

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:	<b>ENGINEERING AND CONSTRUCTION-TECHNOLOGICAL SUPERVISION OF THE MODERNISATION AND ECOLOGISATION OF WEEE</b>
Link to the published procurement documents:	<a href="https://josephine.proebiz.com/sk/tender/43843/summary">https://josephine.proebiz.com/sk/tender/43843/summary</a>
Published in:	Official Journal of the EU No 2023/S 139 of 21.07.2023 under No 443726 Bulletin of the Office for Competition No 144/2023 of 24.07.2023 under No 24333 - MRS
Document:	Explanation of tender documents pursuant to Section 48 of the Public Procurement Act - No.VIII
Processed on:	August 31, 2023

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

#### Question 1:

We request the CA to justify the appropriateness of the evaluation of tenders in the section on the evaluation of the experience of experts, as in our view it does not reflect the actual experience of the expert. As evidence, we submit the following:

E.g., for a Principal Engineer, you evaluate the following:

- Replacement / installation of new or reconstruction of existing technological units of energy installations for the production of electricity or heat from the combustion of waste, fossil fuels or nuclear fission reactions with an hourly output of more than 5 MW
- Replacement / installation of new or reconstruction of existing technological units of WEEE facilities with a minimum capacity of 80 000 t of waste per year
- Replacement / installation of new or reconstruction of existing technological equipment required a change in the original standard functional processes of the other equipment (technological need for process modification) and / or a change in the organisation of work on the other equipment

From the evaluation defined in this way, a more experienced expert for the EO is one who, for example, has worked on the replacement/installation of new or reconstruction of existing technological units of energy equipment, regardless of the financial volume involved (i.e., it could also be a value of 100.000,- EUR) and has 5 references (it can happen that it is the same construction only the new or reconstructed technological equipment has been gradually replaced/installed over the years) than an expert who has only 3 references but with the construction of new technological units of energy facilities or WEEE with an investment cost of e.g. 30 million EUR (e.g. construction of a new waste incineration plant).

The evaluation for each expert is similar, and our model above holds for each expert. Therefore, we ask (*candidate did not complete the question*)

## CA's reply:

According to Annex 3 of the Tender documentation Criteria for evaluation of tenders:

*"The assessed experience of the Qualitatively Assessed Key Experts described in the Reference Letters **must meet all of the following requirements** (these are minimum qualitative requirements which, if not met, the experience of the expert will not be admitted to the qualitative assessment and the applicant will be awarded 0 points for the experience of the expert):*

- a) *In the case of the experience of the Principal Project Engineer and Deputy Principal Project Engineer, both must demonstrate (individually, not collectively):*
  - i. ***In at least 2 of the projects/projects*** on which the assessed experience has been gained, the amount of the investment costs has been demonstrably **higher than EUR 5.000.000 excluding VAT (in case of other currency, see EUR conversion rules below);**
- b) *In the case of the boiler technology expert, the flue gas cleaning process expert and the machinery and process expert, each expert must demonstrate:*
  - i. ***in at least 1 of the projects/works*** on which the assessed experience has been gained, the amount of the investment costs has been demonstrably **higher than EUR 5,000,000 excluding VAT (in case of other currency, see the EUR conversion rules below)."**

The situation described by the applicant is therefore not true, since the tax experts with 5 or 3 experiences with an investment value of EUR 100.000 excluding VAT would have received 0 points for the qualitative assessment of their experience as described above.

In relation to the determination of this condition, the contracting authority states that the originally envisaged conditions of participation of the experts concerned (published in the first stage of the pre-market consultation) should have taken into account experience also on works with a minimum investment value (as a condition of participation, not as a criterion). In the discussions on the appropriateness of the conditions of participation in the pre-market consultation (Phase II), it emerged (it was argued to the contracting authority) that for energy/technology units, the investment value may not always reflect the difficulty and complexity of the experience/project (specifically, one participant said, quote, *"We had a €1 million project that was significantly more difficult than a €5 million or €10 million construction project."*).

For this reason, the minimum qualitative experience requirement for key experts has been set as above, i.e. to take into account to some extent experience on a project with a minimum investment value, but not the full range of experience assessed.

## Question 2:

We request the Tenderer to justify the adequacy of the evaluation of tenders in the section on evaluation of experience of experts, as the following experts are allowed to replace/replace new or refurbish existing technological units of energy equipment, regardless of the technology involved.

- Boiler technology expert
- Expert for flue gas cleaning processes

For the boiler technology expert, it is listed as an evaluation criterion:

- Replacement / installation of new or reconstruction of existing technological units of energy installations for the production of electricity or heat from the combustion of waste or solid fossil fuels with an hourly output of more than 5 MW

- Replacement / installation of new or reconstruction of existing technological units of WEEE facilities with a minimum capacity of 80 000 t of waste per year
- Replacement / installation of new or reconstruction of existing technological equipment required a change in the original standard functional processes of the other equipment (technological need for process modification) and / or a change in the organisation of work on the other equipment

The text does not imply at all that these are to be boiler technology only, whereas the VO requires experience in a position responsible for boiler technology for this expert.

For the flue gas cleaning process expert, it is listed as an assessment criterion:

- Replacement / installation of new or reconstruction of existing technological units of energy installations for the production of electricity or heat from the combustion of waste or solid fossil fuels with an hourly output of more than 5 MW
- Replacement / installation of new or reconstruction of existing technological units of WEEE facilities with a minimum capacity of 80 000 t of waste per year
- Replacement / installation of new or reconstruction of existing technological equipment required a change in the original standard functional processes of the other equipment (technological need for process modification) and / or a change in the organisation of work on the other equipment

The text does not imply at all that these are to be flue gas cleaning technologies only, whereas the VO requires this expert to have experience in a position responsible for flue gas cleaning technology.

#### CA's reply:

According to Annex 3 of the Tender Evaluation Criteria of the Tender Documents, for the assessment of the experience in question, *'it is required that the key professional in question has satisfactorily completed the task for which he/she was responsible (satisfactory completion of the task shall be certified by the purchaser who took over the task)'*. It follows from the above that the key expert in question must have actively participated in the reference experience and completed the task assigned.

In view of the stated assessed aspect, which is:

- Replacement/installation of new or reconstruction of existing technological units of energy installations for the production of electricity or heat from the combustion of waste, fossil fuels (and in the case of an expert on the mechanical part and technological processes, experience is also accepted on a project for the production of electricity or heat by nuclear fission reaction) with an hourly output of more than 5 MW, and
- Replacement/installation of new or reconstruction of existing technological units of WEEE facilities with a minimum capacity of 80 000 t of waste per year,

and in the context of the conditions of participation set for the experts concerned:

- Expert in boiler technology: Min. 10 years (120 months) of experience in a position responsible for boiler technology in construction/retrofit projects of power plant process units or WEEE;
- Expert for mechanical and technological processes: min. 10 years (120 months) experience in the position responsible for mechanical and technological processes (except for boiler or flue gas technology), in projects for the construction/reconstruction of technological units of energy facilities or WEEE, or min. 10 years (120 months) experience in the position responsible for boiler technology in projects for the construction/reconstruction of technological units of energy facilities or WEEE;
- Expert on flue gas cleaning processes: min. 10 years (120 months) of experience in a position responsible for flue gas cleaning processes in projects for the construction/reconstruction of process units of power plants or WEEE

my company. OLO, a.s. considers that it logically follows that the expert in question, who has ten years of experience in the field of boiler technology / flue gas cleaning technology / machinery and

technological processes, has actively participated in the evaluated experience / has held tasks related to his specialisation. Therefore, even though the investment objective may not have been exclusively the replacement / installation of a new boiler / flue gas cleaning technology / machinery or partial technological processes, the expert in question was involved in tasks corresponding to his specialisation, then logically the renovation / investment project in question must also have had an impact on these processes. Otherwise, the expert would not have participated in the project as his specialisation would not have been necessary.

Co. OLO, a.s. does not consider it objectively correct and fair to list the specific types of technologies that were to be installed or subject to reconstruction, because during their professional practice the tax experts may have worked on different energy projects with different investment objectives, where there were different technologies of electricity or heat production with different impact on boiler technology / flue gas cleaning technology / machinery and technological processes. At the same time, it is assumed that if someone specialises in a certain area (specialisation is based on ten years of experience as an expert in that area), then they logically have roles on projects related to their specialisation.

For the avoidance of doubt in the qualitative evaluation of the tender, the Contracting Authority adds to Annex 3 of the Tender Documents: Criteria for the evaluation of tenders, the condition that the experience evaluated must be in the area of specialisation of the expert (i.e. the boiler technology expert must submit experience where he/she has held a position responsible for boiler technology, etc.).

- In relation to the third aspect:
- *Replacement / installation of new or reconstruction of existing technological equipment required a change in the original standard functional processes of the other equipment (technological need for process modification) and/or a change in the organisation of work on the other equipment)*

the essence of this aspect is whether or not the replacement/refitting of new technologies or the refurbishment of existing technologies has had an impact on the normal operation of the energy facility. Thus, for this aspect, it is relevant that the project in which the experts concerned participated had itself an impact on operations, as they had to take this fact into account in the performance of their task.

### **Question 3:**

We request the EAC to justify the appropriateness of the scoring in the key experts interview as the entire sheet (Annex 5 of the Tender Documents) is subjective in nature.

### **Answer from the contracting authority:**

The interview sub-criterion is inherently a subjective criterion. The Public Procurement Act and the professional literature do not exclude the use of subjective criteria, which is also confirmed by the practice in Western EU countries (especially the Netherlands, but also the Czech Republic), but also by the practice in Slovakia.

The aspects pursued by the interview with the key person - the Chief Engineer of the project, who acts as the responsible technical director of the project throughout the project, are considered by the contracting authority to be relevant and reasonable, and therefore the contracting authority has decided to apply this sub-criterion in order to identify the following relevant characteristics of the key person.

At the same time, the contracting authority shall take certain measures to substantially narrow the degree of subjectivity of this sub-criterion, namely:

- points are allocated by the subcommittee (voting members) as a whole, not individually by each member of the subcommittee, thus avoiding individual motives of individual members and making voting more objective (the subcommittee as a whole must justify the amount of points it allocates);
- the Sub-Committee (voting members) will not know the identity of the Bidder on whose behalf the Principal Project Engineer will be acting (they will know the identity of the Principal Project Engineer, but not on whose behalf the Bidder is acting). This will be ensured by appointing a sub-committee to evaluate the interviews for the purpose of assessing this criterion. It will not evaluate, and will not have access to, any documents from the tenderer's tender other than the CV of the Principal Project Engineer (if the information contained therein enables the tenderer to be identified, it will be blacked out for the purposes of the interview). The Sub-Commission will not know how many points the tenderer scored on the other criteria, nor the price differences between the tenderers. In terms of the process of evaluation of the final tenders, the Sub-Commission (the voting members of the Sub-Commission) will not have any information on the progress of the evaluation of the tenders submitted;
- the specific questions to be asked will be given to the members of the Sub-Commission two hours before the first interview. In the meantime, the questions will be in a sealed envelope (the notary will certify that the envelope has been sealed) and will be prepared by a maximum of three persons before the final tenders are submitted;
- the Sub-Commission will be provided with a statute for the organisation of the interviews, according to which the interview will be conducted and questions, if any, will be asked, with sub-questions following the answers;
- The scoring sheet that the panel will complete is publicly available so all candidates are aware of what qualities will be scored in the interview;
- the interview will be audio-visually recorded and the recording will be part of the documentation;
- the overall score that can be obtained for this sub-criterion is not significant (only 10 points) and so it cannot be assumed that a substantial score difference could be made up.

Abroad, this sub-criterion is seen by contractors as an opportunity to demonstrate to the Commission the quality of their services, their interest in implementation. Through this criterion, it is possible to see how the tenderer or the key person chosen by the tenderer to perform the subject of the contract really cares about the successful implementation, how motivated he is, how he communicates, how he approaches risk situations that may arise during the implementation. Applicants have a scoring sheet so they know what qualities will be monitored by the questions. The contracting authority, therefore, also in view of the measures taken and the objective pursued, which the Principal Project Engineer is expected to achieve, considers this criterion to be appropriate and justified.

#### **Question 4:**

Dear VO, do we understand correctly that in the context of Annex 3 of the Tender Documents - Tender Evaluation Criteria, in the formula in paragraph 1.4, where the value "max" - is the maximum allowable price, does VO mean the price of the PHZ ?

#### **CA's reply:**

No. The maximum admissible price is 1,3 times the estimated contract value (see Tender documentation, point 14.8 of the Tender documentation).

#### **Question 5:**

Dear VO, do we understand correctly that under Schedule 6 of the Construction Manager Services and Activities Contract - Calculation of discount on Provider's remuneration in case of change in the qualitatively rated Key Person(s), in the formula in clause 2, where the value of "max" - is the maximum allowable price under the VO, does the VO mean the price of the successful bidder?

#### **CA's reply:**

No. The maximum admissible price is 1,3 times the estimated contract value (see Tender documentation, point 14.8 of the Tender documentation). This is a reverse formula, i.e. the variables are the same as in the formula used to evaluate the tenders.

#### **Question 6**

Do we understand correctly that, in the case of a supplier group as a bidder, if one member of the supplier group satisfies INDEX condition N05, the supplier group is deemed to have satisfied the condition (i.e., it is sufficient for one member of the supplier group to satisfy the condition)?

#### **CA's reply:**

Yes, in the case of a condition of participation relating to economic standing or technical and professional competence, it is sufficient if one member of the group of suppliers demonstrates this condition of participation.

#### **Question 7:**

We ask the ERO to explain the reasonableness of the condition allowing the possibility of replacing an expert with an expert with lower expertise, because the situation we have modelled shows that a situation may arise where the successful bidder wins the competition on the basis of the evaluation (scoring) and subsequently replaces the experts with lower evaluation qualifications. It can be seen from Annex 1 that on the basis of the scoring after the replacement of the experts he would have already come second and it can also be seen that his price after the discount is higher than the price of the other tenderer who came second after the evaluation. In our view, the definition of the discount for the replacement of experts should be such that this situation does not arise in any event, as this is an uneconomic use of public resources. Our model considers that after the first tenderer has replaced the experts, the first and second tenderers would have the same team rating (i.e. the teams' expertise would be the same on the basis of the rating), but that the public authority would pay a higher price for the services provided, in our case by EUR 274 882,26, and we do not consider the Option price for E8 there. We also ask the EO to explain how it will ensure the cost-effectiveness of the competition in maintaining this option to replace the expert if cost-effectiveness is to be maintained throughout the service provision period.

#### **CA's reply:**

Having examined the table attached by the tenderer, the contracting authority notes that the tenderer has incorrectly inserted variables into the formula. At the same time as this explanation, the contracting authority publishes the table sent by the tenderer with the correctly inserted variables (errors corrected by the contracting authority).



At the same time, the contracting authority must state that the situation described by the tenderer, where the winning tenderer is the tenderer who receives the full number of points for quality and at the same time offers a significantly lower price than the estimated value of the contract, will result in a price discount of 100% of the invoice in the event of a significant change in quality during performance (the maximum value of the variable K1n is 100 points, as these are the points for the price criterion).

The essence of selecting the most economically advantageous offer is to select the best quality combination at the corresponding most advantageous price. Therefore, in the projections made by the contracting authority in modelling the set criteria in the preparation of the contract, the maximum value for quality corresponded to or exceeded the expected value of the contract (hence the maximum accepted price exceeding the expected value of the contract). Therefore, in the table published by the contracting authority, the winning tender with the highest quality at the level of the estimated value of the contract is assumed.

The criteria set for the evaluation of tenders allow the tenderer to offer the highest quality at a price below the estimated value of the contract. However, in this case the tenderer must be aware that if it is unable to maintain the quality offered throughout the duration of the contract, the reduction in quality may have a huge impact on the amount of its invoicing.

The aim of this mechanism (and the contracting authority's obligation) is precisely to avoid situations where, during the performance of the contract, experts whose experience entered into the evaluation of the tender would be exchanged for experts of lower quality, thus giving the provider an advantageous position in the contract (because it would receive the same remuneration for the lower quality). The contracting authority shall not allow the replacement of an expert whose experience has entered into the evaluation of the tender without granting a reduction in price by which the winning tender would have to be reduced in order for the tender to be the most economically advantageous even after the replacement of that expert.

Finally, the contracting authority states that its interest, and it believes that the interest of the future provider, is not to replace experts on the project, but to have a stable team. The contractual provision is in the contract for the reason that if it becomes necessary to replace the expert in question, then a reassessment of quality in relation to price will take place. However, the procuring entity believes that lowering the price (providing a price discount) is not in the interest of the future provider and so will ensure that the terms and conditions for the experts are such that they will not change on the project and therefore there will be no need to invoke this mechanism. However, if a change in the experts whose experience entered into the evaluation of the tender occurs (is requested), then the procedure will be followed as to maintain the economic equilibrium of the contract (maintenance of the most economically advantageous tender).

#### **Question 8:**

We ask the ERO to explain how it will ensure the economy of the competition if the price for E8 is not included in the evaluation of tenders and the sum of the prices E1 to E8 results in the winning tenderer having a higher price than another tenderer. We understand that this is an option but in our view, economy must be maintained throughout the period of service.

#### **CA's reply:**

As this is an option that will be ordered operationally and as situations arise during operation (which will be 7 years or more from now), it is not possible to predict the deployment of experts at this point in time and therefore the total cost of this phase cannot be taken into account in the evaluation of the bids.

In order to maintain the economic balance of the contract, the contract specifies the exact prices to be invoiced for the deployment of experts in the event of the exercise of the option. By applying the prices of the stage which is the subject of the criterion evaluation (stage 5), economic balance is ensured (i.e. the tenderer cannot set specific prices to be paid during the option period). This rule is stated in the contract and will not be waived by the contracting authority during the negotiations, as it is a principle of economic balance of the contract which cannot be disturbed by a change in the contract (the exercise of the option inherently changes the contract in terms of its scope under clearly predefined conditions).

As a result of this clarification, the following documents are being amended:

- Annex 3 to the Tender documentation: Criteria for the evaluation of tenders