

Léigh le do thoil an sliocht thíos ó Ionstraim Reachtúil Uimh. 284 de 2016 agus sínigh an dearbhú coiteanta ag a deireadh (níl aistriúcháin oifigiúil le fail ón Oireachtas fós):

EUROPEAN COMMUNITIES (AWARD OF PUBLIC AUTHORITIES' CONTRACTS) REGULATIONS 2016

Exclusion grounds

57. (1) Subject to paragraphs (6), (7), (13) and (18), a contracting authority shall exclude an economic operator from participation in a procurement procedure where it has established, by verifying in accordance with Regulations 59, 60 and 61, or is otherwise aware that the economic operator concerned has been convicted of one or more of the following offences:

- (a) participation in a criminal organisation, within the meaning of Article 2 of Council Framework Decision 2008/841/JHA of 24 October 2008³⁶ on the fight against organised crime;
- (b) corruption, which, in this Regulation, means corruption within the meaning of the following:
 - (i) Regulation 2;
 - (ii) Article 2(1) of Council Framework Decision 2003/568/JHA³⁷ of 22 July 2003 on combating corruption in the private sector;
 - (iii) the law of the State, where the contracting authority or the economic operator concerned is established in the State;
 - (iv) the law of the Member State, other than the State, in which the contracting authority or the economic operator concerned is established;
- (c) fraud within the meaning of Article 1 of the Convention on the protection of the European Communities financial interests drawn up under the Council Act of 26 July 1995³⁸;
- (d) terrorist offences or offences linked to terrorist activities, within the meaning of Articles 1 and 3 respectively of Council Framework Decision 2002/475/JHA of 13 June 2002³⁹ on combating terrorism or inciting or aiding or abetting or attempting to commit an offence referred to in Article 4 of that Council Framework Decision;
- (e) money laundering or terrorist financing, within the meaning of Article 1 of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005⁴⁰ on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing;

(f) child labour and other forms of trafficking in human beings, within the meaning of Article 2 of Directive 2011/36/EU⁴¹ of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims and replacing Council Framework Decision 2002/629/JHA.

(2) The obligation of a contracting authority to exclude an economic operator under paragraph (1) also applies (but subject to paragraphs (6), (7), (13) and (18)) where the person convicted is a member of the administrative, management or supervisory body of that economic operator or has powers of representation, decision or control in the economic operator.

(3) Subject to paragraphs (5) to (7), (13) and (19), an economic operator shall be excluded from participation in a procurement procedure where—

- (a) the contracting authority is aware that the economic operator is in breach of its obligations relating to the payment of taxes or social security contributions, and
- (b) the breach referred to in subparagraph (a) has been established by a judicial or administrative decision having final and binding effect in accordance with the law of the country in which the operator is established or the Member State of the contracting authority.

(4) Subject to paragraph (5), a contracting authority may exclude an economic operator from participation in a procurement procedure where the contracting authority can demonstrate, by any appropriate means, that the economic operator is in breach of its obligations relating to the payment of taxes or social security contributions, who is subject to a bankruptcy or insolvency procedure or process of a kind specified in paragraph (5), or

(5) Paragraphs (3) and (4) shall not apply when the economic operator 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.

(6) A contracting authority shall not be obliged to exclude an economic operator under this Regulation where, on an exceptional basis, there are overriding reasons relating to the public interest such as public health or protection of the environment.

(7) A contracting authority shall not be obliged to exclude an economic operator under this Regulation where such an exclusion would be disproportionate, including where—

- (a) only minor amounts of taxes or social security contributions referred to in paragraph (3)(a) are unpaid, or
- (b) the economic operator was informed of the exact amount due following its breach of its obligations relating to the payment of taxes or social security contributions referred to in paragraph (3)(a) at such time that it did not have the possibility of taking measures as provided

for in paragraph (5) before the expiration of the deadline for requesting participation or, in open procedures, the deadline for submitting its tender.

(8) Subject to paragraphs (13) and (20), a contracting authority may exclude from participation in a procurement procedure any economic operator in one or more of the following situations:

- (a) where the contracting authority can demonstrate by any appropriate means a violation of applicable obligations referred to in Regulation 18(4);
- (b) where the economic operator is bankrupt or is the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under the law of the State;
- (c) where the contracting authority can demonstrate, by appropriate means, that the economic operator is guilty of grave professional misconduct, which renders its integrity questionable;
- (d) where the contracting authority has sufficiently plausible indications to conclude that the economic operator has entered into agreements with other economic operators aimed at distorting competition;
- (e) where a conflict of interest within the meaning of Regulation 24 cannot be effectively remedied by other, less intrusive, measures;
- (f) where a distortion of competition from the prior involvement of the economic operator in the preparation of the procurement procedure, as referred to in Regulation 41, cannot be remedied by other, less intrusive, measures;
- (g) where the economic operator has shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity or a prior concession contract, which led to early termination of that prior contract, damages or other comparable sanctions;
- (h) where the economic operator has been guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the selection criteria, has withheld such information or is not able to submit supporting documents required under Regulation 59;

- (i) where the economic operator has undertaken to unduly influence the decision-making process of the contracting authority, or obtain confidential information that may confer upon it undue advantages in the procurement procedure or where the economic operator has negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award.

(9) Notwithstanding paragraph (8)(b), a contracting authority may decide not to exclude an economic operator that is in any of the situations referred to in that paragraph where the contracting authority has established that the economic operator will be able to perform the contract taking into account the national rules and measures of the Member State of establishment of the economic operator or the law of the State, as appropriate, on the continuation of business in those situations.

(10) A contracting authority shall, at any time during the procurement procedure, exclude an economic operator where the authority becomes aware that the economic operator is, in view of acts committed or omitted either before or during the procedure, in one of the situations referred to in paragraphs (1) to (3).

(11) A contracting authority may, at any time during the procurement procedure, exclude an economic operator where the authority becomes aware that that economic operator is, in view of acts committed or omitted either before or during the procedure, in one of the situations referred to in paragraph (8).

(12) An economic operator that is in one of the situations referred to in paragraphs (1), (2) or (8) may provide evidence to the effect that measures taken by the economic operator concerned are sufficient to demonstrate its reliability despite the existence of a relevant ground for exclusion.

(13) Where the evidence provided under paragraph (12) is considered sufficient the economic operator concerned shall not be excluded from the procurement procedure.

(14) For the purposes of paragraphs (12) and (13) the economic operator shall show that it has—

- (a) paid or undertaken to pay compensation in respect of any damage caused by the criminal offence or misconduct concerned,
- (b) clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities, and
- (c) taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offences or misconduct.

(15) The contracting authority shall, when evaluating the measures shown to be taken by the economic operator under paragraph (14), take into account the gravity and particular circumstances of the criminal offence or misconduct concerned.

(16) Where the contracting authority considers that the measures shown to be taken by the economic operator under paragraph (14) are insufficient, the contracting authority shall give the economic operator a statement of the reasons for that decision.

(17) An economic operator that is excluded by final judgment from participating in procurement or concession award procedures shall not be entitled to make use of the possibility provided for in paragraphs (12) to (16) during the period of exclusion resulting from that judgment in the Member State where the judgement is effective.

(18) Paragraphs (1) and (2) shall be construed so that the requirement under either of those paragraphs that the economic operator be excluded, in the manner there mentioned, shall cease to apply on the expiration of the period of 5 years from the date of conviction of the economic operator or person, as the case may be, for the offence concerned referred to in the relevant paragraph.

(19) Paragraph (3) shall be construed so that the requirement under that paragraph that the economic operator be excluded, in the manner there mentioned, shall cease to apply on the expiration of the period of 5 years from the date the relevant breach is established by the judicial or administrative decision concerned referred to in subparagraph (b) of that paragraph.

(20) Paragraph (8) shall be construed so that the power under that paragraph to exclude an economic operator, in the manner there mentioned, shall not be exercisable where the contracting authority establishes that 3 or more years have elapsed since the date that the economic operator concerned was in the relevant situation referred to in that paragraph.

(21) The reference in paragraph (18) to the requirement under paragraph (1) or (2) includes a reference to the requirement under either such paragraph as it operates by virtue of paragraph (10).

(22) The reference in paragraph (19) to the requirement under paragraph (3) includes a reference to the requirement under that paragraph as it operates by virtue of paragraph (10).

(23) The reference in paragraph (20) to the power under paragraph (8) includes a reference to the power under that paragraph as that paragraph operates by virtue of paragraph (11).

Dearbhú:

Deirim agus dearbhaím nach bhaineann aon cheann de na cúinsí leagtha amach in Ionstraim Reachtúil Uimh. 284 de 2016 liomsa.

Sínithe _____ Ainm Clóite _____

NÓ

(Féach an chéad leathanach eile)

Deirim agus dearbhaím go mbaineann aon cheann na cúinsí a leanas atá leagtha amach in Ionstraim Reachtúil Uimh. 284 de 2016 liomsa:

Sínithe _____ Ainm Clóite _____