

ISPA 2005 - Vinkovci to Tovarnik to State Border Railway Rehabilitation (Civil Works)

TENDER N° 2005/HR/16/P/PT/001

Minutes of Site Visit and Clarification Meeting

A. Introduction

Final Beneficiary (FB) for this project is the company Croatian Railways – Infrastructure, and the Project Implementation Unit (PIU) within this organisation has been established.

Contracting Authority (CA) for this project, which is undertaking the role of the Employer according to FIDIC Conditions of Contract, is the Central Finance and Contracting Unit established as a separate Department within the Ministry of Finance of the Republic of Croatia.

The Site Visit commenced at 11:00 hrs on 2 October 2007 at Vinkovci Railway Station. Participants boarded a rail-coach provided by Croatian Railways (CR) and traveled to Tovarnik and back along the route which is to be rehabilitated.

The Clarification Meeting was held at 10:00 hrs on 3 October 2007 in the headquarters offices of CR at Mihanovićeve 12, Zagreb.

B. Site Visit

On departure of the rail-coach from Vinkovci Station at 11:20 hrs the representative of the CFCU spoke to the participants on the site visit via the train public address system. He welcomed all attendees and emphasized the importance of the visit, which is intended to ensure that the effort invested by both the Final Beneficiary (Croatian Railways Infrastructure Ltd.) and the Tenderers leads to the successful completion of the project. He gave an outline of the plan for the site visit and stated that the train could stop at any site of interest on request from any of the participants, but when leaving the train all participants are to be aware that the adjacent track is operational and trains will be running on that line. The CFCU representative also stated that any questions will be accepted and replies given where possible, but written questions should be submitted in English which is the language of the tendering procedure and these would be answered at the Clarification Meeting. The importance of strictly following the laid out rules of the procedure and the future contract was further highlighted.

The representative of the Project Implementation Unit within the Final Beneficiary institution introduced the project prior to the first stop of the train at Mirkovci Halt. Participants briefly left the train and inspected the Halt, which is typical of the other six Halts on the line. A second stop was made at Jankovci Station, one of the stations where more major works are to be undertaken.

The train then continued to Đeletovci Station where a longer stop was made to allow the scheduled passenger train to pass and for participants to understand the work to be carried out at this site. A brief stop was made at Šidski Banovci Halt before the train continued to Tovarnik at the end of the section that is to be rehabilitated, arriving at 13:35 hrs. On the return journey the train departed from Tovarnik at 14:00 hrs and traveled directly to Vinkovci, arriving at 14:40 hrs. The list of all the participants on the site visit was completed and the Site Visit concluded.

The list of participants of the Site visit is enclosed to this document.

C. Clarification Meeting

The Clarification Meeting commenced at 10:10 hrs at the Courtyard Meeting Room at Croatian Railways headquarters building. The CFCU representative welcomed the attendees and briefly introduced himself to all participants pointing out the main aspects of being the project manager for this project. He advised that the meeting would be conducted in English as that is the language of the tendering procedure, but that a professional interpreter was present to translate questions and answers as necessary. He informed the participants that the Minutes of the Site Visit and this Clarification Meeting will be published on “EuropeAid” and “CFCU” web sites as advised in the Procurement Notice.

It was also stated that all the requirements for participation in the Tender are given in the Tender Dossier emphasizing the importance of the Instructions to Tenderers given in Volume 1, Section 1 of the Tender Dossier since majority of disqualifications derive from inaccurate adherence to requirements stipulated in these provisions. Potential tenderers should note that the requirements will be strictly interpreted and where it reads “shall” in the document that means “must”.

It was pointed out to the meeting, the importance of Evaluation Grids included as Section 5 of Volume 1 of the Tender Dossier. There are some 40 to 50 criteria that have to be complied with, and the Evaluation Committee would be carefully checking to ensure that the companies that were accepted for detailed analysis were in compliance with the requirements, because only one negative answer to these questions will result with rejection of the offer. This also refers to the adherence to templates enclosed in Volume 1, Section 4 of the Tender Dossier. Representative of the CFCU also pointed that Tenders must be received by the date and time quoted in the Procurement Notice i.e. 12:00 hrs local time on 3rd December 2007.

The representative of the Final Beneficiary advised that her department had been responsible for preparing the Tender Dossier for the project. Representatives of the PIU were present to answer any technical questions that were asked.

The list of participants of the Clarification meeting is enclosed to this document.

D. Discussion

Q1: Is it possible for a subsidiary company of Croatian Railways (CR) to participate in the Tendering procedure for this project?

A1: Participation of the subsidiary companies of the Croatian Railways (CR dependent companies) in the tendering process for ISPA Measure "Vinkovci to Tovarnik to State Border" **will not be possible.**

Namely, the basic precondition for the successful tendering process is the assurance of a fair competition with equal rules and opportunities for all tenderers regardless of the country of origin, as derives from the following provisions:

a) Article 2.3.7. of the Practical Guide to contract procedures for EC external actions;

"Any firm or expert participating in the preparation of a project must be excluded from participating in tenders based on this preparatory work, unless they can prove to the Contracting Authority that the involvement in previous stages of the project does not constitute unfair competition."

b) Article 2.4.10. of the Practical Guide to contract procedures for EC external actions;

"Whatever the procedure used, the Contracting Authority must ensure that conditions are such as to allow fair competition"... ..." (especially in cases in which publicly-owned companies, non-profit associations or non-governmental organisations are taking part in a tender procedure alongside private companies), the Contracting Authority must carry out checks and request any additional information necessary"...

c) Article 52 of the European Commission Financial Regulation (01 May 2007);

"1. All financial actors and any other person involved in budget implementation, management, audit or control shall be prohibited from taking any action which may bring their own interests into conflict with those of the Communities. Should such a case arise, the person in question must refrain from such actions and refer the matter to the competent authority.

2. There is a conflict of interests where the impartial and objective exercise of the functions of a financial actor or other person, as referred to in paragraph 1, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with the beneficiary."

Since subsidiary companies are owned by Croatian Railways they would be in conflict of interest if they would participate in Tendering procedure and would breach provisions of Practical Guide and Financial Regulation as stipulated above.

Q2: Even though, the named subsidiaries (Track Overhaul and Maintenance and Track Structures) are companies 100% owned by the Croatian Railways – Infrastructure Ltd. that is owned by the State, they act independently on Croatian and other markets and the companies are obliged to issue their balance sheet at the end of every year. They participate in all public tenders and there is no conflict of interest. Also it is noted that the CR – Infrastructure Ltd. departments will be involved in works (providing permissions for the track possessions, isolation of power and similar) so why cannot the other departments of Croatian Railways work on the project? How would you explain the waste of the Croatian taxpayer's money taking into consideration the fact that this project is co-financed from the state budget in the amount of 70%?

A2: In accordance with the Financing Memorandum for this ISPA Measure which is an Agreement signed between the Croatian Government and the European Commission that has the power of an International Contract, Practical Guide to contract procedures for EC external actions and European Commission Financial Regulation, it is not permitted for any organization or institution to work on ISPA funded projects if this is found to violate the fair competition principles and constitute the conflict of interest. Therefore, all support from the Croatian Railways – Infrastructure Ltd. departments and necessary works will be performed

with no cost for the Contractors as it is clearly explained in Technical Specifications (Volume 3 of the Tender Dossier).

Q3: Who agreed to the abovementioned restrictions?

A3: The Croatian Government has signed the Framework Agreement and the Financing Memorandum with the European Commission, which is an international agreement that must be complied with, committing the involved public bodies to respect the procurement procedures and relevant Financial Regulation issued by the European Commission.

Q4: a) Can a company, which is 100% owned by the Croatian state (Croatian Railways), but not financed from the state budget, and specialized for the track reconstruction and maintenance, be a member of a Joint Venture/Consortium?

b) Can a company, which is 100% owned by the Croatian state (Croatian Railways), but not financed from the state budget, and specialized for the track reconstruction and maintenance be a sub-contractor to the tenderer?

c) If a company, which is 100% owned by the Croatian state (Croatian Railways), but not financed from the state budget, and specialized for the track reconstruction and maintenance can be a sub-contractor to the tenderer, may it be the sub-contractor to more tenderers, or is it limited to just one tenderer (article 5.)?

A4: Please see answers above under numbers 1, 2 and 3 and below number 6.

The Article 5. of the Instructions to Tenderers is the only deviation from the rule that defines the participation of one Company in more than one Tender as not allowed. Possibility for one Company to participate in more than one Tender, as a single Tenderer or as a partner in a Joint Venture/Consortium, is permitted only in case when the specific nature of the market requires that and the specialisation of one Company to perform certain activities/works can not be considered as a specific nature of the market as a whole.

Q5: The representative of the CR - Infrastructure Traffic Department said that for the last 12 years they had been working on the organization of the track possessions for the overhaul works and according to his opinion such works performed by the contractors that are not subsidiaries of the CR - Infrastructure are not possible without their assistance. Without participation of Croatian Railways' subsidiaries this project could not be implemented. Namely, according to the Croatian Railways Act and Croatian Railways Separation Act, Croatian Railways Train Traction Ltd. is still the operator who only has the exclusive legal right to access the Croatian railways' tracks. The selected company will not be able, neither legally or technically, to do the works. How could "outsiders" work on the railway if they do not have the local experience or knowledge of the national rules and regulations?

A5: It is important to emphasize the difference between sub-contractors and providers of services. CR Cargo and CR Train Traction Ltd. are providers of the services. However, since Croatian Railways Cargo Ltd. is the operator who only has the exclusive legal right to access the Croatian railways' tracks the tenderers who wish to transport their machines and/or material by rail have to contact CR Cargo. The tenderers must include the cost of transport in the unit prices under the appropriate items of the Bill of Quantities. As stated in the Tender Dossier, the selected tenderer will have to apply and respect all Croatian laws and regulations connected to Croatian railways and will also have to obtain all necessary permits for performing the contracted works.

Q6: In the Article 5 of the Instructions to Tenderers, which stipulates the following:

"5. ONLY ONE TENDER PER TENDERER

5.1 A company may not tender for a given contract both individually and as a member of a joint venture/consortium. Submission or participation by a tenderer in more than one tender for a contract will result in the disqualification of all those tenders for that contract in which the party is involved. The same company may only participate as subcontractor in different tenders if that is justified by the specific nature of the market and cleared by the European Commission. "

there is left the possibility to change the provisions of the agreement between the European Commission and the Republic of Croatia to make possible for Croatian Railways subsidiaries to participate in this Tender.

A6: Article 5 of the Instructions to Tenderers defines when one Tenderer (one Company) is allowed to participate in more than one tender (in case of "specific nature of the market") and does not apply to this question. Please see answer number 4.

Q7: Why are the rules so rigid that none of the state owned companies can bid for this tender? They can not even participate as sub-contractors, why?

A7: Please see answers above under numbers 1, 2 and 3.

(At this point Mr. Novak and other representatives of Croatian railways subsidiaries left the meeting).

Q8: Referring to the Article 16 (Point 7) of the Procurement notice can you explain if it should be the same consortium bidding for this Tender as the one who had previously successfully completed at least 2 projects of the same nature and complexity?

A8: Only the references of the companies that are applying in the Joint Venture/Consortium for this particular Tender will be considered. Each company can have its own references and all the references of all of the partners of the consortium together will be taken into consideration during the Evaluation process.

The requirements for the Leading partner are given separately in the point 16 of the Procurement Notice and point 4.2 of the Instructions to Tenderers.

Q9: Can the same supplier participate in tendering procedure for several different tenders, even if he takes more than 10% of the Contract value, in those bids in which he participates.

A9: Yes, that is allowed since the suppliers are not limited to participate in only one tender. The rule that derives from Article 5 of the Instructions to Tenderers applies to the sub-contractors only.

Q10: If the foreign Company is operating with a Croatian Sub-Contractor will Value Added Taxes (VAT) and other taxes and duties be charged?

A10: According to the Financing memorandum, the import duties and VAT will not be charged for the percentage of which this project is financed from the EU pre-accession funds (38% of the total Contract value). The percentage financed from the state budget of the

Republic of Croatia (62% of the total Contract value) will be taxable. The precise procedure for dealing with this matter is currently under discussion with relevant Tax Authorities and clarification will be given before signing the contract with chosen tenderer.

Q11: Can a sub-contractor to one tenderer also be a supplier to others?

A11: Yes, a sub-contractor to one tenderer can also provide supplies to other tenderers..

Q12: Can a Company which is capable to carry out 70% of the works by its own resources participate in this Tender in Partnership with another Company if that first Company is 50% owner of the other Partner?

A12: If those Companies are registered as different legal entities, they can participate in this Tender as partners in a Joint Venture/Consortium under condition that they also provide a signed Agreement of a Partnership and nominate one of these Companies as a Leader in the Joint Venture/Consortium. At the same time the Leading partner must be able to fulfill requirements given in the point 16 of the Procurement Notice and point 4.2 (4) & (5) of the Instructions to Tenderers that are applicable for a Joint Venture/Consortium.

Q13: Can a Company that is going to submit an offer as a Leading Partner of a Joint Venture/Consortium use another Company's resources to prove ability to carry out 70% of the works by its own resources, if that Leading Partner owns less than 50% of another Company?

A13: If those Companies are registered as different legal entities they must submit an offer as Partners. In such a case the Leader can use resources of another Company to prove its capability of carrying out at minimum 70% of the works as stipulated in paragraph three of the Tender Form;

"An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the Contracting Authority that it will have at its disposal the resources necessary for performance of the contract, for example by producing a Letter of undertaking on the part of those entities to place those resources at its disposal. 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".

(also please see answer No.12).

E. Clarification of the Tender Documents

During the meeting the Head of the Department for EU Funds, the Final Beneficiary representative draw the attention of the participants to the following:

1. The Regional Planning and Building Act enters into force as of 1 October 2007. As of the day of entry into force of this Act, the Building Act (OG, No 175/03 and 100/04) ceases to apply.

Whenever the Building Act (OG, No 175/03 and 100/04) is mentioned in the Tender Documents, it shall be replaced with the Regional Planning and Building Act (OG, No 76/07).

2. The omission is made in the Tender Documents, Bill of Quantities, 1.1. TRACK, items 1 and 6: - the following sentence shall be added at the end of both items:

“Quantity is given in a length of track: 1m of track equals 2m of rails.”

3. In the Book 2 of the Volume 5 - Drawings, Section 5 - Schematic Drawings of the Level Crossings, the schematic drawing of the pedestrian crossing at km 145+431.20 right track, is not applicable for this point. However, the mentioned drawing applies to the pedestrian crossing in the Tovarnik Station, km 123+493.30 across the 3rd track (right passing track).

F. Conclusion

When there were no more questions to be answered at the meeting the CFCU representative instructed Tenderers to send any further questions to the CFCU in writing. They were reminded of the deadline for submission of questions of 21 days before the closing date for receipt of tenders, which would be the 12th November 2007. All replies would be given by 22nd November at the latest.

The questions may be sent by e-mail to: cfcu@mfin.hr or by fax to: + 385 (0)1 4591 075.

The Clarification meeting was closed at 10:50 hrs.

All Tenderers will receive the minutes from this site visit and the clarification meeting. Any additional questions that Tenderers might submit before the deadline for submission of Tenders on 03 December 2007 will be published at EuropeAid website <http://ec.europa.eu/europeaid/cgi/frame12.pl> and CFCU internet pages http://cfcu.mfin.hr/tenderYYY/ISPA_2005.htm .

Enclosures:

- Annex 1. List of participants of the Site Visit
- Annex 2. List of participants of the Clarification meeting

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