

From: [REDACTED]
Sent: utorak, 15. oktobar 2024. 08:52
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Updated Memorandum of Understanding - Clarification of Responsibilities and Liabilities

Poštovani,

Pišemo vam nastavno na našu prethodnu korespondenciju koja se tiče projekta koji nosi naziv **DESIGN AND EXECUTION OF WORKS: "Road TransRegio Feleac TR 35 - Phase I TR 35 Metropolitan Ring Road and Connecting Roads - Phase I TR 35 Metropolitan Ring Road and Connecting Roads, TR35 from km 14+747 (Node 5 Florești) to km 24+365 (Node 10 Calea Turzii) and TR35 from km 24+365 (Node 10 Calea Turzii) to 38+418 (Node 18 -VOCE)**

Naime, u prethodnom periodu smo dobili dosta oprečnih informacija koje se odnose na ovaj projekat, od toga da se dostavljaju samo dokumentacija za kvalifikaciju, u vrlo kratkom roku, da bismo, nakon što smo izvršili uvid u portal javnih nabavki u Republici Rumuniji, utvrdili da se dostavlja i finansijska ponuda.

Na naše insistiranje da se pošalje kompletna tenderska dokumentacija kako bismo sagledali sve uslove potrebne za nastup na javnoj nabavci, vi ste nam poslali nepotpunu dokumentaciju, tj. samo dio tehničkog opisa to na Rumunskom jeziku, te kasnije nacrt ugovora sa investitorom. Pri tome nas niste obavijestili da je, a kako smo samostalno naknadno provjerili na portalu oglasnika javnih nabavki u EU, u roku od tri dana od prvog našeg kontakta bilo potrebno da se sagledaju svi troškovi izgradnje objekta koji je procijenjene vrijednosti preko 800 milion EUR, te da se preda ponuda za projektovanje i izgradnju objekta. Iako je to vrlo važan podatak, svjesno ste isti izbjegli, a sve u cilju obmane našeg privrednog društva, te izlaganja istog riziku ugovaranja projekta tolike vrijednosti. To svakako nije dovoljno vremena, da bilo koji ozbiljni Izvođač uopšte donese odluku o nastupu i učestvuje u projektu gdje je prema uslovima ugovora dogovorena solidarna odgovornost svih parntera u Konzorcijumu.

U prethodnom periodu je bilo dosta i telefonskih poziva sa pokušajem raznih vrsta uticaja na nas, a sve u cilju da se naša kompanija uvuče u ovaj tenderski postupak.

Izražavamo i sumnju u dostavljenu informaciju da je rok za predaju ponude pomjeren, kako smo obaviješteni od strane predstavnika firme DIMEX 2000 iz Rumunije, s obzirom da ta informacija nije objavljena na portalu javnih nabavki. Iako smo tražili tendersku dokumentaciju, istu nismo dobili u kompletu na uvid.

Naša kompanija nije i niti može učestvovati u bilo kojem tenderskom procesu, bez da naša ponuda bude analizirana i odobrena od strane uprave kompanije, te da se analiziraju potencijalni rizici po našu kompaniju.

Iako smo obrazložili razloge zbog kojih ne možemo da nastupimo na ovom tenderu, i dalje ste nam dostavljali prvo nepotpisan, a zatim i potpisan sporazum o zajedničkom preduzetništvu. Privredno društvo "Integral inženjering" a.d. Laktaši, ni na koji način ne želi da učestvuje u bilo kakvoj prevari ili na drugi način krši zakone EU.

Izričito odbijamo svaku odgovornost za bilo kakvu štetu.

S poštovanjem,

[REDACTED]

"Integral Inženjering" a.d. Laktaši

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Posjetite nas na www.integralinzenjering.com !



Ova poruka je poverljiva i može biti predmet poverljive komunikacije.
Ako ova poruka nije namenjena za Vas, molimo Vas da odmah obavestite pošiljaoca i obrišete ovu elektronsku poštu.
Svako neovlašćeno kopiranje, objavljivanje ili distribucija materijala u ovoj elektronskoj pošti je strogo zabranjeno.

From: Dimex 2000 Company <office.dimex2000@gmail.com>
Sent: Monday, October 7, 2024 4:00 PM
To: [REDACTED]
Subject: Updated Memorandum of Understanding - Clarification of Responsibilities and Liabilities

Dear [REDACTED]

I hope this email finds you well.

First and foremost, I would like to express our sincere appreciation for your support for this important project for Dimex and for the community of Cluj City.

Secondly, we would like to address and neutralize any concerns you may have regarding potential issues that could arise during the implementation of the project. With this in mind, please find attached the updated version of the Memorandum of Understanding (MoU) for your review.

The proposed addition provides a comprehensive clarification of the responsibilities and liabilities of Integral, particularly outlining Integral's role as a consultancy and technical support provider, with no direct involvement in the construction works. This specification is in line with the latest European practices on liability within Association Agreements for public procurement contracts, where the focus is on analyzing the specific obligations of each member and their fulfillment of contractual roles.

In this revision, Integral's function as a provider of consultancy and technical support is clearly outlined, affirming that they will not have direct involvement in any construction works. This approach aligns with recent European practice in matters of liability in Association Agreements for public procurement contracts. Specifically, these recent practices focus on analyzing each member's specific obligations and fulfillment of their contractual roles.

According to the legal nature and extent of liability, European case law indicates that solidarity can be assessed only after examining the method of execution of each associate's obligations.

Specifically, the ruling in CJUE case C-682/21 (Article 18(1) and Article 57(4)(g) of Directive 2014/24) suggests that an economic operator within a consortium that has won a public procurement contract may present evidence to defend against being deemed an unreliable supplier if the contract is terminated due to non-compliance. Such evidence can include aspects related to third parties, such as the main partner within the group, to prove that the operator was not responsible for deficiencies that led to contract termination and could not have reasonably taken further action to address those deficiencies.

Therefore, contrary to the broader claims of joint liability, recent legal interpretations underscore that, as long as association members' activities are separable, liability is limited to their specific contribution. While a unified contract result might mean that one member's actions affect another, it is essential to analyze each member's performance individually to determine the extent of liability. An associate who has fulfilled their share of the contract as per their defined responsibilities can effectively argue for limited liability under the principle of solidarity.

It's important to note that while court practices may vary, the legal texts clearly indicate that contracting authorities are required to distinguish which portions of the association's work were unfulfilled or inadequately performed and to identify the party responsible for any shortcomings.

Please review the attached document and let me know if you have any questions or suggestions for further adjustments.

Thank you for your attention, and I look forward to your feedback.

Best regards,

[Signature]