

Purchaser:	Odvoz a likvidácia odpadu a.s., in short: OLO a. s., Ivanská cesta 22, 821 04 Bratislava (hereinafter "CA" as contracting authority)
Title of the Tender:	ENGINEERING AND CONSTRUCTION-TECHNOLOGICAL SUPERVISION OF THE MODERNISATION AND ECOLOGISATION OF WEEE
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Processed on:	August 22, 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:

In your answer to question 1 of Explanation 3, you stated that for the purposes of demonstrating compliance with the conditions of participation pursuant to Article 34(1)(g) of the Public Procurement Act, it is possible to demonstrate compliance with this condition of participation by concluding a contract of employment/agreement on work/agreement on the performance of work or other employment relationship.

In this regard, we request you to clarify how the bidder should proceed in demonstrating compliance with the conditions of participation of Section 34(1)(g) of the Public Procurement Act with its own capacities if most of these key experts perform their activities on the basis of specific authorizations/permits/etc.? Is it necessary for the bidder to have all the activities in question (complex architectural and engineering activities/statistics/construction supervision for civil engineering/construction supervision for technical technological and energy equipment of the various types of buildings that are the subject of the contract) registered in the commercial register?

If the tenderer does not have all the activities that are necessary for the performance of the functions of experts in the implementation of the subject of the contract in the commercial register / trade register registered in Slovakia, and with whom he will have concluded employment relationships within the deadline for the submission of tenders, i.e. will prove them as their own capacity, will the contracting authority consider this as non-compliance with the conditions of participation pursuant to § 32 (1) (e) ?

CA reply:

In the context of the question, the contracting authority would like to point out the Methodological Guideline No 6384-5000/2019 of 09.05.2019, which concerns the issue of proving compliance with the participation condition pursuant to Section 32(1)(e) of the Public Procurement Act: *"It follows from the*

provisions of Section 32(2)(e) of the Act that a tenderer or a candidate shall prove compliance with the conditions of participation pursuant to paragraph 1(e) by means of evidence of authorisation to supply goods, carry out construction work or provide a service that corresponds to the subject matter of the procurement contract. As the possibilities and forms of business are governed by other legislative rules (e.g. Commercial Code¹, Trade Licensing Act² ...) the Public Procurement Act does not deal with the issue in more detail.

The contracting authority/entity may specify in the notice of public procurement or in the invitation to tender the scope of the subject of activity which the tenderer or candidate must fulfil in order to prove the participation condition pursuant to Section 32(1)(e) of the Public Procurement Act. The contracting authority/entity shall assess compliance with the participation condition in question in relation to the subject matter of the contract, or according to the scope of the subject matter of the activity specified in the contract notice or the invitation to tender. Pursuant to Article 40(6)(a) of the Act, the contracting authority and the contracting entity shall exclude a candidate or tenderer from the public procurement if it has not fulfilled the conditions of participation.

In general, the tenderer should be entitled to carry out the "essence" of the subject matter of the contract. In the case of a works contract, the tenderer's authorisation to carry out the works should be related to the subject-matter of the contract. The same applies to goods and services. If the subject of the contract is an activity which is regulated, the tenderer should have the relevant authorisation/permit/licence. The remaining 'ancillary' activities can be supplemented and demonstrated e.g. by subcontractors. In order to ensure the possibility of verifying the eligibility of other activities related to the substance of the subject-matter of the contract, the contracting authority/entity is entitled to lay down the relevant conditions of participation of technical and professional competence, to lay down requirements for subcontractors, to request clarification as to the fulfilment of the requirements for the subject-matter of the contract. The contracting authority/entity is also entitled to apply the requirement pursuant to Article 38(4) of the Public Procurement Act. Unless the subject-matter of the contract is an intermediary activity, authorisation to carry out only this type of activity and the subsequent performance of the subject-matter of the contract by subcontractors is not sufficient.

The Procuring Entity considers that the candidate must demonstrate compliance with the participation condition of personal status pursuant to Article 32(1)(e) of the Public Procurement Act in the scope of the main activities to be performed, namely the activities of complex architectural and engineering services and related technical consultancy and construction supervision activities. As these are regulated activities pursuant to Act No 455/1991 Coll. on trade business as amended, the contracting authority considers that their performance is possible only if the conditions laid down by the relevant laws are met.

This means that if the candidate will carry out any of the regulated activities through its own employees or through subcontractors, these activities will be carried out on its behalf and under its responsibility and thus it must have these activities duly registered in the commercial register (it must be duly authorised to carry them out). The contracting authority is of the opinion that a tenderer may not conclude a contract for the performance of the abovementioned tied activities if it is not authorised to carry them out.

In the case of a request for participation submitted by a group of suppliers, this condition of participation shall be assessed in relation to the activities to be carried out by that member of the group of suppliers.

¹ Act No. 513/1991 Coll., the Commercial Code, as amended, which regulates the status of entrepreneurs, commercial obligation relations, as well as some other relations related to business

² The conditions of trade business and control over their observance in the Slovak Republic are regulated by Act No. 455/1991 Coll. on Trade Business (Trade Licensing Act), as amended.

Question 2:

We would like to ask you to extend the deadline for the submission of applications for participation. In view of the ongoing summer holidays, we would like to ask you if it would be possible to extend the deadline for the submission of applications for participation from a minimum of 2 weeks, i.e. until 1.9.2023?

CA reply:

The deadline for submitting the application for participation has been extended to 5.9.2023.

Question 3:

The Contracting Authority has set a condition of participation pursuant to Section 34(1)(g) of the CPLA, which requires, among other things, the **Expert on permitting procedures and legislation in the Slovak Republic** to: Min. 3 references/experiences/projects on complex management of permitting processes under the conditions of the legislation of the Slovak Republic for energy installations with a capacity of more than 1 MW.

We assume that the setting of the participation condition in question was based on an in-depth analysis and without such a requirement restricting competition. We request the contracting authority to clarify the following in relation to the condition for participation thus set out:

- What is the range of experts that meets this requirement?
- For what reason the contracting authority has established such a high number of references of permitting processes in the conditions of the legislation of the Slovak Republic for energy installations with a capacity of over 1 MW,
- Why are such demanding requirements set out in the conditions of participation if the contracting authority could have easily used the number of experience as a qualitative requirement in the evaluation of the criterion and at the same time not restrict competition?

CA reply:

The setting of this condition for participation was based on the need to have an expert with experience in energy permitting processes, especially for installations with a capacity of more than 1 MW, as these processes will be crucial for the smooth progress of the project and the achievement of the objective pursued. Co. OLO, a.s. does not have in its capacity staff/experts who have experience in permitting processes to the extent that will be required for this project.

The exercise of this profession or activity is not regulated in the Slovak Republic, therefore it is not possible to objectively specify the range of experts who meet this condition. In terms of the requirement for the performance of installations above 1 MW, the differences in permitting procedures for installations with a capacity of less than 1 MW were taken into account.

Spol. OLO, a.s. has decided, on the basis of the question raised and in particular with a view to simplifying the qualification of suppliers, to move this expert to the group of experts whose experience/experience will be demonstrated after the signing of the contract in accordance with the terms and conditions set out in the contract. At the same time, the company will be required to provide the following OLO, a.s. proceeded to modify the requirements for this expert as follows:

<p>Expert on permitting procedures and legislation in the Slovak Republic</p>	<p>Min. 3 references/experiences/projects on complex management of permitting processes under the conditions of the legislation of the Slovak Republic, of which at least 1 experience must include a permitting process that included obtaining a certificate for the construction of an energy facility pursuant to Section 12 of Act No. 251/2012 Coll. on energy and on amendment and supplementation of certain acts, as amended.</p> <p>Complex management means representing the investor before the relevant authorities (communicating with the administrative authorities on behalf of the applicant) throughout the permitting process (e.g. EIA, UR, SP). Experience of representing the investor in the building approval process (Decision on the use of the building) will not be accepted, as this is considerably simpler than the key permitting processes that the provider will be providing and which are key to achieving the objective pursued.</p>	<p>This is demonstrated by the submission of a CV and 3 reference letters (without the purchaser's endorsement) with the necessary information (details of the work activity for the job and contact details of the person who will confirm the information).</p>
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Documents modified as a result of this clarification:

- Annex 6 of the Tender Documents - Conditions of Participation
- Annex 3 of the Contract - List of Key Persons

Sincerely

Mgr. Adam Kašák

Head of Procurement