



Feidhmeannacht na Seirbhíse Sláinte
Health Service Executive

Tender Competition Rules

HSE may supplement these Tender Competition Rules with additional comments relevant to specific tenders or develop specific rules relevant to a specific contract.

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1 Introduction

This document sets out the general rules governing tender competitions run by the Health Service Executive (“HSE”) (pre-qualification, tender and preferred tenderer stages, as applicable). References to “**Tender**” and “**Tenderer**” shall be deemed to refer to the submission and applicant (respectively) at the relevant stage of the competition.

Tenderers are advised to follow the instructions outlined in the relevant tender documents prior to submitting their Tender. These may comprise the Tender Competition Rules, an Invitation to Provide Expression of Interest, an Expression of Interest Response Document, an Invitation to Tender and/or a Tender Response Document, as applicable (these documents are collectively referred to here as the “**Tender Documents**” and the response documents are collectively referred to here as the “**Response Documents**”). Failure to comply with the requirements of the Tender Documents may, at the discretion of HSE, disqualify the Tenderer.

While every effort has been made to provide comprehensive and accurate background information and requirements and specifications, Tenderers must form their own conclusions about the solution needed to meet the requirements set out in the Tender Documents. No reliance will be placed on any information or statements contained in the Tender Documents, and no representation or warranty, expressed or implied, is or will be made in relation to such information. The information does not purport to be comprehensive or to have been independently verified. Nothing in the Tender Documents will be construed as legal, financial, technical or tax advice. Without prejudice to the foregoing, neither HSE nor its professional advisors will have any liability or responsibility in relation to the accuracy, adequacy or completeness of any information or statements made in the Tender Documents or for the reasonableness of any assumption made therein. HSE and its professional advisors will not incur any liability or responsibility arising out of, or in respect of, the issue of the Tender Documents or any tender process (referred to here as the “**Tender Process**”).

Tenderers will inform themselves of and will observe any applicable legal requirements.

Nothing contained in the Tender Documents is, or will be relied upon as, a representation of fact or promise regarding the future, nor as constituting the basis of a contract that may be concluded in relation to the goods or services nor be used in construing any such contract. No legal relationship or other obligation will arise between a Tenderer and HSE unless and until a contract has been formally executed in writing by HSE and the successful Tenderer(s) and any conditions precedent have been fulfilled. HSE, its professional advisors, and other consultants, contractors, servants and/or agents do not accept any responsibility for the legality, validity, enforceability or effectiveness of any document.

HSE shall be entitled to retain a copy of all Tenders received and shall otherwise be entitled to dispose of any remaining copies of Tenders in accordance with law.

2 Information on Tenders

Generally all information relating to Tenders, including the Tender Documents, clarifications and changes, will be published on the etenders website (www.etenders.gov.ie). Registration is free of charge and there is no charge for downloading documents. HSE will not accept responsibility for information relayed (or not relayed) via third parties. If Tender Documents are in any way altered or edited, the subsequent Tender may be deemed inadmissible.

3 Conditions of Contract

Unless otherwise stated in the Tender Documents, the HSE’s Standard Terms for Services and Supplies shall apply, available to download on: <http://www.hse.ie>.

Tenderers will be advised in the Tender Documents where specific conditions of contract will apply to amend and/or supplement the HSE’s Standard Terms for Services and Supplies.

Any reference in the Tender Documents to the “**Contract**” shall be taken to mean the HSE’s Standard Terms for Services and Supplies (as the same may be amended or supplemented by HSE) the Tender and any other document, which at the discretion of HSE, should form part of the Contract.

Tenderers will be required to engage constructively with HSE and are required to operate in compliance with the terms of the HSE’s Supplier Charter, available to download on: <http://www.hse.ie>.

Tenderers must be tax compliant and comply with all revenue legislation including but not confined to tax clearance, VAT and PAYE employer issues, available to download on the Revenue website: www.revenue.ie.

In case of a conflict between the Tender Documents and the Contract, the Contract shall prevail.

4 Communication Protocol

The sole point of contact in HSE for the Tender Process is outlined in the Tender Documents (the “**HSE Contact**”). Tenderers must not contact any HSE personnel about a Tender between the issuance of the Tender Documents and the date of award of the Contract unless previously authorised to do so by the HSE Contact. All communication between Tenderers and HSE relating to this Tender Process must be in writing. Tenderers may submit queries in relation to the Tender Process to the HSE Contact up to the queries deadline set out in the Tender Documents. Queries received after the queries deadline will only be reviewed at the HSE’s discretion. HSE will endeavour to respond to all reasonable queries received before the queries deadline but does not undertake to respond to all queries received. All Tenderers will be advised of any significant issues raised by any Tenderer. Any necessary meetings or discussions will be arranged and/or facilitated by the HSE Contact.

HSE reserves the right to exclude from the Tender Process any Tenderer who fails to comply with the requirements of this Section 4 (Communication Protocol).

5 Tender Response Documents

Tenderers are required to respond in the format and manner specified by HSE using the Response Documents provided. Documents in other formats may not be read and are liable to result in a Tender being rejected. In completing the Response Documents it is the responsibility of the Tenderer to present clear and accurate responses rather than on HSE staff to decipher or correct mistakes. Without prejudice to Section 17 (Correction of Errors) and Section 18 (Clarification of Tenders), HSE cannot be responsible for and may not consider a Tender which is badly drafted or contains ambiguities, errors or omissions.

6 Submission of Tenders

It is HSE policy not to accept late tenders. Late Tenders are liable to be rejected.

The Tenderer is fully responsible for the safe and timely delivery of the Tender to the specified address. In this regard the attention of Tenderers is specifically drawn to the address for delivery and delivery requirements stated in the Tender Documents.

Tenders must be in English except where the law specifies other languages.

Where hard copies are required Tenderers must also be in a position to supply copies of their Tenders in electronic format on request. A full index must be included with a Tender clearly listing its contents. Where additional documentation is provided in a Tender in accordance with a Response Document such documentation must be clearly cross-referenced to the relevant section of the Response Document.

Unless otherwise stated or agreed, Tenders shall remain valid for a period of 12 months from the closing date specified in the Invitation to Tender.

HSE is not responsible for any expenses or losses incurred by Tenderers in the preparation of Tenders or participation in the Tender Process.

Tenders may be submitted anytime in advance of the closing date specified in the Tender Documents. Such Tenders will be stored in a secure location and remain unopened until after the designated delivery time on the closing date.

The information supplied in Tenders may be regarded as forming part of the Contract, at the discretion of HSE.

7 Specification of Requirement

Specifications will generally be formulated by reference to recognised standards or in terms of performance or functional requirements. It is intended that technical specifications define all required characteristics such as quality levels, environmental performance, design (including accessibility for disabled persons), dimensions, product use, fire, safety, infection control, and packaging. It is further intended that technical specifications afford equal access for Tenderers and do not have the effect of creating unjustified obstacles to opening up competition.

Tenderers should advise HSE of any perceived gaps in the specification of requirements, including possible innovations overlooked, before the closing date for receipt of queries stated in the Tender Documents.

Where HSE has quoted brand names as product/service descriptions, these are used only for descriptive purposes and are not a statement of preference or a specific requirement. These establish the minimum specifications and requirements of HSE, for the product/service being purchased. Tenderers are invited to submit equivalent/alternative products/services. Tenderers are requested to state exact details of equivalent or alternative products/services and give the brand name and catalogue number for all items offered.

8 Scope of Supply

Term: The term of the Contract will be specified in the Tender Documents. Please note that HSE may decide to extend the term of the Contract and further details in this regard will be set out in the Tender Documents. HSE reserves the right to extend the Contract to include similar goods and services. HSE reserves the right to direct a successful Tenderer, service provider or supplier to provide services or supplies procured by HSE to members of the HSE Group. Reference here to the “HSE Group” means all bodies corporate, statutory corporations, hospitals, partnerships, unincorporated associations, charities and other entities operating as part of the Irish primary care service and funded in any way directly or indirectly by HSE or other public funding sources or any local, national or supra-national government or regulatory authority, as well as any employees or contractors of any of the foregoing and any other persons or hospitals assisting in the provision of the Irish primary care service.

Quantity: Unless otherwise stated in the Tender Documents any quantities shown are only estimates of total requirements during the term of the Contract and orders will be issued to meet actual requirements during the term of the Contract.

9 Lots

The Contract may be divided into lots. HSE reserves the right to award contracts for a given lot to two or more Tenderers, should circumstances require.

Where appropriate, HSE reserves the right to divide the Contract between successful Tenderers and to award all or part of the Contract and to award some, none or all of the lots.

10 Price Basis

Unless otherwise stated in the Tender Documents a fixed price contract is required. Tenderers shall complete a schedule of prices in accordance with the requirements stated in the Invitation to Tender. Prices must be inclusive of delivery and all other charges but exclusive of VAT and expressed in Euros. In this respect please note that HSE will not bear foreign currency fluctuation risk in fixed price contract tenders.

Tenderers must clearly state the applicable VAT rate or rates associated with the product, supply or service (and the relevant part of the product, supply or service to which the VAT rate applies).

HSE reserves the right, for example for contracts with a term exceeding twelve months or where Tenderers have linked the price quoted, or a percentage thereof, to a recognised index (e.g. the Consumer Price Index of Ireland) to take steps to ensure that all prices submitted by Tenderers are capable of review on a like for like basis and to take this into account in the evaluation of Tenders.

Where applicable, details of any price review mechanisms will be included in the Contract. Notwithstanding the terms of the Contract, HSE reserves the right to initiate a price review at any time during the term of the Contract and to benchmark prices against other suppliers or service providers in the market. Tenderers should note that price reviews are not intended to occur more than once in any one year of the Contract, subject to the discretion of HSE.

11 Submissions by Groups

Groups of economic operators may put themselves forward as a Tenderer. In order to submit a Tender, these groups may initially not be required by HSE to assume a specific legal form. However HSE may require the group selected to assume a legal form or put in place alternative legal arrangements prior to entry into the Contract, to the extent that this is necessary for the satisfactory performance of the Contract.

Tenders should clearly state which entities are proposed to be members of the consortium, which are to be sub-contractors and how each firm would be jointly and severally liable to HSE for the fulfilment of the terms of the Contract. Subsequent changes to the members of the consortium may result in disqualification of that group from the Tender Process.

A Tenderer may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal standing it has with them. In such cases the Tenderer must prove to HSE that it will have the necessary resources at its disposal, for example, producing an undertaking by those entities to that effect.

12 Transfer of Undertakings - Acquired Rights

For services contracted out, Tenderers must comply with the HSE Specific Instructions to Tenderers relating to Transfer of Undertakings, which is available to download on: <http://www.hse.ie>

The successful Tenderer will be required at the time of contract award to indemnify HSE fully in respect of any losses, damages, costs or expenses of any kind incurred by HSE arising from the application of SI 131 of 2003 entitled European Communities (Protection of Employees on Transfer of Undertakings) Regulations commonly referred to as TUPE (and any subsequent amendments).

The successful Tenderer will be fully responsible for complying with all employment obligations, contractual, statutory or otherwise and in particular will fully comply with its obligations under TUPE (and any subsequent amendments).

13 Declaration of Interest

Tenderers must declare in their Tenders any conflict of interest associated with any current or previous work undertaken, or any relationship that may reasonably be perceived to potentially conflict or impact on their ability to participate in the Tender Process or fulfil the requirements of the Contract. In the event that HSE considers that a conflict of interest or potential conflict of interest exists, HSE will in its absolute discretion, decide on the appropriate course of action. Failure to disclose a material conflict of interest may disqualify a Tenderer or cause the termination of any subsequent contract and entitle HSE to seek remedies, such as cost or compensation for loss.

14 Social Obligations/Green Tenders

Tenderers are required, in preparing their Tenders, to take account of their obligations relating to employment protection and working conditions that are in force in the place where the works are to be carried out or the service is to be supplied. Failure to comply with this requirement may result in their disqualification from the Tender Process.

Tenderers are referred to Annex A for Information Sources Regarding Taxation, Environmental Protection, Employment Protection and Working Conditions.

HSE is committed to promoting sustainability, energy efficiency and other factors relevant to “green” procurement. Where relevant to the particular Tender Process details of HSE requirements for green procurement will be set out in the Tender Documents.

15 Innovation

HSE recognises the role of innovation and innovative purchasing in promoting sustainable growth and improving efficiency and quality in the delivery of healthcare services. Where relevant to the particular Tender Process details of HSE requirements for innovation will be set out in the Tender Documents.

16 Determination of Responsiveness

After the official opening of Tenders, HSE will determine whether each Tender is substantially responsive to the requirements of the Tender Documents. A substantially responsive Tender is one which conforms to the terms, conditions and requirements of the Tender Documents, including, but not limited to, the completion and return of the Response Documents, without material deviation.

A material deviation is one which, without limitation, affects in any substantial way the price, scope, quality, completion or timing of the HSE's requirements under the Tender Documents or the Contract, which limits in any substantial way the HSE's rights or the Tenderer's obligations under the Contract, or which is incapable of evaluation by HSE because of ambiguities, errors or omissions or otherwise. Subject to Section 17 (Correction of Errors) and Section 18 (Clarification of Tenders), a Tender determined to be non-responsive shall be rejected by HSE and cannot be resubmitted. Where the Contract is divided into lots, the Tender will be considered only on the basis of the lots that are responsive to the requirements of the Tender Documents.

If a Tender fails to comply in any respect with the requirements (or the intent of such requirements) of the Tender Documents or is ambiguous or incomplete, HSE shall be entitled at its discretion to take such action as it considers appropriate, including:

- To reject the relevant Tender as non-compliant;
- Without prejudice to HSE's right to reject the relevant Tender, HSE may:
 - meet with, raise issues with and/or seek clarification from a Tenderer in respect of the relevant Tender;
 - request a Tenderer to provide HSE with information or items which have not been provided or have been provided in an incorrect, unclear or ambiguous form;
 - negotiate an amendment and/or change to the relevant Tender with a Tenderer;
 - waive a requirement, which, in the opinion of HSE, is minor or procedural; and/or
 - amend the relevant requirement of the Tender Documents and invite Tenderers to adjust their Tenders on the basis of such revised requirement.

Provided however no amendment and/or change to HSE's requirements shall be permitted if, in the opinion of HSE, the amendment and/or change, if accepted, would constitute a material amendment and/or change to HSE's requirements.

HSE reserves the right to seek additional information and/or to interview a Tenderer in connection with its assessment of its Tender, but will not be held liable for any costs incurred in this regard by Tenderers.

17 Correction of Errors

Tenderers determined to be substantially responsive to the Tender Documents will be checked for any material errors in computation as follows:

- Where there is a discrepancy between amounts in figures and words the amount in words will govern.
- Where there is a discrepancy between the unit price and the total amount derived from the multiplication of the unit price and the quantity, the unit price as quoted will normally govern, unless, in the opinion of HSE there is a gross arithmetical error in the unit price, in which event, the extended amount as quoted will govern.
- The amount stated in the Response Document will be adjusted by HSE in accordance with the above procedure for the correction of errors and, with the agreement of the Tenderer, shall be considered as binding upon the Tenderer.

A Tenderer not accepting the correction of errors as outlined above will have its Tender rejected.

In the event of inconsistency between a Tender submitted in electronic copy and the Tender submitted in hard copy, the hard copy shall prevail.

18 Clarification of Tenders

To assist in the assessment of Tenders, HSE may request a Tenderer to clarify its Tender including, without limitation, providing a breakdown of prices or correcting an ambiguity or obvious error which is likely to have a simple explanation and can be easily resolved. Tenderers should note that HSE is not obliged to request a Tenderer to clarify any aspect of its Tender however HSE may do so at its discretion where HSE considers that clarification is recommended and/or permitted in accordance with relevant guidance and applicable procurement law. Responses to requests for clarification must not materially change any of the elements of the Tender submitted.

A Tenderer should be available if required, to make a presentation of its Tender to HSE at short notice, following the closing date for receipt of Tenders. All costs and expenses associated with such presentations shall be borne by the Tenderer.

19 Confidentiality and Publicity

HSE undertakes to hold any information provided by Tenderers on a confidential basis, subject to the HSE's obligations under law, including the Freedom of Information Acts 1997 - 2003. If for any reason, Tenderers require information provided to HSE not to be disclosed because of its sensitive nature, then it is incumbent upon the person or body when supplying the information to make clear this request, and to specify the reason for the information's sensitivity. HSE will endeavour to consult with any Tenderer supplying sensitive information before making a decision on any Freedom of Information request received.

The Tender Documents remain the property of HSE and are issued only in connection with the Tender Process. The Tender Documents may not be copied or their contents may not be divulged to any third party without the prior written consent of HSE. All information contained in the Tender Documents must be treated in the strictest confidence by the Tenderer and by its staff. Any third party involved in completing the Tender must also comply with these confidentiality requirements.

Without prejudice to the confidentiality and Freedom of Information Act requirements referred to above, HSE reserves the right, at its discretion, to publicise, or otherwise disclose, to any third party, information regarding a tender process, the nomination of Tenderers (including, without limitation, details of their respective representatives, advisors, consultants, contractors, servants and/or agents), the successful Tenderer or the award of the Contract.

A Tenderer will not, by itself, its servants, agents or sub-contractors, communicate with the press, television, radio or other media on, or otherwise use information on, any matter concerning a tender process with HSE, its nomination as a Tenderer or successful Tenderer, the award of a contract by

HSE or the use of the HSE brand or logo, without the prior consent of HSE, acting at its discretion. All requests for HSE consent or media related queries should be directed to the HSE Contact.

20 Variation

Tenderers who feel disadvantaged by the terms governing this Tender Process may make direct representations to the HSE Contact for variations of the terms of this Tender Process, provided that any variation sought shall not operate to the disadvantage of any other Tenderer. HSE shall have the final decision on whether to vary the terms of this Tender Process and will communicate any agreed changes to all Tenderers.

21 Product /Service Information

Tenderers may be required to provide sample product/services free of charge in order for HSE to verify the product/services proposed to be provided and/or for the purpose of evaluation. Samples are to be delivered to the location specified by the HSE Contact.

22 Inspection/Validation

HSE reserves the right to inspect the Tenderer's premises to verify information provided in a Tender. HSE will liaise directly with the Tenderer's contact on the exact detail for visiting any reference sites where applicable.

HSE reserves the right to verify information provided in a Tender at any stage during the Tender Process and for the complete duration of the Contract.

HSE reserves the right to conduct any investigation or market research, as it so chooses, throughout the duration of the Contract to ensure that the successful Tenderer is fully complying with its pricing obligations.

23 Post Tender Negotiations Not Permitted

Please note that once Tenders have been submitted, no individual negotiations other than clarifications will take place (other than as may be permitted in accordance with relevant guidance and applicable procurement law) and the HSE's decision will be final.

24 Evaluation Process

The Tender Process will generally involve the three stages detailed below. For open procedures stages 1, 2 and 3 will be conducted in one phase and for restricted procedures stages 1 and 2 will be conducted in phase 1 and only Tenderers selected after stages 1 and 2 will be invited to submit Tenders in stage 3. For the restricted procedure where the number of candidates to be invited to tender is limited all candidates with equal ranking will be treated equally.

Stage1 - Exclusion: Tenderers to whom any of the circumstances listed in Article 57 of Council Directive 2014/24/EU (the co-ordination of procurement procedures for the award of public works, public supply and public service contracts) apply or Tenderers who fail to sign the Candidate/Tenderer Declaration in the Response Documents (without qualification or amendment) will be excluded from the Tender Process.

Stage2 - Qualitative: Tenders received must meet the minimum requirements outlined under the qualitative selection criteria. Tenders meeting these minimum requirements will then be assessed and ranked in descending order with the Tenderer who receives the highest marks being ranked first. Provided that a sufficient number of Tenderers are qualified to be considered for selection, such Tenderers will (subject to any limits in the Tender Documents) be invited to submit a Tender. In this respect Tenderers are reminded that all requested information must be provided in the manner stipulated by HSE.

Stage 3 - Award: HSE will evaluate and rank the Tenderers selected after stages 1 and 2 on the basis of the award criteria outlined in the Invitation to Tender. Marks will be awarded on a comparative basis against the HSE's requirements and the other Tenderers' Tenders, having regard to those factors which are adjudged under each of the criteria identified in the Invitation to Tender. Tenders will achieve higher marks where the solution offered exceeds HSE's specifications in such a way that it is adjudged to offer further added value by reference to the listed criteria. During this stage, clarifications may be sought in writing (including e-mail and fax) from Tenderers. Deadlines will be imposed for the receipt of such clarifications and failure to meet these deadlines may result in the disqualification of the Tender or loss of marks. Responses to requests for clarification must not materially change any of the elements of the Tender submitted. Unsolicited communications from Tenderers will not be entertained during the evaluation period.

HSE may establish, as appropriate, an evaluation panel/panels using such resources and skills as it considers appropriate to assess and evaluate all tenders. Scores will be arrived at using objective evidence and the professional judgment of the members of the evaluation panel, as appropriate.

HSE may, at its discretion, request meetings with individual Tenderers during the evaluation period for the purposes of clarifying any aspect of the Tenderer's Tender. These meetings will be strictly confidential and will not result in any material change to the Tender submitted. No discussions regarding the progress of the evaluation or the Tenderer's performance will be entered into. All such meetings will be held at the convenience of HSE and HSE will not be responsible for any costs incurred by Tenderers.

The successful Tenderer will be informed in writing that its Tender has been identified as the successful Tender subject to the satisfactory conclusion of the Contract. Unsuccessful Tenderers will also be informed in writing.

25 Ethics

Tenderers should note that canvassing or failure to comply with the communications requirements set out in Section 4 (Communications Protocol) of these Tender Competition Rules may result in the disqualification of a Tenderer.

Any effort by a Tenderer to unduly influence any staff or agents of HSE in the process of examination, clarification or evaluation of Tenders and in decisions concerning the award of contracts shall have its Tender rejected and may result in administrative penalties. In accordance with Section 38 of the Ethics in Public Office Act 1995 any money, gift or other consideration received from a person holding or seeking to obtain a contract will be deemed to have been paid or given corruptly unless the contrary is proven.

HSE reserves the right to suspend or cancel the Tender Process or the Contract:

- If corrupt practices of any kind are discovered at any stage of the Tender Process or during the implementation of the Contract.
- If it emerges that the award or execution of the Contract has given rise to unusual commercial expenses. Such unusual commercial expenses are commissions not mentioned in the main contract or not stemming from a properly concluded contract referring to the main contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a payee who is not clearly identified or commissions paid to a company which has every appearance of being a front company.

Failure to comply with one or more of the ethics clauses may result in the exclusion of the Tenderer from other HSE contracts and in penalties.

26 Exclusion from Participation in the Tender Process

In accordance with Article 57 of Directive 2014/24/EU any Tenderer shall be excluded, or may be excluded, from participation in the Tender Process as appropriate under this article:

Article 57 Exclusion grounds

1. Contracting authorities shall exclude an economic operator from participation in a procurement procedure where they have established, by verifying in accordance with Articles 59, 60 and 61, or are otherwise aware that that economic operator has been the subject of a conviction by final judgment for one of the following reasons:
 - (a) participation in a criminal organisation, as defined in Article 2 of Council Framework Decision 2008/841/JHA;
 - (b) corruption, as defined in 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 and Article 2(1) of Council Framework Decision 2003/568/JHA as well as corruption as defined in the national law of the contracting authority or the economic operator;
 - (c) fraud within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests;
 - (d) terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA respectively, or inciting or aiding or abetting or attempting to commit an offence, as referred to in Article 4 of that Framework Decision;
 - (e) money laundering or terrorist financing, as defined in Article 1 of Directive 2005/60/EC of the European Parliament and of the Council;
 - (f) child labour and 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.

The obligation to exclude an economic operator shall also apply where the person convicted by final judgment is a member of the administrative, management or supervisory body of that economic operator or has powers of representation, decision or control therein.

2. An economic operator shall be excluded from participation in a procurement procedure where the contracting authority is aware that the economic operator is in breach of its obligations relating to the payment of taxes or social security contributions and where this 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 the Member State of the contracting authority.

Furthermore, contracting authorities may exclude or may be required by Member States to exclude from participation in a procurement procedure an economic operator where the contracting authority can demonstrate by any appropriate means that the economic operator is in breach of its obligations relating to the payment of taxes or social security contributions.

This paragraph shall no longer apply when the economic operator has fulfilled its obligations by paying or entering into a binding arrangement with a view to paying the taxes or social security contributions due, including, where applicable, any interest accrued or fines;

3. Member States may provide for a derogation from the mandatory exclusion provided for in paragraphs 1 and 2, on an exceptional basis, for overriding reasons relating to the public interest such as public health or protection of the environment.

Member States may also provide for a derogation from the mandatory exclusion provided in paragraph 2, where an exclusion would be clearly disproportionate, in particular where only minor amounts of taxes or social security contributions are unpaid or where the economic operator was informed of the exact amount due following its breach of its obligations relating to the payment of taxes or social security contributions at such time that it did not have the possibility of taking measures as provided for in the third subparagraph of paragraph 2 before expiration of the deadline for requesting participation or, in open procedures, the deadline for submitting its tender.

4. Contracting authorities may exclude or may be required by Member States to exclude from participation in a procurement procedure any economic operator in any of the following situations:

- (a) where the contracting authority can demonstrate by any appropriate means a violation of applicable obligations referred to in Article 18(2);
- (b) 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 national laws and regulations;
- (c) where the contracting authority can demonstrate by appropriate means that the economic operator is guilty of grave professional misconduct, which renders its integrity questionable;
- (d) 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;
- (e) where a conflict of interest within the meaning of Article 24 cannot be effectively remedied by other less intrusive measures;
- (f) where a distortion of competition from the prior involvement of the economic operators in the preparation of the procurement procedure, as referred to in Article 41, cannot be remedied by other, less intrusive measures;
- (g) 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;
- (h) where the economic operator 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, has withheld such information or is not able to submit the supporting documents required pursuant to Article 59; or
- (i) where the economic operator has undertaken to unduly influence the decision-making process of the contracting authority, to obtain confidential information that may confer upon it undue advantages in the procurement procedure or to negligently provide misleading information that may have a material influence on decisions concerning exclusion, selection or award.

Notwithstanding point (b) of the first subparagraph, Member States may require or may provide for the possibility that the contracting authority does not exclude an economic operator which is in one of the situations referred to in that point, where the contracting authority has established that the economic operator in question will be able to perform the contract, taking into account the applicable national rules and measures on the continuation of business in the case of the situations referred to in point (b).

5. Contracting authorities shall at any time during the procedure exclude an economic operator where it turns out that the economic operator is, in view of acts committed or omitted either before or during the procedure, in one of the situations referred to in paragraphs 1 and 2.

At any time during the procedure, contracting authorities may exclude or may be required by Member States to exclude an economic operator where it turns out that the economic operator is, in view of acts committed or omitted either before or during the procedure, in one of the situations referred to in paragraph 4.

6. Any economic operator that is in one of the situations referred to in paragraphs 1 and 4 may provide evidence to the effect that measures taken by the economic operator are sufficient to demonstrate its reliability despite the existence of a relevant ground for exclusion. If such evidence is considered as sufficient, the economic operator concerned shall not be excluded from the procurement procedure.

For this purpose, the economic operator shall prove that it has paid or undertaken to pay compensation in respect of any damage caused by the criminal offence or misconduct, clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities and taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offences or misconduct.

The measures taken by the economic operators shall be evaluated taking into account the gravity and particular circumstances of the criminal offence or misconduct. Where the measures are considered to be insufficient, the economic operator shall receive a statement of the reasons for that decision.

An economic operator which has been excluded by final judgment from participating in procurement or concession award procedures shall not be entitled to make use of the possibility provided for under this paragraph during the period of exclusion resulting from that judgment in the Member States where the judgment is effective.

7. By law, regulation or administrative provision and having regard to Union law, Member States shall specify the implementing conditions for this Article. They shall, in particular, determine the maximum period of exclusion if no measures as specified in paragraph 6 are taken by the economic operator to demonstrate its reliability. Where the period of exclusion has not been set by final judgment, that period shall not exceed five years from the date of the conviction by final judgment in the cases referred to in paragraph 1 and three years from the date of the relevant event in the cases referred to in paragraph 4.

Tenderers must, when requested, provide sufficient information confirming that they have not been convicted of any such offence. For the purposes of this declaration, Tenderers shall mean any agent of the Tenderer and any person who is concerned in the direction or management of the Tenderer.

27 Anti-Competitive Conduct

Tenderers particular attention is drawn to the application of the Competition Act 2002. The Act declares it a criminal offence for Tenderers to collude on prices or terms in a public tendering procedure. Should HSE become aware of direct or indirect communications through trade associations or otherwise between Tenderers relating to the Contract or which might facilitate price collusion it shall be the policy of HSE to notify the Competition Authority and suspend such Tenders. If the matter is not satisfactorily resolved by the time evaluation of all other Tenders is complete, HSE will base its decision on all Tenders received but not suspended.

28 Official Amendments

If it is necessary for HSE to amend the Tender Documents in any way prior to receipt of Tenders, all Tenderers will be notified simultaneously. If deemed appropriate by HSE, the deadline for receipt of Tenders will be extended.

29 Cancellation of the Tender Process

HSE reserves the right, at its discretion:

- to change the basis of, or procedures (including the timetable) relating to the Tender Process;
- to reject any or all Tenders;
- not to invite a Tenderer to proceed further to any stage of the Tender Process;
- not to furnish a Tenderer with additional information in respect of any aspect of its requirements or otherwise;
- not to otherwise negotiate with a Tenderer in respect of the award of the Contract;
- not to proceed with any Tender;
- to cancel at any stage the Tender Process, or any part thereof, at any time.

In the event of cancellation of the Tender Process, or any part thereof, Tenderers will be notified of the cancellation by HSE. Cancellation may occur where, for example:

- the tender procedure has been unsuccessful i.e. no qualitatively or financially worthwhile Tender has been received or there is no response at all;
- the economic or technical data of the Contract have been fundamentally altered;
- exceptional circumstances or force majeure render normal performance of the Contract impossible;
- all technically compliant Tenders exceed the financial resources available;
- the tendered services or products are no longer required;
- there have been irregularities in the procedure, in particular where these have prevented fair competition; or
- as otherwise permitted or contemplated by these Tender Competition Rules.

In no event shall HSE be liable for any damages whatsoever including, without limitation, damages for loss of profits, in any way connected with the cancellation of the Tender Process, or any part thereof. The publication of a procurement notice does not commit HSE to proceed with a Tender Process or the award a Contract.

30 Conclusion of Contract

The successful Tenderer(s) will be informed in writing that their Tender(s) have been accepted.

Before HSE signs the Contract with the successful Tenderer, the successful Tenderer must provide documentary proof of current insurance cover to HSE required levels, tax status and any other statements required in the Tender Documents. In the case of a Tenderer resident in the Republic of Ireland, it shall be a pre-condition that the Tenderer shall produce a current Tax Reference Number and Tax Clearance Access Number issued by the Irish Revenue Commissioners. A non-resident Tenderer will require a statement from the Irish Revenue Commissioners that they are satisfied as to the suitability for tax purposes of entering into the Contract.

HSE may consider a Tender null and void and invite another Tenderer to sign the Contract if:

- a successful Tenderer fails to provide a current Tax Reference Number and Tax Clearance Access Number within 15 calendar days following notification to the successful Tenderer;
- a successful Tenderer is found to have provided false information or fails to disclose a material change in the Tenderer's circumstances since the submission of its Tender or fails to validate specific aspects of its Tender on request from HSE.
- Within 15 days of receipt of the Contract, the selected Tenderer does not sign, date and return the Contract to HSE.

HSE reserves the right to put a contract in place for some, none or all of the products/services included in the specification of requirements under this Tender Process.

31 Standstill Period

No contract to which a standstill period applies will be executed or take effect until at least fourteen calendar days (if the notice is sent by fax or electronic means) or sixteen calendar days (if the notice is sent by any other means) after the day on which the unsuccessful Tenderers have been sent the appropriate notice informing them of the result of this Tender Process (the "**Standstill Period**"). Unsuccessful Tenderers will be advised of the contract award decision as early as is practicable. The successful Tenderer will be notified of the contract award decision and of the expiry of any applicable Standstill Period.

HSE recognises the importance of formally debriefing unsuccessful Tenderers. Debriefing will be undertaken in writing only, subject to the discretion of HSE.

32 Appeals

Where applicable, Tenderers have a right of review under the European Communities (Public Authorities' Contracts) (Review Procedures)(Amendment) Regulations 2015 (S.I. No. 192 of 2015).

With regard to time limits for initiating proceedings Tenderers should refer to the above Regulations.

Failure to comply with these Tender Competition Rules may disqualify a Tenderer.

Annex A

Information Regarding Taxation, Environmental Protection, Employment Protection and Working Conditions

The persons from whom a Tenderer may obtain information about the obligations that will, during the performance of the Contract, apply in relation to taxation, environmental protection, employment protection and working conditions include the following:

Taxation

Revenue Commissioners

Collector-General's Division, Sarsfield House, Francis Street
Limerick, V94 R972

<http://www.revenue.ie/>

Contact details for relevant sections are available at

<http://www.revenue.ie/en/contact/collector-generals-division.html>

Environmental Protection

Environmental Protection Agency

PO Box 3000, Johnstown Castle Estate, Wexford, Y35 W821

<http://www.epa.ie/>

Contact details for the EPA are available at <http://epa.ie/about/contactus/>

Employment Protection and Working Conditions

Department of Jobs, Enterprise and Innovation

23 Kildare Street, Dublin 2, D02 TD30

<https://www.djei.ie>

Contact details are available at <https://www.djei.ie/en/Contact-Us/>