



Друштво са ограниченом одговорношћу за производњу и дистрибуцију  
енергије и флуида и пружање услуга  
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**Date:** 07.12.2017.

## TO POTENTIAL BIDDERS

**Subject:** Response to the request for additional information or clarifications regarding the preparation of the bid

At the request of interested bidder for additional information about preparing of the bids in open procedure of public procurement - **"Reconstruction of Boiler Room "ZASTAVA" with the purpose of replacing a part of the capacity of coal-fired boilers with the combined natural gas-powered and heavy fuel oil-powered boilers, Phase I", No of PP 1.1.47/2017, Purchaser is publishing an answers in accordance with article 63. of Public procurement law of Republic of Serbia.**

### Questions:

Pursuant to Article 63. Paragraph 2 of the Law on Public Procurement, we are asking you in a timely manner, as an interested person in the public procurement procedure: Reconstruction of Boiler Room "ZASTAVA" with the purpose of replacing a part of the capacity of coal-fired boilers with the combined natural gas-powered and heavy fuel oil-powered boilers, Phase I no. 1.1.47 / 2017 for which on 15.11.2017. has been published call for bids on the Public Procurement Portal. On the same day, tender documentation for the public procurement was published.

After reading the tender documentation for the current public procurement procedure, we observed certain shortcomings and irregularities, due to which we are not able to prepare the offer in accordance with Article 61, Paragraph 1 of the Law on Public Procurement.

1. By reading the Tender documents in section 3. CONDITIONS FOR PARTICIPATION IN THE PUBLIC PROCUREMENT PROCEDURE REFERRED TO IN ARTICLES 75 AND 76. LAW AND INSTRUCTIONS REGARDING COMPLIANCE WITH THE REQUIREMENTS, inter alia are specified the additional conditions that the bidder must fulfill, as well as the evidences that prove the fulfillment of the asked conditions:

### **TECHNICAL CAPACITY:**

A) The bidder must fulfill the technical condition in the form of possession of the necessary certificates and technical documentation, signed purchase and sale contracts, issued invoices and delivery notes.

Among other things, the required evidence is the photocopy of the ISO 9001 and/or ISO 14001 certificates, while it is somewhere specified that the same is necessary for the manufacturer of the goods, and in some places it is not specified who should possess the ISO certificate.

Our questions are:

- 1.1. Why does the Purchaser require that the manufacturer must have an implemented quality management system in accordance with the requirements of the 9001 and/or 14001 standards when the Purchaser, even if it comes to the conclusion of the contract for current public procurement in question, does not come into the realization of the obligatory relationship with the manufacturer but with the Bidder?
- 1.2. Please explain the parts of the tender documentation where it is not emphasized that the ISO certification is required for the manufacturer – for whom it is necessary to possess them, for example, pg.33 of tender documentation?
- 1.3. We also point out that the Purchaser has left out to specify the scope of accreditation for the required standard. Please indicate for which area is required to deliver ISO 9001.

B) The Bidder must have authorized services for setting up the working conditions and service interventions in the Republic of Serbia within the warranty period and post-warranty period of 5 years on the goods that are the subject of procurement, as follows:

- Two authorized services in the territory of the Republic of Serbia for boilers,
- Two authorized services in the territory of the Republic of Serbia for burners,
- Two authorized services in the territory of the Republic of Serbia for exchangers.

Pitanja:

- 1.4. Considering that the subject of public procurement are goods, not the service activities, in what way is the required condition related to public procurement, or what justifies the request for services in the warranty period, and **especially in the post-warranty period of 5 years?**
- 1.5. What justifies the requirement for **two** authorized services in the territory of the Republic of Serbia, bearing in mind that it restricts the competition of the bidders, since the existence of one authorized service already provides a guarantee that the required work will be performed?
- 1.6. Also, there is an unclear alternative to evidence No. 3 of the technical capacity requirements under point B) which, if the Bidder is an authorized service office it is required to have an agreement/s for the business and technical cooperation by the manufacturer of the goods and service centers/shops, and if the Bidder is not an authorized service office, it is required to have an agreement for the business and technical cooperation between the Bidder and service centers/shops. For what reasons the Bidders who are not authorized service offices are favored?

**HUMAN RESOURCES CAPACITY:**

2. In the tender documentation as a condition of human resources capacity, it is required that the Bidder in each post-sale service/shop must have at least one employee with VII degree of technical profession at any time.

**Questions:**

- 2.1. We believe that this condition is a condition that is related to future circumstances, and since the Law on Public Procurement defines that the fulfillment of conditions is priced in relation to the moment of submission of bids, in which way the submission of the required M forms and/or contracts along with the Bid prove the fulfillment of the required condition?
- 2.2. It is also unclear justification of such required condition, considering that the subject of public procurement are goods, and by the human resources capacity the service workers are required. Please clarify.

Public Procurement No.1.1.47/2017 : **"Reconstruction of Boiler Room "ZASTAVA" with the purpose of replacing a part of the capacity of coal-fired boilers with the combined natural gas-powered and heavy fuel oil-powered boilers, Phase I", No of PP 1.1.47/2017, Purchaser is publishing an answers in accordance with article 63. of Public procurement law of Republic of Serbia.**

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1. In the tender documentation it has not been presented the model of the Agreements that will be signed on the basis of the Framework Agreement. It is therefore necessary for the Commission to complement the tender documentation with the model of the Agreement in order to clearly indicate to the bidders the conditions under which the business should be carried out.
  2. In the model of the Framework Agreement page 110 in Article 9, paragraph 3, the Promissory note for seriousness of bid has been mentioned, which is not in any way related to the implementation of the Framework Agreement, since it ceases to be valid by the signing of the Framework Agreement. In other words, the whole paragraph 3 is as it should be part of the Tender Documentation, but should not be part of the Framework Agreement, and therefore should be removed from it.
  3. In the model of the Framework Agreement, page 110 of Article 9, paragraph 1, states: "The Bidder undertakes to deliver to the Purchaser 1 (one) bank guarantee for the amount of 10% of the value of the Framework Agreement/contract without VAT when concluding the framework agreement and the contract concluded with the framework agreement.". Please specify what bank guarantee is required and specify it in paragraph 1 so that there would not be no doubts.
  4. On the page 36 of the Tender Documentation in the Evidence section, item 1 write: "Excerpt from Business Registry Agency which proves that he is authorized service for commissioning and service interventions registered in the Republic of Serbia and that he performs service activities for goods which are the subject of public procurement."
- (i) In this request, the Commission has lost sight of Article 4 of the Company Law ("Official Gazette of the Republic of Serbia", No. 36/2011, 99/2011, 83/2014 and 5/2015) which says:

"The company has a predominant activity, which is registered in accordance with the Law on Registration, and it can also perform all other activities that are not prohibited by law, independently of whether they are determined by the founding act or statute.

A special law may require the registration or performance of a particular activity by issuing prior approval, approval or other act of the competent authority. "

Since the performing of the service activities does not require prior approval, approval or any other act of the competent authority, it is necessary to amend this requirement, or to harmonize it with the Company Law.

- (ii) Also, the quoted condition requires the service provider should be located on the territory of the Republic of Serbia. The interested person point out to the Purchaser that the manner in which the

additional condition is defined represents an unjustified restriction of competition and a discriminatory requirement for potential bidders.

The interested person also recalls that in accordance to the Article 12 of the LPP, the Purchaser is obligated, at all stages of the public procurement procedure, to ensure equal status to all bidders and that he can not determine conditions that would imply **national, territorial, subject or personal discrimination among bidders, nor discrimination that can be derived from the predominant activity performed by the Bidder.**

5. In the tender documentation in the Framework Agreement Model, Article 4, paragraphs 2 and 3, page 107, there are a number of irregularities that are contrary to the positive legislative in Republic of Serbia. Namely, the Purchaser in paragraph 2 of Article 4 strictly states:
  - (i) "If the Contractor is a domestic bidder with a RSD account: If the amount in the invoice is expressed in Euros, the payment by the Purchaser shall be made exclusively in the RSD counter value at the exchange rate of the National Bank of Serbia valid on the date of delivery of the goods concerned under each individual contract referred to in Framework Agreement. Anyone who is a domestic bidder and who is registered in the Business Registers Agency must have an open dinar account since the official currency is in our country dinar.
  - (ii) The amount on the invoice of the domestic bidders MUST be expressed in dinars (Law on Accounting and Auditing), since that is the way for payment to be made. In other words, it is possible to express the amount in euros on the invoice, but then on the same invoice in the dinars, and in the part referring to the amount of the payment, the value must be in dinars. This dinar value may be under a currency clause, but since Article 6, point 2 of the PPL clearly states that "the Purchaser may allow to the Bidder to present the price in one foreign currency and in that case, in the tender documentation, state that the conversion to dinars will be made according to the middle exchange rate of the National Bank of Serbia on the day the opening of bids started. "
  - (iii) Subsequently, in paragraph 3 of Article 4, the Purchaser says:

„If the Contractor is a foreign bidder or a domestic bidder that has an open foreign currency account: If the amount in the invoice is expressed in euros, payment by the Purchaser shall be made in euros.”

In this paragraph, the Purchaser directly violated Article 34 of the Law on Foreign Exchange Operations ("Official Gazette of the Republic of Serbia" No. 62/2006, 31/2011, 119/2012 and 139/2014) in the part of payment to a domestic bidder who has opened a foreign currency account in foreign currency to a foreign currency account. This irregularity needs to be removed in order to prevent the Framework Agreement from being null and void.
6. In the tender documentation on page 44 it is written: "The price in the bid is expressed exclusively in euros ..." The Republic of Serbia is not a member of the EMU and its official currency is dinar (RSD), so it is not clear why the price should be expressed exclusively and only in euros. Pursuant to Article 19, paragraph 2 of the LPP, it is clearly pointed out in what way the bids expressed in different currencies can be compared, and paragraph 1 of the same article clearly states that prices are expressed in dinars. It is therefore unclear why the Purchaser takes away legitimately and legally guaranteed right to the Bidder as domestic producer to express his price in his currency. This requirement should be amended and harmonized with the LPP.
7. On page 39 and 40 of the Tender documentation it is written that it is necessary to submit a photocopy of the Decision on enrollment in the Bidder's register or a statement on its memorandum stating the link at which it can be verified whether the bidders were registered in the Register. Article 78, paragraph 2 of the LPP defines that "The Bid Register is available on the website", so it is therefore unnecessary to submit a photocopy of the APR Decision on enrollment in the Bidder Register, but only to submit a statement on the memorandum that the Bidder is registered in the Bidder Register without specifying the web site where this can be checked for

domestic bidders, since the Law provides that the website is known to the Commission. This remark for the modification of the tender documents is primarily focused on the application of the LPP, as well as on the reduction of the volume of required documentation that is sufficiently extensive even without the need for unnecessary documents. Therefore, we ask the Commission to amend this part of the Tender Documentation considering the Registry of the Bidder.

8. In the Tender Documentation on page 4, 2. The technical characteristics and documentation (specifications) in item 1 it is written that the pressure in the boiler is 16 bar, but there is nothing said about the operating pressure. We ask the Commission to define what is the boiler's operating pressure and is it the same for all boilers?
9. In the Tender Documentation on page 4, 2. The technical specifications and the documentation (specification) in item 2 the safety valve is required, but it is not defined whether it is with a weight or a spring. We ask the Commission to define it.
10. In the tender documentation on page 9, the Technical description for the boiler is written: "There is a CE marking (CE-0035 according to Guidelines for Pressure Vessels) or an adequate 3A certificate on the boiler", and on page 33 of the tender documentation in the part 1. Photographs of the certificate and technical documentation for: boiler, economizer, pump, circulation boiler pump, etc. for example is written: "CE certificate or 3A certificate for the offered type of boiler". Regarding to 3A mark, the legislator clearly stated that the **CE mark does not replace the Serbian sign of conformity.**

Serbian conformity mark, in accordance with the technical regulations, is always placed on products that are brought on the market or used in the Republic of Serbia, regardless of whether the CE mark has already been affixed to that product. This means that both characters can be placed on the same product. This applies both to imported products and domestic products sold simultaneously in the Republic of Serbia and in the EU. Namely, in the EU CE mark is a mandatory sign of conformity, regardless of the origin of the product.

The Law on Technical Requirements for Products and Conformity Assessment ("Official Gazette of the Republic of Serbia" no.36/09) determine that the manufacturer puts a mark of conformity on a product that is harmonized with a technical regulation, **if it is requested by the technical regulation.**

**The appearance** of the Serbian sign of conformity is regulated by Articles 30 to 33 of the Decree on the manner of conducting the conformity assessment ("Official Gazette of RS" no.98/09 and 23/17).

All this and much more information on the relationship between the CE mark and the Serbian sign of conformity can be found on the following websites of the Republic of Serbia:

<http://www.tehnik.privreda.gov.rs/sr/pitanja-i-odgovori.html>

<http://www.pks.rs/CEznak.aspx?ID=1909>

Therefore, the provisions of the Law on Technical Requirements for Products and Conformity Assessment ("Official Gazette of the Republic of Serbia" no.36/09) are directly violated, as well as the Decree on the manner of conducting the conformity assessment, the content of the certificate of conformity, as well as the form, the appearance and the content of the mark of conformity ("Official Gazette of RS" no.98/09 and 23/17), by prescription of the European conformity marks.

Further, when from the manufacturer is required to deliver the 3A certificate for the boiler before the start of the boiler production itself, this means that the manufacturer has made the previous boiler that was manufactured compliant with module B and/or B1 (type certification/project certification) according to the Technical Requirements for Design, production and evaluation of conformity of pressure equipment ("Official Gazette of RS" No.87/2011). However, in the same regulation, the legislator prescribed that the pressure equipment can also be compliant with Module G (individual verification) - which means that during the construction of each individual pressure vessel the certification of conformity is performed, and after completion of the

production process, producer obtains a conformity mark. Requiring the delivery of the 3A sign, prior to the creation of a product that complies with the provisions of this Rule, for boiler or anything else that is required by this Tender Documentation directly violates the Rule, as it gives priority to one evaluation module in relation to the other, and the legislator has foreseen identical treatment for all, and left manufacturers to assess the extent to which the module will, depending on its needs, all in accordance with Article 9, harmonize their products, which is clearly and unequivocally stated in Article 9 paragraph 1, point 3 of the Rule. Therefore, it is necessary to harmonize the FULL Tender Documentation with the Rule so that can not be unlawful.

- (ii) In accordance with mentioned the above, it is necessary to amend the Tender Documentation in the part where a large number of standards are prescribed for the various goods that are required by this public procurement, considering the existence of Module G, and therefore it is not necessary for the manufacturers/bidders of products under pressure have the prescribed standards (mentioning that many of them are not at all in the Serbian regulations, but only in the EU, which can be determined by a simple search on the website of the Institute for Standardization of Serbia) if they evaluate their products according to the G. module. Therefore it is necessary to exclude all listed EN and EU standards from the Tender Documentation in order to be valid.
11. In the Tender Documentation on page 87 Form 10 - Reference list for Boilers it is written: " The bidder completes the reference list for the least delivered 4 boiling water or hot water boilers with a minimum capacity of 8 MW at any time during the last 5 years."
- (i) It is not clear why only boiling water or hot water boilers are required, or why steam boilers can not be applied, considering that they are incomparably more complex for both design as well as for the construction. This requirement is discriminatory with regard to the bidders who have steam boilers of the required capacity in their reference list and can not show them, which is contrary to Article 10 of the LPP. Therefore, in the mentioned text should be added with steam boilers.
  - (ii) With respect to the boiler capacity required in the reference list, it is not clear why it is said that boilers must be a minimum capacity of 8MW. The boilers that you need are boilers with a capacity of 20MW (20000 kW) and they are identical by their design with boilers of 8MW, but they are identical by their design with boilers of, say, 3MW, 5MW, etc .; the difference occurs in the boiler dimensions (the higher the required power means the greater size), the pressure required by the customer and so on. But the CONSTRUCTION IS THE SAME-BLOCK BOILER IS THE BLOCK BOILER. Therefore, it is not clear justification of the requirements in the Reference List to consider only boilers with a minimum power of 8MW when boilers of less power fully meet those who are the subject of public procurement according to their construction, as evidenced in the previously given explanation. Since it is important for you as a Purchaser that as many bidders are able to participate in this procurement procedure, this part of the tender documentation needs to be amended and made in a way to enable it, and also to be in accordance with Article 10 of the LPP.
  - (iii) Also, it is not clear why in the quoted part of the Tender Documentation ir required 4 boilers, when the Purchaser needs 3. It is not clear why more than one boiler is required. Namely, if the bidder has supplied at least 1 boiler, which, according to its construction, is identical to the requested one in period of at the last 5 years, and if this boiler is functional and the Customer to whom it is delivered has no objection, it is clear that the Bidder can produce (or resell ) the correct boiler with the parameters ordered by the Purchaser. By the Article 77, paragraph 2, item 2 of the LPP it has been clearly stated that the Purchaser may require: "one or more

evidence appropriate to the subject of the contract, quantity and purpose ..." and in the specific case there is no justification for seeking more than one boiler, and that has been proven previously. Therefore, in order to enable as many bidders as possible, the required condition is should be revised and harmonized with Article 10 of the LPP.

12. On page 43 of the Tender documentation, it is stated that the procurement was not formed by the lots. Why did not the Commission form this public procurement by lots?
  - The public procurement itself is organized as a Framework Agreement and it is predicted within the signing of several individual contracts for goods that will be then ordered by the Purchaser from the Contractor. If public procurement was formed in this way, it would allow far more bidders to participate in the public procurement procedure.
  - Namely, the subject of public procurement is the delivery of the following goods: boiler with associated armature (pcs 3), burners with electro command cabinet (pcs 3), heavy fuel oil duct (set 1), electric control cabinet (set 1), economizer pumps (pcs 3), circulation boiler pump (set 4), stack system (pcs 3), heat exchangers (pcs 6), water collectors (set 1), armatures.
  - No company is in a position to offer all the required goods ALONE and to submit the reference list required by the Tender Documentation for them, and therefore must act as a group of bidders.
  - Requirements requested in this public procurement which is not formed by lots are such that, for example, it is necessary to attach a bank guarantee for a good performance of the work in the amount of 56.500.000.00 dinars (since the estimated value of the public procurement is 565.000.000,00 dinars according to the public procurement plan), and then give bank guarantees in the amount of 10% when signing each individual contract, which is an extremely large amount of money that would be far more acceptable and tolerable if it has been diversified to lots. In this way, small and medium-sized enterprises would be able to compete independently for this job in the part for which they have a reference, exactly for the part of the job they know and can do.
  - In accordance with this, we note that by Article 48, paragraph 2 of the LPP for centralized public procurement is predicted that it is necessary to be formed into lots whenever possible in order to enable participation for small and medium enterprises, as it is confirmed by the opinion of the Public procurement Office. It is clear that this article of the Law does not apply to you as a Purchaser, but we are referring to it at this occasion in order to show that the legislator absolutely predict as much competition as possible on the market in order to get the best possible product for as little money as possible, which is possible only if the Tender Documentation is well prepared, i.e. formed in such a way that this competitiveness is indeed enabled. And in this particular case, all the conditions that are defined by paragraph 2 of Article 48 have been met.
  - Then, there would not be installation of equipment, but only DELIVERY, so it is not clear again why this public procurement is not formed by parties since the goods themselves are purchased differently. Therefore, this is not a turnkey procurement concept, but only the purchase of the necessary different goods that will subsequently be installed in the designated locations when the conditions are met.
  - If we look further purely mathematically and logically we come to the following: there is no equal number of manufacturers and traders of burners on the market, etc. so that it is possible for each of them to make a consortium with this other, so it will inevitably happen that someone who, for example, is the manufacturer of an exchanger and who has the necessary reference list for their part of the job, will not be able to participate because they will not find enough partners in order to close the unnecessary bulky construction of this Tender Documentation.

Therefore, this public procurement needs to be transformed into lots so that Articles 10 and 12 of the LPP will not be abused and meaningless.

13. We ask you to explain whether the quantities listed in the bid form and the technical specification are fixed or indicative. Since the tender documentation does not say that the quantities are indicative, please explain the reasons why the procurement is being carried out with the aim of concluding a framework agreement.
14. On page 45 of the Tender Documentation, a bank guarantee is required when signing the Framework Agreement to a value of 10% of the value of the Framework Agreement, which is 56.500.000,00 dinars according to the estimated value of the public procurement to 565.000.000,00 dinars. It is not clear why it is necessary for the Bidder who signs the Framework Agreement with the Purchaser, which is scheduled to last for **2 years**, to submit immediately a bank guarantee for a good performance of work that is exceptionally, exceptionally, very expensive and for a period of two years, without knowing whether the Purchaser will realize the purchase of at least one good from the current public procurement (page 106 of Tender documentation, Article 1, paragraph 4 of the Model Framework Agreement on Public Procurement).

The explanation of the Purchaser in the Tender Documentation for this condition is that the Purchaser in this way ensures that the Bidder, when signing the individual Agreements from the Framework Agreement, conducts the signing of the same and will deliver a Bank Guarantee for 10% of the value of the Individual Contract (explained on page 111 of Tender Documentation, Article 9, Paragraph 6 of the Framework Agreement Model on Public Procurement). However, in this way, the Purchaser did not connect its request for this bank guarantee in a logical connection with the subject of the public procurement, since this does not show why the promissory note of the Bidder are not sufficient as a means of compensation in this case, which is incomparably cheaper for the Bidder itself, keeping in mind that even the Purchaser does not know whether and how many goods from the current public procurement will be ordered from the bidder. This requirement is in direct contradiction with the Principle of Ensuring of competition, Article 10 of the LPP. We also note that the Purchaser requests from the Bidder to submit a bank guarantee at the signing of each individual contract to 10% of the total value of the contract without VAT and the promissory note for 10% of the advance payment.

Therefore, it is not logical that the Purchaser asks for a bank guarantee for a good performance of the work when signing the Framework Agreement to an amount of 10% when he does not even know if any of the foreseen will be realized as well to ask for a bank guarantee for good performance of the work when signing each individual contract. It can not be seen how the Bidder can compensate its ENORMOUS expenses for a bank guarantee if the Purchaser decides that nothing will be realized under this contract. Such conditions are **not fair** and they do not take into account the costs for the Bidder when signing such contract. **In other words, it is inconceivable that anyone agrees to conditions that are completely unlogical, except for those who have previously agreed to obtain this public procurement.**

15. On page 38 of the Tender Documentation it is written that is necessary to submit the license of the competent authority, however, it has not been added "if this permit is predicted by a special regulation" Article 75 of the LPP. It is necessary to make this amendment in order to comply with the LPP and the rest of the Tender Documents (page 32 of the Tender Documentation) in order not to cause any doubt among potential bidders that they should have a special license for their activities that the Law does not require.
16. In the part relating to business-financial capacity (page 37) it is not clear why from the Bidder is required to have had in the period from 01.01.2016.-31.12.2016. business income in the amount



of min. 4.400.000,00 EUR; why it is required that it was not illiquid for more than 10 days during 1 (one) calendar year; and why it is required in the Evidence section on page 38 to submit the opinion of the certified financial auditor.

- (i) Why income of 4.400.000,00 EUR? Why only in one accounting year (and the financial balance is required for 3 accounting years)?
  - (ii) When the three accounting years are specified, the request is for full year 2015, 2016 and the period from 01.01.2017.-31.10.2017. This is not the correct data since the accounting year is 12 months, so it is necessary to correct the data in one of the following ways: (a) to include the period to show the balance as of 01.11.2014. until 31.10.2017., which is completely illogical, or (b) to cover the whole of 2014, 2015, and 2016. for which period the data are publicly available on the Business Register website. Data relating to the period 01.01.2017.-31.10.2017. year is by no means confidential except if along with the Internal Balance Sheet Report would not be required to submit VAT registration for a given period, as well as PPP PD applications in which the exact calculation of salaries can be seen, Final Accounting Sheet on 31.10.2017 and other data that we do not want to list (these are just some of the key ones). Without all these additional data, internal balances would be completely unreliable and unprovable.
  - (iii) It is also unclear why it is required that the Bidder has not been illiquid for more than 10 days in one accounting year? Why not 5 or 20 days? In our opinion, for the period of the previous three years, it should not have a single day of blockade, since the work that needs to be done in each segment is very serious and it needs to be loaned 90% (since the advance is only 10%), so it is very important to be a Bidder who is 100% liquid and who knows how to properly dispose with his funds. However, this requirement has no justification or logic.
  - (iv) In the Part: Evidence on page 38 it is written that it is mandatory to provide the opinion of the certified financial auditor, but the auditor's opinion is prescribed by the Law to be submitted only to companies of a certain size, while others who are not in that rank do not have to submit the report to the Business Register Agency along with the final account. Therefore, this condition should be changed and harmonize with the Law.
17. In the tender documentation on page 23, in the stack system properties, it is required that: "The elements of the stack system must be corrosion-resistant and are made by laser welding in a protective atmosphere." It is not possible to deliver a stack system predicted height of 44m in one piece to the Purchaser because it is not possible to transport such a large piece. Such stack system is made in parts that are mounted on the site during installation, and in the place of assembly, the welding of the parts will be carried out MANUALLY. So we come to the conclusion that the stack system must be manually welded, so it is not clear the requirement to be laser welded at the manufacturer's factory by segment, and then manually welded at the site. In accordance with the foregoing, this requirement relating to laser welding is not in a logical relationship with the goods stack system - so the Tender Documentation should be amended and allow tenderers to optionally determine how to weld the stack system in their production facility, all in accordance with Articles 10 and 76 of the LPP.
18. In the Tender Documentation for goods – stack system, it is not clear whether the Purchaser or the Bidder provide a static calculation for the chimney. If the static calculation is provided by the Purchaser, it is necessary to emphasize this in its documentation, and if provided by the Bidder, then the Purchaser should request to provide all the necessary documentation for obtaining a use permit for the chimneys in accordance with the Law on Planning and Construction (of course along with the specification given by the Purchaser on the necessary dimension of the chimneys and the accompanying elements), and the rest is the obligation of the Bidder. In accordance with that, the entire part of those many certificates and directives is not in a logical relationship with the subject of public procurement.

19. In the tender documentation, in the part describing the technical conditions for the exchangers (page 25), it is written to deliver the laminar-drum exchangers. It is not clear why it is necessary for the exchangers to be drum, since even only plate exchangers can meet the required parameters. It is therefore necessary to change this part of the Tender Documentation, because it is not clear why the form of the exchange (drum) itself is important to the Purchaser. Such additional technical requirement can not be brought into a logical connection with the subject of the procurements of goods-exchanger and therefore it needs to be amended and harmonized with Article 10 and Article 76, paragraph 6 of the LPP. What matters is that the exchanger meets the parameters defined in the Tender Documentation, and what form it will be is really irrelevant.
20. Regarding question No. 1 and answer to question No. 1 of 24.11.2017., the Bidder asked the question if the goods are paid after delivery and proof of the good work of the boiler. We did not see this information in the tender documentation, so we would like a confirmation from you wheather the payment is made 45 days after the delivery of the correct invoice. In this section, it is not clear, since it is only a supply of goods, how the Purchaser plans to perform a qualitative check of the goods, since it is not assembled, considering that the invoice will be given after a qualitative and quantitative inspection of the equipment. Does this include the insight into the submitted requested documentation accompanying the goods or is it necessary to wait for the equipment to be installed and put into operation, and only then accept the invoice?
21. Regarding the required characteristics for the burners, as well as the questions of the potential bidder No. 1 and the Purchaser's response to the question dated November 30, 2017, the following irregularities and violations of the LPP in the Tender Documentation are noted.
  - (i) Regarding the Bidder's Question No. 1 and the answer to the question dated November 30.2017, the Purchaser did not respond to the regulation via the O2 probe, so it would be desirable on this occasion to try to answer the question asked. The question was: since it's a gas/heavy fuel oil combined, it's not clear why a O2 probe on a chimney is needed, which only functions when it is fueled with gas, and has nothing to do with oil?
  - (ii) In the same answer, the Purchaser has absolutely unknowingly and inaccurately pointed to the logical connection of its request considering the subject of public procurement (burner). In the following section, we will point out the clear favoring of a burner producer, which we will not name on this occasion because we do not do any free advertising for anyone, and a number of other illogical and craziness that the Purchaser require for the requested goods.
- In the tender documentation in the chapter Technical description, item 2: Burner write: Duoblok rotary combined burner gas/oil. Rotary burner with spraying is predicted for combustion with low emissions of harmful gases and for the combustion of highly viscous oils (heavy fuel oil), with electronic combustion control and working according to the principle of rotary mixing at the mouth of the burner.

By insisting on a burner with rotary spraying of fuel oil (which is a spare fuel) narrows down the choice of manufacturers that can participate to one. It is not clear why it is insisted on rotary spraying, apart from favoring one producer, especially that rotary combustion of fuel oil is not according to the claim that a low emission is required.
- Then in the subtitle: "Required and binding minimum technical characteristics:" the following is stated:

"The minimum acceptable regulating ratio for gas and oil is 1: 8." Such regulating ratio on the fuel oil is related to rotary spraying and favorize one manufacturer of burners.
- "Fuel oil flow meter, with 4-20mA output signal". This type of the meter is not the standard delivery of other manufacturers, it depends on the ability of the automation to receive the signal from the measurer. This is also favorazing of one bidder.

- "Probe Pt 100 for boiler leading at the outlet water temperature, with output signal 4-20mA". This version of the criterion is not the standard delivery of other manufacturers, it depends on the possibility of automation to receive the temperature signal. This is also favorizing of one bidder.
- It has been required that the burner equipment should comply with the specified standards and regulations (9 points). Some of them are valid and standardized in our country (for example, EN 676 and 298), while some have been overcome and invalid even in the EU:  
 EN 954-1 – not in force since the end of 2011,  
 EN 50156-1 – not in force from 31.07. 2015.,  
 IEC 61508 not bounding requirement for burners manufacturers with factory-certified automation, therefore insisting on all standards on the list, besides that it is incorrect and even it is discriminatory.
- "The burner with boiler must fulfill all requirements according to the Decree on limit values for emissions of pollutants in the air from the combustion plant, Official Gazette of RS, no.06/2016 dated 28.01.2016."  
 According to this Regulation for combustion of oil on new medium-sized plants the NOx emission limit is 200 mg/m<sup>3</sup>. This is not feasible with any kind of equipment for combustion of standard fuel oil that is purchased in our country.
- In the required characteristics of the electrical cabinet, it has been insisted that the equipment for the O2 control and the burner programmer are installed in the cabinet. Since at various burner manufacturers, the programmer is built into the burner itself, and the O2 control unit in a special cabinet, this requirement is also discriminatory.
- In subtitle 3. Heavy fuel oil duct, as the obligatory minimal technical characteristics, a linear additional heater for fuel oil (media and electro-heating) is required, which is inherently in the tender for the known manufacturer of the burner, so that the bid of other manufacturers with individual heating on each burner would be disqualified.

In accordance with all previously stated, it is clear that the tender documentation in this part is absolutely contrary from Articles 10, 71 and 76 of Article 6 of the LPP and therefore the Tender Documentation should be harmonized with the Law.

**Answers:**

- 1.1 For quality of equipment subject to procurement, it is important that the producer of equipment poses the required standards, not the Bidder, since in that manner the preconditions for supply of quality equipment will be met.
- 1.2 In Tender documentation on pages 33. and 34 the correction will be made and everywhere where it has not been written will be added that the producer must meet the required ISO certificates.
- 1.3 The scope of accreditation for ISO 9001 is attached to the area of production of the requested equipment.
- 1.4 Exactly the need for servicing the goods that are subject of public procurement in warranty and post-warranty period is the reason for setting the requested condition.
- 1.5 The suggestion of the potential bidder is accepted, the tender documentation in that part will be changed.

1.6 Technical capacity evidence under "B" are not an alternative, but evidence of the conditions that the Bidder must fulfill and prove together with the conditions under "A". Between "Agreement on business-technical cooperation of manufacturers of subject goods and service centers/shops (if the bidder is an authorized service provider)" and "Agreement on business-technical cooperation of the bidder and the service centers/shops (if the Bidder is not an authorized service provider)" is clearly stated" OR "so that all bidders (whether authorized service providers or not) can take part in the current public procurement. There is no talk of favoring the bidders.

2.1/2.2 The request is justified because it provides the procurement of equipment for which a service is provided, equipped with professional personnel, which is a prerequisite for carrying out servicing and maintenance of equipment.

- (1) The suggestion of the potential bidders is accepted, the tender documentation in that part will be changed by adding the model of the contract from the framework agreement.
- (2) The suggestion of the potential bidders is accepted, the tender documentation in that part will be changed.
- (3) The suggestion of the potential bidders is accepted, the tender documentation in that part will be changed

(4)

- (i) The suggestion of the potential bidders is accepted, the tender documentation in that part will be changed, and the Excerpt from Business Register Agency will be deleted as evidence.
- (ii) The suggestion of the potential bidders is accepted, the tender documentation in that part will be changed, in manner that the condition of technical capacity under "B", as well as the Statements about the technical capacity.

5. The suggestion of the potential bidders is accepted for all of three points, the tender documentation in that part will be changed by changing the paragraph 4 of Framework Agreement Model

6. The suggestion of the potential bidders is accepted, the tender documentation in that part will be changed

7. The suggestion of the potential bidders is accepted, the tender documentation in that part will be changed

8. Maximum boiler working pressure is 16 bar. The position 1 in table will be filled.

9. We do not have demands considering this question, so we leave to the bidders to offer safety valve as they think it is appropriate.

10. CE certificate or 3A certificate are asked for the type of boiler depending if the producer is domestic or foreign origine, not for the boilers that can be found in Republic of Serbia, from bidders which has to have 3A certificate. This is because, for foreign bidders, asked certificate 3A does not exist in the moment of submitting the tender documentation, but can be delivered only after the import of boilers. The same is for the rest of the equipment. Our decision, as investor, is to demand 3A certificate has been based on the decision to get boiler (equipment) of proven quality and already present on the market (domestic or foreign). In that manner we do not have

the risk of getting a boiler (equipment) that have not been in exploitation and its quality has not been proven already – everything according to the requested “Reference list”.

11.
  - (i) The referenc list for boilers that are similar or equal to the boilers subject to delivery is requested, not for more komplex boilers which have been offered in this PP.
  - (ii) The range from 8-20 MW has been requested since that is appropriate range relative to the power of requested boiler
  - (iii) The Purchaser retain the conditions from tender documentation, since this document is one of very important proofs for bidder’s reference considering that for public procurement is very important what is the previous experience of bidders for current public procurement
12. The Purchaser has the right not to devide the current public procurement into lots since we need complete equipment for the modernization of the facility. We point out that the current public procurement is only the first phase in modernization of facility, so in that way the Purchaser can not devide this public procurement into lots, because it it easily possible for Purchaser not to gain bid for only one lot and therefore the procurement of all other equipment will be useless.
13. The amounts in current public procurement are fixed. Pursuant to the Article 40 LPP, the Purchaser has the right to use framework agreement from any public procurement procedure. EU Directive 2014/24/EU in preamble recommend higher use of framework agreements in practice. Framework Agreement is used in situation when Purchaser in certaion time period has the need for concluding of great number of contracts whose subjects of procurement are the same. By Article 3, Paragraph 1, point 20 of the LPP, Framework agreement is agreement between one or more purchaser and one or more suppliers, in oredr to determine the conditions of contracts which will be signed durind the certain period of time, defining the prices and where appropriate, the amounts. In this manner the efficiency of the same public procurement procedure becomes higher, and more important, purchasers secure the continuity and safety for their business by depleting the risk for failure of public procurement procedure.
14. Due the complexicity of great estimated value for current public procurement procedure, the Purchaser remains to its demands that as financial means of security for good performance of work occasionally at signing of framework agreement keeps the bank guarantee, but the amount of bank guarrantay for good performance og work at signing of the framework agreement from 10% to 5% of the amount of the framework agreement.
15. The suggestion of the potential bidders is accepted, the tender documentation in that part will be changed
16.
  - (i) The purchaser has the right to aks the additional conditions considering the financial capacity always when it is necessary, consiedering the subject of the public procurement. By financial capacity the Purchaser secure that the bidder has certain level of business income in order to finance the procurement of requested goods. Fulfillment of the conditions pursuant to Article 76. Paragraph 2. ovog Law the Bidder can prove by giving the evidences along with the bid, as follows:
    - 1) Report about the bonitet or scoring given form the competent authority, balance sheet with the opinion of authorized auditor or excerpt from balance sheet, statement about the bidder’s

total income from sale and income from products, activities or services, to what the contract for public procurement is based – at least for the previous three years, opinion or statement of banks or other specialized institutions.

**Minimum income per year requested from Bidder should not be greater than double amount of the estimated public procurement value, except in special cases when it is necessary for special risks connected to the subject of public procurement.**

**On the bases aforementioned, the Purchaser has asked the amount of 4.400.000, 00 EUR the amount even SMALLER than the estimated public procurement value, so that we consider that our demand is more than correct.**

- (ii) The suggestion of the potential bidders is accepted. The mentioned period will be changed.
- (iii) The condition that you ask that the Bidder has not been insolvent at all during the one accounting year is not logical, since the opinion of the Public Procurement Authority is exactly that the bidders can be insolvent only one day due to administrative error of bank and that can prevent them to participate in public procurement procedures if we point out the condition that you demand, in order that the Purchaser with its demands meets the needs of bidders and respect principles of ensuring competition and equality of bidders.
- (iv) Since the Purchaser prescribed the condition of financial capacity of EUR 4,400,000.00 excluding VAT, and that the Obligors of the statutory audit of the financial statements under Article 6 of the Law on Accounting ("Official Gazette of RS", No. 62/13, further text: Law on Accounting), all legal entities, i.e. entrepreneurs whose business income realized in 2016 exceeds EUR 4.400.000 in RSD, we consider that our condition is justified.

17. Stack system as a whole consists of elements for which the condition is to be made by the laser welding process in the protective atmosphere. From the specification given on page 23, it is obviously to see that it is not necessary to deliver a chimney in one piece of length 44m, but from the connecting elements which will be assembled at site, not welded.

18. It is not necessary for Bidder to give the static calculation of stack system.

19. The essential difference between the laminar exchanger and the laminar-drum is neither in efficiency nor in capacity, nor in form, but in exploitation characteristics, maintenance mode, servicing and, ultimately, maintenance costs.

Due to the impurities contained in the operating fluid of the district heating system, the laminar-drum exchangers are selected as the only ones that provide the necessary reliability of the system and the ability to maintain it independently without external support.

Laminar-drum exchangers, due to their construction and geometry, compared to laminar exchangers, provide in a condition of use of dirty fluid an incomparably longer time interval between two cleanings, so that the reliability of work in conditions where there is the need for continuous operation during the heating season is a crucial criterion for selecting the type exchangers.

The construction of a laminar-drum exchanger allows the exchanger to be cleaned on site

without dismantling it from the installation, and it does not require external service, but can be done by the boiler crew in the course of regular activities during the night stand of the boiler room. The laminar exchanger on the other hand must be disassembled, in workshop conditions by the manufacturer or an authorized servicer, cleaned, assembled and mounted again on the installation. In this case, it is necessary not to forget the time needed for all these activities, transport, and the costs for transport and replacement of seals that must be changed during each assembly and disassembly. These are specific seals, which are usually supplied only by manufacturers of exchangers.

20. The suggestion of the potential bidders is accepted, The tender documentation will be supplemented in a manner that the Purchaser will perform qualitative check of delivered goods by the insight into the submitted requested documentation accompanying the goods.

21. (i) The equipment we are asking must be complete and similar to both the natural gas drive and the fuel oil. Hence, the tender requirements regarding regulation

(ii) As already has been emphasized in the answer that we earlier published our determination is that the burners should be are rotational type.

The reason is that the principle of operation of rotary burners when burning fuel oil, allows the use of fuel of different and variable quality, and also has a greater range of regulation of work in relation to other types of burners.

In a situation where the quality of fuel on the market is variable this flexibility of rotatory burners is something that is necessary for us ang what we need to insist on.

I would like to mention that the burners that we have in exploitation and which are not rotatory create problems in the work because they are very sensitive to the quality of the oil for heating.

A larger range of burner regulation is necessary in the context of adjusting boiler operation to external meteorological conditions and the needs of the thermal consume.

The Purchaser is obliged, pursuant to Article 10, paragraph 1 of the LPP, to enable as much competition as possible, but on the other hand it does not imply that it is obliged to define the conditions for participation in the procedure, as well as the technical specifications, in a manner that enables each interested person to participate in the public procedure procurement. Therefore, the Purchaser defines the conditions and requirements in the tender documentation primarily based on their own objective needs, and not from the business and economic interests of the bidders.

22. There is no means of guarantee for the bidders, or the equipment supplier, payment after delivery.

**Since individual suggestions of potential bidders are adopted, amendments to the tender documentation will be made.**