

Response to the request of clarifications received, until 12.07.2012, in relation to the Terms of Reference for the organisation of the competitive selection procedure in view of awarding the rights to use the radio frequencies in the 800 MHz, 900 MHz, 1800 MHz and 2600 MHz bands.

1. Question:

With reference to the provisions under Section 4.5.2 letter a), in view of removing any uncertainty, please specify whether the certification for conformity with the original of the documents submitted by a candidate can be done in a valid manner either by one of the persons mandated to represent the candidate according to Section 4.5.2 letter a) (the persons specified in the authenticated power-of-attorney) or by any other of the candidate's legal representatives.

Answer:

The certification for conformity with the original of the documents that are not requested in original may be done either by the persons mandated to act on the candidate's behalf pursuant to Section 4.5.2 letter a) under the Terms of Reference, or by any of the persons mandated to legally represent the company. In such case, the person making the certification for conformity with the original needs to be one of the persons designated in the acknowledging certificate provided for at Section 4.5.2 letter b), sub-letter (v).

2. Question:

In order to avoid any possible inconsistencies relating to the form and content of the application files submitted by the candidates, please specify whether their representatives can be present at the time when the envelopes are opened, in a limited number for each candidate, in view of the optimum roll-out of the process undertaken by the Commission.

Answer:

No. The final version of Section 4.5.5.6 "Opening of the envelopes containing the application file" in the Terms of Reference provides that the envelopes will be opened only by the Commission.

3. Question:

*As for the **authenticated power-of-attorney** which ~~X~~ will grant to the natural persons who are to act on behalf of the company in the course of the selection procedure, according to the provisions of Section 4.5.2 letter a) of the Terms of Reference, we wish to find out whether the setting up of a general power-of-attorney, **granting full and complete rights to the persons mandated to act in the course of the entire selection procedure (without providing financial limits)**, meets the requirements.*

Answer:

Yes. The authenticated power-of-attorney must nevertheless be an express one (specially drawn up for the competitive selection held in view of awarding radio frequency

usage rights in the 800 MHz, 900 MHz, 1800 MHz and 2600 MHz bands) and must clearly specify that the representatives have full and complete rights.

4. Question:

*With regard to the participation bond which needs to be included in the application file, where this bond is issued by a **foreign banking institution**, we wish to know whether a **translation into Romanian** of the original letter of bank guarantee is required. **If yes, please specify whether a legalised translation is required or whether a simple translation is sufficient.***

Answer:

Yes. In the case of submitting documents drawn up in another language than Romanian, these documents will be accompanied by a legalised translation in Romanian.

5. Question:

Rules concerning the participants' independence – Section 4.3.1 and Section 4.6.1 point 1)

Please specify whether the submission of a CEO statement ~~X~~ certifying that no other entity in the ~~X~~ group takes part in the present selection procedure is sufficient for fulfilling this criterion.

Answer:

No. The statement on own responsibility may be attached to the candidate's file; this however does not have any influence on the observance of the obligation to submit a structure of the candidate's group, valid on the date when the application file was submitted, as provided for in Section 4.5.2 letter e) of the Terms of Reference.

6. Question:

Please specify whether the fulfilment of the requirement concerning the average turnover may be determined in relation to the last 3 years from the date when the applications were submitted. Thus, in view of proving the fulfilment of the aforementioned condition, the financial statements as of 30.06.2009, 31.12.2009, 31.12.2010 and 31.12.2011 and 30.06.2012 may be submitted under the form of the documents approved under the law and submitted to the competent financial bodies.

Answer:

The condition is deemed fulfilled in the situation described above as well, provided that the financial statements are approved under the law, in accordance with the applied accounting principle.

7. Question:

[...], please consider that the requirement on the average turnover is impossible to be fulfilled by a newly established economic operator. Furthermore, this economic operator's access to the procedure, by association with other economic operators who are eligible from this standpoint, is restricted by the requirement of Section 4.6.1. "Qualification criteria" under the Terms of Reference which provides, for associations, that each of the association members must fulfil the requirement concerned. Consequently, please consider reformulating this requirement, in the sense of allowing that the average turnover obligation be fulfilled by cumulation, in the case of associations.

Answer:

The qualification criteria provided for in Section 4.6.1 of the Terms of Reference were elaborated bearing in mind the objective to attract those candidates that are able to

prove their capacity to invest for ensuring the national implementation and development of mobile electronic communications networks.

Therefore, ANCOM does not agree with the modification of the abovementioned criterion and the submitted applications are to be analysed in consideration of the requirement specified at Section 4.6.1 letter d) of the Terms of Reference, as formulated therein.