

RFP No: IOP/40-2021/RD

Procurement of Supplies

Procurement of National Center for Production of Positron Radiopharmaceuticals and 2 PET/CT Camera with Associated Equipment, Design, Construction works, Installation, Fitting (Turnkey), Commissioning

CLARIFICATION NO. 3

Issued on 17th August 2021

QUESTION 1:

Question 1 (Part 1): Section I-II, ITB 1.1 – This tender prescribes that the bidding procedure is not organized in lots. Taking into account the objective criteria, such as type of works / goods, purpose, time and place of execution, etc, this tender should be divided into, at least, two lots in order to ensure a higher competition by allowing a greater number of potential bidders to participate with their bids.

From the perspective of specification of items to be procured under this tender (page 91-92), the first lot should include the items under 1-10 (building construction + cyclotron), while the second lot should include the items under 12-13 (two pet/ct cameras). There are no objective reasons why all items from 1 to 13 are subjected to one contract. The items 1-10 are completely independent from items 12-13 in terms of (a) their type, nature and purpose (cyclotron is a non-medical device, while PET/CT cameras are medical devices), and (b) timeline and place for delivery and completion (items 1-10 are to be delivered at one location within max 730 days, while items 12-13 are to be delivered at another location within max. 160 days). Due to different type, nature of purpose of items in question, there is a number of potential suppliers who are specialized for supply of particular item only, meaning that they can participate independently for items within their specialization which, in the end, lead to a greater competition and subsequently to better prices for promoter (contract authority), all this under the assumption that this tender is divided into lots based on the specifics / nature of items to be procured. One single tender (without division into lots) de facto excluded from participation suppliers who are specialized and able to compete for a particular item, meaning that the single tender waives upfront from better commercial terms that may be offered if the specialized suppliers are allowed to participate without forcing them to enter into joint ventures with other suppliers. It is commonly known that joint ventures and joint bids de facto limit the competition, decrease the number of bidders / bids in tender procedure and, consequently, increase total prices offered. Further, criteria and sub-criteria for evaluation of Technical Proposal, and allocation of ponders designated per each criteria, refer to cyclotron only and not to PET/CT. That means that quality of cyclotron will be key decision for offer evaluation. Quality of PET/CT has no or have minor impact on final decision. This is another indicator implying and conforming that all items under this procurement do not approve and do not comply with single tender model but require the division into separate lots as explained above. Further on, knowing very well situation on the market, that there are several producers for Cyclotron: IBA Radio Pharma Solutions, GE Healthcare, Advanced Cyclotrons Systems Inc etc. and several producers of PET/CT cameras: Philips, Ge Healthcare, Siemens Healthcare, it is

clearly visible that only one company – GE Healthcare can fulfill all tender requirements and only one can provide an offer for all three requested main products. The specification for PET/CT scanners is made in favor of one product, being model DISCOVERY IQ, but such product is produced by GE Healthcare with out-of-dated crystal technology BGO.

Question 1 (Part 2): Section I-II, ITB 1.1In this tender, it is clearly indicated (page 6) that the procurement will be carried out in line with EIB's Guide to Procurement (GtP) and national law as long as aligned with EIB's GtP.

Both GtP and Serbian law promote and advocate for a fair and competitive process.

Namely, GtP prescribes that EIB requires that relevant EU procurement regulations are considered and taken into account in projects that are financed by EIB. In this regard, the EU Directive 2014/24/EU on public procurements prescribes the following:

“...to enhance competition, contracting authorities should in particular be encouraged to divide large contracts into lots. Such division could be done on a quantitative basis, making the size of the individual contracts better correspond to the capacity of SMEs, or on a qualitative basis, in accordance with the different trades and specializations involved, to adapt the content of the individual contracts more closely to the specialized sectors of SMEs or in accordance with different subsequent project phases.” (Art. 78 of Directive), and

“Member States should remain free to go further in their efforts to facilitate the involvement of SMEs in the public procurement market, by extending the scope of the obligation to consider the appropriateness of dividing contracts into lots to smaller contracts, by requiring contracting authorities to provide a justification for a decision not to divide contracts into lots or by rendering a division into lots obligatory under certain conditions” (Art. 78 of Directive).

The same principle is reflected in the Serbian Law on Public Procurement (Art.36) which imposes an obligation for a contract authority, in case of high-value procurements (i.e above the European thresholds) like this one, to mandatory consider the appropriateness of the dividing of the subject-matter of public procurement into several lots, and in case the contract authority concludes that the division into the lots is not appropriate, it must indicate in the report on the public procurement procedure the main reasons for such conclusion.

Having in mind above stated, we deeply believe that this tender has to be divided into lots for objective reasons (some of them are explained above) in order to preserve the commonly accepted principles of public procurement both valid in EU and Serbia. With this division(s), the promoter will be able to conduct a fair and transparent procedure in which a competition will be ensured to a higher extent and in accordance with prevailing standards and principles applicable in public procurements.

RESPONSE 1:

The general principles of the public procurement procedure, applicable hereto, suggest that the contracting authority can organize the tender procedure in several lots based on the certain objective criteria. The same stands in the EU regulation and in the Serbian Law on Public Procurement. Moreover, the Serbian law provides that, if the estimated value of the public procurement is equal to or greater than the European thresholds, when determining the subject-matter of the procurement, the contracting authority should consider the appropriateness of the dividing of the public procurement into several lots, and in case it concludes that the division into the lots is not appropriate, it shall indicate in the report on the public procurement procedure the main reasons for such conclusion. Hence, organizing the tender into several lots is not a rule and is not mandatory for the contracting party, but could be applicable if and when appropriate.

In the preparation phase of this tender procedure, the Employer, as a contracting party, has carefully considered the market conditions regarding respective equipment/goods as well as requirements of the medical institutions in the Republic of Serbia. This analysis is undertaken in both relevant perspectives: (i) number of patients; and (ii) current and planned capacities. Once finalized such analysis determined the requested technologies as well as the type of the public tender procedure.

Public procurement/delivery, installation and exploitation of cyclotron is a necessary precondition for PET/CT diagnostical procedures to become available to the wide range of patients in the Republic of Serbia. This is because the obtaining the stabile and economically sustainable supply of radiopharmaceuticals is a basis for planning and performance of the said PET/CT diagnostics. Supply of PET/CT devices would not make sense without secured supply of radiopharmaceuticals. Also, supply of cyclotron would not make sense without having PET/CT diagnostics, being a main consumer of cyclotron.

Based on this close interdependent connection between two aspects (cyclotron and PET/CT diagnostics) the Employer logically decided to unify the procurement procedure in order to avoid possible adverse situations in which delivered PET/CT devices would be useless without delivered radiopharmaceuticals or delivered cyclotron would not have consumers of its products (PET/CT devices). The PET/CT diagnostics exists where the cyclotron is in place and *vice versa* the cyclotron has the purpose of existence only where its consumers are in place.

Apart to such close functional connection between two types of goods, to be delivered hereunder, the Employer has also taken into consideration that PET/CT systems, by complexity and value, is significantly smaller part of the tender. Therefore, such supply should be merged to the bigger and more complex supply, such as cyclotron supply, on "turn key" basis, which will make the whole tender procedure more economical and efficient.

The concrete tender procedure, i.e. the concrete project is of national significance for the Republic of Serbia. Given said, then several years of preparation as well as demanding process of financing, the Employer wanted to secure unique and comprehensive supply thereof. Dividing tender into several lots bears the increased risk that some items and parts will not be delivered on time. Each further delay would cause a huge damage, primary, to the patients that require PET/CT diagnostics.

This risk the Employer wanted to avoid. Even if this could be unfavorable to certain market participants, the Employer was driven by the best interest of the final consumers/patients as well as by the long-term medical strategy and medical policy of Serbia.

The last, but not the least, after very careful consideration of the relevant market, the Employer has also concluded that besides big four cyclotron producers there are at least big four producers of PET/CT systems which mutually close cooperate worldwide.

Having said, the Employer believes that by this tender model, the competition would be encouraged and supported and will result in the offer with the best quality/price ratio. Therefore, all complaints and objections on the tender model chosen hereto, are results of partial and subjective approach of certain market participant(s) neglecting therewith the public interests, interests of the Employer, i.e. interests of the patients as final consumers.

QUESTION 2:

In the Section II - Proposal Data Sheet E. Evaluation, and Comparison of Proposals, ITB 30.14 you have listed the following requirement no.6 subject of scoring (p. 52):

6	B6	The number of relevant references of the Bidders pertaining to the delivery of a cyclotron of the same energy level as the subject of the proposal (Letter of Technical Proposal)
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Furthermore, on the p.85 in the form of the *Letter of Technical Proposal* the same request is stated but on the p.78 (3. Criteria, sub-criteria, and point system for the evaluation of the Proposal) the request is slightly modified – “...where the same cyclotron has been installed for the same purpose”.

Please confirm that formulation of the requirement no. 6 (B6) in the *Letter of Technical Proposal* on the p.85. is the right one. Otherwise, bidders offering latest models of cyclotron would be discriminated.

RESPONSE 2:

Indeed, the two formulations are somewhat in conflict, as the wording on page 78 (3. Criteria, sub-criteria, and point system for the evaluation of the Proposal) “...where the same cyclotron has been installed for the same purpose” has been oddly formulated.

Hereby we confirm that following Description of the characteristic no. 6 (B6) is the valid one:

“The number of relevant references of the Bidders pertaining to the delivery of a cyclotron of the same maximal energy level as the subject of the proposal, where the cyclotron with the same maximal energy has been installed for the same purpose.”

This applies to all Descriptions of characteristics no. 6 (B6) in Tender Documentation (e.g. on pages 52, 78, 85 etc.)

Procurement Committee

