



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

To all interested parties

In Bratislava 26.09.2023

Subject:
Explanation of the tender documents III

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 explanations to interested parties in the context of the tender.

Explanation of the tender documents III:

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

Question no. 1

“Responses to database queries

You can specify and define in the document "03. Annex c. 2 SP - Annex c. 1 - Description of the subject of the contract", chapter 0.3, line 143 and 144 the requirement of "response to database queries in an average of 2 seconds". There are agendas that for outputting large amounts of data cannot achieve this time without optimization for specific output. Therefore, it would be useful to define in which agenda or functionality this response time is required.”

Answer to question no. 1

The contracting authority addressed this issue in the preparatory market consultation, where space was given to ask for details. The contracting authority refers the interested party to the document 'Minutes of the 1st and 2nd round of pre-market consultations'.

On the basis of the information from the preparatory market consultation, the contracting authority concludes:

"On the basis of the responses provided, the contracting authority concludes that the response requirements of the system will be specified in the description of the subject matter of the contract in such a way as to avoid response times that would limit the work of the users in the system."

The contracting authority would point out to the tenderer that, in the light of the referenced document, these are only average response times.

Question no. 2

"SOFTIP integration

If full, i.e. two-way interconnection or synchronization of entities with the platform is expected, then the following questions arise. How will the data be accessed, will interoperability be ensured and what quality of data will the supplier provide. Will changes be made bilaterally? Is it expected that the SOFTIP software vendor will also provide the write to the application and how?"

Answer to question no. 2

The contracting authority addressed this issue in the preparatory market consultation, where space was given to ask for details. The contracting authority refers the interested party to the document 'Minutes of the 1st and 2nd round of pre-market consultations', in particular to the conclusions reached by the contracting authority on the answers to questions 31 and 32.

The contracting authority shall (as already stated in the conclusions referred to above) provide a more detailed description of the integration interfaces in the description of the subject-matter of the contract, to the extent that its relevant professional capacities allow it to do so.

The contracting authority considers that the definition of the interfaces it provides in the supplemented description of the subject-matter of the contract on the basis of the above is sufficient for the objective preparation of the offer by the tenderers. The contracting authority has also come to this conclusion in view of the fact that the successful tenderer will have sufficient space for a thorough analysis of the integration interfaces in question as part of the analysis that will precede the implementation of the offered solution.

Question no. 3

"Worker

Annex "03. Annex c. 2 SP - Annex c. 1 - Description of the subject of the contract", point 1.9.1 (Worker) what data will be provided, which entity and which information system will provide it

and what role the Platform is to be asked to play in this. Is this an integration to the attendance system? There is an integration to the attendance system in the requirements, but from our perspective it is more of a personnel system."

Question no. 4

"Transfer of key data

Annex "03. Attachment c. 2 SP - Attachment c. 1 - Description of the subject of the contract", point 1.12. If a certain group of vehicles will not be able to do this, do you consider this as a failure to meet the requirement of the tender? Can you specify what parameters or FMS data are required?"

Question no. 5

"Transfer of key data and FMS data history

Annex "03. Annex c. 2 SP - Annex c. 1 - Description of the subject of the contract", point 1.12. What is the required timeframe for monitoring, and evaluation?"

Question no. 6

"RRULE

Annex "03. Attachment c. 2 SP - Attachment c. 1 - Description of the subject matter of the contract", item 1.13 question on the RRULE, what system or from where the data will be drawn on the input, what data will be on the output, where, and what is expected. Can this point be elaborated?"

Question no. 7

Waste collection

Annex "03. Annex c. 2 SP - Annex c. 1 - Description of the subject of the contract", point 1.14. What input data will be provided, or who will define the operation times - taking out, container clogging, opening, closing. It is not possible to draw this information from telematics."

Answer to questions no. 3, 4, 5, 6 and 7

The questions asked are all related to the Evidence Module (1.0) and the contracting authority therefore cumulates the answers to these questions into one.

The contracting authority considers that all entities in section 1.0 of the technical specification are sufficiently specified, it is also specified how the required solution is to perform the required functionalities and at the same time the contracting authority considers that the logic of their functioning is sufficiently clear from the tender documents including all their annexes.

The contracting authority draws the attention of the tenderer to the fact that the individual parts of

the contracting authority's requirements for the subject-matter of the contract, contained in particular but not exclusively in the document 'description of the subject-matter of the contract', must be seen in their interrelations and interdependencies.

The contracting authority also refers the interested party to the answers to questions 13 and 14 of this Explanation.

Question no. 8

"The waste collection plan

Annex "03. Annex c. 2 SP - Annex c. 1 - Description of the subject of the contract", point 1.15. The first inputs are expected from the PROTANK system. Do you expect to break this link in the future and to deal only with the new system, the collection planning module?"

Answer to question no. 8

The contracting authority expects that two systems (Protank system and the solution offered by the winning bidder) will run in parallel for the duration of the implementation of the offered solution.

Data from Protank will be imported into the new solution by a one-time import, after which the platform should operate (or should function) independently of Protank.

Question no. 9

"Storage of containers

Annex "03. Attachment c. 2 SP - Attachment c. 1 - Description of the subject of the contract" point 1.16. We have a question as to where the actual stock of containers is kept, as this is material that is stadnardly kept in the accounting system and subject to applicable laws. How exactly should the platform handle this agenda. Can it be replaced in the future?"

Answer to question no. 9

The complete storage system of the collection bins will be part of the new platform and will not be linked to the accounting system or used as an accounting system.

The container register in the contracting authority's current terms and conditions is not linked to the accounting system.

Question no. 10

"RFID passporting

Annex "03. Annex c. 2 SP - Annex c. 1 - Description of the subject of the contract" point 1.17. is the passporting of containers including RFID LF expected? In the terms and conditions you have, specifically point. 4.17 of the same document, you have defined the HW that is probably currently

used. This HW is not compatible with the requested 134.2 kHz LF chip system.

What is the role of this HW in the context of LF RFID tags? Expected to use mobile application, see definition "Their tracking, unambiguous identification, RFID tagging and resolution of any discrepancies detected in the field. Irregularities are resolved on the basis of reports via the app manually by the planning, procurement and foremen" and on RFID chips at 134,2 kHz? We ask because the devices that read these chips are very specific. A related factual observation is that the current equipment will not be usable and any applications need to be developed."

Answer to question no. 10

The contracting authority does not expect passporting of containers including RFID LF. Neither is the use of a mobile application for this type of RFID chips expected.

The contracting authority considers that such a requirement is not implied by the current wording of the description of the subject of the contract.

Question no. 10 and 11

Note from the Contracting Authority:

The tenderer has quoted its questions from previous requests for clarification as well as the contracting authority's answers to those questions in these questions. The contracting authority has highlighted the candidate's current (new) question in blue for ease of communication, see below.

"re: questions on the contracting authority's reply of 18.8.2023

Reference to the published tender documentation:

In the section: description and rules for the application of Criterion K3, there are a number of requirements and questions that the tenderer considers to be unjustified and not sufficiently transparent to be evaluated. For example: '2. The PM is motivated to achieve the objective, takes the project as a professional priority, it is clear that he will devote sufficient time to the project within reason", or 3. it is clear from the speech that the objective pursued by the PM in the execution of this project is obvious and clearly articulated and in line with the interests of the contracting authority".

The wording of the original question:

The candidate has given only some examples and considers the whole concept of K3 criteria as biased in several points and will not be satisfied with answers only to the given examples of biased evaluation criteria. The tenderer asks the contracting authority either to modify the whole K3 criterion sufficiently to make it objective or to remove this criterion completely from the tender documentation.

Citation of the Contracting Authority's reply No 2 dated 18.8.2023

The contracting authority disagrees with the tenderer's assertion (which, as formulated in the question, amounts to an unsupported opinion) and will not modify or change criterion K3.

The contracting authority would like to point out that the subjective evaluation of tenders by the members of the committee when assigning qualitative points on the basis of the submitted offers is not excluded by the applicable public procurement legislation, provided that the contracting authority does not violate any of the obligations and principles of public procurement, which are established in Section 10 of the Public Procurement Act. To this end, the contracting authority wishes to draw the attention of the interested party to, for example, Decision No 3782/9000/2021 of 19.04.2021 of the Council of the Public Procurement Office, in which the Council is of the opinion that not all qualities can be evaluated on the basis of objectively measurable values. At the same time, we would like to draw the attention of the interested party to the fact that evaluation interviews are a common practice in several public contracting authorities, for example in the Czech Republic or the Netherlands (which are countries which are subject to the same EU directives in the field of public procurement as the legislation applicable in the Slovak Republic). The contracting authority further considers that if it is standard practice in the purchase of software in the private sector for a potential supplier to present its product, its features and the added value of the persons who will implement the product for the client, there is no reason why such a practice in the purchase of software (taking into account the principle of "maximum value for money") should not also be applied by an entity in the position of a contracting authority, provided that it takes steps sufficient to ensure that there is no violation of the legal principles of public procurement.

The formulations to which the interested party refers are a definition of the areas within which the tenderers' representatives will be asked specific (and always the same) questions, therefore the contracting authority considers that their formulation is sufficient for the tenderer to know in advance what the contracting authority is seeking to achieve by the evaluation interview, and therefore the contracting authority considers that its procedure is sufficiently predictable, already at the stage of the submission of tenders.

The contracting authority considers criterion K3 to be transparent, as the method of its evaluation is sufficiently clearly described, while in the process of its evaluation steps will be applied to ensure the greatest possible degree of transparency (inter alia, audiovisual recording of the evaluation interviews and the subsequent written justification of the number of points awarded by the committee), consistent with the principle of equal treatment of tenderers (the method of evaluation of the criterion is described in the same way for each entity, the questions in the evaluation interview will be exactly the same, whether it concerns the evaluation of the characteristics of the project manager or of the characteristics of the presented software solution, evaluated by the expert panel with the same composition in each interview carried out) and the contracting authority considers that the evaluation criterion formulated in this way is an effective tool to ensure the economic efficiency of its procedure in the context of the public procurement procedure in question and thus to ensure the greatest possible value for money. At the same time, this criterion does not discriminate in any way against any entities on the market, as each entity has the same opportunity to present its product and the quality of its representative.

The objective of the contracting authority is to purchase the software solution cost-effectively and at the same time to obtain a partner for the entire contract period, which may be up to seven years

if the option formulated in the draft service contract is applied.

The contracting authority draws the attention of the tenderer to the fact that, although the members of the committee will assign criteria under criterion K3 on the basis of their subjective experience and expertise, this evaluation will be substantially objectified by the fact that all members of the committee must agree on a single number of points to be assigned for a given evaluated aspect.

The contracting authority further considers that:

- By applying criterion K3 as formulated in the tender documents, it will take into account, in the evaluation of offers, whether the principal representative of its contractual partner (and, within the meaning of the contract and the SLA annexed to the tender documents, the person responsible for project management and key communication between the two parties) will be sufficiently motivated to be the main representative of the contractual partner for the funds spent on the project (and, within

the meaning of the contract and the SLA annexed to the tender documents, the person responsible for the project management and key communication between the two parties), who is mainly, but not exclusively, sufficiently knowledgeable about the subject matter from a professional point of view. The person of the project manager will be a key aspect of the performance of the contract for the contracting authority and his/her qualities and expertise may ultimately have a major impact on the quality of the services (in particular the coordination and management of their delivery and the level at which they are communicated to the contracting authority);

- By applying criterion K3 as it is formulated in the tender documents, the evaluation of tenders will take into account the features of the offered solution (such as in particular, but not exclusively, the user-friendliness of the interface, its complexity, etc.) which cannot be verified only formally (or, in the opinion of the contracting authority, could not be fully verified if the tenderer had only declared them in writing in its tender);

- By applying criterion K3 as formulated in the tender documents, the evaluation of tenders will take into account the ability of the offered solution to efficiently generate a plan that would be cost-effective when implemented in the practice of waste collection in the Capital City of Bratislava.

The contracting authority also points out the proportionality of its chosen procedure. In the opinion of the contracting authority, the effective purchase and implementation of the new software solution (and in the case of the contract in question, a solution that is key to the effective performance of the tasks for which OLO was established) is not possible without a prior presentation of the bidder's project manager and a presentation of the solution to the contracting authority's representatives responsible for the implementation of such a solution, which must be suitable for the conditions in which and under which it will be implemented and used by the contracting authority in practice. The number of points that can be obtained under criterion K3 is, according to the contracting authority, proportionate to the significance for the contracting authority of the successful tenderer's project manager, the features of the presented solution and its ability to generate collection plans (in view of the fact that the offered solution and the expertise with which it will be implemented will be crucial for the functioning of the contracting authority as a company and for the efficiency of waste collection and waste management in the Capital City of the Slovak Republic of Bratislava) being at the highest possible level.“

Re question to answer No 2 of the Contracting Authority 2 dated 18.8.2023

The tenderer has read the contracting authority's response in detail and agrees that evaluation criteria on qualitative indicators can be included. The contracting authority describes very comprehensively all the reasons and examples from abroad why such criteria can be included.

However, the tenderer points out the bias of some of the chosen areas/formulations. He cannot see how the answers to the question '2. The PM acts motivated to achieve the goal, takes the project as a professional priority, it is clear that he/she will devote sufficient time to the project within reason.'

- How do you differentiate between the answer of what PM is more and what PM is less motivated to achieve the goal. How does he/she know from the answers whether he/she will devote enough time to the project, whether he/she will treat the project as a professional priority.

- Candidate assumes that each PM who will present in K3 will present that he is motivated, that he takes the project as a professional priority, that he will devote sufficient time to the project within reason.

- Further, the tenderer considers that this criterion is biased on the part of the contracting authority.

- The tenderer does not contest the inclusion of criterion K3 in the evaluation process and agrees that this criterion is used in some foreign countries. However, the tenderer also reiterates its comments on the chosen content of this criterion and asks the contracting authority to reconsider it. The tenderer welcomes the fact that the contracting authority wants to assess the quality of the solutions and some qualitative characteristics of the project manager or the design team, but does not consider the above example quoted from the tender documentation to be such a criterion.

- The tenderer agrees that the evaluation is objectified by the fact that all members of the committee must agree on a single number of points to be awarded for a given evaluated aspect, but adds that if the evaluated aspect is identical or similar to the above example, even a multi-member committee cannot sufficiently reduce the bias of the wording. Only if some PMs answer negatively or otherwise illogically, which is unforeseen as it would reduce the chances of their firm/consortium.

- It is the candidate's understanding that the example question will either lead to an outcome where all interviewees receive full points or, if not so, will very likely lead to the candidate in question being dismissed as to why he/she did not receive full points.

Quotations from the contracting authority's reply No 2

"The application of criterion K3 as formulated in the tender documents in the evaluation of tenders will take into account the ability of the offered solution to efficiently generate a plan that would be cost-effective when implemented in the practice of waste collection in the Capital City of Bratislava ..."

"The number of points to be awarded under criterion K3 is, in the opinion of the contracting authority, proportionate to the importance to the contracting authority of the successful tenderer's project manager, the features of the solution presented and its ability to generate collection plans ..."

Re question No.10b to Contracting Authority's answer No.2 dated 18.8.2023

We do not see a direct correlation between the automatic generation of the waste collection plan and the project manager. We see automatic waste collection plan generation as one sub-task of the overall solution. The role of the project manager is to effectively manage the implementation of the whole solution. To oversee deadlines, responsibilities, predict critical points of the project, etc. They do not necessarily need to have a detailed deep knowledge of the module for automatic generation of the bunching plan.

Answers to question no. 11 and 12

- The fact that the tenderer cannot imagine how the answers of individual project managers may differ is a conjecture of the tenderer, which is not supported by anything. The quality of the answers given in the interview will be assessed by a committee set up by the contracting authority for this purpose;

- The evaluation of the individual responses will be up to the individual members of the committee and, as the contracting authority cannot know at this stage what the responses will be, it cannot logically comment on the candidate's question as to how specifically the committee will reach the conclusions it will reach on the basis of such responses (the panel's conclusions will, however, be justified in writing with a reasoned statement of reasons which will make it specifically clear on what facts the panel has reached its conclusion). The creation of such a record is considered by the contracting authority to be a sufficient step to ensure transparency in the awarding of points under criterion K3. The contracting authority draws the attention of the tenderer to the fact that the committee will evaluate each PM separately and PMs of individual tenderers will not be compared with each other, which, according to the contracting authority, follows directly from the logic of the setting of criterion K3. However, if the committee accepts that the presented quality of each PM, irrespective of their comparisons with each other, was at the same level (which is the situation hypothetically raised by the tenderer's question), it logically follows that such PMs will be awarded the same number of points. The panel will be made up of persons with both IT and project management experience and will evaluate the project manager's responses on the basis of their experience and knowledge

- The public defender considers that in the sense of the preceding paragraph it is not possible to doubt the compliance of the K3 criterion with all the obligations set out in §10 of Act No. 343/2015 Coll. on Public Procurement

- The tenderer bases its arguments on the wording of the outlines of the topics of questions which are published in the current version of the tender documents. The contracting authority once again draws the attention of the tenderer to the fact that these formulations are only a definition of the outlines, which serve for future tenderers to get a closer idea of the topics within which specific

questions will be asked. Within these topics, the committee will ask the project managers specific questions which the project managers will only learn about directly during the evaluation interview and will evaluate the answers to these specific questions in the context of the defined topics. The contracting authority considers that the candidate's comments on this question do not take into account this important and key aspect in the setting of the K3 evaluation criterion.

- The situations predicted by the tenderer and the assertions that the negative and illogical answer of the project manager is unforeseeable, that all interviewees will obtain full points, or that if they do not, it will lead to the appeal of the tenderer, why the tenderer did not obtain full points, are hypotheses of the tenderer, which, however, the contracting authority has no objective reason to take into account. The contracting authority will set up a committee to evaluate the project managers' responses, which will have to give due and careful consideration and justification to its conclusions. The outcome of this evaluation will therefore depend entirely on this committee and the contracting authority sees no reason to accept the conclusions that the tenderer claims in relation to criterion K3

- The contracting authority agrees with the tenderer's assertion that the automatic generation of the harvesting plan is a sub-task of the overall solution. In the current wording of criterion K3, the contracting authority does not expect the project manager to have a detailed or in-depth knowledge of the automatic generation of the harvesting plan module and considers that such a level of knowledge is not directly or indirectly implied by the wording of criterion K3. The contracting authority has made data available to the candidates and expects the project manager to demonstrate in the evaluation interview only how the proposed solution will generate a harvesting plan based on this data. The contracting authority considers that if the project manager in question did not have sufficient knowledge of the offered solution at the time of the publication of this procurement to demonstrate to the contracting authority how the solution can generate such a plan, he had and still has sufficient time to familiarise himself with this functionality of the solution offered by his company during the deadline for submission of tenders (which is already two months at the time of the publication of this explanation). The contracting authority assumes that it will be offered a solution in which the implementation of this step is not so complex and complicated that the project manager, who will lead its implementation in the contracting authority's terms and conditions, cannot familiarise himself with it in such a timeframe (otherwise it is assumed that the offered solution is not 'user friendly', which is, among other things, another aspect of the evaluation interview).

Question no. 13

"The procurement documents do not define the functionalities you require from the platform. We are of the opinion that the definition of the functionalities of the platform is essential for the bidders when preparing their bids. For this reason, we would like to ask you to define the functionalities that the platform should have in order to be able to consider all the technical solutions and the related bid prices."

Answers to question no. 13

In the framework of the preparatory market consultations, the contracting authority asked the interested parties whether the information provided in the description of the subject of the contract

was sufficient to enable the interested parties to submit an objective and accurate quotation on the basis of which it would be possible to proceed to the signing of the contract, and also asked the interested parties to identify what information needed to be completed in order to submit such a quotation.

In response to these questions, the companies either indicated that the information was sufficient or indicated the information that they considered necessary to be added, which in such a case was reviewed by the contracting authority and in most cases added to the description of the subject-matter of the contract.

The contracting authority refers the interested party to the document 'Minutes of the 1st and 2nd round of pre-market consultations', in particular to the points 'Question 4' and 'Question 5' and to the conclusions reached by the contracting authority on these points.

On the basis of the outcome of the preparatory market consultations, the contracting authority considers that the description of the subject-matter of the contract is sufficient to submit an objective and accurate tender (inter alia, on the basis of the fact that at the last stage of the preparatory market consultations a number of indicative offers were submitted to the contracting authority for the purpose of determining the estimated value of the contract, in which the tenderers did not raise any objections to the inadequate description of the subject-matter of the contract).

The contracting authority therefore considers that the documents made available to the interested parties in the framework of the tender documents, in particular but not exclusively the 'Description of the subject-matter of the contract', sufficiently describe the functionalities of the required solution.

The contracting authority also expects that the tenderer, having the required reference experience as defined in the technical terms of participation, will familiarise itself with all the published tender conditions, including the description of the subject of the contract in their interrelationship.

Such a tenderer may be considered to be properly informed and to have exercised reasonable care and diligence in understanding the objective of the contract in question. The contracting authority considers that such a tenderer has a sufficient description within the tender documents of all the required functionalities required by the contracting authority from the platform.

The contracting authority expects the tenderer, having the required reference experience (condition for participation according to § 34) and having a team of experienced experts, to familiarise itself with all the published tender conditions, in particular the intended objective of the cooperation, and to discuss this properly and in detail with the assembled team of experienced experts.

Such a tenderer can be considered to be properly informed and reasonably attentive and prudent in understanding the objective of the contract in question (why it is important to assess quality and what is to be achieved by the performance of the contract).

The contracting authority considers, inter alia, that the basic framework for the operation of the required solution is sufficiently defined in point 0. of the description of the subject-matter of the

contract.

The contracting authority refers to the case law of the Court of Justice of the EU, which refers quite often to the "reasonable tenderer" in its legal assessment. It applies this view in the interpretation of the Public Procurement Directives.

The contracting authority refers, for example, to case law in which the Court of Justice explains the principle of transparency in relation to a 'properly informed and reasonably attentive and prudent' tenderer:

"Judgment C265/22 para 65:

As regards, more specifically, a term providing, in the context of a mortgage loan agreement, for remuneration for that loan by means of interest calculated on the basis of a variable rate determined, as in the main proceedings, by reference to an official index, the requirement of transparency must be understood as requiring, in particular, that the average consumer, who is properly informed and reasonably attentive and prudent, to be able to understand the specific operation of the method of calculating that rate and thus to assess, on the basis of precise and comprehensible criteria, the potentially significant economic consequences of such a contractual term on his financial commitments (judgment of 3 June 2005, paragraph 1, paragraph 1, paragraph 2). March 2020, Gómez del Moral Guasch, C125/18, EU:C:2020:138, paragraph 51 and case-law cited)."

Question no. 14

"In all of your documents you use multiple terms and phrases, such as cloud solution, web services, solution as a service, and so on. Can you clearly identify and explain these terms in a separate Definition of Terms document?"

Answers to question no. 14

The contracting authority considers that the terms used in the tender documents (in particular, but not exclusively, in the description of the subject-matter of the contract), which are not detailed at the moment, are standard terms used. The contracting authority considers that it is not possible to require it to elaborate on such terms in the tender documents and, also in the context of the answer to question 13, considers that the entity bidding for the contract in question must be an entity that does not need to elaborate on terms such as 'web services'.

The contracting authority refers again to the case-law of the Court of Justice of the EU set out in its answer to question 13.

Question no. 15

"From the above stated definition of cloud and your requirements, do we understand correctly that you do not require a SaaS service? Do we understand correctly that SaaS service is not required and hence should not be costed in the bidder's quotation ?"

Answers to question no. 15

The contracting authority requires the provision of a PaaS and IaaS based solution. The contracting

authority considers that these concepts are sufficiently described in the tender documents, including their annexes (in particular in the context of the answers to questions 13 and 14).

The contracting authority does not require a SaaS service as it considers that all the expected modules, functionalities and components of the solution are clearly described in terms of the Scope of the Contract which are functionally interlinked and form a single functional unit operating on the basis of PaaS and IaaS.

The contracting authority refers the interested party to the document 'Minutes of the 1st and 2nd rounds of pre-market consultations', in particular the conclusions to questions 3 to 5.

Question no. 16

"Is there a feasibility study? If so, who is the contractor? How can we get one ? Will the feasibility study be available to interested parties well in advance of the deadline for submission of tenders?"

Answers to question no. 16

The contracting authority does not have a feasibility study or any other similar document prepared for it by an external entity in connection with this contract.

The contracting authority has prepared the documents published under this contract in-house, the feasibility of the subject matter of the contract was verified by the contracting authority through a preparatory market consultation.

The contracting authority refers the interested party to the document 'Minutes of the 1st and 2nd rounds of pre-market consultations' and the document 'Minutes of the 3rd round of pre-market consultations'.

Question no. 17

"The contractual penalty of 10% quoted above is manifestly disproportionate. The above would mean that in the event of a delay of 10 days in meeting any of the integration points, the implementation would be provided by the successful bidder free of charge (10x10= 100% discount). Considering that such a penalty is liable to restrict competition, would the contracting authority not consider aligning this penalty with the law so that it is proportionate to the obligation being secured?"

Answers to question no. 17

Paragraphs 4.6.1 et seq. of the contract provide for a contractual penalty, 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.

Question no. 18

"Area: Schedule and its implementation and general contradiction

Supporting Information:

We consider that there is a contradiction between the requirement defined in the document:

- "03. Attachment No.2 SP - Attachment No.1 - Description of the subject of the contract" item 4.0 Integration Interfaces,

- between document '07. Annex No. 6 of the SP - Annex No. 5 - Schedule - Schedule" and

- Contract clause 7.2 "The Customer agrees to approve or modify this Implementation Schedule as appropriate within 14 (in words: fourteen) days from the date of its receipt"

Question: How then are we to view the defined deadlines?

Annex 2, point 4.0 ... "Separate analysis" ...

Schedule ... "Not to be exceeded"

Contract 7.2 ... "Option to approve or modify" ...

Answers to question no. 18

The contracting authority considers that the documents referred to by the tenderer are not contradictory. The contracting authority has modified the situation within the draft service

contract to allow for a change of schedule.

The contracting authority draws the attention of the tenderer to clause 7.2 of the service contract, which states:

“The Provider undertakes to provide the Customer with all IT Solution Services pursuant to Clause 3.1. of this Agreement, in particular in accordance with the Schedule, which specifies the binding deadlines for the implementation of individual Modules of the required Platform. The Parties are entitled to adjust the Schedule for the implementation of individual Functionalities comprising these Modules s by agreement during the term of this Agreement, after the implementation analysis has been carried out, whereby the Provider shall propose the implementation schedule to the Customer after the implementation analysis has been carried out, but no later than within 14 (fourteen) days after the confirmation of the result of the implementation analysis by the Customer in the Acceptance Protocol, the draft of which forms Annex 7 to this Agreement. The Customer undertakes to approve or modify this implementation schedule accordingly within 14 (fourteen) days from the date of its receipt.”

Question no. 19

“Area: Criterion K3

Background:

Criterion K3 should assess those responsible for implementation and operation by the bidder. In the implementation phase, it is a long-established and practice-proven practice in IT projects that the responsible roles are simultaneously the project manager and the main architect of the solution. On the other hand, in the phase of transition to routine operation, the Accountant and the Key Consultant become the responsible persons.

Question: We request to expand in criterion K3 the group of persons who will be present at the interview. These are, as a minimum, the following roles:

- Principal Solution Architect*
- Key Consultant(s) for specific areas*
- Accountant”*

Answers to question no. 19

The contracting authority shall not accept the tenderer's proposal. The contracting authority considers that it is fully within its competence to determine what it considers, based on its experience and needs, to be added value on the basis of which points can be obtained within the given qualitative criterion, provided that its procedure does not violate its obligations defined in particular, but not exclusively, in Section 10 of Act No. 343/2015 Coll. on Public Procurement.

The contracting authority also draws the attention of the tenderer to the fact that the responsibilities for the performance of the subject matter of this contract are defined for the purposes of this contract in the document 'SLA Support and Penalties (Service Level)' and not by the experience of the tenderer in question.

Question no. 20

The supporting information:

In criterion K2, the contracting authority requires the following for a reference to be ranked among the 4 that will be evaluated and scored in this criterion: 'The minimum annual number of dumps that the solution processes within its database must be at least 3 000 000 dumps over a 12 calendar month period (actual dumps processed, not programmed but not recorded anywhere in practice)'. Furthermore, criterion K2 defines a scoring system for a given number of dumps, ranging from 3 000 000 to 8 500 000 dumps in 12 calendar months (dumps actually processed, not programmed but not recorded anywhere in practice)'.

In the document 'Information on municipal waste management, separate collection and strategic prospects for the future', which was discussed on 24.6.2021 at the Municipality of the Capital City of the Slovak Republic of Bratislava, the following information is provided, inter alia:

Quoting from the document in question, the information is given on page 6. Table 4 Number of services from 2016 to 2020

Počet obslúh v ks	2016	2017	2018	2019	2020
Zmesový komunálny odpad	2 694 763	2 736 819	2 726 418	2 812 559	2 813 804
Triedený zber papier	480 638	509 286	527 876	597 314	627 523
Triedený zber plasty	450 752	473 980	487 360	559 948	592 012
triedený zber sklo	121 580	129 279	133 436	155 272	164 745
Triedený zber BRO		122 359	246 302	272 217	304 614
Počet obslúh celkom	3 747 733	3 971 723	4 121 392	4 397 310	4 502 698
Počet obslúh triedeného zberu	1 052 970	1 234 904	1 394 974	1 584 751	1 688 894
Podiel triedeného zberu	28,10%	31,09%	33,85%	36,04%	37,51%

This data shows that the total number of discharges by the contracting authority is above the threshold of 3 million discharges per year. At the same time, it can be clearly seen that:

- the number of Municipal Mixed Waste Disposals is stable at 2.8 million discharges per year and the upward trend is minimal, at +0.05% per year*
- sorted separate collection has an increasing tendency, but its increase is at +2.34% per year*
- From the above, it is clear that the total number of dumping at the level of 4.5 million dumping per year will increase by an average of 115,000 dumping per year.*

Our calculation is that over a 6 year period this number can mathematically increase by approximately 690,000 tipping points over a 6 year period, so that today's 4.5 million dumps + 690,000 increase equates to 5.19 million dumping points per year. At the same time, it is clear that the number of 2029 level discharges will be below the 6 million per year threshold.

Question: The tenderer requests the Contracting Officer to justify why the K2 criteria levels of individual spills are at, up to 3mil, from 3mil to 5.5mil, from 5.5 to 8.5, and above 8.5mil spills per year.

According to the tenderer, the individual tipping levels should correspond to the total tipping numbers of the contracting authority as indicated above and a derivable trend of their development up to 2029, which will correspond to the information provided in the present document.

According to the tenderer, it is necessary to modify the boundaries of the evaluated intervals for the number of dumps per year, as we consider the evaluation system of criterion K2 in its current state to be discriminatory."

Answers to question no. 20

The contracting authority has set the benchmarks for criterion K2 on the basis of its current needs and forecasts.

Based on its internal calculations, the contracting authority already in 2023 records a maximum number of services of approximately 8 111 475 services last 12 months.

At the same time, the contracting authority has determined this figure on the basis of the number of dumps it currently carries out in the course of one calendar year. year.

According to the contracting authority, it is clear that the benchmarks set under criterion K2 are already reasonable and proportionally correct, since the highest number of points can be obtained if the tenderer's solution has been deployed in an environment in which it has processed such a volume of data (data from 8,5 million dispatches) as the number of dumpings predicated by contracting authority already in 2023. The contracting authority considers that the benchmarks set by the contracting authority cannot be considered discriminatory, as the value of the highest benchmark is also based on real numbers and predictions of the contracting authority.

The contracting authority draws the attention of the interested party to the fact that its question does not take into account the increase in the number of tipping points that the contracting authority foresees on the basis of its strategic plans, within which it plans to increase its activities beyond the current situation also outside the territory of Bratislava and which the contracting authority does not consider appropriate or necessary to disclose at the current stage of the public procurement process.

The contracting authority draws the attention of the interested party to the fact that in formulating its question it assumes a linear growth in the number of services and above all uses data from 3 to 7 years ago to defend it. The bidder's recalculation does not reflect (among other things) the introduction of the collection of household biodegradable kitchen waste, which was introduced in the Capital City of Bratislava from 2022.

Question no. 21

"Area: Integration Solutions and Platform

Supporting information:

From the bidder's perspective, there are a number of duplicate agendas and illogical transfers of information flow in the bid documents for the subject RFP. We will give a few examples, e.g. Contract Register, Collection Points Register, etc.

In addition to duplicate, sometimes even triplicate, records, functionalities are defined by the contracting authority to send multiple flows of information, which does not make logical sense to us. This setup of logic and functionality is illogically complicated, redundant, generates potential errors and is more time consuming.

From an architectural point of view, a system designed in this way is highly inefficient, redundant processes are used, and there is no clearly defined information flow and no basic codebook for the different areas and functionalities.

Q: Is there a possibility to fully replace some of the integration interfaces and/or modules into the Platform itself?"

Answers to question no. 21

The contracting authority considers that the interested party does not cite any specific instances in its question where the above duplications or triplications would occur.

The contracting authority has set its requirements for the evidence (as well as for all other functionalities and modules) on the basis of its own needs arising from the specificities of the waste management area. The requirements for the required solution set out in the tender documents and in particular, but not exclusively, in the description of the subject-matter of the contract, their specific wording and complexity are adapted to the requirements of the waste management sector.

The contracting authority would like to point out that the tenderer has formulated the description of the subject of the contract on the basis of its own needs and in such a way that the offered solution is able to digitise and optimise its current processes.

In the light of the above, the contracting authority draws the attention of the tenderer to the fact that it has consulted the relevant market in the framework of the pre-market consultation and refers the tenderer to the answers to questions 13 and 14 above.

The contracting authority requires all integrations and modules to be implemented as described in the description of the contract and accepts any technological solutions offered by the tenderer that are consistent with the description of the contract as well as with all other annexes and parts of the tender documents.

Question no. 22

*"Area: feasibility study
Background:*

From the bidder's perspective, we consider that the project "Digitization of the fleet, the system for planning the collection and the electronic registration and confirmation of the dumps" is, in size and scope, on the borderline of a medium to large-scale IT project. At the same time, we consider that such a project cannot be implemented without the existence of a "Feasibility Study" or "Project Definition".

Question: Can you please answer us whether a "Feasibility Study" or "Project Definition" has been carried out by the contracting authority for the project?

If so, can you provide / make available to us the document in question?

Answers to question no. 22

The contracting authority does not have a feasibility study or any other similar document prepared for it by an external entity in connection with this contract.

The contracting authority has prepared the documents published under this contract in-house, the feasibility of the subject matter of the contract was verified by the contracting authority through a preparatory market consultation.

The contracting authority refers the interested party to the document 'Minutes of the 1st and 2nd rounds of pre-market consultations' and the document 'Minutes of the 3rd round of pre-market consultations'.

Sincerely

v. r.

Mgr. Adam Kašák
Head of Procurement

