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STATUTORY INSTRUMENTS

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**2006 No. 5**

**The Public Contracts Regulations 2006**

**PART 4**

**SELECTION OF ECONOMIC OPERATORS**

**Criteria for the rejection of economic operators**

**23.**—(1) Subject to paragraph (2), a contracting authority shall treat as ineligible and shall not select an economic operator in accordance with these Regulations if the contracting authority has actual knowledge that the economic operator or its directors or any other person who has powers of representation, decision or control of the economic operator has been convicted of any of the following offences—

- (a) conspiracy within the meaning of section 1 of the Criminal Law Act 1977(1) where that conspiracy relates to participation in a criminal organisation as defined in Article 2(1) of Council Joint Action 98/733/JHA(2);
- (b) corruption within the meaning of section 1 of the Public Bodies Corrupt Practices Act 1889(3) or section 1 of the Prevention of Corruption Act 1906(4);
- (c) the offence of bribery;
- (d) fraud, where the offence relates to fraud affecting the financial interests of the European Communities as defined by Article 1 of the Convention relating to the protection of the financial interests of the European Union, within the meaning of—
  - (i) the offence of cheating the Revenue;
  - (ii) the offence of conspiracy to defraud;
  - (iii) fraud or theft within the meaning of the Theft Act 1968(5) and the Theft Act 1978(6);
  - (iv) fraudulent trading within the meaning of section 458 of the Companies Act 1985(7);

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(1) 1977 c. 45. Section 1 was amended by section 5(1) of the Criminal Attempts Act 1981 (c. 47), section 9(1) and (2) and paragraph 4 of Part II of Schedule 2 to the Criminal Justice (Terrorism and Conspiracy) Act 1998 (c. 40) and section 300(1) of and Schedule 1 to, the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52).

(2) OJ L 351, 29.12.1998,p.1.

(3) 1889 c. 69.

(4) 1906 c. 34. Section 1 was amended by section 47(2) and (3) of the Criminal Justice Act 1988 (c. 33) and section 108(2) of the Anti-terrorism, Crime and Security Act 2001 (c. 24) and section 68(2) of the Criminal Justice (Scotland) Act 2003 (c.asp7).

(5) 1968 c. 60. Section 9 was amended by section 26(2) of the Criminal Justice Act 1991 (c. 53) and sections 139, 140 of, and Part 17 of Schedule 6 and Schedule 7 to, the Sexual Offences Act 2003 (c. 42). Section 14 was amended by S.I.2003/2908. Sections 15A and 15B were inserted by section 1(1) of the Theft (Amendment) Act 1996 (c. 62) and section 15B was amended by S.I. 2001/3649. Section 16 was amended by section 5(5) of the Theft Act 1978 (c. 31). Section 24A was inserted by section 2(1) of the Theft (Amendment) Act 1996 (c. 62). Section 33 was amended by S.I. 2001/1149. Section 34 was amended by S.I. 2003/2908. Section 36 was amended by section 41(1) of, and Part I of Schedule 6 to, the Northern Ireland Constitution Act 1973 (c. 36). There are other amendments which are not relevant to these Regulations.

(6) 1978 c. 31. Section 1 was amended by section 4(1) of the Theft (Amendment) Act 1996 (c. 62). Section 5 was amended by section 37(1) of, and Schedule 2 to, the Extradition Act 1989 (c. 33). There are other amendments which are not relevant to these Regulations.

(7) 1985 c. 6. There are amendments to this Act which are not relevant to these Regulations.

- (v) defrauding the Customs within the meaning of the Customs and Excise Management Act 1979<sup>(8)</sup> and the Value Added Tax Act 1994<sup>(9)</sup>;
- (vi) an offence in connection with taxation in the European Community within the meaning of section 71 of the Criminal Justice Act 1993<sup>(10)</sup>; or
- (vii) destroying, defacing or concealing of documents or procuring the extension of a valuable security within the meaning of section 20 of the Theft Act 1968;
- (e) money laundering within the meaning of the Money Laundering Regulations 2003<sup>(11)</sup>; or
- (f) any other offence within the meaning of Article 45(1) of the Public Sector Directive as defined by the national law of any relevant State.

(2) In any case where an economic operator or its directors or any other person who has powers of representation, decision or control has been convicted of an offence described in paragraph (1), a contracting authority may disregard the prohibition described there if it is satisfied that there are overriding requirements in the general interest which justify doing so in relation to that economic operator.

(3) A contracting authority may apply to the relevant competent authority to obtain further information regarding the economic operator and in particular details of convictions of the offences listed in paragraph (1) if it considers it needs such information to decide on any exclusion referred to in that paragraph.

(4) A contracting authority may treat an economic operator as ineligible or decide not to select an economic operator in accordance with these Regulations on one or more of the following grounds, namely that the economic operator—

- (a) being an individual is bankrupt or has had a receiving order or administration order or bankruptcy restrictions 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>(12)</sup>, or article 242 of the Insolvency (Northern Ireland) Order 1989<sup>(13)</sup>, 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 or any other entity within the meaning of section 255 of the Enterprise Act 2002<sup>(14)</sup> has passed a resolution or is the subject of an order by the court for the company's winding up otherwise than for the purpose 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 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;

<sup>(8)</sup> 1979 c. 2. There are amendments to this Act which are not relevant to these Regulations.

<sup>(9)</sup> 1994 c. 23. Section 72 was amended by section 17 of the Finance Act 2003 (c. 40). There are other amendments to this Act which are not relevant to these Regulations.

<sup>(10)</sup> 1993 c. 36. There are amendments to this Act which are not relevant to these Regulations.

<sup>(11)</sup> S.I. 2003/3075.

<sup>(12)</sup> 1986 c. 45. There are amendments to this Act which are not relevant to these Regulations.

<sup>(13)</sup> S.I. 1989/2405 (N.I. 19). There are amendments to this Order which are not relevant to these Regulations.

<sup>(14)</sup> 2002 c. 40. There are amendments to this Act which are not relevant to these Regulations.

- (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 economic operator is established;
- (g) has not fulfilled obligations relating to the payment of taxes under the law of any part of the United Kingdom or of the relevant State in which the economic operator is established;
- (h) is guilty of serious misrepresentation in providing any information required of him under this regulation;
- (i) in relation to procedures for the award of a public services contract, is not licensed in the relevant State in which he is established or is not a member of an organisation in that relevant State when the law of that relevant 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 (7), (8) and (9), is not registered on the professional or trade register of the relevant State specified in Schedule 6 in which he is established under conditions laid down by that State.

(5) The contracting authority may require an economic operator to provide such information as it considers it needs to make the evaluation in accordance with paragraphs (1) and (4) except that it shall accept as conclusive evidence that an economic operator does not fall within the grounds specified in paragraphs (1) and (4)(a), (b), (c), (d), (f) or (g) if that economic operator provides to the contracting authority—

- (a) in relation to the grounds specified in paragraphs (1) and (4)(a), (b), (c) or (d)—
  - (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 paragraphs (4)(f) or (g), a certificate issued by the relevant competent authority; and
- (c) in a relevant State where the documentary evidence specified in paragraphs (5)(a) and (b) is not issued in relation to one of the grounds specified in paragraphs (1),(4)(a), (b), (c), (d), (f) or (g), a declaration on oath made by the economic operator before the relevant judicial, administrative or competent authority or a relevant notary public or Commissioner for oaths.

(6) 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 relevant State in which the economic operator is established.

(7) An economic operator established in the United Kingdom or Ireland shall be treated as registered on the professional or trade register for the purposes of paragraph (4)(j) if the economic operator —

- (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 their respective Registrar of Companies; or
  - (ii) is certified as having declared on oath that it is carrying on business in the trade in question in the State in which it is established at a specific place of business and under a specific trading name.

(8) In relation to procedures for the award of a public services contract, an economic operator established in Greece shall be treated as registered on the professional or trade register for the purposes of paragraph (4)(j)—

- (a) when the services to be provided under the contract are specified in category 8 of Schedule 3 and when Greek legislation requires persons who provide those services to be registered on the professional register (Μητρώο Μελετητών and Μητρώο Γραφείων Μελετών), if it is registered on that register; and
- (b) in any other case, in accordance with paragraph (9).

(9) An economic operator 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 Schedule 6 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 (4)(j) 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 economic operator 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.