



Republic of Serbia

MINISTRY OF FINANCE

Department for Contracting and Financing of EU Funded Programmes (CFCU)

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CONTRACTING AUTHORITY'S CLARIFICATIONS

“Technical Assistance to the Ministry of Mining and Energy and Relevant Public Entities for the Implementation of the New Energy Law, NEEAP and RES Directive”

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No.	Question	Answer
1	I have a question regarding the technical selection criteria: in case the service one is referring to has been carried out by a consortium, the 400.000 € threshold has to be considered for the % carried out by the candidate or to the project as a whole (independently of the % carried out by the candidate)?	According to Procurement And Grants for European Union external actions - A Practical Guide- 2.4.11.1.3. Verifying the technical and professional capacity of candidates or tenderers <i>If a candidate/tenderer has implemented the project in a consortium, the percentage that the candidate/tenderer has completed must be clear from the documentary evidence, together with a description of the nature of the services, supplies or works provided if the selection criteria relating to the pertinence of the experience have been used.</i> According to the Contract Notice section 21. Selection criteria 3) Technical capacity of candidate: <i>“The candidate has provided services under at least one contract with a budget of at least 400,000 EUR”</i> In light of the above, and considering that the purpose of the selection criterion is to ensure that the candidate has sufficient capacity to carry out services of a minimum volume above the ceiling defined in point 21.3, the 400.000 € threshold has to be considered only for the percentage carried out by the candidate itself.

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2	<p>Regarding the following information provided in the Request for Information of the opportunity <i>Technical Assistance For The Implementation Of The New Energy Law</i>:</p> <p><i>‘An economic operator may, where appropriate and for a particular contract, rely on the capacities of ‘other entities’, regardless of the legal nature of the links which it has with them. It must in that case prove to the contracting authority that it will have at its disposal the resources necessary for performance of the contract, for example by producing a commitment on the part of those entities to place those resources at its disposal. Such entities, for instance the parent company of the economic operator, must respect the same rules of eligibility — notably that of nationality — and must fulfil the same relevant selection criteria as the economic operator’</i></p> <p>In order to understand which ‘other entities’ can be leveraged we kindly ask which of the following selection criteria is considered as ‘relevant’</p> <ol style="list-style-type: none"> 1. <i>Economic and financial capacity of candidate (based on item 3 of the application form). In the case of the candidate being a public body, equivalent information should be provided.:</i> <ol style="list-style-type: none"> a. <i>the average annual turnover of the candidate over the last 3 years must be at least 700 000 EUR;</i> b. <i>current ratio (current assets/current liabilities) in the last year for which accounts have been closed must be at least 1. In the case of a consortium this criterion must be fulfilled by each member.</i> 2. <i>Professional capacity of candidate (based on items 4 and 5 of the application form). The reference period which will be</i> 	<p>In accordance with the Contract Notice section 21. Selection criteria: <i>“In the case of applications submitted by a consortium, these selection criteria will be applied to the consortium as a whole unless specified otherwise.”</i></p> <p>In the situation where the candidate relies on capacities of another entity (referred to as the "capacity provider"), such entity may put at the disposal of such candidate its capacities in order to fulfil either one selection criterion or several criteria. Where the Contract Notice requires that the "relevant selection criteria" must be fulfilled by the capacity provider, it relates only to the specific criterion for which the candidate relies on the capacity provider. As a consequence, the capacity provider is not required to fulfil another selection criteria for which the candidate does not rely on its' resources.</p>

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	<p>taken into account will be the last 3 years from the submission deadline:</p> <ul style="list-style-type: none"> a. at least 5 permanent staff currently work for the candidate in the fields related to this contract. <p>3. Technical capacity of candidate (based on items 5 and 6 of the application form). The reference period which will be taken into account will be the last 5 years from the submission deadline:</p> <ul style="list-style-type: none"> a. the candidate has provided services under at least 1 contract with a budget of at least 400,000 EUR in developing regulatory instruments (policies, mechanisms and operational practices) in the field of energy efficiency, which was implemented at any moment during the reference period; <p>the candidate has provided services under at least 1 contract with a budget of at least 400,000 EUR in developing regulatory instruments (policies, mechanisms and operational practices) in the field of renewable energy sources, which was implemented at any moment during the reference period.</p>	
3	<p>According to Article 21, „An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the Contracting Authority that it will have at its disposal the resources necessary for performance of the contract, for example by producing a commitment on the part of those entities to place those resources at its disposal. Such entities, for instance the parent company of the economic operator, must respect the same rules of eligibility - notably that of nationality – and must fulfil the same relevant selection criteria as the</p>	<p>Please refer to article 21 of the Contract Notice where it states “In the case of applications submitted by a consortium, these selection criteria will be applied to the consortium as a whole unless specified otherwise. The selection criteria will not be applied to natural persons and single-member companies when they are sub-contractors.”</p> <p>Considering that "with regard to technical and professional criteria, an economic operator may only rely on the capacities of other entities where the latter will perform the works or services for which these capacities are required", in this situation the capacity provider is de facto a sub-contractor.</p>

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	<p><i>economic operator. With regard to technical and professional criteria, an economic operator may only rely on the capacities of other entities where the latter will perform the works or services for which these capacities are required. With regard to economic and financial criteria, the entities upon whose capacity the tenderer relies, become jointly and severally liable for the performance of the contract."</i></p> <p>Can you please indicate whether the capacity provider, providing to the consortium technical and professional capacities has to fulfil selection criteria for economics and financial capacities of the candidate, as per article 21, paragraph 1:</p> <p><i>"Economic and financial capacity of candidate (based on item 3 of the application form). In the case of the candidate being a public body, equivalent information should be provided The reference period which will be taken into account will be the last three years for which accounts have been closed :</i></p> <ul style="list-style-type: none"> <i>c. the average annual turnover of the candidate over the last 3 years must be at least 700 000 EUR;</i> <i>d. current ratio (current assets/current liabilities) in the last year for which accounts have been closed must be at least 1. In the case of a consortium this criterion must be fulfilled by each member."</i> 	<p>Therefore, such capacity provider, providing to the consortium only technical and professional capacities does not have to fulfil selection criteria for economic and financial capacities of the candidate (article 21.1 of the Contract Notice). See also answer to question no. 2 above.</p>
4	<p>When proving technical capacity of candidate ("Service Contract Notice – 21. Selection Criteria – 3. Technical capacity of candidate"), please provide full list of countries where consortium members can be effectively established?</p>	<p>The eligibility of candidates (participating either individually or in a consortium) is defined in section 11 of the Contract Notice.</p> <p>For the list of eligible countries please see PRAG annex A2a Eligibility programmes 2014-2020, section 3 (CIR - article 10): <i>Participation in the award of procurement contracts, grants and other award procedures for actions financed under the CIR for IPA II for the benefit of third parties shall be open to all natural persons who</i></p>

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		<p><i>are nationals of, and legal persons who are effectively established in, one of the following eligible countries/ territories/beneficiaries:</i></p> <p><i>(a) EU Member States (appendix 1)</i></p> <p><i>(b) Beneficiaries listed in the Annex I of the IPA II (appendix 2)</i></p> <p><i>(c) European Economic Area (appendix 3)</i></p> <p><i>(d) Partner countries and territories covered by ENI Instrument (annex I of ENI Instrument) (appendix 11)</i></p> <p><i>(e) countries for which Commission has adopted a decision approving the request for reciprocal access to external assistance.</i></p> <p><i>Currently there are no such countries.</i></p>
5	<p>When proving technical capacity of candidate ("Service Contract Notice – 21. Selection Criteria – 3. Technical capacity of candidate"), can we include as a reference a consortium member that is effectively established in the eligible country/territory and performs a contract on the country/territory which is not eligible?</p>	<p>Yes. The selection criteria in section 21.3 do not provide any restriction as regards the place of performance of the reference contracts.</p>
6	<p>In the document "Declaration on honour on exclusion criteria and selection criteria - section VII – Selection Criteria" – can we find there a final version of the table for this tender? If not, please share final version of the table with us</p>	<p>In section VII of the PRAG annex A14 (Declaration of honour on exclusion and selection criteria) the candidate must insert references to the relevant articles in the contract notice:</p> <p><i>(5) declares that the above-mentioned person complies with the selection criteria applicable to it individually as provided in the tender specifications:</i></p> <p><i>(a) It has the legal and regulatory capacity to pursue the professional activity needed for performing the contract as required in section 21 of the tender specifications;</i></p> <p><i>(b) It fulfills the applicable economic and financial criteria indicated in section 21.1 of the tender specifications;</i></p> <p><i>(c) It fulfills the applicable technical and professional criteria indicated in section 21.2 and 21.3 of the tender specifications.</i></p>