

PUBLIC AUCTION

pursuant to art. 73 para. 1 subsection c) of the Royal Decree/*Decreto Reale* no. 827/1924 as amended from time to time

Public selection procedure to determine the party commissioned to carry out the "Urban Restructuring Plan (URP) in the area between Via Alto Adige, Via Perathoner, Via Stazione and Via Garibaldi pursuant to art. 55 quinquies of the Provincial Law/*Legge Provinciale* 13/1997"

This is to announce the City of Bolzano/Bozen's invitation to tender in order to determine the party commissioned to carry out the "Urban Restructuring Plan (URP) in the area between Via Alto Adige, Via Perathoner, Via Stazione and Via Garibaldi pursuant to art. 55 quinquies of the Provincial Law/*Legge Provinciale* 13/1997 as amended".

The selection procedure will be governed by the stipulations of the Italian Royal Decree/*Decreto Reale* no. 827/1924 (Regulation regarding the administration of assets and general state accounting systems).

The tender documents and their appendices will be published in Italian, German and English language. In case of any discrepancy between the texts, the Italian version shall prevail at all times.

ART. 1 Description: subject of the invitation to tender, basic contents and duties arising out of the contract for the successful tenderer.

Following the submission of a private proposal, on 25 June 2014 the Bolzano/Bozen City Council passed its Resolution no. 417 aimed to initiate proceedings to draft an "Urban restructuring plan (URP) in the area between Via Alto Adige, Via Perathoner, Via Stazione and Via Garibaldi pursuant to art. 55 quinquies of the Provincial Law/*Legge Provinciale* 13/1997 as amended from time to time".

With its Resolution, the City Council defined the scope of application, sector, area, subject and aims as well as the construction-related and urban/land use planning parameters of the URP, inviting all parties interested to submit a proposal by 08 August 2014.

The proposals received were submitted KHB S.r.l./GmbH and Erlebnishaus Südtirol S.r.l./GmbH.

Pursuant to art. 55 quinquies para. 5 of the Provincial Law/*Legge Provinciale* 13/1997 and following the Bolzano/Bozen City Council Resolution no. 417/2014, the mayor of Bolzano/Bozen convened a Service Conference in charge of evaluating the proposals; taking office on 18 August 2014, the Service Conference, following a preliminary examination of the proposals, invited both parties to amend their proposals with a view to changing the part concerning traffic infrastructures in order to accommodate the planned relocation of the bus station as set forth in the third premise of the framework agreement. Both parties complied with the request in due time.

During the formulation of the URP and the framework agreement by the Service Conference:

a) the individual contents of the URP, of the respective preliminary and final projects for the infrastructure work and the exact rules for their implementation were defined in due detail and integrated into the framework agreement; they form an integral part of the framework agreement;

b) the subsequent procedural steps and the relevant norms, particularly with regard to the subject of the public tender procedure pursuant to art. 55 quinquies para. 8 of the Provincial Law/*Legge Provinciale* 13/1997, were laid out as set forth in art. 55 quinquies of the Provincial Law/*Legge Provinciale* 13/1997, with the aim of determining the party which will acquire the public and private real estate of KHB S.r.l./GmbH within the construction contract section (section 1) in order to meet their contractual duty, i.e. the full and thorough implementation of the URP, without prejudice to KHB S.r.l./GmbH's right of first refusal which shall in any case remain unaffected;

c) the value estimate and the adequacy assessment detailing the value of the public and private premises and buildings affected by the Urban Restructuring Plan as well as the value of the planned trade-off and of the infrastructure and urbanisation works which the successful tenderer will be required to carry out and the overall assessment regarding the appropriateness of the required performances and considerations including the stipulations contained in art. 55 ter para. 5 of the Provincial Law/*Legge Provinciale* 13/1997, as provided by the department of evaluations at the Autonomous Province of Bolzano/Bozen – South Tyrol pursuant to art. 55 quinquies para. 6 of the Provincial Law/*Legge Provinciale* 13/1997, were submitted to and taken into consideration by the Service Conference on 09 March 2015 and on 22 December 2015 (see Appendix no. 27).

For all performances and considerations as set forth in the URP, the parties have agreed on a price amounting to EUR 99,100,000.00 (ninety-nine million one-hundred thousand euros and zero cents) payable to the City of Bolzano/Bozen as stipulated in the framework agreement; the amount consists of the following sums:

- EUR 14,517,000.00 (fourteen million five hundred seventeen thousand euros and zero cents) for real estate owned by the City of Bolzano/Bozen and the building unit owned by the Bolzano/Bozen Public Agency for Social Services (*Azienda Servizi Sociali di Bolzano /ASSB*);
- EUR 84,583,000.00 (eighty-four million five-hundred eighty-three thousand euros and zero cents) as compensation pursuant to § 8 subsection e) of the premises of the framework agreement resulting from the public tender procedure as set forth in art. 55 quinquies para. 8 of the Provincial Law/*Legge Provinciale* 13/1997.

d) the mutual obligations were thoroughly defined, and on 12 April 2016 the framework agreement including all relevant appendices (Appendix A) were signed by the Special Commissioner of the City of Bolzano/Bozen, the head of the Autonomous Province of Bolzano/Bozen – South Tyrol and the

legal representative of KHB S.r.l./GmbH, whereupon they were ratified and approved with full legal effect as set forth in art. 55 quinquies of the Provincial Law/*Legge Provinciale* 13/1997 by the Special Commissioner of the City of Bolzano/Bozen in the exercise of their functions within the Bolzano/Bozen City Council pursuant to Resolution no. 28 as of 20 April 2016 and by the Autonomous Province of Bolzano/Bozen – South Tyrol pursuant to Resolution no. 435 as of 26 April 2016.

During the procedure, administrative court proceedings were initiated; the Bolzano/Bozen Regional Administrative Court has labelled them RR.GG. (*Ruolo Generale*) 341/2014, 202/2015, 285/2015, 160/2016 and 183/2016. If the appeals related to the procedure are granted, the participants shall not be entitled to any claims for damages or refunds whatsoever against the City of Bolzano/Bozen, which shall remain exempt from all liabilities and responsibility.

All of the above measures concerning the implementation of the URP and the achievement of the objectives regarding land-use planning and the promotion of economic activities are relevant for the parties in order to carry out the URP and meet all of the obligations which the parties have accepted with the URP itself and the framework agreement.

Taking into consideration those objectives and the parties' contributions as defined in the URP project and programme, the economic balance between the parties' performances and considerations too shall be an essential part of the framework agreement; as set forth in art. 55 quinquies para. 6 and art. 55 ter of the Provincial Law/*Legge Provinciale* 13/1997, they are listed in the framework agreement, in the Bolzano/Bozen City Council Resolution no. 417/2014 and in para. 6 of Appendix no. 3 in particular and include:

- a) the contribution of real estate owned by the City of Bolzano/Bozen and its transfer to the successful tenderer to allow them to fully and directly implement the project and programme as the sole party carrying out the URP on the designated area. The value of the real estate amounts to EUR 13,467,000.00 (thirteen million four-hundred sixty-seven thousand euros and zero cents);
- b) for the same purposes, the sale by the City of Bolzano/Bozen to the successful tenderer of real estate owned by the Bolzano/Bozen Public Agency for Social Services (*Azienda Servizi Sociali/ASSB*) worth EUR 1,050,000.00 (one million and fifty thousand euros and zero cents);
- b-bis) a complex trade-off between the successful tenderer and the Autonomous Province of Bolzano/Bozen – South Tyrol;
- c) public infrastructure works carried out by the successful tenderer at the expense of the City of Bolzano/Bozen and the Autonomous Province of Bolzano/Bozen – South Tyrol;
- d) the obligations undertaken by the successful tenderer to initiate and handle the economic activities prescribed by the URP programme;
- e) a compensation including the obligation pursuant to § 1.2 para. 24 of Appendix 2 to the Bolzano/Bozen City Council Resolution no. 417/2014 to be paid by the successful tenderer in exchange for the benefits deriving from the award of the contract to implement the URP as described in § 6 para. 2 of Appendix 3 to the Bolzano/Bozen City Council Resolution

no. 417/2014, and for the obligations undertaken by the City of Bolzano/Bozen with regard to the implementation of the URP project within the context of the performances and considerations prescribed in art. 55 ter para. 5 of the Provincial Law/*Legge Provinciale* 13/1997, for which the department of evaluations at the Autonomous Province of Bolzano/Bozen – South Tyrol has issued a value estimate and an adequacy assessment pursuant to art. 55 quinquies para. 6 of the Provincial Law/*Legge Provinciale* 13/1997.

The infrastructure and urbanisation works described in appendices PSU05, PSU05A, PSU06, PSU07 and PSU08 form an integral part of the objectives formulated for the urban restructuring; their completion by the successful tenderer and in compliance with the deadlines specified in the time schedule is essential for the coordination of the remaining works within the URP and for the objectives formulated in the urban restructuring context.

Although the above infrastructure and urbanisation works will be carried out by the successful tenderer, they are to be considered the City of Bolzano/Bozen's contribution to the urban restructuring measure. The successful tenderer shall therefore be entitled to deduct the total amount of all infrastructure work (Appendix 27 of the framework agreement) plus VAT (10%) from the compensation payable to the City of Bolzano/Bozen.

The City of Bolzano/Bozen and the Autonomous Province of Bolzano/Bozen – South Tyrol consider the amendments made to the URP proposal during the analysis an essential component required to fully safeguard the public interest in terms of simplifying the infrastructure setting and mobility/traffic management within the area designated for the URP and to allow for the unobstructed release of the real estate which is to be transferred to the successful tenderer and currently holds the bus station.

To this end, the City of Bolzano/Bozen and the Autonomous Province of Bolzano/Bozen – South Tyrol have designated a new, temporary location for the bus station in an area adjacent to the URP; the area is owned by Rete Ferroviaria Italiana S.p.a. and is governed by art. 31 of the technical provisions accompanying the Municipal Urban Plan (*Piano Urbanistico Comunale*, section concerning railway space); to allow for the bus station to be moved there in line with the relevant urban/land use planning specifications, the assigned purpose of the area has been changed accordingly.

To this effect, an agreement shall be signed between the Autonomous Province of Bolzano/Bozen – South Tyrol, Rete Ferroviaria Italiana S.p.a. (RFI), FS Sistemi Urbani S.p.a. and the City of Bolzano/Bozen establishing that RFI S.p.a. will sell or make available the current railway plot located on via Renon/Rittner Straße to the Autonomous Province of Bolzano/Bozen – South Tyrol to facilitate the temporary relocation of the bus station. The Autonomous Province of Bolzano/Bozen – South Tyrol and the City of Bolzano/Bozen will define their mutual relations regarding the new bus station in a separate agreement; the expenditures for the construction of the new bus station are detailed in Appendix 27 and will be borne by the Autonomous Province of Bolzano/Bozen – South Tyrol which is in charge of upholding the service. Based on the reciprocal obligations accepted herein by the parties, the following stipulations shall apply:

- a) the City of Bolzano/Bozen and the Autonomous Province of Bolzano/Bozen – South Tyrol will cooperate to construct the new, temporary bus station on the area currently owned by RFI S.p.a.;
- b) the Autonomous Province of Bolzano/Bozen – South Tyrol will do its utmost to make the above plot available to the successful tenderer no later than on the day the preliminary agreement as set forth in art. 8.4 of the framework agreement is signed;
- c) the successful tenderer agrees to draw up and carry out the executive planning of the new, temporary bus station and all corresponding traffic structures;
- d) the Autonomous Province of Bolzano/Bozen – South Tyrol agrees to pay for the construction charges;
- e) the City of Bolzano/Bozen agrees to hand over the bus station to the Autonomous Province of Bolzano/Bozen – South Tyrol upon successful technical inspection.

The completion and successful technical inspection of the new bus station and all corresponding traffic structures as detailed in Appendix 21 of the framework agreement shall not constitute a prerequisite for the implementation of other scheduled works on the plot and within the area designated for the URP; the following conditions and limitations shall apply: The measures regarding the functioning bus station shall be limited to the preliminary measures required for the implementation of the URP, to ensure that the public transport service can be provided without interruptions; until its relocation to the new destination, the area will remain dedicated to its purpose of providing public transport services, as per agreement between the successful tenderer and the competent department of mobility of the Autonomous Province of Bolzano/Bozen – South Tyrol. The above works and additional structures are part of the infrastructure and urbanisation works to be carried out by the successful tenderer and therefore subject to the provisions contained in the premises of the framework agreement.

The works as set forth in the provisions contained in the premises of the framework agreement form an integral part of the urban restructuring in the context of the URP.

Pursuant to art. 55 ter para. 5 of the Provincial Law/*Legge Provinciale* 13/1997, the URP provides for performances and considerations between the public and the private parties.

The value of the infrastructure and urbanisation works both within and outside the area designated for the URP (Appendices PSU05, PSU05A, PSU06, PSU07, PSU08 and 25) has been agreed to amount to EUR 27,283,013.77 (twenty-seven million two-hundred eighty-three thousand and thirteen euros and seventy-seven cents) plus VAT (10%).

The successful tenderer shall be entitled to deduct the value of these works from the compensation.

The value of the new bus station has been agreed to amount to EUR 2,715,274.79 (two million seven-hundred fifteen thousand two-hundred and seventy-four euros and seventy-nine cents) plus statutory VAT (10%) as described above and will be reimbursed to the City of Bolzano/Bozen by the Autonomous Province of Bolzano/Bozen – South Tyrol in the year 2017.

The prescribed infrastructure and urbanisation works both within and outside the area designated for the URP cannot and must therefore not be deducted from the planning permission expenses.

All prescribed infrastructure and urbanisation works both within and outside the area designated for the URP are part of the uniform urban restructuring measure to be carried out by the successful tenderer and shall be invoiced to the City of Bolzano/Bozen by the successful tenderer.

The successful tenderer shall be responsible for commissioning the works (i.e. the principal) and therefore also for the planning and execution of all of the above works.

In order to reimburse the expenditures incurred by KHB S.r.l./GmbH for the final design as set forth in Appendix 25, art. 13.5 of the framework agreement details an amount payable to KHB S.r.l./GmbH by the successful tenderer in case KHB S.r.l./GmbH does not win the contract upon conclusion of the public tender procedure.

The framework agreement contains the following:

1. the successful tenderer's obligation to plan the private works according to the URP and the enclosed preliminary project and to apply for all relevant building permits with the City of Bolzano/Bozen, which in turn shall issue the requested permits provided that they are in line with the preliminary project;
2. the successful tenderer's obligation to prepare the executive planning of all public infrastructure works as set forth in premises 10 and 11 of the framework agreement, in order to allow the City of Bolzano/Bozen and the Autonomous Province of Bolzano/Bozen – South Tyrol to authorise them within the scope of their respective competences;
3. the successful tenderer's obligation to carry out the above infrastructure work and to hand the structures over within the deadlines agreed with the City of Bolzano/Bozen depending on the earmarked purpose of the works and their connection to the existing and/or remaining public works and infrastructure according to the schedule; the lots of the infrastructure project as laid out in Appendix 13 to the framework agreement are the property of the City of Bolzano/Bozen and RFI S.p.a.; the City of Bolzano/Bozen will sign an agreement with RFI S.p.a. to make the required lots available;
4. the successful tenderer's obligation to take out an ex-post ten-year insurance policy for the infrastructure as set forth in premises 10 and 11 of the framework agreement;
5. the successful tenderer's obligation to make all means required for the technical inspection of the infrastructure works available;
6. the obligation of the City of Bolzano/Bozen to carry out the technical inspection of the infrastructure works;
7. the successful tenderer's obligation to have the works carried out by companies which meet the legal requirements and to put the contracts out to tender as set forth in art. 122.8 and 57.6 D.Lgs. 163/2006, art. 32.1 subsection g) and art. 16 subsection 2 bis DPR 380/2001 respectively, which shall serve as contractual rules and static reference;

8. the successful tenderer's obligation to initiate and uphold for a certain amount of time the activities concerning commerce and hospitality as described in the URP;
9. the successful tenderer's duty to inform;
10. the successful tenderer's obligation to pay the City of Bolzano/Bozen EUR 100,000.00 (one hundred thousand euros and zero cents) per annum for initiatives to support local supply structures;
11. the successful tenderer's obligation to set up a technical and administrative office;
12. the successful tenderer's obligation, upon conclusion of the works required for the implementation of the URP and their approval, to establish all easements and any other ties prescribed in the URP, and to sell to the City of Bolzano/Bozen any privately owned property shares on which public infrastructure is located upon conclusion of the works;
13. The successful tenderer shall take on the obligations arising from the framework agreement for themselves and any legal successors. Ceding the framework agreement is subject to the explicit consent of both the City of Bolzano/Bozen and the Autonomous Province of Bolzano/Bozen – South Tyrol.

As detailed in the URP, the area designated for the URP is a uniform, integrated multi-purpose area with public spaces, publicly available private spaces and private spaces with different assigned functions. Any changes to the town-planning purposes determined in the URP are subject to a procedure to modify the City of Bolzano/Bozen's Municipal Urban Plan (*Piano Urbanistico Comunale*). The successful tenderer agrees towards the City of Bolzano/Bozen not to modify the town-planning purposes before the deadlines contained in art. 15.2 subsection c).

The town-planning standards have been laid out as set forth in art. 126 bis of the Provincial Law/*Legge Provinciale* 13/1997 and according to the URP.

In case of doubt, the implementing rules for the URP shall be interpreted taking into consideration the general provisions accompanying the Municipal Urban Plan (*Piano Urbanistico Comunale*); any gaps shall be filled by the current version of the technical provisions accompanying the Municipal Urban Plan. The terms "Accesso carraio agli interrati"/access to the basement and "Rampa coperta"/covered ramp ("non vincolanti"/non-binding) in the legal standards document PSU04 refer to a ramp which shall only serve as a safety exit from the underground parking lot and at the most as access to the parking spaces of the provincial authorities.

Pursuant to the Bolzano/Bozen City Council Resolution no. 417/2014, the following rules shall apply:

- a) any size restriction regarding assigned purposes in the URP shall be listed as net space, the only exception being spaces assigned for retail businesses which shall be listed in terms of sales floor space as set forth in art. 1 para. 3 D.P.G.P 39/2000 and art. 107 bis para. 2 of the Provincial Law/*Legge Provinciale* 13/1997;

b) as prescribed in the legal standards document accompanying the URP, the basement levels shall be equipped with space for retail, services, storage, engineering rooms and additional space as well as parking spaces; the latter, in terms of numbers and dedication, as described in Appendix 30.

Since the area designated for the URP is not a residential area as set forth in art. 35 et seq. of the Provincial Law/*Legge Provinciale* 13/1997, art. 27 and 79 of the same Law shall not apply. Nevertheless, the successful tenderer agrees towards the City of Bolzano/Bozen to register and dedicate a net surface of 2,500.00 (two thousand five-hundred) square metres to residential purposes with the Italian system of land registration no later than one year after conclusion of the works. This dedicated ("*convenzionato*") living space is governed by art. 79 of the Provincial Law/*Legge Provinciale* 13/1997. At least half of the dedicated living space shall have a total useful floor area of no less than 65 (sixty-five) square metres.

The assigned purpose of these apartments shall be recorded in the Land Register prior to the issuing of the compliance certification.

As for the plot area and real estate within the area designated for the URP and its scope of application, the rules regarding the Municipal Urban/*Piano Urbanistico Comunale* shall remain intact until the last ratification pursuant to art. 55 quinquies para. 7 of the Provincial Law/*Legge Provinciale* 13/1997 and for the purposes of said para. 7.

With the ratification of the framework agreement and the approval of the URP in order to change the Municipal Urban Plan, the successful tenderer shall be obliged towards the City of Bolzano/Bozen to pay the compensation agreed in § 8 subsection e) of the premises which arises out of the public tender procedure pursuant to art. 55 quinquies para. 8 of the Provincial Law/*Legge Provinciale* 13/1997 and amounts to EUR 84,583,000.00 (eighty-four million five-hundred eighty-three thousand euros and zero cents).

The successful tenderer shall be entitled to deduct from this sum the value of the infrastructure and urbanisation works as set forth in premises 10 and 11 of the framework agreement, which amounts to EUR 27,283,013.77 (twenty-seven million two-hundred eighty-three thousand and thirteen euros and seventy-seven cents) plus VAT (10%).

The capital value of this amount pursuant to art. 16 of the framework agreement amounts to EUR 1.558.920,00 (one million five-hundred fifty-eight thousand nine-hundred and twenty euros and zero cents Euro), shall be deducted from the compensation and paid as stipulated.

The difference is payable to the City of Bolzano/Bozen as follows:

- a) one third upon conclusion of the final sales contract as set forth in art. 8.4 of the framework agreement;
- b) one third within 18 (eighteen) months after conclusion of the final sales contract as set forth in art. 8.4 of the framework agreement;
- c) the balance within 36 (thirty-six) months after conclusion of the final sales contract as set forth in art. 8.4 of the framework agreement or on the day the compliance certification for the entire building on construction section 1 is issued, whichever date is earlier.

Furthermore, any tax charges paid for by the successful tenderer which are owed by the City of Bolzano/Bozen as set forth in art. 22 can be deducted.

The parties furthermore agree that guarantees will have to be provided as set forth in art. 19.2 of the framework agreement.

ART. 2 General requirements for participation

All economic operators who are natural or legal persons, individual entrepreneurs, partnerships, limited liability companies, temporary business associations (bidding consortia), consortia and European Economic Interest Groupings (EEIG) which meet the requirements listed below in terms of integrity and professionalism may submit bids.

All economic operators, economic groups and temporary business associations (bidding consortia) authorised to carry out the activities contained in the framework agreement and the URP in accordance with the legislation of the state in which they are registered are eligible to take part in the tender procedure.

Admission to participate in the selection procedure cannot be granted if, at the time the invitation to tender is issued:

1. a sentence has been pronounced, an irrevocable penalty order issued or plea bargaining procedures (*sentenza di applicazione della pena su richiesta* as prescribed by art. 444 of the Italian code of criminal procedure) initiated with regard to the above economic operator for one of the following offences or crimes:
 - a) attempted or committed offences or crimes referred to in art. 416 and 416 bis of the Italian criminal code, offences or crimes committed using the prescriptions contained in art. 416 bis or with the aim of aiding the activities of organisations described in art. 416 bis; attempted or committed offences or crimes as set forth in art. 74 of the Presidential Decree no. 309 of 09 October 1990, Art. 291 quater of the Presidential Decree no. 43 as of 23 January 1973 and art. 260 D.Lgs. no. 152 of 03 April 2006 referring to participation in a criminal organisation as set forth in art. 2 of the Framework Decision 2008/841/JHA of the Council of the European Union;
 - b) attempted or committed offences or crimes as set forth in art. 317, 318, 319, 319 ter, 319 quater, 320, 321, 322, 322 bis, 346 bis, 353, 353 bis, 354, 355 and 356 der of the Italian criminal code and art. 2635 of the Italian civil code;
 - c) fraud as defined in art. 1 of the Convention on the protection of the European Communities' financial interests;
 - d) attempted or committed offences or crimes with terrorist aims at national or international level, attempts to subvert the constitutional order, terrorist crimes or offences and crimes linked to terrorist activities;
 - e) offences or crimes as set forth in art. 648 bis, 648 ter and 648 ter.1 of the Italian criminal code or money laundering and terrorist financing as defined in art. 1 D.Lgs. no. 109 of 22 June 2007 as amended;

- f) child labour and forms of human trafficking as set forth in D.Lgs. no. 24 of 04 March 2014, murder and personal injury (art. 575, 582 and 583) caused by a breach of the regulations safeguarding health and hygiene at the workplace;
- g) any other crimes or offences whose legal consequence is a ban from contracting with public authorities;
2. there are reasons for a forfeiture or to exclude, suspend or ban the above economic operator as set forth in art. 67 D.Lgs. no. 159 of 06 September 2011, or in the case of attempts of criminal infiltration by the Mafia as prescribed by art. 84 para. 4 of the above D.Lgs. This shall apply without prejudice to the stipulations contained in art. 88 para. 4 bis and art. 92 para. 2 and 3 D.Lgs. no. 159 of 06 September 2011 (declarations and information to fight organised crime);
 3. an exclusion from the procedure shall be effected if a sentence or decree is pronounced with regard to the owner (in the case of a businesses with sole proprietorship), a partner (in the case of a collective partnership), a general partner (in the case of a limited partnership), a member of the administrative board vested with power of authority to legally represent their company, a member of a management or supervisory body or other persons with representation, management or supervisory authority, or a natural person who is the sole or main shareholder (in companies with fewer than four shareholders), in the case of other company types or consortia. There will be no exclusion or ban if the crime or offence has been decriminalised, the person in question has been rehabilitated, the offence or crime is officially extinguished or the sentence has been revoked;
 4. the economic operator has committed serious violations, as finally ascertained, of the laws and obligations regarding social security contributions, taxes and duties according to Italian law or to the laws of the state in which they are registered. Serious violations are offences such as the failure to pay taxes and contributions amounting to more than the figure established in art. 48 bis, para. 1 and 2 bis of the Presidential Decree no. 602 of 29 September 1973. Finally ascertained violations are offences contained in sentences or administrative measures against which an appeal can no longer be lodged. Serious violations of the laws and obligations regarding social security contributions are all actions which impede the issuance of a document certifying the correct payment of all owed contributions (*documento unico di regolarità contributiva/DURC*) as prescribed by art. 8 of the Decree of the Labour and Social Policies Ministry of 30 January 2015, published in no. 125 of the Official Journal/*Gazzetta Ufficiale* on 01 June 2015;
 5. the economic operator is bankrupt or being wound up, has entered into an arrangement with creditors or is the subject of any such proceedings.

KHB S.r.l./GmbH has submitted the project and signed the framework agreement and the URP upon which the public auction procedure object of the present open call for tenders is based and must take part in the selection procedure.

ART. 3 Financial criteria

All economic operators interested in submitting a bid must provide proof that they have sufficient, adequate and solid financial means in order to meet the obligations contained in the framework agreement and in the URP as described above.

Therefore, bids submitted will only be eligible for evaluation if the tenderer provides proof of the following:

1. a minimum total turnover of EUR 60,000,000.00 (sixty million euros and zero cents) generated in the past five years; taxpayers required to produce a balance sheet must submit their annual financial statements, while economic operators who are not subject to the production and approval of a balance sheet must submit their annual tax declarations.
2. bank references issued by a minimum of two credit institutions stating the economic operator's balance and credit line.
3. limited liability companies: a fully paid-up share capital of no less than EUR 1,000,000.00 (one million euros and zero cents).

The tenderer's compliance with the above requirements must be attested by means of a self-declaration in lieu of a notarised document pursuant to the Presidential Decree no. 445/2000 as amended and using the pre-printed form in Appendix B, which forms an integral part of the tender documents.

Proof of compliance with the requirements must be provided by means of documents and certificates which confirm the information contained in the self-declaration.

Where no such document or certificate is issued in the country of origin or provenance, a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in their country of origin or provenance will be considered sufficient proof.

KHB S.r.l./GmbH has submitted the project and signed the framework agreement and the URP upon which the public auction procedure object of the present open call for tenders is based and shall not be required to provide proof of compliance with the above financial requirements.

ART. 4 Tender and guarantee validity period and submission

It is the aim of the present tendering procedure to determine the party commissioned to carry out the URP, which as such shall enter into the agreements signed during the proceedings pursuant to art. 55 quinquies of the Provincial Law/*Legge Provinciale* 13/1997 as amended, i.e. the framework agreement and all relevant appendices, and carry out the Urban Restructuring Plan as stipulated in the agreement, designs and appendices, all of which shall be submitted together and form an integral part of the open call for tenders.

To this end, the tenderer shall be required to comply with the stipulations contained in the above documents and appendices (Appendix A) to the open call for tenders, all of which form an integral part of the selection procedure, and to acknowledge and accept the documents by signing every page, design, report and appendix; any changes, additions, limitations and/or amendments of the contents shall not be admissible, making the bid ineligible and leading to exclusion.

In order to be considered, all documents listed including proof of the duly provided cautionary deposit must have been delivered to the City of Bolzano/Bozen by **12.00 (twelve noon/00) on 13 April 2017**, before the bids are opened and the contract is awarded (**on 18 April 2017 at 16:00** at the offices of the City of Bolzano/Bozen, Via Lancia 4/A, 39100 Bolzano) either personally or by registered mail in a closed and sealed envelope signed across all seals, to the following address:

Comune di Bolzano
Segreteria Rip. 8: Patrimonio e Attività Economiche
Via Lancia 4/A – stanza 201
39100 Bolzano
Italy

To be eligible to take part, all required documents must be submitted in Italian or German.

Delivery in due time: The postmark applied by the municipal administration upon delivery shall be the only valid date of receipt; this shall also apply to registered deliveries with acknowledgement of receipt. The postmark of the mailing date will not be considered.

Envelopes received after the above term of exclusion will not be considered, even if the delay or failure to deliver is due to force majeure or accident or caused by a third party.

After the above term of exclusion, no other bid shall be considered including but not limited to bids replacing or making additions to earlier ones.

The sealed main envelope must state the bidder's exact company name and address including the following wording: *"Public selection procedure to determine the party commissioned to carry out the Urban Restructuring Plan (URP) in the area between Via Alto Adige, Via Perathoner, Via Stazione and Via Garibaldi pursuant to art. 55 quinquies of the Provincial Law/Legge Provinciale 13/1997"*.

In order to be considered, the main, sealed envelope must contain the following two sealed envelopes (closed, sealed and signed across all seals) with the following documents:

Envelope no. 1 – "Administrative documentation and deposits":

- the present tender documents including the tenderer's legible signature on every page to acknowledge and accept the documents;

- the framework agreement and all pertaining appendices (**Appendix A**) including the tenderer's signature to acknowledge and accept the documents as described above;
- the declaration stating the tenderer's compliance with the requirements using the pre-printed form (**Appendix B**), which must be duly filled in and signed by the tenderer on every page (where applicable, including Appendix B1: "Letter of commitment to found a bidding consortium");
- a declaration (**Appendix C**: "Inspection of the area designated for the URP") stating that the tenderer has visited the area designated for the implementation of the framework agreement and the URP and that they are aware of the legislation in force in the Autonomous Province of Bolzano/Bozen – South Tyrol, which they agree to adhere to during the entire term of the framework agreement and the URP. To this end, the tenderer shall carry out an on-site inspection of the respective area which must take place **by 24 March 2017** and must be confirmed by the City of Bolzano/Bozen; an appointment for the inspection can be made at the address listed in the section "Information and addresses";
- in case the bid is entered *per procurationem*: proof of the authority to represent by means of an official deed or a private deed certified by a notary;
- the following bank guarantees, since the bid must be accompanied by a valid deposit in cash, government bonds or state-guaranteed securities at stock exchange value.

The deposit may also be provided by means of a bank guarantee as per **Appendix D** issued by a public bank, so-called banks of national interest, ordinary banks with a capital (paid-up capital plus capital reserves) of no less than EUR 500,000,000.00 (five-hundred million euros and zero cents), savings banks, so-called first-category pawnbroker banks (*Monti di credito su pegno di prima categoria*) and cooperative banks with EUR 1,500,000,000.00 (one billion five-hundred million euros and zero cents) in capital:

A) a provisional deposit EUR 2,000,000.00 (two million euros and zero cents) to guarantee the seriousness of the bid, to be submitted as described above. If the deposit is made in the form of a bank guarantee, the guarantor must waive the benefit of prior discussion (*beneficium excussionis*); the guarantee must furthermore contain a clause which stipulates the obligation to pay the amount covered by the guarantee no later than 15 days following a simple application to enforce the guarantee filed by the City of Bolzano/Bozen. If the tenderer does not sign the framework agreement and the URP including all appendices within the prescribed time limit, the City of Bolzano/Bozen will retain the deposit; this shall apply without prejudice to KHB S.r.l./GmbH's right of first refusal within the specified period of time after the conclusion of the selection procedure.

B) a deposit made as is admissible for provisional deposits to guarantee the sale of the moveable and immovable property of KHB S.r.l./GmbH at the price established in Appendix 27 of the framework agreement; as prescribed in the framework agreement, the tenderer agrees to acquire said property within the period agreed upon signing the framework agreement, the URP and all appendices; this shall apply without prejudice to KHB S.r.l./GmbH's right of first refusal after the conclusion of the selection procedure.

The deposit may be replaced by a declaration made by a guarantor who meets the above requirements and agrees to issue a bank guarantee for the economic operator no later than ten days after the contract is awarded and for the following amount: The deposit shall amount to EUR 51,657,270.60 (fifty-one million six-hundred fifty-seven thousand two-hundred and seventy/sixty) and may be drawn on by KHB S.r.l./GmbH provided that the amount payable for the sale of moveable (company shares) and immovable property of KHB S.r.l./GmbH is not settled when the contracts of purchase are signed; to this end, the contracts of purchase must be stipulated to ensure that the transfer of ownership is subject to the settlement of the purchase price or the disbursement of the bank guarantee.

If their bid is not successful, the deposits as described in A) and B) will be reimbursed to the tenderer after expiry of the 70-day term of the offer (starting from the date on which the auction is carried out).

If the above documents are not submitted, the second envelope will not be opened.

Please note: The obligations arising for the successful tenderer upon signing the framework agreement and the URP with regard to the guarantee provided to safeguard the careful execution of the infrastructure works contained in the URP at the initiative and expense of the successful tenderer and within the scope and value prescribed in the framework agreement and its appendices shall not be affected. The above guarantees shall be submitted upon signing the framework agreement and the URP including its appendices; this shall apply without prejudice to KHB S.r.l./GmbH's right of first refusal after the conclusion of the selection procedure.

Upon winning the contract and signing the framework agreement, the successful tenderer shall furthermore be required to meet all obligations arising from the framework agreement, particularly with regard to the management and maintenance of the public park contained in the URP, which will remain property of the City of Bolzano/Bozen, and the reimbursement of all expenses incurred by KHB S.r.l./GmbH including the project planning expenses without any contributions or joint liability of the City of Bolzano/Bozen, as set forth in art. 13.5.1, 13.5.2 and 13.5.3 of the framework agreement.

KHB S.r.l./GmbH has submitted the project and it has signed the framework agreement and the URP upon which the public selection procedure is based; it is not required to provide the above guarantees.

Envelope no. 2 – "Price offered": a sealed envelope stating "Price offered" and signed across all seals, containing the bidding price which may only be submitted on the pre-printed form provided (**Appendix E**), including all legally owed stamp duties (*marca da bollo* worth EUR 16,00) and signed by the tenderer or their legal representative. This envelope must be sealed and inserted into the above main envelope.

The price offered must quote a total amount consisting of an improvement with regard to the basic price stated in the framework agreement; the basis shall be the value of the compensation amounting to EUR 84,583,000.00 (eighty-four million five-hundred eighty-three thousand euros and zero cents).

The amount is fixed, may not be modified for the purposes of the bid and shall be added to the above tender value: EUR 14,517,000.00 (fourteen million five-hundred seventeen thousand euros and zero cents) for real estate owned by the City of Bolzano/Bozen and the building unit owned by the Bolzano/Bozen Public Agency for Social Services (*Azienda Servizi Sociali di Bolzano /ASSB*); the taxation system applicable for the above real estate transactions (VAT, registration fees, mortgage tax and cadastral duties) at the expense of the successful tenderer are listed in **Appendix F**.

The amount shall be stated both in figures and in words; in case of disagreement, the amount stated in words shall prevail.

The contract may be awarded even if only one bid is submitted.

By submitting their bid, the tenderer declares to be aware of and accept the conditions for sale; any reservations or conditions added to the bid shall not be considered.

All natural or legal persons whose tenders are admitted to participate in the auction shall be bound by their bids for the duration of 70 (seventy) days starting from the date on which the auction is carried out.

The bid shall be legally binding for the tenderer and must not contain any conditions whatsoever.

Bids can also be entered *per procuracionem*. In that case, the bid must contain proof of the authority to represent by means of an official deed or a private deed certified by a notary, which must be added to the auction report.

ART. 5 Grounds for exclusion from the selection procedure

Tenderers will be excluded from the selection procedure if:

a) the main envelope (containing envelope no. 1 – "Administrative documentation and deposits" and envelope no. 2 – "Price offered") as set forth in the preceding article has not been delivered to the City of Bolzano/Bozen **by 12.00 (twelve noon) on 13 April 2017;**

b) the envelope has not been closed and sealed as prescribed in the present tender document;

c) the tenderer has not signed the framework agreement (Appendix A), the design, the reports and the appendices on every page;

d) one of the required documents prescribed in the present tender document has not been submitted;

e) the bid containing the price offered does not coincide with the pre-printed form provided;

f) the price offered is lower than the tender value, if the bid is vague or undetermined or merely refers to a different bid presented by the same or another tenderer;

g) there is a fault in the authority to represent with regard to submitting bids;

h) the bid is not submitted in either Italian or German.

The above reasons for exclusion from the tendering process will not be enforced in cases where, even though a document has not been submitted, the missing information can be found in other documents submitted by the tenderer for the purposes of the bid.

ART. 6 Auction procedure

The auction shall take place in a single procedural step.

On 18 April 2017 at 16:00, in the conference room no. 215 at Via Lancia 4/A in 39100 Bolzano/Bozen, upon opening the envelopes and presenting the bids, the auction chair will award the contract to the tenderer with the most economically advantageous bid, whose price is equal to or higher than the price listed in the auction announcement.

All natural persons who have signed a bid and all representatives of economic groups or with authority to represent are entitled to be present at and participate in the session subject to previous identification. To provide proof of identity, the person in question must present a valid identification document and, where applicable, proof of the authority to represent based on which they wish to take part in the proceedings.

If two or more bids are of equal value, the Administration shall ask the tenderers to submit a further, amended bid – provided that they deem doing so appropriate – within the course of three days, after which the contract will be awarded.

The amendment shall amount to no less than one two-hundredth of the price offered.

If, in the above case, one of the bids of equal value was submitted by KHB S.r.l./GmbH, then no further, amended bids shall be requested and KHB S.r.l./GmbH shall be pronounced as the successful tenderer winning the contract.

If upon opening the envelopes or obtaining further, amended bids as described above the best bid was not submitted by KHB S.r.l./GmbH, then KHB S.r.l./GmbH shall be granted their right of first refusal as set forth in the framework agreement; the relevant proceedings shall take place as stipulated and within the period of time prescribed in the framework agreement; if KHB S.r.l./GmbH does not make use of their right of first refusal, the tenderer shall be pronounced as the successful tenderer winning the contract.

The award of the contract shall be final.

Once the contract is awarded, the successful tenderer shall be summoned to sign the agreements which will be closed with the department of public procurement and contracts (*Ufficio Appalti e Contratti*) at the City of Bolzano/Bozen.

ART. 7 Information and addresses

Dr Ulrike Pichler, head of the department of assets and economic activity (*Ripartizione Patrimonio e Attività Economiche*), shall be the person responsible for the proceedings.

Any questions regarding the open call for tenders, the URP, the appendices of the framework agreement or of this document must be submitted in writing and sent to the following e-mail address by certified mail: bz@legalmail.it

Questions shall only be accepted **until 12.00 (twelve noon/00) on (day) 31 March 2017.**

The answers to any questions submitted shall concurrently be published on the website of the City of Bolzano/Bozen under the heading referring to the invitation to tender in order to determine the party commissioned to carry out the "Urban Restructuring Plan (URP) in the area between Via Alto Adige, Via Perathoner, Via Stazione and Via Garibaldi pursuant to art. 55 quinquies of the Provincial Law/*Legge Provinciale* 13/1997 as amended".

Any further information and an appointment for the on-site inspection of the respective area is available from the department of assets and economic activity at the City of Bolzano/Bozen (Ripartizione 8: Patrimonio e Attività Economiche, Comune di Bolzano, Via Lancia 4/A, 39100 Bolzano, Italy; Phone: 0039 0471 997482-557; Fax: 0039 0471 997908; ulrike.pichler@comune.bolzano.it).

ART. 8 Data privacy statement

Statement regarding the processing of personal, sensitive and/or judicial data as prescribed by art. 13 and 22 D.Lgs. no. 196/2003 (*Codice in materia di protezione dei dati personali*):

The data of the parties who have expressed their wish to take part in the open call for tenders shall be processed in accordance with the principles of lawfulness, correctness and transparency in order to safeguard the protection of confidentiality and the parties' rights in line with current legislation.

The data of the above parties shall be processed for the purposes of public interest with the aim of facilitating the auction and, as the case may be, the subsequent closure of the sales agreement;

The data shall be processed on paper and electronically (telematically).

The data shall be passed on to parties who are entitled to such information by virtue of laws or regulations in force and only for the purposes of the present proceedings;

The City of Bolzano/Bozen (Vicolo Gumer 7, 39100 Bolzano), i.e. the mayor as its pro-tempore legal representative, is the owner of the data processing act.

Dr Ulrike Pichler, head of the department of assets and economic activity (*Ripartizione Patrimonio e Attività Economiche*) at the City of Bolzano/Bozen, is the person responsible for processing the data regarding the tenderer selection procedure; Dr Petra Mahlknecht, head of the department of public procurement and contracts (*Ufficio Appalti e Contratti*) at the City of Bolzano/Bozen, is the person responsible for processing the data regarding the closure of the sales agreement.

The parties concerned may at any time exercise their rights as prescribed by art. 7 D.Lgs. no. 196/2003 (*Codice in materia di protezione dei dati personali*).

Appendices

- Appendix A:
 - framework agreement;
 - appendices 1 to 35 to the framework agreement;
- Appendix B: Declaration stating the tenderer's compliance with the requirements;
- Appendix B1: Letter of commitment to found a bidding consortium;
- Appendix C: Inspection of the area designated for the URP;
- Appendix D: Bank guarantee: provisional deposit;
- Appendix E: Price offered;
- Appendix F: Taxation for real estate transactions as prescribed by the framework agreement for the Urban Restructuring Plan (USP).

Please note: This document was written in Italian and translated into English. In case of any discrepancy between the texts, the Italian version shall prevail at all times.