

GUIDANCE NOTE

Short Listing of Works Contractors using

Suitability Assessment and Random Selection

Suitability Assessment and Random Selection
Document Reference GN 2.3.1.1 v 1.0
11 November 2009.

© 2009 Department of Finance

Published by: Department of Finance
Government Buildings
Upper Merrion Street
Dublin 2.

This document is not to be taken as a legal interpretation of the provisions governing public procurement. All parties must rely exclusively on their own skills and judgment or upon those of their advisors when making use of this document. The Government Construction Contracts Committee (GCCC), the National Public Procurement Policy Unit (NPPPU) and the Department of Finance and any other contributor to this guidance note do not assume any liability to anyone for any loss or damage caused by any error or omission, whether such error or omission is the result of negligence or any other cause. Any and all such liability is disclaimed.

1.0 Suitability Assessment Method

Introduction

The Contracting Authority must first make a decision on the suitability assessment method it intends to use under a restricted procedure for the main works contract. This guidance note deals with the situation where the Contracting Authority has decided to use the *Pass/Fail plus Random Selection* method. Firstly the Contracting Authority must complete the Contract Notice prior to sending it to the Office for the Official Publications of the European Commission in the format required by the Commission's Directive for publication in the OJEU. A number of key sections of the Contract Notice in the format required by the Commission's Directive for publication of notices in the OJEU are reproduced below to illustrate how they should be filled in.

Contract Notice Section III (Standard Form 2 – EN)

Section III of the Contract Notice should be filled in a similar way to that indicated in the example below by the Contracting Authority prior to issue of Notice to the Office for the Official Publications of the European Commission. **Note:** A decision on what the actual requirements should be should only be made after consideration is given to what is appropriate in a particular situation.

SECTION III: LEGAL, ECONOMIC, FINANCIAL AND TECHNICAL INFORMATION

III.2) Conditions for participation

III.2.1) Personal situation of economic operators, including requirements relating to enrolment on professional or trade registers

Information and formalities necessary for evaluating if requirements are met:

Evidence required in relation to the following criterion is to be provided in accordance with rules set out in the in Questionnaire (Questionnaire provided)

Criteria (A45 [1] to [4])

Standard Declaration (attached to Questionnaire) which meets the requirements in Article 45 of Directive 2004/18/EC (and Regulation 53 of SI No 329 of 2006)

Evaluation

If the Declaration presented is properly completed it is a Pass and if the economic operator passes all other criteria that operator can go forward to the Random Selection stage. Details of the Random Selection mechanism are set out in **Section IV 1.2**.

III.2.2) Economic and financial capacity

Information and formalities necessary for evaluating if requirements are met:

Evidence required in relation to the following criterion is to be provided in accordance with rules set out in the in Questionnaire (Questionnaire provided)

Note: The reference to the Article below (e.g. A.47) relate to the Article in Directive 2004/18/EC

Criterion (A47.1[c] and Regulation 55.1 [ci and cii] of SI No 329 of 2006)

Evidence of certified overall turnover and turnover relevant to the contract for the 3 previous financial years.

Evaluation

If certified turnover meets the minimum standard it is a Pass and if the economic operator passes all other criteria then that operator can go forward to the Random Selection stage. Details of the Random Selection mechanism are set out in **Section IV.1.2**

Minimum level(s) of standard possibly required (*if applicable*):

The minimum turnover requirement is twice the annualised Capital Value of the Contract.

Continued on next page

1.0 Suitability Assessment Method, Continued

**Contract Notice
Section III
(continued)**

III.2.3) Technical capacity	
<p>Information and formalities necessary for evaluating if requirements are met:</p> <p>Note: The reference to Articles below (e.g. A.48) relate to the Articles in Directive 2004/18/EC</p> <p>1. Criterion (A48 [2e] and Regulation 57.1 [c] of SI No 329 of 2006) Evidence of educational and professional qualifications (with dates obtained) and experience (on similar projects) of managerial staff including Curricula Vitae of managerial staff and the organisation structure of the entity.</p> <p>Evaluation If evidence of the contractor and the contractor’s management staff in relation to the educational and professional qualifications meets the minimum standard it is a Pass and if the economic operator passes all other criteria the operator can go forward to the Random Selection stage. Details of the Random Selection mechanism are set out in Section IV.1.2</p> <p>2. Criterion (A48 [2e] and Regulation 57.1 [c] of SI No 329 of 2006) Evidence of educational and professional qualifications (with dates obtained) and experience (on similar projects) of proposed key personnel responsible for managing the works including submission of their Curricular Vitae</p> <p>Evaluation The evaluation method is Pass/Fail plus Random Selection – same as Criterion 1 above.</p> <p>3. Criterion (A48 [2ai] and Regulation 57.1 [a] of SI No 329 of 2006) Evidence of Works that the economic operator has provided over the past five years</p> <p>Evaluation The evaluation method is Pass/Fail plus Random Selection – same as Criterion 1 above.</p> <p>4. Criterion (A48 [2c] and Regulation 57.1 [b] of SI No 329 of 2006) Evidence of the technical facilities and measures used by the economic operator for studying, researching and ensuring quality in the administration of the project and the delivery of a high quality end-product.</p> <p>Evaluation The evaluation method is <i>Pass/Fail plus Random Selection</i> – same as Criterion 1 above.</p>	<p>Minimum level(s) of standards possibly required (<i>if applicable</i>):</p> <p>The minimum standard for managerial staff in the organisation is evidence that shows that at least one managerial person in the organisation is competent to act as Contracts Manager and at least one person is competent to act as H&S Manager (may be the same person).</p> <p>The minimum standard for proposed key personnel responsible for managing the works is evidence that shows that the proposed key persons/person are/is competent to carry out the duties of: Engineer/Forman, Quantity Surveyor/Cost Engineer, Site Safety Officer and Project Supervisor for the Construction Stage.</p> <p>The minimum standard in relation to previous projects is for evidence in the form of Certificates of Satisfactory Execution be provided for at least two projects that the economic operator has executed over the past five years that are similar in nature, scale and complexity to this project.</p> <p>The minimum standard is for an economic operator to provide evidence in the form of a brief description of the measures used for ensuring effective quality both in the administration of a project and the delivery of a high standard of building construction.</p>

Continued on next page

1.0 Suitability Assessment Method, Continued

**Contract Notice
Section III
(continued)**

<p>5. Criterion (A48 [2h] and Regulation 57.1 [e] of SI No 329 of 2006) Evidence for three years of average annual manpower and managerial staff.</p> <p>Evaluation The evaluation method is <i>Pass/Fail plus Random Selection</i> – same as Criterion 1 above</p> <p>6. Criterion (A48 [2g] and Regulation 57.1 [f] of SI No 329 of 2006) Evidence of technical equipment available to carry out the project.</p> <p>Evaluation The evaluation method is <i>Pass/Fail plus Random Selection</i> – same as Criterion 1 above</p>	<p>The minimum standard is that the personnel should be categorised into (i) managerial staff (ii) qualified professional staff (iii) technical staff and (iv) unqualified personnel.</p> <p>The minimum standard is that adequate specialist earth moving machinery for road works is available.</p>
---	---

**Contract Notice
Section IV
(Standard Form
2 – EN)**

Section IV of the Contract Notice should be filled similar to text in red below by the Contracting Authority prior to issue of Notice to the Office for the Official Publications of the European Commission.

SECTION IV: PROCEDURE

IV.1) Type of procedure

IV.1.1) Type of procedure	
Open	<input type="checkbox"/>
Restricted	<input checked="" type="checkbox"/>
Accelerated restricted	<input type="checkbox"/> Justification for the choice of accelerated procedure _____
Negotiated procedure	<input type="checkbox"/> Candidates have already been selected yes <input type="checkbox"/> no <input type="checkbox"/> <i>If yes, provide names and addresses of economic operators already selected under Section VI,3)</i> <i>Additional Information</i>
Accelerated negotiated	<input type="checkbox"/> Justification for the choice of accelerated procedure: _____
Competitive dialogue <input type="checkbox"/>	
IV.1.2) Limitations on the number of operators who will be invited to tender or to participate (restricted and negotiated procedures, competitive dialogue)	
Envisaged number of operators	<input type="checkbox"/> <input type="checkbox"/> 1 <input type="checkbox"/> <input type="checkbox"/> 0
or envisaged minimum number	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> and, if applicable, maximum number <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
Objective criteria for choosing the limited number of candidates: <i>Economic operators that pass the minimum standards set for criteria listed at Sub-Section III.2 will be allowed proceed to the Random Selection stage. The Random Selection mechanism used to determine the tender list consists of placing the names of all eligible economic operators in an appropriate box and, after mixing them thoroughly, drawing out the first ten which will form the tender list. The procedure will be witnessed by an independent third party.</i>	

Continued on next page

1.1 Pass/Fail plus Random Selection

Short listing

The Pass/Fail plus Random Selection assessment method is used to short list the number of economic operators that are to be invited to tender under a restricted procedure. The first step for the Contracting Authority is to evaluate each suitability submission in response to a Contract Notice published in the OJEC against a pre-set range of suitability criteria with minimum standards (see Section III of Contract Notice above) and to produce a list of economic operators that pass the minimum standards. **The minimum standards for the criteria must be proportionate relative to the size of the project and to the nature and complexity of the works¹.** The next step is to randomly select from those that meet the minimum standards a number of economic operators that are eligible to be placed on the tender list for the project up to the number/maximum number stated in the Contract Notice.

Note: Short-listing using random selection is permitted under Article 44(3) of 2004/18/EC which states the “*non-discriminatory criteria or rules they intend to apply, and the minimum number of candidates they intend to invite and, where appropriate the maximum number*”. Regulation 52(5) of SI No 329 of 2006 says “(a) *...non-discriminatory criteria or rules that it proposes to apply, and (b) the minimum number and, if the authority considers it appropriate to do so, the maximum number of candidates it proposes to invite.*”

The main difference between random selection and a marked weighting system is that the mix of economic operators selected under each method can vary significantly. Under the random selection method there can be a greater chance of a wider variation than the marked weighted system where the result tends to be much tighter and more predictable.

Random Selection Mechanism

The random selection mechanism that a Contracting Authority chooses to use:

- must be objective. This is done by ensuring that there is adequate advance publicity of the criteria being used (prior to closing date for suitability submissions),
 - must be independent. This means that the procedure used must be independently monitored and verified (*In choosing an independent monitor care needs to be exercised to ensure that the monitor is aware that the names of those randomly selected are kept confidential from all concerned until after the tender competition and the contract has been awarded. This is to prevent any of those firms selected the opportunity to collude. Furthermore, it is essential that a representative from one of the applicant organizations is not the monitor*). This does not interfere with the rules relating to debriefing under the EU Directive and the Regulations (nor does it discourage voluntary debriefing for below threshold procurements) those Candidates whose applications have been rejected.
 - must be reputable. This means that those monitoring and verifying the procedure are reputable and respected.
 - must be transparent. This means that, in addition to the first bullet point, the draw from start to finish should be witnessed by an independent process auditor who has checked the correctness of the names of the participants in the draw and the arrangements that have been put in place to carry out the draw.
 - must be non-discriminatory. This means that all economic operators that have passed the minimum standards are allowed to participate in the draw and no new entrances are permitted at a later stage.
-

Continued on next page

¹ It is important that if using turnover as a criterion that the minimum standard is not set so that it is disproportionate to the value of the project.

1.1 Pass/Fail plus Random Selection, continued

Below EU threshold contracts.

The rules that apply to above EU threshold contracts in relation to random selection as set out above equally apply to contracts below EU thresholds except that a Contract Notice does not have to be published in the OJEU and is instead only published on eTenders.

[END]