

Setting of Minimum Standards for Pre-Qualification of Works **Contractors**

The Minister for Finance has agreed to publish the minimum standards that are in general use by various Government Departments, Offices and Agencies, and which are in the public domain.

It should be noted that the variation in standards across the public sector arises as a result of their particular application to different markets relative to scale, type, duration, nature and complexity etc. of a project bearing in mind that any minimum standard is proportionate, transparent and relevant in accordance with the requirements of national Regulations and EC Directives.

It should also be noted that this is not an exhaustive list of minimum standards and that project specific minimum standards may also be specified by the contracting authority.

Sectoral Guidance Policy

- **Water Services, Dept. of the Environment, Heritage & Local Government (DEHLG)**

The turnover threshold used in pre-qualification (and suitability assessment in open procedure) has for some time been that the average annual turnover for the three preceding years should exceed 30% of the expected annual expenditure on the contract in hand. This level was introduced some years ago when the DEH&LG were seeking to expand the capacity of construction firms in the water sector and continues to be used. Usually, the DEH&LG has sight of the Contract Notice and Pre-qualification Questionnaire prior to publication/issue and also, in most cases, has a representative on the pre-qualification board, thus ensuring the principles of proportionality, fairness and discrimination are observed.

- **Social Housing Projects, Dept. of the Environment, Heritage & Local Government (DEHLG)**

The position is that the Department has not issued specific guidance to local authorities in regard to this matter for use in connection with social housing projects. In general local authorities are required to use criteria that are appropriate and proportionate and therefore do not unduly discriminate against any candidate.

- **Health Service Executive (HSE)**

The HSE aims to be fair, equitable, transparent and proportional in its dealings with the construction industry in all its forms (i.e. Design Teams and Contractors/Developers) and seeks to treat each project individually. The measures noted below are suggested minimum standards. Each project is treated on its own merits and the appropriate minimum standards are applied therefore ensuring that short listed candidates are suitable and capable of delivering proposed health projects.

1. Evidence of Turnover:

The minimum level of turnover is set at approximately twice/three times the estimated annualised value of the proposed construction project. The HSE has, in light of the prevailing construction market conditions, set this threshold for the majority of non-complex projects at, or close to, the lower level i.e. twice the annualised project value. This measure should ensure a wider range of contractors will meet this criterion.

2. List of Project/Works of Similar Nature Provided Over the Past 5 Years:

- Where a project is of a complex nature, for example, on an existing acute hospital site this is reflected in the stated requirements within the procurement process by requesting healthcare experience and experience of a comparable complex building project.
- The HSE is also aware that a sizeable proportion of its buildings are not of a complex nature and this is also reflected in the selection criteria. The proposed candidates are required to have 'similar relevant project experience'.
- The construction value of previous projects in the prospective Candidate Company's portfolio is also relevant. Projects presented as experience are required to equate to the estimated value of the proposed project/projects at present day values.

• **Department of Education & Science (DoES)**

The DoES as a sanctioning agency has an obligation to ensure that, as part of suitability assessment for placing on tender lists for projects, Contractors have adequate economic and financial capacity. One of the key criteria for assessing financial and economic capacity is the average annual turnover of the contracting company over the previous three years. The purpose of this is to ensure that the firm has adequate capacity and will not be overstretched if it is successful in winning the tender competition.

The turnover requirement for school building projects has been reduced from 2.5 times the estimated contract value in 2007 to twice the estimated contract value in 2009 and this is also reduced pro-rata for projects exceeding 12 months in duration (e.g. 1.5 times the estimated contract value for an 18 month contract). With pre-tender estimates (on which the turnover requirement is calculated) also reflecting the significantly reduced tender levels, this also serves to reduce, on an ongoing basis, the turnover threshold for contractors applying for projects. The three previous financial years are 2008, 2007 and 2006. Only one of these years fully encapsulates the downturn in the construction industry. Once 2009 comes into the reckoning as one of the three previous financial years, DoES would expect to further reduce the turnover requirement to reflect the downturn in the industry.

In practical terms what this requirement means is that any firm applying would be capable of taking on two projects of similar size at the same time. The contract periods on DoES projects are set at a reasonable level in compliance with health and safety requirements; however, there is usually also a strict requirement to meet the completion date in order to comply with school term times. This imposes a requirement on the contractor to carefully programme the project to

ensure timely delivery. Where a Contractor does not have adequate economic and financial capacity and is consequently overstretched, he/she may not be able to meet these targets.

For Minor Works Projects (less than €500,000) the turnover is set at between 1.5 and 2 times the estimated project value. As these projects have a Contract duration of between 3 and 6 months, this is merely a requirement that Contractors would be in reasonably continuous operation for the rest of the year.

- **National Roads Authority (NRA)**

NRA procedures are designed to encourage and promote participation of SMEs where appropriate. In particular their financial thresholds at 30pc of project value, previous project size etc. is deliberately low to encourage entry into the market and rapid promotion as schemes are completed. Proportionality was tested in Supreme Court and found in their favour.

- **Department of Transport**

Circular NNR 27/2007 issued by the Department of Transport sets out the following requirements:

- Open Tender does not use pre-determined thresholds other than those relating to manpower.
- In Restricted Tender, it is recommended that the financial threshold for turnover in Civil Engineering Construction should be fixed at 0.3 times the Contract Value (excluding VAT) averaged over the previous three years. 'Technical Capability' should be demonstrated by reference to works carried out over the previous five years and the emphasis should be on the ability of Tenderers to manage the project and have adequate resources under their control. Evidence of experience of each and every element of a typical Road project should not be sought. However where a contract includes significant works of a specialised nature (e.g. bridges over railways, excavation through rock etc.) appropriate thresholds may be set. Evidence of management of a Civil Engineering Construction Contract of approximately 0.2 times the Contract Value (excluding VAT) should be sought.
- Where Restricted Tender is the method of procurement it is important that contractors are not precluded from progressing from smaller to larger contracts by the setting of unreasonable thresholds. Hence the importance of adhering to the financial threshold of 0.3 and the Technical Capability threshold of 0.2 as referred to above.
- It should be noted that, where certificates of satisfactory execution are sought in respect of previous schemes undertaken by tenderers, the conditions attached to the return of such certificates must be reasonable.

November 2009