

Clarification

MARKT/2011/107/C

UPDATE AND UPGRADE OF THE REPORT OF THE CASE LAW OF THE COURT OF JUSTICE OF THE EUROPEAN UNION AND OF THE GENERAL COURT RELATED TO PUBLIC PROCUREMENT

09/09/2011

Question (free translation in English)

1. Following point 12.2.1 of the invitation to tender you require that tenderers proof their financial capacity by sending the necessary evidence.

2. Question on economic and financial capacity

When you mention that the commission has the sole discretion to judge the adequacy of tenderers' financial standing – this is not transparent.

It should be encouraged that the commission informs beforehand what are the minimum requirements for the financial capacity

- Which standards does the commission consider for the financial capacity?
- Does the Commission define minimum requirements for the financial capacity?
- Which minimum requirements should be fulfilled?

3. Concerning the documents to proof the financial capacity listed under 13.4.

- Is it enough that one of the documents is presented ?
- Are the documents mentioned equally relevant or is one considered more important than another
- Which ones are considered as more important?
- Are there minimum criteria for these documents to make sure that the financial capacity of a tenderer is accepted when the turnover reaches a certain level

4. For the selection criteria – 100 points are distributed. The 5th criterium is the price without mentioning how many points are attributed.

- How many marks are given in total for the selection criteria?
- How many points are given for the price criterium?

5. How is the calculation done to compare the financial value of the other offers.

Answer

1-2. As regards to the Economic and Financial Capacity : Article 135 (2) of the implementing rules of the Financial Regulation of the European Union stipulates that the selection criteria shall be applied in every procurement procedure for the purpose of assessing the financial and economic capacity of the tenderer. Therefore, the European Commission requires proof that the tenderer and any

subcontractors do have the necessary resources and financial means to carry out the work that is subject of the tender and are able to pre-finance the costs until the payments foreseen by the contract.

DG Internal Market and Services doesn't set fixed minimum requirements on financial capacities (like expected levels of turnover) as it might unnecessarily hinder the participation of smaller companies. However, the contracting authority needs assurance that the selected contractor would be able to finance the costs arising from the contract and continue its operations securely throughout the duration of the contract.

This financial capacity can be evidenced by documents listed under point 13.4 of the Invitation to Tender.

3. Not all of the requested documents under point 13.4 of the Invitation to tender should be presented. It is mentioned that one or more of the documents may be furnished. A tenderer will not be disadvantaged if providing one or another document but in the case of legal persons, statements of turnover and balance sheets are welcomed. It is in the interest of the tenderer to proof as much as possible that they and any subcontractors do have the necessary resources and financial means to carry out the work that is subject of the tender.

In any case, should the Evaluation Committee consider that the proof presented is not sufficient, it might contact the tenderer and request to submit additional evidence. As mentioned before there is no minimum requirement for acceptance of the financial capacity.

4-5. The contract will be awarded in favour of the most economically advantageous offer on the basis of the 4 technical capacity criteria (which make a total of 100 points) and the price. The evaluation committee will only consider further those tenders that have obtained at least a technical quality score of 60 points.

The evaluation committee will then proceed with the financial comparison of the tenders retained for further consideration according to the following procedure:

The retained tender with the lowest total price receives a financial score equal to the maximum score received for the technical quality award criteria.

To be able to define the economically most advantageous offer and the relation quality/price, the other retained tenders are awarded a financial score by means of the following formula:

Financial score = (lowest total price/total price of the tender being considered) x (maximum score received for the technical quality award criteria).

The most economically advantageous tender is established by means of the computation of a final score according to the following formula:

Final score = (Technical quality score) + (Financial Score).

Example: There are 3 offers, A, B and C as follows:

Offer	Technical quality score	Price	Financial score
A	90	125.000	72
B	80	100.000	90
C	50	80.000	-

Offer C will be excluded, as it didn't obtain the minimum technical score. From the retained tenders Offer B has the lowest price, consequently, it will receive a financial score equal to the highest technical score which is 90 in this case.

Offer A's financial score is determined by the formula:

$$100.000/125.000 \times 90 = 72$$