



URZĄD MIEJSKI W GDAŃSKU
BIURO ZAMÓWIEŃ PUBLICZNYCH

BZP.271.18.2019

Gdańsk, 24 of May 2019

Economic Operators

regarding: public procurement procedure for: Presentation service of an autonomous bus on a show route.

Acting pursuant to Article 38 paragraph 1 of the Act - Public Procurement Law The Contracting Authority shall provide answers to the questions asked.

Question No 68

Can the contracting authority temporarily exclude the road on which the tests are to be carried out from use?

After the site visit, the Economic Operator suggests temporary disuse of the road. It is precisely the lane on which the autonomous vehicle is to travel along the length between Marking B-1 and U-20b on the side of Spacerowa Street and Marking A-7 on the side of the bus loop. Thanks to this, it will not have the status of a public road and the vehicle will be able to move bilaterally while maintaining bus stops on one side of the street (proposed solution in the annex). At the same time, the Economic Operator will take care of proper marking and protection of access to the construction site and pedestrian crossing.

Answer:

According to the temporary traffic organisation attached to the tender, on the indicated section of Karwieńska Street, a ban on traffic in both directions will be introduced by using the B-1 sign, excluding the "autonomous electric vehicle" as indicated on the sign. Such marking will allow only authorized vehicles to drive - indicated on the plate under the sign B-1 - to move in any way, also on both sides (pendulum).

Such traffic organisation does not deprive the road of its public road status. A public road is a road classified in one of the categories of roads pursuant to the Act of 21 March 1985 on public roads (Journal of Laws of 2018, item 2068), which may be used by anyone, in accordance with its intended use, with restrictions and exceptions specified in that Act or other special provisions. A road obtains the status of a public road by giving it the appropriate category. In the case of assigning a category of a district road, it is done by way of a resolution of the Poviát Council. In the case of Karwieńska Street, it is a Resolution of the Gdańsk City Council.

Question 69

Does the Customer permit two-way (swinging) movement of the vehicle?

In order to make an independent turn by an autonomous vehicle, a space (wheel) with a minimum diameter of 14m is required. After the visit, the Economic Operator states that it is impossible at the beginning of the route from Spacerowa Street. The width of the lane from the side of the walking street - about 5m makes it impossible to turn around, so the vehicle will have to operate on both sides.

Answer:

Yes, the Ordering Party allows swinging movement of the vehicle in the street.

Question No 70



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If the Ordering Party accepts two-way (swinging) movement of a vehicle on a public road, does he exempt the Economic Operator from liability if the external or controlling authorities (police, ITD., voivode, insurer in case of damage, etc.) question the approach accepted by the Ordering Party?

Answer:

We are not able to relieve the Economic Operator from liability. The role of the Economic Operator is to obtain the necessary permits.

Question 71

If the Customer does not allow the vehicle to move on both sides, the Economic Operator shall request that the end of the route be extended from the side of the walking street to a width allowing at least for manual turning manoeuvre (approx. 9-10 m).

Answer:

It is not possible to modify Karwieńska Street to widen the section for the turning manoeuvre.

Question 72

If the customer accepts two-way traffic, does he accept the location of stops on both sides of the road?

The vehicle has a front door on one side. If the ZOO is to use the bus terminus at the final stop and turn back, this will be necessary. If you do not need to turn back, you will be able to locate the stops on one side of the road.

Answer:

The ordering party accepts the location of stops necessary to handle passengers transported in an autonomous vehicle. The locations of stops not included in the temporary traffic organisation project made available must be notified to the Purchaser in order to update the agreed traffic organisation project.

Question No 73

In the place marked as a parking place for an autonomous vehicle, there is currently a parking lot for zoo employees. How will the area be developed and will there still be a parking lot for employees?

The Economic Operator suggests clearly defining the parking spaces (marking with painted lanes) so that the tests and the parking lot do not collide with each other, or shortening the route to the point of contact with the second road lane and the pendulum traffic of the self-contained vehicle.

Answer:

The contracting authority accepts both of the proposed solutions. The development of this area may be carried out in accordance with the needs of the Economic Operator, provided that the public transport bus traffic is smooth.

Question 74

Does the customer allow for a garage to be located on one of the charging points or right next to it? The preferred location is on the right side of the charger (further from the guardhouse).

Answer:

We do not agree to build a charging station for electric vehicles with a garage structure - the station is generally accessible to all users of electric vehicles. We do not agree to the supply of power to objects of the garage type from the electric vehicle charging station.

Question No 75

Does the contracting authority confirm that the Economic Operator should request the use of the lane in a special way on which an autonomous vehicle will operate?

Answer:



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Yes, the aim that the Municipality of Gdańsk intends to achieve within the Sohjoa Baltic project is to present the inhabitants with an innovative form of vehicles that can be used in passenger transport in public transport. The idea behind the presentation is to promote modern technical solutions, not to actually test the vehicle in road traffic.

Therefore, it seems that the chosen formula, which excludes the introduction of an autonomous vehicle to regular traffic on public roads, does not require the application of the permit procedure pursuant to Article 65l of the Act on Combating Unfair Competition. If, in addition, it were possible to obtain vehicles which could be classified as slow-moving vehicles (see answer to question 1), this procedure would not have any *raison d'être* because the slow-moving vehicle does not fall within the definition of an autonomous vehicle (the latter can only be a motor vehicle, i.e. a vehicle with a speed exceeding 25 km/h). Therefore, while maintaining other provisions (e.g. relating to the obligations of the driver), such vehicles could be tested without the procedure laid down in Article 65l of the Act on Combating Unfair Competition and without the need to obtain approval/unit approval or registration of this type of vehicle.

Due to the need to ensure the safety of people and order during the presentation of autonomous vehicles, we recommend obtaining a permit to use the road in a special way based on Article 65 of the Act on Combating Unfair Competition.

It should be stressed, however, that it is necessary to meet general statutory requirements for the movement of a vehicle, i.e. that in the light of international and national law it must have a driver, and the behaviour and qualifications of this person must correspond to the driver of a standard ("non-autonomous") vehicle.

It is worth noting that the transport of persons by tourist train of a similar nature (carried out for tourist/recreational purposes) in the Ronald Reagan Park is based on the same regulations.

Question 76

In case of a positive response regarding the specific use of the lane, does the Purchaser confirm that no vehicle approval and technical inspection will be required?

Answer:

The requirement of approval and possession of valid technical inspections by the vehicle is not related to the mode of making the road available for presentation of an autonomous bus, but to the fact whether the Economic Operator will present a slow-moving vehicle. In accordance with Article 71 paragraph 3 of the Act - Road Traffic Law, a vehicle not mentioned in paragraph 1 of this article, a motorcycle trailer and a special trailer intended for hauling by an agricultural tractor or slow-moving vehicle is admitted to traffic if it meets the conditions specified in Article 66 of this Act. If it is correctly proven that a given vehicle is actually a slow-moving vehicle, i.e. a motor vehicle whose construction limits its driving speed to 25km/h, excluding an agricultural tractor, then such a vehicle will have to comply with the conditions specified in Article 66 of the Act - Road Traffic Law (including the relevant provisions of the regulation issued pursuant to Article 66 paragraph 5);

Therefore, a slow moving vehicle will be a vehicle which consists of at least one element which, alone or in combination with other elements, will cause a situation where it is physically impossible to exceed the speed of driving above 25 km/h (without changing this element, i.e. without changing the element, or, more broadly, without changing the vehicle's structure). A mechanical locking device set up by the manufacturer (e.g. a fourth gear lock) is clearly part of the vehicle's current design and it is irrelevant that, originally (at the factory), the vehicle may not have had such a locking device or that it may be removed in the future by an intervention in the design. It is only relevant that the vehicle design taking into account the installed interlock currently prevents the vehicle from reaching speeds in excess of 25 km/h. Such a solution is also confirmed by widespread practice, e.g. in relation to backhoe loaders in order to qualify as slow-moving vehicles.

For the purposes of proof, a certificate issued, in particular, by the manufacturer must be available to prove that the vehicle is locked and has no design capability to move at a speed greater than 25 km/h. Therefore, other technical conditions laid down in the relevant legislation for slow-moving vehicles (e.g. triangular marking plate and vehicle owner identification plate, relevant lights or mirrors) should also be met. Such a slow moving vehicle will be able to drive on public roads in accordance with the law without the need for approval or registration.



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Importantly, the provisions on road use do not specifically address the issue of the approval and registration of vehicles at all. However, taking into account the exceptional nature of the event that may be organised in this procedure, it seems that meeting the requirements of human safety and order specified in the Act during the event excludes the application of the provisions setting out the obligations concerning the admission of vehicles to regular road traffic.

The so called soap box cars (vehicles made of any materials by themselves) taking part in races organised regularly all over the world (including in Agrykola in Warsaw) by the Red Bull drink manufacturer should be treated in a similar way: <https://www.redbull.com/pl-pl/tags/soap-box-race>

Question 77

If the answer to the question on approval and technical tests is positive, will the Contracting Authority take responsibility for any consequences if authorities such as the Police, Road Transport Inspectorate, provincial governor, etc. question such an approach?

Answer:

The approach according to which a slow-moving vehicle may leave and drive on a public road without the need for approval, registration and technical inspections results directly from the Act - Road Traffic Law, and therefore does not leave any room for any questioning.

Hypothetically, however, when accepting the variant proposed by the Economic Operator, a distinction should be made between the consequences of non-performance of the contract (inability to provide services) and the liability for a breach of the provisions of the Code of Administrative Offences or the Act - Road Traffic Law.

From the point of view of legal liability for possible negative consequences of control by public administration bodies, the Contracting Authority draws attention to the content of Article 495 § 1 of the Civil Code, which indicates external circumstances (for which none of the parties is responsible), resulting in inability to provide services. In such a case, the party which was to perform the service cannot demand a counter-performance, and in the case when it has already received it, it is obliged to return it in accordance with the provisions on unjust enrichment.

As far as the misdemeanour liability is concerned, it should be stressed that it is not legally possible for the Contracting Authority to contractually release the Economic Operator from its possible personal liability under the law of misdemeanour.

Once again, however, it should be stressed that the Contracting Authority does not provide for the possibility of such a situation occurring not only for the reasons listed in the first paragraph, but also because of the recommended formula of using the road in a special manner pursuant to Article 65 of the Act on Combating Unfair Competition.

Question No 78

Will the Customer take care to cut off protruding branches of trees and bushes that reduce the street surface, preventing proper operation of the vehicle?

The Economic Operator informs that the vehicle requires a corridor 4 m wide and 3.5 m high in order to function properly. This corridor must be maintained throughout the life of the vehicle.

Answer:

The customer will cut the trees entering the edge of Karwieńska Street to the extent that the autonomous vehicle will be operational by the end of August this year.

Question No 79

Does the Contracting Authority permit location points on the route that will facilitate the verification of the vehicle's location on the route? The cost of their placement and disassembly will be borne by the Economic Operator.

Answer:

The Contracting Authority shall permit the placement of temporary location points provided that their appearance, size and method of foundation are agreed upon.



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Question No 80

Can the Contracting Authority already select 3-4 people to be trained so that the Economic Operator can agree on the conditions of operation and determine the maximum costs of employing operators? Without this, the Economic Operator cannot realistically estimate this amount.

Answer:

Pursuant to §2 (2) (12) of the Model Agreement, the Contracting Authority does not require the employment of designated drivers by the Economic Operator. This is one of the two acceptable options. In case the Economic Operator decides on it, the Contracting Authority suggests employing people on the basis of the contract of mandate with the remuneration of 35 - 40 PLN gross per hour of work.

The Contracting Authority will appoint people at the beginning of June, i.e. after the tender announcement is resolved. The Contracting Authority ensures that it has sufficient staff with the required qualifications.

Question No 81

In the case of questioned by the broadly understood control bodies of the agreed scope and manner of execution of the project, including the required permits to move the vehicle along the designated route, which will make it impossible to execute the project within the set time limit, will the Contracting Authority withdraw from charging the Economic Operator with contractual penalties?

Answer:

In the opinion of the Contracting Authority, the practice of applying the provisions of Article 65 of Act on Combating Unfair Competition indicates that the use of public roads in a special way as a legal instrument allowing for non-standard road behaviours is used in a very wide range of situations. These include, inter alia, car and cycle racing, running, and tourist trips. Taking into account a number of requirements concerning the safety of life and health of people, i.e. passive and active participants of the event imposed on the organisers of the project by the provisions of the Road Traffic Act (Article 65a), it seems that the risk of negative effects of potential control by entities equipped with such competences is marginal. In particular, it should be noted that Article 65(3) requires the organiser to cooperate in particular with the Police, Fire Brigade and other rescue services in the form of agreeing on the principles of holding an event and maintaining regular contact with representatives of relevant institutions. These entities analyse the organised event from the point of view of ensuring security and public order, therefore - in the opinion of the Contracting Authority - it is unlikely that - if the relevant requirements in this respect are met - it will be possible to refuse to agree to conduct the event. On the other hand, other institutions mentioned in the question (Road Transport Inspectorate, Voivode) are not competent to question the legality of the form of presentation of the autonomous vehicle chosen by the Contracting Authority. The question of legal liability for possible negative effects of control by public administration bodies was approximated in the answer to question 77.

Question No 82

In the case of questioned by the broadly understood control bodies of the agreed scope and manner of project execution, including the required permits to drive a vehicle along the designated route, which will prevent the project from being executed within the set time limit and lead to termination of the agreement by the Contracting Authority, will the Contracting Authority compensate the Economic Operator for all incurred and documented costs?

Answer:

As indicated in the reply to question 81, the risk of such an event occurring is marginal. Moreover, such a situation is provided for in §10.4 of the Model Agreement as amended: "In case of withdrawal by the Ordering Party due to circumstances for which none of the parties is responsible, the Ordering Party shall reimburse the Contractor for the costs incurred on the basis of documented expenses.

Question 83



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As regards the lane use fee - erecting a temporary garage, should the Economic Operator include in the calculation the fee for "promoting the commune" or "other"?

Answer:

Please include the rate for "serving the promotion of the commune".

Question No 84

Should the Economic Operator include the rate for the county/communal road network in the calculation of the lane use fee for the construction of a temporary garage?

Answer:

Karwieńska Street is a communal road.

Question No 85

As regards the Contracting Authority's answer to questions 25 and 48: Will the Contracting Authority relieve the Economic Operator from liability in the event that external or control authorities (police, ITD, voivode, insurer in case of damage etc.) question the approach accepted by the Contracting Authority, i.e. a statement on a slow-moving vehicle, as a sufficient document which allows for departure and driving on a public road?

Answer:

In this case, the key is the manner of proving that a given vehicle has the status of a slow-moving vehicle within the meaning of the provisions of the Act. No provision specifies this method, and in particular there is no legal basis to demand that diagnostic tests be carried out for this purpose. It should be assumed, therefore, that it will be sufficient to refer to any reliable document which will confirm the fact of design speed limit to 25 km/h. The Ordering Party decided that the most appropriate document would be the documentation from the manufacturer (in the form of a certificate that the applied structure limits the speed of the vehicle to 25 km/h, e.g. with an indication of the mechanical lock installation), which should be presented each time an inspection is carried out. Theoretically, the possibility of presenting other documents, e.g. issued by a competent expert or a district vehicle inspection station, should not be ruled out. Any additional proof of the status of a slow-moving vehicle would undoubtedly enhance the evidential value, although it is not strictly required.

As far as the question of possible exemption from liability is concerned, the contracting authority is of the opinion that it concerns liability for non-performance of the contract. This issue has already been clarified in reply to question 77, paragraph 3. Understanding liability more broadly and hypothetically, assuming that the above approach to proving the possession of the slow-moving vehicle status could be questioned, there could be an attempt to accuse the Economic Operator of committing an offence, in particular under Article 96 § 1 item 4 or Article 97 of the Code of Administrative Offences. However, even in such a case, in the course of the proceedings it would be very probable that the vehicle is a slow moving vehicle. Liability would appear only if the vehicle was not in fact a slow running vehicle in accordance with the statutory definition and therefore was subject to a proper procedure of admission to traffic, and this procedure would not be completed. The Economic Operator is obliged to deliver such a vehicle that meets all the requirements for a slow moving vehicle and shall be liable to the Ordering Party for the performance of this obligation. However, it is also not legally possible for the Ordering Party to contractually release the Economic Operator from his personal liability under the law of misdemeanour, which has already been indicated in reply to question 77, fourth paragraph.

Question 86

Referring to the Contracting Authority's answer to questions 56 and 57: Will the Contracting Authority relieve the Economic Operator from liability in the event that external or control authorities (police, ITD., provincial governor, insurer in case of damage etc.) question the approach accepted by the Contracting Authority, i.e. insurance of the Economic Operator in the scope of its activity or insurance of the entire event, as sufficient to enable the tested slow-moving vehicle to drive on a public road?



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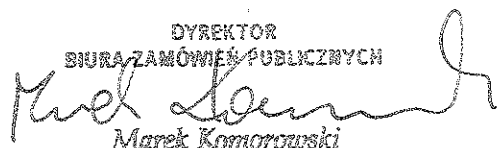
Answer:

With regard to insurance, the Contracting Authority shall accept variants included in questions No. 56 and 57.

The purpose of having insurance coverage by the Economic Operator (the organiser of the presentation) is to have a guarantee of potential compensation, repair of the damage caused - even if the approach of the Contracting Authority is questioned by any entity. In this respect, the Contracting Authority requires the Economic Operator to have a form of insurance that guarantees the safety of the presentation, but also (in case of determining liability for any potential damage) the entity responsible for repairing the damage. The Contracting Authority requires that the area of responsibility in the course of the presentation (performance of the subject of the contract) shall not be transferred to the Contracting Authority, and the Economic Operator in the performance of the subject of the contract shall be the entity responsible for repairing the damage (in the event of such liability being established towards the Economic Operator).

Sincerely

DYREKTOR
BIURA ZAMÓWIEŃ PUBLICZNYCH



Marek Komorowski