

RESPONSES DOCUMENT
QUESTIONS AND COMMENTS TO THE FINAL SPECIFICATIONS
INTERNATIONAL OPEN CALL FOR TENDERS MONÓMEROS 003-2024

OBJECT: *To contract the ‘Supply of a secondary nitrous oxide (N₂O) abatement system for the nitric acid plant of Monómeros, located in the Special, Industrial and Port District of Barranquilla, Department of Atlántico - Colombia, in the context of the Nitric Acid Climate Action Group (NACAG) initiative’.*

In the term established in the chronogram of the Bidding process, the company Monómeros Colombo Venezolanos S.A., offers answers to the questions and observations received in the ‘DEFINITIVE’ stage of the International Open Bidding Monómeros 003-2024, in the following terms:

1. Comments and questions made by the company CASALE SA, by e-mail dated 11 September 2024.

NR.	REFERENCE	QUOTE	CASALE COMMENT - 10.09.2024
3	TENDER DOCUMENTS SECT. II, PAR. 11; NOTICE OF CONVOCATION Par. 7	PROPER MANAGEMENT AND INVESTMENT OF PREPAYMENTS For one hundred percent (100%) of the sum of money established as advance payment. This guarantee must be a BANK GUARANTEE.	Noted. The clarifications was supposed to clarify the duration of Advance Payment Guarantee to be considered. Duration shall be till opening of Bank Guarantee for Defect and Hidden Defects? Please confirm

RESPONSE FROM MONÓMEROS.

In response to the observation received, it is evident that there is an error in the denomination of the guarantee requested, which corresponds to ‘PAYMENT IN ADVANCE’, which must cover the total amount of the sum of money that will be transferred by the GIZ in the first disbursement equivalent to 35% of the value of the contract. The validity of this guarantee will be for the total term of the contract to be defined by the successful bidder on the date established for the closing of the process.

This modification may be evidenced in the document to be called ‘Addendum to the final specifications’ which will be published on 25 September 2024.

4	TENDER DOCUMENTS SECT. II, PAR. 11; NOTICE OF CONVOCATION Par. 7	<p>BANK GUARANTEE FOR DEFECTS AND HIDDEN DEFECTS</p> <p>The term of this warranty shall be 3 years from the date of final acceptance to the full satisfaction of Monómeros, which shall be formalized in the delivery-reception certificate of the goods and services by the Parties.</p>	<p>Please consider that WARRANTY BOND is aimed to guarantee contractual obligation during warranty period. Following the expiry of the warranty period, the relevant obligations cease to exist and therefore WARRENTY BAND has no reason to exist. Based on what above 30% Bank GURANTEE FOR DEFECT AND HIDDEN DEFECTS for 3 years from final acceptance is not acceptable. As per standard practice we can accept 5% for 2 years from the successful test run.</p>
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RESPONSE FROM MONÓMEROS:

In consideration of the observation received, the structuring committee of this bidding process considers it prudent to modify the time and percentage of the insured value for the concept of ‘Guarantee for Defects and Hidden Defects’, which must cover the quality and correct operation, as well as the possible hidden defects that may occur in the goods that MONÓMEROS will receive in compliance with the contract. And taking into account that the delivery of the good will take place in the Colombian territory, the regulation to be applied in this type of contractual relation is the consumer's statute, which establishes that the manufacturer or producer must respond for the guarantee of the good and that the action of responsibility by defects of factory that can be exercised by the buyer will prescribe in a period of three (3) years, notwithstanding the above, although Monómeros S. A., once initiated the corresponding process of the contract, will be liable for the defects of the goods. A. once initiated the corresponding bidding process defined that the time of coverage (according to the risk analysis) was for the mentioned period, our company granted the reduction of the same one of (3) years to (2) two years, being thus 12 months uncovered before an eventual sinister or claim to the contractor (manufacturer).

In relation to the percentage of the insured value and considering that the vices or manufacturing defects that the good may suffer, are indeterminable within the pre-contractual and contractual stage, Monómeros S.A. does not accept the observation to reduce to 5% and will modify the percentage of coverage in order to generate a balance in the charges, from the legal point of view it is recommended the following:

1. A guarantee percentage of 20% of the value of the contract is modified, with a validity of one (1) year counted from the final reception to the entire satisfaction of MONÓMEROS, which shall be formalized with the certificate of delivery and reception of the goods and services by the Parties.

2. After the first year of delivery of the goods without warning of manufacturing defects, a reduction of coverage from 20% to 10% may be made.

3. At the end of the second year of delivery of the goods without identification of manufacturing defects, the contractor may cancel the bank guarantee, without this being understood as the extinction of the post-contractual obligations of quality guarantee of the delivered goods.

This modification may be evidenced in the document to be called 'Addendum to the final specifications', which will be published on 25 September 2024.

6	TENDER DOCUMENTS SECT. II, PAR. 14.2	<p>PECUNIARY PENALTY In the event of a declaration of total or partial breach of the obligations of the contract, the supplier that is awarded the contract (Contractor) shall recognize Monómeros as a penalty clause as an advance estimate of damages an amount equivalent to ten percent (10%) of the total value of the CONTRACT, This sum shall be effective, prior declaration of default, directly by offsetting the balances owed to the CONTRACTOR, if any, with respect to this CONTRACT, or if this is not possible, it may enforce the Performance Bond, and may also resort to the competent jurisdiction, including the coercive jurisdiction.</p> <p>FIRST PARAGRAPH: The Penal Clause does not exclude the indemnification of damages not covered by the application of this penalty.</p>	<p>Pecuniary Penalty for any and all breaches (even minor ones) is not acceptable. If it must be present, it shall be applicable only in case of material breach as determined by a competent court and shall be of full settlement of the relevant breach.</p>
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RESPONSE FROM MONÓMEROS.

Monómeros will prepare a penalty clause, which expressly establishes and lists the possible non-compliance and its respective penalty.

The above is requested considering that this process is monitored by international entities that require and oblige Monómeros S.A. to comply with each of the agreements related to this project.

7	TENDER DOCUMENTS SECT. II, PAR. 14.3	The successful bidder (Contractor) shall be responsible for all damages caused to Monómeros caused by its fault or that of its subcontractors or dependents and shall recognize and pay the value of such damages or shall proceed to repair them properly.	Contractor shall indemnify Monómeros for any claim made by third part against Monómeros for death, injury and damage to property. So that your explanation is acceptable to us, but please note that the wording suggested differs from your response and shall be amended.
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RESPONSE FROM MONÓMEROS:

The adjusted clause is attached:

The successful bidder (Contractor) shall indemnify Monómeros for any damages and claim made by third parties against Monómeros for death, injury and damage to property caused by its fault or its subcontractors or dependents during the execution of Contractor obligations.

This modification may be evidenced in the document to be called 'Addendum to the final specifications', which will be published on 25 September 2024.

22	FORM 05	The date of issuance of the certificate of existence and legal representation no more than three (3) months prior to the closing date of the term of this process	Ok, we are able to provide it dated 05.06.2024. Please confirm.
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RESPONSE FROM MONÓMEROS:

*In view of the observation received, the structuring committee finds no impediment to accept and validate the Certificate of Existence and Legal Representation, dated **no more than six (6) months prior to the closing date.***

This modification may be evidenced in the document to be called 'Addendum to the final specifications' which will be published on 25 September 2024.

2. Comments received on Annex 03 - Contract Minutes

0	ANNEX 03 - Contract Minute CLAUSE ONE, DEFINITIONS	Definition of CONFIDENTIAL INFORMATION shall be made reciprocal. We suggest:" any and all the information, documentation and data disclosed to or received by Customer directly or indirectly from Contractor or which may be learned, acquired, deduced, derived or obtained by Customer during any examination of said information and/or in connection with the performance of this Contract."
28	ANNEX 03 - Contract Minute CLAUSE THREE, FIRST PARAGRAPH	"Notwithstanding, MONÓMEROS may choose between demanding the execution of the guarantee or declaring the breach or termination of this Contract with the corresponding indemnification of damages, having to choose only one of these options." is not acceptable and shall be deleted.
29	ANNEX 03 - Contract Minute CLAUSE THREE, SECOND PARAGRAPH	Contractor cannot accept blindly any type of variations that may arise, without determine either the type or the extent of the variations in subject. We ask for following modification:" THE CONTRACTOR undertakes to discuss in good faith the variations that may arise."
30	ANNEX 03 - Contract Minute CLAUSE FOUR	Previous communications and correspondence shall not become part of the Contract, as well as "such other documents".
31	ANNEX 03 - Contract Minute CLAUSE FIVE, SPECIFIC OBLIGATION OF THE CONTRACTOR	Point h), "Comply with the guidelines defined by Monómeros (procedures, technical guidelines, program manuals, resolutions, protocols, guides, instructions, Integrated Management System formats, etc.) " can be accepted to the extent these are expressly listed in the Contract and have been provided to Contractor as part of the ITB.

32	ANNEX 03 - Contract Minute CLAUSE FIVE, SPECIFIC OBLIGATION OF THE CONTRACTOR	Point k), Confidentiality (for both Parties) shall be subject to a dedicated clause.
33	ANNEX 03 - Contract Minute CLAUSE FIVE, OBLIGATIONS OF MONOMEROS	Point c), To supply the tools, construction equipment, labor -technical personnel- for the assembly, installation, commissioning and start-up of the abatement system at the Monómeros facilities.
34	ANNEX 03 - Contract Minute CLAUSE SIX, OBLIGATIONS OF MONOMEROS	"Shall neither the CONTRACTOR pay or compensate economically or in any way or form THE CONTRACTOR for any fact, error or omission made by THE CONTRACTOR in the calculation of the value of its bid." seems meaningless.
35	ANNEX 03 - Contract Minute CLAUSE EIGHT, BANK GUARANTEE FOR DEFECTS AND HIDDEN DEFECTS	We can accept a bank guarantee of 5% up to maximum 2 years from the successful test run.
36	ANNEX 03 - Contract Minute CLAUSE EIGHT, FOURTH PARAGRAPH	We propose to apply a 5% threshold for amending annex and policy by insurance company
37	ANNEX 03 - Contract Minute TENTH CLAUSE, PENALTY CLASUE	Not in compliance with Tender documents, Par. 14. Liquidated Damages (not penalties) shall be due in case of delay (e.g. "x% of the price for each week of delay"), not for any breach of any obligation.
38	ANNEX 03 - Contract Minute TENTH CLAUSE, FIRST, SECOND, THIRD PARAGRAPH	To be deleted or, in any case, to be discussed afterwards.
39	ANNEX 03 - Contract Minute CLAUSE ELEVEN, GROUNDS FOR EARLY TERMINATION	It shall be reciprocal and applicable in case of: - dissolution or liquidation; - material breach of contractual obligation and remedy failure; - When THE CONTRACTOR does not start the work within the stipulated term; - Legal Representative is subject to any of the causes of inability and incompatibility, conflicts of interest and special prohibitions provided by law;

		- Assigning or subcontracting of the contract without written approval.
40	ANNEX 03 - Contract Minute ANNEX 01, 1.4	Liability for damages to MONOMEROS shall be subjected to liability limitation.
41	ANNEX 03 - Contract Minute ANNEX 01, 2.7	Not applicable
42	ANNEX 03 - Contract Minute ANNEX 01, 6. INDEMNITY	Required rewording as follow: "The Contractor shall indemnify and hold harmless the Customer from and against any and all losses or damages arising out of: (a) personal injury, disease or death to any person; (b) damage to the property of any Third Party, in each case to the extent they arise or result from any negligent, grossly negligent or intentionally wrongful act or omission of the Contractor."
43	ANNEX 03 - Contract Minute ANNEX 01, 11	Required rewording as follow:"The signature of MONÓMEROS' Supervisor on the Contract Liquidation Deed does not release THE CONTRACTOR from any liability, which have accrued prior to the date thereof."
44	ANNEX 03 - Contract Minute ANNEX 01, CONFIDENTIALITY	CONFIDENTIALITY shall be made reciprocal.
4 5	ANNEX 03 - Contract Minute ANNEX 01, 15	EXECUTIVE MEANS can't be accepted, we ask for deletion of the clause.
46	ANNEX 03 - Contract Minute ANNEX 01, 18	Clause to be amended according to MONOMEROS clarifications "the solution of controversies that arise on the occasion of the corresponding legal transaction, may be resolved through an international arbitration court. "
47	ANNEX 03 - Contract Minute	General comments to Contract: - Limitation on liability concept shall be included; - Delay liquidated damages (0.5% per week) with 10% cap shall be included;

		- Consequential damages and loss of profits shall be excluded; - Confidentiality shall be made reciprocal;
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GENERAL RESPONSE OF MONÓMEROS:

The company Monómeros Colombo Venezolanos S.A. and the designated structuring and evaluation committee of the process are pleased to clarify that the document published in the bidding process called “Annex 03 - Minutes of the contract”, corresponds to a model document that indicates and points out to the interested bidders that, once the bidding process has been completed, the ‘final contract’ will be drawn up with the successful bidder, whose technical and performance conditions will be those defined in this procedure, but whose legal conditions (value, term and additional services, etc.) will be those offered by the winning bidder in its proposal.

In this sense, the final conditions of the contract will be defined with the future contractor, once the awarding stage of the tender is completed.

In conclusion, it is not considered prudent to make a specific statement on the observations received, as the minutes of the final contract will be agreed by the parties, once the present selection process has been completed.

In the above terms we respond to the observations received.

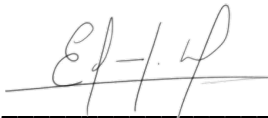
The Evaluation Committee;



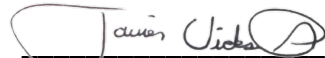
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