

EXPLANATION OF THE TENDER DOCUMENTATION No. 2

Name of Public Contract:	RAILWAY BRIDGES UNDER VYŠEHRAD
Contracting authority:	Správa železnic, státní organizace Dlážděná 1003/7, 110 00 Prague 1 ID No.: 709 94 234

The Contracting Authority received a written request for clarification of the Tender Documentation (Tender Specifications) from a prospective contractor.

The Contracting Authority hereby provides an explanation of the Tender Documentation (Tender Specifications) for the above-mentioned Public Contract in accordance with Section 98 of the PPA, in both Czech and English, including the exact wording of the request for explanation of the Tender Documentation without identifying the prospective contractor who requested the explanation.

Inquiry by the prospective contractor if the explanation was provided following a request for clarification	
2.	<p><i>On 7 May 2021, the public contract was announced on the profile of the contracting authority, Správa železnic, státní organizace, with its registered office at Dlážděná 1003/7, 110 00 Prague 1 – Nové Město, ID No.: 709 92 234 (the "Contracting Authority"), by the publication of a notice of the commencement of the above-threshold public contract awarded in a competitive dialogue procedure entitled "Railway Bridges under Vyšehrad" (the "Public Contract").</i></p> <p><i>In compliance with Section 98 of Act No. 134/2006 Sb., on Public Procurement, as amended (the "PPA") and in compliance with Section 5.2 of the Tender (Qualification) Documentation, we request an explanation of the following section:</i></p> <p><i>Section 9.4 in Part 9. Qualification Requirements provides the following in respect of Technical Qualification:</i></p> <p><i>"The contractor shall prove fulfilment of the technical qualification criterion in accordance with Section 79(2) of the Public Procurement Act by submitting a list of significant services provided by the contractor no longer than in the past 16 years (extension for allowing more competition) before the commencement of the Competitive Dialogue."</i></p> <p><i>However, at the same time, the following is stated at the end of Section 9.4:</i></p> <p><i>"For the avoidance of doubt, the Contracting Authority provides that the participant may list in the list of significant services only such significant services in providing which always the person was involved that will hold in the contractor's team either the position of "Architect", "Bridge Engineer" or "Engineer for Transport Infrastructure".</i></p> <p><i>The bidder considers the Contracting Authority's requirement that significant services provided by the bidder under Section 79(2) of the PPA must in all cases be provided with the involvement of a person "that will hold in the contractor's team either the position of "Architect", "Bridge Engineer" or "Engineer for Transport Infrastructure" as discriminatory.</i></p> <p><i>The qualification requirements defined as described above do not reflect the natural fluctuation of employees in the labour market and, as a result, discriminate against</i></p>

	<p><i>the bidders – companies / legal entities who implemented the required contracts using persons who are no longer their employees, either because they started working for another legal entity or retired, etc.; however, the companies / legal entities currently have other employees who are experts in the given field but have gained their professional practice in employment with an entity other than the bidder.</i></p> <p><i>In accordance with the PPA, the objective of the professional qualification and technical qualification criteria is to prove that the bidder has at its disposal a person with the required professional qualification and that the bidder – a company – has experience with the required type of public contracts.</i></p> <p><i>We call upon the Contracting Authority to amend the Technical Qualification and delete the unreasonable and discriminatory requirement that combines the technical qualification requirement under Section 79(2)(b) and Section 79(2)(d) of the PPA.</i></p>
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Explanation of the Contracting Authority	
	<p>The Contracting Authority states that it does not consider the parts of the qualification identified by the contractor to be discriminatory. However, in the interest of wider competition, the Contracting Authority has decided to change the provisions of Section 7.4 of the Tender Documentation as set out below.</p> <p>The Contracting Authority hereby amends the entire wording of Section 7.4 of the Tender Documentation [Technical Qualifications] to read newly as follows:</p> <p>The contractor shall demonstrate compliance with the technical qualification by submitting a list of members of the participant's implementation team, whose members must:</p> <p>a) meet the conditions of Section 9.3(c) of the Tender Documentation, and at the same time</p> <p>(b) have the experience required below.</p>
2.	<p>The list of members of the participant's implementation team will consist of the following persons:</p> <p>1. Architect</p> <p>= an authorised person within the meaning of Section 4 (2) (a) and (b) of the Act on the Exercise of Profession, or an authorised person pursuant to Section 4 (3) of the Act on the Exercise of Profession, or an authorised person under the law of the state the person is a citizen of or has its registered office in, meaning that an authorisation is required by the Czech Chamber of Architects with a general scope and numerical designation A.0, or authorisation for the field of architecture with numerical designation A.1, or authorisation for the field of land use planning with numerical designation A.2, or a foreign equivalent (except cases where under the law of the country of which the architect is a citizen or in which the architect is established, no such document is issued) - see requirement under Section 9.3(c)(1) of the Tender Documentation</p> <p>2. Bridge Engineer</p> <p>= an authorised engineer who is certified by the Czech Chamber of Authorized Engineers and Technicians in Construction in the field of bridges and civil engineering structures – see requirement under Section 9.3(c)(2) of the Tender</p>

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3. Engineer for Transport Infrastructure

= an authorised engineer who is certified by the Czech Chamber of Authorized Engineers and Technicians in Construction in the field of transport infrastructure - see requirement under Section 9.3(c)(3) of the Tender Documentation.

In addition, the members of the participant's implementation team must have, in aggregate, the following experience no older than 16 years before the commencement of the Competitive Dialogue:

- a) *Elaboration of at least 1 Architectural study of a zoning and technical solution of an area comparable to the area concerned (area where the Structure is to be located), that is, an area that constitutes a transfer hub between different modes of transport*

OR

Elaboration of at least 1 Documentation of a zoning and technical solution of an area comparable to the area concerned (area where the Structure is to be located), that is, an area that constitutes a transfer hub between different modes of transport

- b) *Elaboration of at least 1 Architectural study of a railway bridge and its context*

OR

Elaboration of at least 1 Documentation of a railway bridge and its context

- c) *Elaboration of at least 1 additional Architectural study of a railway bridge or road bridge and its context*

OR

Elaboration of at least 1 additional Documentation of a railway bridge or road bridge and its context

The Contracting Authority does not explicitly state which of the above-mentioned experience must be possessed by individual members of the participant's implementation team - i.e. which experience must be possessed by the person holding the position of Architect, which experience must be possessed by the person holding the position of Bridge Engineer and which experience must be possessed by the person holding the position of Engineer for Transport Infrastructure.

It is also permissible for only one or two persons in the participant's implementation team to have all of the above experience - e.g. *the person who will hold the position of Architect can demonstrate experience according to point a) - c) above, while the persons who will then hold the position of Bridge Engineer or Engineer for Transport Infrastructure in the Participant's implementation team do not need to demonstrate any of the above experience (however, it is necessary that the persons in these positions still demonstrate the Contracting Authority's requirement under Section 9.3 c) 2. of the Tender Documentation and the requirement under Section 9.3 c) 3. of the Tender Documentation).*

Therefore, the Contracting Authority will only assess whether all of the above-mentioned experience under a) - c) is possessed by the

participant's implementation team as a whole.

For the avoidance of doubt, the Contracting Authority states that:

- although the Contracting Authority expects that the Winning Contractor's implementation team will be composed of more persons who will participate in the performance of the subject of the Public Contract than only the person holding the position of Architect, the person holding the position of Bridge Engineer and the person holding the position of Engineer for Transport Infrastructure, for the purpose of demonstrating compliance with the qualification, the Participant shall submit an implementation team composed of **a maximum of 3 natural persons** who will hold the above-mentioned positions in the Participant's implementation team. **Each position in the participant's implementation team may be filled by a maximum of 1 natural person.** The Contracting Authority does not allow a participant to nominate more than one natural person for any position on the participant's implementation team;
- **However, it is permissible to combine the positions of** Architect, Bridge Engineer, Engineer for Transport Infrastructure in the sense that one natural person can hold more than one position in the participant's implementation team at the same time. It is a prerequisite that such an individual meets all the conditions set by the Contracting Authority for that position in the Participant's implementation team.

The implementation team of the participant for the purpose of demonstrating the fulfilment of the qualification will consist of 1-3 natural persons.

For purposes of submitting the Request to Participate, fulfilment of the technical qualification criterion can be proven by submitting a completed and signed sample attached as Annex **P08** to the Tender Documentation.

The Contracting Authority submits a new sample of **P08** to the Tender Documentation.

Capitalized terms used in this explanation, unless otherwise specified, shall have the meanings as set forth in the definitions in the Tender Documentation.

For the avoidance of any doubt, the Contracting Authority states that by providing the above clarification, the Tender Documentation is amended in accordance with § 98(5) and § 99 of the PPA and the deadline for submission of the Request to Participate is newly set to 29 June 2021 by 10:00 a.m. CET.

In view of the extension of the deadline for the submission of Request to Participate, the deadlines set out in the CD timetable in Section 4 of the Tender Documentation will be pro-rated.

In Prague, 28 May 2021