independent engineers. Therefore, only certificates/ evidence of successful completion of completed projects will be accepted as proof of the exclusion criterion of 5.1.5.3.

- 18. Question:** Please clarify if the Candidate's subcontractor (if any) must also fulfill the criterion as stipulated under article 5.1.3 or the criterion's fulfillment from the Candidate himself covers this eligibility criterion to the fullest.

Answer: As stated in Article 2.3.5, the Candidate's subcontractor (if any) does not have to fulfill the criterion of financial standing as stipulated in article 5.1.3. The criterion's fulfillment from the Candidate covers the eligibility criterion to the fullest.

- 19. Question:** Please consider adjusting the percentages mentioned in Article 5.3.7. under Important Note 2 as follows "[...] the execution of the First Mandatory Enhancements, the IE shall be entitled to receive, an amount equal to 80% (instead of 70%) of its contractual fee [...]" and "The final payment, corresponding to an amount equal to 10% (instead of 20%) of the IE's contractual fee [...]".

Answer: It is not possible to reconsider such an amendment.

- 20. Question:** In article 6.3.1. viii. reference is made to the last three audited financial years. Taking into consideration that Société Anonyme (S.A.) Companies have the time allowance to submit the financial statements of 2017 by 30/09/2018 in Greece and 31/12/2018 in other EU-Countries

respectively, please clarify the financial years for which consolidated financial statements must be submitted for the above-mentioned cases.

Answer: According to article 6.3.1. viii. copies of the financial statements of the last three audited financial years should be submitted. Therefore, if the Company has not completed the process of auditing their 2017 financial statements, the years to be submitted should be 2014, 2015 and 2016. If, however, the Company's 2017 financial statements have been audited, years to be submitted include 2015, 2016 and 2017.

- 21. Question:** Please clarify and amend the reference to para 5.1.4 regarding subcontractor's personnel in article 6.3.2.

Answer: It is clarified that the subcontractors and their personnel has no obligation to comply with the provisions of article 5.1.4.

- 22. Question:** Please consider granting an extension to the deadline for submission, for the benefit of the overall process and the due preparation of the proposals (as currently envisaged to be amidst the month of August).

Answer: Please refer to Answer no 13.

- 23. Question:** In para. 5.1.4.1. of the Tender, the participation Tender Bank Guarantee is specified in accordance to Annex A "FORM OF TENDER BANK GUARANTEE". In this form it is noted that the Guarantee is of "*.. indefinite duration*".

We plan to issue the Participation Bank Guarantee through the Engineers and Public Works Constructors Fund (EPWCF /TMEDE), which is a competent body according to the Greek Law. However, we have been informed by TMEDE (but also by our International Bank, to which we also addressed the issue), that they cannot issue a Guarantee of "indefinite duration".

Alternatively, we can issue a Guarantee with a duration of i.e. 12 months and the option to renew upon request.

We kindly request that this becomes acceptable, taking also into account para. 6.4.8., where it is stipulated that the offers are valid and binding for ninety (90) calendar days.

Answer: If TMEDE, according to its Articles of Associations/bylaws and the Greek Law is in accordance with the definition of the Eligible Bank, as defined in the Call for Tender, then a Tender Bond issued by TMEDE can be accepted. In regards to the Tender Bank Guarantee duration, as already addressed in Answer no 4, the Tender Bank Guarantee should be of indefinite duration.

- 24. Question:** In para. 6.2.2. among the information required to be clearly written on the Folder of Offer, is the "number of the Call for Tender". Please, kindly provide this information.

Answer: Please refer to Answer no 15.

Important note

Please visit regularly THPA SA website <http://www.thpa.gr/> in order to be promptly informed about the "CALL FOR TENDER FOR THE AWARD OF SERVICES OF INDEPENDENT ENGINEER IN ACCORDANCE WITH THE PROVISIONS OF THE CONCESSION AGREEMENT BETWEEN THE HELLENIC REPUBLIC (HR) AND THESSALONIKI PORT

AUTHORITY S.A. (THPA S.A.), REGARDING THE USE AND EXPLOITATION OF CERTAIN AREAS AND ASSETS WITHIN THE PORT OF THESSALONIKI”.

Previous links related to the Call for Tender for the award of Services of Independent Engineer

1. <http://www.thpa.gr/index.php/en/diagonismoi/1919-thpa-s-a-call-for-tender-for-the-award-of-sevices-of-independent-engineer-2>
2. <http://www.thpa.gr/index.php/en/diagonismoi/1921-indeng-2>
3. <http://www.thpa.gr/index.php/en/diagonismoi/1927-extension-of-offers%E2%80%99-submission-date,-regarding-the-call-for-tender-for-the-award-of-services-of-independent-engineer-2>
4. <http://www.thpa.gr/index.php/en/diagonismoi/1939-clarifications-ind-eng-en>