

CT 5048/2013

Contracts Circular N° 19/2013

Department of Contracts  
Notre Dame Ravelin  
Floriana

Permanent Secretaries  
Directors General  
Directors  
Heads of Public Sector Organisations

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### **EXPERIENCE AS SELECTION CRITERIA**

As part of the Government's drive to increase opportunities in the public procurement market to new and emerging companies especially SMEs, it has been decided to eliminate the use of experience as part of the selection criteria in the procurement process.

Experience is only one of the criteria used in the evaluation process as evidence of technical capacity of economic operators. In fact, it is being brought to the attention of all Contracting Authorities that there exist a number of other criteria that may be utilised to ascertain the technical capacity of economic operators. Hence, during the drafting of tender documents, Contracting Authorities are advised to refer to Regulation 52(2)(b) to (j) in order to draw up the appropriate evidence of technical capacity.

In respect of sub-section 52(2)(e) when requesting key experts in public tenders, reference should be limited only to the educational and professional qualifications without requesting relevant experience.

The above applies to tenders below the threshold of €500,000 excluding VAT published by all the Contracting Authorities listed in Schedule 1 of the Public Procurement Regulations. All new tenders published after the 1<sup>st</sup> of January 2014 shall comply with the provisions of this circular.

A copy of Regulation 52(2)(b)-(j) is attached for ease of reference.

Anthony Cachia  
Director General (Contracts)

**Reg. 52.** (2) Evidence of the economic operators' technical abilities may be furnished by one or more of the following means according to the nature, quantity or importance, and use of the works, supplies or services:

[...]

(b) an indication of the technicians or technical bodies involved, whether or not belonging directly to the economic operator's undertaking, especially those responsible for quality control and, in the case of public works contracts, those upon whom the contractor can call in order to carry out the work;

(c) a description of the technical facilities and measures used by the supplier or service provider for ensuring quality and the economic operator's study and research facilities;

(d) where the products or services to be supplied are complex or, exceptionally, are required for a special purpose, a check carried out by the contracting authorities or on their behalf by a competent official body of the country in which the supplier or service provider is established, subject to that body's agreement, on the production capacities of the supplier or the technical capacity of the service provider and, if necessary, on the means of study and research which are available to it and the quality control measures it will operate;

(e) the educational and professional qualifications of the service provider or contractor and, or those of the economic operator's managerial staff and, in particular, those of the person or persons responsible for providing the services or managing the work;

(f) for public works contracts and public services contracts, and only in appropriate cases, an indication of the environmental management measures that the economic operator will be able to apply when performing the contract.

Provided that should contracting authorities require the production of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain environmental management standards, they shall refer to the Community Eco-Management and Audit Scheme (EMAS) or to environmental management standards based on the relevant European or international standards certified by bodies conforming to Community law or the relevant European or international standards concerning certification. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent environmental management measures from economic operators;

(g) a statement of the average annual manpower of the service provider or contractor and the number of managerial staff for the last three years;

(h) a statement of the tools, plant or technical equipment available to the service provider or contractor for carrying out the contract;

(i) an indication of the proportion of the contract which the services provider intends possibly to subcontract;

(j) with regard to the products to be supplied:

(i) samples, descriptions and, or photographs, the authenticity of which must be certified if the contracting authority so requests;

(ii) certificates drawn up by official quality control institutes or agencies of recognised competence attesting the conformity of products clearly identified by references to specifications or standards.

**Repealed by Cont Circ 08/2022**