

## DODATEČNÉ INFORMACE č. 5

v souladu s § 49 odst. 2 Zákona č. 137/2006 Sb.,  
o veřejných zakázkách, ve znění pozdějších předpisů (dále jen „zákon“)

Identifikace zadavatele: Česká republika – Ministerstvo financí  
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Osoba oprávněná jednat za zadavatele: RNDr. Lenka Betincová

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Podpis:

V Praze dne 3.7.2014

<i>Název veřejné zakázky:</i>  <i>Name Public Tender:</i>	<b>Poskytování právních služeb státu v mezinárodních investičních arbitrážích vedených proti České republice investory do fotovoltaických elektráren</b>  <b>Provision of legal services to the State in international investment arbitration proceedings brought against the Czech Republic by investors in photovoltaic power plants</b>
<i>Evidenční číslo veřejné zakázky:</i> <i>No. Public Tender:</i>	VZ 484 102
<i>Druh zadávacího řízení:</i>	Jednací řízení s uveřejněním – nadlimitní Negotiated procedure with publication

### **I. Questions regarding overall tender process:**

#### **Part I. - Question No 1.:**

Part A, paragraph 8.d, of the Notice requires candidates to submit a confirmation from the Czech Bar Association that the candidate (i.e., the law firm) and the person responsible for providing the services (i.e. a lawyer at the firm designated as the “Leading Counsel”) have not faced disciplinary proceedings. The Czech Bar Association has informed us that they are not able to provide such a confirmation in relation to a lawyer or law firm that is not registered in the Czech Republic. Could you please clarify whether this requirement can be satisfied, in relation to a foreign law firm, by providing a similar confirmation from the relevant authority that regulates the candidate law firm at its place of registration, in light of § 51(7) of the Act?

#### **Reply to question No 1:**

In light of § 51 (7) of the Act on public contracts (hereinafter as “Act”) it is sufficient in relation to a foreign law firm to provide a similar confirmation from the relevant authority regulating the candidate’s law firm at its place of registration.

**Part I. - Question No. 2.:**

Part A, paragraph 8.e, requires candidates to pay a CZK 1,800,000 deposit. Could you please confirm whether this deposit will be refundable and, if so, on what conditions?

**Reply to question No 2:**

The security deposit is refundable. The refund deposit is regulated by § 67 (2) (c) of the Act on public contracts. The security deposit is to be paid during the second phase of public procurement proceeding, when selected candidates will be asked by the Ministry of Finance to submit their tender offers (§ 29 (2) of the Act on the public contracts).

**Part I. - Question No. 3.:**

Part A, paragraph 8.g, appears to require candidates to provide a list of statutory bodies, or members of statutory bodies, whom the candidate law firm has employed or with whom it has been in a similar relationship in the three years preceding the deadline for submitting tenders. Could you please clarify: (i) What is meant by "statutory bodies"? (ii) How this requirement applies to foreign-registered firms that do not have a presence in the Czech Republic?

**Reply to question No 3:**

Part A, paragraph 8 g requires candidates to provide a list of statutory bodies or members of statutory bodies who have been either employed by, or have been in an executive or similar relationship with the contracting authority during the past three years. Under the provisions of Czech law the term “statutory body” represents an executive body of a legal person, which is by law empowered to represent the legal person in all acts with third persons (§ 163 and § 164 Act No 89/2012, Civil Code). Therefore a foreign-registered operator shall read the term “statutory body” in a manner similar to the legal order in force in the country of its registered office, place of business or place of residence thereof.

**Part I. - Question No. 4.:**

Part A, paragraph 5, states that the contract to provide legal services will be concluded with “the contractor whose tender is selected as the most suitable”. Could you please indicate what the criteria for this selection will be?

**Reply to question No 4:**

As to the criteria for the selection, the offered price will be considered together with the level of expertise of the candidate.

**Part I. - Question No. 5.:**

A question on the cover sheet asks: “Will the contract be performed through sub-contractors[?]”. If a foreign law firm considers that it may need the assistance of local counsel in representing the Czech Republic — depending on the facts of the arbitrations to which this procedure relates and the strategy adopted — does the identity of such potential counsel have to be declared at this preliminary stage, or may such a decision be made at a later stage in accordance with paragraph 2.5 of the draft Agreement to Provide Legal Services (“Agreement”)(concerning the engagement of “external advisors”)?

**Reply to question No 5:**

The candidate may reserve the decision to appoint a sub-contractor to a later stage of the tender or the actual arbitration proceedings in accordance with paragraph 2.5 of the draft Agreement to Provide Legal Services. If the candidate considers that it might need an assistance of a sub-contractor in the future, then the candidate may make a reservation. In such case, the candidate shall answer the question “Will the contract be performed through sub-contractors?” positively and state that the name of the subcontractor will be determined later.

### **Part I. - Question No. 6.:**

Part A, paragraph 7, states: “If the contracting authority [candidate?] shall demonstrate that part of the eligibility conditions are fulfilled by a sub-contractor ..., it shall list the identification data for the sub-contractor in the cover sheet for the request to participate and submit a contract concluded with the sub-contractor...” (emphasis added). Could you confirm at what stage a candidate firm is required to identify a potential sub-contractor such as local counsel? At what stage must it submit the relevant contract with the subcontractor?

#### **Reply to question No 6:**

When the candidate demonstrates that part of the eligibility conditions are fulfilled by a sub-contractor, it shall already identify the sub-contractor in the cover sheet attached to its request to participate and submit the relevant contract concluded with the sub-contractor for the purpose of participation in the bid.

When the qualification is not demonstrated through a sub-contractor, the candidate may reserve the identification of a potential subcontractor for the future (when the need arises), such as during the performance of the contract. In such case the contract with the sub-contractor shall be notified and approved in advance by the contracting authority.

## **II. Questions regarding preliminary stage**

### **Part II. - Question No. 1.:**

Part A, paragraph 4, states that “All documents shall be submitted in ... original”. Can this requirement be relaxed in relation to, for example, university diplomas (with respect to which we would be unable to send the original)?

#### **Reply to question No 1:**

Candidates may submit all the qualification documentation in a form of copies (see Part B para 1). The bid, however, must be submitted in original.

### **Part II. - Question No. 2.:**

Part A, paragraph 8.c, states that a single lawyer has to be designated by the candidate as the “person responsible for providing the services” (also referred to as the “leading counsel” in the draft Agreement). However, Part B, paragraph 2.b, requires the submission of a certificate of education and professional qualifications of “the persons who will be responsible for providing the services” (emphasis added). Could you please confirm whether it is in fact only the single lawyer whom the candidate designates as the leading counsel for whom such documents have to be submitted?

#### **Reply to question No 2:**

The requirement in Part B, paragraph 2.b applies only to the lawyer proposed by the candidate as the lawyer responsible for providing legal services (leading counsel) pursuant to Articles 2.2 to 2.4 of the draft contract.

### **Part II. - Question No. 3.:**

Part A, paragraph 8.c, states that the person responsible for providing the services must be “available in Prague if needed for the duration of the proceedings”. Could you confirm that, in relation to a foreign law firm that does not have a branch office in the Czech Republic, this requirement can be interpreted as meaning that the relevant lawyer would have to be available, upon reasonable notice, to travel to the Czech Republic for in-person meetings of reasonable duration?

#### **Reply to question No 3:**

The candidate understands this requirement correctly.

#### **Part II. - Question No. 4.:**

Part B, paragraph 1 states — in accordance with § 51(7) of the Act — that foreign economic operators can demonstrate compliance with the qualification requirements “in accordance with the applicable legislation in the country where their registered office ... is located”. The paragraph also mentions the possibility of demonstrating the fulfilment of qualifications through a sworn statement. In this regard we have the following questions:

#### **Part II. - Question No 4 lit. a):**

Part C, paragraph 2.1, requires the submission of “Extract(s) from the Criminal Records”. Does this requirement refer to criminal records in the jurisdiction of residence of the relevant lawyers, or to criminal records in the Czech Republic, or both? May this requirement be satisfied through the submission of a “criminal history summary” from the state of the lawyer’s residence, as well as a sworn declaration under the penalty of perjury that the lawyer has not been found guilty of any offence in the Czech Republic?

#### **Reply to question No 4 lit. a):**

The requirement refers both to Extract(s) from the Criminal Record in relation to the territory of the Czech Republic and to Extract(s) from the Criminal Record or similar record issued by the public authorities in the country of registered office, place of business or residence of the candidate, respectively, and it applies to all the individual members of the statutory body or its equivalent. However, § 51 (7) of the Act on public contracts applies.

#### **Part II. - Question No 4 lit. b):**

The same paragraph makes reference to §53(1) of the Act, which in turn refers to “the economic operator” not having been convicted of certain offences. If, in the state of the candidate law firm’s registration, no criminal record check can be carried out in relation to a partnership (which is the legal form adapted by the candidate law firm), may this requirement be satisfied by submitting the above-mentioned documents (criminal history summary and a sworn declaration) for the person responsible for providing the services?

#### **Reply to question No 4 lit. b):**

If the state of the candidate cannot issue Extract from the Criminal Record for legal entities (e. g. partnership), § 51 (7) of the Act on public contracts applies.

#### **Part II. - Question No 4 lit. c):**

Part C, paragraph 2.2, requires the submission of a “Confirmation from the competent Tax Office” concerning the absence of outstanding tax arrears. May this requirement be satisfied through the submission of a report on “Federal Tax Liens” and “State Tax Liens” and the relevant bankruptcy court’s records, accompanied by a sworn statement, signed by the person responsible for providing the services, that the candidate law firm does not owe any taxes in the Czech Republic?

#### **Reply to question No 4 lit. c):**

The requirement refers both to confirmation from the competent Tax Office in the territory of the Czech Republic and similar statement issued by the public authorities in the country of registered office, place of business or residence of the candidate (§ 53 (1) (f) of the Act on public contracts). If such statement cannot be objectively issued by public authorities in the country of registered office, place of business or residence of the candidate (within the time period), § 51 (7) of the Act on public contracts applies.

#### **Part II. - Question No 4 lit. d):**

Part C, paragraph 2.3, requires the submission of a “Confirmation from the competent authority of institution” concerning the absence of outstanding arrears on social security payments. If it is not possible to obtain such a letter from the relevant foreign authority in the candidate law firm’s state of registration within the timeframe provided, may this requirement be satisfied through the

submission of a sworn statement, signed by the person responsible for providing the services, confirming that the firm has no outstanding arrears on social security payments, either in the state of registration or the Czech Republic?

Reply to question No 4 lit. d):

The candidate understands this requirement correctly.

**Part II. - Question No 4 lit. e):**

Part C. Paragraph 2.4, requires the submission of an “Extract from the Commercial Register (if the candidate is entered into the Commercial Register)”. Could you please confirm that this refers to a Czech Commercial Register and, as such, the requirement does not apply to foreign law firms that do not have a presence in the Czech Republic?

Reply to No 4 lit. e):

Pursuant to § 51 (7) of the Act on public contracts the candidate shall provide the extract from the Business Registry or similar extract from the public evidence/registry of legal entities issued by public authorities in the country of registered office, place of business or residence of the candidate.

**Part II. - Question No. 5.:**

Part C, paragraph 3.1, requires the submission of a table of the candidate law firm’s international arbitration experience, “including certificates or contracts” (further described in Part B, paragraph 2.f). What does "certificate" refer to in this context? Could you please confirm whether a letter from the candidate law firm’s former client - confirming the fact that services were provided, and that the matter concluded within the last three years - would be sufficient for this purpose? (We note in this regard that the language in the Notice seems inconsistent with the relevant statutory provision (§56(2)(a)), which provides that a “solemn declaration” can be provided instead of the certificate).

Reply to question No 5:

The requirement is to be understood that a letter from the candidate law firm’s former client is sufficient for certifying the law firm’s international arbitration experience according to § 56 (2).