
STATUTORY INSTRUMENTS

1991 No. 2680

The Public Works Contracts Regulations 1991

PART IV

SELECTION OF CONTRACTORS

Criteria for rejection of contractors

14. –

(1) A contracting authority may treat a contractor as ineligible to tender for, or to be included amongst those persons from whom it will make the selection of persons to be invited to tender for or to negotiate a public works contract in accordance with regulations 11(7), 12(4), and 13(7), or decide not to select a contractor to tender for or to negotiate a public works contract in accordance with regulations 12(5) and 13(8) on one of the following grounds, namely that the contractor–

- (a) being an individual is bankrupt or has had a receiving order or administration order made against him or has made any composition or arrangement with or for the benefit of his creditors or has made any conveyance or assignment for the benefit of his creditors or appears unable to pay, or to have no reasonable prospect of being able to pay, a debt within the meaning of section 268 of the Insolvency Act 1986⁽¹⁾, or article 242 of the Insolvency (Northern Ireland) Order 1989⁽²⁾, or in Scotland has granted a trust deed for creditors or become otherwise apparently insolvent, or is the subject of a petition presented for sequestration of his estate, or is the subject of any similar procedure under the law of any other state;
- (b) being a partnership constituted under Scots law has granted a trust deed or become otherwise apparently insolvent, or is the subject of a petition presented for sequestration of its estate;
- (c) being a company has passed a resolution or is the subject of an order by the court for the company's winding up otherwise than for the purposes of bona fide reconstruction or amalgamation, or has had a receiver, manager or administrator on behalf of a creditor appointed in respect of the company's business or any part thereof or is the subject of proceedings for any of the above procedures or is the subject of similar procedures under the law of any other state;
- (d) has been convicted of a criminal offence relating to the conduct of his business or profession;
- (e) has committed an act of grave misconduct in the course of his business or profession;
- (f) has not fulfilled obligations relating to the payment of social security contributions under the law of any part of the United Kingdom or of the member State in which the contractor is established;

(1) 1986 c. 45.

(2) S.I.1989/2405 (N.I. 19).

- (g) has not fulfilled obligations relating to the payment of taxes under the law of any part of the United Kingdom;
- (h) is guilty of serious misrepresentation in providing any information required of him under this regulation and regulation 15, 16 and 17; or
- (i) subject to paragraphs (5) and (6) below, is not registered on the professional or trade register of the member State in which the contractor is established under the conditions laid down by that State.

(2) Subject to regulation 18, the contracting authority may require a contractor to provide such information as it considers it needs to make the evaluation in accordance with paragraph (1) above except that it shall accept as conclusive evidence that a contractor does not fall within the grounds specified in paragraphs (1)(a), (b), (c), (d), (f), or (g) above if that contractor provides to the contracting authority—

- (a) in relation to the grounds specified in paragraphs (1)(a), (b), (c) or (d) above,
 - (i) an extract from the judicial record, or
 - (ii) in a member State which does not maintain such a judicial record, a document issued by the relevant judicial or administrative authority;
- (b) in relation to the grounds specified in paragraph (1)(f) or (g) above, a certificate issued by the relevant competent authority;
- (c) in a member State where the documentary evidence specified in paragraphs (2)(a) and (b) above is not issued in relation to one of the grounds specified in paragraph (1)(a), (b), (c), (d), (f) or (g) above, a declaration on oath made by the contractor before the relevant judicial, administrative or competent authority or a relevant notary public or commissioner for oaths.

(3) In this regulation, “relevant” in relation to a judicial, administrative or competent authority, notary public or commissioner for oaths means an authority designated by, or a notary public or commissioner for oaths in, the member State in which the contractor is established.

(4) The following are the appropriate professional or trade registers for the purposes of paragraph (1)(i) above—

- in Belgium, the registre du commerce/Handelsregister;
- in Denmark, the Erhvervsand Selskabsstyrelsen;
- in France, the registre du commerce or the repertoire des metiers;
- in Germany, the Handelsregister or the Handwerksrolle;
- in Italy, the Registro della Camera di commercio, industria, agricoltura e artigianato;
- in Luxembourg, the registre aux firmes and the role de la Chambre des metiers;
- in the Netherlands, the Handelsregister;
- in Portugal, the Commissao de Alvaras de Empresas de Obras Publicas e Particulares (“CAEOPP”); and
- in Spain, the Registro Oficial de Contratistas del Ministerio de Industria y Energia.

(5) A contractor established in the United Kingdom or Ireland shall be treated as registered on the professional or trade register for the purposes of paragraph (1)(i) above if the contractor—

- (a) is established in Ireland and is certified as registered with the Registrar of Friendly Societies, or
- (b) is established in either State and is either—
 - (i) certified as incorporated by the Registrar of Companies, or

(ii) is certified as having declared on oath that he is carrying on business in the trade in question in the State in which he is established at a specific place of business and under a specific trading name.

(6) A contractor established in Greece shall be treated as registered on the professional or trade register for the purposes of paragraph (1)(i) if the contractor is certified as having declared on oath before a notary public that he exercises the profession of public works contractor.

Information as to economic and financial standing

15. –

(1) Subject to regulation 18 and paragraph (2) below, in assessing whether a contractor meets any minimum standards of economic and financial standing required of contractors by the contracting authority for the purposes of regulations 11(7), 12(4) and 13(7), and selecting the contractors to be invited to tender for or to negotiate the contract in accordance with regulations 12(5) and 13(8), a contracting authority shall only take into account any of the following information (and it may require a contractor to provide such of that information as it considers it needs to make the assessment or selection)–

- (a) appropriate statements from the contractor’s bankers;
- (b) statement of accounts or extracts therefrom relating to the business of the contractor where publication of the statement is required under the law of the Member State in which the contractor is established;
- (c) a statement of the overall turnover of the business of the contractor and the turnover in respect of works in the 3 previous financial years of the contractor.

(2) Where the information specified in paragraph (1) above is not appropriate in a particular case a contracting authority may require a contractor to provide other information to demonstrate the contractor’s economic and financial standing.

(3) A contracting authority which requires information to be provided in accordance with paragraphs (1) and (2) above, shall specify in the contract notice or in the invitation to tender the information which the contractor must provide.

(4) Where a contractor is unable for a valid reason to provide the information which the contracting authority has required, the contracting authority shall accept such other information provided by the contractor as the contracting authority considers appropriate.

Information as to technical capacity

16. –

(1) Subject to regulation 18, in assessing whether a contractor meets any minimum standards of technical capacity required of contractors by the contracting authority for the purposes of regulations 11(7), 12(4) and 13(7), and in selecting the contractors to be invited to tender for or to negotiate the contract in accordance with regulations 12(5) and 13(8), a contracting authority shall only take into account any of the following information (and it may require a contractor to provide such of that information as it considers it needs to make the assessment or selection)–

- (a) a list of the contractor’s educational and professional qualifications where the contractor is an individual and a list of such qualifications of the contractor’s managerial staff if any and those of the person or persons who would be responsible for carrying out the works under the contract;
- (b) a list of works carried out over the past 5 years together with (unless the contracting authority specifies that the following certificate should be submitted direct to the contracting authority by the person certifying) certificates of satisfactory completion for

the most important of those works indicating in each case the value of the consideration received, when and where the works were carried out and specifying whether they were carried out according to the rules of the trade or profession and properly completed;

- (c) a statement of the tools, plant and technical equipment available to the contractor for carrying out the work under the contract;
- (d) a statement of the contractor's average annual manpower and the number of managerial staff over the previous 3 years;
- (e) a statement of the technicians or technical services which the contractor may call upon for the carrying out of the work under the contract, whether or not the technicians or persons providing the technical services are independent of the contractor.

(2) The contracting authority shall specify in the contract notice which of the information specified in paragraph (1) above it requires to be provided.

Supplementary information

17. Subject to regulation 18, the contracting authority may require a contractor to provide information supplementing the information provided in accordance with regulations 14, 15 and 16 or to clarify that information, provided that the information so required relates to the matters specified in regulations 14, 15 and 16.

Official lists of recognised contractors

18. Where a contractor is registered on the official list of recognised contractors in a Member State which maintains such lists and in which the contractor is established and the contractor submits to the contracting authority a certificate of registration issued by the authority administering the official list which specifies the information submitted to that authority which enabled the contractor to be registered and which states the classification given, the contracting authority, to the extent that the certificate deals with the grounds referred to in regulation 14(1)(a) to (e), (h), and (i), 15(1)(b) and (c) and 17(1)(b) and (d)–

- (a) shall accept the certificate as evidence that the contractor does not fall within the grounds specified in regulation 14(1)(a) to (e), (h) and (i) and shall not be entitled to require the contractor to submit such information relating to those grounds as is specified in regulation 14,
- (b) shall not be entitled to require the contractor to provide information specified in regulations 15(1)(b) and (c) and 16(1)(b) and (d), and
- (c) shall not be entitled to seek any supplementary information in accordance with regulation 17 in relation to the matters specified in paragraphs (a) and (b) above.

Consortium

19. –

(1) In this regulation a “consortium” means 2 or more persons, at least one of whom is a contractor, acting jointly for the purpose of being awarded a public works contract.

(2) A contracting authority shall not treat the tender of a consortium as ineligible nor decide not to include a consortium amongst those persons from whom it will make the selection of persons to be invited to tender for or to negotiate a public works contract on the grounds that the consortium has not formed a legal entity for the purposes of tendering for or negotiating the contract; but where a contracting authority awards a public works contract to a consortium it may require the consortium to form a legal entity before entering into, or as a term of, the contract.

(3) In these Regulations references to a contractor or to a concessionaire where the contractor or concessionaire is a consortium includes a reference to each person who is a member of that consortium.