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SCOTTISH STATUTORY INSTRUMENTS

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**2012 No. 88**

**The Public Contracts (Scotland) Regulations 2012 (revoked)**

**PART 4**

**SELECTION OF ECONOMIC OPERATORS**

**Information as to technical or professional ability**

**25.**—(1) Subject to regulation 27, in assessing whether an economic operator meets any minimum standards of technical or professional ability required of economic operators by the contracting authority—

- (a) for the purposes of regulation 15(11), 16(7), 17(9) or 18(10); and
- (b) in selecting the economic operators to be invited to tender for or to negotiate the contract in accordance with regulation 16(8), 17(10) or 18(11),

a contracting authority may have regard to any means listed in paragraph (2) according to the purpose, nature, quantity or importance of the contract.

(2) The means referred to in paragraph (1) are—

- (a) in the case of a public services contract, a public works contract or a public supply contract requiring the siting or installation of work, the economic operator's technical ability, taking into account in particular that economic operator's skills, efficiency, experience and reliability;
- (b) a list of works carried out over the past 5 years together with (unless the contracting authority specifies that the following certificate should be submitted direct to the contracting authority by the person certifying) certificates of satisfactory completion for the most important of those works indicating in each case—
  - (i) the value of the consideration received;
  - (ii) when and where the work or works were carried out; and
  - (iii) specifying whether they were carried out according to the rules of the trade or profession and properly completed;
- (c) a statement of the principal goods sold or services provided by the supplier or the services provider in the past 3 years and—
  - (i) the dates on which the goods were sold or the services provided;
  - (ii) the consideration received;
  - (iii) the identity of the person to whom the goods were sold or the services were provided;
  - (iv) any certificate issued or countersigned by that person confirming the details of the contract for those goods sold or services provided; and
  - (v) where—
    - (aa) that person was not a contracting authority; and
    - (bb) the certificate referred to in sub-paragraph (c)(iv) is not available,

- any declaration by the economic operator attesting the details of the goods sold or services provided;
- (d) a statement of the technicians or technical services available to the economic operator to—
    - (i) carry out the work under the contract; or
    - (ii) be involved in the production of goods or the provision of services under the contract, particularly those responsible for quality control, whether or not they are independent of the economic operator;
  - (e) in relation to the goods to be purchased or hired or the services to be provided under the contract, a statement of the supplier's or services provider's—
    - (i) technical facilities;
    - (ii) measures for ensuring quality; and
    - (iii) study and research facilities;
  - (f) where the goods to be sold or hired or the services to be provided under the contract are complex or, exceptionally, 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 or services provider is established—
    - (i) on the technical capacity of the supplier or services provider in relation to the goods to be purchased or hired or the services to be provided under the contract; and
    - (ii) if relevant, on the supplier's or services provider's study and research facilities and quality control measures;
  - (g) the services provider's or contractor's educational and professional qualifications where the services provider or contractor is an individual and—
    - (i) if any, those of the services provider's or contractor's managerial staff; and
    - (ii) those of the one or more persons who would be responsible for providing the services, or carrying out the work or works under the contract;
  - (h) the environmental management measures, evidenced in accordance with paragraph (4), that the services provider or contractor is able to apply when performing the contract, but only where it is necessary for the performance of that contract;
  - (i) a statement of the services provider's or contractor's average annual number of staff and managerial staff over the previous 3 years;
  - (j) a statement of the tools, plant and technical equipment available to the services provider or contractor for performing the contract;
  - (k) a statement of any proportion of the contract which the services provider intends to sub-contract to another person;
  - (l) any 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;
  - (m) 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 9(1)) identified by the contracting authority;
  - (n) a certificate—
    - (i) attesting conformity to quality assurance standards based on the relevant European standard; and

- (ii) from an independent body established in any relevant State conforming to the European standard concerning certification; or
  - (o) any other evidence of conformity to quality assurance measures which are equivalent to the standards referred to in sub-paragraph (n)(i).
- (3) Where appropriate—
- (a) an economic operator or a group of economic operators as referred to in regulation 28 may rely on the capacities of other entities or members in the group, regardless of the legal nature of the link between the economic operator or group of economic operators and the other entities; and
  - (b) the economic operator or the group of economic operators must prove to the contracting authority that the resources necessary to perform the contract will be available and the contracting authority may, in particular, require the economic operator to provide an undertaking from the other entities to that effect.
- (4) The evidence referred to in paragraph (2)(h) is—
- (a) a certificate—
    - (i) attesting conformity to environmental management standards based on—
      - (aa) the Community Eco-Management and Audit Scheme <sup>M1</sup>; or
      - (bb) the relevant European or international standards; and
    - (ii) from an independent body established in any relevant State conforming to EU law or the relevant European or international standards concerning certification; or
  - (b) any other evidence of environmental management measures which are equivalent to the standards referred to in sub-paragraph (a)(i).
- (5) A contracting authority which requires information to be provided in accordance with paragraph (2) must specify in the contract notice or in the invitation to tender the information which the economic operator must provide.

**Marginal Citations**

**M1** The Community Eco-Management and Audit Scheme (EMAS) is a management tool for companies and other organisations to evaluate, report and improve their environmental performance; for more information see [www.europa.eu.int/comm/environment/emas/index-en.htm](http://www.europa.eu.int/comm/environment/emas/index-en.htm).

**Status:**

Point in time view as at 01/05/2012. This version of this provision has been superseded.

**Changes to legislation:**

There are currently no known outstanding effects for the The Public Contracts (Scotland) Regulations 2012 (revoked), Section 25.