

TERMS RELATING TO THE TENDERING PROCEDURE

- CLV

(hereinafter referred to as the "**Terms**")

Id. number of the tendering procedure: 1/2018
Date of the publication: 26th March 2018
Process: 900700 – the Department of Marketing and Business
Contact person: Bc. Josef Voltr, MBA
00 420 296 192 060
Reklamni.Plochy@dpp.cz

1. Identification of the tenderer:

Business Name: Dopravní podnik hl. m. Prahy, joint-stock company
ID. No.: 000 05 886
Tax ID. No: CZ00005886
with its registered seat at: Sokolovská 217/42, 190 22 Praha 9

(hereinafter referred to as "**Lessor**")

2. Description of the tendering procedure

The subject-matter of the tendering procedure is selection of the lessee of the specified premises in the specified Lessor's premise publicly accessible, for the purpose of installation of at least 1,200 pcs of CLV (city-light vitrines) in format DIN 4/1 1,76 m x 1,20 m (hereinafter referred to as "**CLV**"), that will be used by the lessee for the purpose of performing advertising activities consisting of the placement, installation or presentation of advertisement, i.e. any announcements, regardless of their medium, form and content, the purpose of which is to provide third parties with information about another person or about its business activities, products, services, about a certain event, about a social phenomenon or idea, regardless of the fact whether the purpose of providing the information is commercial or charitable.

The Lessor is interested in selecting one (1) lessee with whom he concludes the Agreement on the use of selected premises for advertising activities, which template, except its Annex No. 1, forms Annex No. 1 to the Terms (hereinafter referred to as the "**Draft Agreement**") based on the submitted offers. Annex No. 1 to the Draft Agreement will be made available to the tenderers only after the conclusion of a Non-Disclosure Agreement (hereinafter referred to as the "**NDA**") and after depositing of a security due to confidential manner of information contained in the Annex No. 1 to the Draft Agreement.

The specific terms and conditions of renting the premises are specified in the Terms and, in particular, in the Draft Agreement, including its annexes, which contains the catalogue of

premises and operational and technical conditions of installation of the CLV and the conditions of the placing advertising announcements on the CLV.

3. Binding character of the Terms and the documentation of the tendering procedure

The information and data contained in the respective parts of the Terms and in its annexes define Lessor's binding requirements for demanded scope of performance. The tenderer shall fully accept and comply Lessor's requirements when processing of its tender. Non-acceptance of the Lessor's requirements stated in the Terms, respectively any deviation or determination of any other conditions, is considered as the failure to comply with the conditions of the tendering procedure and the tenderer could be excluded from further participation in the tendering procedure by the Lessor.

4. The Qualifying Conditions

The tenderer shall meet and demonstrate the fulfilment of the qualifying conditions mentioned in this Article of the Terms.

Unless otherwise provided in the Conditions, the tenderer is entitled to submit plain copy of the required documents demonstrating fulfilment of the qualifying conditions. In response to the request of the Lessor, the tenderer shall submit original documents or certified copies of such documents.

The tenderer shall submit the documents demonstrating fulfilment of the qualifying conditions primarily in the Czech language. If the documents are not executed in the Czech or English language, the tenderer shall translate the documents into the Czech language. In response to the request of the Lessor, the tenderer shall submit certified translation of the documents.

4.1. The General Qualifying Conditions

a) The Legal form of the tenderer

The tenderer shall be a legal person with its registered seat in the Czech Republic, foreign legal person, whose branch is registered in the Commercial Register of the Czech Republic or natural person registered in the Commercial Register of the Czech Republic.

The tenderer shall prove the fulfilment of the condition by submitting a copy of the extract from the Commercial Register of the Czech Republic. The foreign legal person shall also submit a copy of the extract from the register of the state in which it has its registered seat for the purpose of proving that it has a legal capacity and also proving of the authorized representative of the foreign legal person.

b) Criminal Integrity

The tenderer shall be a legal or natural person, who has not been finally convicted for a criminal offence under the laws of the Czech Republic and, in the case of foreign legal persons, under the laws of the Czech Republic and also the laws of state of its registered seat, within five (5) years prior to the publication of the Terms; expunged criminal records shall not be taken into account.

The tenderer shall prove the fulfilment of the condition by submitting a copy of the clear criminal record. The foreign legal person shall also submit a copy of the clear criminal record of the state in which has its registered seat. When the state of the tenderer's registered seat does not issue the criminal record or a similar document, from which the fulfilment of this condition is apparent, the condition shall be fulfilled by submitting an affidavit.

c) The Status

The tenderer shall not be declared bankrupt within the meaning of Act No. 182/2006 Coll., The Insolvency Act. The tenderer – legal person shall not be in liquidation.

The tenderer shall prove the fulfilment of the condition by submitting a copy of the extract from the Commercial Register. The foreign legal person shall also submit an affidavit stating that there is no impending insolvency or similar procedure against the tenderer in the state in which it has registered seat and that the person has not been wound up with liquidation or similar procedure leading to dissolution of the foreign legal person.

4.2. Economic Qualifying Conditions

a) Trade Licence

The tenderer shall prove, that he disposes with a trade licence to practise activities in the Czech Republic directly related to the purpose of using the subject of the lease, i.e. unqualified trade licence within the meaning of the Act No. 455/1991 Coll., The Trade Licensing Act, branch of activity “Advertising activities, marketing, media representation”.

The tenderer shall prove the fulfilment of the condition by submitting a copy of the extract from the Trade Register. The foreign legal person whose branch is registered in the Commercial Register of the Czech Republic shall prove the fulfilment of the condition by submitting a copy of the extract from the Trade Register related to this branch.

b) Sales

The tenderer shall prove, that he reached in each of three (3) business years prior to the day, in which the tendering procedure was issued, revenues from sales of goods and services, within the meaning of Annex No. 2 to the Ministerial Decree No. 500/2002 Coll., a minimum amount: CZK 35,000,000 (or the equivalent in another currency converted according to the exchange rate announced by the Czech National Bank on the date of issue of the tendering procedure).

The tenderer shall prove the fulfilment of the condition by submitting a copy of a profit and loss statement for the relevant business year. The foreign legal person shall prove the fulfilment of the condition by submitting a profit and loss statement or similar document from which reaching of revenues from sales of goods and services in minimal amount of CZK 35.000.000 (or the equivalent in another currency converted according to the exchange rate announced by the Czech National Bank on the date of issue of the tendering procedure) will be apparent.

c) Sales in advertising activities

The tenderer shall prove, that he reached in each of three (3) business years prior to the day, in which the tendering procedure was issued, revenues from sales of goods and services consisting of rental of advertising premises in the EU in a minimal amount of CZK 35.000.000 (or the equivalent in another currency converted according to the exchange rate announced by the Czech National Bank on the date of issue of this tendering procedure).

The tenderer shall prove the fulfilment of the condition by submitting an affidavit.

For avoidance of any doubts, revenues from the advertising activities may be also calculated into revenues from the sales of goods and services under Section (b) of this Article.

5. Interest in participation in the tendering procedure

The tenderer is entitled to express his interest in participation in the tendering procedure by delivering a request to participate which template forms Annex No. 2 to the Terms (hereinafter referred to as the "**Request**").

The tenderer shall attach two (2) counterparts of the NDA, which template forms Annex No. 3 to the Terms, to the Request. The NDA shall be signed by the person(s) authorised to act on behalf of the tenderer with officially verified signature(s), respectively with signature verified by an advocate registered with Czech BAR Association.

The tenderer shall submit the document which proves that the conditions stipulated in Article 4.1 a) of the Terms was met, to the Request.

The tenderer shall deposit a security in amount of CZK 1.000.000 to the Lessor's bank account No. 1930731349/0800 , administered by Česká spořitelna a.s., (hereinafter referred to as the "**Security**") before the submission of the Request. The payment shall be designated with a variable symbol (tenderer's ID Number), and a notice „*The Security of the tender procedure for lease of premises to install CLV*“. The foreign legal person with its registered seat in the Czech Republic shall use its branch's ID Number. The tenderer shall prove the fulfilment of the condition by submitting a copy of the bank or other financial institution's confirmation of execution of the irrevocable order to transfer the Security to the Lessor's bank account specified in this Article of the Terms.

The tenderer shall deliver the Request in person or via Postal Service to the Lessor's address: Dopravní podnik hl. m. Prahy, akciová společnost, Sokolovská 217/42, 190 22 Praha 9, Department of Marketing and Business. **The envelope shall be identified by the tenderer's identification** (Business name, Registered seat/Address) **and designation:** „900700 – *the Department of Marketing and Business - Request for Participation – Tendering Procedure for lease of premises to install CLV – DO NOT OPEN*“.

In the event of a defect in the Request or in its Annexes the Lessor shall inform the tenderer about the defect and request the tenderer for correcting the defect. In the event that the defects are not remedied or the Security is not lodged within the deadline for submitting the Request, the defective Request will not be further considered.

The deadline for submitting the Request expires **on 16th April 2018 at 12:00 PM.**

After expiration of the deadline for submitting the Request the Lessor shall provide all tenderers who met the above-mentioned conditions (i.e. receipt the Request with all annexes and confirmation of deposit of the Security) via contact person's e-mail address (mentioned in the Request) with an access to the data-room through which the Lessor shall provide the tenderer with all documents and information about the tendering procedure. The Lessor shall send one (1) counterpart of the NDA back to the tenderer without undue delay after receipt the Request and confirmation of deposit of the Security.

The Request that does not meet the Qualifying Conditions stipulated in Article 4.1 (a) of the Terms and/or the Request delivered after the expiration of the deadline hereinabove mentioned will not be considered.

6. The Draft Agreement

The tenderer will be acquainted with the Draft Agreement without the Annex No. 1 to the Draft Agreement as a part of the Terms, since the Annex No. 1 to the Draft Agreement contains strictly confidential information, in particular schematic plans of publicly accessible premises of the Prague metro system. Instead of the Annex No. 1 to the Draft Agreement, the tenderers will be provided with a list of respective Prague metro system stations containing information about appropriate numbers of premises for the purpose of installation of the CLVs in the respective station which forms Annex No. 4 to the Terms. The tenderer is entitled to acquaint himself with the Annex No. 1 to the Draft Agreement, which will be provided through the data-room after timely and proper receipt of the Request and deposit of the Security.

The version of the Draft Agreement is final. The tenderer is entitled to add, amend or change **only** such data labelled „*[complete by the tender]*“ or similarly. Any other changes, amendments or additions to the Draft Agreement will be considered as a breach of the Terms and the tenderer may be excluded from the tendering procedure for this reason.

The Draft Agreement will be binding for the period of one hundred twenty (120) days as of the day on which the deadline for the submission of the tender has expired.

The tenderer shall attach in case of his interest to submit the tender the Draft Agreement as a separate document. The Draft Agreement including all Annexes shall be firmly bounded as a single document. The tenderer shall ensure the Draft Agreement is signed by the person(s) authorised to act on behalf of the tenderer with officially verified signature(s), respectively with signature verified by an advocate registered with Czech BAR Association.

7. Questions related to the tendering procedure

The tenderer is entitled to raise any inquiries to the Lessor related to the Terms, the Draft Agreement or any other documents and information relating to the tendering procedure after timely and properly delivery of the Request and deposit of the Security.

The tenderer shall send the inquiries to contact person's e-mail of the Lessor set out in the Terms. The answers to the inquiries will be publicized in the data-room.

The Lessor is entitled not to inquire into questions that are not specific or understandable or are not relevant in relation to this tendering procedure.

8. On-site visit of the subject of the lease

On-site visit of the subject of the lease will not take place. The subject of the lease is publicly accessible.

9. The Tender

The tenderer shall submit the tender in paper form and secure the signature(s) of the tender by the person(s) authorised to act on behalf of the tenderer with officially verified signature(s), respectively with signature verified by an advocate registered with Czech BAR Association.

The tenderer shall submit a scan of the tender in the portable document format (.pdf). The scan shall be placed in the storage device and attached to the paper form of the tender.

Mandatory parts of the tender are:

- Cover page;
- The declarations as mentioned in the template of the tender;
- Beneficial Owner Declaration;
- The documents proving fulfilment of the Qualifying Conditions stipulated in Article 4 of the Terms.

The tenderer shall use the template of the tender, which will be publicized in the data-room.

The Lessor does not accept any variant or conditional proposals.

The tenderer shall firmly connect the tender documentation including all Annexes (except the Draft Agreement). The tender shall be numbered with ascending continuous numerical scale (1st page shall include Cover page).

The tenderer shall deliver the tender to the Lessor in the sealed envelope. **The envelope shall be identified by the tenderer's identification** (Business name, Registered seat/Address) **and designation:** „900700 – the Department of Marketing and Business - The tender – Tendering Procedure for lease of premises to install CLV – DO NOT OPEN“.

10. The deadline and submission of the tender

The tenderer shall deliver the tender with all necessary requirements in person or via the Postal Service to the Lessor's address: Dopravní podnik hl. m. Prahy, akciová společnost, Sokolovská 217/42, 190 22 Praha 9, Department of Marketing and Business.

The deadline for lodging the tender expires **on 9th May 2018 at 12:00 PM.**

If the tender is sent via postal service, the tenderer shall ensure that the tender will be delivered within the required deadline to the above address. Sending of the tender within the required deadline does not satisfy the delivery condition. The tenders delivered after the expiry of the deadline will not be considered.

Changes, amendments or additions to the tender made after the expiry of the deadline for delivery of the tender will be disregarded, with the exception of additions, amendments or changes made to an express Lessor's request in accordance with the Terms.

11. Evaluation of the tenders

The submitted tenders will be evaluated for the formal criteria and the qualifying conditions. The Lessor is entitled to request for clarification and additions of the tenders, eventually answering the questions.

If the tenderer does not meet the formal criteria stipulated in the Terms, the Lessor is entitled to exclude the tenderer from the tender procedure. The tenderer's contact person will be informed about such situation by the Lessor.

If the tenderer does not meet the qualifying conditions stipulated in the Terms, the Lessor is entitled to exclude him from the tender procedure. The tenderer's contact person will be informed about such situation by the Lessor.

The only evaluation criterion is a bided tender price.

Minimal tender price for lease of the one premise, as defined in the Draft Agreement, is set in amount of CZK 20.000 (in words: twenty thousand Czech crowns) per year. This price does not include VAT.

The Lessor is entitled to exclude the tender from evaluation, if the tender contains the tender price less than the minimal tender price.

The Lessor is entitled to exclude the tenders from evaluation, when the tenderer has committed serious or long-term breaches of performance of a contractual relationship with the Lessor or with the controlling, controlled or connected entities with the Lessor (in particular the contractual relationship with the Capital City of Prague, organizations and its subsidiaries) in the last three (3) years prior to the publication of the tender procedure. The Lessor's entitlement to exclude the tender also applies to the tenderers who are controlled or controlling to a person who has breached the performance of the contractual relationship described in the preceding sentence or are the legal successors of such person.

The Lessor is entitled to exclude the tenders from the evaluation, if the beneficial owner has been economically sanctioned by the Czech Republic, the European Union or another international organization in which the Czech Republic or the European Union is a member.

The Lessor is entitled to exclude the tender from the evaluation, if the Lessor registers a claim against the tenderer due more than fourteen (14) days.

The Lessor is entitled to exclude the tender from the evaluation, if it contains false, incomplete or incorrect data or information.

The Lessor is entitled to decline all received tenders without reasoning. The tenderers will be informed about such decision.

The evaluation of the tenders is carried out by an evaluation committee appointed by the Lessor. Approval of the results of the tender procedure and selection of the winner is to be approved by the Statutory and Supervisory Body of the Lessor.

12. Announcement of the results of the tender procedure

The tenderers who submitted the tender and were not earlier notified about their exclusion from the participation will be informed about the evaluation of the submitted tenders no later than thirty (30) business days from the actual evaluation and approval or disapproval of the results of the tender procedure by the Lessor.

13. Submission of an insurance contract and conclusion of the agreement with the selected tenderer

The tenderer whose tender will be assessed as the most advantageous by the Lessor will be invited in writing to conclude an agreement and to provide an insurance contract for the liability insurance under the conditions set forth in the Draft Agreement and its Annexes.

The submission of the insurance contract is required as condition precedent to the conclusion of the agreement with the selected tenderer by the Lessor.

The tenderer shall deliver a copy of the insurance contract and three (3) copies of the Draft Agreement signed by the authorized representative of the tenderer within ten (10) days of receipt of the Lessor's invitation to sign the agreement.

In the event that the selected tenderer does not submit a copy of the insurance contract or the insurance contract does not meet the conditions specified in the Draft Agreement, the Lessor is entitled to terminate negotiations for the conclusion of the agreement with that tenderer and address the invitation to the next tenderer in order.

The Lessor is also entitled to contact and conclude an agreement with another tenderer in the event that the conclusion of the agreement with the selected tenderer is forbidden to the Lessor on the basis of an enforceable resolution of any judicial or other competent authority. The tenderer will be immediately informed about such situation.

The selected tenderer shall submit to the Lessor a bank guarantee issued by a bank or a branch of a foreign bank, whose headquarters are located in the Czech Republic and which is authorized to provide banking services in the territory of the Czech Republic within twenty one (21) days as of the effectiveness of the Draft Agreement in accordance with a template forming Annex 2 to the Draft Agreement. The bank guarantee shall contain an unconditional obligation of the bank to pay to the Lessor an amount up to the amount of CZK 12.000.000,- (in words: twelve million Czech crowns). The bank guarantee shall be valid for the period at least one (1) month longer than the non-prolonged lease term under the Draft Agreement. The terms for the amount of the bank guarantee limit, its revolving and extension are regulated in the Draft Agreement.

14. Handling with the Security

The Lessor is not entitled to handle with the Security in any other manner than as set out in the Terms or in the Draft Agreement.

The Security deposited by the tenderer who does not submit the tender within the deadline specified in the Terms will be returned to the tenderer within sixty (60) days from the expiry of the deadline for submitting the tender.

The Security deposited by the tenderer who has been excluded from the tendering procedure will be returned to the tenderer within thirty (30) days of the date of delivery of the notice of the exclusion of the tenderer. Accordingly, the Lessor will proceed, if the tender will be excluded from the evaluation or if all tenders are declined or if the tendering procedure is cancelled.

The Security deposited by the tenderers who does not become the winner of the tendering procedure is bound to the Lessor's bank account for one hundred and twenty (120) days after the deadline for submitting the tenders.

In the event that the agreement is concluded with the tenderer, the Lessor shall return the Security to the selected tenderer within thirty (30) days of the date of presenting of the bank guarantee as specified in Article 13 of the Terms.

In the event that the tenderer does not deliver the signed agreement in the appropriate number of counterparts or fails to submit the insurance contract within the time limit specified in Article 13 of the Terms or the insurance contract will not satisfy the conditions specified in the Draft Contract, the Security will forfeit to the Lessor and the Lessor is entitled to freely dispose with the Security.

The Lessor is also entitled to retain the Security and set off the Security against the contractual penalty in the event of a breach of the NDA by the tenderer.

15. Final provisions

The tendering procedure is neither a public offer within the meaning of Section 1780 of the Act No. 89/2012 Coll., the Civil Code, nor a public contract within the meaning of the Act No. 134/2016 Coll., on Public Procurement.

There is no legal remedy against the exclusion from the tendering procedure, decline of the tender, or cancellation of the tendering procedure.

The tenderer shall bear all the costs of participation in the tendering procedure. The tenderer is not entitled to claim any compensation against the Lessor for the costs or damages incurred in connection with the exclusion or rejection of the tender or the cancellation of the tendering procedure.

The Lessor shall deliver the notifications or other documents relating to the tendering procedure to the tenderer electronically to the e-mail address of the contact person listed in the tender or via the data-room.

In the event that legal act under the Terms shall be signed by person who is not the tenderer or a statutory body of a tenderer – legal person, the tenderer shall prove authorization of such person to act on behalf of the tenderer (e.g. by submitting an appropriate authorisation or certified copies of such documents).

The Lessor reserves the right to modify, specify, supplement the Terms or the Draft Agreement, or cancel the tendering procedure before concluding of the agreement, even without any reasoning.

In case of cancelation of the tender procedure or termination of negotiation on conclusion of the agreement with the winning tenderer the Lessor shall not bear any liability for any harm construed in connection with pre-contractual liability. The Sections of the Civil Code, in particular but not exclusively the Sections 1728 to 1730 of the Civil Code, regulating the pre-contractual liability shall not be applicable in this tender procedure. The tenderer waives any and all of his claim against the Lessor which may arise out of pre-contractual-liability with exception of the claims connected with the harm caused by the Lessor intentionally or with gross negligence.

The Terms are considered to be publicized at the moment of their publication on the websites www.dpp.cz. Further documents and information will be publicized in the data-room.

The following Annexes form an integral part of the Terms:

- Annex No. 1 – The Draft Agreement (without Annex No. 1);
- Annex No. 2 – Template of the Request;
- Annex No. 3 – Template of the NDA;
- Annex No. 4 – The list of respective Prague metro system stations with the appropriate number of premises for installation of CLVs.

Dopravní podnik hl. m. Prahy, akciová společnost