Annex 3 to the Procurement Conditions ‘Grounds for Exclusion of Tenderers’

GROUNDS FOR EXCLUSION OF TENDERERS

1. Only ESPD shall be provided along with the tender bid. The Contracting Authority shall not require the tenderer to provide documents proving the absence of grounds for exclusion, which are specified in the table along the tender bid. These documents shall be requested only from the tenderer who submitted the most economically advantageous tender bid before awarding of the Contract. However, the Contracting Authority may, at any time during the Procurement procedure, request candidates or tenderers to submit all or part of the documents proving the absence of grounds for exclusion if this is necessary to ensure the proper conduct of the Procurement procedure.
2. Grounds for exclusion shall be applicable to the tenderer (in case the tender bid is submitted by a group of economic operators - to all members of that group), to economic operators whose capacities the tenderer relies on and sub-suppliers/sub-providers.
3. The Contracting Authority shall eliminate the tenderer from the Procurement procedure at any stage thereof if it appears that, due to its actions or omissions prior to or during the Procurement procedure, it meets at least one of the grounds for exclusion laid down in the Procurement documents, except cases provided for in Article 46(10) of the Law on Public Procurement (but taking into account the provisions of Article 46(11) and (12) of the Law on Public Procurement).
4. When making decisions on exclusion of a tenderer from the Procurement procedure on grounds for exclusion referred to in Article 46 (4) and (6) of the Law on Public Procurement, the Contracting Authority shall take into account whether, in assessing the reliability of the tenderer, exclusion of the tenderer from the Procurement procedure is proportionate to the tenderer’s conduct assessed with reference to Article 46 (4) (7) (c) of the Law on Public Procurement: whether the application of this ground for exclusion from the Procurement procedure would not significantly restrict competition. When making decisions on exclusion of a tenderer from the Procurement procedure on the grounds for exclusion referred to in Article 46 (4) (4) and (6) of the Law on Public Procurement, one may consider the information published in accordance with Articles 52 and 91 of the Law on Public Procurement.
5. The Contracting Authority shall require primarily such types of certificates and forms of documentary evidence that are covered by the online repository of certificates established by the European Commission, namely, e-Certis. The fourth column of the table specifies the documents to be submitted by tenderers registered in the Republic of Lithuania. Regarding the documents to be submitted by foreign tenderers, the Contracting Authority shall check the information at e-Certis, https://ec.europa.eu/tools/ecertis/.
6. The Contracting Authority shall not require the tenderer to provide documents confirming the absence of grounds for exclusion if it:
   1. Has access to those documents or information by accessing the national database **directly and free of charge** in any Member State or by tools of the Central Public Procurement Information System.
   2. These documents are already available from previous procurement procedures if the information contained in these documents is still relevant and up to date (the document was issued not earlier than the number of days indicated the relevant row of the table below).
7. If the tenderer is unable to provide the specified documents proving that there are no grounds for exclusion provided for in Article 46(1) and (3) and (6)(2) of the Law on Public Procurement of the Republic of Lithuania since such documents are not issued in a Member State or in the country concerned, or documents issued in that country do not cover all the matters referred to in Article 46(1) and (3) and (6)(2), they may be replaced by:
   1. Declaration on oath.

7.2. An official declaration by the tenderer if the country does not use a declaration on oath. The official declaration must be attested by the competent legal or administrative authority of the Member State or tenderer’s country of origin, or the country where it is registered, by a notary or by a competent professional or trade organisation.

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| **No** | **Grounds for exclusion of a tenderer** | **Article, Chapter, Point of the Law on Public Procurement and part of the ESPD form for completion** | **Documents proving the absence of grounds for exclusion** |
| **Mandatory grounds for exclusion in accordance with the provisions of Article 46 (1) - (4) of the Law on Public Procurement** | | | |
|  | Tenderer or its responsible person indicated in Article 46 (2) (2) of the Law on Public Procurement has been the subject of a conviction for one of the following criminal acts:  1) participation in a criminal association, its formation or being in charge thereof;  2) bribery, trading in influence, graft;  3) fraud, misappropriation of property, squandering of property, misleading declaration about the activities of legal entity, use of a credit, loan or targeted support not in accordance with its purpose or the established procedure, credit fraud, provision of inaccurate data on income, profit or assets, failure to file a tax return or to submit a report or another document, fraudulent management of accounts or abuse, where these criminal acts affect the European Union’s financial interests within the meaning of Article 1 of the Convention on the protection of the European Communities’ financial interests;  4) criminal bankruptcy;  5) terrorist crime or crime linked to terrorist activities;  6) laundering of property as proceeds from crime;  7) trafficking in human beings, purchase or sale of a child;  8) crime committed by the tenderer of another state, as defined in the legal acts of other states implementing the European Union legal acts listed in Article 57 (1) of Directive 2014/24/EU.  A tenderer or its responsible person shall be deemed to have been convicted of the said criminal act where:  1) a judgement of conviction has been passed and become effective over the past five years against the tenderer being a natural person and this person has an unspent or unexpunged conviction;  2) a judgement of conviction has been passed and become effective over the past five years against the manager of the tenderer being a legal entity, another organisation or a unit thereof, a member of another management or supervisory body or another person authorised to represent or control the tenderer, to take a decision or to enter into a transaction on behalf thereof, person/persons authorised to draw up and sign the tenderer’s accounting documents and this person has an unspent or unexpunged conviction;  3) a judgement of conviction has been passed and become effective over the past five years against the tenderer being a legal entity, another organisation or a unit thereof or, in the case of Article 46 (3) of the Law on Public Procurement, an administrative decision having final effect, if such decision is made in accordance with the legal provisions of the country of the tenderer. | **Article 46 (1) of the Law on Public Procurement**  Points A1-A6 of the ESPD Part III  Point D1 of the ESPD Part III | Entities incorporated in Lithuania are required to submit:   * an extract from a court decision; or * a certificate from the Department of Informatics and Communications under the Ministry of the Interior, or * a document issued by the State Enterprise Centre of Registers in accordance with the procedure established by the Government of the Republic of Lithuania, confirming the joint data processed by the competent authorities.   Entities incorporated outside Lithuania are required to submit:   * a document from the relevant foreign authority [[1]](#footnote-2).   The documents referred to above must be issued not earlier than **180 days** before the date on which the tenderer will have to provide, at the request of the Contracting Authority, the documents proving the absence of grounds for exclusion*.* ***Example****: If the Contracting Authority requested the tenderer on 10.10.2022 to provide the documentary evidence by 14.10.2022, it must be issued not earlier than 180 days, counting backwards from 14.10.2022.*  If the document has been issued earlier but the period of validity specified therein is longer than the deadline for the submission of documents confirming the absence of grounds for exclusion with reference to the ESPD, such a document shall be admissible during its period of validity. |
|  | The supplier has not complied with the punitive measure imposed on it – a ban on a legal entity from participating in public procurement. | **Article 46 2¹ of the Law on Public Procurement**  Point D2 of the ESPD Part III | Entities incorporated in Lithuania are not required to submit documentary evidence. The ESPD provided is sufficient. |
|  | The tenderer has been convicted of non-compliance with obligations relating to the payment of taxes, including social security contributions, in accordance with the requirements of the country where the tenderer is registered, or of the country where the Contracting Authority is located, within the meaning of Article 46 (2) (1) and (3) of the Law on Public Procurement, or the Contracting Authority has other evidence of non-compliance with these obligations.  The tenderer shall be deemed to have been convicted of an offence referred to above where:  1) a judgement of conviction has been passed and become effective over the past five years against the tenderer being a natural person and this person has an unspent or unexpunged conviction;  2) a judgment of conviction has been passed and become effective over the past five years against the tenderer being a legal entity, another organisation or a unit thereof or, in the case of Article 46 (3) of the Law on Public Procurement, an administrative decision having final effect, if such decision is made in accordance with the legal provisions of the country of the tenderer.  However, this provision does not apply if:  1) the tenderer has committed to pay taxes, including social security contributions, and is therefore deemed to have already fulfilled the obligations referred to in this paragraph;  2) the amount of the arrears does not exceed €50 (fifty euros);  3) the tenderer has been informed of the exact amount of his indebtedness at such a time that he was been able, before the deadline for the submission of applications or tender bids, to pay taxes, including social security contributions, to enter into a tax credit agreement or any other agreement of a similar nature for the payment of such taxes, or to take any other measures to comply with the provisions of Point 1. A tenderer shall not be excluded from the Procurement procedure on this ground if, when requested by the Contracting Authority to provide relevant documents in accordance with Article 50 (6) of the Law on Public Procurement, the tenderer demonstrates that it is already deemed to have fulfilled its obligations in relation to the payment of taxes, including social security contributions. | **Article 46 (3) of the Law on Public Procurement**  Points B1 and B2 of the ESPD Part III | 1) With reference to the fulfilment of obligations related to the payment of taxes, the entities incorporated in Lithuania are required to submit:   * an extract from a court decision (if any) or a document issued by the State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania; * or a document issued by the State Enterprise Centre of Registers in accordance with the procedure established by the Government of the Republic of Lithuania, confirming the joint data processed by the competent authorities.   Entities incorporated outside Lithuania are required to submit:   * a document from the relevant foreign authority [[2]](#footnote-3).   The documents referred to above must be issued not earlier than **120 days** before the date on which the tenderer will have to provide, at the request of the Contracting Authority, the documents proving the absence of grounds for exclusion*.* ***Example****: If the Contracting Authority requested the tenderer on 10.10.2022 to provide the documentary evidence by 14.10.2022, it must be issued not earlier than 120 days, counting backwards from 14.10.2022.*  If the document has been issued earlier but the period of validity specified therein is longer than the deadline for the submission of documents confirming the absence of grounds for exclusion with reference to the ESPD, such a document shall be admissible during its period of validity.  2) With reference to the fulfilment of obligations related to the payment of social security contributions, the entities incorporated in Lithuania are required to submit:  2.1) If the tenderer is a legal entity registered in the Republic of Lithuania, it shall not be required to provide any documents proving this requirement. The Contracting Authority shall independently verify the data in the national database at <http://draudejai.sodra.lt/draudeju_viesi_duomenys/>.  If, due to technical failures of the information system of the State Social Insurance Fund Board (hereinafter referred to as Sodra), the Contracting Authority will not be able to verify the gratuitously available data on the tenderer (legal entity), it will be entitled to request the tenderer (legal entity) to provide an extract from a court decision (if any) or a document issued by Sodra in accordance with the procedure laid down by Sodra, confirming compliance with this requirement. The tenderer may also provide a document issued by the State Enterprise Centre of Registers in accordance with the procedure laid down by the Government of the Republic of Lithuania, confirming the joint data processed by the competent authorities.  2.2) If the tenderer is a natural person registered in the Republic of Lithuania, the tenderer shall provide an extract from a court decision (if any) or a document issued by Sodra, or a document issued by the State Enterprise Centre of Registers in accordance with the procedure laid down by the Government of the Republic of Lithuania confirming the joint data processed by the competent authorities.  Entities incorporated outside Lithuania are required to submit:   * a document from the competent authority of the relevant foreign country [[3]](#footnote-4).   The documents referred to above must be issued not earlier than **120 days** before the date on which the tenderer will have to provide, at the request of the Contracting Authority, the documents proving the absence of grounds for exclusion*.* ***Example****: If the Contracting Authority requested the tenderer on 10.10.2022 to provide the documentary evidence by 14.10.2022, it must be issued not earlier than 120 days, counting backwards from 14.10.2022.*  If the document has been issued earlier but the period of validity specified therein is longer than the deadline for the submission of documents confirming the absence of grounds for exclusion with reference to the ESPD, such a document shall be admissible during its period of validity. |
|  | The tenderer has entered into agreements with other tenderers aimed at distorting competition in the Procurement concerned, and the Contracting Authority has sufficiently plausible indications to conclude so. | **Article 46 (4) (1) of the Law on Public Procurement**  Point C10 of the ESPD Part III | Entities incorporated in Lithuania are not required to submit documentary evidence. The ESPD provided is sufficient. |
|  | The tenderer is in a conflict of interest at the time of the Procurement procedure within the meaning of Article 21 of the Law on Public Procurement, and the relevant situation cannot be remedied.  It shall be deemed that a relevant situation related to a conflict of interest cannot be remedied if the persons subject to the conflict of interest have conferred a decisive influence on the decisions of the Public Procurement Commission or the Contracting Authority, and any modification of such decisions would be contrary to the provisions of the Law on Public Procurement. | **Article 46 (4) (2) of the Law on Public Procurement**  Point C12 of the ESPD Part III | Entities incorporated in Lithuania are not required to submit documentary evidence. The ESPD provided is sufficient. |
|  | Competition has been distorted as referred to in Article 27 (3) and (4) of the Law on Public Procurement and the relevant situation cannot be remedied. | **Article 46 (4) (3) of the Law on Public Procurement**  Point C13 of the ESPD Part III | Entities incorporated in Lithuania are not required to submit documentary evidence. The ESPD provided is sufficient. |
|  | The tenderer, in the course of the Procurement procedures, withheld information or misrepresented information on conformity to the requirements set out in Articles 46 and 47 of the Law on Public Procurement, and the Contracting Authority can demonstrate this by any appropriate legitimate means, or the tenderer is not able to submit the supporting documents required pursuant to Article 50 of the Law on Public Procurement due to the misrepresentation of information.  The tenderer shall also be excluded from the Procurement procedure on this ground if in the course of previous procedures performed in accordance with the Law on Public Procurement, the Law of the Republic of Lithuania on Public Procurement in the Field of Defence and Security, the Law of the Republic of Lithuania on Procurement by Contracting Authorities Operating in the Water, Energy, Transport or Postal Services Sectors it withheld information or misrepresented information as referred to in this Point, or the tenderer was not able to submit the supporting documents required pursuant to Article 50 of the Law on Public Procurement due to the misrepresentation of information, which resulted in its exclusion from procurement or concession award procedures within the last one year.  The tenderer shall also be excluded from the Procurement procedure on this ground where, in accordance with legal acts of other states in the course of the previous procedures, it withheld information or misrepresented information, or was not able to submit supporting documents due to the misrepresentation of information, which resulted in its exclusion from the procurement or concession award procedures, or other similar sanctions have been introduced within the last one year. | **Article 46 (4) (4) of the Law on Public Procurement**  Point C15 of the ESPD Part III | Entities incorporated in Lithuania are not required to submit documentary evidence. The ESPD provided is sufficient.  **Decisions to exclude a tenderer from the Procurement procedure on the grounds of exclusion referred to in this Point may consider, inter alia, information published in accordance with Article 52 of the Public Procurement Law:**  https://vpt.lrv.lt/lt/nuorodos/kiti-duomenys/powerbi/melaginga-informacija-pateikusiu-tiekeju-sarasas-3/ |
|  | At the time of Procurement, the tenderer undertook to unduly influence the decision-making process of the Contracting Authority, to obtain confidential information that would confer upon it undue advantages in the Procurement procedure, or provided misleading information, which may have a material influence on decisions of the Contracting Authority concerning the exclusion of tenderers, evaluation of their qualifications, determination of the successful tenderer, and the Contracting Authority can demonstrate this by any appropriate means. | **Article 46 (4) (5) of the Law on Public Procurement**  Point C15 of the ESPD Part III | Entities incorporated in Lithuania are not required to submit documentary evidence. The ESPD provided is sufficient. |
|  | The tenderer has failed to perform a contract concluded in accordance with the Law on Public Procurement, the Law on Public Procurement in the Field of Defence and Security or the Law on Procurement by Contracting Entities in the Field of Water Management, Energy, Transport or Postal Services, or a concession contract, or if the tenderer has failed to perform the contract properly and this has constituted a material breach of contract as defined in Article 6.217 of the Civil Code (hereinafter referred to as "material breach of contract"), which has led to the termination of the contract within the last 3 years or to a court decision which has been delivered and has become final within the last 3 years and which upholds the claim of the contracting authority, the contracting entity or the granting authority for compensation for the losses suffered as a result of the tenderer’s performance of an essential term/ condition of the contract with serious or persistent deficiencies, or a decision of the contracting authority within the last 3 years has been made that the tenderer’s performance of an essential term/condition of the contract was seriously or persistently deficient, resulting in a contractual sanction.  On this basis, a tenderer shall also be excluded from the Procurement procedure where it has been established, in accordance with the legislation of other countries, within the last 3 years, that, in the performance of a previous contract, a previous contract with a contracting entity or a previous concession contract, it has fulfilled an essential requirement laid down in the contract with serious or persistent deficiencies, with the result that that previous contract was terminated earlier than the period of validity laid down in the contract, or where it has been subjected to an action for damages, or to any other similar sanction. | **Article 46 (4) (6) of the Law on Public Procurement**  Point C14 of the ESPD Part III | Entities incorporated in Lithuania are not required to submit documentary evidence. The ESPD provided is sufficient.  **Decisions to exclude a tenderer from the Procurement procedure on the grounds of exclusion referred to in this Point may consider information published in accordance with Article 91 of the Public Procurement Law:**  <https://vpt.lrv.lt/lt/nuorodos/kiti-duomenys/powerbi/nepatikimi-tiekejai-1/>  <https://vpt.lrv.lt/lt/pasalinimo-pagrindai-1/nepatikimu-koncesininku-sarasas-1/nepatikimu-koncesininku-sarasas/> |
|  | The tenderer has committed a serious professional misconduct which causes the Contracting Authority to question the integrity of the tenderer where it committed a breach of financial reporting and audit legislation and less than one year elapsed since the date of breach commitment. | **Article 46 (4) (7) (a) of the Law on Public Procurement**  Point C11 of the ESPD Part III | Entities incorporated in Lithuania are not required to submit documentary evidence. The ESPD provided is sufficient. Decisions to exclude a tenderer from the Procurement procedure on the grounds for exclusion referred to in this Point, inter alia, shall take account of the information published in the national database:  https://www.registrucentras.lt/jar/p/index.php  as well as the information contained in this information notice:  <https://vpt.lrv.lt/lt/naujienos-3/finansiniu-ataskaitu-nepateikimas-gali-tapti-kliutimi-dalyvauti-viesuosiuose-pirkimuose/>  [https://www.registrucentras.lt/p/1094](https://click.mlsend.com/link/c/YT0yNjQxNTQwNDg5MjIzODcwMDgwJmM9cjBlOSZlPTU2MTgmYj0xMzk5NDE5MDgzJmQ9ZjZwNXk1aQ==.765f3qCtXNenYevJcDe0y7FBCwmESX7mSRN6MDdgRjk) |
|  | The tenderer has committed a serious professional misconduct for which the Contracting Authority doubts the tenderer’s honesty where the tenderer does not comply with the minimum criteria for being a reliable taxable person laid down in Article 401 (1) of the Law on Tax Administration of the Republic of Lithuania. | **Article 46 (4) (7) (b) of the Law on Public Procurement**  Point C11 of the ESPD Part III | Entities incorporated in Lithuania are not required to submit documentary evidence. The ESPD provided is sufficient.  Decisions to exclude a tenderer from the Procurement procedure on the grounds for exclusion referred to in this Point inter alia shall take account of the information published in the national database: https://www.vmi.lt/evmi/mokesciu-moketoju-informacija |
|  | The tenderer has committed a serious professional misconduct which leads the Contracting Authority to doubt the tenderer’s integrity where the tenderer has committed a breach of the prohibition on the conclusion of prohibited agreements laid down by the Law on Competition of the Republic of Lithuania or by a similar act of another country, and where the breach has been committed within less than three years from the date of its commission. | **Article 46 (4) (7) (c) of the Law on Public Procurement**  Point C11 of the ESPD Part III | Entities incorporated in Lithuania are not required to submit documentary evidence. The ESPD provided is sufficient.  **Decisions to exclude a tenderer from the Procurement procedure on the grounds for exclusion referred to in this Point inter alia shall take account of the information published in the national database:**  <https://kt.gov.lt/lt/atviri-duomenys/diskvalifikavimas-is-viesuju-pirkimu> published information. |

1. *If the tenderer is unable to provide the specified documents proving that there are no grounds for exclusion provided for in Article 46 (1) and (3) and (6) (2) of the Law on Public Procurement of the Republic of Lithuania since such documents are not issued in a Member State or in the country concerned, or documents issued in that country do not cover all the matters referred to in Article 46 (1) and (3) and (6) (2), they may be replaced by:*

   *declaration on oath;*

   *an official declaration by the tenderer if the country does not use a declaration on oath. The official declaration must be attested by the competent legal or administrative authority of the Member State or tenderer’s country of origin, or the country where it is registered, by a notary or by a competent professional or trade organisation.* [↑](#footnote-ref-2)
2. *If the tenderer is unable to provide the specified documents proving that there are no grounds for exclusion provided for in Article 46 (1) and (3) and (6) (2) of the Law on Public Procurement of the Republic of Lithuania since such documents are not issued in a Member State or in the country concerned, or documents issued in that country do not cover all the matters referred to in Article 46 (1) and (3) and (6) (2), they may be replaced by:*

   *declaration on oath;*

   *an official declaration by the tenderer if the country does not use a declaration on oath. The official declaration must be attested by the competent legal or administrative authority of the Member State or tenderer’s country of origin, or the country where it is registered, by a notary or by a competent professional or trade organisation.* [↑](#footnote-ref-3)
3. *If the tenderer is unable to provide the specified documents proving that there are no grounds for exclusion provided for in Article 46 (1) and (3) and (6) (2) of the Law on Public Procurement of the Republic of Lithuania since such documents are not issued in a Member State or in the country concerned, or documents issued in that country do not cover all the matters referred to in Article 46 (1) and (3) and (6) (2), they may be replaced by:*

   *declaration on oath;*

   *an official declaration by the tenderer if the country does not use a declaration on oath. The official declaration must be attested by the competent legal or administrative authority of the Member State or tenderer’s country of origin, or the country where it is registered, by a notary or by a competent professional or trade organisation.* [↑](#footnote-ref-4)