



**ATTIKO METRO A.E.**

**TITLE OF THE TENDER: LINE 4 – SECTION A’  
“ALSOS VEIKOU – GOUDI”  
RFP-308/17**

**CLARIFICATIONS DOCUMENT 2**

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## CLARIFICATIONS DOCUMENT 2

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This Clarifications Document 2 is issued in accordance with paragraph 6.3 of the Invitation to Express Interest. It contains responses to the questions that have been raised by the Bidders until 01.06.17, as well as clarifications on the Tender Documents.

The content of the Clarifications Document 2 are considered to be an integrated part of the Invitation to Express Interest.

### **A. RESPONSES TO QUESTIONS**

#### **Question 1**

Being potentially interested in participating in the Tender procedure for the Project "LINE 4 – SECTION A' ALSOS VEIKOU – GOUDI", kindly clarify to us the following items, concerning the engineering technical capacity of the bidder, as specified in paragraph 11.4.2:

- a) Does the minimum cross-section of 100m<sup>2</sup> referred to in item (b) concern the excavation cross-section (considered decisive, in our view) or the useful cross-section?
- b) Does the requirement for a minimum cross-section of 100m<sup>2</sup>, referred to in item (b) for tunnels, also concern stations constructed using the underground method or not?
- c) Does the minimum depth of 12.0m referred to in item (c) concern the depth of the general excavation (considered reasonable, in our view) or the useful depth of the lowest level?
- d) We consider that the term "urban underground projects" also includes private parking facilities in multistory buildings accommodating offices and shops, given that the experience requested in deep excavations – which is what the Project Owner is interested in – is acquired from these projects too.

Kindly confirm.

#### **Response 1**

- a) The minimum cross-section of 100m<sup>2</sup> referred to in item (b) concerns the excavation cross-section;
- b) The requirement for a minimum cross-section of 100m<sup>2</sup>, referred to in item (b), concerns underground tunnel excavation in urban environment using conventional mechanical means. The sections of the Stations constructed by the underground method shall be also taken into account;
- c) The minimum depth of 12.0m referred to in item (c) concerns the depth of an excavation;
- d) The term "urban underground projects" of item (c) also includes private parking facilities in multistory buildings accommodating offices and shops.

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### **Question 2**

- The scope of the Contract (Article 2 of the Invitation to Express Interest) includes the "Supply of the required Rolling Stock".
- In line with article 5.3 of the Invitation to Express Interest, it is stressed that in case of economic operators' association, each member of the association must be registered in at least one of the categories stipulated in article 5.1.
- The subject article 5.1 stipulates that "eligible to participate in the Tender shall be physical or legal entities or their associations, whose business activities involve **building, hydraulic and electromechanical works**".

The requirements of articles 5.1 and 5.3 entail that a rolling stock supplier, whose business activities do not constitute "projects", is not allowed to be a member of an association of enterprises interested in participating in the project.

For this reason, kindly clarify – and modify accordingly – whether, in accordance with articles 5.1 and 5.3, eligible candidates also include legal entities whose business activities consist in manufacturing and supplying rolling stock, as proven by virtue of the Chamber of Commerce pertinent Certificate.

### **Response 2**

See Clarifications Document 1, Chapter B', paragraph B1.1.

### **Question 3**

We understand that the provisions of articles 5.2.3.1 and 5.2.3.2 of the Invitation to Express Interest apply to foreign Contracting Companies whose business activities correspond to Register of Contracting Companies (M.E.EP.), class 7 exclusively, for building, hydraulic and electro-mechanical works.

Given that a Rolling Stock Supplier cannot be registered in M.E.EP., or in a corresponding Registry (for foreign entities), kindly confirm that the requirements for the financial and credit competence, as specified in article 5.2.3.1, and the technical and professional capacity, specified in article 5.2.3.2, for proving the professional activities do not apply to rolling stock manufacturers and, thus, rolling stock manufacturers are not required to submit the back up documentation foreseen in articles 10.4.3.1 and 10.4.3.2.

Thank you in advance for your attention and your immediate response.

### **Response 3**

See Clarifications Document 1, Chapter B', paragraph B1.2 and B1.5.

### **Question 4**

Paragraph 11.3.1 of the Invitation to Express Interest requires that the Candidates must prove their experience during the time period from 2010 up to 2017 in the following scope of works:

11.3.1.d. Commissioning of Metro ventilation systems.

11.3.1.f. Commissioning of Metro traction power systems.

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11.3.1.g. Commissioning of Metro signalling systems.

11.3.1.h Commissioning of driverless Metro trains.

On the basis of the above, it can be assumed that the Contracting – Construction Company – the General Contractor who executes Metro related Contracts, that include the aforesaid works – meets the aforesaid criteria just by submitting the relevant certificate prepared by the authorities concerned and not by invoking the experience of other specialized economic operators / suppliers of the systems specified above.

Kindly confirm.

### Response 4

In case the Candidate has executed - individually and not as a member of a Joint Venture - a Metro Works Contract that includes the aforementioned categories of works, and, neither an approved sub-contractor has participated in the execution of the subject works, nor has the Contractor relied on the competence of a third party that has executed the relevant work, then the entire experience is added to the Candidate. See also similar responses (response 3 of the Clarifications Document 1 and response 22 of this Document).

### Question 5

In paragraphs 11.3.1.h and 11.3.2.h of the Invitation to Express Interest, the wording "Commissioning of driverless Metro trains" does not correspond to the wording of table 2.8, i.e. "*Experience of Individual Candidate or Members of the Candidate in the Supply of driverless Metro Trains*". Kindly confirm that the wording of articles 11.3.1.h and 11.3.2.h prevails.

### Response 5

The title of Table 2.8 refers in general to the relevant scope. Column 6, which must be filled in by the Candidates, clearly refers to the time for completion of the trains commissioning. Therefore, there is not any discrepancy. See also addition B1.7, Chapter B of this Document.

### Question 6

Article 11.2 of the Invitation to Express Interest stipulates that the candidates must submit Certificates issued by Banks or similar Credit Institutions, lawfully operating in the member-states of the EU or the EFTA or in the member-states that have ratified the Government Procurement Agreement (GPA), proving the candidate's credit and financial competence for an amount of at least **eight hundred million EURO (€800,000,000.00)**. This obligation is presented in the two different version (Greek text and English translation) of the sample certificates (item 2) included in the Invitation as follows:

«Υπόδειγμα Α.1, σημείο 2: "2. Με βάση τη σημερινή οικονομική της κατάσταση μπορεί να πιστοδοτηθεί από την Τράπεζά μας υπό συγκεκριμένους όρους και προϋποθέσεις, μέχρι του ποσού των Ευρώ ..... το οποίο να χρησιμοποιηθεί:

- Για χρηματοδοτήσεις μέχρι ποσού Ευρώ ..... ( ..... )  
(Να συμπληρωθεί ολογράφως και αριθμητικώς)

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- Για εγγυητικές επιστολές μέχρι ποσού Ευρώ ..... (.....)  
(Να συμπληρωθεί ολογράφως και αριθμητικώς)

*Sample A.2, point 2: "2. Our Bank has approved, under the terms and conditions determined by our Bank, the following credit limits in favor of the above company:*

- *For financing, the limit of EURO..... (.....)*  
*(To be filled in full and in numbers)*
- *For letters of guarantee, the limit of EURO..... (.....)*  
*(To be filled in full and in numbers)*

Kindly confirm which of the two versions is in line with the awarding authority, so that there can be a harmonization between the Greek and the English text of the sample certificates of the Invitation.

### **Response 6**

See Supplement B1.3, Chapter B of this Document.

### **Question 7**

Article 11.4 "Design Team" makes no clear reference to whether the bidders must submit the European Single Procurement Document (ESPD). In view of the fact that the associated designers are considered to be third party providers of special technical competence, kindly confirm that the ESPD must be submitted as far as the associated designers/engineering firms are also concerned.

### **Response 7**

The Associated Designers must also submit the ESPD document, since, in line with article 11.4.1 of the Invitation, they must meet the preconditions for participation stipulated in article 5.1 that are in effect for the candidates too; moreover, the associated designers provide the Candidate with their experience in the engineering scope and they are evaluated as to their experience.

### **Question 8**

As regards the provisions of paragraphs 11.3.1.h and 11.3.2h of the Invitation to Express Interest and taking into consideration that the subject criteria are primarily met by the suppliers of the critical equipment (METRO driverless trains), who have commissioned driverless METRO trains and who are not contracting firms registered in the Registry of Contracting Companies, while, apparently, it is not required for those providing the specific competence to be registered in this registry in order to prove and certify their professional capacity in this field, we consider that the special competence stipulated in paragraphs 11.3.1.h and 11.3.2.h can be provided on behalf of third parties/economic operators, which are not registered in the Registry of Contracting Companies; their registration in a General Commercial Registry in the country where they are established must suffice. Therefore, adherence – on their part – of articles 5.2.1, 5.2.2 and 5.2.3, 10.4.3.1 and 10.4.3.2 of the

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Invitation to Express Interest is not required. Given that the aforesaid assumption is the only compatible one with the principle of seeking for the widest possible range of competition and proportionality, kindly confirm the above.

### **Response 8**

See Clarifications Document 1, Chapter B', paragraph B1.2 and B1.5.

### **Question 9**

Paragraph 10.4.2 states that the Candidates established in other member-states of the European Union must submit the declarations and certificates issued by the competent authorities described in Annex XI, Appendix A, Law 4412/2016 and that "*These certificates shall make reference to the back up documentation on the basis of which the registration had been effected, as well as the classification deriving from the subject Certificate, so that the correspondence as regards the contracting firms registered in class 7 shall derive (be presumed)*". Given that the certificates issued by numerous competent authorities make no reference to the back up documentation on the basis of which a contracting company is registered in the pertinent registry (including the certificate for the Company's registration in the Registry of the Contracting Companies), we understand that the bidder can refer to these back up documentation in the ESPD or even in a separate legal statement of his; otherwise we are heading towards the abolishment of the participation option of the contracting companies that are registered in a Registry but no reference to the back up documentation required for this registration is made on their registration certificate. Kindly confirm that listing in the ESPD of the back up documentation required for the registration – if they are not mentioned in the certificate – suffices.

### **Response 9**

The correspondence to contracting companies registered in class 7 of the Registry of the Contracting Companies must ensue (be presumed) from the certificates to be submitted by candidates established in other member-states of the European Union. In case the submitted certificates do not make reference to the supporting documents based on which this registration took place, in a manner to demonstrate the correspondence to class 7, then either the competent professional Registry must confirm that the economic operator is registered in the highest class of the professional Registry in the country of origin, or it must be confirmed that the economic operator has the ability to undertake a project with no budgetary limit. Otherwise, the supporting documents mentioned in articles 10.4.3.1(c) and 10.4.3.2(2) must be submitted. In any case, the tender committee is entitled to request additions and/or clarifications to the submitted information.

### **Question 10**

On the basis of the provisions of the Invitation to Express Interest and due to the lack of any special reference to it, we understand that for any public or private document or for any back up documentation that may be submitted and concerns foreign company, **it is not required** to have the form of a certified photocopy deriving for the legally certified original issued by the Consular of the Bidder's country; moreover, it is not required for the original document to have the "Apostile" stamp, in line with the Convention of Hague dated 05.10.1961 (as regards public documents).

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Kindly confirm.

**Response 10**

See Clarifications Document 1, Chapter B, paragraphs B1.3 and B1.7.

**Question 11**

In line with article 10, "Content of Sub-Envelope A' "Formal Qualifications" Sub-Envelope A' shall – at the penalty of disqualification - include the following data:

*The application to express interest for the participation in the subject Tender, to be signed by the Candidate's representative..."*

Kindly clarify whether the "application to express interest" must satisfy specific requirements as to its wording and content (in this case, the provision of a sample would be imperative) or whether each candidate is to compile his application by himself, without any particular requirements as regards its content.

This application is submitted in due time by our company in line with the provisions of article 6.3 of the Invitation regarding the subject project.

On this occasion, we would like to point out the time period between 23.06.2017 - which is defined as the latest deadline for the issuance of the Clarifications Document by AM – and 30.06.2017 – which is the deadline set for the submission of the Envelopes with the Expression of Interest and, even the more so, those of Sub-Envelope B', in the requirements/provisions of the Clarifications Document. In view of the above, kindly provide as soon as possible any clarifications regarding the Essential Qualifications of the Candidates, the selection criteria and the back up documentation to prove same, so that Candidates can timely respond to any requirement. Otherwise, an extension should reasonably be granted to the deadline for the submission of the Envelopes to Express Interest.

Thank you in advance for your attention; kindly proceed to the appropriate actions.

**Response 11**

It is clarified that the application to express interest in paragraph 10.1 of the Invitation is not required to have a specific wording, as long as it responds to the requirements set forth in the aforesaid paragraph.

**Question 12**

Kindly clarify whether the technical competence (experience) submitted by an engineering firm, resulting from its participation in a joint venture scheme in a specific design category and without scope splitting is added by 100% to the members of the joint venture scheme. Taking into consideration the restricted time available for the preparation of the Envelope for Participation in the Tender, kindly provide us with your response on the above the soonest possible.

**Response 12**

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If splitting of the designs prepared by each engineering firm is not demonstrated in the relevant experience certificates, in a specific design category, then and only in that case the experience is added by 100% to each of the companies.

### **Question 13**

Paragraph 10.2 of the Invitation to Express Interest states that in case of an Association of economic operators, the Resolution of the Boards of Directors of the operators of the Association shall include for each member "*the percentage and the type of participation of each member in the association*".

Our understanding is that "type of participation" means the section of the project that each member shall undertake to execute (e.g. civil works, E/M works, trackwork, signalling, electrification, trains, etc.).

### **Response 13**

It is hereby confirmed that the phrase "type of participation" refers to the scope of the Project each member of the association will execute.

### **Question 14**

Paragraph 5.2 of the Invitation to Express Interest states that candidates must prove their competence for exercising their professional activity through the submission of the back-up documentation specified in paragraph 10.4 of the Invitation. In addition, in paragraph 5.3 of the Invitation to Express Interest, it is stated that in case of economic operators' association, the work categories, stipulated in paragraph 5.1, must be cumulatively covered, while each member of the association must be registered in at least one of the aforesaid categories.

Our understanding is that each member of the association of economic operators shall be evaluated in terms of the suitability to exercise its professional activity in connection with the type of its participation in the association, namely with the type of the project section it will undertake to execute as per the Resolutions of the Boards of Directors of the members of the associations (e.g. the member(s) to undertake to execute civil works shall be evaluated as to their suitability to execute their professional activity by proving their registration in the MEEP or in a similar registry of the country where they execute their activities in the categories of building and hydraulic works, the member(s) to undertake to execute E/M works in the category of E/M works etc.), while the association should cover cumulatively all the categories of the works of para. 5.1 of the Invitation to Tender.

### **Response 14**

Confirmed.

### **Question 15**

Paragraph 11.3 of the Invitation to Express Interest specifies the experience of the candidates in similar projects, the minimum requirements pertaining to this experience, while in case of an Association of economic operators, it is stated that the above experience can be covered cumulatively by the members of the Association.

Our understanding is that both the evaluation of the experience in similar projects and the evaluation of the minimum requirements related to this experience applicable to each member of the association shall be performed in connection with the type of the participation of each member in the association, namely with the type of the project section it will undertake to execute as per the Resolutions of the Boards of Directors of the members of

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the associations (e.g. the member(s) to undertake to execute civil works shall be evaluated in terms of their experience in the construction of underground tunnelling works using the Tunnel Boring Machine or conventional means or in the construction of underground METRO stations; the member(s) to undertake the execution of various E/M works shall be evaluated in terms of their experience in ventilation or trackwork or traction power or signalling or driverless metro systems), whereas the association should cover cumulatively the entire experience and the total of the minimum requirements related to this experience.

### **Response 15**

Confirmed.

### **Question 16**

Paragraph 11.4.3.1 of the Invitation to Express Interest specifies that in the Resolution of the Board of Directors of the candidate or – in case of an association, in the Resolution of the Board of Directors of the members of the association, reference should be made to the engineering firms/companies with which the candidate shall cooperate for the execution of all kinds of designs for the project.

Our understanding is that if a candidate selects various engineering firms/companies that satisfy the several license categories stipulated under paragraph 11.4.1 of the Invitation to Express Interest, then he shall state in the Resolution of the Board(s) of Directors the license categor(-ies) and the type of the design(s) that will assign to each of the engineering firms/companies he opted to work with.

In addition, our understanding is that each engineering firm/company shall be evaluated both as to the extent that it covers the license class specified in para. 11.4.1, and as to the required experience specified in para. 11.4.2 in connection with the type of license and the type of the design to be stated in the Resolution of the Board(s) of Directors of the Candidate, while the engineering firms/companies should cover cumulatively all the license classes specified in para. 11.4.1 and all the required experiences specified in para. 11.4.2.

Kindly confirm the above.

### **Response 16**

Confirmed.

### **Question 17**

In paragraph 11.4.2 (e), article 11 of the Invitation to the subject Tender you request the Design Team to prove that it possesses professional experience for the period 2002-2017 "...in the preparation of Trackwork Designs...".

Please clarify whether by this you mean that the Design Team must possess experience in the preparation of General Final Designs and/or Detailed Final Designs in the alignment of Metro tracks and tunnels, as well as in the alignment and layout of tracks in Metro stations and Depots.

### **Response 17**

It is clarified that the experience mentioned in paragraph 11.4.2 (e) about trackwork designs is not limited to trackwork for Metro networks.

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### **Question 18**

The documentation required to be submitted by the designers do not include the European Single Procurement Document (ESPD) for designers.

Please confirm that the aforementioned document is not required to be submitted by the designers.

### **Response 18**

See response to question No. 7 of this Document.

### **Question 19**

There is a discrepancy in the wording of Sample A1 (ΒΕΒΑΙΩΣΗ ΧΡΗΜΑΤΟΛΗΠΤΙΚΗΣ ΚΑΙ ΟΙΚΟΝΟΜΙΚΗΣ ΙΚΑΝΟΤΗΤΑΣ) between the Greek and the English text, as these Samples are attached to the INVITATION TO EXPRESS INTEREST, and more specifically in paragraph 2, where the following phrase is missing from the English text:

"μέχρι του ποσού των Ευρώ ..... το οποίο να χρησιμοποιηθεί"

#### Extract from the ENGLISH text

*Our Bank has approved, under the terms and conditions determined by our Bank, the following credit limits in favour of the above company:*

- *For financing, the limit of EURO..... (.....)  
(To be filled in full and in numbers)*
- *For letters of guarantee, the limit of EURO..... (.....)  
(To be filled in full and in numbers)*

#### Extract from the GREEK text

*Με βάση τη σημερινή οικονομική της κατάσταση μπορεί να πιστοδοτηθεί από την Τράπεζά μας υπό συγκεκριμένους όρους και προϋποθέσεις, μέχρι του ποσού των Ευρώ ..... το οποίο να χρησιμοποιηθεί:*

- *Για χρηματοδοτήσεις μέχρι ποσού Ευρώ ( )  
(Να συμπληρωθεί ολογράφως και αριθμητικώς)*
- *Για εγγυητικές επιστολές μέχρι ποσού Ευρώ (.....)  
(Να συμπληρωθεί ολογράφως και αριθμητικώς)*

We propose the attached English text (attachment 1), which is agreement with the Greek text in SAMPLE A.1.

Moreover, in paragraph 5 of Sample A1, reference is made to article 726 of the CIVIL CODE, while in previously requested Bank Certificates reference is made to article **729** of the CIVIL CODE.

Please confirm that the correct article is article 729 of the CIVIL CODE.

### **Response 19**

See additions B1.2 and B1.3 of chapter B herein.

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### **Question 20**

According to article 16 of the Invitation: "*The official language for the conduct of the Tender and the Contract to be signed is Greek. All back up documents, certificates and documents required to be submitted during the conduct of the Tender shall be in Greek. Should the original documents in question have been drawn originally in a language other than Greek, they should be accompanied by an official translation in Greek, which shall prevail*".

It is concluded from the above that it is accepted for foreign companies to submit some of the back up documents, such as resumes, the filled out tables of experience, the ESPD, directly filled out in Greek, as well as originals signed by the responsible persons, i.e. the executives of the companies as regards the BoD (article 10.2 of the Invitation to Express Interest) of the bidding foreign companies, as regards the tables of experience and the ESPD.

Please confirm.

### **Response 20**

It is confirmed that foreign candidates can submit back up documents directly in Greek.

Moreover, it is pointed out that the European Single Procurement Document (ESPD) is signed by all members of the administrative (including the Managing Director, in case of a Societe Anonyme), management or supervisory body of an economic operator, in accordance with the applicable statutory and regulative framework governing the economic operator. The person appointed by the BoD as representative for this Tender, who is not a member of the BoD, is not required to sign the ESPD.

### **Question 21**

After the addition to article 10.4 Back up documentation to prove competence for exercising the professional activity of the Invitation to Express Interest, i.e. the addition of paragraph 10.4.4 with Clarifications Document 1, and in order to avoid any misinterpretation, we believe that the last paragraph of article 10.4.3 "*It is hereby clarified that in case of an Association, the aforesaid back up documentation shall be submitted for each member - company of the Association*" must be supplemented as follows:

*It is clarified that in case of Association, the aforesaid back up documentation shall be submitted for each member - company of the Association, except for the rolling stock companies*".

### **Response 21**

We confirm that the said requirement does not apply to rolling stock companies, which must submit the certificate mentioned in paragraph 10.4.4, as the said paragraph was added via the Clarifications Document 1, Chapter B, paragraph B1.5.

### **Question 22**

We understand from response 3 of Clarifications Document 1 that when the company certificate for experience makes reference only to the participation percentages of each member of the Joint Venture that executed the Project, without defining the splitting of the various project categories per company, then each member of the Joint Venture can invoke the experience in the entire project, i.e. in each individual category as well.

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Therefore and in order to avoid any misinterpretations, we believe that the following phrase must be added in the last section of response 3: "If the certificate does not make any reference to the splitting of works but it also indicates each company's percentage of participation in the Joint Venture, then the entire project (all its categories) shall be regarded as experience belonging to each member of the Joint Venture".

Please confirm.

### **Response 22**

As per response 3 in Clarifications Document 1, in case the projects are executed by a Joint Venture, the certificates to be submitted in order to demonstrate the technical experience must make reference to the specific works executed by each member of the Joint Venture, given that the technical experience of a company that participated in projects as a member of a Joint Venture, shall be evaluated for the works it has executed in the subject projects, in combination with the works that this member intends to execute as a member of a candidate association (joint venture) in this tender. According to the same answer, in case a work category is jointly executed with other company (-ies), for which category the relevant experience certificate does not prove the splitting of the works that have been executed by each company at the level of a self-standing section of work, only then the subject experience is added 100% to each one of the companies that executed these works.

In view of the above and in order to facilitate the task of the Tender Committee and to avoid delays, the candidates are strongly reminded, in the application they will submit in the various Authorities in order to obtain the relevant experience certificates, to ask that the works each member of the Joint Venture executed -in case of Joint Ventures- be described in the relevant certificates.

### **Question 23**

As stated in paragraph 11.3.1, point f and 11.3.2, point d of the Invitation to Express Interest, the candidates must demonstrate that they are experienced in the commissioning of Metro ventilation systems.

Given that the technology – methodology for implementing tunnel ventilation (linear ventilation using axial fans) in road and railway networks is identical, if not more demanding, to the technology implemented in Metro tunnels, it is easily concluded that testing and, in general, the startup of the ventilation system in a Metro tunnel section are identical to those implemented in road – railway tunnels.

In view of the above and since the requirement to demonstrate the candidate's experience refers exclusively to experience deriving from Metro projects, we believe that the said requirement in the Invitation acts in a restrictive manner as to the wider participation of candidates.

You are requested to kindly re-examine the said issue and make the appropriate amendments to the said paragraphs, so that accepted is the experience not only from Metro projects, but also from projects related to road and railway tunnels.

### **Response 23**

Paragraphs 11.3.1.d and 11.3.2.d. of the Invitation to Express Interest remain as they are. This is due to the particularity of the Metro ventilation system, whose ventilation is not linear in the stations but rather 3-dimensional, neither can it perform by means of propulsion fans;

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the ventilation system performs mainly by large axial fans installed in special shafts adjacent to the stations and other additional ventilation systems. Moreover, the presence of the Platform Screen Doors system in stations further complicates normal operation, along with the management of fire and passenger evacuation related incidents. Besides, the requirements of the road and railway tunnels present significant differences in relation to Metro tunnels, as to their operational characteristics and their specifications (gas exhaust needs, different fire-loads, traffic regulation, different passenger evacuation scenarios, need for controlling temperature in Metro, special response in this particular case of driverless trains, etc.) both under normal operation and in emergencies and, thus, it is assumed that the experience in road and/or railway projects exclusively does not cover the required experience in Metro ventilation systems.

### **Question 24**

The Invitation to Express Interest and more specifically articles 5 and 11 make reference to the parties eligible to participate in the subject Tender and to the fact that these parties must prove that they possess the following qualifications:

#### ARTICLE 5 ELIGIBLE TO PARTICIPATE

5.1 Eligible to participate in the Tender shall be physical or legal entities or their associations, whose business activities involve building, hydraulic and electromechanical works and are established:

- a) in a member – state of the European Union, or
- b) in a member – state of the European Financial Area (EFA), or
- c) in third countries that have signed and ratified the Public Procurement Agreement (PPA), to the extent that the contract under award is covered by Annexes 1, 2, 3, 4 and 5 and the general notes of Appendix I of the aforesaid PPA, or
- d) in third countries that do not fall under the above items and have concluded a bilateral or multilateral agreement with the European Union on issues pertaining to the procedures for the award of public contracts.

AND

They prove that they fulfil the terms of this Invitation.

11.3.1 The candidates shall prove that they possess experience during the time period 2010-2017, in the following scopes of work.

- a. Boring of underground railway / road tunnels in urban environment using a Tunnel Boring Machine (TBM) of a section of 30m<sup>2</sup> as a minimum.
- b. Boring of underground tunnels in urban environment using conventional mechanical means of a section of 100m<sup>2</sup> as a minimum.

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- c. Construction of underground Metro stations or other urban underground works, (such as car park facilities) at a minimum depth of 12m., using the Cut and Cover or the Cover and Cut method.
- d. Commissioning of Metro ventilation systems.
- e. Construction of Trackwork.
- f. Commissioning of Metro traction power systems.
- g. Commissioning Metro signalling system.
- h. Commissioning of driverless Metro trains.

In view of the above, it is made clear that the members of the bidding association of natural or legal entities must be registered in class 7 of the Greek Register of Contracting Companies (M.E.EP.), for building, hydraulic and electro-mechanical works, on condition that these members originate from Greece or - in case they originate from a foreign country – they must prove that they are registered in a corresponding class and category. In addition, apart from the construction companies that must participate in this Association, companies too whose business activities extend to the field of signalling and rolling stock must also participate therein, given that they must prove their experience in the commissioning of Metro signalling system and the commissioning of driverless trains.

Moreover, article 5 stipulates as follows:

### 5.2.3.1 Credit and financial competence in order to prove the professional activity

Each Candidate must possess, as a minimum, the following, namely:

- i. Equities, whose value amounts to EURO 45,000,000.00 as a minimum. The amounts of the share capital whose payment and certification procedure has not been completed by the supervising authorities are not included in the aforesaid equities.
- ii. Real Estate property, whose value amounts to EURO 2,700,000.00 as a minimum. The real estate property shall include own-used and investment property, real estate property means land, land plots, buildings, mines, quarries and fields.
- iii. Mechanical equipment, whose value amounts to EURO 2,700,000.00 as a minimum. Mechanical equipment means Machinery and Transportation Means, related to the construction of technical works, including hardware, but not the remaining office equipment.
- iv. Fixed assets, whose value amounts to EURO 9,000,000.00 as a minimum.
- v. Sustainability Indicator:  
Total of Equities / Total of Liabilities > 0.4

Total of Equities means the value stated in "Liabilities and Share Holders' Equity" of the company's financial statement as "Total of

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Equities" further to the deduction of the Due Capital and the "Amounts intended for the Increase in the Share Capital".

Total of Liabilities means the sum up of the current and long-term liabilities of the Company, with the exception of the long-term liabilities not relating to bank borrowing, as these are defined in the chartered accountant certificate, minus the invoiced receivables certified by the chartered accountant.

vi. Sustainability Indicator:

Current Assets /Current Liabilities > 0.6, where

Current Assets, as indicated in the section "Assets", and

Current Liabilities, as indicated in the section "Liabilities".

The aforesaid requirements must be in line with the detailed provisions of Articles 99 and 100 Law 3669/2008, as amended and are in force.

Kindly provide us with the following clarifications, as regards the above, namely:

1. In the preconditions for the Companies originating from Greece, eligible to participate in the subject tender, why haven't you included their registration in class 7 – **Roadworks** (given that the most important section of the project concerns underground excavation of railway / road tunnels in urban environment using both the TBM and Conventional Mechanical Means) in such a way so as those companies originating from other countries, in which Registries of Contracting Firms are kept, be obliged to be registered in the category of railway projects and roadworks corresponding to the MEEP class 7?
2. As regards the member-companies of the bidding associations, which must prove that they possess experience in the commissioning of Metro signalling systems, should they also prove that they are experienced in both **the installation "and"** commissioning of a Driverless Metro Signalling System or just in the commissioning of a Driverless Metro Signalling System?
3. As regards the member-companies of the bidding associations, which must prove that they possess experience in the commissioning of Driverless Metro trains, should they also prove that they are experienced in **the design, construction, testing "and"** commissioning of ten (10) Driverless Metro Trains or just in the commissioning of ten (10) Metro Trains? In other words, as regards rolling stock, should the Candidate prove that he possesses - as a minimum - a well-proven experience in the following systems:
  - i. Manufacturing of bodies;
  - ii. Manufacturing of bogies;
  - iii. Doors;

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- iv. Braking System;
  - v. Propulsion System;
  - vi. Automatic Train Control System?
4. The fact that the financial figures of the foreign companies, originating from countries in which no official Registries of Contracting Firms are kept, and which (companies) must prove that they fulfil the credit and financial competence stipulated in article 5.2.3.1 do not correspond to the financial figures of the Greek Contracting Companies gives rise to an unequal and unfair treatment of these companies as compared to those participating in the Tender utilizing registration certificates by acknowledged registries of contracting firms. This results from the fact that the equivalence of the candidate companies is not taken proportionally into account, because a Greek Contracting Firm during its reassessment ought to prove that it fulfils the above financial criteria in order to be classified in class 7; however, in Greece class 7 is a general category, i.e. any company that is classified in this class will automatically be classified in class 7 for all basic categories of works, which is not the case in any other European country. This means that for a European Company to be eligible to participate in a tender – e.g. for Building Works – it must prove, on the one hand, that it possesses the experience required from the construction of building works in Metro underground Stations or in other underground urban works (e.g. parking facilities) of minimum depth of 12m. and of minimum excavation volume of 100,000m<sup>3</sup> and, on the other hand, that it has the same financial figures as those required in Greece for it to be classified in class 7 in all basic categories of works.

For all reasons mentioned above, we believe that the subject criterion for participation must be amended. We also deem that for a company - originating from EU or third countries that have signed and ratified the Public Procurement Agreement (PPA) with the EU, and, in which countries no official Registries of Contracting Firms are kept - to be eligible to participate in the subject tender, the proof of its experience in works of the category it wishes to cover must suffice.

Besides, as known, in accordance with the published balance sheets of the Greek contracting firms classified in class 7, it results that these companies do not directly satisfy the Sustainability Indices but, as we were informed, during re-assessment, they are covered by favourable regulations, e.g. debenture loans etc., which, of course, are not valid in the EU for the corresponding contracting firms either registered or not in acknowledged registries of contracting firms.

- B. In the Invitation to Express Interest, and more specifically in article 9 which includes the reasons for disqualification of the candidates, the following are stipulated:

### ARTICLE 9 REASONS FOR DISQUALIFYING THE ECONOMIC OPERATOR

- 9.1 Each Candidate shall be disqualified from this procedure related to the conclusion of the contract, if it is proven or if it is known to AM – in any other way – that there is a final decision against the Candidate for each of the reasons stipulated in paragraphs 9.1.1. up to 9.1.6.

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.....

9.1.3 Fraud, in the sense of article 1 of the Convention on the protection of the European Communities' financial interests (OJ C 316 dated 27.11.1995, page 48), which was ratified by Law 2803/2000 (A' 48).

.....

9.2 Each Candidate shall be disqualified from any participation in this contract conclusion procedure:

.....

9.3.5 If in the framework of previous participation of the Candidate in the preparation of the contract conclusion procedure there had been distortion of competition, in line with the provisions of article 48, Law 4412/16 that cannot be addressed through less intrusive means.

.....

9.3.9 If AM can prove, using the appropriate means, that the Candidate has committed a grave professional misconduct which puts his integrity into question.

.....

9.4 For all cases mentioned above, the Candidate shall submit in Sub-envelope A the European Single Procurement Document (ESPD) as preliminary proof that the subject Bidder the requirements of this article as per article 10.3.

In order to meet the aforementioned preconditions of the Invitation, the Candidates, in the framework of their participation, must, at first, fill out the ESPD form (questions – responses). Only the Contractor, to be nominated upon completion of Phase B of the Tender, shall be called upon to prove that he meets the aforementioned preconditions by submitting the relevant certificates.

### **Part III Exclusion Grounds**

#### **A. Grounds relating to Criminal Convictions**

**Article 57(1) of Directive 2014/24/EU sets out the following reasons for exclusion**

#### **Fraud**

*Has the economic operator itself or any person who is a member of its administrative, management or supervisory body or has powers of representation, decision or control therein been the subject of a conviction by final judgment for fraud, by a conviction rendered at the most five years ago or in which an exclusion period set out directly in the conviction continues to be applicable? Within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests (OJ C 316, 27.11.1995, p. 48).*

Your response:

Yes

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No.

**C. Grounds relating to insolvency, conflicts of interests or professional misconduct**  
**Article 57(4) of Directive 2014/24/EU sets out the following reasons for exclusion**  
**Agreements with other economic operators aiming at distorting competition**

Has the economic operator entered into agreements with other economic operators aimed at distorting competition?

Your response:

Yes

No

As we were informed, the major part of the Greek Contracting Firms that are experienced in Metro related projects and are registered in MEEP class 7 and, thus, cover the basic participation precondition, have confessed in writing their complicity in anti-competitive procedures related to the conclusion of public works contracts (cartels), i.e., in procedures regarding the distortion of competition, even in Projects of the same Awarding Authority, in order to be subject to the foreseen settlement program (a fact that equals both to the final decision stipulated in article 9.1.3, as to the clear proof that there are the grounds for disqualification, as these are stipulated in articles 9.3.5 and 9.3.9 of the Invitation to Express Interest) in the framework of the major problem of the cartels existence in the Greek public works that is currently under thorough examination by the Competition Commission, a fact that, in line with the preconditions for participation stipulated in the Invitation to Express Interest, sets these Firms automatically out of participation. Moreover, beyond these firms, it is stressed that the charge has also been leveled at other foreign contracting firms too with business activities in Greece that would potentially be eligible to participate in the subject tender. To the relevant question that our Company posed before the Greek Competition Committee, the latter responded and the response is attached hereto for your information. On the basis of this response, it derives that, in view of the equality of the terms and of the adherence to the provisions of the Invitation, it is necessary for your Company to be informed by the Competition Committee as to which companies – in the framework of the relevant investigation – have accepted, either directly or indirectly, their involvement in agreements that limit competition (cartel) and that are under investigation. Such a possibility would reduce drastically the options of the awarding authority and would probably result in a fruitless Tender, creating, thus, unjustified delays. "In this case, a drastic solution, which we hereby recommend as an inviolable term for the participation in the tender, would be the submission of a certificate of clearance by the candidate companies to be granted to them by the Competition Committee".

In view of the above and taking into consideration the following, namely:

1. Due to the significance of the project as regards the enhancement of the quality of life in the Urban web, the economic activities and development, in general, as well as the need for ensuring the optimal Offer for the public interest and for securing the conditions for free and efficient competition, it is necessary to provide clarifications and include additions and corrections, as presented in detail in the attached memorandum to which we refer.

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As a characteristic example, we hereby refer to the need for securing the terms for the equal participation of Greek and foreign companies, in relation the spectrum of construction activities and category of works, as well as to the means for certifying their financial credibility and status;

2. The Companies, whose business activities involve signaling works in the framework of Metro projects, are about four (4), while the respective companies responsible for the supply of Metro trains are usually two (2). Thus, this fact may – and on the basis of our investigation, it is proven – secure the exclusive cooperation on the part of companies that are not eligible to participate in the tender – as per the above – or, as it will be proven, they will not be eligible to participate at any given time in the future, in line with the provisions of article 9.4 of the Invitation to Express Interest, most probably, even after the completion of the pre-qualification phase; on the contrary, other companies that do not fall under the emerging reasons for being disqualified from procedures related to public contracts and/or supplies in Greece, may not be able to participate in the subject tender and these companies may also raise in the future claims for compensation, beyond any other issues;
3. In addition to the above and given the important and critical issues concerning the participation preconditions in the subject tender, it is not possible for the time period between the date of issuance of the Clarifications Document and the deadline for the submission of the Envelopes for Expressing Interest to be just four (4) days, since, depending on the clarifications to be provided, there might be new preconditions and information that must be taken into consideration by the companies interested in the subject tender for the configuration of the final schemes of the candidate association of companies,

We request that:

1. a reasonable extension be granted, i.e. of at least three (3) months from the issuance of the Clarifications Document until the expiry of the deadline for the submittal of Applications to Express Interest and, in any case, until the relevant procedure is completed and the decision of the Competition Committee the case of cartels operating in the framework of public projects in Greece is issued and published in the Government's Gazette Issue, so as to make clear to each Interested Party which companies can and which cannot participate in the subject tender;
2. the preconditions of article 5.2.3.1 proving the professional activity and the equivalence between foreign companies and those companies classified in class 7 of the Registry of Contracting Companies (MEEP) be abolished;
3. the category of roadworks be also included in the invoked classes;
4. the required experience of the signaling companies and the companies supplying the rolling stock be clarified in view of the above;
5. the above signaling and rolling stock companies be eligible to participate as "nominated sub-contractors" in more than one or, eventually, in all bidding schemes, given that, once these companies are required to participate in the

## CLARIFICATIONS DOCUMENT 2

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bidding scheme as members of the candidate Association, as it is well known worldwide, limited is the option for many companies to participate in the tenders, creating thus an informal, but *de facto* "cartel", with a detrimental effect, as easily understood, for each Awarding Authority (in our case ATTIKO METRO S.A.); this detrimental effect means that, on the one hand, the number of candidates is limited and, by extension, the pertinent competition, and, on the other hand, once these companies undertake the responsibility before ATTIKO METRO S.A. - jointly, indivisibly and severally - as members of the contracting Association for Civil Works too (underground tunnels in urban environment, underground stations etc.), beyond their scope of works, it is clear that this fact increases extensively their financial offer or, respectively, the guarantees required by the other members of the Association, a fact that is once more interpreted into the increase in the entire financial offer.

### **Response 24**

1. The excavation works in tunnels and trenches are included in the category of Hydraulic Works of the Unified Price Lists issued by the Ministry, and not in the category of Roadworks. Roadworks constitute a very small part of the Project, less than 10%. Therefore and in accordance with paragraph 1(c), article 76 of L. 4412/16, a category of works covering less than 10% is not taken into account in the determination of the Project categories.
2. According to paragraph 11.3.1, item h, of the Invitation, a signaling system must have been commissioned in the time period 2010-2017. A prerequisite for the commissioning is the installation of the system by the same Candidate. Therefore, the Signalling System Commissioning Certificate shall include both the installation of the subject system, even if this installation took place in a time period earlier than the above, as well as the commissioning of the system, which must have taken place within the aforementioned time period.

The same requirements apply also as regards the experience in the Ventilation and Traction Power systems.

See addition B.1.7, Chapter B of this Document.

3. According to paragraph 11.3.1, point e, of the Invitation, at least ten (10) driverless Metro trains must have been commissioned in the time period 2010-2017. A prerequisite for the commissioning is the manufacturing of the said trains by the same Candidate. Therefore, the Commissioning Certificate regarding the required number of trains shall include both the manufacturing of the subject trains, even if this manufacturing took place in a time period earlier than the above, as well as the commissioning of the trains, which must have taken place within the aforementioned time period.

See addition B.1.7, Chapter B of this Document.

4. The principle of equal treatment among Bidders governing the public contracts awarding procedure imposes that the Bidders be selected on the basis of the equal competence related criteria. Moreover, the awarding authority has the discretion to choose the criteria, and more specifically the financial and credit competence criteria,

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as well as the means to prove them, thus securing the competence of the operators for the award of the tendered project, taking into consideration its magnitude. The financial and credit competence criteria, set forth in the Invitation (article 5.2.3.1) must be at least satisfied by the Greek Contracting Companies for their classification in MEEP class 7. Therefore, in the framework of the principle of equal treatment and in order to secure equivalence among Candidates, AM requires all Candidates to possess at least the credit and financial competence [as well as technical competence (staff)] of the Greek Companies classified in class 7 of the Register of Contracting Companies.

Thus, especially as regards foreign companies deriving from countries where there are no official records, these companies are required to prove that they possess the equivalent financial and credit competence and technical capacity (staff) with those of the Greek companies classified in class 7 of the Register of Contracting Companies, by submitting all relevant documentation. In view of the above, the relevant requirements as set for the foreign companies remain as they are.

5. In accordance with article 5, paragraph 5.1 of the Invitation to Express Interest, as this has been supplemented through Clarifications Document 1 (Chapter B, paragraph B1.1) the option is given to the Rolling Stock Companies to make part of the Associations participating in the Tender, without this being obligatory. If the subject Companies do not wish to participate in the Associations, they may provide their experience to them as "third parties". The same is also valid as regards the specialized E/M systems (signalling). Thus, in case a Rolling Stock or an E/M Systems Company provides its experience to an Association, it cannot select to participate in another Association either as a member or as a third party, in view of securing safe competition since in that case this Company, depending on the agreement it has reached with the participants of each Association, can decisively affect the outcome in favour on an Association to the detriment of the remaining ones.
6. The investigation carried out by the Competition Committee in relation to cartels operating in the framework of public projects in Greece constitutes a on-going procedure, independent from the current tender procedure, and, therefore, does not affect the conduct of the tender.

### **Question 25**

In article 10.3 of the Invitation to Express Interest for Stage A of the Tender, it is stated that the ESPD is signed by the Candidate. If the company is a legal entity seated abroad and a third party not a member of its BoD has been lawfully authorized to submit the Offer and other documents and declarations, then is it necessary for the ESPD to also bear the digital signature or is it sufficient to bear only the physical signature of the responsible legal representative/Manager of the company, in addition to the digital signature of the legally authorized third physical entity not belonging to the BoD?

### **Response 25**

As regards the obligations concerning the signing of the ESPD by the Candidate, please see response 20 in this Document. It is also clarified that both physical and digital signatures are accepted.

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### **Question 26**

Article 8.4 of the Invitation to Express Interest for Stage A of the Tender specifies that the language for submission of the documents relating to the Tender is the Greek language or otherwise, the documents shall be accompanied by an official translation into Greek. Please confirm that on the basis of this term but also on the basis of the stipulations in article 92, para. 4, Law 4412/16, the Bidder shall be able to submit an official translation of any document that will be submitted along with the Offer. Especially as regards the ESPD, can it be signed in a foreign language by a foreign representative of the Bidder and be submitted along with its legal translation in the Greek language or should it be signed and submitted only in the Greek language? If the latter applies, kindly make reference to the legislation according to which the ESPD must be submitted only in Greek.

### **Response 26**

The content of article 16 of the Invitation to Express Interest applies, according to which should the original documents have been drawn originally in a language other than Greek, they should be accompanied by an official translation in Greek. . Therefore, the Candidates can sign the ESPD in a foreign language and submit same accompanied by its official translation into Greek.

### **Question 27**

In connection with the completion of the ESPD, Part V, which concerns a restricted procedure with negotiation on the basis of specific criteria, you are requested to confirm that this particular part does not find application in this Tender procedure, given that no such selection criteria are mentioned in the present Invitation. Therefore, you are requested to confirm that response "No" is accepted both by the Awarding Authority and the electronic system, so that the submission concerning the Expression of Interest is technically accepted.

### **Response 27**

Part V of the ESPD must be filled out since it is included in the application field of this procedure. Article 4.1 of the Invitation stipulates that the Tender is conducted based on the restricted procedure and as per article 12.6 of the Invitation, the Candidates selected to submit a Financial Offer at Stage B of the Tender are limited to seven (7). Therefore, response "No" in Part V of the ESPD is not accepted. The Candidate must place the response "Yes" and indicate the selection criteria of article 12 of the Invitation or those criteria mentioned in article 12 that are met by the Candidate, in case of a Joint Venture or in case third-party resources are invoked.

### **Question 28**

We refer to clause 5.2.2 of the Invitation based on which the Candidates seated in a member state of the European Union are required to be registered in the official registers mentioned in Appendix XI of Annex A, Law 4412/16. As far as France is concerned, the above Appendix sites the "Register du commerce et des societies" and the "Repertoire des métiers". The latter does not refer to the main business activity of the construction companies. According to the French practice, we satisfy the preconditions for registration in the professional registry which relates to the nature of the works we execute, as demonstrated by the 1<sup>st</sup> certificate referred to herein, which has been submitted for a number of years in the framework of Tender procedures in Greece and which clearly describes the work categories. The said certificate was also accepted by ATTIKO METRO S.A. in the past. You are requested to confirm that ATTIKO METRO S.A. accepts the submittal of this single certificate, since it fulfils the requirements set forth in articles 10.4.2 and 10.4.3.1(b) of the

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Invitation to Express Interest and serves as a proof of the suitability of the Candidate to exercise the business activities mentioned in article 5.2.

**Response 28**

It is confirmed that the certificate from "Register du commerce et des societies" is accepted. For all other matters, see the above Response 9 in this document.

**Question 29**

As regards the completion of the ESPD, article 10.3, please clarify the manner of description of the documentary evidence in PART V.

In particular, Part V of the ESPD reads as follows:

*"The economic operator declares that:  
It meets the objective and non discriminatory criteria or rules to be applied in order to limit the number of candidates in the following way:  
In case certain certificates or other forms of documentary evidence are required, please indicate for each whether the economic operator has the required documents:  
If some of these certificates or forms of documentary evidence are available electronically, please indicate for each:  
Your answer?  
Yes  
No*

First of all, we believe that since the Invitation makes reference to selection criteria, the response to the above question should be YES.

In this case, the system asks for a description of these criteria.

It results from the Invitation for Tender (RFP-308/17) Line 4 – Section A' "Alsos Veikou – Goudi" that the number of Candidates that meet the criteria is limited only by the selection criterion specified in article 12 EVALUATION CRITERIA – SCORING, which are the following:

	<b>DESCRIPTION OF CRITERIA 1 &amp; 2, article 12</b>
1.a	Construction of underground tunnels in urban environment using a TBM
1.b	Construction of underground tunnels in urban environment using conventional means.
1.c	Construction of underground Metro stations.
2a.	Commissioning of Metro ventilation systems
2.b	Construction of trackwork
2.c	Commissioning of Metro traction power systems
2.d	Commissioning of Metro signalling system
2.e	Commissioning of driverless Metro trains

Therefore, we believe that under heading *Please describe them* ...in Part V of the ESPD, the bidders shall be required to describe only the above mentioned criteria. Besides, all other

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minimum preconditions for participation in the Expression of Interest are covered by the answer in Part IV – Selection Criteria, a: Global indication for all selection criteria.

Given however that the certificates and the tables with the experience as mentioned in articles 12 and 13 are required to be submitted with Subenvelop B, while the ESPD must be submitted with Sub-Envelop A, the question that is risen is what will the description of the criteria consist of?

We believe that under heading *Please describe them* ...in Part V of the ESPD, Bidders shall only record the criteria of article 12, as above, which are covered by each company-member of the Candidate who submits the ESPD, without further details, such as tables, etc., which shall be submitted in the Sub-envelope, as required by the Invitation.

In case the Candidate is an Association, each company-member of the Association must complete in the ESPD:

- 1) only those criteria among the criteria of article 12 that the specific company meets  
or
- 2) all the above criteria 1a, 1b, 1c, 2a, 2b, 2c, 2d, 2e indicating next to each criterion the company that satisfies this criterion.

Please clarify the above.

### **Response 29**

Please see response 27 in this document.

### **Question 30**

According to article 10 "CONTENT OF SUB-ENVELOPE A' "FORMAL QUALIFICATIONS" and para. 10.2 of the Invitation, the Bidder is required to submit the BoD Resolution approving the participation of the bidding company in the Tender, the appointment of the legal representatives, as well as a statement of acceptance of the participation in the Association.

According to article 11 "CONTENT OF SUB-ENVELOPE B' "ESSENTIAL QUALIFICATIONS" – MINIMUM REQUIREMENTS" and para. 11.4.3.1, the Bidder is required to submit the BoD Resolution approving the cooperation with engineering firms.

Given that Sub-envelopes A and B are submitted sealed and separately (13.1.3), please clarify if we must submit a BoD Resolution including the items requested under articles 10 and 11 which shall be included in both Sub-envelopes A and B or we must submit a separate BoD Resolution containing the items of article 10 in Sub-envelope A and another BoD Resolution with the items of article 1 in Sub-envelope B.

Please clarify.

### **Response 30**

It is clarified that both are acceptable, as long as Sub-envelopes A and B are complete in any case.

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### **Question 31**

The ESPD document is not included in the supporting documents that must be submitted by the designers as per article 11.4.3.

Please confirm that the designers are not required to submit the ESPD.

If your response is that the designers are required to submit the ESPD, please clarify which of the two Sub-envelopes shall contain it.

### **Response 31**

See above response 7 in this document. Moreover, it is clarified that the ESPD shall be included in Sub-envelope B.

### **Question 32**

According to paragraph 9.4, the Candidate is required to submit the ESPD in Sub-envelope A as a preliminary proof that he fulfils the requirements of article 9, in line with the stipulations of article 10.3.

In case of a foreign economic operator seated in a member-state of the EU and participates in an association of economic operators who jointly submit an offer, please confirm that the ESPD of this foreign economic operator can be submitted in a pdf print-out form in English, signed by the legal representative of the foreign economic operator, accompanied by an official translation of the ESPD in Greek. Kindly also confirm that no Apostille is required on the English printed document.

### **Response 32**

It is confirmed that in case of a foreign economic operator, the ESPD can be submitted in a pdf print-out form in English, signed by the responsible persons, accompanied by its official translation in Greek without requiring the Apostille stamp on the English printed pdf document. However, please see response 20 in the present document concerning the individuals that are required to sign the ESPD.

### **Question 33**

Paragraph 10.4.2 stipulates that Candidates established in other member-states of the European Union must submit the declarations and certificates issued by the competent authorities described in Annex XI, Appendix A, Law 4412/2016. As regards the date of the issuance of the subject certificates, kindly clarify the maximum acceptable time period that must have elapsed between the issuance date of these certificates and the deadline for the submission of the Envelopes containing the Application to Express Interest.

### **Response 33**

It is clarified that the subject certificates are required to be valid on the date of their submission in the framework of the relevant Tender, in accordance with the regulations pertaining the validity of the certificates in the country of origin of the economic operator. If there is no provision for a specific validity period, these certificates are required to have been issued - as a maximum - six (6) months prior to the date of expiry of the deadline for the submission of the Envelopes to Express Interest.

### **Question 34**

Paragraph 10.4.3.1 "Back up documentation proving the Credit and Financial Competence stipulated in article 5.2.3.1" and more precisely, item (c) specifies that the Candidates, in whose country no official lists of recognized contractors are kept, must prove that they fulfil

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the preconditions of article 5.2.3.1. To this end, Candidates shall submit the documentation specified in paragraphs 1, 2, 3, 4 and 5 of item (c). Please clarify whether separate certificates issued by a Chartered Accountant must be submitted to satisfy the requirements of paragraphs 2, 3, 4 and 5 set forth under item (c) or whether these requirements can be met by the submission of the signed Audit Report of the Chartered Accountant on the Final Financial Statements accompanying the relevant Financial Statements of the Candidate.

### **Response 34**

The preconditions stipulated in paragraph 10.4.3.1(c), items 2 – 5, concern separate Certificates issued by the Chartered Accountant for each case separately. However, a signed Report issued by the Chartered Accountant can be accepted, on condition that it includes all required data for cases 2 to 5.

### **Question 35**

Paragraph 10.4.3.2 relating to the back up documentation to prove the technical and professional competence described in article 5.2.3.2, and more precisely, item 2 of paragraph 10.4.3.2 specifies that foreign Candidates shall submit the back up documentation proving that they meet the preconditions as these are set forth in paragraph 5.2.3.2. Please clarify whether copies of University degrees must be also submitted or whether it suffices to make a simple reference in the Curriculum Vitae to the university degrees of executives of the company, each CV signed by the executive concerned.

### **Response 35**

According to paragraph 10.4.3.2.(2) of the Invitation to Express Interest, University degrees accompanying the CVs must be submitted. As to the remaining issues, see Clarifications Document 1, Chapter B, paragraph B1.3.

### **Question 36**

Article 11.3.2 of the Invitation to Express Interest specifies as minimum experience-related requirement the commissioning of Metro ventilation systems, 1,500 KVA of minimum installed power. Underground railway tunnels and road tunnels more than 3km long equipped with heavy-duty axial fans have the same technical requirements for installation and commissioning with the ones applicable for Metro projects. Therefore, please clarify the following:

- i) Can the experience in commissioning Underground Railway Projects Ventilation Systems be taken into consideration?
- ii) Can the experience in commissioning Ventilation Systems with heavy-duty Axial Fans in Road Tunnels more than 3km long be taken into consideration?

### **Response 36**

See response 23 in this Document.

### **Question 37**

With regard to article 14 relating to the Invocation of Third Party Resources, please clarify that, with regard to the operators whose qualifications are invoked by the Candidates, the only document that must be included in the Sub-envelope "Formal Qualifications" for these operators is their ESPD.

### **Response 37**

See Addition B1.6, Chapter B in this Document.

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### **Question 38**

Articles 5.3.2.1 and 10.4.3.1 of the Invitation to Express Interest set forth terms on the Credit and Financial Competence for proving business activities. These terms are of essential importance, since they are closely related with the eligibility for participation in the Tender. To this end, it is our view that the following clarifications must necessarily be provided, so that there is no doubt about their accurate meaning and to prevent disputes during the tender procedure. More precisely:

In the framework of demonstrating the Credit and Financial Competence for proving business activities, the third economic operator must meet, as per article 10.4.3.1, the preconditions of article 5.2.3.1 and, to this end, he must submit the most recent final financial statements, approved by the competent body of the Administration (General Assembly, Board of Directors or other) – in line with the legislation in force in the country of origin– certified by a Chartered Accountant.

If in the country of origin of the third economic operator who shall make available his technical competence to the Candidate, financial statements are not required to be certified by a Chartered Accountant, could the third economic operator in lieu of the above (i.e. financial statements certified by a Chartered Accountant) submit either the financial statements, approved by the competent Administrative body, or the financial statements of the parent company, certified by a Chartered Accountant, which shall include in detail the financial data of the subsidiary company that will make its experience available to the candidate scheme.

Kindly clarify/ confirm.

### **Response 38**

It is clarified that, if in the country of origin of the third economic operator it is not required to have the financial statements certified by a Chartered Accountant, then it is required to submit a Declaration on Oath verifying the above; then the financial statements of the parent company are accepted, as certified by a Chartered Accountant, provided that the required economic figures of the subsidiary company are included in detail therein.

### **Question 39**

The Greek and the English sample of the certificate concerning the credit and financial competence of the Invitation to Express Interest state that:

"[...] This certificate shall not serve as letter of guarantee or advice or suggestion, in line with the provisions of article 726 of the Civil Code".

Given that in article 726 of the Civil Code reference is made to "termination of the mandate" whereas in article 729 of the Civil Code reference is made to "advice or suggestion", kindly confirm whether the wording of the clause of the certificate concerning the credit and financial competence must be amended as follows:

"This certificate shall not serve as letter of guarantee or advice or suggestion, in line with the provisions of article 729 of the Civil Code".

### **Response 39**

See clarification B1.2, Chapter B, in this Document.

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### **Question 40**

With regard to the required experience of the candidates in similar projects, article 11.3.1 of the Invitation to Express Interest specifies that:

“The candidates shall prove that they possess experience during the time period 2010-2017, in the following scopes of work [..]”.

Please confirm that the time period 2010-2017 means from 01/01/2010 until the date of the submission of the offers, inclusive.

### **Response 40**

Confirmed.

### **Question 41**

Article 11.4.3.1 “Back up Documentation for the Acceptance of Cooperation” of the Invitation to Express Interest stipulates that the following must be submitted, namely:

“[..]”

- Legal Statement of the Candidate’s appointed legal representative stating that in case the Candidate is appointed as the Contractor that he undertakes the obligation to pay to the engineering company/firm its fee corresponding to the preparation of the designs”:

Question A: If the Candidate is a Joint Venture of Companies, does the submission of the legal statement by the common representative meet the requirements of the aforesaid article or should legal statements of the legal representative of each member-company of the joint venture be submitted?

Question B: Please confirm that clause “that he undertakes the obligation to pay to the engineering company/firm its fee corresponding to the preparation of the designs” means that it is the Candidate who undertakes the obligation to pay to the engineering company/firm the fee corresponding to the preparation of the designs.

### **Response 41**

A. The submission of a legal statement by the common representative of the Joint Venture satisfies the requirements of the aforementioned article, provided that this representative is authorized, by virtue of the Resolution of the BoD or the competent Administrative Body, in case of foreign Candidates, to bind the Candidate by his (representative’s) signature for all documents pertaining to the Tender (see 10.2 of the Invitation).

B. Confirmed.

### **Question 42**

Article 10.4.2 of the Invitation to Express Interest stipulates that:

“The Candidates established in other member-states of the European Union must submit the declarations and certificates issued by the competent authorities described in Annex XI [..]. These certificates shall make reference to the back up documentation on the basis of which the registration had been effected, as well as the classification deriving from the subject

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Certificate, so that the correspondence as regards the contracting firms registered in class 7 shall derive (be presumed)".

In Spain, the Advisory Body on Administrative Affairs has published a directive on the presentation and submission of the required back-up documentation for entering new registrations or for maintaining existing registrations in the official lists of the professional registry of technical firms. Correspondingly, with regard to the certificates required for entering new registrations/maintaining an existing registration, the body responsible for their issuance states that it has received, examined and accepted the certificates submitted by the candidate company, as being in line with the provisions of the aforesaid directive and proceeds to the issuance of a registration/registration renewal certificate. Nevertheless, the submitted back-up documentation is not listed again in the text of the certificate. Does the aforementioned statement by the Authority - namely that the back-up documentation submitted by the Company have been examined and accepted - meet the requirements of article 10.4.2? If not, does the inclusion of the said directive in the Envelope to Express Interest, stating the required back-up documentation, as these have been set forth by the Advisory Body on Administrative Affairs, meet the requirements of article 10.4.2?

### **Response 42**

Since no reference is made to the back up documentation on the basis of which the registration had been effected, there can be no equivalence, as required. Thus, submission must be made of the relevant Directive issued by the Advisory Body on Administrative Affairs where reference is made to the subject back up documentation. However, in any case, , if the required equivalence is once more not obtained based on the aforementioned Directive, then the Competition Committee can request the submission of additional back up documentation. See also Response 9 in this Document.

### **Question 43**

We intend to invoke the technical and professional competence of a third party – economic operator - for the construction of underground tunnels in urban environment using conventional mechanical means.

Based on Article 14 of the Invitation to Express Interest "The Candidates can invoke and make use of the technical and professional capacity of other operators, only if the third party operators are to execute works or to provide services for which the specific capacities are required". Taking into consideration another provision of the same article 14, which specifies that the relevant resolution of the competent statutory Body of the third party shall state that approval is granted to provide the Candidate with the borrowed competence, making also very detailed and itemized reference to the specific resources that shall be available for the execution of the contract, it is our understanding that it suffices for the third party to commit to provide the necessary resources (provision of specialized personnel/ equipment, provision of specialized consultation and technical support, etc.) to the bidder, throughout the execution of the contract and for its sound execution – *based on any lawful contractual relationship* – without having commit himself to execute the works for which his special technical competence is provided.

Moreover, according to the provisions of article 307, Law 4412/2016, to which article 14 of the Invitation refers, the obligation to execute works for which experience is made available burdens only the party lending his competence relating to the academic titles and the professional qualifications of the Contractor or the managerial executives or the party lending his "professional" experience. Based on the above, it results that the obligation to execute works is non existent in case of invoking borrowed special technical competence, as required by the Awarding Authority, concerns the basic professional competence and

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experience, proven by registration and classification in a professional registry by satisfaction of the relevant applicable criteria, while in terms of the special technical competence required, sufficient is the third party will commit himself that he/she shall make available his competence and the necessary resources to the bidder, based on any lawful relationship or agreement.

In view of the above, kindly respond to the following question:

Is it acceptable that the third-party economic operator whose special technical competence we intend to invoke in order to meet the requirement related to the construction of underground tunnels in urban environment using conventional mechanical means and the remaining criteria of articles 11.3.1 and 11.3.2 commits himself that he shall make available his competence and his experience under a contract/ agreement for the provision of services or technical support through a limited number of specialized personnel, equipment, resources and means or is it mandatory that the third party undertakes the commitment to execute the works for which he lends his special technical competence?

### **Response 43**

According to article 307 of Law 4412/16, when economic operators are based on the capacities of other operators ("third parties") as regards, *inter alia*, the relevant professional experience (which is the case to which you refer), then "third parties" that possess the required capacities, invoked by the Candidate, have the obligation to execute the aforementioned works, calling for the required capacities.

### **Question 44**

If you reply to the previous question is that the third-party lending the special technical competence is not required to execute the works by himself and if this same third party fails to meet the requirements of article 5.1.a, b, c and d of the Invitation to Express Interest, is it accepted for the third party to invoke the borrowed special technical competence, given that he shall not execute works but he will only provide services?

### **Response 44**

According to the aforementioned Response 43, the works are required to be executed by the "third party", whose capacities are invoked by the Candidate and, thus, the third party is required to meet the requirements of article 5.1.a, b, c and d of the Invitation to Express Interest.

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### B. CLARIFICATIONS/ADDITIONS TO THE TENDER DOCUMENTS

#### B1. INVITATION TO EXPRESS INTEREST

##### B1.1 Article 5

Article 5, paragraph 5.2.3.1(v), is supplemented as follows:

##### 5.2.3.1 .....

Total of Liabilities means the sum up of the short and long-term liabilities of the Company, with the exception of the long-term liabilities not relating to bank borrowing, as these are defined in the chartered accountant certificate, minus the invoiced receivables certified by the chartered accountant, from public procurement contracts.

##### B1.2 Sample A.1

Paragraph 5 of Sample A.1 is corrected as follows:

Η παρούσα δεν επέχει θέσει εγγυητικής επιστολής ή συμβουλής ή συστάσεως κατά τη διάταξη του άρθρου 726 729 του Αστικού Κώδικα.

##### B1.3 Sample A.2

2. *Based on its current financial status, this Company may be credited by our Bank under specific terms and conditions up to the amount of ..... which can be used as follows:*

~~Our Bank has approved, under the terms and conditions determined by our Bank, the following credit limits in favour of the above Company:~~

- For financing, the limit of EURO..... (.....)  
(To be filled in full and in numbers)
- For letters of guarantee, the limit of EURO..... (.....)  
(To be filled in full and in numbers)

5. This certificate shall not serve as letter of guarantee or advice or suggestion, in line with the provisions of article 726 729 of the Civil Code.

##### B1.4 Sample A.2

It has been stressed that in English text, the General Final Design is referred to as GFD and not as FD.

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**B1.5 Article 5.2.3.1**

v. Sustainability Indicator:  
Total of Equities / Total of Liabilities > 0,4 0,6

.....  
vi. Sustainability Indicator:  
Current Assets /Current Liabilities > 0,6 0,8, where

**B1.6 Article 14**

.....  
The Candidates shall incorporate in the Sub-envelope "Formal Qualifications" the ESPD as well as the back up documentation required in paragraph 10.4 to prove that these operators –whose qualifications they invoke- are competent to exercise their professional activities.

**B1.7 Article 11.3.3**

Back up Documentation for proving the Experience

.....  
b. Certificates issued by the authorities concerned showing good and timely execution of the projects required or completed parts thereof, as well as their successful, reliable and safe commissioning of the requested E/M systems and train-sets. More particularly, with regard to the cases (a), (b) and (c) and (e) specified under paragraph 11.3.2 of this article, these certificates must show the place (in case the whole project is not constructed in an urban environment, then a clarification should be made as to the extent and the part of the Project that has been constructed in an urban environment) and the time of their execution and must confirm that the works were executed in accordance with the rules of technology and that they were normally finished. In addition, as regards cases (d), (f), (g) and (h) specified under paragraph 11.3.2 of this article, the certificates must prove that the installation of the E/M systems – for cases (d), (f), (g) – or the manufacturing of trains – for case (h) – have been performed by the Candidate himself, even if the installation / or the manufacturing – respectively - was effected in a time period prior to 2010-2017. In case the candidate executed these projects as a member of a Joint Venture, the certificate shall indicate the Candidate's participation or the participation of the Candidate's members, in the execution of the projects, as well as the specific scope of this participation.