

TERMS RELATING TO THE TENDERING PROCEDURE - TUBES OF PRAGUE METRO SYSTEM
(hereinafter referred to as the "Terms")

Id. number of the tendering procedure: 1/2019
Date of the publication: 13. 5. 2019
Responsible department of the tenderer: 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 object of the tendering procedure is selection of the lessee of the specified premises situated on the side walls of the tubes of Prague metro system, which are schematically designated in Annex 1 of the contract which is to be concluded within the tender (please, see hereunder). The premises are to be sized of three hundred metres (300 m) horizontally and up to two and a half meters (2.5 m) from the edge of the boarding platform of Prague metro system. The premises shall be situated at least fifty meters (50 m) from the nearest end of the boarding platform edge.

The Lessor is interested in selecting one (1) lessee from the delivered bids with whom the Lessor concludes the Framework Lease Agreement, which template forms Annex No. 1 to this Terms (hereinafter referred to as the "Draft of the Agreement"). Annex No. 1 to the Draft of the Agreement shall be made available to the tenderers after 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 of the Agreement.

The specific terms and conditions of the lease of the premises are described in this Terms and, in particular, in the Draft of the Agreement, including its annexes, and in respective internal regulations of the Lessor which regulates operational and technical conditions of using and execution of works in Prague metro system. The list of the relevant internal regulations will for annex of the Draft of the Agreement and valid and effective wording of such regulation shall be publicize to the tenderer via data-room (please, see hereunder).

Based on the conclusion of the contract compliant to the Draft of the Agreement the Lessor shall conclude with the selected tenderer implementing contracts on the respective premises, which shall be designated by the tenderer in collaboration with the Lessor with respect to the specific technical environment in Prague metro system. The plan to be implemented by the tenderer on the specific premise shall not in any case interfere with safety and fluent traffic flow and with any technical installation which are essential for safety traffic of the Prague metro system and/or which are installed in the Prague metro system for the purpose of increase of passenger comfort (e.g. in particular, but not exclusively, signal lights, traffic signs, vent, collector channels or appliances of telecommunications company for mobile network or other signal propagation).

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

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

4. The Qualifying Conditions

The tenderer shall satisfy and prove the fulfilment of the qualifying conditions mentioned in this Article of the Terms.

Unless otherwise provided in this Terms, the tenderer is entitled to submit plain copy of the required documents proving fulfilment of the qualifying conditions. Based on the request of the Lessor, the tenderer shall submit original documents or certified copies of such documents.

The tenderer shall submit the documents proving 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. Based on 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 formed as 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 – entrepreneur - 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 for the purpose of proving of the persons authorized to represent the foreign legal person.

b) Criminal Integrity

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

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 pending 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 has not been commenced.

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 object 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.

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 its branch.

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 to the Request two (2) counterparts of the NDA, which template forms Annex No. 3 to this Terms. 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, as well, to the Request the document which proves that the conditions stipulated in Article 4.1 a) of the Terms was met.

The tenderer shall deposit a security in amount of CZK 10.000.000 (ten million Czech crowns) to the Lessor's bank account No. 120037-1930731349/0800, 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 in Tubes of Prague Metro System.*“. The foreign legal person with its branch registered 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 deposited Security shall not bear in favour of the tenderer.

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 details** (Business name, Registered seat/Address) **and designation:** „900700 – *the Department of Marketing and Business - Request for Participation – Tendering Procedure for lease of premises in Tubes of Prague Metro System – 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 deposited within the deadline for submitting the Request, the defective Request will not be further considered.

The deadline for delivery of the Request expires **on 24. 5. 2019 at 14.00.**

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

The Requests that do not satisfy 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 of the Agreement

The tenderer will be acquainted with the Draft of the Agreement which forms annex to this Terms without Annex No. 1, as the Annex No. 1 to the Draft Agreement contains strictly confidential information, in particular, schematic plans of the Prague metro system. Instead of

the Annex No. 1 to the Draft of the Agreement, the tenderers are provided with a list of respective parts of Prague metro system tubes.

The tenderer is entitled to acquaint himself with the Annex No. 1 to the Draft of the 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 of the Agreement is final. The tenderer is entitled to add, amend or change **only** such data labelled „*[to be filled in by the tender]*“ or similarly. Any other alternations, 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 upon the Tenderer 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 together with the Request the Draft of the Agreement as a separate document. The Draft of the Agreement including all Annexes shall be firmly bounded as a single document. The tenderer shall ensure the Draft of the 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 of the 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 or will be provided to the tenderers via email address of the contacting persons designated in the Request.

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 object of the lease

The object of the lease is not publicly accessible.

In the event of interest of any tenderer to hold an on-site visit of the tubes the Lessor shall hold such on-site visit upon agreement with the tenderer. Other tenderers will be acquainted with the term of such on-site visit via data-room or via email of the contacting persons of the tenderers and all tenderers may participate on such on-site visit.

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 attorney-at law registered with Czech BAR Association.

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

Compulsory parts of the tender are:

- Cover page;
- The declarations of the tenderer;
- 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 tenders.

The tenderer shall be firmly connected including all Annexes (except the Draft of the 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 in Tubes of Prague Metro System – 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 delivery of the tender expires **on 14. 6. 2019 at 14.00.**

The Lessor is entitled to extend the period for delivery of the tenders. The tenderers will be acquainted about deadline extension via data-room or via email address of the contacting persons of the tenderers.

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-mentioned 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.

Alternations, 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 satisfy the formal criteria stipulated in the Terms, the Lessor is entitled to exclude the tenderer from the tender procedure. The tenderer's contacting person will be notified about such situation by the Lessor.

If the tenderer does not satisfy 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

Minimal tender price is set in amount of CZK 385,630.00 (in words: three hundred eighty-five thousand six hundred thirty 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 breach 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, its organizations and its subsidiaries) in the last three (3) years prior to the publication of this 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 winning bidder is to be approved by the Statutory Body and Supervisory Body of the Lessor.

12.

The Lessor reserves the right to send to the tenderers, whose tender was evaluated, notice to increase of the tender. The notice will contain the deadline for delivery of the increased tender. The tenderers are entitled, not obliged, to increase his tender. If the tenderer does not increase its tender, the original tender is valid. Increase of the tender is effective by delivery of the tender (compliant with its template) with additional information, that it is increased

tender without repetitive proving of beneficial owner declaration or proving the qualification conditions. The Draft of the Agreement shall be presented with the increased tender.

Clauses regarding original tender and original Draft of the Agreement shall be also applicable to the formal criteria of the Draft of the Agreement, increased tender and its delivery and evaluation. If the increased tender does not satisfy the formal criteria, the Lessor may exclude from evaluation the increased tender and shall consider only the original tender.

13. 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.

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

The tenderer whose tender will be evaluated as the most advantageous by the Lessor will be invited in writing to conclude an agreement and to provide an insurance policy for the liability insurance under the conditions set forth in the Draft of the 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 conclude 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 of the 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 order 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 informed about such situation.

15. Handling with the Security

The Lessor is not entitled to handle with the Security in any other manner than as set forth in this Terms or in the Draft of the 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 thirty (30) 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 thirty (30) 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 Draft of the Agreement.

In the event that the tenderer does not deliver the signed agreement in the appropriate number of counterparts or fails to submit the insurance policy within the time limit specified in Article 144 of the Terms or the insurance policy will not satisfy the conditions specified in the Draft of the Agreement, 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.

16. 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 tenderers 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 email address of the contacting 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. The Lessor shall notify the tenderers about such situation via email address of the contacting persons or via the data-room.

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 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 parts of Prague metro system tubes with the respective length of the tubes.

Dopravní podnik hl. m. Prahy, akciová společnost