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| Purchaser: | Odvoz a likvidácia odpadu a.s., in short: OLO a. s., Ivanská cesta 22, 821 04 Bratislava, Slovak Republic |
| Title of the Tender: | ENGINEERING AND CONSTRUCTION-TECHNOLOGICAL SUPERVISION OF THE MODERNISATION AND ECOLOGISATION OF WEEE |
| Link to the published procurement documents: | https://josephine.proebiz.com/sk/tender/43843/summary |
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| Document: | Explanation of tender documents pursuant to Section 48 of the Public Procurement Act - Round III |
| Processed on: | August 11, 2023 |

Dear Sir or Madam,

Co. OLO, a.s. hereby publishes the answers to the questions received within the deadline for submission of applications for participation.

Question 1:

According to point 5 of Annex 6 of the tender documents (page 15/17), it is necessary for each person whose capacities will be used to demonstrate technical competence or professional competence to demonstrate compliance with the conditions of participation relating to personal capacity (par. 32 of the TPL).

In the case of a legal person, this is clear to us. However, we do not know how to proceed in the case of a natural person (without a trade licence, only a person with a birth number) with whom we would enter into a contract for the performance of work or a contract for the provision of a service in the event of success in the tender. Is it necessary for this person to submit the documents pursuant to Article 32 of the TPL?

Purchaser's reply:

The person through whom the tenderer will prove compliance with the conditions of participation of technical and professional competence may be:

- an individual who is under the employment contract to the tangible capacity regardless of the form of the employment relationship (e.g. fulltime employment, part time employment with the performance agreement, etc.). This relationship **must exist at the time of submission of the application** and throughout the selection procedure (i.e. until the contract is signed). This relationship shall be submitted by an affidavit from the employer (candidate). Since the tenderer's own capacities are involved, it is not necessary to prove the conditions of participation pursuant to Article 32(1) of the Public Procurement Act on behalf of a natural person.
 - o The Purchaser draws the attention of interested parties to the fact that labour relations in Slovak law are regulated by a special legal regulation, namely the Labour Code.

Based on the systematics of legal regulations, the Labour Code is *lex specialis* in relation to the Civil Code, which is *lex generalis*. The Slovak Labour Code (unlike the Czech Code) regulates the types of employment contracts in a mandatory manner. The fact that labour law regulations are essentially mandatory means that the parties to labour relations may conclude contracts (agreements) only with respect to the types of contracts that are regulated by labour law regulations and their contractual freedom applies only where the labour law regulations allow it (e.g. with respect to the determination of the date of commencement of work). The mandatory nature of employment law is based on the principle of 'what is not permitted is prohibited'. This is confirmed by the ruling of the Constitutional Court of the Slovak Republic of 7 July 2006, spi. No. II. Constitutional Court 60/06-26 citation: " ... *in view of the mandatory nature of the norms of the Labour Code, the Constitutional Court is of the opinion that the Regional Court correctly assessed the agreement on the conclusion of a future employment contract as an invalid legal act.*"

- an individual who will participate in the future performance of the contract / cooperate with the prospective service provider. In this case, the candidate shall demonstrate that it will actually have these capacities at its disposal in the performance of the contract on the basis of a valid contract concluded with a natural person pursuant to Act No 40/1964 Coll., the Civil Code, as amended, or a generally binding legal regulation governing private law relations in the country/state of the candidate's domicile. The Purchaser points out that the contract must indicate a specific commitment/object/content of cooperation, a general statement that the parties will cooperate is not sufficient. In such a case, the interested party is obliged to prove in the application for participation that the conditions of participation of a personal status pursuant to Section 32 of the Public Procurement Act are fulfilled to the extent of the facts relating to a natural person (i.e. the facts pursuant to Section 32(1)(a) ('was not he' as a natural person), (b)(c) and (e) of the Public Procurement Act);
- a registered business entity that will participate in the future performance of the contract/cooperate with the candidate in the provision of the service. In this case, the candidate shall demonstrate that it will actually have these capacities at its disposal in the performance of the contract on the basis of a valid contract concluded with a legal entity pursuant to Act No 513/1991 Coll., the Commercial Code, as amended, or a generally binding legal regulation governing commercial relations in the country/state of the candidate's registered office. The Purchaser points out that the contract must indicate a specific obligation/object/content of cooperation, a general statement that the parties will cooperate is not sufficient. In such a case, the candidate is obliged to prove in the application for participation that the conditions for participation of a legal person pursuant to Article 32 of the Public Procurement Act are fulfilled to the extent of the facts relating to a legal person (i.e. the facts pursuant to Article 32(1)(a) to (e) of the Public Procurement Act).

Yours sincerely

Mgr. Adam Kašák

Head of Procurement