

Inter-Ministerial Tender Committee – Tender for monitoring Land Transport Projects Entities in Israel

Ministry of Finance

Ministry of Transport and Road Safety

November 24, 2010

To all Bidders

Re: Tender for Monitoring Land Transport Projects Entities in Israel

Tender Committee's Notice as per clause 19.2 of the Tender

[Answers to questions and requests for clarifications]

Pursuant to the Tender for the selection of engineering and management consulting companies for monitoring entities responsible for the execution of land transport projects in Israel issued on October 4, 2010 and in accordance with the provisions thereof, the attention of all Bidders is drawn to the attached answers to all questions and requests for clarifications submitted by Bidders by the deadline date for submission of questions and requests for clarifications.

All Bidders are reminded that this " **Tender Committee's Notice** " must be submitted as part of the information and documents to be submitted in each Bidder's proposal, as provided for in clauses 6.6 and 11.1 of the Tender.

Respectfully Yours,



Gil Shabtai
Senior Deputy Accountant General
Chairman of the Tender Committee

CC : Members of the Tender Committee

Clarifications to the Tender for Monitoring Land Transport Projects Entities

November 24, 2010

		<i>Bidder's Questions (Q) / Tender Committee's answers (A)</i>	<i>Clause</i>
Tender			
1.	Q	<p>a) The Tender excludes award of more than one package to the same Bidder. Can we assume that any company with an existing commission to provide Monitoring Land Transport Projects Entities that would run at the same time as the new contracts will not be allowed to participate in this Tender, as to do so would give that company two contracts, while other bidders are limited to one, which would be unfair ?</p> <p>b) Are the previously selected Monitoring Entities allowed to participate in this Tender ?</p>	3.2
	A	<p>a) The Tender Committee hereby confirms that any company with an existing commission to provide Monitoring Land Transport Projects Entities is allowed to participate in this Tender.</p> <p>b) The Tender Committee hereby confirms that previously selected Monitoring Entities are allowed to participate in this Tender.</p>	
2.	Q	<p>Is the focus of the services required on the engineering side/aspects or on the economic and financial side/aspects ?</p> <p>In other words does the major part of the monitoring consist of having the engineering project management company supervising works in the fields, or consist of office work ?</p>	4
	A	<p>The attention of the Bidders is drawn to the provisions of clause 4 of the Tender. The services to be performed by the selected EMC are primarily engineering monitoring.</p> <p>The Tender Committee further draws the attention of the Bidders that the Tender is for the performance of monitoring services, not supervision nor management services.</p>	
3.	Q	<p>The GOI is requesting information and follow-up regarding the evolution of yields and profitability indicators for the projects.</p> <p>IRR figures, for instance, are the result of a lot of preparatory calculations and models. Who will provide feasibility studies and financial basic models, the monitored entities ?</p>	4
	A	<p>The Tender Committee hereby clarifies that the EMC will not be requested to prepare feasibility studies and/or traffic surveys. Existing financial information and traffic forecasts/assumptions/surveys for the projects to be monitored will be made available to the EMC.</p> <p>In its monitoring reports to the GOI the EMC will be required to update the financial indicators (calculated by the GOI when approving the projects) of the monitored projects, to reflect the effects of changes in the cost estimates or in the time-tables for the execution of the projects.</p>	
4.	Q	<p>Is English going to be the only working language between the GOI and the EMC for correspondence and meetings, documents and reports to be prepared and submitted by the EMC ?</p>	4

	A	The Bidders' attention is drawn to the requirements of clause 4.2 of the Tender for submitting within the deadlines all reports in English with a full translation into Hebrew. Meetings are held both in Hebrew and in English, while according to experience most of the participants are expressing themselves in Hebrew. It is the Advisor's responsibility to take care of translation for its non Hebrew speaker staff members.	
5.	Q	To whom is the EMC reporting, to the MOT, to the MOF ?	4
	A	The EMC is reporting to the GOI's representatives from the ministries of Finance, Transport and Road Safety.	
6.	Q	Is the EMC required to include a minimum number of staff in the proposed team for the execution of the services ?	4.1
	A	The Tender Committee draws the Bidder's attention to the provisions of clause 4.1.12.	
7.	Q	Please confirm that the minimum project capital value for monitoring is NIS 50 million	4.1.3
	A	The Tender Committee draws the Bidders' attention to the provisions of clause 4.1.3.1, which provide for the GOI's discretion to request monitoring of individual projects of a lower size than the minimum NIS 50 million.	
8.	Q	Please confirm that the existing information and documents such as Work Guidelines, Risk Matrix, Quality insurance Procedures, will be made available to the selected Monitoring Company.	4.1.11
	A	The Tender Committee hereby confirms that existing and relevant information and documents will be made available to the selected Monitoring Company.	
9.	Q	Each year 12 monthly, 4 quarterly and 1 annual reports are required to be submitted in English with full translation into Hebrew. Due to the fact that international companies have different holidays and vacation times we request the Tender Committee to consider increasing the period for delivery to 14 days for monthly, 21 days for quarterly and 28 days for annual reports.	4.2
	A	The Tender Committee hereby clarifies that the annual report will be submitted within 21 days after the end of each calendar year.	
10.	Q	Will the Tender Committee accept either the Project Manager or Deputy Project Manager to be present in Israel on a permanent basis during working days ?	5
	A	The Tender Committee rejects the request.	
11.	Q	Please clarify the intention is that the EMC provides international experts to be present in Israel for at least 10 man/day per month.	5
	A	The Tender Committee hereby clarifies that the requirement for presence in Israel of one or more of the international experts included in the team members of the EMC is at least 10 working days in each month during the contract period. Furthermore the Tender Committee confirms that this minimum monthly requirement is for all international experts together and on a cumulative basis.	
12.	Q	In this clause the required relevant monitoring experience must be proven by the international company. Can this requirement be proven by an Israeli-based company ?	6.3

	A	<p>The Tender Committee hereby clarifies that at least 80% of the activity of the international company must be outside Israel, and that all the projects (up to 20) , to be submitted in Form 3 to prove its relevant monitoring experience, have to be projects executed or under execution in countries other than Israel.</p> <p>The attention of the Bidders is drawn to the following changes in clauses 5 and 6.2 an to the new sub-clause 6.3.3 of the Tender :</p> <p><u>5. The EMC</u> <i>The Bidder (and the chosen EMC) must either be an international company with at least 80% of its activity outside Israel or a joint proposal between an international company with at least 80% of its activity outside Israel and an Israeli local entity</i></p> <p><u>6.2 Structure of the EMC</u> <i>The Bidder (and the chosen EMC) must either be an international company with at least 80% of its activity outside Israel or a joint proposal between an international company with at least 80% of its activity outside Israel and an Israeli local entity.</i></p> <p><u>6.3.3</u> <i>Each of the submitted projects must have been executed or must be under execution in a country other than Israel.</i></p> <p>The attention of the Bidders is further drawn to the attached revised Form 2 "Composition of the Bidder" of the Tender.</p>	
13.	Q	Please confirm that one single Bid Bond has to be attached to the proposals in case a Bidder is submitting two proposals, one for each package to be tendered.	6.7+ 15
	A	The Tender Committee hereby confirms that Bidders submitting two proposals, one for each package tendered, are required to provide one single Bid Bond with their submission.	
14.	Q	We request the possibility to submit a price proposal for the execution of the services in Pounds Sterling.	8
	A	The Tender Committee rejects the request.	
15.	Q	Can the Tender Committee share with the bidders the fees paid to the EMC currently providing Land transport Projects monitoring services to the GOI ?	8.1
	A	The Tender Committee rejects the request.	
16.	Q	<p>The financial dichotomy is unclear to us: On the one hand there is an annual reference budget for the cost of monitoring services (for each of the two packages) and on the other hand the subject of competition in the tender is the monthly payment required by the bidders for the execution of the monitoring services.</p> <p>Is the reference budget also intended to be used for the purpose of adjusting the monthly contractual payment according to projects volume, a minimum budget ?</p>	8.3

	A	<p>The Tender Committee clarifies that according to provisions of clause 8.1 of the Tender each Bidder shall submit in its proposal for each package a price proposal for the fixed monthly payment, it requires for the execution of the services.</p> <p>The Tender Committee further clarifies that according to provisions of clause 8.3 of the Tender the price proposal of the Winning Bidder shall be subject to adjustments (up and down) during the contract period. <u>The mechanism for the annual adjustment of the price proposal</u>, as described in clause 8.3 of the Tender, is based on the fluctuations of the amount of cash budgets transferred by the Ministry of Transport and Road Safety to the monitored entities during the contract period, compared to the reference budget (referred to as" basic budget").</p> <p>The " basic budget " in clause 8.3 of the Tender is not a minimum budget, however the attention of the Bidders is drawn to the fact that in any case the price proposal shall not be adjusted downwards by more than 20%.</p> <p>Examples illustrating how the adjustment mechanism works:</p> <p>The basic budget for package 2 is 4,500 million NIS and the contractual agreed fixed monthly payment (price proposal of the Winning Bidder) is 100,000 NIS.</p> <p><u>Example 1:</u> If in a given year the actual cash budget transferred by the Ministry of Transport and Road Safety to the monitored entities of package 2 will amount to 5,175 million NIS (+ 15% compared to basic budget), the fixed monthly payment paid to the Winning Bidder during that year will be increased to 104,250 NIS (+ 4,25% compared to the price proposal, as provided for in the table in clause 8.3 of the Tender).</p> <p><u>Example 2 :</u> If in a given year the actual cash budget transferred by the Ministry of Transport and Road Safety to the monitored entities of package 2 will amount to 3,600 million NIS (- 20% compared to basic budget) the fixed monthly payment paid to the Winning Bidder during that year will be reduced to 90,000 NIS (- 10% compared to the price proposal, as provided for in the table in clause 8.3 of the Tender).</p>	
17.	Q	<p>The Tender indicates that the Quality: Price balance desired by the GOI is 60:40. However the procedure outlined in these clauses awards the best price score the maximum of 40 but does not award the maximum of 60 to the best quality score.</p> <p>Will the Tender Committee please consider in the quality section awarding the highest score the maximum number of 60 points and the other proposals receive points relative to the highest score in descending order. This process will maintain the intention of a 60:40 balance of Quality: Price.</p>	13,14 ,12
	A	The Tender Committee rejects the request.	
18.	Q	<p>The projects to be monitored are of such strategic significance and provide such high benefits in economic, defense and social (safety) terms to the State of Israel.</p> <p>The Tender Committee is therefore requested to change the Quality: Price balance to 70:30 or even 80:20.</p>	13,14 ,12
	A	The Tender Committee rejects the request.	

19.	Q	We request the Tender Committee to raise the threshold to 45 points out of the maximum of 60 points, equivalent to 75%. We request the Tender Committee to consider applying the minimum score threshold in each of the scoring divisions.	13.5
	A	The Tender Committee rejects the request.	
20.	Q	Please clarify the procedure for return of Bid Bonds to unsuccessful Bidders. Also please clarify the treatment of Bid Bond for successful bidders.	15.1
	A	The Tender Committee hereby clarifies that the Bid Bond to the unsuccessful Bidders shall be returned within reasonable lapse of time after the announcement of the Winning Bidders. The Tender Committee further clarifies that the Bid Bond will be returned to each Winning Bidder in exchange for the Performance Bond.	
21.	Q	We request the Tender Committee to amend the wording to require the bond to be called for specified non-performance(s) rather than the unreasonable on-demand condition.	15.2/ Exhibit 6.1(PSA)
	A	The Tender Committee rejects the request.	
22.	Q	We are working for Israel Railways Company and for one of the entities to be monitored, as defined in the Tender : a) If we shall be part of the proposed team members of the EMC, shall the Tender Committee consider that we are in a situation of conflict of interest ? b) Will it be possible for the Bidder to split in its proposal the proposed team members in our field of expertise, so that we shall be proposed as team member only for the monitoring of entities other than the ones we are currently working for ?	16
	A	a) The attention of the Bidders is drawn to the provisions of paragraphs 1 and 2 of exhibit 8.1B of the Professional Services Agreement. In accordance with these provisions the Winning Bidder (the Advisor), its employees, agents and sub-contractors shall not provide to any monitored entity (as defined in the Professional Services Agreement) any services of whatsoever nature during the contract period and one year after termination of the Agreement. The attention of the Bidders is also drawn to the fact that in the Tender the Israel Railways Company is not included in the list of monitored entities. b) The Tender Committee rejects the proposed way to overcome a conflict of interest with one of the monitored entities in a package, and clarifies that the team members of the EMC, proposed for the monitoring of a package, must have no conflict of interest with all the entities to be monitored in the package it is tendering for.	
23.	Q	We are a large engineering group of companies, and some of our companies are working for monitored companies, as defined in this tender. Will it be possible for a company of our group, not working for any monitored company, to be part of a bidding group ?	16

	A	<p>The Tender Committee hereby clarifies that the Advisor or any related company to the Advisor / to a member of the Advisor (controlling/ controlled company, or sister company) shall not provide to any monitored entity (as defined in the Professional Services Agreement) any services of whatsoever nature during the contract period and one year after termination of the Agreement, without receiving the prior written consent of the GOI.</p> <p>The attention of the Bidders is further drawn to the attached revised Exhibit 8.1B "Undertaking of No-Conflict of Interest" to the Professional Services Agreement.</p>	
24.	Q	Please clarify the wording of sub clause 2 in exhibit 8.1B (PSA).	16.1/ Exhibit 8.1B(PSA)
	A	The Tender Committee draws the Bidders' attention to the attached revised exhibit 8.1B.	
25.	Q	<p>Bidders are invited to submit either one proposal for one of the two packages tendered, or two proposals, one for each of the two packages tendered.</p> <p>It is unclear to us how a Bidder should submit its two proposals (in case it has decided to tender for both packages). Both original copies of the proposals in one sealed envelope, both identical copies of the proposals in one sealed envelope, both original Price Proposals in one sealed envelope, and both identical copies of the Price Proposals in one sealed envelope ? Please confirm.</p>	20
	A	<p>The Tender Committee hereby clarifies that Bidders submitting two proposals (one for each package tendered) are requested to submit <u>two separate</u> outer envelopes or boxes, each one containing the four sealed envelopes referred to in clause 20 (on set of four sealed envelopes for each proposal submitted).</p> <p>On each outer envelope or box the Bidder will clearly indicate the tender name and the package (package 1 or 2) he is tendering for:</p> <p><u>Tender for Monitoring land Transport Projects Entities in Israel</u></p> <p>Proposal for monitoring package [1 or 2]</p> <p>The original copy of the Bid Bond will be included in the documents submitted for "package 1" proposal, and a photocopy of the Bid bond will be included in the documents submitted for "package 2" proposal.</p>	
26.		<p>The attention of the Bidders is drawn to the amendments in the third paragraph of section 20.1 of the Tender :</p> <p><i>The four sealed envelopes shall then be sealed in an outer envelope or a box. The CD or disk on key will include all files submitted in the proposal, <u>except the Price Proposal</u> (which has to be submitted only in hard copy in a sealed separate envelope), in an original PDF format, except for tables (Forms 3 and 4) to be submitted according to requirements of clauses 6.3 and 6.5 above, which have to be in word or excel format.</i></p>	20.1
27.	Q	Kindly complete the annual cash budgets in Exhibit 5B and update Exhibit 5A as necessary.	Exhibit 5B

	A	The Tender Committee hereby clarifies that the released exhibit 5B includes all the information currently available.	
Professional Services Agreement			
28.	Q	We are requesting that the Advisor's liability shall be limited to its fees in the project, unless it caused bodily injury, sickness or death, infringement or alleged infringement of intellectual property rights, illegal or unlawful acts or the damages were caused as a result of gross negligence by the Advisor.	5.2
	A	The Tender Committee hereby accepts to limit the Advisor's liability up to the limits of liability provided for in the insurance policies required in clause 7 of the Agreement. Clause 5.2 of the Agreement is amended as follows : <i>The Advisor accepts liability and shall indemnify the GOI for any damage caused by himself up to the limits of liability of the insurance policies required in clause 7 below.</i>	
29.	Q	We are requesting to delete the GOI's right to agreed compensation, or at least to amend it to a mutual agreed compensation.	12.3 iii)
	A	The Tender Committee rejects the request.	

Form 2 – Composition of the Bidder

To
Mr. Gil Shabtai
Chairman of the Tender Committee
Ministry of Finance
Jerusalem

Dear Sir,

Re: The composition of the Bidder

In accordance with the provisions of section 6 of the Tender the EMC is required to be either a joint proposal between an international company and a local entity or an international company.

1. We therefore declare that:

-(name of the Bidder) is a cooperation between(name of the international company) and(Israeli entity/ies). It is hereby confirmed that the obligations of the Bidder are joint and several.
-(name of the international company) is bidding alone and will hire local staff for the execution of the services.

2. We hereby declare that at least 80% of the international company's activity is executed outside Israel.

Executed and signed on _____ 2010

On behalf of : (name of the Bidder) _____

Full name and signature of the authorized representatives of the Bidder :

(full name and office/function)

(signature)

(full name and office/function)

(signature)

I _____, attorney-at-law/advocate/solicitor, hereby do attest and confirm that _____ is/are authorized to sign on behalf of _____, and that his/her/their signature/s will commit the Bidder for the purpose of the above stated Exhibit, for all purposes and intents.

Attorney-at-Law

Exhibit 8.1B - Undertaking of No-Conflict of Interest

Whereas the Government of Israel, through the Accountant General and the General Manager of the Ministry of Transport and Road Safety (hereinafter the " **GOI**") acting on behalf of the State of Israel is desirous of receiving the services as defined hereafter;

Whereas _____ has been selected as Advisor for providing the services;

Whereas the Advisor and its employees may find themselves in a situation of conflict of interest in the course of the execution of the services and after completion of the services;

Therefore, the Advisor undertakes the following towards the GOI :

1. The Advisor or any related company to the Advisor/ to a member of the Advisor (controlling/ controlled company, or sister company) shall not provide to any monitored entity (as defined in the Professional Services Agreement) any services of whatsoever nature during the contract period and one year after termination of the Agreement, without receiving the prior written consent of the GOI.
2. The Advisor hereby agrees that during the period of rendering the services under the Professional Services Agreement ("SLA") and the period of one year after the termination of the SLA, there shall be no conflict of interest of the Advisor, its employees, agents and sub-contractors, between the provision of the services and the other activities of the Advisor, its employees, agents and sub-contractors.
3. The Advisor undertakes to inform the GOI of any information or new situation which may cause it or any of its employees, agents or sub-contractors to be in a situation of conflict of interest, immediately after it becomes aware of such information or of the occurrence of such event.
4. The Advisor undertakes to report to the GOI in advance of any intent on its part to enter into a relationship with any entity which might or will be in contradiction with its above undertaking, and undertakes to act according to the GOI instructions in this respect. The GOI is entitled not to approve the transaction or to give such instructions with respect the situation of no-conflict of interest. In such case the Advisor undertakes to act according to the instructions received from the GOI.

Signed on _____, on behalf of the Advisor by:

[Name(s), Title(s) and Signature(s)]