
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2016 No.

The Procurement (Scotland) Regulations 2016

PART 4

SPECIFIC DUTIES

Selection of tenderers: selection criteria

10.—(1) Selection criteria may relate to—

- (a) suitability to pursue a professional activity;
- (b) economic and financial standing;
- (c) technical and professional ability.

(2) A contracting authority may impose upon economic operators as requirements for participation only the criteria referred to in paragraphs (6) to (19).

(3) A contracting authority must limit any requirements to those that are appropriate to ensure that a candidate or tenderer has the legal and financial capacities and the technical and professional abilities to perform the contract to be awarded.

(4) All requirements must be related and proportionate to the subject-matter of the contract.

(5) With regard to suitability to pursue a professional activity, a contracting authority may require economic operators to be enrolled in one of the professional or trade registers kept in their member State of establishment, as described in Schedule 2 to the 2015 Regulations, or to comply with any other request set out in that Schedule.

(6) In procurement procedures for services, in so far as economic operators have to possess a particular authorisation or to be a member of a particular organisation in order to be able to perform in their country of origin the service concerned, a contracting authority may require them to prove that they hold such authorisation or membership.

(7) With regard to economic and financial standing, a contracting authority may impose requirements ensuring that economic operators possess the necessary economic and financial capacity to perform the contract.

(8) A contracting authority may require that economic operators—

- (a) in particular, have a certain minimum yearly turnover, including a certain minimum turnover in the area covered by the contract;
- (b) provide information on their annual accounts showing the ratios, for example, between assets and liabilities;
- (c) have an appropriate level of professional risk indemnity insurance.

(9) The minimum yearly turnover that economic operators are required to have must not exceed twice the estimated contract value, except in duly justified cases, such as by reference to special risks attached to the nature of the works, supplies or services.

(10) Ratios referred to in paragraph (8)(b) may be taken into consideration where the contracting authority specifies the methods and criteria for such consideration in the procurement documents, but such methods and criteria must be transparent, objective and non-discriminatory.

(11) Where a contract is divided into lots paragraphs 12 to 14 shall apply in relation to each individual lot.

(12) A contracting authority may set the minimum yearly turnover that economic operators are required to have by reference to groups of lots in the event that the successful tenderer is awarded several lots to be performed at the same time.

(13) Where a contract based on a framework agreement is to be awarded following a reopening of competition, the estimated contract value referred to in paragraph (9) must be calculated on the basis of the expected maximum size of specific contracts that will be performed at the same time, or, where it is not known, on the basis of the estimated value of the framework agreement.

(14) In the case of a dynamic purchasing system, the estimated contract value referred to in paragraph (9) must be calculated on the basis of the expected maximum size of specific contracts to be awarded under that system.

(15) With regard to technical and professional ability, a contracting authority may impose requirements ensuring that economic operators possess the necessary human and technical resources and experience to perform the contract to an appropriate quality standard.

(16) A contracting authority may require, in particular, that economic operators have a sufficient level of experience demonstrated by suitable references from contracts performed in the past.

(17) A contracting authority may assume that an economic operator does not possess the required professional abilities where the contracting authority has established that the economic operator has conflicting interests which may negatively affect the performance of the contract.

(18) In a procurement procedure for works, for supplies requiring siting or installation work or for services, a contracting authority may evaluate the professional ability of economic operators to execute or provide the works, siting or installation or the services with regard to the skills, efficiency, experience and reliability of the economic operator.

(19) A contracting authority must state the requirements for participation, which may be expressed as minimum levels of ability, together with the appropriate means of proof, in the contract notice or in the invitation to confirm interest.