



**Odvoz a likvidácia odpadu a.s., Ivanská cesta 22, 821 04 Bratislava**

To all interested parties

In Bratislava 20.09.2023

**Subject:  
Explanation of the tender documents II**

The contracting authority Odvoz a likvidácia odpadu in short: OLO a.s., IČO 00681300, with registered office at Ivanská cesta 22, 821 04 Bratislava (hereinafter referred to as "the contracting authority"), announced the above-limit contract by means of a tender procedure entitled "Digitisation of the fleet, collection planning system and electronic registration and confirmation of tipping" (hereinafter referred to as "the tender") by means of a notice of public procurement published in the Official Journal of the EU on 25 July 2023 (hereinafter referred to as the "Contract Notice").

**The contracting authority provides the following information and explanations to interested parties in the context of the tender.**

**Notice of extension of the deadline for the submission of offers:**

In the framework of the subject tender, the contracting authority proceeds to extend the deadline for the submission of tenders due to the shutdown of the information systems of the Office for Public Procurement of the Slovak Republic, which will take place from 19.09.2023 from 19:00 to 25.09.2023 until 09:00.

More information about the shutdown can be found on this link:

<https://www.uvo.gov.sk/aktualne-temy/aktualita/planovana-odstavka-informacnych-systemov-uradu-z-dovodu-nasadenia-noveho-informacneho-systemu-eforms>

**Accordingly, the contracting authority will extend the deadline for submission of tenders until 03.10.2023 at 10:00 a.m.**

The contracting authority will modify the deadline for the submission of tenders in the JOSEPHINE system and at the same time modify the deadline for the submission of tenders in

the relevant contract notice.

### **Explanation of the tender documents II:**

The contracting authority has received the following questions from interested parties, to which it provides the following answers:

#### **Question no. 1**

The Contracting Authority in paragraph 23.1 requires that the bidder participating in the proceeding proves that it has delivered/implemented 3 services with a total value (sum of the value of the individual services delivered) of at least EUR 1,300,000.00 excluding VAT in the relevant period – while indicating that the period is "within the last 3 years".

We request the Contracting Authority to change the reference requirements mentioned in item 23.1 by:

- extending the indicated period "from the last 3 years" to "from the last 5 years" or "from the period after 01.01.2018

or

- adding an alternative condition that would be based on the actual experience of the bidder, i.e., the number of implementations made and their functionality in the indicated period, and not only on the condition of the value of the implementations, as the value of the implementations does not necessarily follow their quality at all.

We motivate our request as follows:

1. due to the fact that 2020 and 2021 was a pandemic year in Europe and the world, many investments of the same or similar nature as the subject of the contract were stopped or slowed down. In many countries around the world, including Poland, similar solutions are in operation and the time of their implementation was before 2020.

2. The condition of participation in the proceedings constructed in such a way, based on the criterion of the price of solutions delivered/implemented in the past, in no way demonstrates the high degree of technical sophistication of the Bidder and the solutions offered by him. In this way, tenderers offering similar or even more advanced solutions, but implemented on attractive price terms, will be excluded from the tender, and suppliers whose solutions are overpriced will be privileged, which only exposes the contracting authority to high implementation costs without guaranteeing high quality, efficiency and reliability of the implemented solution.

We would like to point out that in many cities in Europe there are solutions of similar or larger scale in terms of number of vehicles, number of serviced residents and containers, the amount of collected and processed data, whose implementation costs were lower than the budget planned by

the

Employer.

3. The proposed changes seem to correspond better with other requirements specified by the Ordering Party regarding the evaluation of the quality of the offered solution which are included in paragraph 26.2, where the Ordering Party writes that when evaluating the quality of the offered solution, the Ordering Party wants to evaluate only modern solutions using current technologies on the market with adequate performance, and that the Ordering Party will award points only for solutions that relate to the implementation of the solution completed after 01.01.2018. Thus, it seems reasonable in light of the above to propose that the bidder, in order to confirm the quota condition, i.e. the total value of implemented solutions of EUR 1,300,000, may also use references from an earlier period relating to implementations completed after 01.01.2018.

Question 1: In view of the above, does the Contracting Authority allow changing the reference requirements mentioned in item 23.1 by extending the indicated period "from the last 3 years" to "from the last 5 years" or "from the period after 01.01.2018".

Question 2: Does the Contracting Authority allow changing and/or adding an alternative reference requirement, i.e.

- changing the condition of the number of implementations performed in a given period to the condition of the minimum number of implementations performed corresponding to the size and scope of the subject of the contract in the indicated period;

or

- by adding an alternative to the quota condition 23.1 to the condition of a minimum number of implementations performed corresponding to the size and scope of the subject matter of the contract in the indicated period.

Thus, enabling the admission of bidders who can boast adequate references as to the number and scope of implementations performed, but with a value less than that indicated by the Contracting Authority.

### **Answer no. 1**

The contracting authority maintains the original wording of the condition of participation and will not change its definition.

The contracting authority takes the following positions on the candidate's arguments:

- The statement that the pandemic years have led to the stoppage or suspension of projects is an unsupported statement on the part of the interested party. Prior to the announcement of the tender in question, the contracting authority carried out a pre-market consultation, which was freely accessible and published in the European Journal without any restriction on access to it. In the framework of these PMC, the contracting authority asked the market how many projects and in what value during the reference period of the last three years the different entities had carried out. The contracting authority has set the participation condition in question in such a way that it reflects the market responses it received in the PMC and is of the opinion that a participation condition set in this way cannot be perceived as artificially or inappropriately narrowing the market in this regard.

- The purpose of the participation condition in question is not only to verify the high technical level of the bidder's software (which the contracting authority pursues mainly but not exclusively by setting the qualitative criterion K2), but to obtain a contractual partner who has, among other things, time-relevant experience in the provision of such projects, the size of which (with the least possible limitation of the market) corresponds to the scope of the contract in question.

- The contracting authority stated the estimated value of the contract in the contract notice in the amount of € 2 700 000 excluding VAT. This estimated contract value was determined on the basis of a number of indicative and non-binding offers from the entities participating in the PMC, i.e. it was determined on the basis of data provided by the relevant market. The contracting authority considers that the determination of the participation condition to allow the participation of an entity that has carried out three similar contracts with an aggregate value of € 1 300 000 (not even half of the amount of the estimated value of the contract, which is, moreover, for the purposes of this participation condition, divided into three projects that the tenderer can demonstrate the implementation of) is, in the opinion of the contracting authority, proportionate and in line with the principle of proportionality of the procedures applied in the public procurement procedure.

- In the light of the above, the tenderer's statement that the setting of the condition of participation favours overpriced suppliers is, in the opinion of the contracting authority, an unsupported statement. The contracting authority addressed a sufficiently broad market in the framework of the PMC to both obtain a relevant idea of the estimated value of the contract and, on the basis of the market's responses, to determine a condition of participation that would not prevent the relevant market entities from participating in the procurement. The contracting authority has obtained data in the framework of the PMC which indicate that the company which submitted the lowest price offer in the non-binding tenders for the purpose of determining the estimated value of the contract also fulfils the participation condition in question. The contracting authority has sought to take an approach in the context of the competition in which the conditions of participation it sets will be based as far as possible on actual data obtained from the market and not on generalising and generalised statements.

- The contracting authority draws the attention of the interested parties to the fact that the condition of participation must be demonstrated by the tenderer, i.e. the economic entity which has provided the services at the minimum required level during the reference period, taking into account whether this economic entity has provided the relevant services when assessing whether the conditions of participation have been met. The points under quality criterion K2 will be awarded to the tenderer for the specific software offered to the contracting authority. Therefore, the contracting authority (in particular in the light of the data obtained in the PMC) does not consider the setting of the participation condition and the quality criterion K2 to be contradictory or inconsistent

- The contracting authority considers the participation condition in its current wording to be sufficiently formulated, and since such setting of the participation condition is based on data obtained during the PMC from (in the opinion of the contracting authority) a sufficiently wide market, it sees no reason to change its wording or to admit an alternative to the condition of a minimum number of implemented implementations corresponding to the size and scope of the subject matter of the contract in the specified period of time. The contracting authority considers

that the value of the implemented contract is sufficient to give an idea of the scope of the reference project.

- The contracting authority would like to remind the tenderers once again that it accepts the submission of three references with a total value of € 1 300 000 excluding VAT within the scope of the participation condition. This means that the participation conditions can be fulfilled by demonstrating the implementation of, for example, one project worth € 500 000, another worth € 100 000 and a third worth € 700 000 over a reference period of three years. The contracting authority considers that, in view of the scope and the expected value of this contract (€ 2 700 000), there can be no doubt as to the proportionality of the participation condition and its adequacy.

- In addition, the contracting authority points out to the interested parties that it will recognise from the list of provided services only those reference services, at least part of which were implemented in the reference period (or the last required functionality) in the reference period, if it would be the provision of services that were started outside this reference period (i.e. the implementation of some functionalities could be earlier than 3 years from the date of publication of the notice of public procurement in the Official Journal of the European Union), but the reference services are not included in the list. However, the last required functionality must have been implemented within the reference period (i.e. at least part of the relevant services must have been performed within the reference period). In this case, the tenderer is obliged to explicitly mention in addition to such services provided (references) a precise indication/description of what was the subject of the services in the reference period.

## **Question no. 2**

Referring to Excel-sheet „UPDATED - 05. ENG Annex No. 4 TD - Annex No. 3 – Price”.

We can see in Column F that there is a possibility to choose several values. For example for the project and/or for the functionalities of lines 26 to 54. Do we have to choose a value if there stated N/A. Please can you clarify?

## **Answer no. 2**

Column F should not be edited.

It is used by contracting authority to provide more information to the market about current status of certain functionality and process ie:

- A. Functionality is NEW and will be implemented during the project
- B. Functionality is IN USE and will need to be adopted by this project

Lines 26-54 have N/A because these are related to platform specification

The tenderer needs to fill columns H,I,N,Q.

## **Question no. 3**

Referring to Excel-sheet „UPDATED - 05. ENG Annex No. 4 TD - Annex No. 3 – Price”. Line 40.

REST API/MQTT

We do not see any specification or documentation what you expect under this points. We can offer a REST API but the details must be specified and this also causes work load for our developers which must be calculated. Please can you specify what you expect for this issue?

**Answer no. 3**

Line 40. is used to confirm that the platform is capable of REST API/MQTT.

Costs should be calculated for each integration starting line 203 / ID 400

More detail about integrations is provided in "03. ENG Annex No. 2 TD - Annex No. 1 - Description of the subject of the contract.docx"

**Question no. 4**

Referring to SLA: UPDATED - 02 ENG Annex no. 1 TD - AGREEMENT FOR THE PROVISION OF THE SERVICES IN FIELD OF IT SOLUTIONS

Is Article 4.6.1, pertaining to the contractual penalty for delays, compliant with Slovak law? As per our legal interpretation, penalties should be subject to a maximum cap. The specified contractual penalty amount appears unusual, given that 10% of the total price is already imposed as a penalty for a single day's delay. Standard practice typically involves contractual penalties ranging from 0.5% to 0.7% per week, with an overall limit of 5% to 7% of the total price. We kindly request that the penalty be limited in accordance with these customary rates.

**Question no. 5**

Referring to SLA: UPDATED - 02 ENG Annex no. 1 TD - AGREEMENT FOR THE PROVISION OF THE SERVICES IN FIELD OF IT SOLUTIONS

In reference to Clause 4.6.4, there are similar regulations that cannot be determined by the length or nature of the violation. These are no standard provisions according to our legal understanding. Here, maximum limits must be included which should not exceed 10% of the total price.

**Question no. 6**

Referring to SLA: UPDATED - 02 ENG Annex no. 1 TD - AGREEMENT FOR THE PROVISION OF THE SERVICES IN FIELD OF IT SOLUTIONS

In addition, Clause 4.6.6, in accordance with the mentioned considerations, appears unconventional. Would it not be more appropriate to structure the contractual penalty for a delay based on completed weeks and then impose an upper limit? According to our legal understanding

it is also customary to include caps with regard to the total amount of damages. Commonly, such caps for any claims for damages, including contractual penalties, range from 50% to 100% of the purchase price or the total price for services. We kindly request the implementation of limitations to the SLA in accordance with the commonly recommended contractual penalties.

**Answer no. 4 (to questions 4,5 and 6)**

In the event that the contract does not provide for interest on late payment of a monetary obligation, it shall be applied at the rate established by the Government of the Slovak Republic by regulation. The maximum amount of default interest shall be guaranteed by the State. The amount of statutory default interest is mentioned in the Commercial Code, pursuant to Article 369(2) and Article 369a.

Paragraphs 4.6.1 et seq. of the contract provide for a contractual penalty (a different security instrument from the above-mentioned default interest), which the parties themselves determine. The legislation thus allows the parties themselves to legally agree on the most appropriate model for the effect of this security measure, which is one of the greatest advantages of the contractual penalty.

The contracting authority considers the amount of the contractual penalty to be appropriate, since the contractual penalty is a means of security and, among other things, has a preventive character, i.e. it secures an obligation that is of particular importance in the performance of the contract to be fulfilled in a timely and proper manner. If the obligation is not fulfilled properly and on time, the contracting authority may claim the contractual penalty.

The contracting authority has not excluded in the contract the mandatory provisions of the Commercial Code, thus it does not act contrary to the legal order of the Slovak Republic, e.g. in case of damage, the provider is not obliged to compensate for it if it was caused by circumstances excluding liability (§ 373 of the Commercial Code).

The agreement on limitation of damages and/or contractual penalty is a permissible exercise of discretion, but not an obligation of the contracting authority.

Among other things, point 5.22 of the contract states that if a breach of a secured obligation (contractual penalty) causes damage exceeding the agreed contractual penalty, the provider is not obliged to pay the full amount of the damage, but only the amount exceeding the contractual penalty.

Above all, the Contracting Authority notes that the solution provided under this contract will be a key part of the Contracting Authority's performance of its own contractual obligations to its clients, customers, shareholder and its potential delays / failures will potentially lead to penalties that may be levied against it under its contracts with these entities. The contracting authority therefore considers all the contractual terms and conditions set out in the tenderer's questions to be reasonable and will not proceed to modify them as suggested by the tenderer.

Sincerely

*v. r.*

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Mgr. Adam Kašák

Head of Procurement



