
STATUTORY INSTRUMENTS

1995 No. 201

The Public Supply Contracts Regulations 1995

PART IV

SELECTION OF SUPPLIERS

Criteria for rejection of suppliers

14.—(1) A contracting authority may treat a supplier 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 contract in accordance with regulations 11(7), 12(4) and 13(7) above, or decide not to select a supplier to tender for or to negotiate a contract in accordance with regulations 12(5) and 13(8), on one of the following grounds, namely that the supplier—

- (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 relevant State in which the supplier is established;
- (g) has not fulfilled obligations relating to the payment of taxes under the law of any part of the United Kingdom or the relevant State in which the supplier is established;

(1) 1986 c. 45.

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

- (h) is guilty of serious misrepresentation in supplying any information required of him under this regulation and regulations 15, 16 and 17; or
- (i) subject to paragraphs (5) and (6) below, is not registered on the professional or trade register of the relevant State in which the supplier is established under the conditions laid down by that State.

(2) Subject to regulation 19, the contracting authority may require a supplier 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 supplier does not fall within the grounds specified in paragraphs (1)(a), (b), (c), (d), (f) or (g) above if that supplier 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 relevant 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 relevant State where the documentary evidence specified in paragraphs 2(a) and (b) above is not issued or where it is issued but does not extend to all of the grounds specified in paragraph (1)(a), (b), (c) or (d) above, a declaration on oath, or in a relevant State which does not provide for a declaration on oath a solemn declaration, made by the supplier 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 such an authority designated by, or a notary public or commissioner of oaths in, the relevant State in which the supplier is established.

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

- in Austria, the Firmenbuch, the Gewerberegister or the Mitgliederverzeichnisse der Landeskammern;
- in Belgium, the Registre du commerce/Handelsregister;
- in Denmark, the Aktieselskabsregistret, Foreningsregistret or Handelsregistret;
- in Finland, the Kaupparekisteri or Handelsregistret;
- in France, the Registre du commerce or repertoire des metiers;
- in Germany, the Handelsregister or Handwerksrolle;
- in Greece, the ΒιοΤεΚνικó η ΒιομηΚανικó η Εμπορικó ΕπιμεληΤηριο
- in Iceland, the Firmaskrá;
- in Italy, the Registro della Camera di commercio, industria, agricoltura e artigianato or Registro delle Commissioni provinciali per l'artigianato;
- in Liechtenstein, the Gewerberegister;
- in Luxembourg, the Registre aux firmes or Rue de la chambre des metiers;
- in Norway, the Foretaksregisteret;
- in the Netherlands, the Handelsregister;
- in Portugal, the Registo Nacional das Pessoas Colectivas;
- in Spain, the Registro Mercantil; and

in Sweden, the Aktiebolagsregistret or the Handelsregistret.

(5) A supplier 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 supplier—

(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) An individual who is established in Spain shall be treated as registered on the professional or trade register for the purposes of paragraph (1)(i) above if he is certified as having declared an oath that he exercises the particular profession or trade.

(7) A supplier established in a relevant State, other than the United Kingdom or Ireland, which either has an equivalent professional or trade register which is not listed in paragraph (4) above or which does not have an equivalent professional or trade register shall be treated as registered on a professional or trade register for the purposes of paragraph 1(i) above on production of either a certificate that he is registered on the equivalent professional or trade register or where no such register exists, a declaration on oath, or in a relevant State which does not provide for a declaration on oath a solemn declaration, made by the supplier before the relevant judicial, administrative or competent authority or a relevant notary public or Commissioner for oaths, that he exercises the particular profession or trade.

Information as to economic and financial standing

15.—(1) Subject to regulation 19 and paragraph (2) below, in assessing whether a supplier meets any minimum standards of economic and financial standing required of suppliers by the contracting authority for the purposes of regulations 11(7), 12(4) and 13(7), and in selecting the suppliers to be invited to tender for or to negotiate the contract in accordance with regulations 12(5) and 13(8), a contracting authority may take into account any of the following information—

(a) appropriate statements from the supplier's bankers;

(b) statements of accounts or extracts therefrom relating to the business of the supplier where publication of the statement is required under the law of the relevant State in which the supplier is established;

(c) a statement of the overall turnover of the business of the supplier and the turnover in respect of goods of a similar type to the goods to be purchased or hired under the public supply contract in the 3 previous financial years of the supplier.

(2) Where the information specified in paragraph (1) above is not appropriate in a particular case, a contracting authority may require a supplier to provide other information to demonstrate the supplier'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 supplier must provide and it may require a supplier to provide only such of that information as it considers it needs to make the assessment or selection.

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

Information as to technical capacity

16.—(1) Subject to regulation 19, in assessing whether a supplier meets any minimum standards of technical capacity required of suppliers by the contracting authority for the purposes of regulations 11(7), 12(4) and 13(7), and in selecting the suppliers to be invited to tender for or to negotiate the contract in accordance with regulations 12(5) and 13(8), a contracting authority may take into account any of the following information—

- (a) the principal deliveries by the supplier of goods of a similar type to the goods to be purchased or hired under the public supply contract in the past 3 years, specifying in each case the date of delivery, the consideration received and the identity of the purchaser accompanied by a certificate issued or countersigned by the purchaser confirming the details of the purchase or hire or, but only where the purchaser was not a contracting authority, a declaration by the supplier attesting the details of the purchase or hire;
- (b) the supplier's technical facilities, measures for ensuring quality and study and research facilities in relation to the goods to be purchased or hired under the public supply contract;
- (c) the technicians or technical bodies who would be involved with the production of the goods to be purchased or hired under the public supply contract, particularly those responsible for quality control, whether or not they are independent of the supplier;
- (d) samples, descriptions and photographs of the goods to be purchased or hired under the public supply contract and certification of the authenticity of such samples, descriptions or photographs;
- (e) certification by official quality control institutes or agencies of recognised competence attesting that the goods to be purchased or hired under the public supply contract conform to standards and technical specifications (within the meaning of regulation 8(1)) identified by the contracting authority;
- (f) where the goods to be sold or hired under the public supply contract are complex or are required for a special purpose, a check, carried out by the contracting authority or on its behalf by a competent official body of the relevant State in which the supplier is established, on the production capacity of the supplier in respect of the goods to be purchased or hired under the contract and, if relevant, on the supplier's study and research facilities and quality control measures.

(2) The contracting authority may only require a supplier to provide information specified in paragraph (1) above and only such of that information as it considers it needs to make the assessment or selection and it shall specify in the contract notice or in the invitation to tender which of that information it requires to be provided.

Supplementary information

17. The contracting authority may require a supplier to provide information supplementing the information supplied 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.

Confidentiality of information

18. A contracting authority shall comply with such requirements as to the confidentiality of information provided to it by a supplier as the supplier may reasonably request.

Official lists of recognised suppliers

19. Where a supplier is registered on the official list of recognised suppliers in a relevant State which maintains such lists and in which the supplier is established and the supplier 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 supplier 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), (h) and (i), 15(1)(b) and (c) and 16(1)(a)—

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

Consortia

20.—(1) In this regulation a “consortium” means 2 or more persons, at least one of whom is a supplier, acting jointly for the purpose of being awarded a public supply 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 supply contract on the grounds that that consortium has not formed a legal entity for the purpose of tendering for or negotiating the contract; but where a contracting authority awards a public supply contract to a consortium it may, if to do so is justified for the satisfactory performance of the contract, require the consortium to form a legal entity before entering into, or as a term of, the contract.

(3) In this part of these Regulations references to a supplier where the supplier is a consortium includes a reference to each person who is a member of that consortium.