**Listo of Possibilities to Prove Qualifications in an Open Procedure**

# Introductory Information

The Contracting Authority has set out the requirements for proving qualification in Part IV of the Tender Documentation. In this document, the Contracting Authority provides an overview of the statutory options for proving the qualification required by the Contracting Authority.

As already stated in the Tender Documentation, fulfilment of the qualification means:

1. proof of basic qualification in accordance with the provisions of Section 74 of the Act,
2. proof of professional qualification in accordance with the provisions of Section 77 of the Act,
3. proof of technical qualification in accordance with the provisions of Section 79 of the Act.

# General Information on the Proof of Qualification in an Open Procedure

For the purpose of proving qualification, the Contracting Authority preferably requires documents recorded in the system that identifies documents to prove compliance with the qualification (e-Certis system), available at: <https://ec.europa.eu/tools/ecertis/#/homePage>.

The economic operator proves compliance with all the required qualifications by submitting a plain copy of the relevant documents.

The Contracting Authority may request the submission of originals or certified copies of the qualification documents during the procurement procedure.

The documents proving basic qualification pursuant to Section 74 of the Act must prove compliance with the required qualification criterion to the extent of Section 86(5) of the Act no later than 3 months before the date of the commencement of the procurement procedure.

In accordance with Article 45(4) of the Act, the Contracting Authority allows economic operators to prove in their tender that they meet the qualifications by reference to the relevant information held in a public administration information system or in a similar system held in another Member State which allows unrestricted remote access. Such a link must include the Internet address and the details for logging in and retrieving the requested information, if such details are necessary.

In order to prove basic and professional qualification (see Art. 3 and 4 below), the so-called extract from the list of qualified economic operators (see Art. 7 below), or include a reference to this extract in the tender form in point 4.1. If the economic operator is registered in this list, the extract can be obtained at: <https://skd.nipez.cz/ISVZ/SKD/Filter.aspx?type=2>. A similar procedure can be followed in the case of proving professional qualification with an extract from the Commercial Register where a link can be obtained at <https://or.justice.cz/ias/ui/rejstrik>.

# Basic Qualification

### The basic qualification is fulfilled by the tenderer:

1. who has not been convicted of an offence listed in Annex 3 to the Act or a similar offence under the law of the country of the its registered office in the past five years before the start of the procurement procedure; expunged convictions are disregarded; in the case of a legal entity, both the legal entity and each member of the governing body must meet this requirement. If a legal entity is a member of the economic operator's governing body, the above conditions must be met by that legal entity, by each member of the legal entity's governing body and by the person representing that legal entity in the economic oeprator's governing body.[[1]](#footnote-1)
2. who does not have outstanding tax arrears in the Czech Republic or in the country of its registered office,
3. who is not in arrears on insurance premiums or penalties for public health insurance in the Czech Republic or in the country of its registered office,
4. who is not in arrears on payments and penalties of social security contributions and state employment policy contributions in the Czech Republic or in the country of its registered office,
5. who is not in liquidation, has not been the subject to a bankruptcy order, has not been placed under receivership under any other law and regulation or in a similar situation under the law of the country of the economic operator’s country of its registered office.

### Proof of Basic Qualification

The economic operator proves compliance with the basic qualification requirements in respect of the Czech Republic by submitting

1. relevant extracts from the criminal records of individuals and legal entities in respect of Section 74(1)(a) of the Act,
2. a confirmation from a competent tax authority in respect of Section 74(1)(b) of the Act,
3. a written affirmation regarding excise duty in respect of 74(1)(b) of the Act,
4. a written affirmation in respect of 74(1)(c) of the Act,
5. a confirmation from a relevant district social security administration in respect of Section 74(1)(d) of the Act,[[2]](#footnote-2)
6. an extract from the commercial register, or by submitting a written affirmation in the event that the economic operator is not incorporated in the Commercial Register, in respect of Section 74(1)(e) of the Act.

Table 1 provides an overview of the documents proving the fulfilment of the basic qualification, not only in relation to the Czech Republic, but also in relation to the country of the registered office of foreign economic operators. Foreign economic operators request the necessary documents in relation to the Czech Republic from the relevant Czech institutions listed in Table 1. The Contracting Authority informs the economic operators that there is a charge for the issue of certain documents.

**Table 1 List of documents proving the fulfilment of basic qualification, both in relation to the Czech Republic and, in the case of foreign economic operators, to the country of their registered office**

|  |  |  |
| --- | --- | --- |
| **Request** | **in relation to the Czech Republic** | **in relation to the country of the registered office** |
| basic qualification  under Section 74 (1) of the Act |  |  |
| (a) | - | extract from the criminal record for legal entities in the country of the registered office extract from the criminal record in the country of the registered office for each person in the economic operator's governing body |
| (b) | confirmation from the relevant tax office written affirmation regarding excise duty | confirmation from the competent authority in the country of the registered office |
| (c) | written affirmation | confirmation from the competent authority in the country of the registered office |
| (d) | confirmation from the relevant district social security administration | confirmation from the competent authority in the country of the registered office |
| (e) | extract from the Commercial Register/affirmation if not registered in the Commercial Register | extract from the Commercial Register/affirmation if not registered in the Commercial Register |

# Professional Qualification

The tenderer proves that it meets the professional qualification pursuant to Section 77 in relation to the Czech Republic by submitting **an extract from the Commercial Register**, if registered, or an extract from another similar register, if registered (Section 77(1) of the Act).

In case the economic operator is not registered in the Commercial Register, it is obliged to submit an affirmation in respect of Section 74(1)(e) of the Act.

# Technical Qualification

The economic operator proves compliance with the technical qualification by

**(a) A list of significant supplies** provided over the last 3 years prior to the commencement of the procurement procedure, including the price and duration of their provision and identification of the client (Article 79(2)(b) of the Act).

The specific requirements are set out in 4.3(a) of the Tender Documentation.

Details of reference deliveries are provided by the economic operator in the format of clause 4.3(a) of Annex 3 to the Tender Documentation. The identification details of the client of the reference contract must include a contact for verification of this reference.

**(b) A description of the products to be supplied** in the form of a duly completed Annex 1 to the Tender Documentation - Technical Specification(Section 79(2)(k) of the Act), which the economic operator will attach as an annex to the completed tender form.

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# Proof of Qualification by Another Person

The economic operator may prove compliance with a specific part of qualification (except for the criterion under Section 77(1) of the Act - the Commercial Register) required by the Contracting Authority through other persons.

In such a case, the economic operator is obliged to submit to the Contracting Authority:

1. documents proving the fulfilment of professional qualification pursuant to Section 77(1) of the Act (Commercial Register) by that other person,
2. documents proving that the relevant missing part of the technical qualification or professional qualification has been fulfilled by that other person,
3. documents of the fulfilment of the basic qualification pursuant to Section 74 of the Act by that other person,
4. a contract or confirmation of its existence signed by another person, the content of which is a commitment by another person to provide the performance intended for the performance of the public contract or to provide the things or rights which the economic operator will be entitled to dispose of in the performance of the public contract, at least to the extent that the other person has proved qualification for the economic operator,

in the structure set out in 4.4 of Annex 3 to the Tender Documentation.

Where an economic operator proves qualification by another person pursuant to Section 79(2)(a), (b) or (d) of the Act[[3]](#footnote-3) relating to such person, the contract or the confirmation of its existence pursuant to Section 83(1)(d) of the Act must imply an undertaking that the other person will perform the works or services to which the proved qualification criterion relates.

**Based on current case law and interpretative practice, the Contracting Authority reminds economic operators that a contract on the commitment of another person must be sufficiently definite and clear. It is essential that it includes a clearly defined qualification skill (ability, license, experience) and a real valid commitment to its performance. The wording of the contract on the commitment of another person must be specific enough to make it clear what part of the qualification requirements will be proved on behalf of the economic operator by the subcontractor.**

# Other Ways of Proving Qualification

### Affirmation

In accordance with Section 86(2) of the Act, the Contracting Authority allows economic operators to provide compliance with the basic qualification in the Tender by means of an affirmation.

The affirmation must be signed by the economic operator's governing body, or in the case of signature by another (authorised) person, the original or an officially certified copy of the authorisation of that person must be part of the documents by which the economic operator proves the fulfilment of the qualification.

### European Single Procurement Document

In accordance with Section 87 of the Act, the economic operator may replace the documents and information proving the fulfilment of the qualification with the European single procurement document (hereinafter referred to as the "Document").

The Document is a formal declaration, i.e. a preliminary document proving compliance with the required qualifications and other conditions of participation. At the same time, the Document can be used to provide information on the use of a subcontractor or whether the economic operator meets the definition of an SME (available at: <https://www.mpo.cz/assets/cz/podnikani/dotace-a-podpora-podnikani/oppik-2014-2020/spolecne-prilohy-dotacnich-programu-op-pik/2023/8/Aplikacni-vyklad-MSP_od-24-5-2023.pdf>).

### Proving Qualification Obtained Abroad

If the qualification was obtained abroad, it is proved, to the extent required by the Contracting Authority, with documents issued in accordance with the laws of the country in which it was obtained.

### Joint Proof of Qualification

In the case of joint participation of economic operators, each economic operator proves compliance with the basic qualification pursuant to Section 74 of the Act individually.

In the case of joint participation of economic operators, each economic operator proves the basic qualification and professional qualification referred to in Article 77(1) individually.

In accordance with Section 103(1)(f) of the Act, the Contracting Authority requires that, in the event of joint participation of economic operators, they document a joint and several division of responsibilities for the performance of the public contract in their tender.

### Use of the Extract from the List of Qualified Economic Operators

If the economic operator submits to the Contracting Authority an extract from the list of qualified economic operators within the time limit for proving compliance with the qualification, this extract replaces the proof of compliance with the basic qualification pursuant to Section 74 of the Act and professional qualification pursuant to Section 77 of the Act to the extent that the documents proving compliance with the professional qualification cover the requirements of the Contracting Authority for the proof of compliance with the professional qualification for the performance of the public contract.

The extract from the list of qualified economic operators must not be more than 3 months old on the last date on which compliance with the qualification is to be proved.

### Proof of Qualification with a Certificate

If the economic operator submits to the Contracting Authority a valid certificate issued under the Certified Supplier Scheme, which contains the particulars set out in Section 239 of the Act, this certificate will replace the economic operator's proof of compliance with the qualification to the extent of the information contained therein.

## Changes in Qualification

If, since the submission of the documents or declaration of qualification during the procurement procedure, there has been a change in the tenderer's qualification that would otherwise mean that the tenderer does not meet the qualification, the tenderer must notify the Contracting Authority in writing within 5 working days at the latest and submit new documents or declaration of qualification within 10 working days of notification of the change.

Failure to comply with this obligation is grounds for immediate exclusion of the tenderer to the extent of Section 88(2) of the Act.

1. If the tender is submitted by a branch of a foreign legal entity, the above conditions must be met by that legal entity and the head of the branch. If the tender is submitted by a branch of a Czech legal entity, in addition to the persons mentioned above, the above conditions must also be met by the head of the branch. [↑](#footnote-ref-1)
2. According to the law, the economic operator is also considered to be debt-free if the economic operator has agreed on a payment plan with the tax administrator or the relevant Social Security Office for any amount owed. [↑](#footnote-ref-2)
3. i.e. list of construction works/list of significant supplies or services/certificate of education and professional qualification [↑](#footnote-ref-3)