



PUBLIC PROCUREMENT OFFICE

To the Ministry of Justice of the Republic of
Lithuania
Email: jurate.burtiliene@tm.lt

09 12 2020 No. 4S- (1.25)
To 18 11 2020 No. (1.11E) 7R-7032

Copy to
UAB Raimda auditas
Email info@raudit.lt

REGARDING YOUR REQUEST

On 18 November 2020, the Public Procurement Office (hereinafter - the Office) got acquainted with the questions of the letter of the Ministry of Justice of the Republic of Lithuania No. (1.11E) 7R-7032 “Regarding Your Request”, which forwarded the letter of UAB Raimda auditas dated 23 October 2020. The Office is requested to propose, in its opinion, the most appropriate way to implement the Law on the Prevention of Money Laundering and Terrorist Financing of the Republic of Lithuania (hereinafter – Law on PMLTF) in public procurement.

Please note that Item 4 of Paragraph 1 of Article 95 of the Law on Public Procurement of the Republic of Lithuania (hereinafter - the Law) states that the Office provides methodological assistance, prepares recommendations and guidelines *on the application and implementation of this Law*, as well as on the issues of procurement planning and conduct, teaches contracting authorities and suppliers *on the application of this Law*. As the Office is not empowered to interpret the Law on PMLTF, advice, within its competence, is provided only on the application of the Law.

As noted by the Ministry of Justice of the Republic of Lithuania, after assessing the definitions of financial institutions and other obliged entities provided in Items 7 and 10 of Article 2 of the Law on PMLTF, it should be noted that public institutions are not indicated therein. Given that the legal relations of public procurement are regulated by a special law, the provisions of other legal acts must be applied in the alternative to the special rules of public procurement law. Subsidiary application of other legal provisions in favor of the primacy of the Law means that the existing provisions of the Law must be applied first, and all other legal norms are applicable in cases where the Law does not regulate the relevant issue or blanket provisions established in the Law. It should be noted that such a relationship between the Law and other legal acts is relevant not only during public procurement procedures, but also after the conclusion of the contract. The discussed nature of the subsidiary application of the provisions of the

special law and other legal acts does not preclude the application of the imperative requirements established outside the Law. According to the consistently formed cassation practice, the provisions of the Law may not be interpreted and applied in such a way as to deviate from the legal norms of other legal acts, and their application may not be considered contrary to the application of the Law, unless the Law *expressis verbis* provides otherwise. Thus, the contracting authority must not violate other legal acts, both when preparing the tender documents and evaluating the suppliers' tenders.

It should be noted that the list of grounds for exclusion of a supplier¹ provided for in the Law, as well as the list of documents substantiating qualification², is exhaustive, and the customer and beneficial owner identification requirement you specify is neither similar to the established grounds for exclusion nor to the qualification requirements, nor does it meet the concept of a technical specification.

The only ground for exclusion established by the Law related to money laundering is established in Item 8 of Paragraph 1 of Article 46 of the Law. Public sales contracts should not be awarded to economic operators who have been involved in a criminal organization or who have been found guilty of corruption, fraud (affecting the financial interests of the European Union), terrorist offenses, money laundering or terrorist financing³. The Law provides for one of the mandatory grounds for exclusion of a supplier related to money laundering or terrorist financing activities, which is enshrined in Item 8 of Paragraph 1 of Article 46 of the Law. Item 8 of Paragraph 1 of Article 46 of the Law is related to such situations when a supplier of another state has been convicted in another Member State of the European Union not for the Republic of Lithuania for such offenses that correspond to the offenses listed in Article 57 (1) of Directive 2014/24/EU, i.e. (i) participation in a criminal organisation; (ii) corruption; (iii) fraud; (iv) terrorist offences or offences linked to terrorist activities; (v) *money laundering or terrorist financing*; (vi) child labour and other forms of trafficking in human beings⁴. This ground for exclusion must be raised in the case of cross-border and simplified procurement, and may be raised in the case of low value procurement. However, this ground for exclusion does not address the issues raised in your letter.

It should be noted that if the contracting authority or supplier actually has certain obligations arising from the provisions of other legal acts, which are not separately regulated in the Law, it may include the relevant provisions in the public procurement contract, having duly disclosed these requirements in the public procurement documents.

Director

Darius Vedrickas

¹ Article 46 of the Law on Public Procurement

² The methodology for determining the supplier's qualification was approved by the Order No. 1S-105 of the Director of the Public Procurement Office of 29 June 2017.

³ Directive 2014/24/EU of the European Parliament and of the Council

⁴ Commentary on Item 8 of Paragraph 1 of Article 46 of the Law on Public Procurement:

<https://klausk.vpt.lt/hc/lt/articles/360016427039-46-straipsnis-Tiek%C4%97jo-pa%C5%A1alinimo-pagrindai>

Karolina Skorupskaitė, tel. (8 5) 2197049, email: Karolina.Skorupskaite@vpt.lt