

Purchaser:	Odvoz a likvidácia odpadu a.s., in short: OLO a. s., Ivanská cesta 22, 821 04 Bratislava, Slovak Republic
Title of the Tender:	ENGINEERING AND CONSTRUCTION-TECHNOLOGICAL SUPERVISION OF THE MODERNISATION AND ECOLOGISATION OF WEEE
Link to the published procurement documents:	https://josephine.proebiz.com/sk/tender/43843/summary
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Document:	Explanation of tender documents pursuant to Section 48 of the Public Procurement Act – No. II
Processed on:	August 10, 2023

Dear Sir or Madam,

Co. OLO, a.s. hereby publishes the answers to the questions received within the deadline for submission of applications for participation.

Question 1:

We request the Purchaser to clarify how it determined the estimated value of the contract.

Purchaser's reply:

Referring to the minutes of the pre-market consultations carried out, the last phase of the pre-market consultations was a public invitation to all entities that followed the market consultations (i.e. downloaded the invitation to the consultations or used the consultation tracking functionality in Josephine by ticking the "I'm interested" box).

The resulting estimated value of the contract was fixed taking into account the indicative tenders received.

Question 2:

We request the Purchaser to modify the competition documents - Bank Guarantee section as we believe it is inadequate, and in similar tenders with a high estimated value of the contract, the amount of the bank guarantee is usually based on a mathematical calculation of the amount of the tenderer's accepted quotation, i.e. the Contract Price.

Purchaser's reply:

The tender documents do not include a bank guarantee section, so the Purchaser does not understand this requirement.

If the tenderer is referring to a bank guarantee in the sense of the draft contract, which constitutes a contractual performance security instrument, the Purchaser recommends that the tenderer re-read and carefully study the tender documents, including the key document Concept for the modernisation and ecologisation of the WEEE (which describes in detail the scope and technical complexity of this project) for this procurement procedure, as the draft contract will be subject to negotiation rounds with qualified tenderers. The Purchaser emphasises that this tender is awarded by a negotiated procedure with publication, which has its own specificities.

At the same time, the Purchaser does not understand what kind of "similar tenders" the interested party has in mind, because such a comprehensive service for the modernisation of WEEE has not been done in Slovakia (or in neighbouring countries) so far. Therefore, the tenderer's experience with contract terms from other line construction infrastructure projects, where only part of the performance of this contract (e.g. only design or only supervision) was the subject of the contract, is irrelevant and not mutually transferable. At the same time, the Purchaser's requirement for a contractual performance guarantee in a specific amount is an expression of the contractual freedom typical in a private-law commercial relationship and fully in line with the principles of public procurement, since it is the same for all tenderers who freely choose to submit a final tender which is an expression of their will to perform the contract on the terms and conditions set out in the contract.

Question 3:

At the same time, the amount of the bank guarantee is also disproportionate to the actual performance of the works contract, as the performance itself is divided into stages, where especially in stage 1 - 4. third parties, whose actions cannot be foreseen, enter into the proper performance and who may cause the extension of the performance period by their actions or inactions, and thus also cause unforeseen extensions of the bank guarantee for the successful bidder, which cannot be sufficiently evaluated in terms of the bidders' input costs when submitting a tender. In view of this, we request the Purchaser to reconsider the phasing of the bank guarantee also in the light of the draft contract.

Purchaser's reply:

As stated above, the draft terms and conditions will be subject to negotiation with qualified tenderers who, if they make a similar proposal and offer a constructive solution reflecting the objective pursued by the term of the contract, the Purchaser will deal constructively with such a proposal.

It is not the object of this phase of this procurement procedure to make comments and suggestions on the contractual terms and conditions, as these will be the subject of the basic tenders and subsequent negotiation.

Question 4:

We ask the Purchaser for an explanation of how the deadlines for the execution of individual stages were set, in particular e.g. stage 1 - processing of the DLU with delivery of the valid Construction Plan.

In our opinion, for such a complex construction, it is not possible to meet the required deadline, min from the point of view that the project needs to be designed and communicated and to obtain opinions from third parties, especially from the point of view of environmental protection in the vicinity of the Bratislava agglomeration, where the issuance of permits for similar constructions is always associated with a great interest of the public and various organizations with the requirement for additional surveys and environmental impact. At the same time, the zoning procedure has deadlines under the law, which are

included in the deadline for implementation, but during which the permitting authority, over which the future contractor has no influence, is already acting or not acting. We dare to say that if there is someone who can hand over at least stage 1 in this way, it can be assumed that he has the project already prepared and by signing the contract he will start the engineering activity.

Purchaser's reply:

The Purchaser brings to the attention of the Interested Party that the duration of each stage is estimated/planned. These are not binding deadlines, the non-compliance with which is sanctioned, for the very reason described by the interested party in the question. In particular, the Purchaser draws the attention of the interested party to the full wording of the duration of stage 1 as set out in the document: Description of the subject-matter of the contract: "Planned duration of the stage: 6 months or until the issue of the planning permission".

At the same time, the Purchaser states that the lengths of the individual stages will be subject to negotiation (as is apparent from the description of the stage of this procurement procedure in the relevant chapter of the Tender Documents), i.e. in the published Competition Documents it is a proposal whose comments will be included in the basic tenders and subsequently negotiated with the qualified tenderers in the negotiations. The final duration of the stages will be determined by the Purchaser on the basis of the outcome of the negotiations in the call for final tenders. It is not clear to the Purchaser on what basis the bidder believes that these are the final dates.

The Purchaser will not deal with the fabrications and unsubstantiated invectives, bordering on conspiracy, set out at the end of the interested party's question.

Question 5:

We request the VO to clarify on the basis of which authorisations the future experts in the future contractor's team will provide professional services, as the requirement for professional competence is only required for an architect as a holder of a licence from the Chamber of Architects.

Purchaser's reply:

In accordance with the draft contract Article VII Rights and Obligations of the Parties, point 7.1 (d) and (e), by signing the contract, the future provider declares/confirms, undertakes/guarantees that:

(d) "possesses sufficient / appropriate professional / specialist skills / knowledge and capacity (including Key Persons) necessary for the proper provision / performance of the Services / activities under this Contract, including in relation to its demonstrated technical / professional competence and capacity under the tender (Key Persons);

(e) has all necessary authorisations/permits for the purpose of proper provision/performance of the Services/activities."

In view of the objective pursued by this tender, which is clearly described in the Tender documents and their annexes, and on which the draft contract is based, it is clear that the performance of the contract must be carried out by persons possessing the appropriate authorisations. The fact that the Purchaser does not require the submission of the relevant qualifications of key experts as part of the minimum required level of technical and professional competence does not call this into question. There is nothing to prevent the fulfilment of the contractual obligation in question from being verified during the performance of the contract.

The Purchaser does not, by this answer, impose new requirements to demonstrate the specified conditions of participation, nor does it modify the specified conditions of participation, nor does it provide new information necessary for the processing of requests for inclusion. For these reasons, the Purchaser is not extending the deadline for the submission of requests for inclusion.

Sincerely

Mgr. Adam Kašák

Head of Procurement