

Manual for foreign suppliers describing bid preparation process and requirements for demonstration of qualification criteria

Due to specific and rather formal nature of the Czech Public Procurement law, and following onto the experience we had with participants from outside the Czech Republic, who may not be entirely familiar with the Czech Public Procurement law, the project team of the “**ELI: EXTREME LIGHT INFRASTRUCTURE**” project, which is managed by the **Institute of Physics of the Czech Academy of Sciences**, a public research institution (hereinafter the “**FZU**”), would hereby like to provide to those foreign bidders who intend to take part in **above-the-threshold public contracts awarding procedures** (public tenders) these additional instructions to assist them in the bid preparation and submission (hereinafter the “**Manual**”).

Please note that that it is a document called TENDER DOCUMENTATION issued in all tender procedures by FZU which is a set of detailed requirements, documents, information, technical, business and other terms, which were determined by FZU necessary for the preparation and submission of a bid. It is impossible to prepare complete and correct bid without proper following the tender documentation.

This MANUAL is only an additional document serving as a means to ease bid preparation.

This manual:

- 1) provides **basic information on Czech public procurement law**;
- 2) provides **some basic information regarding bid preparation**;
- 3) serves as a **specification of qualification criteria**, which will be assessed once the bids will have been submitted; it also provides an outline for demonstrating qualification;
- 4) provides examples of the **most common omissions and errors** (annex No 1).

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Czech public procurement law

Czech public procurement law is regulated by Act 137/2006 Coll., on Public Contracts, as amended (hereinafter the “**Act**”), which implements EU Directives 2004/17 and 2004/18.

Although these EU directives set out a common EU Public Procurement framework, the specific Czech implementation may be in many aspects stricter and more formalistic than in some other countries.

The Act defines the procedures, among other things, that the so-called Contracting Authority needs to follow in awarding public contracts. The Act imposes relatively strict formal requirements both on the Contracting Authority and on the bidders. Due to the formal nature of the procedure, both the Contracting Authority and the bidders themselves often use external (legal) advisors to assist them throughout the process. The process often leaves little flexibility with regard to actions that may be taken by the Contracting Authority, especially in cases of discrepancies in bids, procedural steps, or tender documents, where **the Contracting Authority has little space to remedy these discrepancies ex post and often has to exclude participants from tenders or cancel tenders entirely.**

If the Contracting Authority does not exclude a bidder from a tender where it is stipulated by the Act such situation is regarded as a mistake of the Contracting Authority leading to ineligibility of costs paid to the supplier according to contract concluded on the grounds of such tender (i.e. such costs must not be reimbursed from EU subsidy).

Some basic information and rules on bid preparation

Please note that the information and instructions provided below should be complied with as closely as possible, otherwise a bidder risks mandatory exclusion from the tender procedure due to breaches or even purely formal shortcomings in the bid.

- A) The bidders must always **strictly follow all instructions regarding bid preparation that are defined in the TENDER DOCUMENTATION**. Lack of compliance with the requirements that may even seem overly formal may constitute a reason for **mandatory exclusion of bidders and their bids** from further tender procedure.
- B) **All technical specifications included in the tender documentation are strictly binding and mandatory** and bidders are not allowed to offer performance (whether in the form of goods or services) with different specification (e.g. there should be no difference in size, shape, output or performance specifications etc.). Noncompliance with technical specifications as defined in the tender documentation constitutes reason for **mandatory exclusion of the bid** from the tender procedure.
 - i) It is possible to offer technical specifications that are different from those specified by the Contracting Authority only if such option is **expressly stated** in the tender documentation (e.g. if some specifications are expressly defined by their minimum or maximum values);
 - ii) However, bidders are always allowed to offer solutions or performance (whether goods or services) that is of a **better quality, higher performance or higher value for money** than what is demanded in the tender documentation. Should you not be entirely certain whether any

deviation (improvement) is or is not permissible please always ask the Contracting Authority for clarification or additional information.

*In case any technical specification would be **unacceptable or unworkable for you**, or in case you are convinced you are **aware of a more suitable solution for us** and therefore you would like to deviate in your bid from the defined specification, please always tell us first via the contact person stipulated by the tender documentation. Tender terms & conditions (including technical specifications) may be always changed **before** the date the bids are supposed to be submitted (usually with the consequence of bid submission deadline extension).*

[Please note that even a very minor impermissible change or difference may constitute a valid reason for mandatory expulsion from the tender procedure. It is not possible in any case whatsoever to correct any differences or make any changes whatsoever after the bid will have been submitted to the Contracting Authority - this is the expressed provision of the law.

The reason for such strict rules is that all the bids must be and remain comparable.]

- C) **Binding draft contract or a set of binding commercial terms are strictly binding and mandatory** and bidders are not allowed to change them in any manner or form.

In case a binding draft contract is included in the tender documentation bidder are only allowed to fill in those parts that are expressly indicated (i.e. the heading / identification information, the price, contact information, tables etc.). Bidders must not make any other changes to the contract or its wording, e.g. cross out some articles or paragraphs or modify wording. **Any changes, additions, reservations with respect to some contractual term will constitute a valid and mandatory reason for expulsion from the tender.**

In case a binding set of commercial terms (i.e. not the contract in its entirety) is included in the tender documentation bidders are allowed to use their own form contracts but such contract must include any and all commercial terms specified in the tender documentation. These binding commercial terms prepared by the Contracting Authority must be observed in part and on the whole.

[The reason for such strict rule is that all the bids must be comparable also in their commercial terms.]

- D) In some tender procedures the Contracting authority requires **the bid price to be structured** (broken up) by the bidder as specified by the tender documentation. Sometimes not only overall bid price but also unit (price per item) price is required or other price structure is defined. In such cases the bidder is obliged to perfectly comply with these requirements and provide price information on all items as required by the Contracting authority. Please note that to leave out even a single item of the defined price structure (e.g. **not providing a single unit price for some product etc.**) **usually leads to mandatory exclusion from the tender procedure.**

If the bid price for some public contract or separate part of public contract (if expressly allowed by the tender documentation that bidders are allowed to bid for only one or more separate parts of public contract) should be structured according to requirements of the Contracting authority the bidder must not **give the partial price "0" (zero) which is for legal reasons considered to be incomparable with price bids of other bidders.**

- E) **We strongly recommend that bidders ask the Contracting Authority anything** if they feel they are not sure about certain aspects of the procedure, specifications, extent of the requirements or demonstration of qualification and so on. The contact person whose information is provided in the

tender documentation is there specifically for these reasons and the Contracting Authority will always strive to answer all questions as soon as possible. It is entirely sufficient to send questions by email. Questions are the most efficient means for avoiding expulsion from the procedure.

We strive to obtain as many bids as possible in every tender. Therefore we want to avoid all cases when a bid would have to be excluded for formal or legal reasons. IN CASE THERE ARE ANY TENDER CONDITIONS THAT YOU DISAGREE WITH OR YOU ARE NOT ABLE TO COMPLY WITH PLEASE ALWAYS LET US KNOW AS SOON AS YOU LEARN ABOUT SUCH PROBLEM.

PLEASE DO NOT SUBMIT BIDS THAT INCLUDE TECHNICAL SPECIFICATIONS OR COMMERCIAL TERMS THAT ARE NOT IN COMPLIANCE WITH TENDER DOCUMENTATION; likewise please do not give up on bid preparation without sending us a message stating reasons why you cannot submit a bid under given conditions.

Demonstrating qualification

The law requires that all bidders (or “economic operators” in the language of the Act) wishing to participate in a tender demonstrate that they meet the following three sets of qualification criteria:

- **basic qualification criteria**
- **professional qualification criteria**
- **technical qualification criteria.**

In addition, all bidders must also submit an **affidavit confirming their economic and financial capacity to duly perform the public contract.**

All bids must demonstrate all three sets as required mainly in the tender documentation **in full** otherwise the bids will not be evaluated.

Any missing documents or proof demonstrating fulfilment of qualification criteria may constitute a valid reason for expelling the participant (bidder) and his bid from the public tender.

Demonstrating qualification criteria by foreign bidder in general

The Act sets forth, unless stipulated otherwise by separate legal regulation, that:

- foreign bidders demonstrate qualification in a manner required by the law in force in the country of registered office, place of business or place of residence (hereinafter the “**Principal offices**”) of the bidder, in the extent as required by the Act and by the contracting authority (FZU).
- Where **particular documents are not issued** under the laws in force in the country of Principal offices of a foreign bidder, the foreign bidder shall be obliged to demonstrate such part of qualification by solemn declaration (an affidavit signed by the bidders duly authorized representative).

(Example: a system of mandatory social insurance does exist in a foreign country but for legal reasons it is not possible to obtain a statement confirming nonexistence of outstanding mandatory payments)

- Where the obligation, the meeting of which is to be demonstrated, is not established in the country of principal offices of a foreign bidder, the bidder shall make a solemn declaration to that effect (*i.e. due to the nonexistence of a certain obligation we, the bidder, cannot submit the relevant documentation and for that reasons we make the following declaration in lieu of such document*).

(Example: system of mandatory social insurance does not exist at all in a foreign country and therefore the bidder is obliged to make a solemn declaration to that fact)

Evidence – documents demonstrating qualification may be submitted by foreign bidders in the original language with **attached official translation into the Czech language, unless stipulated otherwise by the Contracting Authority in the tender documentation** or by an international agreement binding upon the Czech Republic. The obligation to attach to documents officially translated into Czech does not apply to documents submitted in the Slovak language.

*(Note: FZU usually accepts documentation in English or documents which had been officially translated into English but this option must always be **expressly** stated in the tender documentation or in other document that concerns qualification criteria)*

Authenticity (originals, copies etc.) and **age** of required documents is always defined in the tender documentation or other document concerning qualification criteria.

Which documents are required and where can I get them?

This part of the Manual provides a list of specific documents which are generally required by the Act. Please note that this manual specifically concerns the “**above-the-threshold public contracts**” and documents required by the Act for that type of procedure.

As mentioned above, foreign bidders demonstrate qualification in a manner required by law in force in their home country (where their Principal office is located). In order to identify the equivalent certificates and attestations in the particular (domicile) country, bidders are advised to visit the EU Commission eCERTIS webpage at <http://ec.europa.eu/markt/ecertis/searchDocument.do>, which provide more detailed information on the qualification documents across the 28 Member States, one candidate country (Turkey) and the three EEA countries (Iceland, Liechtenstein and Norway).

A) Basic Qualifications Criteria

Bidders have to submit the following documents:

1) **Extract from the Penal (Criminal) Register**

demonstrating good standing / integrity of the bidder – i.e. bidder having no criminal history (requirement defined in § 53/1 a) and b) of the Act)

- this requirement must be met **by the bidder whether acting / existing as a natural person or as a legal entity / corporation**; in case of legal entities / corporations this requirement must be also met by the “statutory body” or by each member of the statutory body of a corporation (i.e. by all appointed and / or registered directors, presidents etc. who are generally authorized to act on behalf of the corporation vis-a-vis third parties),
- where a legal entity acts as the statutory body or a member of the statutory body of a bidder (another legal entity), this requirement must be met by the statutory body or by each member of the statutory body of that legal entity (i.e. if corporation A has “statutory body” which is a corporation B, all directors of corporation B must demonstrate good standing);
- if a bid or a request to participate in a tender is submitted by a foreign legal entity via its local organizational branch (a specific form of local corporate presence), the requirement must be met, besides the above stated persons, also by the head of the local organisational branch (branch manager);
- **this basic qualification requirement must be met by bidders in relation to the territory of the Czech Republic and to the country of their Principal office**

(example: a foreign corporation having one director authorized to act on its behalf submits: 1 criminal registry extract for the corporation confirming no criminal history of that corporation in the Czech Republic + 1 criminal registry extract for the director confirming no criminal history in the Czech Republic + 1 criminal registry extract for the corporation confirming no criminal history of that corporation in the country of its Principal office + 1 criminal registry extract for the director confirming no criminal history of that person in the country of its Principal office

If for example criminal liability of legal entities/corporations does not exist in the state of Principal office at all the bidder is obliged to make a solemn declaration on this fact.

If for example criminal liability of legal entities/ corporations or natural persons exist in the state of Principal office but it is for legal reasons impossible to get an extract from respective register or records the legal entity/ corporation or the natural person is obliged to make a solemn declaration on the fact of clear criminal history.)

The extract from the relevant register in the Czech Republic can be obtained at the following institution:

Rejstříktrestů (Czech Criminal Register)

Address: Soudní 1 14066 Praha 4 Czech Republic

<http://portal.justice.cz/justice2/Soud/soud.aspx?o=203&j=213&k=2027>

Phone: +420 244 006 111,

Fax: +420 244 006 260,

email: rejstrik@rejtr.justice.cz

Warning: Depending on nationality, it may take several weeks to obtain the extract. The reason is that the Penalty register has to cooperate with the authorities of the bidder's home country. Sometimes, the period that will be necessary to obtain the excerpt may be nearly identical to the period for bid submission. **We hereby strongly recommend that bidders apply for the excerpt in the Czech Republic and in their home country without undue delay.**

2) **Certificate of the relevant tax authority on non-existence of tax arrears**

demonstrating that there are no outstanding tax arrears registered in the tax records of a bidder (requirement defined in **§ 53/1 f) of the Act**)

- this basic qualification requirement must be met by bidders both in relation to the Czech Republic and to the country of their Principal office / residence.

This certificate in relation to the Czech Republic may be obtained at this institution:

FinančníúřadproPrahu1 (Tax Authority for Prague 1)

Address: Štěpánská 28, 112 33 Praha 1

<http://urad-praha.cz/financni-urad-praha-1-uzemni-pracoviste>

Phone: +420 224 04 3160, Mrs. Kralova,

Fax: +420 224 043 198,

email: podatelna2001@fs.mfcr.cz

Bidders submit a simple written application to be issued with such confirmation, signed by the competent / authorized person, and providing information / address where / or to whom the issued certificate shall be sent.

3) **Certificate of the relevant authority on non-existence of arrears with respect to social security insurance**

demonstrating that there are no outstanding arrears with respect to payments and penalties levied by the social security insurance and contribution to the State employment policy (requirement defined in **§ 53/1 h) of the Act**)

- this qualification requirement must be met by bidders both in relation to the Czech Republic and to the country of their Principal office / residence.

This certificate in relation to the Czech Republic may be obtained here:

Pražská správa sociálního zabezpečení, územní pracoviště pro Prahu 8 (Prague Social Security Office, local office Prague 8)

Address: Trojská 1997/13a, 182 00 Praha 8

Phone: +420 283 104 111,

Fax: +420 283 104 262,

email: posta.xa@cssz.cz or marcela.chloubova@cssz.cz

Bidders submit a simple written application to be issued with such confirmation, signed by the competent / authorized person, and providing information / address where / or to whom the issued certificate shall be sent.

4) **An affidavit with respect to the following qualification criteria**

(corresponding to **§ 53/1 c) – e) and g), i) – k) of the Act**) confirming / demonstrating that (simplified outline, for full wording please refer to the Act or the tender documentation, which copies the wording of the Act)

- the bidder is not involved in unfair competition practices in the form of bribery under special legal regulation in the preceding 3 years
(corresponding to **§ 53/1 c) of the Act**)
- the bidder is not subject to any threatened, pending or existing insolvency proceedings in the preceding 3 years
(corresponding to **§ 53/1 d) of the Act**)
- the bidder is not being liquidated / wound up
(corresponding to **§ 53/1 e) of the Act**)
- the bidder demonstrates there are no outstanding tax arrears as regards the excise tax; both in the Czech Republic and in the country of Principal office of the bidder
(corresponding to **§ 53/1 f) of the Act**)
- the bidder has no outstanding arrears in respect of payments and penalties of public health insurance, both in the Czech Republic and in the country of principal office of the bidder
(corresponding to **§ 53/1 g) of the Act**)
- the bidder has not been found guilty for grave professional misconduct in the preceding 3 years or subject to disciplinary punishment with regard to professional qualifications (Section 54/d) of the Act);
(corresponding to **§ 53/1 i) of the Act**)
- the bidder is not on the black list of bidders prohibited from participating in public contract tenders;
(corresponding to **§ 53/1 j) of the Act**)
- the bidder has not been fined for allowing illegal employment in last 3 years;
(corresponding to **§ 53/1 k) of the Act**)

Please note that FZU always provides a form affidavit (the sample is included into the tender or qualification documentation) with the full wording of the relevant provision which the bidders may

use for the purposes of the procedure. The bidders are advised to sign this form affidavit and include it in their bid.

[The purpose of the basic qualification criteria is to prove that the bidder duly fulfils its duties vis-a-vis public authorities and other statutory duties in relation to the fact that the bidder will be receiving public funding in exchange for the performance under the public contract.]

B) Professional Qualification Criteria

All bidders will be asked to demonstrate that they meet professional qualification criteria (as required by Section 54 of the Act) according to the tender documentation, by providing FZU with the following documents:

1) **Extract from the Commercial Register**

if the bidder is registered as a legal entity in such registry or similar registry in another country (where it has its Principal office) if such exists, and

2) **License to pursue business activities** (professional certification or trade license), to the extent corresponding to the subject-matter of the public contract, particularly, evidence proving relevant trade authorisation or license, if such is issued.

[The purpose of these documents is to prove that the bidder has been duly established and exists as a legal entity and that it is duly registered with respective mandatory commercial or similar register, and to show who is the person authorised to act on behalf of the bidder – corporation and that it has adequate licence or similar certification to conduct its business. For natural persons the registration obligation is clearly different, please consult your counsel.]

The Act operates with institutes it knows under the Czech (or in wider context European) law, therefore **the excerpt** is supposed to represent a registration sheet for legal entity giving the corporation's name, address, names of its directors, list of its licensed business activities, capitalization, shareholders and so on. It is similar to K-Bis in France, or Handelsregisterauszug in Germany. Most European countries have such register of companies, including UK (Companies house). In the US the situation may be different, as there is usually no central register of corporations on federal or state level, but a certificate of incorporation may be issued for instance by the State Secretary for Commerce. In other countries this situation may differ even more. Business licences may not be commonly issued in certain foreign countries at all and in such case please provide affidavit to that effect. **Please always consult your counsel before submitting any documentation** or make request (within reason) to the Contracting Authority for additional information if you are unsure about your available documentation. **Please note that FZU / Contracting Authority cannot provide legal advice in this respect.**

C) Technical Qualification Criteria

The purpose of these criteria is to prove that bidders have relevant experience with similar previous contracts or that they have sufficient personal and technical background to duly perform the public contract.

The Contracting Authority / FZU has the right to choose from a list of various technical qualification requirements and demand that these are demonstrated by bidders during the tender procedure. FZU also

has the right not to use criteria in this respect, as may be warranted by simplicity / common nature of the contract.

Technical qualification criteria and the manner in which they must be demonstrated are always contract-specific and defined in the tender documentation.

D) Affidavit confirming economic and financial capacity to duly perform the public contract

FZU always provides bidders with a form affidavit in the tender or qualification documentation. Bidders are advised to use and sign the provided form and include it into their bids.

Annex No. 1: Common mistakes and discrepancies in bid preparation (by foreign entities)

Missing documents: on a general note, please note that with respect to some missing documents, the Contracting Authority may request bidders to resubmit the required documents, while with some substantial documents (e.g. signed contract, price bid) the Contracting Authority has no other option than to expel the applicant from the tendering procedure.

Changes to the binding draft contract other than those expressly allowed by the contracting authority/deviations from technical specifications or deviations from other requirements stipulated by tender documentation (underspecified bid price/price in different structure than required/price exceeding maximum permissible price if stipulated): Please note that these kinds of discrepancies cannot usually be remedied and constitute grounds for expulsion (incompatible bid). Should you feel the need to make such deviations, please bring it to the Contracting Authority's attention in advance (prior to bid submission, within the deadlines set by the Act and or tender documentation) by submitting a request for additional information.

Discrepancies in price calculation: please note that discrepancies in the price calculation (e.g. unresolved un-provided for rounding up of numbers) cannot usually be remedied ex post and constitute grounds for applicant's exclusion from the tendering procedure.

Deviation from requirements regarding price structure, not giving a partial price information on any partial item of price structure nulová cena

Missing translations into the required language, e.g. university diplomas: These are usually remediable upon the request of the Contracting Authority, but the requests may lead to extensions of the tender and the Contracting Authority may choose to expel the applicant from the tendering procedure for this reason or for other (additional) reasons.

Qualification documents only for the Czech Republic or only for state of Principal office of the applicant: please note that some qualification documents need to be submitted both in relation to the applicant home country and for the Czech Republic.

Purely formal omissions, e.g. the pages of the bid are not bound in the required manner, an electronic or paper copy is missing: Please note that while these purely formal omissions may not constitute the grounds for exclusion, they may complicate the position of the Contracting Authority and lead to longer bid assessment or expulsion due to suspected tampering etc.

Age of Documents: principally, the documents issued by the authorities of state, in the Czech Republic, or in one's home country (commercial register, penal register, tax and social security certificates etc.) should not be older than 90 days as of the day you submit the bid. Please always consult your counsel when preparing the bid.