



Automobili La'Bergitla

TENDERING INSTRUCTIONS

This document sets out the standard procedure to be applied in relation to invitations to tender issued by **Automobili La'Bergitla** for sole supply contracts to the **Automobili La'Bergitla Endurance Series**.

In these Tendering Instructions, capitalised terms shall have the meanings ascribed to such terms in Appendix I.

1. TENDER CONTENTS

1.1. Tenders must be submitted in the form set out in Appendix II to this document and must contain:

1.1.1. the TENDERER's name and address;

1.1.2. the contact details of the person(s) at the TENDERER responsible for the tender submitted;

1.1.3. a description of the TENDERER's relevant experience;

1.1.4. a detailed technical description, and supporting documentation, setting out all relevant qualities and specifications of the PRODUCT the TENDERER proposes to supply, together with evidence that the PRODUCT would be in accordance with the requirements set out in the applicable TECHNICAL REGULATIONS and any TECHNICAL SPECIFICATIONS;

1.1.5. a list of activities that the TENDERER would intend to subcontract within the context of its supply of the PRODUCT, and details of the identities of the subcontractors it intends to commission for such activities;

1.1.6. details of the financial or other contributions for the benefit of motorsport that the TENDERER would make if appointed as the PROVIDER;

1.1.7. details of the financial or other contributions for the benefit of motorsport that the TENDERER would make in consideration for the AUTOMOBILI LA'BERGITLA ASSOCIATION RIGHTS.

The TENDERER is advised that the only entities entitled to create an association with the SERIES are official partners of the COMMERCIAL RIGHTS HOLDER. TENDERERS are, therefore, restricted from marketing their involvement with the SERIES unless agreement has been reached with the COMMERCIAL RIGHTS HOLDER.

1.1.8. a completed version of the PRICING FORM as appended to the DRAFT CONTRACT stating the prices at which the PRODUCT will be supplied at the EVENTS and, when required, the OFFICIAL TESTING;

1.1.9. the terms according to which the TENDERER proposes to supply the PRODUCT to the COMPETITORS if appointed as the PROVIDER. Submissions in this regard may be in the form the TENDERER considers to be fit for the purpose, which may include the TENDERER's standard supply terms and conditions or a summary of the main terms and conditions proposed by the TENDERER. In any event, the terms and conditions proposed by the TENDERER must be appropriate and proportionate to the PRODUCT, the COMPETITORS and the SERIES;

1.1.10. confirmation that the TENDERER will be able to warrant that it will be in a position, at the time of the entry into the CONTRACT, to meet any liability to the COORDINATOR as specified in the DRAFT CONTRACT; and

1.1.11. a list of terms, including amendments to the SPECIAL CONDITIONS, that the TENDERER would hope to have included in the CONTRACT if selected as the winning TENDERER (such terms may not conflict with any GENERAL CONDITION (the GENERAL CONDITIONS are not negotiable));

1.1.12. details responsive to any further requirements as may be set out in the Tender Summary and Additional Tender Requirements published with the DRAFT CONTRACT.

2. CLARIFICATIONS OF TERMS OF INVITATION TO TENDER

2.1.

TENDERERS are invited to submit a bid for the CONTRACT as set out in the DRAFT CONTRACT and are invited to take their business decisions based on the terms as set out. In principle, further information will not be given, and no advance discussions or communications with any prospective TENDERER about the terms of the tender or the terms of any possible future bid will be entered into. However, in exceptional circumstances in which a TENDERER believes that it cannot take a business decision on whether to submit a tender offer without some element of clarification of the terms, it may apply to the COORDINATOR for a clarification.

2.2.

Any request for clarification must be submitted in writing to the COORDINATOR no later than 10 BUSINESS DAYS before the expiry of the period for the submission of tenders. Later requests will not be replied to.

2.3.

Requests for clarification may only be submitted by identified prospective TENDERERS. However, their request must be attached in a separate document which does not identify the questioner and which is ready for publication.

2.4.

The submission of a request for clarification does not entitle any prospective TENDERER to a clarification or response from the COORDINATOR. Whether to respond with a clarification (or at all) is entirely within the discretion of the COORDINATOR. If the COORDINATOR does decide to give a substantive response, it will publish (anonymously) the request and the COORDINATOR's response. At that time the request and response become part of the invitation to tender and all TENDERERS may take account of the answer given.

2.5.

This facility is not intended to replace any negotiations that might occur after a TENDERER is selected and is reserved only for issues requiring substantive clarification.

3. PRE-SELECTION TENDER PROCEDURE

3.1.

Tenders must be received either: (i) in original and with three copies in a closed and sealed envelope addressed to **Evgenios Erotokritou, Barrister-at-Law, Middle Temple, London, 36 Aigyptou Avenue, 6030 Larnaca, Cyprus** (phone number: +357 24 656 406); or (ii) by email to the same office at **evgenios.law@cytanet.com.cy**, no later than 11.59 p.m. [local time] on the tender submission date as set out in the Tender Summary published with the DRAFT CONTRACT. In the event that a tender is received in the first instance only by email, the TENDERER must also dispatch an original and three copies of its tender in a closed and sealed envelope addressed to **Evgenios Erotokritou** at the above address to arrive at the office no more than three BUSINESS DAYS after the date on which the emailed version was received. In the event that a PRODUCT sample is required under the Additional Tender Requirements published with the DRAFT CONTRACT, such sample shall be provided together with the hard copies of the tenders submitted in accordance with this clause 3.1.

3.2.

Tenders must be marked – on the sealed envelope in the case of hard copies and on the first page in the case of emails – with the name and address of the TENDERER and the title of the DRAFT CONTRACT in relation to which the tender is submitted (as set out in the Tender Summary published with the DRAFT CONTRACT).

3.3.

A receipt will be issued to the TENDERER at its request and shall serve as an acknowledgement of receipt.

3.4.

Tenders received out of time will not be presented to the COORDINATOR and will be sent back to the sender. For the avoidance of doubt, such tenders will not be considered for selection.

3.5.

On the opening date as set out in the Tender Summary published with the DRAFT CONTRACT, **Evgenios Erotokritou** shall present all the sealed envelopes submitted in time to a representative of the COORDINATOR and shall open them during a public meeting. Each TENDERER may attend the opening of the envelopes and may personally verify that the seal of each envelope is firmly secure prior to its official opening.

4. SELECTION

4.1.

The COORDINATOR shall select the TENDERER which, in the COORDINATOR's sole opinion, best serves the interests of the SERIES and the interests of motorsport in general. The COORDINATOR is not required to give reasons for the acceptance or refusal of any particular tender.

4.2.

In the event that the COORDINATOR decides that any tender submitted does not satisfy these Tendering Instructions, it may reject that tender without consideration of its merits.

4.3.

It is the responsibility of each TENDERER to submit a tender that is sufficiently detailed and clear to allow a decision to be taken. Any failure to do so may count against a TENDERER in the selection process. However, without being under any obligation to do so, the COORDINATOR may decide to seek any clarification of the tender terms submitted by any party and may take any clarifications received into account in taking its decision.

4.4.

The selected TENDERER shall be informed of their selection no later than the notification date as to selection of a TENDERER as set out in the Tender Summary published with the DRAFT CONTRACT.

5. POST-SELECTION PROCEDURE

5.1.

Prior to execution of the CONTRACT, the winning TENDERER shall be bound, at the sole election of the COORDINATOR, to the terms of the tender it submits, which tender shall, for the purposes of this invitation to tender, incorporate any representations made by the TENDERER to the COORDINATOR in whatever form prior to the date on which the COORDINATOR makes its decision as to selection. In the event of any material deviation by the winning TENDERER from the terms of its tender, the COORDINATOR shall have the right, at its sole election, to take any one or more of the steps set out at section 5.7 of this invitation to tender.

5.2.

The selection by the COORDINATOR of the winning TENDERER shall initiate a period of exclusive negotiation between the COORDINATOR and the winning TENDERER with a view to the conclusion of the CONTRACT. For the avoidance of doubt, however, the selection by the COORDINATOR of a winning TENDERER does not impose any obligations on the COORDINATOR, save the obligation to initiate a period of exclusive negotiation with the winning TENDERER for such period as set out in this invitation to tender. Selection does not entitle the winning TENDERER to any CONTRACT.

5.3.

The DRAFT CONTRACT will be provided to the winning TENDERER after the date as to selection of a TENDERER as set out in the Tender Summary published with the DRAFT CONTRACT for detailed review and comment. There will be no negotiation of, or amendment to, the GENERAL CONDITIONS of the DRAFT CONTRACT except at the initiation of the COORDINATOR. The opportunity to negotiate and amend the SPECIAL CONDITIONS of the DRAFT CONTRACT is provided only to allow technical amendments that are necessary to give the CONTRACT full force and effect.

5.4.

The winning TENDERER will have a period of 10 BUSINESS DAYS from the submission by the COORDINATOR to the winning TENDERER of the DRAFT CONTRACT in which to make detailed comments on its terms. If this period expires without the winning TENDERER either confirming its full acceptance of the DRAFT CONTRACT or making any such comments on the DRAFT CONTRACT, the COORDINATOR shall have the right, at its sole election, to take any one or more of the steps set out at section 5.7 of this invitation to tender.

5.5.

The COORDINATOR and the winning TENDERER shall have a period of 30 BUSINESS DAYS from the submission by the winning TENDERER of its first set of comments on the DRAFT CONTRACT in which to execute the CONTRACT. If this period expires without the CONTRACT having been executed, the COORDINATOR shall have the right, at its sole election, to take any one or more of the steps set out at section 5.7 of this invitation to tender.

5.6.

If the winning TENDERER breaches any undertaking provided in its tender, the COORDINATOR shall have the right, at its sole election, to take any one or more of the steps set out at section 5.7 of this invitation to tender.

5.7.

On the occurrence of any of the events set out in sections 5.1 and 5.4 to 5.6 of this invitation to tender, the COORDINATOR shall have the right, at its sole election, to: (i) terminate the period of negotiation exclusivity granted to the winning TENDERER; (ii) alter its decision as to the selection of the winning TENDERER; (iii) issue a determination that no sole supplier of PRODUCT will be selected for the SERIES; (iv) hold a new tendering procedure; and/or (v) conduct negotiation of the DRAFT CONTRACT with TENDERERS other than the winning TENDERER with a view to concluding with such other TENDERERS a CONTRACT for the exclusive supply of PRODUCT to the SERIES.

6. MISCELLANEOUS

6.1.

In submitting a tender the TENDERER acknowledges that it waives all rights in the event that the COORDINATOR elects to take any one or more of the actions identified at points (i) to (v) of section 5.7.

6.2.

Regardless of whether a TENDERER is ultimately appointed as the PROVIDER, each TENDERER is responsible for all its costs, expenses and liabilities incurred, inter alia, in: (i) the preparation of its tender; (ii) the preparation of any responses to requests for further information issued by the COORDINATOR; (iii) relation to negotiations with the COORDINATOR.

6.3.

The COORDINATOR has taken steps to ensure that this invitation to tender is accurate in all material respects. However, neither the COORDINATOR, nor any of its representatives or employees, make any representation or warranty, or accept any responsibility or liability for the accuracy or completeness of any of the information contained in this invitation to tender, including the Appendices hereto. Furthermore, the COORDINATOR shall not be liable for any loss or damage suffered by any TENDERER in reliance on this invitation to tender, including the Appendices hereto, or any subsequent communication in relation thereto.

6.4.

The COORDINATOR reserves the right to change any aspect of this invitation to tender, including the Appendices hereto, at any time, to issue an amended invitation to tender or to provide the TENDERERS with clarification in relation to the invitation to tender. Any such change, amendment or clarification may be issued by the COORDINATOR in such form as the COORDINATOR considers appropriate.

6.5.

Nothing in this invitation to tender or any communication made by the COORDINATOR or its representatives or employees shall constitute a contract between the COORDINATOR and any prospective TENDERER. The COORDINATOR shall be under no obligation to accept any tender submitted in response to this invitation to tender. Furthermore, if, in the sole discretion of the COORDINATOR, the COORDINATOR considers that no tender meets with the COORDINATOR's criteria for the appointment as the sole supplier of PRODUCT, the COORDINATOR may, inter alia, issue a further invitation to tender or elect not to appoint a single supplier of PRODUCT to the SERIES.

7. GOVERNING LAW AND LANGUAGE

7.1.

This invitation to tender – and any related errata – shall be published in English and/or French, at the discretion of the COORDINATOR. Where versions exist in both English and French, the English version shall prevail in the event of any conflict.

7.2.

The CONTRACT will be drafted in English or French, at the discretion of the COORDINATOR. In the event of any conflict between the language of the CONTRACT and any translation thereof, the language of the CONTRACT, English or French, as the case may be, shall prevail.

7.3.

The governing law applicable to this invitation to tender, any bids received in relation thereto and the CONTRACT shall be the law of England and Wales.

7.4.

The courts of England and Wales shall have sole jurisdiction to settle any dispute that may arise in relation to this invitation to tender, any bids received in relation thereto or the CONTRACT, whether such disputes are between the COORDINATOR and the PROVIDER or between the COORDINATOR and a TENDERER.

Appendix I – Definitions

BUSINESS DAY means a day that is not a public holiday or weekend in England and Wales.

SERIES means the Automobili La'Bergitla Endurance Series in respect of which the PRODUCT will be supplied pursuant to the CONTRACT.

COMMERCIAL RIGHTS HOLDER means Automobili La'Bergitla Limited or its nominated rights-holding entity.

COMPETITORS means the racing teams that have been accepted by the COORDINATOR to take part in the SERIES.

CONTRACT means the agreement pursuant to which the COORDINATOR grants the PROVIDER the right to supply the PRODUCT to the COMPETITORS.

COORDINATOR means Automobili La'Bergitla Limited or its designated representative.

DRAFT CONTRACT means the draft agreement issued by the COORDINATOR at the inception of an invitation to tender process setting out the terms pursuant to which the COORDINATOR would grant the PROVIDER the right to supply the PRODUCT to the COMPETITORS.

AUTOMOBILI LA'BERGITLA ASSOCIATION RIGHTS means the non-transferable right for a PROVIDER to describe itself (including in advertising, publicity, or other promotional activity) as the Official PROVIDER of the PRODUCT to the Automobili La'Bergitla Endurance Series (or the direct equivalent thereof in other languages).

GENERAL CONDITIONS means the terms of the DRAFT CONTRACT set out at Part 1 thereof and which are not for negotiation.

OFFICIAL TESTING means the official testing for the SERIES.

PRICING FORM means the pricing form appended to the DRAFT CONTRACT stating the prices at which the PRODUCT will be supplied at the EVENTS, and, when required, the OFFICIAL TESTING, to the COMPETITORS.

PRODUCT means the product to be supplied pursuant to the CONTRACT.

SPECIAL CONDITIONS means the terms of the DRAFT CONTRACT set out at Part 2 thereof.

SUPPLY AGREEMENTS means any agreement, and all amendments thereto, between the PROVIDER and a COMPETITOR pursuant to which the PROVIDER shall supply PRODUCT to the COMPETITOR.

TECHNICAL REGULATIONS means the Technical Regulations applicable to the SERIES as published and amended by the COORDINATOR from time to time.

TECHNICAL SPECIFICATIONS means the technical requirements applicable to the PRODUCT as issued and amended by the COORDINATOR from time to time.

TENDERER means any person or entity making a bid in response to this invitation to tender.

Appendix II

Tender For Sole Supply Contract

1.1.1. and 1.1.2.

Name of Tenderer:
.....

Registered Office of Tenderer:
.....

Company Number of Tenderer (if applicable):

Contact Person(s) Responsible for Tender and Contact Details:
.....

Product in Respect of Which Tender Submitted:
.....

Season in Respect of Which Tender Submitted:
.....

In accordance with the terms of the DRAFT CONTRACT published by the COORDINATOR on [DATE] and the invitation to tender, the TENDERER hereby submits its tender to be appointed as the sole supplier of PRODUCT to the SERIES. Capitalised terms in this document bear the meaning ascribed to them in the invitation to tender. The section numbers identified in this document correspond to the section numbers in the invitation to tender document. Answers may be provided in appendices where necessary, provided each appendix is clearly marked with the number of the question to which it relates.

- 1.1.3. Description of the TENDERER's relevant experience:**
- 1.1.4. Detailed technical description, and supporting documentation, setting out all relevant qualities and specifications of the PRODUCT the TENDERER proposes to supply, together with evidence that the PRODUCT would be in accordance with the requirements set out in the TECHNICAL REGULATIONS and any TECHNICAL SPECIFICATIONS:**
- 1.1.5. A list of activities that the TENDERER would intend to subcontract within the context of its supply of the PRODUCT, and details of the identities of the subcontractors it intends to commission for such activities:**
- 1.1.6. Completed version of the PRICING FORM as appended to the DRAFT CONTRACT stating the prices at which the PRODUCT will be supplied at the EVENTS and the OFFICIAL TESTING to the COMPETITORS. (To be appended hereto.)**
- 1.1.7. Description of the terms according to which the TENDERER proposes to supply the PRODUCT to the COMPETITORS if appointed as the PROVIDER. Submissions in this regard may be in the form of the TENDERER's standard supply terms and conditions or a summary of the main terms proposed by the TENDERER:**
- 1.1.8. Details of the TENDERER's offer, if applicable, in consideration for the grant of the ASSOCIATION RIGHTS, including details of the financial or other contributions that the TENDERER would make for the benefit of the SERIES if appointed as the PROVIDER:**

- 1.1.9. Confirmation that the TENDERER will be able to warrant that it will be in a position at the time of the entry into the CONTRACT to meet any liability to the COORDINATOR up to the amount specified in the DRAFT CONTRACT:

- 1.1.10. List of terms, including amendments to the SPECIAL CONDITIONS, that the TENDERER would seek to include in the CONTRACT if selected as the winning TENDERER (such terms may not conflict with any GENERAL CONDITION (the GENERAL CONDITIONS are not negotiable)):

- 1.1.11. Details responsive to any further requirements as may be set out in the Tender Summary and Additional Tender Requirements published with the DRAFT CONTRACT:

Undertakings:

The TENDERER undertakes that the information provided in this tender is not false or misleading and that if, following submission of its tender, there is any change in circumstances which may impact on the TENDERER's statement in this regard, the TENDERER shall promptly notify the COORDINATOR in writing, setting out the relevant details in full.

Signed on behalf of the TENDERER:

.....

By:

.....

In his/her capacity as:

.....

In:

.....

On:

.....