



Republic of Serbia
MINISTRY OF FINANCE
Department for Contracting and
Financing of EU Funded Programmes
(CFCU)
13/04/2021, Belgrade

CONTRACTING AUTHORITY'S CLARIFICATIONS No. 1

Supervision of the modernization and rehabilitation of the railway section Niš – Brestovac
Reference number: NEAR/BEG/2021/EA-RP/0048

Q No.	Question	Answer
1.	Why is the Contracting Authority named as DG NEAR when it is the MOF-CFCU of Serbia	<p>In accordance with Contract Notice, Section I: Contracting authority, section I.1) Name and addresses Official name: Ministry of Finance, Government of the Republic of Serbia Department for Contracting and Financing of EU Funded Programmes (CFCU).</p> <p>Therefore please see Contract Notice section I.1) Name and addresses for the information regarding Name and addresses. On the website https://etendering.ted.europa.eu/cft/cft-display.html?cftId=8062 information related to Contracting authority: (Directorate-General for Neighbourhood and Enlargement Negotiations (DG NEAR)), shall not be considered as related to information regarding Contracting authority regarding Contract Notice for Supervision of the modernization and rehabilitation of the railway section Niš – Brestovac.</p>
2.	Clarification: Please clarify why Article 29 of the AICN (a non-legal document) is not in breach of several Articles of the following Serbian laws: Framework Agreement (ratified by Serbian Parliament)-Articles 18, 19 and 28 Law on Procurement (Serbian Parliament), Articles 7, and 10	<p>Pursuant to Article 18 of Framework Agreement procurement procedure is managed in accordance with rules of Practical guide on contract procedures for European Union external action, ver. 2020.0, August 2020 (hereinafter: PRAG) and not Serbian Procurement Law. Further, in accordance with section II.1.4) of</p>

	<p>Law on Planning and Construction (Serbian Parliament) Articles 2,153 and 162 And the following European Union/Commission documents IPA II Regulations-a legal document (ratified by the EU Parliament and the Council of Ministers) Directives 2014/24/25/EU, also ratified by the EU Parliament and the Council of Ministers The Financing Agreement (23/11/2020) The Practical Guide, Section 3.4.5, ITT 26.</p>	<p>Contract Notice supervision services are performed in accordance with relevant national legislation. Such legislation includes Law on Planning and Construction (Official Gazette 72/2009, 81/2009, 64/2010, 24/2011, 121/2012, 42/2013, 50/2013, 98/2013, 132/2014, 145/2014, 83/2018, 31/2019, 37/2019, 9/2020) and Rulebook on the manner, procedure and data content for verifying fulfillment of the conditions for issuing licenses for drafting technical documentation and licenses for construction of facilities for which the building permit issued by the Ministry, or autonomous province, and of the conditions for revocation of these license (Official Gazette 24/2015; hereinafter; the Rulebook). Provisions of Article 29 of Additional Information about Contract Notice are in accordance with Article 153 paragraph 3 and 4 of Law on Planning and Construction, Article 128, including paragraph 7 of stated Article. Further, all required licenses are foreseen in Article 9 of the Rulebook. Since stated legislation prescribes conditions for performance of services the conditions must be fulfilled before commencement of contractual rights and obligations. Consequently, the Contracting Authority reserved the right to award the contract to the second-best tenderer, all in accordance with section 3.4.12.1 of PRAG. Therefore, provisions of Article 29 are in accordance with applicable legislation. Finally, please note that document Additional Information about Contract Notice is publicly published in accordance with provisions of PRAG and is legal document.</p>
<p>3.</p>	<p>To whom should Requests for Clarifications be submitted, address and email address</p>	<p>In line with Additional information about the Contract Notice, section 25. Clarifications on the contract notice, Any request for additional information must be made in writing through the TED eTendering website accessible from the</p>

		<p>F&T portal at https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/home. Registration on TED eTendering is required to be able to create and submit a question. Additional information can be requested by clicking “Create a question” in the Questions&Answers tab at the latest 21 days before the deadline for submission of applications stated at section IV.2.2) of the contract notice.</p> <p><u>The Contracting Authority reserves the right not to consider any request for additional information which has not been submitted in accordance with the provisions of the Additional information about the Contract Notice.</u></p>
4.	<p>The original request was submitted to the email addresses cfcu.questions@mfin.gov.rs and cfcu.publications@mfin.gov.rs .</p> <p>Dear Sir/Madam.</p> <p>Title: Supervision of the Modernization and Rehabilitation of the Railway Section Niš - Brestovac</p> <p>Reference number: NEAR/BEG/2021/EA-RP/0048 TED No: 2021/S 050-122198</p> <p>25. Clarifications on the contract notice Any request for additional information must be made in writing through the TED eTendering website accessible from the F&T portal at https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/home. Registration on TED eTendering is required to be able to create and submit a question. Additional information can be requested by clicking “Create a question” in the Questions&Answers tab at the latest 21 days before the deadline for submission of applications stated at section IV.2.2) of the contract notice.</p>	<p>We acknowledge receipt of your e-mail. See also answer to question no 3. Further, submitted questions and answers are listed under point 5- of this document.</p>

	<p>Clarifications will be published on TED eTendering website at the latest 5 days before the deadline for the submission of applications. The website will be updated regularly and it is the applicants responsibility to check for updates and modifications during the submission period.</p> <p>As this website limits questions to 2000 characters, I was not able to submit my full request for Clarifications, please find attached.</p> <p>Please acknowledge receipt of this communication</p>	
5.	<p>The original request was submitted to the email addresses cfcu.questions@mfin.gov.rs and cfcu.publications@mfin.gov.rs .¹</p> <p style="text-align: center;">Title: Supervision of the Modernization and Rehabilitation of the Railway Section Niš - Brestovac</p> <p style="text-align: center;">Reference number: NEAR/BEG/2021/EA-RP/0048 TED No: 2021/S 050-122198</p> <p>Extracts from 1) <i>Additional information about the Contract Notice, hereafter called the AICN</i> 2) FRAMEWORK AGREEMENT <i>Between THE REPUBLIC OF SERBIA represented by the GOVERNMENT OF THE REPUBLIC OF SERBIA and THE EUROPEAN COMMISSION onthe arrangements for implementation of union financial assistance to the REPUBLIC OF</i></p>	

¹ Sentence inserted by the Contracting Authority

	<p><i>SERBIA under the instrument for pre-accession assistance (IPA II) hereafter called the Framework Agreement.</i></p> <p>3) THE LAW ON PUBLIC PROCUREMENT <i>"Official Gazette of RS", No. 91 of December 24, 2019.</i></p> <p>4) THE LAW ON PLANNING AND CONSTRUCTION <i>("Official Gazette of RS", No. 72/2009, 81/2009 - corrigendum, 64/2010 - US decision, 24/2011, 121/2012, 42/2013 - US decision, 50/2013 - US decision, 98/2013 - decision US, 132/2014, 145/2014, 83/2018, 31/2019, 37/2019 - other law and 9/2020)</i></p> <p>5) COMMISSION IMPLEMENTING REGULATION (EU) No 447/2014 <i>of 2 May 2014 on the specific rules for implementing Regulation (EU) No 231/2014 of the European Parliament and of the Council establishing an Instrument for Pre-accession assistance (IPA II) -- Article 45 Procurement</i></p> <p>6) Procurement and Grants for European Union external actions -A Practical Guide <i>Version 2020.0 August 2020, hereafter called the PRAG</i></p> <p>7) DIRECTIVE 2014/24/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL <i>of 26 February 2014 on public procurement and repealing Directive 2004/18/EC</i> <i>and</i> DIRECTIVE 2014/25/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL <i>of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services</i></p>	
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	<p><i>the following countries⁴ (hereafter referred to as "eligible countries"), and to International Organisations¹³:</i></p> <p><i>(a) Member States, IPA II beneficiaries, contracting parties to the Agreement on the European Economic Area and partner countries covered by the European Neighbourhood Instrument,</i></p> <p>Clarification b)⁵: Please clarify if this tender procedure (CN and AICN) is being carried out in full compliance with the requirement of Article 19 of the Framework Agreement for the procurement procedures to be open to all natural and legal persons as above</p> <hr/> <p>Article 28 Rules on taxes, customs duties and other fiscal charges</p> <p><i>(h) Union contracts, contracts signed by Union contractors as well as partners in a consortium or joint venture or co-beneficiaries and affiliated entities in grants shall not be subject to stamp or registration duties, or to any other charge having equivalent effect in the Republic of Serbia. This exemption shall also apply to transactions (including assignment of rights) and documents related to payments made to the Union contractor, including contracts concluded between grant/loan beneficiaries (including their partners, affiliated entities or sub-grant/loan beneficiaries) and their contractors (including their staff or contracted experts), and contracts concluded for incidental and provisional expenditure under service contracts and works contracts respectively.</i></p> <p><i>5) In case of conflict between the provisions in this Article and the national legislation of the IPA II beneficiary, the provisions of this Agreement shall</i></p>	<p>b)As stated in section 4 of Additional information about the Contract Notice participation in the procedure is open to all natural persons who are nationals of and legal persons (participating either individually or in a grouping – consortium – of candidates/tenderers) which are effectively established in a Member State of the European Union or in a eligible country or territory as defined under the Regulation (EU) No 236/2014 establishing common rules and procedures for the implementation of the Union's instruments for external action (CIR) for the applicable instrument under which the contract is financed. Participation is also open to international organisations. Further information is provided in section 4 of stated document. Therefore, procedure is carried out in full compliance with Article 19 of Framework agreement.</p>
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⁴ Bold inserted by question author

⁵ In order to enable clear match between the questions and related answers the Contracting Authority added letter b) to original request

	<p><i>prevail.</i></p> <p>Clarification c)⁶: Please clarify that the provisions of this Article 28 of the Framework Agreement prevail in cases of conflict with other national legislation.</p> <p><i>ЗАКОН о јавним набавкама „Службени гласник РС“, број 91 од 24. децембра 2019.</i></p> <p><i>THE LAW on public procurement "Official Gazette of RS", No. 91 of December 24, 2019.</i></p> <p>Pojmovi i značenje izraza Član 2</p> <p>10) dokumentacija o nabavci je svaki dokument u kome se opisuju ili utvrđuju elementi nabavke ili postupka, a koji uključuje javni poziv, prethodno informativno ili periodično indikativno obaveštenje u slučaju kada se ono koristi kao javni poziv, obaveštenje o uspostavljanju sistema kvalifikacije, opisnu dokumentaciju i konkursnu dokumentaciju;</p> <p>11) konkursna dokumentacija je dokumentacija koja sadrži tehničke specifikacije, uslove ugovora, obrasce dokumenata koje podnose privredni subjekti, informacije o propisanim obavezama i drugu dokumentaciju i podatke od značaja za pripremu i podnošenje prijava i ponuda;</p> <p>Concepts and meaning of expressions Article 2</p> <p><i>10) procurement documentation is any document in which elements of procurement or procedure are described or determined, and which includes a public invitation, prior informative or periodic indicative notification in case it is used as a public invitation, notification on establishing a qualification system, descriptive documentation and tender documentation;</i></p> <p><i>11) tender documentation is documentation that contains technical specifications, contract conditions, forms of documents submitted by economic entities, information on prescribed obligations and other documentation and data of importance for the preparation and submission of applications and bids;</i></p>	<p>c) The request for clarification is unclear since there are no provisions in Contract Notice or Additional Information about Contract Notice which would be in breach of Article 28 of Framework agreement nor does the economic operator specify such provisions in its request.</p>
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⁶ In order to enable clear match between the questions and related answers the Contracting Authority added letter c) to original request

<p>Clarification d)⁷: Please clarify if this CN and AICN comply with Article 2 of the Serbian Law on Procurement, and that therefore the Serbian Law on Procurement is the ruling law for this procurement procedure, where it is not in conflict with the Framework Agreement.</p>	<p>d)As stated in Answer no 2, Serbian Law on Procurement is not applicable in this procedure. Please see section 28.Legal basis, of the Additional information about the Contract Notice.</p>
<p>ЗАКОН О ПЛАНИРАЊУ И ИЗГРАДЊИ <i>("Сл. гласник РС", бр. 72/2009, 81/2009 - испр., 64/2010 - одлука УС, 24/2011, 121/2012, 42/2013 - одлука УС, 50/2013 - одлука УС, 98/2013 - одлука УС, 132/2014, 145/2014, 83/2018, 31/2019, 37/2019 - др. закон и 9/2020)</i></p>	
<p>The Law on Amendments to the Law on Planning and Construction ("Official Gazette of RS", No. 9/2020), enters into force on 12.02.2020. years.</p> <p>THE LAW ON PLANNING AND CONSTRUCTION</p> <p>("Official Gazette of RS", No. 72/2009, 81/2009 - corrigendum, 64/2010 - US decision, 24/2011, 121/2012, 42/2013 - US decision, 50/2013 - US decision, 98/2013 - decision US, 132/2014, 145/2014, 83/2018, 31/2019, 37/2019 - other law and 9/2020)</p>	
<p>2. Terms Article 2</p> <p><i>Certain terms used in this law have the following meaning:</i></p> <p><i>30) construction of a facility is a set of activities that includes: preliminary works, preparation and control of technical documentation, preparatory works for construction, construction of a facility and professional supervision during the construction of the facility;</i></p> <p><i>31) construction is the performance of construction and construction-craft works, installation of construction products, plants and equipment;</i></p> <p>6. Professional supervision Article 153</p> <p><i>The investor provides professional supervision during the construction of the facility, i.e. the execution of works for which a construction permit has been issued.</i></p>	

⁷ In order to enable clear match between the questions and related answers the Contracting Authority added letter d) to original request

<p>Clarification e)⁸: Please clarify that the Supervision is as defined by the Law on Planning and Construction and is therefore not required until construction commences, and Supervision Contract does not fall under the Law of Planning and Construction until the Administrative Notice to begin implementation is given to the Supervisor, and that the Law on Planning and Construction therefore does not apply to the Procurement process, which is under the Law on Procurement</p>	<p>e)Please see answer no 2, clarifying which procurement rules are applicable as well as application of national legislation to performance of the Contract.</p>
<p>3. Foreign persons performing professional activities in the field of spatial and urban planning, preparation of technical documentation, construction and energy efficiency Article 162a</p> <p><i>A natural person who has been issued a license or other authorization, or a person who is entered in the appropriate register of the competent authority or body according to the regulations of another state (hereinafter: foreign authorized natural person), to perform professional activities corresponding to professional activities established by this Law, the right in the Republic of Serbia to perform these professional activities in the capacity of a responsible person under the conditions of reciprocity and if it meets the conditions established by this Law, regulations adopted on the basis of this Law and a special law governing the recognition of foreign professional qualifications.</i></p>	
<p>Clarification f)⁹: Please clarify that natural persons as defined under Article 162 of the Law on Planning and Construction are qualified to be in a tender for this project, provided they comply with this Article 162.</p>	<p>f) Please see section 29. Additional information of the AICN regarding the licences issued by the Ministry of Construction, Transport and Infrastructure which are subject of supervision services in this case. The licences listed under section 29. Additional information of the AICN are described under the Rulebook on the manner, procedure and data content for verifying fulfilment of the conditions for</p>

⁸ In order to enable clear match between the questions and related answers the Contracting Authority added letter e) to original request

⁹ In order to enable clear match between the questions and related answers the Contracting Authority added letter f) to original request

	<p><i>The currency of the Contract shall be the Euro. However, according to the Law on Foreign Currency Operations in the Republic of Serbia, all payments made by the Employer to Contractors who are legal person/s established in the Republic of Serbia, shall be made in the national currency (RSD). The exchange rate, applied for conversion of EUR in RSD for the payment of an order or invoice established in EUR, shall be the middle exchange rate of the National Bank of Serbia (NBS) applicable on the date of payment.”</i></p> <p>Clarification g): Please clarify if the above requirements will apply to the Supervision Contractor if registered in Serbia, as suggested to comply with in Article 29 of the AICN.</p> <p>Contract Notice: VI.4.1)Review body <i>Official name: General Court of the European Union</i> <i>Postal address: rue du Fort Niedergrünwald</i> <i>Town: Luxembourg</i> <i>Postal code: 2925</i> <i>Country: Luxembourg</i> <i>E-mail: GC.Registry@curia.europa.eu</i> <i>Telephone: +352 4303-1</i> <i>Internet address: http://curia.europa.eu</i></p> <p>Clarification h)¹⁰: Please clarify which law this Review Body will operate under, EU Law and Directives or the Serbian Law on Procurement</p>	<p>issuing licenses for drafting technical documentation and licenses for construction of facilities for which the building permit issued by the Ministry, or autonomous province, and of the conditions for revocation of these license (Official Gazette of RS", No. 24/2015).</p> <p>g) In prequalification stage of restricted procedure clarifications refer to published documents (Contract Notice and Additional Information about the Contract Notice - AICN). Therefore, no other information will be provided at this stage of the procedure. The complete tender dossier will be provided to the shortlisted candidates. Please see PRAG 2020 (2.6.3. Restricted procedure) for details regarding Restricted procedure. Financial information relevant in this stage is prescribed in section 29 <i>Additional Information of AICN: Financial data to be provided by the candidate in the standard application form or the tenderer in the tender form must be expressed in EUR. If applicable, where a candidate refers to amounts originally expressed in a different currency, the conversion to EUR shall be made in accordance with the InforEuro exchange rate of MARCH 2021, which can be found at the following address: http://ec.europa.eu/budget/graphs/inforeuro.html.</i></p> <p>h) The procurement procedure is managed in accordance with applicable rules for external actions in force at the time of publication of Contract Notice – applicable version of PRAG which is based on EU law.</p>
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¹⁰ In order to enable clear match between the questions and related answers the Contracting Authority added letter h) to original request

<p>VI.4.3)Review procedure <i>Precise information on deadline(s) for review procedures:</i> <i>See internet address provided in section I.3).</i> I.3)Communication The procurement documents are available for unrestricted and full direct access, free of charge, at: https://etendering.ted.europa.eu/cft/cft-display.html?cftId=8062 Additional information can be obtained from the abovementioned address Tenders or requests to participate must be submitted to the abovementioned address</p>	
<p>Clarification i)¹¹: Please clarify what is meant by <i>deadlines for review procedures</i> as this is not clear in the CN or the AICN obtained from the internet address provided in section 1.3, as it is assumed that review procedures may take place up until the Contract is awarded.</p>	<p>i)Please refer to section I.3) of Contract Notice.</p>
<p>Clarification j)¹²: Please clarify which additional procurement documents are available for unrestricted and full direct access as the information above is included in the CN and AICN as downloaded from the above address..</p>	<p>j) Please note that this is the prequalification stage in the restricted procedure. No information other than that in the Contract Notice and Additional information about the Contract Notice will be provided at this time. The complete tender dossier will be provided to the shortlisted candidates.</p>
<p>Напомена: Закон о изменама и допунама Закона о планирању и изградњи ("Сл. гласник РС", бр. 9/2020), ступа на снагу 12.02.2020. године ЗАКОН о јавним набавкама „Службени гласник РС“, број 91 од 24. децембра 2019.</p> <p><i>Начело обезбеђивања конкуренције и забране дискриминације</i> Члан 7.</p> <p>Наручилац је дужан да у поступку јавне набавке омогући што је могуће већу конкуренцију. Наручилац не може да ограничи конкуренцију са намером да одређене привредне субјекте неоправдано доведе у повољнији или неповољнији положај, а нарочито не може онемогућавати било којег</p>	<p>Please see PRAG 2020 (2.6.3. Restricted procedure) for details regarding Restricted procedure.”</p>

¹¹ In order to enable clear match between the questions and related answers the Contracting Authority added letter i) to original request

¹² In order to enable clear match between the questions and related answers the Contracting Authority added letter j) to original request

<p>привредног субјекта да учествује у поступку јавне набавке коришћењем дискриминаторских критеријума за квалитативни избор привредног субјекта, техничких спецификација и критеријума за доделу уговора.</p> <p>Наручилац не може да одређује услове који би директно или индиректно значили националну, територијалну или личну дискриминацију међу привредним субјектима.</p> <p><i>Начело транспарентности поступка јавне набавке</i> Члан 8.</p> <p>Наручилац је дужан да обезбеди транспарентност поступка јавне набавке поштујући обавезе из овог закона.</p> <p><i>Начело једнакости привредних субјеката</i> Члан 9.</p> <p>Наручилац је дужан да у свим фазама поступка јавне набавке обезбеди једнак положај свим привредним субјектима.</p> <p><i>Начело пропорционалности</i> Члан 10.</p> <p>Наручилац је дужан да јавну набавку спроведе на начин који је сразмеран предмету јавне набавке и циљевима које треба да постигне.</p> <p>Критеријуми за квалитативни избор привредног субјекта у поступку јавне набавке, техничке спецификације, критеријуми за доделу уговора и рокови, као и докази морају да буду сразмерни обиму, природи и сложености јавне набавке и уговора који произлази из те набавке.</p>	
<p>THE LAW on public procurement "Official Gazette of RS", No. 91 of December 24, 2019.</p> <p><i>The principle of ensuring competition and non-discrimination</i> Article 7</p> <p>The procuring entity is obliged to enable the greatest possible competition in the public procurement procedure.</p> <p>The procuring entity may not restrict competition with the intention to unjustifiably put certain economic entities in a more favorable or unfavorable position, and in particular may not prevent any economic entity from participating in the public procurement procedure by using discriminatory criteria for qualitative</p>	

<p>selection of economic entity , technical specifications and award criteria. contract. (italics is that of the author of this document)</p> <p>The procuring entity may not determine conditions that would directly or indirectly mean national, territorial or personal discrimination between economic entities.</p> <p><i>The principle of transparency of the public procurement procedure</i> Article 8</p> <p>The procuring entity is obliged to ensure the transparency of the public procurement procedure, respecting the obligations from this law.</p> <p><i>The principle of equality of economic entities</i> Article 9</p> <p>The procuring entity is obliged to provide an equal position to all economic entities in all phases of the public procurement procedure.</p> <p><i>The principle of proportionality</i> Article 10</p> <p>The procuring entity is obliged to conduct public procurement in a manner that is proportionate to the subject of public procurement and the goals to be achieved. Criteria for qualitative selection of an economic entity in the public procurement procedure, technical specifications, criteria for awarding contracts and deadlines, as well as evidence must be proportionate to the scope, nature and complexity of public procurement and the contract arising from that procurement.</p>	
<p>Clarification k) ¹³ : Please clarify which Article in the Law on Planning and Construction requires the tenderer to have staff with the required licenses before signature of Supervision contract.</p>	<p>k) Please see answer no 2.</p>

¹³ In order to enable clear match between the questions and related answers the Contracting Authority added letter k) to original request

<p>Clarification l)¹⁴: Please clarify that at this stage of the procurement process, evidence of limits of insurance as per Article 129a of the Law on Planning and Construction are not required</p>	<p>l)Please note that this is the prequalification stage in the restricted procedure. No information other than that in the Contract Notice and Additional information about the Contract Notice will be provided at this time. The complete tender dossier will be provided to the shortlisted candidates. Please see PRAG 2020 (2.6.3. Restricted procedure) for details regarding Restricted procedure.</p>
<p>Clarification m)¹⁵: Please clarify what is the minimum limit of insurance as per Article 129a of the Law on Planning and Construction that will be required.</p>	<p>m)The minimum limit of insurance is defined by the Rule book on the conditions of professional liability insurance "Official Gazette of RS", No. 40 of May 7, 2015.</p>
<p style="text-align: center;">Additional Information about the Contract Notice</p> <p>29. Additional information The supervision services according to the relevant national legislation (including latest changes of the Law on planning and construction) should be provided. Foreign companies may establish a branch company in Serbia and enter into the procedure for licencing both the company and engineers. Otherwise, foreign companies may establish a branch company locally but engage local engineers who are already licenced. The third possibility for foreign companies is to establish a consortium with local company(s) which is/are already licenced. Licences issued by the Ministry of Construction, Transport and Infrastructure which are subject of supervision services according to the relevant national legislation in this case are: 1) Licence – Public railway infrastructure designs with connections (P141G2) or Licence – Construction of public railway infrastructure with connections (I141G2); 2) Licence – High and medium voltage electrical installations designs for public railway infrastructure with connections</p>	

¹⁴ In order to enable clear match between the questions and related answers the Contracting Authority added letter l) to original request

¹⁵ In order to enable clear match between the questions and related answers the Contracting Authority added letter m) to original request

	<p>(P141E1) or Licence – Construction of high and medium voltage electrical installations for public railway infrastructure with connections (I141E1);</p> <p>3) Licence - Management of electric motor drives designs - automation, measurements and regulation for public railway infrastructure with connections (P141E4);</p> <p>4) Licence - Building structures designs for facilities on public railway infrastructures with connections (bridges) (P142G1) or Licence – Construction of building structures for facilities on public railway infrastructures with connections (bridges) (I142G1);</p> <p>5) Licence – Traffic and Traffic signaling designs for public railway infrastructure with connections (P141S1);</p> <p>Please note that the tenderer must demonstrate that it possesses the above licences according to the Serbian Law for planning and construction before the contract signature at the latest¹⁶, except the licence no.5 Traffic and Traffic signaling designs for public railway infrastructure with connections (P141S1). The licence no.5 referred above has to be provided by the Contractor not later than 30 days after the contract signature by both parties.</p>	
	<p>Clarification n)¹⁷: Please clarify which Article in which Law, Regulation or Rulebook (and presumably the relevant law is the Law on Procurement) that requires the matter in bold before the contract signature</p>	<p>n) Please see section 29. Additional information, of the Additional information about the Contract Notice regarding the information of required licences (not personal/staff) and timing for demonstration of possession of licences. The timing for possession is a discretion right contracting authority. Also, please see the last paragraph of the section 29. Additional information of the AICN. For further information please see answer no 2.</p>

¹⁶ Bold inserted by question author

¹⁷ In order to enable clear match between the questions and related answers the Contracting Authority added letter n) to original request

	<p>Clarification o)¹⁸: Please clarify why the matter in bold is not a clear breach of Article 7 (restricted to companies registered in Serbia or with a Serbian partner, why not Serbian sub-contractor) and particularly Article 10 of the Law on Procurement</p> <p><i>Additional Information about the Contract Notice</i></p> <p>25. Clarifications on the contract notice Any request for additional information must be made in writing through the TED eTendering website accessible from the F&T portal at https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/home. Registration on TED eTendering is required to be able to create and submit a question. Additional information can be requested by clicking "Create a question" in the Questions&Answers tab at the latest 21 days before the deadline for submission of applications stated at section IV.2.2) of the contract notice. Clarifications will be published on TED eTendering website at the latest 5 days before the deadline for the submission of applications.¹⁹ The website will be updated regularly and it is the applicants responsibility to check for updates and modifications during the submission period.</p>	<p>o) Please note that Serbian Law on procurement is not applicable in this procedure. Please see section 13. Sub-contracting, of the Additional information about the Contract Notice. We understood that in this clarification you referred to Additional information about Contract Notice in section 29 prescribes:" Please note that the tenderer must demonstrate that it possesses the above licences according to the Serbian Law for planning and construction before the contract signature at the latest..." The above cited provision is to be interpreted that the tenderer must ensure that economic operator performing the services for which licences are required (tenderer/member of consortium/subcontractor) possesses stated licences. Such licences must be provided by the tenderer before the contract signature at the latest, except the licence no.5 Traffic and Traffic signaling designs for public railway infrastructure with connections (P141S1). The licence no.5 referred above has to be provided by the Contractor not later than 30 days after the contract signature by both parties. Therefore, subcontracting is allowed with regards to all 5 listed licences if subcontractor performs the services for which licences are required. In addition please see the Additional information about Contract Notice in section 29 which prescribes:"Foreign companies may establish a branch company in Serbia and enter into the procedure for licencing both the company and engineers. Otherwise, foreign companies may establish a branch company locally but engage local engineers who are already licenced. The</p>
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¹⁸ In order to enable clear match between the questions and related answers the Contracting Authority added letter o) to original request

¹⁹ Bold inserted by question author

<p>PRAG Section: 3.4.5. Additional information during the procedure <i>The tender dossier must be clear enough to save shortlisted candidates from requesting additional information during the procedure. If the contracting authority provides additional information 11 on the tender dossier, either on its own initiative or in response to a request from a shortlisted candidate, it must send such information in writing to all other shortlisted candidates at the same time.</i> <i>Tenderers may submit questions via TED e-Tendering platform no later than 21 days before the deadline for submission of tenders. The contracting authority must reply to all tenderers' questions in TED e-Tendering no later than 11 days before the deadline for receipt of tenders²⁰. In the case of indirect management with ex ante controls, the European Commission transmits the questions to the partner country. The partner country then submits the clarifications to the European Commission for ex ante approval and publication in TED e-Tendering.</i></p>	<p>third possibility for foreign companies is to establish a consortium with local company(s) which is/are already licenced.”</p>
<p>Clarification p)²¹: Please clarify that the above procedures also apply to the shortlisting process</p>	<p>p) Please note that this is the first stage of the procedure and section 3.4.1 of PRAG is applicable. Stated provisions of PRAG describe: <i>If information in the contract notice/additional information about the contract notice needs to be clarified but does not require an amendment of the contract notice, the request for clarification must be submitted at the latest 21 days before the submission deadline and the clarification will be published on the F&T portal, not in the Official Journal of the European Union at the latest 5 days before the submission deadline.</i></p>
<p>Clarification q)²²: Please provide clarification as to why the PRAG is being ignored and the period of 11</p>	<p>q) Please see answer p) above.</p>

²⁰ Bold inserted by question author

²¹ In order to enable clear match between the questions and related answers the Contracting Authority added letter p) to original request

²² In order to enable clear match between the questions and related answers the Contracting Authority added letter q) to original request

<p>days as per the Practical Guide has been reduced to 5 days as in Article 25</p>	<p>r) In line with Additional information about the Contract Notice, section 25. Clarifications on the contract notice, any request for additional information must be made in writing through the TED eTendering website accessible from the F&T portal at https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/home. Registration on TED eTendering is required to be able to create and submit a question. Additional information can be requested by clicking “Create a question” in the Questions&Answers tab at the latest 21 days before the deadline for submission of applications stated at section IV.2.2) of the contract notice.</p>
<p>Clarification r)²³: Please provide clarification as to where Requests for Clarifications are to be sent, if not sent to the Contracting Authority, ie the CFCU of the Ministry of Finance.</p>	
<p>Instructions to Tenders Article 26. Appeals Tenderers believing that they have been harmed by an error or irregularity during the award process may file a complaint. See Section 2.12. of the practical guide. PRAG 2.12.1. Complaints to the contracting authority Without prejudice to other remedies and, in particular, without altering the time-limits for bringing actions set out in paragraphs 2.12.3., where a candidate, tenderer or applicant believes she/he has been adversely affected by an error or irregularity allegedly committed as part of a selection or procurement procedure, or that the procedure was vitiated by any maladministration, she/he may file a complaint to the contracting authority.</p>	<p>s)Complaint can be submitted in accordance with section 2.12.1 of PRAG: <i>Without prejudice to other remedies and, in</i></p>
<p>Clarification s)²⁴: Please provide clarification that this complaint</p>	

²³ In order to enable clear match between the questions and related answers the Contracting Authority added letter r) to original request

²⁴ In order to enable clear match between the questions and related answers the Contracting Authority added letter s) to original request

	<p>procedure also applies to the CN and the AICN to the Contract Notice.</p>	<p><i>particular, without altering the time-limits for bringing actions set out in paragraphs 2.12.3., where a candidate, tenderer or applicant believes she/he has been adversely affected by an error or irregularity allegedly committed as part of a selection or procurement procedure, or that the procedure was vitiated by any maladministration, she/he may file a complaint to the contracting authority.</i></p>
	<p>Summary</p> <p>Clarification t)²⁵: Please clarify why the section within the box in Article 29 of the AICN (a non-legal document) is not in breach of Articles of the following Serbian laws:</p> <p>Framework Agreement (ratified by Serbian Parliament)</p> <p>Law on Procurement (Serbian Parliament)</p> <p>And the following European Union documents</p> <p>IPA II Regulations-a legal document (ratified by the EU Parliament and the Council of Ministers)</p> <p>Directives 2014/24/25/EU, also ratified by the EU Parliament and the Council of Ministers</p> <p>The Financing Agreement</p> <p>The Practical Guide</p>	<p>Please see answer no 2.</p>
<p>6.</p>	<p>Dear Sir/Madam, We have been unable to extract information from the documents provided on how to prepare the</p>	<p><i>Please see section 22. Applications format and details to be provided, of the Additional information about the Contract</i></p>

²⁵ In order to enable clear match between the questions and related answers the Contracting Authority added letter t) to original request

	<p>proposal. The document provided guides to the below link, however, we didn't find any information on documents submission or forms to be filled. Looking forward to your kind instructions.</p>	<p><i>Notice regarding the format and details to be provided. The application form is available on the provided Internet address and application form for services (B3 Standard Application Form) should be used. Further, application must be accompanied by the declaration on honor on exclusion and selection criteria using the template (A14a Declaration on honour on exclusion and selection criteria for procurement) available on the provided Internet address.</i></p>
<p>7.</p>	<p>The contract address as given does not accept emails. as response to request for clarifications was Your message wasn't delivered to EUROPEAID-R5-CALL-FOR-TENDERS@ec.europa.eu because the address couldn't be found, or is unable to receive mail.</p>	<p>Please see answer to question no.3.</p>
<p>8.</p>	<p>Dear Sir/Madam, As the deadline is getting closer, we, once again, kindly request your kind instructions on what to be included in the proposal.</p>	<p>Please see answer to question no.6.</p>