

We would like to ask some additional questions regarding the following point XII.1 (Proceedings of the Procedure):

1. *An Offer may be made exclusively by a person or an unincorporated organizational that is given a legal capacity by Law. If, before making an Offer, a group of above-mentioned persons or organizational units participates jointly in the Proceedings, the group is obliged, before making an Offer, to appoint or establish a person or an unincorporated organizational unit that is given a legal capacity by Law or a consortium that includes minimum 1/3 part of the present participants of the group. In the case described in the preceding sentence, Participants to the Proceedings that make an Offer have to fulfil all the conditions for participating in the Proceedings, including by having experience indicated in section XI.4(c) hereof. It is also allowed to make an Offer exclusively by one member of such a group, provided he alone meets all the conditions for participating in the Proceedings, including by having experience indicated in section XI.4(c) hereof.*

- I. We understand that if a Participant to the Proceedings has independently submitted the Entry, however in the Entry such Participant, provided for that it intends to submit the Offer together with other legal person or persons (as a group), it is permissible to submit the Offer by such Participant jointly with other legal person or persons. Please confirm if the above interpretation of point XII.1 of the Procedure for the Proceedings is correct.

Answer:

Yes, subject to the first sentence of point XII.1 of the Proceedings.

- II. Before submitting the Offer, a group of entities submitting the Offer jointly shall establish either (i) a legal entity/an unincorporated organizational unit that is given a legal capacity by Law or (ii) a consortium that includes minimum 1/3 of the present Participants of the group jointly submitting the Offer. Could you confirm the proper understanding that ratio 1/3 refers only to the number of group members, not to their planned participation in the Project? Please confirm if the above understanding of the Procedure for the Proceedings is correct.

Answer:

Yes, the above interpretation of the second sentence of point XII.1 of the Procedure is consistent with the understanding of this provision by ZMPSiŚ S.A. and the Commission.

- III. Should the Participants under the consortium agreement appoint a representative/proxy that will represent members of the consortium in the Proceedings and future development of the Project??

Answer:

Since Polish legislation lacks detailed regulation of a model consortium agreement, both the structure of a consortium and issues of representation are purely contractual and depend solely on the will of the consortium participants (subject to the casuistic legal qualification of a given consortium relationship and its individual, independent elements by the parties under the principle of freedom of contract,

which is limited by the provisions of applicable law and the principles of social co-existence).

For the purpose of the Procedure the solution has been adopted, according to which the condition for allowing such a group to participate in the Procedure is that all participants in the group appoint one person entitled to represent the entire group and grant this person appropriate powers of attorney in a manner consistent with the principles of representation of each of the participants in the group (point VIII.4 of the Procedure). In the Commission's opinion, such authorisation may result from the consortium agreement.

IV. The Procedure for the Proceedings does not grant ZMPSiŚ S.A./Commission the right to verify the consortium agreement. We understand that the ZMPSiŚ S.A./Commission does not require submission of the consortium agreement. Please confirm if the above understanding of the Procedure for the Proceedings is correct.

Answer:

The Commission does not intend to verify the formal correctness or the terms of the consortium agreement in the event that a bid in the Proceedings would be submitted by a consortium.

However, the Commission draws attention to the fact that the Participant to the Proceedings is required to properly identify the entity submitting the Offer and in case of consortium - the composition of this consortium (along with showing documents of circumstances described in, for example, point XII.10. a-c of this Procedure) and to prove that the consortium meets conditions for participation in the proceedings, and in addition, that none of the entities constituting the consortium has grounds for exclusion from participation in the proceedings (point VIII.4. of this Procedure). The Commission also reminds that the Participant to the Proceedings is required, among others, to prove legitimacy of the person or persons who signed the Offer (clause XII.9 of this Procedure).

The Commission also draws attention e.g. to point III.13 of the Procedure: at any time, the Commission may ask any of the Participants to the Proceedings for information or explanations regarding in particular: information provided by the Participant or the content of documents submitted by it, capital structure of the Participant to the Proceedings, equity links or the beneficial owner within the meaning of the counteracting money laundering and terrorist financing Act of 01 March 2018, the Real Estate, the anticipated manner or conditions of use of the Real Estate, the Project, the anticipated conditions of Project implementation.