

Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC (Text with EEA relevance)

TITLE II

RULES ON CONTRACTS

CHAPTER VII

Conduct of the procedure

Section 2

Criteria for qualitative selection

Article 42

Technical and/or professional ability

1 Evidence of economic operators' technical abilities may, as a general rule, be furnished by one or more of the following means, according to the nature, quantity or importance and use of the works, supplies or services:

- a (i) a list of the works carried out over the past five years, accompanied by certificates of satisfactory execution for the most important works. These certificates shall indicate the value, date and location of the works and shall specify whether they were carried out according to the rules of the trade and properly completed. Where appropriate, the competent authority shall submit these certificates to the contracting authority/entity directly;
- (ii) a list of the principal deliveries effected or the main services provided, as a general rule, in the past five years, with the sums, dates and recipients, whether public or private, involved. Evidence of delivery and services provided shall be given:
 - where the recipient was a contracting authority/entity, in the form of certificates issued or countersigned by the competent authority,
 - where the recipient was a private purchaser, by the purchaser's certification or, failing this, simply by a declaration by the economic operator,
- b an indication of the technicians or technical bodies involved, whether or not they belong directly to the economic operator's undertaking, especially those responsible for quality control and, in the case of works contracts, those upon which the contractor can call in order to carry out the work;

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- c a description of the technical facilities and measures used by the economic operator to ensure quality and the undertaking's study and research facilities, as well as internal rules regarding intellectual property;
- d a check carried out by the contracting authorities/entities or on their behalf by a competent official body of the country in which the economic operator is established, subject to that body's agreement, on the production capacities of the supplier or the technical capacity of the economic operator and, if necessary, on the means of study and research which are available to it and the quality control measures it will operate;
- e in the case of works contracts, service contracts or supply contracts also covering siting and installation operations or services, the educational and professional qualifications of the economic operator and/or those of the undertaking's managerial staff and, in particular, those of the person or persons responsible for providing the services or managing the work;
- f for works contracts and services contracts, and only in appropriate cases, an indication of the environmental management measures that the economic operator will be able to apply when performing the contract;
- g a statement of the average annual manpower of the service provider or contractor and the number of managerial staff for the last three years;
- h a description of the tools, material, technical equipment, staff numbers and know-how and/or sources of supply — with an indication of the geographical location when it is outside the territory of the Union — which the economic operator has at its disposal to perform the contract, cope with any additional needs required by the contracting authority/entity as a result of a crisis or carry out the maintenance, modernisation or adaptation of the supplies covered by the contract;
- i with regard to the products to be supplied, provision of:
 - (i) samples, descriptions and/or photographs, the authenticity of which must be certified if the contracting authority/entity so requests;
 - (ii) certificates drawn up by official quality control institutes or agencies of recognised competence attesting the conformity of products, clearly identified by references to specifications or standards;
- j in the case of contracts involving, entailing and/or containing classified information, evidence of the ability to process, store and transmit such information at the level of protection required by the contracting authority/entity.

In the absence of harmonisation at Community level of national security clearance systems, Member States may provide that this evidence has to comply with the relevant provisions of their respective national laws on security clearance. Member States shall recognise security clearances which they consider equivalent to those issued in accordance with their national law, notwithstanding the possibility to conduct and take into account further investigations of their own, if considered necessary.

The contracting authority/entity may, where appropriate, grant candidates which do not yet hold security clearance additional time to obtain such clearance. In this case, it shall indicate this possibility and the time-limit in the contract notice.

The contracting authority/entity may ask the national security authority of the candidate's Member State or the security authority designated by that Member State to check the conformity of the premises and facilities that may be used, the industrial and administrative procedures that will be followed, the methods for managing information and/or the situation of staff likely to be employed to carry out the contract.

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2 An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It shall in that case prove to the contracting authority/entity that it will have at its disposal the resources necessary for the execution of the contract, for example by producing an undertaking by those entities to put the necessary resources at the disposal of the economic operator.

3 Under the same conditions, a group of economic operators as referred to in Article 5 may rely on the abilities of participants in the group or of other entities.

4 In procedures for awarding contracts having as their object supplies requiring siting or installation work, the provision of services and/or the execution of works, the ability of economic operators to provide the service or to execute the installation or the work may be evaluated in particular with regard to their skills, efficiency, experience and reliability.

5 The contracting authority/entity shall specify in the notice which of the references referred to in the first paragraph it has chosen and which other references must be provided.

6 If, for any valid reason, the economic operator is unable to provide the references requested by the contracting authority/entity, it may prove its technical and/or professional ability by any other document which the contracting authority/entity considers appropriate.