



MINISTRY OF TRANSPORT AND COMMUNICATIONS

51/2010

TENDER DOCUMENTATION
PROCUREMENT OF LEGAL SERVICES

Skopje, August 2010

Dear all,

Ministry of Transport and Communications, with address on str. Crvena Skopska Opstina No. 4, 1000 Skopje, Republic of Macedonia, contact tel. +389 2 3145 516, fax:+ 389 2 3226 392, e-mail: zoran.jordanoski@mtc.gov.mk, contact person Zoran Jordanoski and bashkim.asani@mtc.gov.mk contact person Bashkim Asani, needs to Procure legal services by law firm registered in England or having an office in England, with experience in commercial law, in particular with experience in litigation of disputes arising out of international commercial contracts in front of The High Court of Justice Queen's Bench Division Commercial Court in London

Therefore, the Contracting Authority implements a procedure for awarding public procurement contract in line with Article 17 paragraph 1 line 2 of the Law on Public Procurements.

The bid for the above mentioned subject of public procurement contract can be submitted at latest by 30.08.2010 at 12:00 (local time) at the given address.

As enclosed to this invitation you may find the tender documentation containing all information necessary in the preparation of the bid. We kindly ask you, in the preparation of the bid, to use the original forms, which you will find as constitute part of the tender documentation.

The opening of bids shall be at the Ministry of Transport and Communications with authorized representatives of the bidders at the day and hour defined as final deadline for submission of bids, 30.08.2010 at 12:00 (local time).

Thank you in advance for the cooperation.

In Skopje 09.08.2010	COMMISSION FOR IMPLEMENTATION OF THE PROCEDURE
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1 GENERAL INFORMATION

1.1 Contracting Authority

Contracting authority is Ministry of Transport and Communications, with address: Str. Crvena Skopska Opstina No. 4, 1000 Skopje, contact tel:+389 (0)2 3145517, fax (0)2 3226392 e-mail: zoran.jordanoski@mtc.gov.mk, contact person Zoran Jordanoski and bashkim.asani@mtc.gov.mk contact person Bashkim Asani

1.2 Subject of Public Procurement Contract

Subject of the public procurement contract: **Procurement of legal services by law firm registered in England or having an office in England, with experience in commercial law, in particular with experience in litigation of disputes arising out of international commercial contracts in front of The High Court of Justice Queen's Bench Division Commercial Court in London.**

Detailed description of the subject of public procurement contract

The Contracting Authority intends to procure the legal services from:

Respected law firm, with experience in commercial law, in particular with litigation of disputes arising out of international commercial contracts;

Law firm experienced in advising and representing foreign clients, in commercial cases in litigations in front of English courts;

Main activity of the law firm shall include, but is not limited to:

- Analysis of the claim which TARBS Europe SA has submitted against the Republic of Macedonia (and other defendants) to The High Court of Justice Queen's Bench Division Commercial Court in London, analysis of the case and all documents and proofs which are brought against Republic of Macedonia.
- Advising the Government of the Republic of Macedonia in selecting of defence strategy for this particular case in front of The High Court of Justice Queen's Bench Division Commercial Court in London, advising in selection and submitting proofs in favour of the defence of the Republic of Macedonia as well as analysis of these documents.
- Representing Republic of Macedonia in front of The High Court of Justice Queen's Bench Division Commercial Court in London in the procedure which TARBS Europe has brought;
- To carry out everything that is required and necessary to properly represent and defend the Government of the Republic of Macedonia in this case.

1.3 Method of performing the service

The Law firm shall perform services and meet its obligations with all due care, efficiency and thriftiness, in accordance with applicable law and generally accepted techniques and professional practices, adherence to regular practices, knowledge and experiences necessary for implementing the Contract. The Law firm, in respect of all matters related to this Contract, will always act as a faithful adviser to the Contracting authority and shall at any time support and protect the legitimate interests of the Contracting authority in all matters with third parties.

The Law firm is obliged to provide legal services of highest quality and efficiency to help the Republic of Macedonia to achieve its goals.

The Law firm is required in the performance of service to realize the usual obligations for which the legal representative is entitled to his Client, including duty of care and confidentiality. Hereby the obligation of care is towards the Republic of Macedonia.

The Law firm is obliged to perform all services that will be required by the Contracting authority and are subject to procurement.

In case, during the procedure for which it is engaged, the law firm undertakes responsibility for representation in any other proceedings, especially if it is unfavourable for Republic of Macedonia, it is obliged to notify the Client on this matter. This representation can only be on matters that are not essentially related to the subject of this procurement.

All documents that will arise from the work of the Law firm would be available to Contracting authority which can use them for its own needs.

Law firm is obliged to perform service to fully meet obligations and achieve the objective of the Contracting authority, unless the Contract is terminated earlier.

Conflict of interest:

The Law firm has an obligation to disclose any situation of actual or potential conflict that affects their ability to perform tasks in the best interest of the Contracting authority, or which can reasonably be assessed that would have such effect. The failure to disclose such situations may lead to termination of the Contract.

The Contract will be terminated if the Contracting authority determines that the service in question is in conflict with any other current or future services and activities of the Law firm that could bring it in a position not to be able to perform the task in the best interest of the Contracting authority.

Termination of contract

Contracting authority may terminate the Contract by written notice of termination to the Law firm within a period at least fourteen (14) days, which notice must be delivered after the occurrence of any of the following events:

- (A) if the law firm fails to remove the deficiency in meeting its obligations within fifteen (15) days from receipt of notice of suspension, or within any of the next period which the Contracting authority may subsequently approve in writing
- (B) If the law firm partially or fully loses its independence declared during the period of submitting bids,
- (C) If the law firm issues or signs a statement or other document that has a material effect on the rights, obligations or interests of the Contracting authority, which is incorrect, or for which there is no authorization
- (D) If the Law firm profit unfairly at the expense of the client, conducting the services covered by this Contract,
- (E) If the Law firm causes significant damage to the Client to property for various reasons (incompetence, malpractice, negligence, ignorance of laws, delay etc.)

- (F) If it is determined that the Law firm or its personnel in the implementation of this Contract, made intentional errors and omissions, or participated in illegal activities
- (G) If the Law firm does not reimburse the damage caused to the Contracting authority- in the full amount,
- (H) If the law firm encloses in public or to third persons, confidential information without prior consent of the Contracting authority
- (I) If there is a conflict of interest

The service provider assumes full responsibility for its work and service of its team in the overall performance of Services under this Contract.

Lawyers` team

The intention of Contracting authority is not to have any changes of the experts who are designated as key personnel in the legal team throughout the contract period. If, for any reason that is beyond reasonable control the Law firm, has become necessary to replace any of those experts, the Law firm has to immediately provide as a replacement, an expert with equivalent qualifications and experience acceptable for the Contracting authority. Acceptable reasons may not be the need of Law firm to hire particular expert for work or other activities at the expense of services under this Contract.

Correspondence

Contracting authority shall appoint a person/persons who will be responsible for communicating and providing information and instructions.

All notices, demands or consents required or permitted to be given under this Contract shall be in writing. Any such notice, request or consent shall be deemed given or delivered when personally delivered to an authorized representative of the party to which such communication is addressed or when sent by registered mail, telex, telegram or fax it to that person, at the address listed in special conditions.

Each Party may change its address for correspondence by notifying the other party for such change.

Other costs

Contracting authority considers that the price per person per hour for each member of the team includes the fee for the engaged person and other expenses such as transport, accommodation, daily allowances, absences from office etc. All other expenses incurred in connection with the conduct of proceedings involving a trip to the Republic of Macedonia (economic class), hotel accommodation, translations of documents, postage costs, etc. will be reimbursed by the Contracting Authority following submission of the appropriate evidence of incurred expenditures.

1.4 Method of communication in public procurement procedure

Any request, information, notification and other documents shall be sent in writing by mail or fax.

Each document is recorded at the time of dispatch, i.e. at the time of admission. The document that was sent by fax, the supplier is obliged to submit by mail within two days from the date of submission of documents by fax. The procedure for awarding the public procurement contract will be carried out using electronic means.

1.5 Method of obtaining the tender documentation

Tender documentation is free of charge and can be obtained from the Ministry of Transport and Communications, every working day from 09:00 to 14:00 hours or on the Web site of the Ministry of Transport and Communications: www.mtc.gov.mk, for the duration of the announcement..

1.6 Payment

Contracting authority is obliged to perform the payment within 30 days from receipt of an invoice together with the report for realized services and items (invitations, certificates, etc. by a court for held judicial hearings, prepared documents, etc.) Contracting authority will pay only real services rendered.

1.7 Language of tender documentation

The tender documentation is prepared in Macedonian and English language.

1.8 Corruption and fraudulent conduct

Purchaser and bidders are required to consistently adhere to the legal regulations governing this matter and to the highest standards of ethics during the implementation of the procurement procedure and the implementation of the Contract.

To prevent conflicts of interest in the procedure for awarding public procurement contract, the provisions of the Law on Prevention of Conflict of Interest are properly applied.

2. GUIDELINES ON LEGAL DEADLINES AND NECESSARY TERMS FOR PARTICIPATION IN THE CONTRACT AWARDING PROCEDURE

2.1 DEADLINES

2.1.1 Deadline for submission of bids:

30.08.2010 at 12:00 local time

2.1.2 Period of validity of bid:

Bids should be valid at least 60 days from the date of opening of tenders.

2.2 CRITERIA FOR DETERMINING BIDDERS' CAPACITY

2.2.1 Documents for proof of ability to perform professional activities:

The Law firm shall submit a document for registered activity as proof that it is registered as a legal person to perform activities related to the subject of public procurement contract or proof that belongs to the appropriate professional association in accordance with regulations of the country where it is registered

- The law firm is obliged to submit evidence that it is duly authorized to represent clients in cases in front of The High Court of Justice Queen's Bench Division Commercial Court in London;

3. MINIMUM CRITERIA FOR PARTICIPATION:

3.1 Minimum criteria necessary for defining the technical or professional capacity:

- Referent list for same or similar services with enclosed certificates for the performed services issued by the recipients and if such certificates cannot be obtained than only a statement from the Law firm
- The Law firm has to have at least 10 highly professional employees (lawyers and legal assistants) and this should be proved with relevant documents
- The lawyers' team should consists of at least 3 professional and experienced lawyers (apart from the technical and assisting personnel)
- At least one of the lawyers engaged in this specific case, should have at least 10 years of experience in representing clients in cases of commercial law.

A CV should be submitted for each of the proposed members of the lawyers' team, containing at least name and surname, degree of education, area of professional activity and working experience

4. GUIDELINES FOR DEVELOPMENT AND SUBMITTING FINANCIAL BID

Cost of submission of bid

All costs associated with submission of bid shall be borne by the bidder.

4.1 PREPARATION OF FINANCIAL BID/OFFER

4.1.1 Price of bid

Bidder shall submit the bid with price, VAT excluded, which is expressed differently.

The Law firm shall enclose a price list for all members of the legal staff including technical and support staff required to perform the service.

The Economic operator is obliged to give a price per 1 man/hour, VAT excluded, separately for the team leader and separately for each member of the team (lawyers or assistants and other auxiliary and technical personnel who will be involved in the team executing the service). The price remains fixed until the expiry of the contract and during this period there will be no changes made in respect of bided prices. Payment will be made in real services rendered.

4.1.2 Currency of bid

Evaluation of bids will be made in Denars. The FX rate list to be used is the FX rate list of the National Bank of Macedonia and the Exchange rate is the one valid 14 days before the deadline for submission of bids.

4.2. PREPARATION OF THE BIDS

4.2.1 Elements of the bid

Bid shall consist of the following elements and according to the following order:

- Form of Bid (Appendix 2)
- Documents proving the ability to perform professional activities
- Documents of proof to meet the minimum criteria

4.2.2 Language of bid

The bid, as well as all correspondence and documents relating to the bid to be exchanged with the bidder shall be submitted in Macedonian language and Cyrillic alphabet or in English with compulsory translation into Macedonian language.

4.2.3 Period of validity of bid

The period of validity of the bid will be 60 days from the date of public opening during which the bid in all its elements shall be binding to the bidder. Bids that contain shorter period of validity of the one determined in this item of tender documents will be rejected as unacceptable. The bid is binding for the entire period of validity set by the Contracting authority.

4.2.4 Format and signing of bid

The bid shall be submitted in one original copy which should be verified and signed (each page) by a responsible person of the bidder or his authorized person.

The data in the bid should be filled with ink which is cannot be deleted. Any writing between the lines, deleting or writing on the previous text is valid only if initialled by person signing the bid.

4.2.5 Principle of one bid

A natural or legal entity may submit only one bid, regardless of whether it is submitted individually or as a member of a group of bidders. Otherwise all bids in which this natural or legal entity appears shall be rejected.

4.2.6 Deadline and place for submission of bids

The bids should be submitted at latest by **30.08.2010** by **12:00** (local time).

The bids should be submitted at the following address: Ministry of Transport and Communications, Str. Crvena Skopska Opstina, No. 4, 1000 Skopje.

4.2.7 Public Opening of Bids

Opening of bids will be publicly.

The opening of bids shall be made by the Commission for Public Procurement in the Ministry of Transport and Communications in the presence of authorized representatives of bidders. The public opening of bids will be made on the date and hour set as the deadline for submission of bids in the Ministry of Transport and Communications. Representatives of bidders should submit to the Commission a written authorization from the bidder for their participation in the public opening of bids. Authorized representatives of the bidders may participate in the procedure of opening of bids by giving their own remarks, which are entered in the minutes of public opening of bids. Before the bid opening committee shall determine the number of received bids, check the powers of authorized representatives and sets out the changes, replaces or withdrawals of bids, as well as their timeliness and correctness of the stipulated submission of bids.

4.3 SUBMISSION OF BIDS

4.3.1 Method of sealing and labelling of the bid

The bidder submits the original copy in a sealed inner envelope containing the name of the bidder with full and correct address.

The inner envelope should be put in a sealed outer envelope:

- addressed with the correct address of the Contracting authority;
- which contains the number of the announcement, and
- which in the upper left corner have the designation:

**“Do not open
Announcement for awarding a public procurement contract No. 51/2010”**

If all envelopes are not sealed and marked as required, the contracting authority does not take responsibility for neglecting or premature opening of the bid.

4.3.2 Deadline for submission of bids

The deadline for submission of bids is the date and time of public opening, published in the announcement.

4.3.3 Modification, substitution or withdrawal of tenders

Bidder may amend, replace or withdraw its bid before the expiry of the deadline for submission of bids.

Envelopes for modification, replacement or withdrawal of the bid shall be submitted sealed with appropriate designation "change", "replacement" or "withdrawal" and delivered the same way as bids.

4.4.4 Late bids

Any bid which will arrive after the deadline for submission shall be rejected as late and returned to the bidder unopened.

5. CRITERIA FOR AWARDING THE CONTRACT:

The criteria for awarding the public procurement contract is the best bid, as follows:

- 1. PRICE 20 points, of which:**
- price (1 man/hour) for the team leader **10 points**
 - average price (1man/hour) for the remaining team members **10 points**
- 2. QUALITY.....80 points, of which:**
- working experience of the Law firm in the area of commercial law **20 points**
 - working experience of the Law firm in representing commercial law cases in front of The High Court of Justice Queen’s Bench Division Commercial Court in London **20 points**
 - working experience of the team leader, particularly in the area of representing of commercial cases **40 points**

The calculation of the **price** points is calculated in percentage terms of the lowest bided price and the lowest value is multiplied by the maximum number of points and dividing the price of the bid for which points are calculated after the following formula:

$$\text{Number of points} = \frac{\text{Lowest price for 1 man/ hour (VAT excl.)} \times 10}{\text{Price for 1 man / hour (VAT excl.)}}$$

Computation of **quality** points will be compared with the relevant working experiences of the firm and the team leader with the longest and most extensive experience.

6. OPENING AND EVALUATION OF BIDS**6.1 Opening of bids**

The opening of bids shall be made by the Commission for Public Procurement in the Ministry of Transport and Communications in the presence of bidders.

Submitted bids shall be opened in accordance with the Law on Public Procurement as follows: one by one, by reading the name of the bidder, after which it is ascertained whether the bids are submitted under item 4.3.1 of the tender documentation and are original and then it will be approached to read the bids in the same order in which they are open, apart from the bids, which according to the Law on Public Procurement, are excluded from further procedure. After that it is accessed to read the prices on bid, including any discounts and the existence of

security of supply. Only discounts read at the public opening of the bids will be considered when evaluating the bids. No bid will be rejected at the opening of bids, except late bids. The Commission for Public Procurement shall start the public opening of bids even if there is one bid submitted.

6.2 Confidentiality of the evaluation process

No information regarding the examination, evaluation and comparison of bids in the process of evaluation will not be disclosed to the bidders or any other persons not officially involved in the process.

3.6 Clarification of bids and method of contact supplier

When checking the validity and completeness of the documentation to determine the capacity of the bidder at the bid evaluation, the commission may require bidders to clarify or supplement the documents, only if it is a substantial deviation from the required documentation. The requested explanation shall be submitted in writing by the bidder within the period determined by the Contracting authority.

No change in terms of prices and contents of the original bid is allowed.

6.4 Correction of errors

If the bid is acceptable and is composed and submitted in accordance with the tender documentation, the Contracting authority shall correct arithmetic errors as follows:

- If there is a discrepancy between words and figures, the amount written in words shall prevail.
- If there is difference between unit price and total price then unit price is prevailing.

The Commission for Public Procurement will correct errors as described in the process and in accordance with economic operators, it will be considered binding on him. The assessment of the most favourable bid, based on established criteria, will be undertaken in accordance with the methodology for expressing criteria in points.

7 CONTRACT AWARDING

7.1 Criteria for awarding the contract

Contracting authority selects the most favorable bid, based on the criteria for awarding the contract specified in the announcement and tender documentation, if the bidder whose bid is the best meets the prescribed criteria for defining capacity. The Contracting authority will review, evaluate and rank the bids. The best bid to be ranked will be nominated for the award of the contract.

7.2. Unusually low price

If the price in the bid is unusually low and to a large extent does not comply with the estimated value of the subject procurement, the Contracting Authority will request, in written, from the economic operator details related to the bid, considered as important, later being subject of analyses so as to justify the bid's price.

7.3. Notification for selection or rejection

The Contracting Authority shall notify the candidates – bidders regarding the decision for public procurement contract award within a period of three days of the day of the decision for awarding the public procurement contract. The Contracting authority shall enclose a copy of the decision in the notification letter.

7.4. Signing of the contract

The Contracting authority shall conclude the public procurement contract with the economic operator whose bid has been selected as most advantageous, in regards with the technical and financial bid/offer.

7.5. Corruption and fraudulent conduct

In the course of the implementation of the contract, the Contracting Authority and bidders are required to consistently adhere to the legal regulations governing this matter and to the highest standards of ethical behaviour.

8. INSTRUCTION FOR LEGAL PROTECTION

Every economic operator having a legal interest in obtaining the public procurement contract and which suffered or may suffer damages from potential breach of the provisions from the Law on Public Procurement, may ask for legal protection against the decisions, activities or failure to act by the Contracting authority in the public procurement contract award procedure, in accordance with the Law on Public Procurement.

9. INFORMATION FOR THE COMPULSORY PROVISIONS IN THE CONTRACT

Contracting authority and the selected Law firm will sign a contract for the performance of service in which, besides the intended conditions of the tender documentation required shall make the following points:

1. CONTRACTING PARTIES

1. Ministry of Transport and Communications of Republic of Macedonia address Crvena Skopska Opstina No. 4- Skopje, represented by _____ (hereinafter Client)

2. Law firm: _____

2.SUBJECT OF CONTRACT**Article**

Subject of the public procurement contract is Procurement of legal services by law firm registered in England or having an office in England, with experience in commercial law, in particular with experience in litigation of disputes arising out of international commercial

contracts in front of The High Court of Justice Queen's Bench Division Commercial Court in London.

Law firm experienced in advising and representing foreign clients, in commercial cases in litigations in front of English courts;

Main activity of the law firm shall include, but is not limited to:

- Analysis of the claim which TARBS Europe SA has submitted against the Republic of Macedonia (and other defendants) to The High Court of Justice Queen's Bench Division Commercial Court in London, analysis of the case and all documents and proofs which are brought against Republic of Macedonia.
- Advising the Government of the Republic of Macedonia in selecting of defence strategy for this particular case in front of The High Court of Justice Queen's Bench Division Commercial Court in London, advising in selection and submitting proofs in favour of the defence of the Republic of Macedonia as well as analysis of these documents.
- Representing Republic of Macedonia in front of The High Court of Justice Queen's Bench Division Commercial Court in London in the procedure which TARBS Europe has brought;
- To carry out everything that is required and necessary to properly represent and defend the Government of the Republic of Macedonia in this case.

Article

This Contract regulates the mutual rights and obligations of contracting parties on the procurement of legal services under the Decision on public procurement No. _____.2010, following the implementation of the procedure for public procurement no. ___/2010 and Decision for selection of most favourable offer No. _____ 2010.

3.PRICE

Article

Price for services rendered is:

1 man / hour _____ calculated without VAT for the team leader of the legal team

1 man / hour _____ calculated without VAT _____

The price remains in effect until the expiry of the contract and during this period there will be no changes made in respect of the offered prices.

Other expenses: _____

4. MANNER, CONDITIONS AND TERMS OF PAYMENT

Article

Payment will be made on the basis of real services and actual realized time. Client undertakes to perform the payment within 30 days of receipt of the invoice along with a report of completed service and items (invitations, certificates, etc. by a court for held judicial hearings, prepared documents, etc.)

The Client will pay only real services rendered.

5. MANNER OF SERVICE PERFORMANCE (TEAM MEMBERS)

6. CONFLICT OF INTEREST

7. CONFIDENTIAL INFORMATION

8. TERMINATION OF CONTRACT

9. PROFESSIONAL CONDUCT OF THE PROCESS

10. PROVISION OF INSTRUCTIONS

11. INFORMATION AND COMMUNICATION

12. OBLIGATIONS OF THE LAW FIRM

13. OBLIGATIONS OF CLIENT

14. EXPENSES

15. VAT

16. RESPONSIBILITY OF THE LAW FIRM

17. GOVERNING LAW

FOR THE CLIENT:

FOR THE LAW FIRM:

Appendix 2 FORM OF THE BID

On the bases of the invitation to submit bids 35/2009 for awarding a public procurement contract for **Procurement of legal services for representation in criminal proceedings for a period of one year**, we hereby submit the following :

BID

Part I – Information on the bidder

- I.1. Name of the bidder: _____
- I.2. Contact details
- Address: _____
 - Telephone: _____
 - Fax: _____
 - e-mail: _____
 - Contact point: _____
- I.3. Responsible entity: _____
- I.4. Tax number: _____

Part II – Technical and financial bid

II.1. We are consent to offer the following service:: **Procurement of legal services by law firm registered in England or having an office in England, with experience in commercial law, in particular with experience in litigation of disputes arising out of international commercial contracts in front of The High Court of Justice Queen’s Bench Division Commercial Court in London**

II.2. According to this, the total price of our bid, including all expenses and discounts, VAT excluded, is:

- for the team leader _____ (name and surname):1 man/hour
 _____ [with numbers] MKD
 (_____) [with letters]
 MKD. The total amount of VAT for 1 man/hour is _____ MKD Denars.
- for the team member _____ (name and surname):1 man/hour
 _____ [with numbers] MKD
 (_____) [with letters]
 MKD. The total amount of VAT for 1 man/hour is _____ MKD Denars.

II.3. We hereby accept the manner and deadline for performing the services set in the tender documentation.

II.4. Our bid is valid for the period set in the tender documentation. We are consent with the manner of payment set in the tender documentation.

II.5. With the submission of this bid, we fully accept the conditions foreseen in the tender documentation and we are consent to implement the compulsory provisions of contract, in line with the Tender documentation.

Place and date

Bidder

(signature and seal)