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Directorate Policy Development and Programme Implementation

Procurement Policy Note #28

Title: Occupational Health and Safety legislative requirements in respect of Works Tenders including Construction

Date reviewed: 18.08.2018

1 Purpose

It is being noted that some provisions included in tenders involving construction works, go contrary to the regulations established under LN 281/2004¹ regarding Occupational Health and Safety requirements. In this respect works tender documents need to be amended so as to ascertain that the Regulations stipulated under the above Legal Notice are incorporated and thus enforced.

2 Organisational Scope

This is a Government-wide policy. It shall apply to all Entities/Departments/Ministries falling under Schedule 1, 2 and 3 of the Public Procurement Regulations – S.L. 174/04 for all works tenders.

3 Definitions

Nil

4 Policy Content and Guidelines

As per LN 281/2004², requirements regarding Health and Safety in published tender documents issues need to ascertain the following:

- (a) The Health and Safety project supervisor shall be appointed by the Contracting Authority and not by the contractor.

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¹ As from the 1st August 2018, LN 281 of 2014 this has been replaced by LN 88 of 2018.

² *ibid.*

- (b) The role of the project supervisor shall be consistent with the responsibilities arising from LN 281/2004³ and such supervisor shall not be answerable to the contractor but directly to the Contracting Authority. Hence, any conflict of interest shall be precluded in any procurement procedure used by the Contracting Authority to appoint such Health and Safety project supervisor.
- (c) Any other Health and Safety officers appointed by contractors need not be registered or otherwise approved by OHSA. There is no mandatory legal requirement that requires the registration of such competent persons.
- (d) Health and safety documents prepared by the different parties are not required to be approved by OHSA. The legal obligation to ensure that such documents are according to law rests upon the Health and Safety project supervisor preparing the document (notification of works [where applicable], H&S file or H&S plan) or on the employers in the case of certain H&S certificates or risk assessments.

In line with the above it is being recommended that the Special Conditions include the following clauses:

Article 20: Safety on site

20.2 Further to the provisions of the General Conditions, it is the obligation of contractors to carry out a suitable, sufficient and systematic assessment of all the occupational health and safety hazards which may be present at the place of work and the resultant risks involved concerning all aspects of the work activity.

20.3 Further to the provisions of the General Conditions, it is also the duty of a contractor to cooperate with other employers, contractors and, or self-employed persons who share a common work place, on the implementation of Health and Safety provisions. The contractor or his designate shall co-ordinate necessary actions in matters which concern protective and preventive measures, and shall inform all on site as well as the Project Supervisor regarding any potential risks.

Notwithstanding the above, one needs to make sure that the technical specifications are also coherent with the principles of Health and Safety as enshrined in the applicable legislation, in the sense that actually the onus for the filing of the prior notification form, (the preparation of the mandatory Health and Safety plans, and the maintenance of the Health and Safety file, etc) will always be on the Contracting Authority and not on the contractor.

5 Effective

³ *ibid.*

Immediate

6 Applicability

All Works - Call for Tenders (CfTs) involving Construction

7 Legislative Compliance

LN281/2004⁴

8 References

Nil

9 Appendices

Nil

10 Other related policy notes published

Nil

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⁴ *ibid.*