

## Exclusion Grounds

The Contracting Authority shall exclude Tenderers from the process if they have been found guilty of any of the offences listed below:

### Mandatory exclusions

- (1) Contracting authorities shall exclude a tenderer from participation in a procurement procedure where they have established, or are otherwise aware, that the tenderer has been convicted of any of the following offences:—
  - (a) conspiracy within the meaning of section 1 or 1A of the Criminal Law Act 1977 or article 9 or 9A of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 where that conspiracy relates to participation in a criminal organisation as defined in Article 2 of Council Framework Decision 2008/841/JHA on the fight against organised crime;
  - (b) corruption within the meaning of section 1(2) of the Public Bodies Corrupt Practices Act 1889 or section 1 of the Prevention of Corruption Act 1906;
  - (c) the common law offence of bribery;
  - (d) bribery within the meaning of sections 1, 2 or 6 of the Bribery Act 2010, or section 113 of the Representation of the People Act 1983;
  - (e) where the offence relates to fraud affecting the European Communities' financial interests as defined by Article 1 of the Convention on the protection of the financial interests of the European Communities:—
    - (i) the common law offence of cheating the Revenue;
    - (ii) the common law offence of conspiracy to defraud;
    - (iii) fraud or theft within the meaning of the Theft Act 1968, the Theft Act (Northern Ireland) 1969, the Theft Act 1978 or the Theft (Northern Ireland) Order 1978;
    - (iv) fraudulent trading within the meaning of section 458 of the Companies Act 1985, article 451 of the Companies (Northern Ireland) Order 1986 or section 993 of the Companies Act 2006;
    - (v) fraudulent evasion within the meaning of section 170 of the Customs and Excise Management Act 1979 or section 72 of the Value Added Tax Act 1994;
    - (vi) an offence in connection with taxation in the European Union within the meaning of section 71 of the Criminal Justice Act 1993;
    - (vii) destroying, defacing or concealing of documents or procuring the execution of a valuable security within the meaning of section 20 of the Theft Act 1968 or section 19 of the Theft Act (Northern Ireland) 1969;
    - (viii) fraud within the meaning of section 2, 3 or 4 of the Fraud Act 2006; or
    - (ix) the possession of articles for use in frauds within the meaning of section 6 of the Fraud Act 2006, or the making, adapting,

supplying or offering to supply articles for use in frauds within the meaning of section 7 of that Act;

- (f) any offence listed—
    - (i) in section 41 of the Counter Terrorism Act 2008; or
  - (g) in Schedule 2 to that Act where the court has determined that there is a terrorist connection; any offence under sections 44 to 46 of the Serious Crime Act 2007 which relates to an offence covered by subparagraph;
  - (h) money laundering within the meaning of sections 340(11) and 415 of the Proceeds of Crime Act 2002;
  - (i) an offence in connection with the proceeds of criminal conduct within the meaning of section 93A, 93B or 93C of the Criminal Justice Act 1988 or article 45, 46 or 47 of the Proceeds of Crime (Northern Ireland) Order 1996;
  - (j) an offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004;
  - (k) an offence under section 59A of the Sexual Offences Act 2003;
  - (l) an offence under section 71 of the Coroners and Justice Act 2009;
  - (m) an offence in connection with the proceeds of drug trafficking within the meaning of section 49, 50 or 51 of the Drug Trafficking Act 1994; or
  - (n) any other offence within the meaning of Article 57(1) of the Public Contracts Directive—
    - (i) as defined by the law of any jurisdiction outside England and Wales and Northern Ireland; or
    - (ii) created, after the day on which these Regulations were made, in the law of England and Wales or Northern Ireland.
- (2) The obligation to exclude a tenderer also applies where the person convicted is a member of the administrative, management or supervisory body of that tenderer or has powers of representation, decision or control in the tenderer.

### **Mandatory and discretionary exclusions for non-payment of taxes etc**

- (3) An tenderer shall be excluded from participation in a procurement procedure where—
- (a) the contracting authority is aware that the tenderer is in breach of its obligations relating to the payment of taxes or social security contributions; and
  - (b) the breach has been established by a judicial or administrative decision having final and binding effect in accordance with the legal provisions of the country in which it is established or with those of any of the jurisdictions of the United Kingdom.

- (4) Contracting authorities may exclude a tenderer from participation in a procurement procedure where the contracting authority can demonstrate by any appropriate means that the tenderer is in breach of its obligations relating to the payment of taxes or social security contributions.
- (5) Paragraphs (3) and (4) cease to apply when the tenderer has fulfilled its obligations by paying, or entering into a binding arrangement with a view to paying, the taxes or social security contributions due, including, where applicable, any interest accrued or fines.