

Section III: Evaluation Methodology

Application Evaluation

General

In order to participate in the follow-up procurement process a Participant shall demonstrate to the Client that it substantially meets all eligibility requirements set forth in ITP 4 and the qualification requirements specified below, as well as the criteria specified in Section IV, Eligibility and Qualification Criteria.

The evaluation of applications shall be carried out based on the information submitted pursuant to the provisions of ITP 10.

During the evaluation the Client shall follow the instructions provided in ITP 18-22, as appropriate.

1. Preliminary Examination

Applications shall be examined to check that all documents required by the Procurement Document have been submitted. It shall be followed by verification whether the documents are correctly signed by an authorised person, appropriate power of attorney is enclosed, forms contain all the required information etc.

Where necessary and provided for by the ITP, the Client shall request a Participant to submit within a reasonable period of time any necessary missing information or documentation.

To assist with the examination and evaluation of applications the Client may ask, at its discretion, any Participant for a clarification of its application, allowing a reasonable time for response.

Applications that are not substantially complete or which otherwise do not provide a basis for detailed evaluation shall not be considered further and shall be rejected.

2. Detailed Evaluation of Eligibility and Qualification

2.1 Eligibility

Participants shall meet the criteria stated in the Procurement Document.

2.2 Qualification

2.2.1 Experience

The Client shall assess information and evidence to determine whether the Participant substantially meets the criteria for general, management and specific experience for the time period stated in Section IV, Eligibility and Qualification Criteria.

The Participant shall be permitted to claim only its own experience and capabilities or of its parent company, unless otherwise is stated in the paragraph Subcontractors.

For the purpose of the interpretation of this requirement, the parent company shall be considered the company which have a high degree of ownership in the Participant company having the power to exercise, or actually exercises, dominant influence or control over the Participant company, or both of them are managed on a unified basis.

If a Participant wish to claim the experience and capabilities of its parent company for the purposes of meeting the qualification requirements, the Participant shall submit with its

proposal a Parent Company Guarantee, either using the form included in Section V, Forms or in another substantially similar form approved by the Client prior to deadline for submission of proposal.

Failure to furnish a Parent Company Guarantee may result in the disqualification of the Participant.

For the application of this criterion the following convention shall be considered:

- a) For contracts claimed as experience in which the Participant was lead partner in a JVCA, the Participant can claim as his own experience the entire contract;
- b) For contracts claimed as experience in which the Participant was a partner in a JVCA, the Participant can only claim as his own experience the percentage of the overall contract corresponding to the Participant's participation in the JVCA. This shall apply both to the value of the contract as well as to its physical outputs as reflected in the acceptance/completion certificate or equivalent documentation.
- c) Where the Participant was a subcontractor in a contract, he can only claim as experience the works he directly performed under the contract for which he can provide acceptance/completion certificate or equivalent document issued directly to him.

In addition to the information provided in format required in the qualification forms, the Participant shall provide copies of acceptance/completion certificates or similar/equivalent documents which unequivocally support the information provided in the relevant qualification form. Documents which are not in the language of the Tender shall be accompanied by certified translations. Failure to furnish a suitable acceptance / completion certificate or similar / equivalent document **will result in rejection** of the claimed experience.

Where necessary, the Client may make inquiries with the Participant's clients in respect of the reference projects or contracts.

When requested by the Client, the Participant shall facilitate the Client's access to Participant's clients. Failure of the Client to obtain the information on Participant's experience directly from the Participant's clients may result in rejection of the claimed experience.

2.2.2 Financial Situation

The financial information shall be provided for the time periods stated in Section IV, Eligibility and Qualification Criteria.

The submitted annual financial statements for the required period must demonstrate the soundness of the Participant's financial position, showing long-term profitability. Consistent losses or a risk of insolvency shown in the accounts may be cause for the disqualification of the Participant.

With respect to the Financial Solvency, the Participant shall include in its proposal the documents issued by the competent authority from the country where the Participant has its business registered conforming that the Participant does not fall in one of the situation stated Table 2, paragraph 2.3 as per Section IV, Eligibility and Qualification Criteria. The documents presented as a proof shall not be older than four (4) months before the deadline for submission of Proposal. The Participant shall have the financial resources free of ongoing obligations and recent contract awards, for which the Participant shall provide information.

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The Client may reject the application if the level of the confirmed commitments to be carried out in parallel with the Contract exceeds the Participant's annual revenues for the previous year by a factor of **two (2)**.

2.2.3 Historical Contract Non-Performance

Non-performance, as determined by the former or current clients, includes any contracts where (a) non-performance was not challenged by the Participant, including through referral to the dispute resolution mechanism under the respective contracts, or (b) non-performance was so challenged, but was fully settled against the Participant. Non-performance shall not include contracts, where client's decision was overruled by the dispute resolution mechanism. Determination of non-performance must be based on information on fully settled disputes or litigations, i.e. dispute or litigation that has been resolved in accordance with the dispute resolution mechanism under the respective contract and where all appeal instances available to the Participant have been exhausted.

The information in respect of litigation or arbitration shall be provided for the time period stated in Section IV, Eligibility and Qualification Criteria. It shall include any pending litigations or arbitration.

A consistent history of litigation or arbitration awards against the Participant or any partner of a JVCA or their non-performance under the contracts may result in rejection of the application.

2.2.4 Environmental, Social, Health and Safety Records

The Participant shall meet the criteria for Environmental, Social, Health and Safety records and experience for the time periods stated in Section IV, Eligibility and Qualification Criteria.

2.2.5 Licenses (certificates and permissions)

For execution of the contract, which will be the result of the second phase of this tender procedure, licences will be sought only from the successful tenderer. If the successful tenderer does not have designers/engineers complying with the licencing requirement of the Law on Planning and Construction of Republic of Serbia (Article 128) (<https://www.mgsi.gov.rs/en/odsek/law-planning-and-construction>) and Rulebook on the manner, procedure and content of data for determining the fulfilment of the conditions for issuing license for elaboration of technical documentation and building licenses for buildings ("Official Gazette of RS" No. 66/19) (<https://www.mgsi.gov.rs/lat/dokumenti/pravilnik-o-nacinu-postupku-i-sadrzini-podataka-za-utvrdivanje-ispunjenosti-uslova-za>), it will be given sufficient time from the day the award decision becomes final to provide those licenses (it will have to follow the procedure of engineers licencing with the Ministry of Construction, Transport and Infrastructure) and will not be penalized for any delay in issuance of licences not caused by the successful tenderer.

To demonstrate compliance with the qualification requirement relating to Licences (Certificates and Permissions), the Participant shall submit, as part of its Application, a signed written statement confirming that it will comply with all applicable licensing, certification and permitting requirements. No licences, certificates or permissions are required to be submitted at the Prequalification stage.

If the Participant fails to demonstrate to the Client's satisfaction its ability to timely obtain such licenses, certificates or permissions, its application may be rejected.

2.2.8 Specific Requirements with regard to JVCA

A JVCA must satisfy the following minimum qualification requirements:

- (a) the JVCA must satisfy collectively all the qualification criteria, for which purpose the relevant figures for each of the partners shall be added to arrive at the JVCA's total capacity; and
- (b) each partner of the JVCA shall fully satisfy the requirements with regard to the soundness of the financial position and non-performance history. They also shall individually meet the share/percentage of certain qualifying criteria, as stated in Section IV, Eligibility and Qualification Criteria.

2.2.9 Subcontractors

The Client shall assess eligibility and qualification of the Subcontractors, proposed by the Participant in its application for the execution of the specific critical works or activities under the Contract:

- railway electrification works;
- railway bridges and structural works;
- design services performed under the Contractor's responsibility; and
- activities requiring demonstrated experience in the application of the EU Technical Specifications for Interoperability (TSIs), where applicable.

The Subcontractor's financial information shall be disregarded for the purposes of qualification of the Participant. However, their specific experience related to the Contract and/or availability of licenses, where required, shall be taken into account only with respect to the following:

a) Licenses (certificates and permissions):

- confirmation that Subcontractor holds or will obtain all licences required by the applicable Laws before commencing the relevant subcontracted works, activities, services or supplies .

b) Specific experience:

- experience in the successful execution of works, activities or services of a nature, complexity and magnitude comparable to the specialist works or activities proposed for subcontracting, including, where relevant, railway electrification, railway bridges and structures, railway design services under contractor responsibility, and application of the EU Technical Specifications for Interoperability (TSIs).

Whenever the Participant claims the Subcontractor's experiences and licenses for the purpose of meeting the qualification requirements, the acceptance and commitment of the named Subcontractor to participate in contract implementation shall be confirmed through a letter of intent as per Forms SUB 5 - Letter of Commitment and Consent in Section V – Sample Forms.

The Participants shall demonstrate that the Subcontractors proposed for the Contract substantially satisfy the qualification criteria stated in Section IV, Eligibility and Qualification Criteria.

3. Substitution of Subcontractors

The Client may request a Participant to substitute Subcontractors who were determined to be unacceptable in accordance with ITP.

Should the Client determine that a Subcontractor is unacceptable in accordance with ITP or unqualified, where appropriate, the Client shall not reject the application, conditionally prequalify a Participant subject to paragraph 6 below.

4. Exceptions

Notwithstanding the above provisions, in the event that a Participant is prohibited by an applicable law from providing the Client with specific information or documents required to prove the Participant's qualifications, the absence of such information or documents shall not result in the rejection of its application, provided that the respective prohibition is evidenced by the Participant in its application, and the other information and documents submitted by the Participant demonstrate their ability to perform the proposed Contract successfully.

5. Verification in Respect of Exclusions from Prequalification

The Client through application of the provisions of ITP 22 shall verify if there are any grounds for exclusion of a Participant from the follow-up procurement process Contract. If such grounds exist, the Client shall disqualify the Participant.

6. Conditional Prequalification

The Client may conditionally prequalify a Participant, when the Participant fails to meet some of the qualification criteria, concerning the circumstances (a) which will cease to exist at, or (b) which the Participant may correct, prior to the anticipated time of award of the Contract.

The conditions of such prequalification shall be clearly articulated and communicated to the Participants, as appropriate, in due course.