

We cannot do it alone...

- or the joint tenderers and eligibility criteria-

The legislator specifies different eligibility criteria in procurement procedures in order that the contracting authority may clearly judge whether the tenderer is able to meet the contractual obligations. Among the categories specified in Act CXLIII of 2015 on Public Procurement, the requirements relating to technical and professional competence and economic and financial situation have to be highlighted.

It can be evaluated with the determination of technical and professional competence whether the economic operator has the adequate professional experience and expertise. The certification of condition relating to economic, financial situation aims to ensure the stable financial background necessary for the implementation.

However, it happens many times, mainly in case of complex projects that an economic operator oneself would not be able to meet all criteria specified in the tender, there is also a possibility in such a case that it submits a bid together with someone else in public procurement procedure. It is worth reviewing that which conditions have to be or may be fulfilled by the tenderers jointly in this situation and which conditions are which one of the tenderers needs to meet.

In case of such conditions, **which may be exclusively individually construed to the economic operators**, such as whether the balance sheet is negative or not, **it is sufficient if only one of them meets the requirements**. Such eligibility criteria, which **may not be exclusively construed separately**, such as sales revenues or reference numbers, **may be carried out in such way that the tenderers meet the requirements jointly**. Consequently, the data of economic operators may be added together.

In terms of the **relevant changes** in the Government Decree No.321/2015, the joint tenderers may submit the eligibility statement or declaration on the basis of amended and stricter rules in case of indivisible performance. Earlier, the contracting authority was required to accept overall of the reference work presented, regardless the proportion in which the tenderers intended to carry out the work or under which they apportion the compensation for the work among themselves, if the covenant of tenderers concerned was joint and several and the proportion of the performance reached 15%.In terms of amendment, henceforth, the contracting authority is required to accept the reference work



regarding construction investment and service only in such proportion in which the joint tenderer receives compensation on the basis of the performance that it carried out.

The aim of the amendment is that those undertakings carry out the works which have the sufficient references to fulfil them.

The change is also applicable to procurement proceedings already ongoing on 25 July 2016 in which the deadline for the tender (deadline for participation) has not expired yet.

The tenderers, in order to meet the specified conditions, may also rely upon the capacity of other entity under required conditions, although this must be specified in the tender separately. It must also be proved in such case that they will have the necessary resources at their disposal. If it is specified in the call for competition to launch the public procurement procedure that tenderer itself has to carry out certain essential tasks but then it may not rely upon the capacity of other entity as well as it may not use subcontractor for carrying out the service in the implementation of the contract. At the same time, any of the joint tenderers may also carry out the tasks in such a case.

The institution of joint tenderers expands the circle of participant in the procurement procedure, thereby increasing the competition and it gives an opportunity that the tenderer can bear the burden with the economic operator jointly in order to meet the eligibility requirements, but it is necessary to act carefully in making the circle of the tenderers on the conditions for compliance that have been partially tightened up.