

12/12/2019

To:
Bidders in Public Tender for the Supply of Fittings
(INGL/TENDER/2019/30)

Contracts &
Procurement
Department
e-mail: c-tender@ingl.co.il
Ref: 415519

Via: e-mail

**Re: Clarification & Amendment no. 2 -
Public Tender for the Supply of Fittings (INGL/TENDER/2019/30)**

1. General

- 1.1. All capitalized terms not expressly defined herein shall have the meaning attributed to them in the Tender Documents.
- 1.2. The clarifications and amendments appearing below replace and supersede all prior correspondence, whether written or oral, and shall constitute the sole binding document with respect to the subject matter hereof and an integral part of the Tender Documents.
- 1.3. Except where expressly stated herein, nothing in this clarification and amendment letter shall be construed to derogate from the Tender Documents.
- 1.4. **Bidders are requested to send a confirmed signed copy of this Clarification & Amendment no. 2 immediately upon its receipt and to submit it signed as integral part of their Bid.**

Q – Question, **A** – Answer

ITB – the instruction Submit Bids (doc. no. 414207)

Contract - Contract for the Supply of Fittings (doc. no. 414245)

INGL - the Company

2. Clarifications

#		DOCUMENT SECTION	CLARIFICATION
2.1	Q	Contract, Clause 4.1.1	Regarding the requirement that the Goods delivered shall be "new". The Stock materials shall be deemed "new".
	A		Noted.
2.2	Q	Contract, Clauses 20.2.4.	Insurances waiver on all rights of subrogation against INGL and anyone on its behalf is not provided by Seller's insurance policy. Following please delete the following expressions.

#		DOCUMENT SECTION	CLARIFICATION
		20.2.5.1 – 20.2.5.2	<p>(a) in Clause 20.2.4: "shall ensure that all such insurances waive all rights of subrogation against Company, its affiliates, and Company's other contractors, suppliers, subcontractors and sub-vendors"</p> <p>(a) in Clause 20.2.5.1: "The Supplier's insurer waives the right of subrogation against the Company as well as anyone operating on its behalf."</p> <p>(b) in Clause 20.2.5.2: "All Insurances arranged by the Supplier are primary to any insurance arranged by the Company and include a waiver of all rights of recourse or claim for insurance participation against the Company"</p>
	A		Not confirmed. The issue may be addressed between the parties prior to Contract signing.
2.3	Q	Contract, Clauses 20.2.5.3	Please delete Clause 20.2.5.3 "The insurer of the Supplier shall provide the Company with a 30 days written notice prior to the termination, or material reduction of coverage during the insurance period."
	A		Not Confirmed. However, the issue may be addressed between the parties prior to Contract signing.
2.4	Q	Contract, Clauses 24.5	The compensation fee in clause 24.3. [agreed compensation fee for late supply of the Goods which exceeds 14 Days from the delivery date] shall be Company's sole remedy for damages occurred due to delayed delivery.
	A		Not Confirmed.
2.5	Q	Contract, Annex 6, Clause 1	Our guarantees are usually issued by our insurance company. Please allow,
	A		Confirmed. However, such insurance company should meet the conditions in Clause 1.3.1 to the Contract.

3. Amendments

Note – for convenience only, erased wording below is marked as ~~strikethrough~~ and additions are underlined.

#	DOCUMENT SECTION	AMENDMENT
3.1	ITB, Clause 6(b)	<p>The Deadline for submission of Bids (including Quotations) ("Last Submission Deadline") is amended as follows:</p> <p>Bids shall be submitted to INGL's offices (at the designated place in Clause 7.1 to the ITB) no later than Thursday, December 26, 2019 at 17:00 (Israel time) during normal business hours. Please note that offices in Israel are normally open from Sunday – Thursday.</p>
3.2	ITB, Clauses 18.1, 22.4.9.5	<p>The following shall be added as second paragraph to clause 18.1 to the ITB:</p> <p><u>"An Approved Bidder shall be required within 14 Days of the Company's notice to enter into a contract with the Company in the form of the Contract provided as Document B of the Tender subject to the amendments approved by the Company during the Tender as well as any immaterial amendments in the Contract's specific wording, if and to the extent such shall be approved by the Company. Failure to do so within such period or extended period if decided by the Company, shall allow the Company to disqualify the Bidder."</u></p> <p>Clause 22.4.9.5 to the ITB shall be added as follows:</p> <p><u>"It may accept a Deviation if it reflects, in accordance to the Company's decision at its sole discretion, an immaterial change with respect to the specific wording of the Contract."</u></p>
3.3	Contract, Clause 3.3.3	<p>This clause is amended as follows:</p> <p>"The Time Schedule <u>for delivery</u> of the additional Goods under such option shall not <u>be less than</u> exceed the duration for the delivery of the <u>initial</u> Goods as set forth in the relevant RFQ."</p>
3.4	Contract, Clause 6.3	<p>This clause is amended as follows:</p> <p>"Without derogating from Supplier's responsibilities, Company shall be entitled to perform any expediting of the Goods that may be deemed necessary over and above that performed by Supplier pursuant to this Clause 6. For this purpose Supplier shall</p>

		promptly provide all reasonable and free access <u>upon prior notice</u> to Supplier's worksites and ensure that his sub-vendor(s) do the same, together with all reasonable and free assistance including, but not limited to, the provision of a list of sub-vendors, together with unpriced copies of sub-vendor orders placed, schedules, progress reports, and any shipping information pertaining to sub-vendor(s) orders when and as requested by Company."
3.5	Contract, Clause 8	<p>This clause is amended as follows:</p> <p>"If for any reason, Company is unable to accept dispatch of the Goods at the time when the Goods are timely due and ready for dispatch, Company shall so inform Supplier in writing and Supplier shall store the Goods, safeguard them and take all steps to prevent their deterioration during such storage and Company shall be liable to Supplier for reasonable justified costs, including insurance, of so doing after a period of one month grace of free storage (unless otherwise specifically provided). It is hereby clarified that the Company shall be liable to the Supplier for reasonable costs when the Goods dispatch is delayed as of the date set forth in the Time Schedule, provided that the cause for such delay is <u>not</u> under the sole responsibility of the Company <u>Supplier</u>."</p>
3.6	Contract, Clause 11.6	<p>This clause is amended as follows:</p> <p>"Unless otherwise provided for in the Purchase Order, such prices shall be, firstly, the unit prices of the Purchase Order, including indexation if applicable according to the Contract, or secondly be deducted therefrom by analogy, or, when not applicable, shall be the current market price. Failure to agree to any adjustment shall not excuse Supplier from proceeding with the Variation."</p>
3.7	Contract, Clause 11.7	<p>This clause is amended as follows:</p> <p>"Should an agreement not be reached within a reasonable time as per Company's judgement, Company shall instruct and Supplier shall proceed with the Variation with diligence and the dispute shall be settled in accordance with Clause 25 or at any time by mutual agreement. A dispute regarding a Variation shall not serve as grounds for the Supplier to delay the performance thereof and the Supplier shall be obligate to proceed with such Variation."</p>

3.8	Contract, Clause 13.3.3	<p>This clause is amended as follows:</p> <p>"The Supplier's liability for actual removal and substitution costs at site and under this sub-Clause is limited to the highest of the following: (i) the total price quoted in the relevant Purchase Order, or (ii) the maximal insurance coverage of the Supplier for the ordered items under the Contract."</p>
3.9	Contract, Clause 18.1.2	<p>This clause is replaced in its entirety with the following:</p> <p><u>"The Company, may at any time, transfer or assign all or any of its rights and obligations under the Contract to any other third party, provided that the Supplier will be able to obtain credit insurance coverage or sufficient guarantee for the payment of the Contract price by the assignee or that the Company itself shall guarantee the payment by the assignee."</u></p>
3.10	Contract, Clause 18.2.5	<p>This clause will be amended as follows:</p> <p>"Supplier shall remain fully responsible for any part of the Contract performed. by his sub-vendors. at any level, and for the acts and omissions of such sub-vendors and their personnel. Notwithstanding anything to the contrary in the Contract, the Supplier shall indemnify and hold harmless Company against all such acts/omissions of sub-vendors and against any consequence of use of sub-vendors at any level"</p>
3.11	Contract, Clauses 20.1.2 – 20.1.3	<p>These clauses are amended as follows:</p> <p>"20.1.2 Without derogating from anything stipulated in the Contract and the Purchase Order, the Supplier shall be liable for: (i) any bodily injury or property damage resulting from any <u>negligent</u> act or omission by the Supplier and/or anyone on its behalf in connection with the manufacturing and supplying of the Goods under this Contract; (ii) any damage or loss resulting from <u>Supplier's negligence or willful misconduct witch caused</u> any defect in the Goods, including Incompatibility due to poor workmanship and/or quality of materials used for the production of the Goods and/or late delivery, incurred by the Company and/or any third party including, among others, third parties employed by the Supplier.</p> <p>20.1.3 The Supplier's liability towards the Company for any consequential loss and/or loss of profit deriving out of physical defect or damage to the Goods shall in any</p>

		<p><u>case</u>, including in case of any liability imposed on or attributed to the Company by any third party, as well as termination of the Contract by the Company for a reason attributed to the Supplier, <u>in the aggregate shall</u> be limited to the total and aggregate Contract Price. These limitations of liability shall not apply in respect of indemnity provided under Supplier's insurance, as well as in case of Gross Misconduct by the Supplier or by anyone acting on its behalf."</p>
3.12	Contract, Clause 21.3.1.2	<p>This clause will be amended as follows:</p> <p>"With immediate effect <u>after the expiration of a 3 Days grace period</u>, if Supplier fails to either meet the Time Schedule and/or supply the Company any of the guarantees or the insurance certificate required under the Contract and/or commits any material breach of the Contract (Any breach by the Supplier of Clauses 4, 5, 7, 10.1, 12, 18.1.1, 18.2.1 and 22 shall be regarded as a material breach of the Contract); or"</p>
3.13	Contract, Clause 24.3	<p>This clause will be amended as follows:</p> <p>"The Company shall have the right to collect from the Supplier an agreed compensation fee for late supply of the Goods which exceeds 14 Days from the delivery date stipulated in the Time Schedule, in whole or in part, at a rate of 0.5% of the total value of the delayed <u>items included in the</u> Purchase Order, or every week (or part thereof) of tardiness, up to an aggregate value of 10% of the total value of the Purchase Order (the "Agreed Compensation"). The Parties agree that the Agreed Compensation constitutes adequate and predetermined minimal compensation for reasonable, foreseeable damages the Company may incur. <u>Company shall be obliged to reserve its right to the Agreed Compensation within 14 Days of receiving the final invoice</u>"</p>
3.14	Contract, Clause 24.4	This clause is removed in its entirety.
3.15	Contract, Clause 26.1.3	<p>This clause is amended as follows:</p> <p>"The Supplier shall cause the validity of any of the Guarantees to be extended, from time to time, by such period(s) as the Company shall request in order <u>required in order for the Supplier to fulfill his obligations meet the provisions of under the Contract</u>, and shall provide the Company with written evidence of such</p>

		extension."
3.16	Contract, Annex 2, Clause 2.7	<p>This clause will be amended as follows:</p> <p><u>"Without limiting the Company's right under the Contract a breach by the Supplier of any of the following provisions shall entitle the Company to Agreed Compensation according to Clause 24.4 to the Contract, without limiting the Company's right under the Contract to terminate the Contract after a grace period as provided in Clause 21.3.1.3 to the Contract."</u></p>
3.17	Contract, Annex 2, Clause 3.1	<p>This clause is amended as follows:</p> <p>"Subject to the provisions of the Contract, the Company shall be entitled to request additional or repetition of inspection and tests of the Goods during manufacture or storage or as otherwise set out in the Contract. In addition, the Company shall have the right, at their own cost, to inspect and ensure quality of the Supplier's facilities at any time during its performance of the Contract. If the Company exercises any of such rights, the Supplier, at his own <u>reasonable cost</u>, shall provide or shall ensure the prompt provision of all such facilities, materials and labor as may be required by the Company."</p>
3.18	Contract, Annex 2, Clause 3.5	<p>This clause is amended as follows:</p> <p>"For any such rejected Goods, the Supplier shall be obligated to replace such Goods by new Goods conforming to the requirements of the Contract on its own costs and risk. In the event of the Supplier failing to replace the Goods so rejected as aforesaid within 60 <u>30</u> working days <u>or any other period the Company has agreed at its sole discretion, or in the event that the Company is in the opinion that the replacement is urgent</u> the Company shall have the option at its sole discretion either to have such Goods replaced by the Supplier or to exclude same from the purchase order, to order such Goods from another third party, in which case the Supplier shall reimburse the Company for any additional cost incurred by the Company in so doing and any sums already paid with respect to such rejected Goods shall be forthwith reimbursed by the Supplier."</p>

The Bidders are requested to acknowledge receipt of this Clarification & Amendment No. 2 by returning an executed copy of the attached acknowledgment receipt form.

Sincerely yours,

Israel Natural Gas Lines Company Ltd.

* * * * *

Acknowledgement of Receipt

We, the undersigned, hereby confirm, that we received **Clarification & Amendment No. 2** to Public Tender for the Supply of Fittings (INGL/TENDER/2019/30).

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Date

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Company

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Signature