

## EXCLUSION CRITERIA

These criteria follow the rules for EC contracts

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### 1. Exclusion criteria applicable for participation in procurement and grant procedures

An economic operator will be excluded from participation in procurement and grant procedures if:

- a) it is bankrupt, subject to insolvency or winding-up procedures, where its assets are being administered by a liquidator or by a court, where it is in an arrangement with creditors, where its business activities are suspended, or where it is in any analogous situation arising from a similar procedure provided for under national laws or regulations;
- b) it has been established by a final judgment or a final administrative decision that the economic operator is in breach of its obligations relating to the payment of taxes or social security contributions in accordance with the applicable law;
- c) it has been established by a final judgment or a final administrative decision that the economic operator is guilty of grave professional misconduct by having violated applicable laws or regulations or ethical standards of the profession to which the economic operator belongs, or by having engaged in any wrongful conduct which has an impact on its professional credibility where such conduct denotes a wrongful intent or gross negligence, including, in particular, any of the following:
  - o fraudulently or negligently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of selection criteria or in the performance of a contract;
  - o entering into agreement with other economic operators with the aim of distorting competition;
  - o violating intellectual property rights;
  - o attempting to influence the decision-making process of the contracting authority during the procurement procedure;
  - o attempting to obtain confidential information that may confer upon it undue advantages in the procurement procedure;
- d) it has been established by a final judgment that the economic operator is guilty of any of the following:
  - o fraud, within the meaning of Article 3 of Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law and Article 1 of the Convention on the protection of the European Communities' financial interests drawn up by the Council Act of 26 July 1995;
  - o corruption, as defined in Article 4(2) of Directive (EU) 2017/1371 and Article 3 of the Convention on the fight against corruption involving officials of the

European Communities or officials of Member States of the European Union, drawn up by the Council Act of 26 May 1997, and in Article 2(1) of Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector, as well as corruption as defined in the law of the country where the contracting authority is located, the country in which the economic operator is established or the country of the performance of the contract;

- conduct related to a criminal organisation referred to in Article 2 of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime;
  - money laundering or terrorist financing within the meaning of Article 1(3), (4) and (5) of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Text with EEA relevance) of the European Parliament and of the Council;
  - terrorist-related offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision of 13 June 2002 on combating terrorism, respectively, or inciting or aiding or abetting or attempting to commit such offences, as referred to in Article 4 of that Framework Decision;
  - child labour or other forms of trafficking in human beings as defined in Article 2 of Directive 2011/36/EU 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;
- e) the economic operator has shown significant deficiencies in complying with main obligations in the performance of a contract financed by the EU, which has led to the early termination of a legal commitment or to the application of liquidated damages or other contractual penalties or which has been discovered following checks and audits or investigations by an authorising officer, OLAF or the Court of Auditors;
- f) it has been established by a final judgment or final administrative decision that the economic operator has committed an irregularity within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests;
- g) it has been established by a final judgment or final administrative decision that the person or entity has created an entity under a different jurisdiction with the intent to circumvent fiscal, social or any other legal obligations of mandatory application in the jurisdiction of its registered office, central administration or principal place of business;
- h) it has been established by a final judgment or final administrative decision that an entity has been created with the intent provided for in point (g)

Point a) does not apply to the purchase of supplies on particularly advantageous terms either from a supplier that is definitively winding up its business activities or from liquidators of an insolvency procedure, an arrangement with creditors, or a similar procedure under EU or national law.

In cases referred to in points c), d), f), g) and h) in the absence of a final judgment or a final administrative decision, or in the case referred to in point e), the contracting authority must exclude an economic operator on the basis of a preliminary classification in law having regard to established facts or other findings contained in the recommendation of the EDES panel. The EDES panel ensures a centralised assessment of those situations after giving the economic operator the opportunity to submit its observations. In indirect management, where applicable according to the correspondent financing or contribution agreement, the contracting authority/entrusted entity will transmit the information to the European Commission and the European Commission may refer the case to the EDES panel.

The contracting authority must exclude the economic operator where:

- a natural or legal person who is member of the administrative, management or supervisory body or has power of representation, decision or control on the economic operator is in a situation listed in points c) to h);
- a natural or legal person that assumes unlimited liability for the debts of that economic operator is in a situation listed in points a) or b);
- a natural or legal person who is essential for the award or for the implementation of the legal commitment and is in a situation referred to in point c) to h).

The contracting authority must not exclude an economic operator where i) it can demonstrate that adequate measures have been adopted which ensure its reliability, except in the cases listed in point d); ii) it is indispensable for the continuity of the service for a limited duration and pending the adoption of remedial measures; iii) where the exclusion would be disproportionate.

## **2. Rejection from a given procedure**

The contracting authority must reject from a given award procedure a candidate, tenderer or applicant who:

- a) is in one of the exclusion situations established under Section I above;
- b) has misrepresented the information required by the contracting authority as a condition for participating in the procedure or has failed to supply that information;
- c) was previously involved in the preparation of procurement documents used in the award procedure where this entails a breach of the principle of equality of treatment, including distortion of competition that cannot be remedied otherwise.

In cases under (a), if the contracting authority becomes aware of a situation of exclusion where a recommendation of the EDES panel is required in accordance with Section I., it will immediately seize the EDES panel. The evaluation will not be suspended, except in procurement restricted procedures at shortlisting stage (in this case the establishment of the shortlist must be suspended until a decision on the rejection is taken). If the contract is to be awarded to the entity/person concerned by the situation of exclusion, the award of the contract will be suspended until the EDES panel has issued its recommendation. Where

necessary, the contracting authority may ask all tenderers to extend the period of validity of the offers accordingly. If the situation of exclusion is confirmed in the recommendation of the EDES panel, the relevant entity/person must be rejected from the given procedure and the procedure can resume with an award to the second tenderer on the list or, if necessary, cancellation. In parallel, after the recommendation of the EDES panel, a decision of exclusion must be taken according to Section I above.

If the rejection is justified by the fact that the participant is already included at exclusion level in the EDES, the decision of rejection must be taken directly without any contradictory procedure with the participant.

In cases under (b) and (c), before taking the decision to reject a tenderer, candidate or applicant from a given procedure, the contracting authority must give the economic operator the opportunity to submit its observations (right to be heard) and to prove, in case of (c) that its involvement in the preparation of documents used in the award procedure does not breach the principle of equal treatment, including distortion of competition.

These grounds of rejection may have serious consequences for the economic operator concerned as they may also qualify as grave professional misconduct according to Section I above and result in a decision of exclusion. In this case, after or in parallel to the decision of rejection, the contracting authority must refer the case to the EDES panel according to Section I above.