

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
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Co. OLO, a.s. hereby publishes the answers to the questions received on 6.9.2023. OLO, a.s. published in the No. VI. - VIII. of explanations published on 30.8.2023 and 31.8.2023. In questions no. 1, 2 and 3, the tenderer has re-stated the original question and the answer provided, and subsequently re-stated the question or clarified its original question. For simplicity of the document, the original question, the original answer of the Co. OLO, a.s., the actual/added question (blue) and the answer provided (red).

Question 1:

Former question:

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*)

Former 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.

New question:

In the context of our question, we counted on each applicant meeting the minimum qualification conditions with its experts, otherwise the applicant would not have made it to the evaluation round. With our question we wanted to point out that the evaluation is set up in such a way that an expert with one larger project (in addition to the minimum qualification) receives fewer points than an expert with several smaller projects (in addition to the minimum qualification). The argument made in the market consultation that 'We had a EUR 1 million project that was significantly more challenging than a EUR 5 million or EUR 10 million construction project' is not substantiated. Each project has its own specificities and it is not easy to determine its complexity, but it is generally assumed that a project with a higher

investment cost is more complex and challenging. The IE has set the evaluation criteria in such a way that they may not reflect the quality of the expert and therefore we request a proper justification of the appropriateness of the evaluation of the quality of the experts.

CA's reply:

The Contracting Authority considers that, in relation to the value of the contract and the complexity of the project, the scoring conditions are set to take into account the experience of the 5 most relevant key experts (the leadership team in the field) most relevant to the subject matter of the contract. As stated by the candidate itself, each project has its own specificities and it is not easy to determine its complexity. Therefore, in the contracting authority's view, it is also not correct to award more points simply because a given expert has experience in a project with a higher investment value.

According to the contracting authority, it should not be decisive only who has participated in a bigger/more expensive/more efficient work/project (i.e. a score based on a comparison of the experience of the experts concerned). In the contracting authority's view, the experience of the experts concerned should be decisive if it meets the requirements set for the award of a point (i.e. not only the investment value of the project itself). It can be concluded from the tenderer's arguments that the tenderer proposes to modify the method of awarding points for the quality of the experts concerned so as to take into account the investment value of the work/project in which the expert has participated, by comparing the experience of the experts concerned with each other. However, the contracting authority does not consider this necessary in accordance with the principle of proportionality.

Referring to the judgment of the Court of Justice in Case T 195/08 Antwerpse Bouverken v European Commission, the principle of proportionality, i.e. the principle of proportionality, "requires that the acts of the institutions do not go beyond what is appropriate and necessary to achieve the objectives pursued, meaning that, where there is a choice between several appropriate measures, the least restrictive one must be preferred and that the difficulties caused must not be disproportionate in relation to the objectives pursued."

The Contracting Authority considers that the rules set out for the scoring of the experience of the identified key experts are in line with this principle.

Question 2:

Former question: 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.

Former 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 specialization. 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.

New question:

Your answer to our question in no way ensures that only boiler technologies will be evaluated by the boiler technology expert and, similarly, only flue gas cleaning technologies will be evaluated by the flue gas cleaning process expert. Nor has the addition of Annex 3 to the EO changed this fact. If the VO evaluates the quality of the experts, it should have indicated in the evaluation table for the experts concerned that only the technological units/equipment that had a demonstrable impact on the boiler or flue gas cleaning will be evaluated. The VO has set the evaluation criteria in such a way that it may not reflect the quality of the expert and therefore we request proper justification for the adequacy of the evaluation of the quality of the experts.

CA's reply:

The Contracting Authority considers that the wording is comprehensible and clear. At the same time, the answer provided makes clear the intent/objective pursued in light of which the rule must be interpreted.

The Contracting Authority reiterates that if the expert in question is a boiler specialist and has to demonstrate experience where he/she has been in a position responsible for boiler technology in a heat or power generating facility with a minimum hourly output of 5 MGW, then the experience of the person on the project that was not related to boiler technology in a heat or power generating facility with a minimum hourly output of 5 MGW cannot be evaluated/points cannot be awarded for the experience of the person on the project.

It is clear from the requirements for the description of the experience evaluated (see Annex 4 of the Tender Documents Key Professional Reference Letter for the assessment of the qualitative criterion - Criterion 'Ks') that the professional must describe the experience in detail in such a way that it is clear what he/she was responsible for, i.e. what he/she was working on. If this is not clear from the description provided, then no points can be awarded for such experience.

In relation to the tenderer's proposal 'only technological units/equipment that have had a demonstrable impact on the boiler or flue gas cleaning will be evaluated', the contracting authority states that the requirement to hold a position directly responsible for the technology in question (i.e. in terms of the expert's specialisation) is inherently implied (the requirement is defined by the responsibility, not by the subject matter/content of the experience).

Question 3:

We ask the CA 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.

Former 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).

New question:

After correcting the values in the calculation, we found that the above formula is broken (nonsensical values are coming out), we ask the VO to check it and in case of brokenness to correct it.

CA's reply:

The Contracting Authority has rechecked the formulae in the published file and finds that they are correct and functional. The tenderer probably does not fully understand the behaviour of the parabolic function for the calculation of the price points, and consequently its inverse function. It is also necessary to take into account and be aware of the disproportion (inverse proportionality) of the points for quality and price.

In the model, 3 situations can be briefly modelled:

1. Situation - Bidder offers a price < PHZ but gets a lot of quality points - extreme case
2. Situation - Bidder offers a price and receives the expected number of points for it based on our estimate of the experience of experts in the market (E.g. PHZ and 140-150 quality points, less than PHZ and <110 quality points, more than PHZ and >150 quality points)
3. Situation - Bidder offers a price > PHP but receives low quality points - extreme case

For all three models, the formula shows no errors that would disagree with the mathematical prescription of the parabolic function (and hence the function inverse to it) and the inverse proportion of price and quality points.

In the event that the winning bidder offers a low contract price, its price point gain is large and weighs heavily. This is independent of the number of quality points awarded. Since in the case modelled by the interested party the price points (79,355 points) (bid price of EUR 8,5 million excluding VAT) had a large impact on the bidder's win, then if the expert is lost, and with him the quality points, the cost of one point for such a bid price is very large. This is precisely because of the nature of the parabolic function and the inverse proportionality between the points. Therefore, it follows that at low contract prices the discount on the invoice is very high or even 100%, even in situations where the bidder loses few quality points (not a very large point difference for quality after the change of experts). In fact, the cost of one point is very large because the bidder has won many points for price and therefore had a significant impact on his win.

On the other hand, at very high bids the amount of points for price falls rapidly. Thus, if a bidder with a high price manages to win, his score for price is very low, so quality points were the decisive factor. The price per point is therefore lower and the bidder can lose many more points on quality than in the first model described above and still not achieve a 100% discount on the invoice. However, such a model is unlikely because the price points for high bids are very low indeed, and the lower bidder will be outbid very quickly. The high bidder thus takes a big risk right at the start of the competition, because he runs a very high risk of being outbid by someone with a lower price. However, with a very low bid, the bidder risks paying for it later if the experts leave, because the penalty for not delivering the promised quality is very severe in his case. These two mechanisms of the parabolic relationship thus discourage both bidders with very low bids (high penalty) and bidders with very high bids (very few price points). The mechanism behaves normally if prices are within the level of the PHZ.

The fact that the contract must contain terms and conditions which ensure that the performance of the contract in question is realistically in line with the proposals set out by the tenderer which led to him being declared successful, i.e. the need for a real and severe 'penalty' for failure to meet the quality offered in the case of evaluation of tenders on the basis of the most economically advantageous tender, or the most economically advantageous tender, or the most economically advantageous tender. The evaluation of tenders on the basis of quality and price is also stressed as necessary by the Council of the Authority in its decisions, in particular Decision 3543-9000/2014-KR/16 of 15.5.2014 or 12345-9000/2022 of 31.10.2022, and by the Authority itself in its methodological materials.

The Procuring Entity underlines that with this tender procedure it is looking for a bidder to hire / provide highly qualified staff (long-standing specialists with real experience). The procuring entity has established a method of evaluating bids that substantially considers the quality - relevant / most similar experience of the five key team leaders. In the context of fair competition, all companies that qualify, and are therefore able to provide the required service in accordance with the stated project objective, are free to develop their quotation.

Therefore, it is naturally expected that a bidder having the required reference experience (a condition of participation under Section 34(1)(a) of the Public Procurement Act) and having a team of experienced experts, will familiarise itself with all the published tender conditions, in particular the intended objective of the cooperation, and discuss this properly and in detail with the assembled team of experience experts. Such a tenderer can be considered to be properly informed and reasonably attentive and prudent in understanding the objective of the contract (why it is important to evaluate quality and what is to be achieved by the performance of the contract). Such a tenderer is able to understand the specific workings of how the parabolic formula is calculated and is able to assess, on the basis of precise and comprehensible rules for calculating the price discount for failure to meet the quality of the team offered, the potentially significant economic consequences of such a contractual condition on its financial obligations.

Simply put, a properly informed, attentive and prudent bidder must understand the difficulty and importance of the objective to be achieved and the corresponding contractual terms and their impact on its financial obligations if it does not deliver what it declares in its bid.

Question 4:

You have published a general description of activities for certain professionals. In order to select the right expert for the job, we ask you to describe clearly the individual activities of these experts. In practice, it is common knowledge that the VO gives specific descriptions of the activities of the experts. We also ask you to clearly specify the list of activities for each phase of the project in order to clearly

define what is expected of the expert in that phase. A description of the activities is requested for each expert.

CA's reply:

The Contracting Authority has defined the subject matter of the contract in terms of the objective that the successful tenderer will be responsible for meeting/achieving. With this tender, the contracting authority is looking for a highly experienced team of experts who, precisely because of their experience, do not need to be tasked or defined what they are required to do / what activities they are to perform. At the same time, the contracting authority has specified within the description of the subject of the contract specifically which specialist experts it requires as leaders and has also specified their deployment. A document describing the roles and competencies of these specialists has been prepared as part of the explanatory documents provided, where the level of competence and responsibility of each specialist is clearly indicated to demonstrate compliance with the conditions of participation. The Public Procurement Act does not require the description of the subject matter of a contract for the purchase of services to be defined by the specific activities to be carried out. The description of the subject-matter of the contract shall be clear, unambiguous and complete. The contracting authority has clearly set out (in more than 200 pages) the objective of the cooperation - what is to be achieved by the cooperation. The content of this document also implies specific tasks for the provider to be carried out. At the same time, the scope of the contract is clearly defined, both in terms of the number and position of key experts and their deployment.

The contracting authority considers that it is not useful to define the activities/roles of individual experts (either as a whole or in phases), as it has clearly defined what is to be achieved by the cooperation, what the cooperation will cover and who is responsible for what. Such a procedure / way of defining the description of the subject of the contract is not contrary to Article 42 of the Public Procurement Act.

Nor is such a practice unusual, because, by analogy, if the contracting authority were to compete, e.g.

- legal advice, it would also not specify what acts the lawyer is to perform. On the contrary, it is the lawyer who is supposed to know what to do when, because he knows what he is working on, what he is responsible for and what is expected of him. If the subject of the cooperation is representation in some commercial litigation, the description of the subject of the contract is logically defined as complex representation in commercial litigation, it does not define/describe what all the attorney is supposed to do and guard, much less if an attorney with a minimum of 10 years of experience is required. It really doesn't describe the individual acts such as having to go to court to review the pleadings, having to file a resistance, having to give notice of payment of fees, asking for a power of attorney, etc;
- Taxi service or transportation of packages or people, also does not specify what acts/logistics and route to be chosen. On the contrary, the starting point is defined, the final destination is defined and it is up to the bidder how (by what route, what logistics, what means of transport, etc.) to get from point A to point B (even the taxi driver does not change the route and the traffic rules for the passenger);
- When a motorway is built and operated as a concession or PPP (public-private partnership) project, the objective is set - what is to be built where (route, technical requirements for the motorway) and, in terms of operation, the requirement to ensure full operation over a specified period is determined. It does not specify what maintenance is to be carried out, when and where, let alone what activities/tasks are to be carried out by the staff assigned to achieve the objective.

The contracting authority reasonably expects that a sufficiently skilled and experienced service provider will not have to be guided and told what to do when by whom for the successful achievement of the objective. The procuring entity is seeking a partner through this tender procedure whose essential part

of professional life is the provision of services of a similar nature, and therefore does not need to ask what activities to perform in order to meet the objective. That is the purpose of this competition.

Question 5:

You have published a general description of the activities for certain experts where you state that they are the persons who will lead the team of experts responsible for the development of the draft DUR. In connection with the admission that these experts can prove their experience in the field of implementation, we ask you to explain how the said expert can lead a team of expert designers if he has not led a team of experts who have carried out the design documentation for the DUR in his life, because in practice the contractor is faced with the preparation of the implementation documentation and the documentation for the actual execution of the construction. In the same way, how will such an expert lead a team of expert supervisors when he has not led a team of supervisors in his life. Our question applies to all experts where you have admitted to documenting experience of execution of the construction or the expert has worked for the contractor of the construction.

CA's reply:

From the tenderer's argumentation, it can be concluded that the tenderer proposes to modify the requirement for experts to demonstrate compliance with the conditions of participation so as not to allow/accept experience in the field of implementation (construction/reconstruction). So, in essence, the tenderer is proposing to tighten up the requirements set out. However, this is not considered necessary by the contracting authority in accordance with the principle of proportionality.

Referring to the aforementioned judgment of the Court of Justice in Case T 195/08 Antwerpse Bouverken v European Commission, the principle of proportionality, i.e. the principle of proportionality, 'requires that the acts of the institutions do not go beyond what is appropriate and necessary to attain the objectives pursued, that is to say, where there is a choice between several appropriate measures, the least restrictive one must be preferred and that the difficulties caused must not be disproportionate in relation to the objectives pursued'.

The contracting authority considers that the requirements set out for experts to demonstrate compliance with the specified conditions of participation are in line with this principle.

This clarification does not change the published documents.