

2.3.2. Grounds for exclusion

Tenderers will be excluded from participation in procurement procedures if:

- a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- b) b) they have been convicted of an offence concerning their professional conduct by a judgment which has the force of *res judicata*; (i.e. against which no appeal is possible);
- c) they have been guilty of grave professional misconduct proven by any means which IMG can justify;
- d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or those of the country where the contract is to be performed;
- e) they have been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to IMG financial interests.

Points (a) to (d) shall not apply in the case of purchase of supplies on particularly advantageous terms from either a supplier which is definitively winding up its business activities, or the receivers or liquidators of a bankruptcy, through an arrangement with creditors, or through a similar procedure under national law.

IMG will accept, as satisfactory evidence that the tenderer is not in one of the situations described in (a), (b) or (e) production of a recent extract from the judicial record or, failing that, a recent equivalent document issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied. IMG shall accept, as satisfactory evidence that the tenderer is not in the situation described in (d), a recent certificate issued by the competent authority of the State concerned. Where no such document or certificate is issued in the country concerned and for the other cases of exclusion listed above, it may be replaced by a sworn / solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in its country of origin or provenance.

IMG should take into account that, as a rule, the exclusion criteria are related to the legal entity/ natural person who acts as a tenderer and not to its representatives in case of legal entities. However, depending on the national legislation of the country in which the tenderer is established and where considered necessary by IMG or where IMG has doubts concerning the personal situation, the above documents may also relate to the natural persons including company directors or any person with powers of representation, decision-making or control in relation to the tenderer. Whenever one tenderer, due to its nature (for instance, national public administrations and international organisations), cannot fall into some of the categories above and/or cannot provide the documents indicated above, a simple declaration explaining their situation will suffice.

Tenderers, except those in a second step of a restricted service tender or competitive dialogue, must sign their applications including the declaration that they do not fall into any of the categories cited above.

Depending on its risks assessment, IMG may refrain from requiring the above-mentioned declaration that the Tenderers are not in one of the situations of exclusions for contracts with a value equal to or less than EUR 10,000.

Tenderers who have been notified the award of a contract following an open procedure must supply the proof usual under the law of the country in which they are established that they do not fall into the categories listed above. In restricted procedures, the supporting documents must be sent together with the tender. The date on the evidence or documents provided must be no earlier than 1 year before the date of submission of the tender. Tenderers must, in addition, provide a statement that their situation has not altered in the period that has elapsed since the evidence in question was drawn up. If the supporting documents are not written in English, a translation must be attached.

The required proof documents shall be submitted by the tenderer and their consortium members. The documents may be originals or copies. The original documents shall be available upon request by IMG. If sub-contractors are used, they may not be in any of the exclusion situations either.

Whenever requested by IMG, the successful tenderer/contractor shall submit a declaration from the intended subcontractor that it is not in one of the exclusion situations. In case of doubt on this declaration of honour, IMG shall request the documentary evidence as mentioned above.

For contracts with a value less than the international thresholds (service < €200.000, supply <€ 150.000, works < €5.000.000) IMG may waive this obligation, depending on its risk assessment. When this obligation has been waived, IMG may nevertheless, where it has doubts as to whether the tenderer to whom the contract is to be awarded is in one of the situations of exclusion, require him/her to provide the evidence.

IMG may also waive the obligation of any tenderer to submit the documentary evidence referred to above if such evidence has already been submitted to it for the purposes of another procurement procedure and provided that the issuing date of the documents does not exceed one year and that they are still valid. In such a case, the tenderer shall declare on his/her honour that the documentary evidence has already been provided in a previous procurement procedure and confirm that no changes in his/her situation have occurred.

Contracts may not be awarded to Tenderers who, during the procurement procedure:

- are subject to a conflict of interest;
- are guilty of misrepresentation in supplying the information required by IMG as a condition of participation in the contract procedure or fail to supply this information;
- find themselves in one of the situations of exclusion for this procurement procedure.