

A response to clarification questions in procurement process no. 1/2018 – for the Assignment of Concession and Activity and Lease and Operation of Israel Main Hotelier School Ltd. - TADMOR (in voluntary liquidation)

Letter of Clarifications - No. 4

1. Part I – General

Israel Main Hotelier School Ltd. - Tadmor (in voluntary liquidation) (hereinafter: "**Tadmor**") wishes to respond to questions asked by interested parties in the aforementioned procurement proceeding, as detailed below.

The detailed answers, and the changes deriving therefrom, obligate the bidders as if they were written in the original procurement process documents, and they are an integral part of the procurement process documents and the agreements to be signed with the Successful Bidder, respectively.

It is hereby clarified that this notice is updated as of 4.10.18, and contains the questions asked by the interested parties and the responses given to them by that said date, and the attachment must be signed and attached to the Bid documents, as required. This does not exhaust the clarifications questions that were asked or the answers that will be published, if published, under Tadmor's sole discretion.

Beyond the reply herein, there is no change in the conditions of the procurement procedure.

2. Part II - a response to clarification questions

No.	Name of Document	Paragraph in document	Subject	Clarification	Reply
1	Part VI – Renovation and Operation Agreement Part VII – Lease Agreement	3 7	Duration of the contract Duration of the tenancy	Paragraph 3.2 of the Renovation and Operating Agreement prescribes that: <u>"The State may extend , in its sole discretion,</u> the period of the contract by two	<u>First Clarification</u> It is hereby clarified that the term of the agreement in Part VI - Renovation and Operation Agreement, and the lease period as set in Part VII - Lease Agreement, will be extended in accordance with Section 7.2 of Part 7 - Lease Agreement,

			<p>additional periods..."</p> <p>"A notice regarding realization of the option period shall be given to the Developer at least 60 days before the end of the contract period."</p> <p>However, paragraph 7.2 of the Lease Agreement provides that:</p> <p>"The Lessor through the Steering Committee, as defined in the Government Decision, or its representatives, <u>are given the right to extend the lease period by two additional periods...</u>"</p> <p>And thereafter that:</p> <p>" It is emphasized that the Steering Committee shall approve the extension of the Term of Lease and the First Term of Lease respectively provided that all of the following</p>	<p>notwithstanding anything stated elsewhere, so in any case the term of both agreement will be extended, if extended together.</p> <p><u>Second Clarification</u> There is no change in the procurement process documents. However, the attention of the Bidders is drawn to the fact that, if the lessee will not give notice to the Lessor, the conditions required for the extension of the Lease Agreement will not be fulfilled. In this situation, the tenant chooses not to request an extension of the rental period and thus leads to non-renewal of the agreement.</p> <p><u>Third Clarification</u> There is no change in the procurement process documents.</p> <p><u>Fourth Clarification</u> The Government Agreements, the Assignment Agreement and the Renovation and Operation Agreement constitute the concession. The concession period is set forth in the Lease Agreement and in the Renovation and Operation Agreement, though it is clarified and emphasized that each agreement has a</p>
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			<p>conditions have been met:" (These are all the conditions specified in subparagraph 7.2.1 – 7.2.4 and amongst them subparagraph 7.2.3 which states as follows: "7.2.3 - The Lessee delivered to the Lessor a written notice regarding its intention to exercise its right and to extend the Term of Lease by the First Additional Term of Lease and the Second Additional Term of Lease until and no later than 12 months prior to expiration of the Term of Lease or the expiration of the First Additional Term of Lease, as the case may be.")</p> <p>Hence an illogical situation may be created in which the State decides to extend the Renovation and Operating Agreement while contemporaneously deciding not to extend the Lease</p>	<p>separate term as specified in each agreement.</p>
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				<p>Agreement, or vice versa, and thus the Developer/Lessee shall be obliged to honor his obligations under the agreement which shall remain in force, while in practice he cannot continue to honor it due to the termination of the other agreement.</p> <p>Moreover, assuming that your intention was indeed to compel the Lessee to give a notice to the Lessor at least 12 months in advance as stated in subparagraph 7.2.3 above, a situation may be created in which the Lessee gave notice of his desire to extend the duration of the lease, the Lease Agreement was then extended accordingly, leaving the Lessee bound once again by the undertakings and obligations in the Lease Agreement with respect to the relevant additional period, and then</p>	
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				<p>approximately half the no. of months later, the State may decide not to exercise the option as stated in paragraph 3.2 of the aforementioned Renovation and Operating Agreement [since in that agreement it is the State which is obliged to give notice to the Developer (the Lessee) 60 days before the contract period is due to expire].</p> <p>Therefore, <u>Firstly</u>, a mechanism must be devised to fully harmonize the extension provisions in the two agreements, so that the option period and the two additional leasing periods (as defined in the aforementioned agreements) shall dovetail with one another and be exercised together and simultaneously, thereby expressly precluding the possibility of one</p>	
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			<p>being exercised and the other not.</p> <p>In this regard it should be noted that, in our humble opinion, paragraphs 2, 7.1 and 7.2 of the Assignment Agreement, which were perhaps supposed to remove misunderstandings in this matter, fail to achieve this objective and do not help to understand the nature of the relationship between all the agreements within the framework of the RFP and in particular between the Lease Agreement and the Renovation and Operating Agreement - We would like a clarification regarding this matter <u>too.</u></p> <p><u>Secondly</u>, given the fact that large financial investments in the premises/facility are required, and having regard to the payment of rent with respect</p>	
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				<p>thereto, it seems that a longer period of time shall be required than the term of lease and the initial contract period (as defined in the aforementioned agreements) in order to enable the Developer to recoup his aforementioned investments, so that should the Lessee/Developer not have the right in his discretion to extend the agreements by the option periods and the two additional lease terms (as defined in the aforementioned agreements) it would not be economically viable from the Lessee's/the Developer's perspective to enter into a contract within the framework of the RFP.</p> <p>The other side of the same coin, is that should the Lessee/the Developer operate</p>	
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				<p>the premises/the facility, during the term of the lease and the initial contract period, in the course of which it was proved that it was not economically feasible to continue doing so, it cannot be right that the State shall have the right to compel the Developer/the Lessee at the end of the lease term and the initial contract period to continue to rent/operate the facility/the site.</p> <p>In the light of the foregoing, we would ask you to determine that the option to extend the lease term and the initial contract period as aforesaid, <u>shall be given to the Lessee/the Developer and not to the Lessor/the State.</u></p> <p><u>Thirdly</u>, we would ask you in addition, to delete paragraphs 7.2.1 and 7.2.2 in the Lease Agreement for the</p>	
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				<p>reason specified above regarding the magnitude of the investment in the premises.</p> <p><u>Fourthly</u>, we would ask you to clarify whether the "Renovation and Operating Agreement" is the "Concession Agreement" (as defined in the Government Decision) and if not we would ask that you clarify and specify which contractual framework constitutes "the Concession Agreement" and what is the duration of the concession according to that contractual framework.</p>	
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Signature + stamp of the bidder _____