

Department of Contracts  
Notre Dame Ravelin  
FLORIANA

To Permanent Secretaries  
Directors General  
Directors  
Heads of Public Sector Organisations

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**EXPERIENCE:****SELECTION CRITERION AND TECHNICAL OFFER CRITERION**

A procurement procedure necessitates that further to a needs analysis, Contracting Authorities identify their procurement requirements, carry out discussions with stakeholders and conduct comprehensive research to be able to compile appropriate Selection Criteria and Technical Offer Criteria (including specifications).

**Experience: Selection Criterion**

Contracting Authorities may impose on Economic Operators a set of specific *Selection Criteria* as requirements for participation in a Procurement / Concession Call. Such requirements shall be limited to those that are appropriate to ensure that Economic Operators have the legal and financial capacities as well as the technical and professional capacities to perform the contract. The said Selection Criteria shall be related and proportionate to the subject-matter of the procurement.

Regulation 222(2)<sup>1</sup> of the Public Procurement Regulations S.L. 601.03 and Regulation 166<sup>2</sup> of the Utilities Procurement Regulations S.L. 601.05<sup>3</sup> state that *‘Contracting authorities may require, in particular, that economic operators have sufficient level of experience demonstrated by suitable references from contracts performed in the past.’*

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<sup>1</sup> Regulation 77 of S.L. 601.09 (Concession Contracts Regulations) relates to the Qualitative Assessment of Candidates, Economic Operators and Tenderers. Regulations 44 till 46 of S.L. 601.12 (Procurement of Property Regulations) relate to the Choice of Participants.

<sup>2</sup> Regulation 166 of S.L. 601.05 redirects to Regulation 222 of S.L. 601.03 since it applies *mutatis mutandis*.

<sup>3</sup> S.L. 601.05 - Public Procurement of Entities operating in the Water, Energy, Transport and Postal Services Sectors Regulation.

### **Experience: Technical Offer Criterion**

Contracting Authorities shall also define and lay down the *Technical Offer Criteria* that an Economic Operator's proposal shall address and outline accordingly. Such requirements shall specify the performance and / or functional characteristics which shall be linked to the subject-matter as well as proportionate to the Procurement's Estimated Value and objectives. The Technical Offer Criteria and Specifications shall afford equal access to Economic Operators in the relevant market.

In line with Regulation 239(2)(b)<sup>4</sup> of the Public Procurement Regulations S.L. 601.03 and Regulation 170(2)(b) of the Utilities Procurement Regulations S.L. 601.05, the most economically advantageous tender shall be identified based on the Price or Cost and may include the Best Price-Quality Ratio (BPQR), which shall consist of various criteria, including qualitative, environmental and / or social aspects. Such criteria may comprise, '*organisation, qualification and experience of staff assigned to performing the contract, where the quality of the staff assigned can have a significant impact on the level of performance of the contract*'.

### **Experience: Applicability**

Further to the above, Contracting Authorities may impose the 'Experience' requirement as a Selection Criterion, requested through the European Single Procurement Document (ESPD)<sup>5</sup>. One may also include the condition of 'Experience' as a Technical Offer Criterion, specifically through the Key Expert requirements via the completion of the Key Experts' Form.

The 'Experience' as a Selection Criterion shall necessitate that Economic Operators have a minimum level of company experience, rather than experience in relation to personnel working with the Economic Operators.

On the other hand, 'Experience' as a Technical Offer Criterion relates to a minimum level of experience held by Key Experts forming part of the technical offer.

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<sup>4</sup> Regulations 79 and 70 of S.L. 601.09 relate to the Award Criteria and to the Technical and Functional Requirements respectively. Regulations 47 and 23 of S.L. 601.12 relate to the Award Criteria and Technical Specifications respectively.

<sup>5</sup>The ESPD consists of an updated self-declaration as preliminary evidence confirming that the relevant economic operator fulfils the conditions in relation to (i) Exclusion and Blacklisting of Economic Operators as well as (ii) Selection Criteria.

Contracting Authorities are reminded that as already established through Contracts Circular N° 19/2013, to push forward Government's drive to increase opportunities in Public Procurement to new and emerging Economic Operators especially SMEs<sup>6</sup>, 'Experience' shall be limited to high value procurement.

'Experience' is only permissible for Procurement / Concession Calls having an Estimated Procurement Value equal to or exceeding €500,000 excluding VAT.

*Contracts Circular N° 19/2013 (dated 16 December 2013) titled 'Experience as Selection Criteria' is being repealed and superseded by this Circular.*

### **Alternatives to Experience Criterion**

Contracting Authorities are reminded that the Selection Criteria and the Technical Offer Criteria need not necessarily focus on experience requirements. In fact, quality standards and technical details may be assessed through other resources, features and characteristics.

### Selection Criteria

To ascertain technical capacity, Economic Operators may be requested to declare conformity or provide evidence in relation to other Selection Criteria such as:

- Enrolment in relevant Professional or Trade Registers
- Facilities: Technical, Study and Research
- Supply Chain Management and Tracking Systems
- Environmental Management: Standards, Measures and Systems
- Quality Assurance: Standards, Measures and Systems
- Tools, Plant and Technical Equipment
- Educational and Professional Qualifications
- Quantity of Managerial Staff
- Average Annual Manpower

Contracting Authorities are encouraged to review Regulation 232 of the Public Procurement Regulations S.L. 601.03 and Regulation 166<sup>7</sup> of the

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<sup>6</sup> SME - Small and Medium Sized Enterprises.

<sup>7</sup> Regulation 166 of S.L. 601.05 redirects to Regulation 232 of S.L. 601.03 since it applies *mutatis mutandis*.

Utilities Procurement Regulations S.L. 601.05, to familiarise themselves with an array of possible technical abilities (including ‘Experience’) options.

### Technical Offer Criteria

To ascertain that the technical details of the procurement are achieved, Economic Operators may be requested to have a minimum number of Key Experts specifying their role, duties and responsibilities. In such instances, specifically for low valued procurement, such requirements shall be limited only to the Educational and Professional qualifications without requesting experience.

It is also possible to specify a minimum level of technical activity that shall be attained when performing the contract. Accordingly, Economic Operators may be requested to declare conformity or provide evidence in relation to certain Technical Offer Criteria and Specifications such as:

- Process or Method of Production
- Technical Merit
- Aesthetic and Functional Characteristics
- Design and Accessibility Features
- Social, Environmental and Innovative Characteristics
- Trading and Delivery Conditions
- After-sales Service and Technical Assistance

Contracting Authorities are encouraged to review Regulation 53 (Technical Specifications) and Regulation 239 (Award Criteria) of the Public Procurement Regulations S.L. 601.03 to widen their knowledge on technical criteria. On the other hand, Contracting Entities<sup>8</sup> would best review Regulation 76 (Technical Specifications) and Regulation 170 (Contract Award Criteria) of the Utilities Procurement Regulations S.L. 601.05.

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<sup>8</sup>Contracting entities are entities which: (a) are contracting authorities or public undertakings and which pursue one of the activities referred to in regulations 8 to 14; (b) when they are not contracting authorities or public undertakings, have as one of their activities any of the activities referred to in regulations 7 to 13, or any combination thereof and operate on the basis of special or exclusive rights granted by a competent authority. Regulations 7 to 14 relate to various activities as follows: Reg 7 – Gas and Heat. Reg 8 – Electricity. Reg 9 – Water. Reg 10 – Transport Services. Reg 11 – Ports and Airports. Reg 12 – Postal Services. Reg 13 – Extraction of Oil and Gas Exploration or Extraction of Coal or other Solid Fuels. Reg 14 – Tenders Comprising Products Originating in Third Countries.

**Contact**

Contracting Authorities may submit any queries in relation to the procurement content of this Circular to the Department of Contracts' Customer Care service on [info.contracts@gov.mt](mailto:info.contracts@gov.mt) or by calling on +356 21220212.

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