



**EUROPEAN UNION  
DELEGATION TO THE REPUBLIC OF SERBIA**

Belgrade,

**CONTRACTING AUTHORITY'S CLARIFICATIONS No. 7**

**Improvement of air quality through reduction in dust emissions  
from thermal power plants Nikola Tesla, Unit A3 and Morava**

**Republic of Serbia**

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No	Question	Answer
1	<p><i>Vol. 1, Sec. 1 Instructions to Tenderers, clause 14</i> <u>Period of validity of tenders</u></p> <p>a) We understand that according to clause 14.1 tenders must be valid for 90 days after the deadline for submission, i. e. until 30.01.2014, and b) We understand that according to clause 14.2 in exceptional circumstances the Contracting Authority is allowed to request that tenderers extend the validity by max. 40 days, i. e. until 11.03.2014, and c) We understand that according to clause 14.3 the successful tenderer must maintain its tender for a further 60 days (added to the validity period), i.e. until 30.03.2014 or max. until 10.05.2014.</p> <p>On the other side you have given according to ITT, clause 1.2 (Timetable) the planned date for "Signature of the Contract" in December 2013 and you have fixed the period for the construction works on site according to the Appendix to Tender, i. e. for Nikola Tesla A3: Beginning of May 2014 until End of November 2014.</p> <p>As you can see it will not be possible to start with construction works on site beginning of May 2014 if the Contract will only become effective after the events mentioned in clauses 14.1 – 14.3.</p> <p>So our understanding is that the Contract will</p>	<p>The dates mentioned under article 1.2 Timetable are provisional dates.</p> <p>The Contracting Authority intends to sign the contract by the end of this year.</p> <p>Construction works can only be performed in the time window as quoted in the Appendix to tender (Volume I, Section 2).</p>

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	<p>become effective latest on Jan. 02, 2014. A later Contract effective date will shift the period for the construction works on site accordingly.</p> <p>Please confirm and clarify.</p>	
2	<p><i>Vol. 1, Sec. 5</i>  <u>Glossary of Terms</u>  We do not understand for which cases these terms shall apply. The Contract (GC = FIDIC yellow book) has its own definition of terms. Furthermore we found some terms in the Glossary of Terms which are not used in the Contract (e.g. Final Acceptance Certificate (= "Performance Certificate" in the Contract), Defects Liability Period (= "Defects Notification Period" in the Contract, etc.) Please explain.</p>	<p>Please consider:  Final Acceptance Certificate as Performance Certificate,  Defects Liability Period as Defects Notification Period.</p>
3	<p><i>Vol. 2, Sec. 2 GC and Vol. 2, Sec. 3 PC</i>  <u>General:</u>  Given periods (usually 21 or 28 days) for checking/approval of information/documents by Engineer and Employer.  As the project execution schedule is very tight we ask to shorten all such periods by half. Please confirm.</p>	<p>Please, refer to the Question &amp; Answer 34 of the Clarification Round no. 6.</p>
4	<p><i>Vol. 2, Sec. 2 GC, clause 1.1.3.2 and Vol. 1, Sec. 2 Appendix to Tender, clause 1.1.3.2</i>  <u>Time for Notice to Commence:</u>  Not later than 180 days following notification of the signature of the Contract.  We understand that the contract will be effective and in full force from the date of signing the contract and the delivery of the performance security. If the "Notice to Commence" will take place at a later date than the aforementioned all other dates in connection with the execution of the contract are to be shifted accordingly. Please confirm.</p>	<p>Administrative order for the commencement date will be issued and the kick-off meeting set immediately after the contract is signed.</p>
5	<p><u>5.1.</u>  <i>Vol. 2, Sec. 2 GC, clause 1.1.3.3 and Vol. 1, Sec. 2 Appendix to Tender, clause 1.1.3.3</i></p>	<p><u>5.1.</u>  a) Dates and periods given in the draft Contract (Appendix to Tender) are valid. The dates mentioned under article 1.2</p>

	<p><u>Time for Completion of the Works:</u></p> <p>Lot 1: <b>16 months</b> from the commencement to the taking over of works. Defects notification period is an additional 12 months from the taking over of works.</p> <p>Lot 2: <b>28 months</b> from the commencement to the taking over of works. Defects notification period is an additional 12 months from the taking over of works.</p> <p>Construction works can be performed on TPP A3 during the A3 overhaul in 2014 (planned from beginning May 14 until end of Nov 14), and on ESP TPP Morava during overhaul in 2015 (planned from beginning May 15 until end of Nov 15).</p> <p>a) We see a contradiction between the given information. According to ITT, clause 1.2 Timetable – expected signature of the contract is planned in December 2013. So if we add 16 months (28 months) to Dec. 2013 we end up with Apr. 2015 (Apr. 2016) but not with Nov. 2014 (Nov. 2015) which is mentioned in the Employer’s requirements. As the Contract has a higher ranking than the Employer’s requirements (see Vol. 2, Sec. 1 Contract Agreement) we understand that the dates and periods given in the Contract (Appendix to Tender) are valid. Please confirm.</p> <p><u>5.2.</u> <i>and</i> <i>Vol. 3 Employer’s requirements, Table 7.2</i></p> <p>Commercial Operation Date’s (COD): Lot 1: COD = 15.11.2014 Lot 2: COD = 15.11.2015 [COD = Take-over Certificate has been issued]</p> <p>b) What will happen with the planned time periods for construction works (Lot 1 = May – Nov. 2014 and Lot 2: May – Nov. 2015) if the contract becomes fully effective after the planned date (=Dec. 2013)? Please explain.</p>	<p>Timetable are provisional dates.</p> <p><u>5.2.</u></p> <p>b) Please, refer to the Question &amp; Answer no.1 above.</p>
6	<i>Vol. 2, Sec. 3 PC, clause 1.14</i>	The Contractor (in case of a JV/Consortium, all members together) shall

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	<p><u>Joint and several liability</u></p> <p>The Contractor (in case of a JV/Consortium, all members together) shall carry out at least 70 % of the contracted Works by its own means. The upper limit authorised for subcontracting is 30% of the value of the contract.</p> <p>We understand that the design, process technology, supervision of erection and commissioning, guarantees and warranties for the works must be mainly in one hand and should not be distributed between many parties. So for us it is clear that at least 70 % of the scope of supplies and services of the aforementioned items must be executed by the contractor/ consortium and only max. 30 % are allowed to be done by sub-contractors. With regard to materials, components and services like erection works we understand that the aforementioned restrictions shall not apply. Please confirm.</p>	<p>carry out at least 70 % of the contracted Works by its own means. The upper limit authorised for subcontracting is 30% of the value of the contract.</p> <p>This applies not only on supplies and services, but also on erection works.</p> <p>Supervising Engineer will monitor the implementation and take care of this issue.</p>
7	<p><i>Vol. 2, Sec. 3 PC, clause 4.4</i></p> <p>The upper limit for subcontracting is 30% of the value of the contract. See our question/clarification no. 6</p>	<p>Please, see the above question/answer no.6.</p>
8	<p><i>Vol. 2, Sec. 3 PC, clause 4.7</i></p> <p><u>Setting Out</u></p> <p>Does the PC, clause 4.7 replace or amend the GC, clause 4.7? Please clarify.</p>	<p>The clause 4.7 of the Particular Conditions, amends the clause 4.7 of General Conditions.</p>
9	<p><i>Vol. 2, Sec. 2 GC, clause 5.6 and Vol. 2, Sec. 3 PC, clause 5.6</i></p> <p><u>As-Built Documents</u></p> <p>We understand that the mentioned “as-built documents” can have red marks entries at that time because the final as-built documents can only be delivered within a time period after tests on completion and trial run has been finished. Please confirm.</p>	<p>We confirm the understanding is correct.</p>

10	<p><i>Vol. 2, Sec. 3 PC, clause 8.3</i></p> <p><u>Programme</u></p> <p>“Including handing-over procedures in compliance with Kosovo legislation in force.” Is there a difference in Serbian and Kosovo legislation? Please explain.</p>	<p>Please, refer to the Question and Answer No 47.1 of the Clarification Round no.6.</p>
11	<p><i>Vol. 2, Sec. 3 PC, clause 8.6</i></p> <p><u>Rate of Progress</u></p> <p>We see a contradiction in this clause to GC, clause 8.7. According to the GC, clause 8.7 Delay Damages have only to be paid in case the Contractor fails to comply with GC, clause 8.2 (Time for Completion) and not already as stated in PC, clause 8.6 (actual progress is too slow or progress has fallen (or will fall) behind the programme). So in our understanding Delay Damages should only to be paid if the Take-over date is delayed for reasons attributable to the Contractor. This is also according to international contract practice. Please confirm.</p>	<p>Delay Damages shall only to be paid if the Take-over date is delayed for reasons attributable to the Contractor.</p>
12	<p><i>Vol. 1, Sec. 2 Appendix to Tender, clause 8.7</i></p> <p><u>Delay Damages for the Works</u></p> <p>0.5 % of the Accepted Contract Price per day is very high. According to international contract practice delay damages for not meeting the scheduled Take-over date are between 0.1 % and 0.3 % per day. So we ask you to decrease the given percentage accordingly.</p>	<p>Vol. 1, Sec. 2 Appendix to Tender, clause 8.7 remains unchanged.</p>
13	<p><i>Vol. 2, Sec. 3 PC, clause 11.9</i></p> <p><u>Performance Certificate</u></p> <p>The expiration of the Defects Notification Period and the issuance of the Performance Certificate do not influence the rights of the Employer during the Warranty Period. Where is “Warranty Period” defined in the Contract? We understand that “Warranty Period” and “Defects Notification Period” means the same. Please confirm.</p>	<p>Please consider: Warranty Period as Defects Notification Period.</p>

14	<p><i>Vol. 2, Sec. 3 PC, clause 14.7</i></p> <p><u>Payment</u></p> <p>What is meant by “Financing Memorandum” and how does it affect the Payment? Please explain.</p>	<p>The mentioned Financing Memorandum is providing the financial resources for this specific project. It contains a certain deadline for disbursement of earmarked funds. As per clause 14.7, in case the financing deadline expires before the end of the Defects Notification Period, the Employer shall pay the outstanding part of the Retention Money to the Contactor against a Retention Money Guarantee.</p>
15	<p><i>Vol. 2, Sec. 3 PC, clause 17.1</i></p> <p><u>Indemnities</u></p> <p>Substitute in the second paragraph (1) with: "bodily injury, sickness, disease or death, which is attributable to any <b>gross</b> negligence, wilful act or wilful breach of the Contract by the Employer, the Employer's Personnel, or any of their respective agents, and" In clause 17.1 you have changed Employer's liability from “negligence” to “gross negligence” but the Contractor is still liable for “negligence”. This is an unfair solution and we ask to stay with the wording of the GC or to change Contractor's liability also from “negligence” to “gross negligence”. Please clarify.</p>	<p>Vol. 2, Sec. 3 PC, clause 17.1 remains unchanged.</p>
16	<p><i>Vol. 1, Sec. 2 Appendix to Tender, clause 18</i></p> <p><u>Periods for submission of insurance</u></p> <p>7 days from the commencement of the works and remain in full force until final acceptance of the works. For the EAR insurance we ask to submit the confirmation only 30 days before start of the site activities because it is unusual to conclude directly after contract award the EAR insurance. Please confirm.</p>	<p>Vol. 1, Sec. 2 Appendix to Tender, clause 18 remains unchanged.</p>
17	<p><i>Vol. 2, Sec. 2 GC, clause 18.3</i></p> <p><u>Insurance against injury to persons and damage to property</u></p> <p>First paragraph and 18.3 (c) We understand that in “for any loss, damage, death or bodily injury” and “all loss and damage” any and all is interpreted according</p>	<p>Quoted text is the original FIDIC wording and the Governing Law is European Union Law supplemented as appropriate by Belgian Law.</p>

	<p>to the German legal liability because all of our insurances are subject to the German legal liability obligations. Please confirm.</p>	
18	<p><i>Vol. 2, Sec. 2 GC, clause 18.3 and Vol. 1, Sec. 2 Appendix to Tender, clause 18</i></p> <p><u>Insurance against injury to persons and damage to property</u> <u>18.3 and 18.3 (b)</u></p> <p>a) We have an overall third party liability insurance for our company and have no separate ones for each project. The covered amount is for bodily injury and property damage: 20 million EUR each occurrence and up to 40 million EUR in the annual aggregate. Furthermore there are some sub-caps for further events covered by the insurance.</p> <p>b) In general no third parties are insured within our insurance cover because it is an overall insurance. Please confirm that this kind of third party liability insurance is accepted.</p>	<p>The terms and conditions of the tender dossier must be strictly followed.</p>
19	<p><i>Vol. 2, Sec. 3 PC, clause 18.5 and Vol. 1, Sec. 2 Appendix to Tender, clause 18</i></p> <p><u>Insurance for design</u></p> <p>We as plant manufacturer and not only plant design company have no such insurance (this insurance is a typical insurance for architects who only plan but do not build the plant). In this Contract we will not only design but also build the plant (EPC contract). Damages to persons and property are covered by our Third Party Liability insurance. So we ask you to confirm that we do not need to conclude such insurance for design.</p>	<p>The terms and conditions of the tender dossier must be strictly followed.</p>
20	<p><i>Vol. 2, Sec. 3 PC, clause 20.6</i></p> <p><u>Arbitration</u></p> <p>The Place of Arbitration shall be chosen by the Employer, The Employer shall also have, if it acts as Claimant in the dispute, the possibility to unilaterally choose the settlement of the dispute by the Serbian courts of law in Belgrade, having jurisdiction at the</p>	<p>Governing Law is European Union Law supplemented as appropriate by Belgian Law.</p>

	<p>time of the dispute, instead of arbitration; in such case, a possible counter claim filed by the Contractor shall be also under the jurisdiction of the Serbian courts of law in Belgrade.</p> <p>We do not understand this wording. According to GC, clause 1.4 and Appendix to Tender, clause 1.4 the Contract will be based on European Law supplemented by Belgian law where appropriate.</p> <p>So what does this clause 20.6 mean? Will it change the Governing law in some cases to Serbian law?</p> <p>Please explain.</p>	
21	<p><i>Vol. 4, Sec. 4.3</i></p> <p><u>Schedules of Commitments / Guarantees</u></p> <p>In these Schedules the stated Defects Notification Period is 2 years.</p> <p>This is a contradiction to the Contract where the Defects Notification Period is 1 year. As the Contract is the leading document we understand that a Defects Notification Period of 1 year (starting with Taking-over Certificate) is valid.</p> <p>Please confirm.</p>	<p>Defects Notification Period is 1 year, starting with Taking-over Certificate.</p>
22	<p><i>Vol. 4, Sec. 4.3, clause 4.3.1.1.3a and 4.3.1.1.3b</i></p> <p><u>Schedules of Commitments / Guarantees</u></p> <p>In the tender documents is mentioned that the NPV factor (capitalization factor) is 14. This is based on a discount rate of 8 % for a period of 20 years.</p> <p>According to our calculations the NPV factor must be changed to 9,82 (Example: yearly cost is 100,000 € □□NPV for 20 years with a discount rate of 8 % is 982,000 €, so the NPV factor is 9.82 (982,000/100,000)).</p> <p>Please confirm.</p>	<p>Vol. 4, Sec. 4.3, clause 4.3.1.1.3a and 4.3.1.1.3b remains unchanged.</p>