

**Advisory Note**

**CONSTRUCTION Supplier Profile Certificates**

**This advisory note is to assist suppliers with the completion of the following Supplier Profile Certificates on the eTendersNI portal.**

**B3. Public Sector - Mandatory Exclusion [A] 2017**

[A] – Above Threshold procurements

**B4. Public Sector – Discretionary Exclusion [A] 2017**

[A] – Above Threshold procurements

**ABOVE EU THREHOLD mandatory exclusion**

Application:

This certificate will be used on all works procurements above EU threshold.

Supplier Profile Certificates B3 and B4 set out Mandatory (B3) and Discretionary (B4) reasons why a Centre of Procurement Expertise will exclude an Economic Operator from a procurement process.

Mandatory reasons for exclusion include conviction of individuals for certain offences, non-payment of taxes and poor past performance.

Full details are set out below.

**B3. Public Sector Mandatory Exclusion [A] 2017**

The Contracting Authority will exclude Economic Operators from the procurement process if they have been convicted of any of the offences listed in regulations 57(1)(a) – 57(1)(n), and 57(3) of the Public Contracts Regulations 2015.

**The Contracting Authority will treat as ineligible and shall not select an Economic Operator if the Economic Operator (or any parent company / affiliates / Other Entities whose capacities it is relying upon) or any of its directors (of a company), partners (of a firm) or anyone who has powers of representation, decision or control has been convicted of any of the offences set out in paragraphs (a) to (n)** **below:**

1. 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;
2. 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;
3. the common law offence of bribery;
4. 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;
5. 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:—
6. the common law offence of cheating the Revenue;
7. the common law offence of conspiracy to defraud;
8. fraud or theft within the meaning of the Theft Act 1968(i), the Theft Act (Northern Ireland) 1969, the Theft Act 1978 or the Theft (Northern Ireland) Order1978;
9. fraudulent trading within the meaning of section 458 of the Companies Act 1985,article 451 of the Companies (Northern Ireland) Order 1986(n) or section 993 of the Companies Act 2006;
10. 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;
11. an offence in connection with taxation in the European Union within the meaning of section 71 of the Criminal Justice Act 1993;
12. 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;
13. fraud within the meaning of section 2, 3 or 4 of the Fraud Act 2006; or
14. 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;
15. any offence listed—
16. in section 41 of the Counter Terrorism Act 2008(a); or
17. in Schedule 2 to that Act where the court has determined that there is a terrorist connection;
18. any offence under sections 44 to 46 of the Serious Crime Act 2007 which relates to an offence covered by subparagraph (f);
19. money laundering within the meaning of sections 340(11) and 415 of the Proceeds of Crime Act 2002;
20. 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;
21. an offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004;
22. an offence under section 59A of the Sexual Offences Act 2003;
23. an offence under section 71 of the Coroners and Justice Act 2009;
24. 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
25. any other offence within the meaning of Article 57(1) of the Public Contracts Directive—
    1. as defined by the law of any jurisdiction outside England and Wales and

Northern Ireland; or

* 1. created, after the day on which the Public Contracts Regulations 2015 were made, in the law of England and Wales or Northern Ireland.

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

**The Contracting Authority will also treat as ineligible and shall not select an Economic Operator if the Economic Operator (or any parent company / affiliates / Other Entities whose capacities it is relying upon) or any of its directors (of a company), partners (of a firm) or anyone who has powers of representation, decision or control has been convicted of any of the offences set out below:**

is in breach of its obligations relating to the payment of taxes or social security contributions; and

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.

**The Contracting Authority may treat as ineligible and may not select an Economic Operator if the Contracting Authority can demonstrate by any appropriate means that the Economic Operator (or any parent company / affiliates / Other Entities whose capacities it is relying upon) or any of its directors (of a company), partners (of a firm) or anyone who has powers of representation, decision or control is in breach of its obligations relating to the payment of taxes or social security contributions.**

The Economic Operator will not be excluded on these grounds for non-payment of taxes if it has fulfilled its obligations by paying, or entering into a binding agreement with a view to paying, the taxes or social security contributions due, including, where applicable, any interest accrued or fines.

**To be eligible to participate in a procurement process the Economic Operator must confirm that the Economic Operator, its partners, other Entities whose capacities it is relying upon or any other person who is a member of the administrative, management or supervisory body of that entity / entities, which it is relying upon, or who has powers of representation, decision or control in that entity or entities have not been convicted of the offences indicated above by completing question [Q2] in SUPPLIER Profile Certificate B3** – Public Sector Mandatory Exclusion [A].

If an Economic Operator answers ‘YES’ to question [Q2] then the Employer will reject the Economic Operator’s PQQP Submission unless:

* The Economic Operator provides evidence to the effect that measures taken by it are sufficient to demonstrate its reliability, in accordance with Regulation 57(13) *Self-cleaning -* of the Public Contracts Regulations 2015, to the satisfaction of the Contracting Authority.

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### Contractor past performance

The Contractor’s performance on contracts will be regularly monitored. Contractors not delivering on contract requirements is a serious matter. It means the public purse is not getting value for money.

As part of its contract management procedures, the Contracting Authority and their CoPEs will use the Protocol for Managing Poor Supplier Performance contained in Procurement Guidance Note PGN 01/12 – Contract Management Principles and Procedures:

<https://www.finance-ni.gov.uk/publications/procurement-guidance-note-0112-contract-management-principles-and-procedures>

The Protocol sets out a series of five escalating stages to enable Contracting Authorities and their CoPEs to manage poor performance by suppliers.

At Stage 3, following the issue of a Second Written Warning of Unsatisfactory Performance, if a Contractor fails to reach satisfactory levels of contract performance having been given a specified time to improve, the process can be escalated to Stage 4. At Stage 4, as an alternative to terminating the contract, senior management in the Contracting Authority/CoPE can issue a Notice of Written Warning.

If the Contractor has not significantly improved performance after the period specified in the Notice of Written Warning the process can be escalated to stage 5. At stage 5, as an alternative to terminating the contract, a Notice of Unsatisfactory Performance can be issued to the Contractor.

These notices remain current for the period of time stated in the protocol and the Contractor must declare, in subsequent procurement competitions at the PQQ stage, if it has received a current Notice of Written Warning or a current Notice of Unsatisfactory Performance within three years the PQQP Submission Deadline.

If the Contractor has received more than one current Notice of Written Warning the Contracting Authority/CoPE, at its discretion, can consider a Contractor’s exclusion from future procurement competitions, being undertaken on behalf of bodies covered by the Northern Ireland Public Procurement Policy, for a minimum period of 12 months.

If the Contractor is subject to a Notice of Unsatisfactory Performance the Contracting Authority/CoPE, at its discretion, can consider the Contractor’s exclusion from future procurement competitions, being undertaken on behalf of bodies covered by the Northern Ireland Public Procurement Policy, for a period of 3 years.

A list of these bodies subject to Northern Ireland Public Procurement Policy can be viewed at:

<https://www.finance-ni.gov.uk/articles/list-public-bodies-which-ni-public-procurement-policy-applies>

Contractors and Consortium members interested in being selected to participate in a procurement competition, must confirm, in Question [Q3] of Supplier Profile Certificate B3. Public Sector – Mandatory Exclusion [A] 2017, that prior to the PQQP Submission Deadline:

* It is in receipt of more than one current Notice of Written Warning.
* It is in receipt of a Notice of Unsatisfactory Performance within the last three years or
* It has had a prior public contract terminated or other comparable sanctions imposed on it within the last three years.

If the Contractor or a Consortium member is in receipt of more than one valid Notice of Written Warning, a current Notice of Unsatisfactory Performance or has had a prior public sector contract terminated, or comparable sanction imposed within the last 3 years on the PQQP Submission Deadline then the Contractor or Consortium member in answering ‘YES’ to Question [B-01] must provide details of the Notice(s) including an explanation of the deficiencies in performance that led to the issues of the Notice(s) / termination.

The details provided may include evidence to the effect that measures taken by the Contractor or Consortium are sufficient to demonstrate its reliability. The Contracting Authority will then consider whether to exclude the Contractor from the procurement competition.

Furthermore, if a Contractor, or Consortium is issued with notices so that it is in receipt of more than one current Notice of Written Warning or a current Notice of Unsatisfactory Performance, by any CoPE or Contracting Authority, prior to the award of this contract, the Contractor may not proceed any further in this competition. This will apply regardless of whether the Contractor has already been invited to submit a tender by that time

**ABOVE EU THREHOLD DISCRETIONARY EXCLUSION**

Application:

This certificate will be used on all works procurements above EU threshold.

Supplier Profile Certificates B3 and B4 set out Mandatory (B3) and Discretionary (B4) reasons why a Centre of Procurement Expertise will exclude an Economic Operator from a procurement process.

Discretionary reasons for exclusion include insolvency, grave professional misconduct and misrepresentation.

Full details are set out below

**[B4] Public Sector - Discretionary Exclusion [A] 2017**

The Contracting Authority may treat as ineligible and shall not select an Economic Operator if the Economic Operator (or any parent company / affiliates / Other Entities whose capacities it is relying upon) or any of its directors (of a company), or partners (of a firm) is in any of the situations listed in Regulations 57(8)(a) – 57(8)(i) of the Public Contracts Regulations 2015, as follows:

1. where the Contracting Authority can demonstrate by any appropriate means a violation of applicable obligations referred to in Regulation 56(2) of the Public Contracts Regulations 2015;
2. 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 laws and regulations of any State;
3. where the Contracting Authority can demonstrate by appropriate means that the Economic Operator is guilty of grave professional misconduct, which renders its integrity questionable;
4. 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;
5. where a conflict of interest within the meaning of Regulation 24 of the Public Contracts Regulations 2015 cannot be effectively remedied by other, less intrusive, measures;
6. 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 of the Public Contract Regulations 2015, cannot be remedied by other, less intrusive, measures;
7. 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;
8. where the Economic Operator—
9. 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; or
10. has withheld such information or is not able to submit supporting documents required under Regulation 59 of the Public Contracts Regulations 2015; or
11. where the Economic Operator has
12. undertaken to—

(aa) unduly influence the decision-making process of the Contracting Authority, or

(bb) obtain confidential information that may confer upon it undue advantages in the procurement procedure; or

1. negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award.

The Economic Operator must confirm if it or Other Entities whose capacities it is relying upon meets, or may meet, any of the grounds, paragraphs (a) to (i) above, for discretionary exclusion by answering question [Q2] in Supplier Profile Certificate B4. Public Sector – Discretionary Exclusion [A] 2017.

In such instances the Contracting Authority may exclude the Economic Operator. However, if the Economic Operator confirms that it or Other Entities whose capacities it is relying upon meets or may meet any of the above grounds then in answering question [Q2] in Supplier Profile Certificate B4. Public Sector – Discretionary Exclusion [A] 2017, the Economic Operator may provide evidence to the effect that measures taken by it are sufficient to demonstrate its reliability. This evidence will be considered by the Contracting Authority. This is in accordance with Regulation 57(13) *Self-cleaning* - of the Public Contracts Regulations 2015.

By satisfying the requirements of [Q2] the Economic Operator also confirms that neither it nor the Other Entities upon which it relies, are guilty of serious misrepresentation in providing any information required of it under Regulation 57, 58, 59, 60, 61, 62 or 63 of the Public Contracts Regulations 2015, or in not providing such information in response to a request by the Contracting Authority.