

Contracting authority:	Odvoz a likvidácia odpadu a.s., in short: OLO a. s., Ivanská cesta 22, 821 04 Bratislava (hereinafter "CA" od „Co. OLO, a.s.“)
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 - No.VI
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Hello,

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

Question 1:

After reviewing the tender documents and the published responses, we would like to ask you to add to the tender documents a list of activities to be performed by the individual expert for the following reasons:

- the subject of the contract is mainly the preparation of project documentation and the performance of technical supervision - it is not clear to us why a member of the implementation team is mentioned in the experts, similarly, we do not understand why you have admitted the expert Expert on mechanical engineering and technological processes to demonstrate experience in the function of Technical Director. The term member of the implementation team can also mean that the expert has worked for a construction contractor and does not need to have any experience in design and technical supervision, the same applies to the position of Technical Director, so for the correct selection of the expert, it is necessary to know the activities expected by the contracting authority from the expert in question,
- the expert is to submit a letter of reference where a detailed description is to be given in the project description so that it is possible to have an idea, among other things, of the competences of the expert, so that for the correct selection of the expert it is necessary to know the activities that the contracting authority expects from the expert in question.

Our company has been involved in constructions of this nature for a long time and therefore we would like to provide you with the following table, which represents our division of experts into individual phases of the project.

Design phase/preparation of project documentation for planning permission	Preparatory phase of construction implementation/Participation in the public procurement for the selection of the general	Implementation phase/performance of technical supervision
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	contractor and preparation of tender documentation	
Chief Project Engineer	All experts from the design phase and the implementation phase	Expert in Quality
Deputy Chief Engineer of the project		HSE expert
Expert in complex architectural and engineering construction		Expert in welding technology
Expert in statics of buildings and structures		Construction supervision
Expert in ground infrastructure construction		Machine supervision
Expert		Electrical supervision
Expert for technical, technological and energy equipment of buildings		I&C surveillance
Boiler Technology Expert		Quality controller for the construction part
Expert in machinery and technological processes		Machine Part Quality Controller
Expert for flue gas cleaning processes		Electrical and I&C Quality Controller
Expert in electrical and power engineering		Quality controller of dedicated technical equipment
MAR expert (I&C)		Expert in functional testing, commissioning and operation of complex power units
Expert on permit procedures and legislation		All experts from the design phase for the purpose of approving the design documentation prepared by the contractor

The above table shows us that it is mainly about designers and experts carrying out technical supervision and for a correct and clear understanding of the conditions of participation - the requirements of the experts, it is essential to know the list of activities to be carried out by the individual expert. For all the experts, implementation is mentioned - this may also mean that the expert has worked for the

construction contractor and does not need to have any experience in design and technical supervision. For the purpose of clarity of the tender documents, it is essential to have a list of the activities to be carried out by the individual expert.

CA's reply:

In parallel with this explanation, the contracting authority publishes a document "**Explanation of the role and competences of individual experts demonstrating compliance with the conditions of participation pursuant to Section 34(1)(g) of the Public Procurement Act**", which describes the roles, competences and expectations (activities that the contracting authority expects the contracting authority to provide) of the expert concerned. Where a relevant authorisation is required in terms of the activities expected, it will be checked during the performance of the contract with the persons actually carrying out the activity in question. For the sake of a clear interpretation of the contract and of the contractual condition relating to the performance of the activities by authorised persons, the company shall not be obliged to provide the following OLO, a.s. modifies the draft contract in Article VII(7.1)(e). **Since this modification, the company has not made any changes. OLO, a.s. will not deviate from this modification during the negotiations on the terms of the contract** (i.e. OLO, a.s. will insist that during the performance of the contract the provider submit the relevant authorisations for the performance of the activities of the persons who, according to the relevant legislation, must have the relevant authorisation to perform the activities in question).

As can be seen from the explanation of roles and competences, the experts whose qualification/experience is a condition for participation represent the so-called leadership team for the respective areas. They are neither members of the design team nor members of the construction supervision team. It is a leadership team, which, in terms of the project structure, will include designers, construction supervisors and other persons identified by the provider itself and perceived by the provider as necessary to ensure performance within the scope of the activities specified in the contract description. The team leader will be the Co. OLO, a.s. as the contractor, will be responsible for the smooth and professional provision of the activities. Therefore, in terms of previous experience of the experts concerned, experience in both design and implementation or construction supervision is admissible. The purpose of the verification of experience is to demonstrate that the expert/leader has experience in the field of thermal energy construction or construction of WECS and is therefore presumed/reasonably expected to understand the field and to be able to lead and supervise the experts who will be providing the design activity or checking the submittals from the general contractor or the performance of the construction supervision. Where appropriate authorisation is required in terms of the activities expected, this will be checked during the performance of the contract with the persons actually carrying out the activity.

Spol. OLO, a.s. does not exclude filling the position of an expert in a given area by a person possessing a professional authorization, even if it is not required under the description. However, this is a free decision of the candidate.

Question 2:

It is clear from the tender documents and the published responses that the submission of a certificate of competence for the expert is not required. The following justification is provided in the published responses:

In accordance with the draft contract Article VII Rights and Obligations of the Parties, point 7.1 (d) and (e), by signing the contract, the future provider declares/confirms, undertakes/guarantees that:

(d) "possesses sufficient / appropriate professional / specialist skills / knowledge and capacity (including Key Persons) necessary for the proper provision / performance of the Services / activities under this

Contract, including in relation to its demonstrated technical / professional competence and capacity under the RFP (Key Persons);

(e) has all necessary authorisations/permits for the purpose of proper provision/performance of the Services/activities."

In view of the objective pursued by this contract, which is clearly described in the Tender documents and their annexes, and on which the draft contract is based, it is clear that the performance of the contract must be carried out by persons possessing the appropriate authorisations. The fact that the contracting authority does not require the submission of the relevant qualifications of key experts as part of the minimum level of technical and professional competence required to fulfil the conditions of participation does not call this into question. There is nothing to prevent the fulfilment of the contractual obligation in question from being verified during the performance of the contract.

We wish to bring to the attention of the Contracting Authority that the above declaration by the Bidder that it possesses all the necessary authorisations / permits for the purpose of proper provision / performance of the Services / activities does not apply to the professionals - this declaration applies to the Bidder itself. The requirement of authorization for the expert is also important for the clarity of the tender documents to avoid different interpretations of the tender documents or the contract during the execution of the work. We request the contracting authority to explain/justify in technical terms why it does not require the submission of authorisations for experts.

CA's reply:

See the answer to question 1 and the description of the roles and responsibilities of the experts concerned.

Question 3:

It is clear from the tender documents that other construction - *or responsible for the operation of an industrial chemical / petrochemical / metallurgical / metallurgical / technology, which includes at least 2 combustion boilers in continuous operation,* is admissible for the Expert for the machinery and technological processes. We do not understand why only this expert allowed other constructions and not others and yet it can be said that there are similar processes in the petrochemical and metallurgical industries. We request the contracting authority to explain/justify in technical terms why it has allowed other constructions by the expert in question and not by others.

CA reply:

The applicant misunderstood the alternative requirement of the gifted expert. The alternative is to accept experience as an Operations Director in companies in the field, as this position requires direct responsibility and knowledge of technological processes and experience in managing responsible professionals.

At the same time, the Contracting Authority wishes to note that it does not define in the requirements for experts the type of construction or the field of industry in which the experience is to be acquired (with the exception of this alternative for the Expert on Machinery and Technological Processes). The procuring entity has clearly stated the requirement for experience in the field of power equipment, clearly defining what is meant by power equipment.

The issue of acceptance/admissibility of other areas and the risks associated with this has been the subject of pre-market consultation. Any of the interested parties, including the questioner, could participate and make such a comment and subsequently discuss the reasons for proposing alternative areas or alternative experiences of the experts Interested parties who took this opportunity drew the attention of the Co. OLO, Inc. on the experience of experts/job positions (in particular the admissibility

of experience as Operations Director in manufacturing companies) where they did not consider it appropriate and explained this recommendation. As the Co. OLO, a.s. stated in the minutes of the market consultation, where it considered it appropriate, it accepted alternative experience (experience as an operations director). At the same time, the wording of the Conditions of Participation does not imply a requirement for experience/experience gained on a certain type of construction or industrial field. Experience in the field of energy equipment is required, pursuant to Section 2(b) of Act No 251/2012 Coll. on energy or Section 2(a) and (c) of Act No 657/2004 Coll. on thermal energy.

In this context, to close the discussion on the relevant practice of the experts of Co. OLO, a.s. proceeds to modify the definition of the term "energy equipment", due to the relevance of this term to the pursued objective, which is the modernization and greening of energy equipment of a significant nature. Therefore, experience/practice in relation to gas installations, fuel or oil pipelines and LPG distribution facilities is not relevant.

Modified definition of the term "energy facility": for the purposes of this condition of participation, an energy facility/energy units shall be understood as an electricity facility, pursuant to Section 2(b) of the first and ninth points of Act No 251/2012 Coll. on energy and on amendment and supplementation of certain acts, as currently in force, or an energy installation in the heating sector pursuant to Section 2(a) and (c) of Act No 657/2004 Coll. on thermal energy and on amendment and supplementation of certain acts, as currently in force.

Spol. OLO, a.s. would like to emphasize that, according to its articles of incorporation, it is a company engaged in waste collection and recovery. Internally, it does not have capacity /experts in the field of machinery or boilers, or structural engineers or other experts whose experience is a condition of participation. This means that it does not have in-house professional capacities to be an expert interlocutor for discussions during the execution of the contract, for suggestions for solutions to situations arising, or who would professionally supervise the provision of the service. Since the main objective of the project is to upgrade the WEPP (install a new boiler and upgrade the existing two boilers) and to increase the production of electricity and heat, with full or limited operation of the WEPP, the Co. OLO, a.s. perceives real risks associated with achieving the objective.

A waste-to-energy facility is an energy facility by nature. In such a plant, the energy obtained from the exothermic reaction of the combustion process is used to produce heat in the form of hot steam, which is transformed in further processes into electricity for the distribution network and into hot water for the district heating system (hereafter SCZT). These networks are external to the management of the plant and its operator. Therefore, the nature of the boiler, the heat exchangers, the turbo-generator, the water management and the entire connection to the electricity grid and the SCZT must be adapted and optimised in view of their close cascading relationship and the strict requirements of the criteria of the distribution networks. However, in the case of the metallurgical and petrochemical industries, where despite the combustion reactions taking place in boilers or metallurgical furnaces, the energy obtained from these processes is only used in the form of thermal energy. This is subsequently used only for internal industrial and chemical processes and not for generating electricity for the distribution grid or hot water for the SCZT. The only link between these industries is the existence of the combustion plant. However, even the primary purpose of the WECS is already diametrically opposed, not to mention all the other equipment that is not or only minimally used in the above industries. However, the CA is aware of the existence of various energy installations, of the nature of a 'power plant or heating plant', which are operated in plants in the metallurgical, pre-chemical or other industries. Where such plants have, as part of their operation, energy installations whose purpose is to generate and distribute electricity, heat or steam to the relevant networks, such references will be duly acknowledged by the contracting authority, since they are installations meeting the definition of energy installations within the meaning of the competition conditions.

Another important point is the specificity of waste-to-energy plants from the point of view of the energy industry. Unlike other energy sources, WEEE works with heterogeneous fuel whose composition and

structure, and therefore its calorific value, varies on a daily to sometimes hourly basis. These changes consequently affect the operation of the entire plant and increase the demands on each facility. An example is flue gas cleaning technology, which must be adapted to the regularly changing fuel component, on which the composition and concentration of pollutants present in the flue gas stream directly depend. The metallurgical and petrochemical industries mentioned above work only with a homogeneous component of a certain type of fuel, or with a known proportion of several types of fuel. Therefore, the requirements for the required technology, and the understanding of the functionality and interdependence of this technology, are diametrically opposed.

It is for this reason that, if the experience from other areas does not reflect the risks associated with electricity and heat generation (the energy part of the WEO), the Co. OLO, a.s. has set as a requirement for the selected experts to have experience in the field of energy equipment. It is precisely for the reason that spol. OLO, a.s. does not have the capacity to second/replace this lack of experience of the expert in question. In the case of positions where the connection with the energy part is minimal, or the impact / result of the activities of the expert and his subordinate experts, on the energy part of ZEVO, spol. OLO, a.s. admits experience from other areas.

In conclusion, Co. OLO, a.s. respectfully and sincerely asks that interested parties accept the following facts and requirements for experience in the field of power equipment from relevant experts. In case the interested party considers that it is reasonable to take into account experience in other fields for this or that expert, it is necessary to specify in the question the expert for whom this is reasonable and at the same time to describe in detail why this is reasonable. Otherwise, it is a general question that cannot be answered specifically because it is not clear what is being asked.

Question 4:

In the published answers concerning the Expert on permitting procedures and legislation in the Slovak Republic, you used the following arguments to explain the condition of demonstrating experience in managing administrative proceedings only for "energy installations with a capacity of more than 1 MW", regardless of the type of administrative proceedings (e.g. EIA, or zoning, construction, building permitting proceedings):

1. representation of spol. OLO, a.s. in the permitting process - the procedure for the issuance of a zoning decision,
2. controlling and representing the company. OLO, a.s. also in the following permitting procedures,
3. specificity of permitting processes for energy constructions above 1 MW, e.g. different administrative authority, different scope of authorities concerned, etc.,
4. specifics of modernisation and greening of ZEVO.

1) How is the difference in the representation of the applicant in the zoning proceedings, depending on the applicant's business, so significant that the pool of applicants is so limited? In what way is the representation of the Co. OLO, a.s. specific in the process of zoning proceedings compared to the representation of another company? For the sake of completeness, we would like to point out that the zoning decision, as one of the instruments of zoning planning within the meaning of Act No. 50/1976 Coll. on spatial planning and building regulations (Building Act) is always issued by the general building authority, so we do not register any potential specificity here on the grounds of a special building authority. And even if hypothetically there is a potential specificity, why is it possible to prove compliance with the conditions by providing 3 references from the approval procedure? What does the approval procedure have to do with the (potential) specificity of the planning procedure dependent on the object of the claimant's activity?

2) In the case of representation of the builder (OLO, a.s.) in the following proceedings, the issues from point 1 apply accordingly. i.e., what is the essential specificity of the representation of the builder in the construction proceedings, depending on the subject of the activity as well as on the energy performance, so significant that it is necessary to limit the range of bidders in this way? Further, you cite as an argument "controlling Co. OLO, a.s. also in subsequent permitting procedures"; what will the control of the builder OLO, a.s. in the construction procedure consist of if the provider is to represent it?

3) What is the fundamental difference between the permitting process for power construction and other civil engineering structures permitted by other special construction authorities? What is the specificity of permitting processes above 1 MW, when the limits set out in Act No 24/2006 Coll. on environmental impact assessment and on amendment and supplementation of certain acts do not recognise such an interface? (NB: we are aware of the 1 MW interface from the point of view of the provisions of Act No 251/2012 Coll. on energy in the context of the authorisation of the energy business or the construction of an energy facility as well as the market income ceiling or the measurement of electricity consumption at the terminals, but this has nothing to do with the permitting processes) The administrative authorities conduct the proceedings in accordance with the Administrative Procedure Code, unless the lex specialis defines a different process. You argue for a different administrative authority, but that does not depend on the subject matter of the builder's activity, but on the nature of the construction and its local and subject matter jurisdiction. The same is true of the authorities concerned, which are affected by the purpose of the construction and/or the subject matter of the proceedings and not by the subject matter of the builder's activity. Permitting processes for other types of civil engineering constructions, such as linear constructions of motorways or railways, although Act No. 39/2013 Coll. on Integrated Pollution Prevention and Control and on Amendments and Additions thereto, are no less demanding than the permitting of constructions for disposal or recovery of waste or other energy use thereof.

4) What is the fundamental specificity of representing the proponent in the EIA and planning proceedings or the builder in the construction and approval proceedings for the "upgrading and greening of the WEWTP" as compared to other complex engineering structures? Not to mention that the type of proceedings is not relevant for the contracting authority, i.e. it is sufficient to demonstrate representation in 3 approval proceedings, which are by their nature incomparable to EIA processes or complex construction and related other proceedings.

CA's reply:

The procuring entity has modified the requirements for this expert to allow for the demonstration of the expert's experience from other construction permitting processes. The contracting authority has achieved the objective pursued by the applicant by the change it has made and therefore considers that the questions have been answered.

Question 5:

We request the CA to indicate the planned amount of investment costs that the investor plans to incur in the implementation of the construction works for the project Modernization and Greening of the WEEE.

CA's reply:

The contracting authority has a 2021 study which estimated the cost at EUR 110 million. Currently, the costs are expected to be considerably higher (somewhere around EUR 150 million), but these are only expert internal estimates of the persons involved. The contracting authority does not have an up-to-date qualified estimate based on the relevant evidence and the corresponding choice of technologies and any induced investments. Therefore, it is part of the tasks of the future provider to process a qualified investment estimate (resulting from the Concept for the modernisation and greening of the WEEE) as part of the documentation for the planning decision.

Question 6

Dear CA Usually the month of August represents the holiday period in every company and at the same time the beginning of September represents the beginning of the school year, therefore we kindly ask you to postpone the deadline for submission of tenders and applications for participation until at least 20.9.2023. We also make the above request in the context that we are a foreign company, which has to study the extensive documents published by you in a foreign language, and the same applies to the publication of the questions and answers, which are published continuously (i.e. In our case, it is necessary to translate the documents into Polish in order to understand them properly).

CA's reply:

The launch of this procurement was preceded by a preparatory market consultation, which was announced by publication of a preliminary notice in OJ C 241, 30.12.2006, p. 1. Bulletin of the EU on 05.04.2023. As stated in the prior notification, the original planned date of contract award was 11.05.2023.

On 21.07.2023 was in Úr. 20.07.20. the contract notice was published in the EU Bulletin and from this date all the documents and relevant documents for this contract are also published. This means that the contract notice itself was issued during the holiday period, both on the part of the tenderers and the contracting authority. Therefore, this fact, as well as the start of the school year, does not constitute an objective reason to postpone the deadline for the submission of the request to participate.

To facilitate the access of foreign companies spol. OLO, a.s. voluntarily publishes all documents also in English. If an interested party needs a translation of these documents into another language for internal reasons, this is an internal need of the interested party, which spol. OLO, a.s. cannot take into account individually when setting the deadline for submitting the application for participation.

At the same time, it should be stressed that at this stage only documents demonstrating compliance with the conditions for participation are submitted, neither price proposals nor other documents related to the evaluation of the provision of the service are submitted.

Question 7:

Dear CA, the subject of this procurement is the preparation of project documentation, technical assistance in the selection of the contractor and the performance of construction supervision activities. We do not understand on what basis the VO allows, as part of the conditions of participation, the submission of a reference for the bidder as implementation or commissioning. These activities are carried out by the contractor of the construction and technological works. On the basis of the above, we request to align the conditions of participation with the subject of the contract. Also, we do not understand why the contracting authority requires 2 stages of project documentation from the tenderer if the subject of the service is the preparation of documentation for planning permission. We ask the Tenderer to justify the reasonableness of the above requirement.

CA's reply:

The task of the successful bidder will be to prepare the documentation for the planning decision. At the same time, the successful bidder will also be required to prepare an analysis of the legislative obligations related to the construction (a list of all necessary permits, notifications, decisions, certificates, applications, opinions, statements, expert opinions, etc.). The successful bidder will also represent the company in the preparation of the planning permission. OLO, a.s. in communication with authorities, state administration bodies, the city, the municipality and third parties in the process of obtaining the necessary permits, notifications, applications, certificates (e.g. certificate for the construction of energy equipment), decisions (e.g. decision on the location of the construction), statements, opinions, consents,

expert opinions in all phases of the project (listed in the Description of the subject of the contract). The successful Bidder's experts (or their subordinates) will review the processed documentation and submittals that the General Contractor will submit and will also review the timely and thorough processing of the necessary documents for the subsequent permitting processes, as the successful Bidder (its designated expert) will be responsible for their timely submittal (if it has the submittals on time). Therefore, the contracting authority considers the requirement for experience in preparing at least 2 stages of project documentation to be reasonable and appropriate.

In relation to the alternative experience in the implementation or commissioning of technologies, the procuring entity states that it was not referring to experience in the execution of civil works, but to experience/execution in the installation and commissioning of energy technology units. In order to avoid misinterpretation, **the contracting authority adds a clarification to the conditions of participation according to** which the tenderer shall demonstrate that it has implemented and commissioned the technologies in question in accordance with the requirements set out (the alternative of experience in design and construction supervision remains unchanged). Experience in the execution of related construction work will not be recognised, but **direct experience in the installation and commissioning of technological units**.

With regard to the appropriateness of the participation condition, the contracting authority states that its objective is to select a technically capable contractor with a team of experts who will be leaders in their field of responsibility. The project as a whole involves the selection, installation and commissioning of a number of complex and interconnected technological units. Therefore, the contracting authority considers it relevant to take into account the experience of companies in the installation and commissioning of technological units in the energy sector when selecting a service provider within the scope of the scope of the contract description.

Documents edited in consistency to this explanation:

- Annex 1 of the Tender Documents - Service Contract
- Annex 6 of the Tender Documents - Conditions of Participation

Documents related to this explanation:

- Explanation of the role and competences of individual experts demonstrating compliance with the conditions of participation pursuant to Article 34(1)(g) of the Public Procurement Act

In the context of the modifications / clarifications made to the definitions, the deadline for the submission of applications for participation will be postpone.

Sincerely

v. r.

Mgr. Adam Kašák
Head of Procurement