

**Procurement of equipment for new building of Institute for cardiovascular disease –  
Dedinje 2, Belgrade**

**NO. IOP/51-2021/UHI**

**Clarification No.10**

**Issued on 21<sup>th</sup> of July 2021**

**Question 1:**

The Purchaser requires within LOT 7, Line Item No. 1, ID 9 - GPS Positioning of Patients

Once more we highlight the reasons why we believe that GPS Positioning / Tracking of Patients is not expedient for the requirements of the project in question, all in accordance with the Law on Personal Data Protection (“Official Gazette RS”, No 87/2018) (hereinafter: the Law) and the General Data Protection Regulation (EU) 2016/679 (hereinafter: the GDPR), as well as for reasons of financial justification (additional expenses).

**1. Issues with the lawfulness of using the location tracking systems**

When using location tracking systems, the companies (data controllers and data processors) must ensure that permission under the Law and the GDPR exists for processing the location data of the patients. Otherwise, there is a risk of prosecution for the company due to breaches of data protection obligations.

To secure such permission to track the data subject’s location, the companies must previously obtain the consent of the data subject, in accordance with Article 12, para 1, item 1, and Article 15 of the Law as well as Article 6 (1) (a) and Article 7 of the GDPR a.

Aforesaid consent must be voluntarily given, specific, informed and unambiguous indication of the data subject’s wishes by which he or she, by a statement or by clear affirmative action, signifies agreement to the processing of personal data relating to him or her, all according to Article 4, para 1, item 12 of the Law and Article 4, para 1, item 11 of the GDPR.

For consent to be voluntarily given, data subjects must be aware of the purpose of the processing. In this specific situation, the voluntary character of the consent, given the nature of the controller–patient relationship may not be considered adequate.

Furthermore, such consent must be given in a written form making the administrative burden enormous and not justifiable.

**2. Lack of secure environment**

To apply the location services, the software must use third-party location identification tools (e.g. Google location service, cookies, etc.).

Using such location identification tools exports patient’s data outside of the secure environment allowing unauthorized access by third parties, creating a profoundly serious data security risk.

In case of the occurrence of the data breach, the companies may be subject to fines up to 2.000.000,00 RSD, under Article 95 of the Law, or even up to 20 000 000 EUR, or in the case of an undertaking, up to 4 % of the total worldwide annual turnover of the preceding financial year, whichever is higher, according to Article 83 of the GDPR.

We ask the Purchaser to reconsider the possibility of excluding ID 9 from LOT No.7 Line Item No 1., taking into account the above.

**Answer 1:**

Regarding excluding ID 9 from LOT No.7 Line Item No 1, **is acceptable.**

**(See the Amendment No.2 to procurement documents, Issued on 21st July 2021)**

**Question 2:**

LOT 5, Line Item No.6 – Vascular Imaging System

The Purchaser requires within LOT 5, Line Item No. 6, ID 3 - Vessel enhancement.

The characteristic ID 3 - Vessel enhancement is a characteristic of the Vascular Image Processing System, good from the technical specification within LOT 5, Line Item No. 7. The Purchaser has defined the technical specification in such a way so that no bidder can submit a bid for LOT 5, Line Item No. 6, so we ask the Purchaser to exclude the mentioned characteristic from the technical specification, because otherwise no bidder can offer a good that meets the required technical specification within LOT 5, Line Item No. 6.

**Answer 2:**

Regarding excluding ID 3 - Vessel enhancement from LOT 5, Line Item No. 6. **is acceptable.**

**(See the Amendment No.2 to procurement documents, Issued on 21st July 2021)**

Public Procurement Committee

*Marija Stamboljovic*