

**HIGHLIGHTS**  
**ON THE NON-PARTITIONING OF THE SUBJECT-MATTER OF THE CONTRACT**

|                                   |                                                       |
|-----------------------------------|-------------------------------------------------------|
| <b>Buyer</b>                      | UAB "LTG Kompetencijų centras" (hereinafter – LTG KC) |
| <b>Procurement number</b>         | 33543                                                 |
| <b>Subject of the procurement</b> | Public cloud services                                 |
| <b>Procurement value limits</b>   | International procurement                             |
| <b>Procurement method</b>         | Negotiated procedure                                  |

LTG KC is conducting an international procurement and, in accordance with the provisions of Article 28 of the Law on Public Procurement of the Republic of Lithuania, with a view to increasing competition amongst suppliers and taking into account the capacity of small and medium-sized enterprises to fulfil the procurement contract, has decided to divide the subject matter of the procurement into lots and has set out the grounds for this decision in the procurement documents.

The subject matter of the procurement is not divided into parts because, prior to initiating the procurement, an analysis of the subject matter and the market established that:

1. The LTG Group's business objectives dictate that, throughout the entire term of the procurement contract, it is necessary to implement a 'multi-cloud' strategy and to have uninterrupted access to at least two public cloud service providers (manufacturers). Therefore, the Contracting Authority seeks to procure the subject of the procurement as a comprehensive service model that would ensure the Contracting Authority's ability, under a single contract, to use the services of at least two cloud service providers, manage and administer them through a single supplier channel, and which would be fully tailored to the Contracting Authority's needs and operations.
2. The scope and complexity of the subject matter of the procurement are best managed by a single service provider. If the subject matter of the procurement were divided into parts, the performance of the procurement contract would become excessively costly and technically complex, the implementation of the different parts of the procurement would be closely interlinked, and the contracting authority would therefore need to coordinate the suppliers ensure compatibility among different contracts and their service providers, resolve issues of liability allocation, and coordinate incident resolution; this would pose a risk of improper performance of the procurement contract and could potentially harm the reputation of the LTG Group companies.
3. It should be emphasised that splitting the subject matter of the procurement is also not permitted because, once the contracting authority has signed a public procurement contract for the provision of cloud services from a single cloud provider, regardless of the circumstances (for example, in the event of a system failure, in order to ensure the operation of critical IT systems), the contracting authority will be unable to conduct public procurement procedures for the provision of cloud services from another cloud service provider, as it will still have a valid contract for these services, and concurrent contracts for the same subject matter of the procurement are not permitted. Consequently, in the event of a failure, the contracting authority would have no legal basis for ensuring the proper and smooth operation of cloud services – and, by extension, of almost all (~90%) IT systems. Given that public cloud services are integral to a significant portion of the Contracting Authority's and the entire LTG Group's IT systems, the procurement model must ensure not only the availability of a specific provider's services but also the practical ability to promptly switch service usage to another cloud provider when necessary due to incidents, security requirements, changes in service levels, or other objective circumstances. This objective can only be achieved by procuring the subject of the procurement as a unified service delivery model, rather than through separate, mutually independent procurement lots.
4. By entering into a procurement contract to use the services of a single public cloud provider, the contracting authority would also face undefined legal risks, as, alongside the procurement contract, the contracting authority would simultaneously be bound by the standard terms and

conditions for cloud services applied by the cloud provider. Cloud service providers periodically update, refine and supplement these standard terms and conditions, whilst the contracting authority has neither the legal nor the practical leverage to negotiate the inclusion or exclusion of specific provisions. By signing a Procurement Contract with a supplier that provides access to at least two public cloud service providers, the Contracting Authority will, throughout the term of the Procurement Contract, have the option to opt out of using services that may pose legal risks and, under the same Procurement Contract, to select cloud services provided by another cloud service provider that meet the Contracting Authority's business needs.

5. Cloud service providers are in constant competition with one another and offer customers more favourable pricing terms, improve their Service Level Agreements (SLAs) and offer other innovative services or added (free) benefits. Only by having access to at least two public cloud service providers will the contracting authority be able to choose between those cloud service providers offering the most favourable pricing and service packages at that time, and only in this way will it ensure the effective use of funds allocated for procurement.
6. Failure to divide the subject matter of the procurement into lots does not in itself disproportionately restrict competition among suppliers. A market assessment has determined that there are suppliers operating in the market capable of offering a public cloud service delivery model that includes access to the services of more than one cloud provider, and that suppliers may also engage partners, subcontractors, or other resources to fulfill the procurement contract. The terms of the procurement do not seek to favor a specific cloud provider or supplier; on the contrary, they aim to enable the contracting authority to select the cloud service model that is most suitable from an economic, technical, and security standpoint during the performance of the Contract.
7. Implementing a 'multi-cloud' strategy, whereby the services of several cloud providers are used simultaneously, is a widely adopted and common practice in the market. In the rail services sector, in which the Contracting Authority also operates, the decision to implement a 'multi-cloud' strategy (i.e. to connect its IT systems to several cloud service providers simultaneously) has already been adopted by the national railway companies of France (SNCF), Germany (Deutsche Bahn), Switzerland (SBB) and Finland (VR Group).

In view of the above circumstances, the Contracting Authority requires uninterrupted access to at least two public cloud service providers and, in accordance with Articles 28(2) and 35(4) of the Public Procurement Law, the procurement may not be divided into separate lots. In deciding not to divide the subject matter of the procurement into lots, the contracting authority took into account the objective set forth in Article 28 of the Public Procurement Law to promote competition among suppliers and to enable small and medium-sized enterprises to participate in procurements. However, in this specific case, it was determined that dividing the subject matter of the procurement would pose a greater risk to achieving the procurement's objective, ensuring business continuity, and the effective performance of the contract than the potential benefits of division in terms of increasing competition.