

Responses to requests for clarifications regarding the project

THE DEVELOPMENT OF A REGIONAL CROSS-BORDER SYSTEM OF EXCELLENCY MEDICAL CENTRES SPECIALISED IN THE PRENATAL DIAGNOSIS OF FETAL MALFORMATIONS IN THE TIMISOARA-VRSAC AREA MIS-ETC code 1347

Supply and installation of the necessary equipments and furniture for the construction of a medical center specialized in prenatal diagnosis of fetal malformations, within the Emergency Municipal Clinical Hospital ("Dr. Dumitru Popescu" Clinical Hospital of Obstetrics and Gynecology Timisoara), 1-3 Alexandru Odobescu Street
Reference number: EuropeAid/135017/D/SUP/RO

No.AP2014-16/15.01.2014

No.	REQUESTS / QUESTIONS	ANSWERS
1.	<p>Considering your requests "All goods purchased must originate in a Member State of the European Union or a country covered by the Romania-Republic of Serbia IPA Cross-border Cooperation Programme" mentioned in 3 tender documents, "C2 SUPPLY CONTRACT NOTICE", "c4bINSTRUCTIONS TO TENDERERS", Art. 4 - Origin, paragraph 4.1 and "c4d_specialconditions_en.doc", Art. 10 - Origin, paragraph 10.1, from tender dossier and the DIRECTIVE 2004/18/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts", Art. 23 - Technical specifications please clarify "the must" of European Origin for the goods or eliminate this request because it violates the Directive mentioned above . Other reasons to eliminate this request is that excludes the participations and competition between bidders because not all the LOT 1, LOT 2 or LOT 3 equipments are manufactured in EU (for example,</p>	<p>According to Article 2.3.1 from the Current version of the Practical Guide to Contract Procedures for EU external actions, products origin rules applies as follows: "Origin of goods: All goods (supplies and materials) purchased under a contract financed under an EU instrument, including the EDF, must originate from the EU or from an eligible country. All goods to be delivered under a supply contract fall under the rules of origin, as do materials, goods and components to be incorporated or to form part of the permanent works under a works contract (subject to any specific exceptions as stated below). Considering that the rule of origin applies to all items tendered and supplied, it is not enough if only a certain percentage of the goods tendered and supplied or a certain percentage of the total tender and contract value comply with this requirement. Definition of "origin": The term 'origin' is defined in the relevant EU legislation on rules of origin for customs purposes: the Customs Code (Council Regulation (EEC) No 2913/92) in particular its Articles 22 to 24 thereof, and the Code's implementing provisions (Commission Regulation (EEC) No 2454/93). The country of origin is not necessarily the country from which the goods have been shipped and supplied. Two basic concepts are used to determine the origin of goods namely the concept of "wholly obtained" products and the concept of products having undergone a "last substantial transformation". If only one country is involved the production, the "wholly obtained" concept will be applied. In practice these goods wholly obtained in a single country shall be</p>

Date: 15.01.2014

<p>the only EUROPEAN Manufacturer for LOT 1 – Item No. 9 - Chemiluminescence Analyzer for double and triple test (Automatic access for double test and triple test) is Siemens, Advia Centauri.</p>	<p>regarded as having their origin in that country. This will be restricted to mostly products obtained in their natural state and products derived from wholly obtained products.</p> <p>If two or more countries are involved in the production of goods it is necessary to determine which of those countries confers origin on the finished goods. For this purpose the concept of "last, substantial transformation" is applied.</p> <p>The proof:</p> <p>When submitting its tender, the tenderer must state expressly that all the goods meet the requirements concerning origin and must state the country(ies) of origin. When tendering for systems comprising more than one item, the origin of each item in the system must be specified. The supplier may be requested to provide documents supporting the stated origin. In this case, the supplier must provide a certificate of origin or additional information considering that the issuing authority may refuse to issue at tendering stage a certificate of origin without presentation of commercial invoices.</p> <p>The official certificates of origin must, in any case, be submitted before provisional acceptance. Failing this, the Contracting Authority will not make any further payment to the Contractor.</p> <p>Certificates of origin must be issued by the competent authorities of the goods' or supplier's country of origin (usually the Chamber of Commerce) and comply with the international agreements to which that country is a signatory.</p> <p>It is the Contracting Authority's obligation to check the existence of a certificate of origin. Where there are serious doubts about the authenticity of a certificate of origin or the information it contains (e.g. because of discrepancies in the document, spelling errors, etc.), the Contracting Authority should contact the issuing authority and request confirmation of the authenticity of the documents submitted and the information it contains.</p> <p>For EDF procurement, supplies originating in the Overseas Countries and Territories are regarded as originating in the EU."</p> <p>Also it should be pointed that the legal basis for conducting this acquisition is COUNCIL REGULATION (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance (IPA) – indicated on paragraph 22. "Legal basis" from "C2 SUPPLY CONTRACT NOTICE.doc" form. According to Art. 19, paragraph 5 from the COUNCIL REGULATION mentioned above "all supplies and materials purchased under a contract</p>
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		<p>financed under this Regulation must originate from the Community or a country eligible according to paragraphs 1 or 2. The term 'origin' for the purpose of this Regulation is defined in the relevant Community legislation on rules of origin for customs purposes."</p>
<p>2.</p>	<p>Article 6 – Subcontracting 6.1. A subcontract shall be valid only if it is a written agreement by which the Contractor entrusts performance of a part of the contract to a third party. 6.2. The Contractor shall request to the Contracting Authority the authorization to subcontract. Request: Taking into consideration that none of the LOT 1 goods cannot have only one manufacturer and/or suppliers, please authorise the bidders to subcontract other suppliers or split the LOT 1 as follows: Item 1& Item 2 in one single lot, Item 3 in one single lot, Item 4&5 in one single LOT and also all other Items in separate Lots.</p> <p><i>Articles and paragraph of the documents mentioned above:</i> The document "c4d_specialconditions_en.doc", Art. 10 - Origin, paragraph 10.1 mentions: "All goods purchased must originate in a Member State of the European Union or a country covered by the Romania-Republic of Serbia IPA Cross-border Cooperation Programme. For these purposes, 'origin' means the place where the goods are mined, grown, produced or manufactured and/or from which services are provided. The origin of the goods must be determined according to</p>	<p>According to Annex 1 - "Glossary of terms" to the Practical Guide to Contract Procedures for EU, the term "Contractor" is defined as "any natural or legal person or public entity or consortium of such persons and/or bodies <u>selected at the end of the procedure for the award of the contract.</u> The successful tenderer, once parties have signed the contract".</p> <p>Therefore, when receiving from the Contractor a request to authorize subcontracting part of the contract, the Contracting Authority shall notify the Contractor of its decision within 30 days of receipt of the request, stating reasons should it withhold such authorizations. The request sent by the Contractor must indicate the elements of the contract to be subcontracted and the identity of the subcontractors (art. 6.2. from the "General Conditions" form).</p> <p>Also, tenderers must take into consideration when preparing the tenders, the provisions relating to Article 6.3. - Namely: "Subcontractors shall satisfy the eligibility criteria applicable for the award of the contract and shall not fall under the exclusion criteria described in the tender dossier."</p> <p>Considering all mentioned above, it can be inferred that Articles 6.1. and 6.2., from the "General Conditions" form, <u>shall take effect at the time of concluding the contract.</u></p> <p>Regarding the provisions relating to Article 10 - Origin, paragraph 10.1 from "c4d_specialconditions_en.doc" form, Article 8 - Eligibility and rules of origin from "C2 SUPPLY CONTRACT NOTICE" form, Article 4 – Origin, paragraph 4.1 from "c4bINSTRUCTIONS TO TENDERERS" form (including other documents within the tender documentation), we're making the following clarifications: All tender documentation posted by the contracting authority has been developed in accordance with the Current version of the Practical Guide to Contract Procedures for EU external actions and with the Supply Annexes, downloaded from the official website of the European Commission (http://ec.europa.eu/europeaid/prag/document.do).</p>

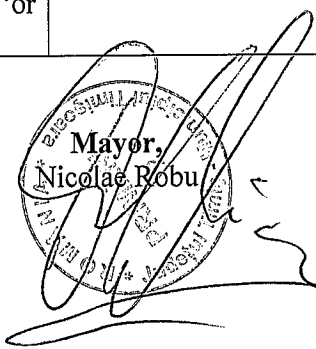
the EU Customs Code or to the relevant international agreement applicable”

The document “C2 SUPPLY CONTRACT NOTICE”, Art. 8 - Eligibility and rules of origin mentions:

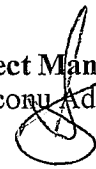
“Participation is open to all legal persons participating either individually or in a grouping (consortium) of tenderers which are established in a Member State of the European Union or in a country or territory of the regions covered and/or authorised by the specific instruments applicable to the programme under which the contract is financed (Romania – Republic of Serbia IPA Cross-Border Cooperation Programme). All goods supplied under this contract must originate in one or more of these countries. Participation is also open to international organisations. Participation of natural persons is directly governed by the specific instruments applicable to the programme under which the contract is financed.”

The document “c4bINSTRUCTIONS TO TENDERERS”, Art. 4 – Origin, paragraph 4.1 mentions:
“Unless otherwise provided in the contract, all goods purchased must originate in a Member State of the European Union or a country covered by the Romania-Republic of Serbia IPA Cross-border Cooperation Programme. For these purposes, ‘origin’ means the place where the goods are mined, grown, produced or manufactured and/or from which services are provided. The origin of the goods must be determined according to the EU Customs Code or to the relevant international agreement

<p>applicable”</p> <p>The “DIRECTIVE 2004/18/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts”, Art. 23 - Technical specifications mentions:</p> <p>Paragraph 2: Technical specifications shall afford equal access for tenderers and not have the effect of creating unjustified obstacles to the opening up of public procurement to competition</p> <p>Paragraph 8: Unless justified by the subject matter of the contract, technical specifications shall not refer to a specific make or source, or a particular process, or to trade marks, patents, types or a specific origin or production with the effect of favouring or eliminating certain undertakings or certain products. Such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraphs 3 and 4 is not possible; such reference shall be accompanied by the words ‘or equivalent’.</p>	<p>Concerning art.23, paragraph 2 and 8 from the DIRECTIVE 2004/18/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, invoked in the request for clarifications, it should be pointed out that the contracting authority introduced on <u>page 1</u> within the forms "c4f_annexiitechspeciitechoffer_lot 1.doc", "c4f_annexiitechspeciitechoffer_lot 2.doc" & "c4f_annexiitechspeciitechoffer_lot 3.doc" attached to the tender documentation, the following specifications:</p> <p><i>“Unless otherwise specified, the requirements in these Technical Specifications are presented as a minimum standard which the offered goods must meet.</i></p> <p><i>The offers that will not satisfy completely and correctly the minimum requirements mentioned bellow will be disqualified.</i></p> <p><i>When brand names are used in the technical specifications, they are “used in descriptive purposes only”, and must considered as “equivalent”.</i>”</p>
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