Belgrade, 17/01/2017

**CONTRACTING AUTHORITY’S CLARIFICATIONS No. 4**

**"NOx emission reduction at the TPP Nikola Tesla Unit A4"**

**Publication ref: EuropeAid/137765/IH/WKS/RS**

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| **No.** | **Question** | **Answer** |
|  | Volume 1, Section 4. Form 4.6.2.2. Design Information Schedule. In point 3 and 5 and 7 Single Line Drawings are mentioned. Our understanding is that with terminology of single line drawings you identify general arrangement drawings and/or P&IDs to present the solution proposed by bidder. Please confirm. | Single line drawings are assembly drawings in vertical and horizontal cross-sections of the certain parts of the boiler unit (firing system, hot air system- OFA…) with mutual arrangement of its main components.  P&IDs are not Single line drawings. |
|  | Volume 3, chapter 7.1.1.5. Electrical and I&C. What control voltage is preferred for actuators, switches etc.? Because 110 VDC is present at field (acc. to RfQ) and AUMA MATIC or equivalent are required for flaps. Problem is that AUMA MATIC has standard control signal for 24 VDC; modification to 48 VDC, 60 VDC, 110 VAC and 220 VDC is possible but not to 110 VDC. Please clarify. | For switches with non-potential contacts it is preferred to use 110 VDC.  If Matic board has 24 VDC as only solution (since it has opto couplers or similar electronics) then 24 VDC can be used. Distribution cabinets (HB) in electronic room that contains PLC relays for galvanic separation are supplied with 110 VDC and with 24 VDC as control voltages toward field equipment. |
|  | Volume 3. Employer’s Requirements and Volume 5. Designed Documents including Drawings:  In order to be able to prepare the best technical and financial offer and therefore support the subjected project on the best way leading to the best performances, please clarify/comment/confirm/provide answers/documentation needed for the following:  • Attachments: 1. Tesla A4\_TTQs\_2016-11-18: Technical Questions  • Attachments: 2. Tesla A4 Request for Additional Documents – Update 18.11.2016 | This question has been resubmitted. Please refer to Clarifications No.1 answers from No.52 to No.56. Please note that a lot of requested documents are not available. |
|  | As the bidder is missing clarification meeting in this Tender, please provide us with the answer about prescribed procedure in case basis data for Performance Guarantee will change from the Bid submission/Base Date till Commencement of Works due to reasons not attributable to Contractor, as this is not clarified in the drafted T&C’s? Is it allowed to have later amendments or use the Clause 16.2.? | The Applicable procedure regarding Performance guarantee is elaborated under sub-section 4.2 of Particular and General Conditions of Contact (FIDIC Yellow Book).  Please note that the Contracting Authority cannot act as legal counsellor when it comes to provision of legal interpretation of standard FIDIC conditions of contract. |
|  | Doc. Particular conditions, Chapter 1.13 Compliance with Law, Page 7 – The contractor shall give notices, obtain all permits and licenses, as required by the Laws in relation to the design, execution and completion of the works and the remedying of any defects; and the Contractor shall indemnify and hold the Employer harmless against and from the consequences of any failure to do so. Official question / statement to the client: Please confirm our understanding that the Works to be performed under the subject Contract are to be considered an adaptation works with the meaning as per Art.2 point 34 of the Law on Spatial Planning and Construction?  a) If yes, could you please confirm that the End Recipient has obtained the opinion by the competent Ministry confirming the stance?  b) If yes, could you confirm that Permit on execution of construction works has already been issued by the competent Ministry in in accordance with Art 145 of the Law on spatial Planning and Construction?  c) If not, please confirm that the construction permit for the Works shall be obtained in the course of obtaining the permit for the entire project – Modernization and upgrade of Unit A4 | The Works shall be performed in line with Article 145 of the Planning and Construction Law of the Republic of Serbia. Under the said article, no building permit is required, and works are performed based on the order approving the performance of such works.  Obtaining of necessary opinions and permits for the performance of foreseen works under this project falls under the obligation of the End Recipient and shall be implemented in line with the Planning and Construction Law. |
|  | Doc. Particular conditions, Chapter 1.13 Compliance with Law, Page 7: The Contractor shall give notices, obtain all permits and licenses, as required by the Laws in relation to the design, execution and completion of the Works and the remedying of any defects: and the Contractor shall indemnify and hold the Employer harmless against and from the consequences of the failure to do so. Official question / statement to the client: If it is your understanding that the Works are to be considered as reconstruction with the meaning as per Art 2 point 32 of the Law on Spatial Planning and Construction (hereinafter LSPC) please state which of the following documents / designs / consents are already available:  - Conceptual solution (Art. 117a LSPC)  - Location conditions (Art. 53a LSPC)  - Preliminary design (Art. 118 LSPC)  - Report by the Revision Commission on Preliminary Design (Art. 131 LSPC)  - Design for Construction Permit (Art. 118a LSPC)  - Technical Control on Design for Construction permit (Art. 129 LSPC)  If some of the stated document is not available at the moment, please confirm that all of the documents shall be available latest by the Commencement Date and shall be handed over to the Contractor. | Please refer to answer No.5. |
|  | Doc. Instructions to tenderers, Chapter 12.2.1, Page 12: Please note that before the contract commencement date the tenderer must demonstrate that he possesses proper company licenses according to the Serbian Law for the engineering and construction works.As per paragraph of the Clause 12.2.1 of the instructions to Tenderers, the tenderer must demonstrate that he possesses proper company’s licenses according to the law on Spatial Planning and Construction before the contract commencement date. Furthermore, Clause 12.2.2 provides that an economic operator may relay on third parties when proving the required capacities. In that respect could you please confirm that a tenderer, i.e. contractor when fulfilling the requirements in respect to the licenses necessary for performing the design and construction works under subject Contract? | This assumption is incorrect; contractor cannot rely on capacity provider when it comes to fulfilment of legal preconditions imposed by national legislation of the Republic of Serbia in case of execution of prescribed works. |
|  | Although X has submitted significant amount of Clarification questions starting from November the 14th, yet no answer has been announced. X understands that Tender Document stipulates no obligation form Contracting Authority to answer timely before the Dead Line -12th of January 2017, however our previous experience in EU IPA Funded Projects and similar, shows different praxis. Contracting Authority was always coming forward in clarification process in sense that clarification answers used to come significantly before the Dead line.  In order to have the best technical solution followed by appropriate commercial approach, all in fulfilling the aim of having a successfully finished project, each of the bidders needs relevant information on all the Tenderer’s subjects followed by the appropriate period of time needed for implementing it into their best offers.  Having in mind abovementioned, we are kindly asking you to accelerate answers announcements and extend Bidding Time for 3 (three) weeks till 13th of February 2017. | The deadline for submission of tenderers was already extended by means of Corrigendum to Tender Dossier/Contract Notice No.1. No further extensions of the submission deadline are expected. |
|  | Referring to required financial statements verified by chartered accountant is it acceptable to submit audit report including financial statements in it. | Yes, it is acceptable. |
|  | Should works in hand be listed in form 4.6.4.1 with relevant experience or it should be given in separate table? | Works in hand should be specified as part of the Form 4.4, section 4.4.3. |
|  | In Volume 1, Section 1 – Tender Form, in point 3 Tenderer’s declaration it is foreseen “As part of their tender, each legal entity identified under point 1 of this form, including every consortium member, as well as each capacity-providing entity and each subcontractor providing more than 10% of the works, must submit a signed declaration using this format, together with the Declaration of honor on exclusion and selection criteria (Annex 1) (insert Form a.14)”.  Should, within Tenderer’s declaration, which every consortium member, each capacity-providing entity and each subcontractor providing more than 10% of the works is obliged to submit, they provide all points, from 1-14, or the points 3 and 4, referring to contract price and discount, can be excluded from the declaration of all others except the Tenderer – Leader of the Consortium? | All Declarations must contain all listed points. |
|  | Should the form 4.4 – Financial statement, be submitted, besides for each consortium member, also as a summary for consortium in whole?  Should any other form be submitted as summary for the whole consortium? | Each member of a joint venture/consortium must fill in and submit every form, including any supporting information/document requested in the form itself (e.g. form 4.4., Financial statement: copies of the company’s certified statements of account for the previous three years, reference/certificate about the financial situation of the company and its access to credit facilities). |
|  | If the tenderer is private legal entity (e.g. limited liability company) should he submit only Legal entity form for private/public law body with legal form, or he should submit form Legal entity for Natural persons as well filled with information about legal representatives (natural persons) of the company? | No, it is not required to submit Legal Entity Form for responsible natural persons representing particular legal entity. |
|  | Volume 2. Section 2. 11.4.b.  Which criteria’s and parameters will be used by Engineer related to price reduction in case of Clause 11.4.b.?  Is there a final limit (CAP) in the price reduction that cannot be exceeded by Employer? | Adjustments deemed necessary will be executed in accordance with this contract, in line with sub-clause 3.5 of General conditions (FIDIC Yellow Book).  Regarding general rules and exceptions to the limitation of liability, please refer to sub-clause 17.6 of General conditions (FIDIC Yellow Book). |
|  | Volume 2. Section 2. 11.4.c.  Could you please explain what will be considered as criteria’s for “depriving the Employer of substantially the whole benefit of the Works or any major part of the Works” for which the Contract can be terminated per clause 11.4.c.?  Please explain in more details “substantial benefit of the Works” and “major part of works” per Contract and Tender Documents?  Please explain if final limitation of liability and exclusion of consequential loss from point 17.6. will apply in case of 11.4.c. and 15.2.? | Please note that the Contracting Authority cannot act as legal counsellor when it comes to provision of legal interpretation of standard FIDIC conditions of contract. |
|  | Volume 2. Section 2. 15.2. What if the Contractor doesn’t provide permission in accordance with the last paragraph in Clause 1.10. to the other entities from last two paragraphs in 15.2, or the usage of this documentation is prohibited under valid contract or law?  What will be considered as “near the site”?  Which criteria’s and parameters will be used for removal decision and selling price, by Employer, in case of last two paragraphs per Clause 15.2.? | Decision could be made only after assessing actual circumstances and establishing facts in concrete case.  Please bear in mind that sub-clause 1.10 of General conditions has been amended by means of corresponding sub-clause of the Particular conditions.  There is no strict definition of the term “near the site” nor parameters for selling price, hence they will be determined in line with sub-clause 3.5 of the General conditions. Reason for removal decision is commonly associated with contract termination. |
|  | Please, advice about the content of the document which should be submitted with the Bid, as an evidence that the tenderer will have at disposal the resources necessary to perform the contract per point 12.2.2. Instruction to tenderers (Capacity providing entities).  Are we obliged to submit any kind of agreement or similar document or legal link between those companies and tenderer? | When engaging capacity-providing entities, the tenderer must produce a letter of undertaking issued by the entity placing its resources at tenderer’s disposal.  Furthermore, the tender should include a separate document providing data on this third entity for the relevant selection criterion. For details, please refer to 12.2.2 of Instructions to tenderers.  In respect of capacity providing entities, please also refer to answer No. 41. |
|  | As all clarifications during the tendering end evaluation process will be deemed to form and be read and construed as part of the future Contract, we are proposing to hold clarification meeting, between Contracting Authority and all bidders, to discuss and clarify open questions as all of them will essentially influence future Contract and execution of the whole project. | This kind of meeting is not foreseen under the tender procedure. |
|  | Volume 1, Section 4, Additional notice to Tenderers, Having in mind written in Chapter 7 - “Each member of a joint venture/consortium must fill in and submit every form”, does it mean that legally authorized person from each member of a joint venture/consortium, by default, verifies and signs every forms on behalf of his company?  If it is, is it allowed that legally authorized person (from a member) to empower another person (from a member) to verify and to sign every forms on behalf of a member of a joint venture/consortium?  If it is allowed, whether legally authorized person (from a member) empower another person (from a member) by the Power of Attorney (Form 4.3) or by the particular statement? | The legally authorized person from each member of a joint venture/consortium verifies and signs every form on behalf of his company, except for those forms that can be submitted for the consortium as a whole, in that case, a person duly authorised by all consortium members should sign the relevant forms on behalf of the consortium. |
|  | Volume 1, Section 2, Appendix to the Tender form for a work contract, Whether this document enclosed each member of a joint venture/consortium or only joint venture/consortium on behalf of all members?  In Chapter 3 “ Tenderer’s declaration(s) it is written: “As part of their tender, each legal entity identified under point 1 of this form, including every consortium member, as well as each capacity-providing entity and each subcontractor providing more than 10% of the works, must submit a signed declaration using this format”.  On which the declaration it relates? | The Appendix to the Tender Form should be filled in and signed by every consortium member. This note refers to the Tenderer’s Declaration, item 3 of the Tender Submission Form. |
|  | Volume 1, Section 2, Annex 1 – Declaration of honour on exclusion and selection criteria, Whether this document enclosed each member of a joint venture/consortium or only joint venture/consortium on behalf of all members? | As part of their tender, each legal entity identified under point 1 of Tender Form, including every consortium member, as well as each capacity-providing entity and each subcontractor providing more than 10% of the works, must submit a signed Tenderer’s declaration, together with the Declaration of honour on exclusion and selection criteria. |
|  | Volume 1, Section 2, Annex 2 – Appendix to Tender for a woks contract, Whether this document enclosed each member of a joint venture/consortium or only joint venture/consortium on behalf of all members? | The Appendix to the Tender Form should be filled in and signed by every consortium member. |
|  | Regarding the Subject and scope of works and delivery as defined in Volume 3, Employer’s requirements, please clarify if the Contractor is expected to prepare two sets of design documents according to Serbian Law on planning and Construction (Official Gazette of Republic of Serbia No. 72/2009, 81/2009, 64/2010, 24/2011, 121/2012, 42/2013, 50/2013, 98/2013, 132/2014, and 145/2014): Design for the execution of works (projekat za izvodjenje) and as-built design (projekat izvedenog objekta). In case it is expected to also prepare a design for the construction permit (projekat za gradjevinsku dozvolu), who will be responsible to organize technical control (tehničku kontrolu) of the said design as it is required by Serbian legislation prior submitting a request for the for the issuance of the construction permit (dozvola za gradnju). | Yes, the Contractor should prepare the Design for the execution of works (projekat za izvodjenje) and As-built Design (projekat izvedenog objekta), as well as other documentation and calculations defined under Volume 3, point *7.1.1. “Design, calculations and technical documentation*”.  In view of the type of works from the design in question, the Building Permit Design is not necessary, and thereby the technical control (under the Planning and Construction Law of the Republic of Serbia). However, the End Recipient has foreseen, in line with Volume 3, point *7.1.1. Design, calculations and technical documentation”*, expert control of the designs in the manner stipulated by the point in question. |
|  | According to Tender Dossier, Volume 1, Section 1, point 1.2, Signature of the contract will take place at 30 April 2017. At the same time, according to time schedule presented in Volume 3, point 1.3, Contractor will have 80 days before beginning of an outage, that is planned for April/May 2017. For preparatory works.  This two statements are excluding each other. Vendor kindly asks for correct time schedule for project execution that would show dated and periods starting form contract signature. | Please refer to Clarifications No.2 answer No.27. |
|  | According to the statement from your Works Contract Notice (Serbia – Belgrade: IPA – NOx emission reduction at the TPP Nikola Tesla Unit A4 2016/S 206-372442) i.e. “Please note that before the contract commencement date the tenderer must demonstrate that he possesses proper company licences according to the Serbian law for the engineering and construction works”.  Please specify the date on which the tenderer must posses the engineering and construction work permit/licenses. | Before the contract commencement date the tenderer must demonstrate that he possesses proper company licences according to the Serbian law for the engineering and construction works. |
|  | Futher to your tender “Serbia-Belgrade: IPA – NOx emission ate the TPP Nikola Tesla Unit A4 2016/S 206-372442”we would like to request and extension of time for the tenderer submission of 1 month from the 25th January to the 24th of February 2017. | Please refer to answer No.8. |
|  | With reference to the tender no. EuropeAid/137765/IH/WKS/RS on “NOx emission reduction at the TPP Nikola Tesla Unit A4”, we would like to request you to clarify some issues of Tender Guarantee. Namely, based on Article 15 of the Instructions to Tenderers and TENDER GUARANTEE FORM, to the tender has to be included Tender Guarantee which must remain valid for 45 days beyond the period of validity of the tender (90 days after the deadline for submitting tenders), including any extensions, for us it means that Tender Guarantee must be valid at least 135 days from the deadline for submitting tenders and if the Contract Authority asks for extension of the tender validity, Tenderer must also extend Tender Guarantee validity for appropriate time (if it still wants to take part in the tender). In tender Guarantee guarantor requires exact date of Tender Guarantee validity, the guaranty must be valid for one year after the deadline for submitting tenders. Such wording results in much longer validity period and as a consequence in a much higher costs of guarantee, which is unnecessary. Therefore we suggest to introduce below provisions in the guarantee wording:  “We note that the guarantee will be released at the latest within 45 days of expiry of the tenderer validity period, including any extension, in accordance with Article 15 of the Instructions to Tenderers and in any case at the latest on… (one year 135 days after the deadline for submitting tenders).  In case of the extension of tender validity will be needed we will also extent Tender Guaranty validity for the required period. | TENDER GUARANTEE FORM remains unchanged. |
|  | Volume 3, In the Chapter 7.1.3.1. Deliverables, on page 23. in Item XV, among other things is stated: “…connector boxes for each supplied actuator…”  In the Chapter 10.2.2. Scope of Electrical and I&C works, on page 38. In Item 10.2.2 , among other things is stated: “Modulating actuators shall be wired and connected directly from actuator to the designed junction box and distribution board. On-off actuators shall be supplied with additional 250x250mm junction boxes and connected to the actuator with plug connectors allowing fast disconnecting.”  It is necessary to clarify this nonconformity. | Statement in 10.2.2 is correct. Yes, modulating and on-off actuators are field-wired differently. |
|  | Volume 1, Section 4, FORM 4.6.1.3, Having in mind that is no necessary to provide required details for subcontractors that are <10% of the Contract Price, is it necessary to provide Curriculum Vitae for this subcontractors Key staff for their part of works?  If it is, whether in Form 4.6.1.3 need to fill in all data, including name of this subcontractor as Company/organization? | Please bear in mind that provision of sub-clause 3.3 of Instructions to tenderers in case of sub-contractors and suppliers providing less than 10 % of the works does not abolish tenderer to provide all forms and corresponding information requested in the Tender Dossier.  In line with corresponding note in the Instructions to tenderers, it is important to stress that the provision of information/documents requested per form 4.6.1.3 and 4.6.1.4 is mandatory only for the successful tenderer. |
|  | Doc. Employer’s requirements, Chapter 1.3 UnitA4 Major Overhaul, Page 4: Planned period of the Unit outage (from the unit “shut down“ to the unit start-up) is 150 calendar days, while unit stoppage is foreseen to take place in the period from April/May 2017 and the Start-up of Unit (return of the unit on grid) by September / October 2017. Official question / statement to the client: Taking in mind postponement of Bid submission, and period of 80 days for Project preparation works after commencement date, please define more precisely planned Date for Unit A4 stoppage. | Please refer to Clarifications No.2 answer no.27. |
|  | Referring to the form 4.6.1.2 is it acceptable for some positions to propose several candidates? | No, it is not acceptable to propose several candidates for one position. |
|  | In the form Legal entity – private/public law body with legal form, in the note on the top of the form it is required to attach copies of official supporting documents, among others “official gazette”. Is official gazette obligatory and if so could you please explain closely which document is that? | Aim of instruction note you are referring to is to illustrate which documents may be presented by the tenderer for substantiating information provided in the Legal entity form (e.g. official name, registration number, VAT number, place of registration etc.), in accordance with national legislation of the country in which entity is established.  Official Gazette is the document where in one country all laws, regulations, decisions, tenders and official statements are printed for public knowledge. |
|  | Referring to the request that all pages of the offer have to be numbered, is it allowed numbering to be in similar manner as the tender dosier (e.g. Volume 1 page x/y, Volume 2 page x/y) or offer in whole should be numbered consecutively (1,2,3….x)? | The offer should be numbered consecutively. |
|  | Where copies of documents are demanded to be submitted with the offer is it acceptable to submit plain (not verified) copies? | Yes, it is acceptable. |
|  | Is the request from point 3.4 in Volume 1 Section 1 that “Tenderers must provide declarations to the effect that they are not in any of the exclusion situations listed in section 2.3.3 of the Practical Guide” fulfilled by only submitting signed “Declaration of honor on exclusion criteria” given in tender dossier? | Yes, Declaration of honour on exclusion criteria is to be filled in and signed for this purpose. |
|  | Referring to the Volume 1 Section 1, point 12.1.1.1 and request “The tenderer must indicate whether this equipment is owned, hired or used by a subcontractor. Manufacturer’s documents fully describing the equipment must be submitted with the tender” in the case of fully operated equipment for which Manufacturer’s documents are not available is it acceptable to provide alternative document e.g. Tenderers Statement providing all relevant information about the equipment? | Tenderer’s statement signed by its authorized representative may be considered as alternative in case of justified absence of Manufacturer’s documents describing equipment. |
|  | Regarding request from point 12.1.1.1. in Volume 1/Section 1 that “Tenderers must provide an undertaking signed by their representative certifying compliance with this requirement. For more details, see point 2.3.1 Practical Guide” is there any required form/text of undertaking or it should be submitted as a free form containing all requirements stated in point 2.3.1 of Practical Guide? | There is no prescribed format, however Practical Guide, section 2.3.1 contains guidance being essential for understanding scope of compliance with rule of origin which needs to attested by means of tenderer’s statement. |
|  | In the Volume 1, Section 1, point 13.1 it is stated that “The currency of the tender is the EUR” and in footnote “The currency of the tender will be the currency of the contract and of payment”. Is the payment in EUR also valid for Tenderers companies established in Serbia? | Yes, the currency of the Contract and of all payments is EUR. |
|  | In the point 15.3 of the Volume 1, Section 1 it is required that “tender guarantee must remain valid for 45 days beyond the period of the validity of the tender, including any extension…”. Since in point 14.3 it is foreseen “The successful tenderer must maintain its tender for a further 60 days” should guarantee be valid 90 days from opening day + 45 +60 days or just 90 days from opening day + 45? | Please refer to Clarifications No.1 answer No.10. |
|  | Referring to Volume 1, Section 4, Forms 4.6.1 to 4.6.13 Technical Qualifications, should every member fill and submit separately all forms to the extent of its share of works, or Leader may fill those for Consortium in whole? This is especially concerning forms 4.6.1.4 – 4.6.3.2, 4.6.5 and 4.6.7 – 4.6.13? | Tenderer must comprise all information requested in the Tender Dossier. As specified in the Questionnaire, Volume 1, Section 4, Additional notice to tenderers, point 7, “Each member of a joint venture/consortium must fill in and submit every form.” In line with instruction provided under point 3, if a question does not apply to the tenderer (i.e. particular member of consortium/joint venture), ‘not applicable’ should be entered alongside with a brief explanation. |
|  | Work contract notice, Chapter 16 Selection criteria; Volume 1, Section 1, Chapter 3.3; Volume 1, Section 1, Chapter 3.5:  In Work contract notice is mentioned that If tenderers relies on other entities, it must prove to the Contracting Authority that it will have at its disposal the resources necessary to perform the contract.  In Volume 1, Section1, Chapter 3.3 is specified that only tenderer, member of a joint venture/consortium, every capacity-providing entity, every subcontractor providing more than 10 % of the works and every supplier providing more than 10 % of the works must certify that they meet conditions about Regulation (EU) N° 236/2014 and nationality.  In Volume 1, section 1, chapter 3.5 is specified that exclusion situation referred declarations to the effect that they are not in any of the exclusion situations listed in section 2.3.3 of the Practical Guide applies to all members of a joint  - If we rely on the resources, staff person or company that performs less than 10% of the works, which documents are required and acceptable as proof?  - Whether it is enough statement of engagement with the data of given company or person? | As stipulated in the Instructions to Tenderers, such entities, for instance the parent company of the economic operator, must respect the same rules of eligibility and notably that of nationality, as the economic operator.  In case of capacity providing entities, sub-clause 3.3 does not limit obligation to certify compliance with eligibility requirements based on value of provided works as in case of suppliers and sub-contractors. However, ITT also states following: Proof of capacity must be furnished at the request of the Contracting Authority, implying that submission of documentary evidences for capacity providing entities is on-demand.  Furthermore, it is requested that the tenderer should include a separate document providing data on this third entity for the relevant selection criterion. Tender form for a works contract (Volume 1, Section 2) should be used for that purpose as it already contains reference to capacity providing entities, dedicated tables for presenting capacity in respect of relevant selection criteria as well as Tenderer’s Declaration and Declaration of honour. |