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STATUTORY INSTRUMENTS

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**1993 No. 3228**

**The Public Services Contracts Regulations 1993**

**PART IV**

**SELECTION OF SERVICES PROVIDERS**

**Criteria for rejection of services providers**

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

- (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<sup>(1)</sup>, or article 242 of the Insolvency (Northern Ireland) Order 1989<sup>(2)</sup>, or in Scotland has granted a trust deed for creditors or become otherwise apparently insolvent, or is the subject of a petition presented 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 services provider is established;
- (g) has not fulfilled obligations relating to the payment of taxes under the law of any part of the United Kingdom;

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(1) 1986 c. 45.

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

- (h) is guilty of serious misrepresentation in providing any information required of him under this regulation and regulations 15, 16 and 17;
- (i) is not licensed in the member State in which he is established or is not a member of an organisation in that member State when the law of that member State prohibits the provision of the services to be provided under the contract by a person who is not so licensed or who is not such a member; or
- (j) subject to paragraphs (5) and (6) below, is not registered on the professional or trade register of the member State in which he is established under conditions laid down by that State.

(2) Subject to regulation 18, the contracting authority may require a services provider 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 services provider does not fall within the grounds specified in paragraph (1)(a), (b), (c), (d), (f) or (g) above if that services provider provides to the contracting authority—

- (a) in relation to the grounds specified in paragraph (1)(a), (b), (c), (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; and
- (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 services provider 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 services provider is established.

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

- in Belgium the registre du commerce/Handelsregister or the ordres professionnels – Beroepsorden;
- in Denmark, the Erhvervs- and Selskabstyrelsen;
- in France, the registre du commerce or the répertoire des métiers;
- in Germany, the Handelsregister, the Handwerksrolle or the Vereinsregister;
- in Italy, the Registro della Camera di commercio, industria, agricoltura e artigianato, the Registro delle commissioni provinciali per l'artigianato or the Consiglio nazionale degli ordini professionali;
- in Luxembourg, the registre aux firmes and the rôle de la Chambre des métiers;
- in the Netherlands, the Handelsregister;
- in Portugal, the Registo nacional das Pessoas Colectivas; and
- in Spain, the Registro Central de Empresas Consultoras y de Servicios del Ministerio de Economía y Hacienda.

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

- (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 services provider established in Greece shall be treated as registered on the professional or trade register for the purposes of paragraph (1)(j) above—
- (a) when the services to be provided under the contract are specified in paragraph 8 of Schedule 1 and when Greek legislation requires persons who provide those services to be registered on the professional register “Μητρωο Μελετητων” and “Μητρωο Γραφειων Μελετων”, if he is registered on that register; and
  - (b) in any other case, if the services provider is certified as having declared on oath before a notary public that he exercises the profession which will be exercised in providing the services under the contract.

#### **Information as to economic and financial standing**

15.—(1) Subject to regulation 18 and paragraph (2) below, in assessing whether a services provider meets any minimum standards of economic and financial standing required of services providers by the contracting authority for the purposes of regulations 11(8), 12(4) and 13(7), and in selecting the services providers 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 services provider to provide such of the information as it considers it needs to make the assessment or selection)—

- (a) appropriate statements from the services provider’s bankers, or evidence of relevant professional risk indemnity insurance;
- (b) statement of accounts or extracts therefrom relating to the business of the services provider where publication of the statement is required under the law of the member State in which the services provider is established;
- (c) a statement of the overall turnover of the business of the services provider and the turnover in respect of the provision of services of the type to be provided under the proposed services contract in the 3 previous financial years of the services provider.

(2) Where the information specified in paragraph (1) above is not appropriate in a particular case a contracting authority may require a services provider to provide other information to demonstrate the services provider’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 services provider must provide.

(4) Where a services provider 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 services provider as the contracting authority considers appropriate.

#### **Information as to ability and technical capacity**

16.—(1) Subject to regulation 18, in assessing whether or not a services provider meets any minimum standards of ability and technical capacity required of services providers by the contracting authority for the purposes of regulations 11(8), 12(4) and 13(7), and in selecting the services

providers to be invited to tender for or to negotiate the contract in accordance with regulations 12(5) and 13(8), a contracting authority may have regard to—

- (a) the services provider's ability, taking into account in particular his skills, efficiency, experience and reliability; and
- (b) his technical capacity, taking into account any of the following—
  - (i) the services provider's educational and professional qualifications where the services provider is an individual and the qualifications of the services provider's managerial staff if any and those of the person or persons who would be responsible for providing the services under the contract;
  - (ii) the principal services provided by the services provider of a similar type to the services to be provided under the contract in the past 3 years, the dates on which the services were provided, the consideration received and the identity of the person to whom the services were provided, any certificate issued or countersigned by that person confirming the details of the services provided or, but only where that person was not a contracting authority, any declaration by the services provider attesting the details of the services provided;
  - (iii) the technicians or technical bodies who would be involved in the provision of the services under the contract, particularly those responsible for quality control whether or not they are independent of the services provider;
  - (iv) the services provider's average annual manpower and the number of managerial staff over the previous 3 years;
  - (v) the tools, plant and technical equipment available to the services provider for providing the services under the contract;
  - (vi) the services provider's measures for ensuring quality and his study and research facilities in relation to the services to be provided under the contract;
  - (vii) where the services to be provided under the contract are complex or are required for a special purpose, any check, carried out by the contracting authority or on its behalf by a competent official body of the member State in which the services provider is established, on the technical capacity of the services provider in relation to the services to be provided under the contract and, if relevant, on the services provider's study and research facilities and quality control measures;
  - (viii) any certificate that the services of the services provider to be provided under the contract conform to BS 5750 or any certificate of an independent body established in any member State conforming to the EN 45 000 European standards series attesting conformity to relevant quality assurance standards based on the EN 29 000 series, or where the services provider has no access to such a certificate, or cannot obtain such a certificate within the relevant time limits, any other evidence of conformity to equivalent quality assurance standards;
  - (ix) any proportion of the contract which the services provider intends to sub-contract to another person.

(2) The contracting authority shall specify in the contract notice or in the invitation to tender or to negotiate what information, for the purposes of making the assessment or selection for the purposes of paragraph (1) above, it requires to be provided and it may require a services provider to provide such of that information as it considers it needs to make the assessment or selection.

### **Supplementary information**

17. The contracting authority may require a services provider to provide information supplementing the information supplied in accordance with regulations 14, 15 and 15 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 services providers**

**18.** Where a services provider is registered on the official list of recognised services providers in a member State which maintains such lists and in which the services provider submits to the contracting authority a certificate of registration issued by the authority administering the official lists which specifies the information submitted to that authority which enabled the services provider 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 regulations 14(1)(a) to (e) and (h) to (j), 15(1)(b) and (c) and 16(1)(b)(i)—

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

### **Consortia**

**19.—(1)** In this regulation a “consortium” means 2 or more persons, at least one of whom is a services provider, acting jointly for the purpose of being awarded a public services 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 services 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 services 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 services provider where the services provider is a consortium includes a reference to each person who is a member of that consortium.

### **Corporations**

**20.—(1)** A contracting authority shall not treat the tender of a services provider as ineligible nor decide not to include a services provider amongst those persons from whom it will make the selection of persons to be invited to tender for or to negotiate a contract on the ground that under the law of any part of the United Kingdom the services provider is required to be an individual, a corporation or other type of body, if under the law of the member State in which the services provider is established, he is authorised to provide such services.

(2) A contracting authority may require a services provider which is not an individual to indicate in the tender or in the request to be selected to tender for or to negotiate the public services contract the names and relevant professional qualifications of the staff who will be responsible for the provision of the services.