Annex 3 to the Procurement Conditions, "Grounds for exclusion of suppliers"

1. Only the ESPD is submitted with the tender. The contracting authority does not require the tenderer to submit documents proving the absence of the grounds for exclusion specified in the table. These documents are requested only from the supplier who submitted the most economically advantageous tender before determining the winning tender. However, at any stage of the procurement procedure, the contracting authority may request candidates or participants to submit all or part of the documents proving that there are no grounds for their exclusion, if this is necessary to ensure the proper conduct of the procurement procedure.
2. The grounds for exclusion apply to the supplier (when a tender is submitted by a group of economic operators – to all members of that group) and to the economic operators on whose capacity the supplier relies.
3. The contracting authority shall exclude a supplier from the procurement procedure at any stage of the procurement procedure if it becomes apparent that, due to its actions or inaction prior to or during the procurement procedure, it meets at least one of the grounds for exclusion of suppliers set out in the procurement documents, except in the cases specified in Article 46(10) of the Law on PP (but taking into account the provisions of Article 46(11) and (12) of the Law on Public Procurement).
4. When deciding on the exclusion of a supplier from the procurement procedure on the grounds specified in Article 46(4) and (6) of the Law on PP, the contracting authority shall take into account whether, when assessing the reliability of the supplier, the exclusion of the supplier from the procurement procedure is proportionate to the conduct of the supplier under assessment. in the case of Article 46(4) clause 7 sub-clause c of the Law on PP, whether the application of this ground for exclusion of the supplier from the procurement procedure would significantly restrict competition. When deciding on the exclusion of a supplier from the procurement procedure on the grounds specified in Article 46(4) clause 4 and 6 of the Law on PP, the information published in accordance with Articles 52 and 91 of the Law on PP may be taken into account.
5. In particular, the contracting authority shall require the type of certificates and forms of documentary evidence for which information is available on the European Commission's information repository for documents “e-Certis”. The fourth column of the table lists the documents that must be submitted by suppliers registered in the Republic of Lithuania. The contracting authority checks the information on the documents to be submitted by foreign suppliers in “e-Certis” at <https://ec.europa.eu/tools/ecertis/>.
6. The contracting authority shall not require the supplier to submit documents confirming the absence of grounds for exclusion if it:
   1. has the opportunity to access these documents or information directly and free of charge by connecting to the national database in any Member State or by using the tools of the Central Public Procurement Information System;
   2. already has these documents from previous procurement procedures, provided that the information contained in these documents is still relevant (the document was issued no more than the number of days specified in the relevant row of the table below).

6.3. In simplified procurement procedures, when a supplier submits an ESPD, certificates confirming the absence of grounds for exclusion of the supplier specified in Article 46 of the Law on PP are not required. The contracting authority shall require suppliers to provide certificates confirming the absence of grounds for exclusion only if it has reasonable doubts about the reliability of those suppliers in simplified procurement procedures.

1. If the supplier is unable to provide the specified documents proving that there are no grounds for exclusion as provided for in Article 46(1) and (3) and Article 46(6) clause 2 of the Law on PP, because such documents are not issued in the Member State or country concerned, or because the documents issued in that country do not cover all the issues referred to in Article 46(1) and (3) and Article 46(6) clause 2, they may be replaced by:
   1. declaration of oath;

7.2. an official supplier's declaration, if sworn declarations are not used in the country. The official declaration must be certified by a competent legal or administrative authority, a notary public or a competent professional or trade organisation in the Member State or in the supplier's country of origin or in the country in which he is established.

|  |  |  |  |
| --- | --- | --- | --- |
| **No.** | **Grounds for excluding a Supplier** | **Article, part, clause of the Law on PP and part of the ESPD form to be completed** | **Documentation proving the absence of grounds for exclusion** |
| **Mandatory grounds for removal pursuant to the provisions of Article 46(1)-(4) of the Law on PP** | | | |
|  | The supplier or its responsible person, as specified in Article 46(2) clause 2 of the Law on PP, has been convicted of the following criminal offense:  1) participation in organization of or management of a criminal organization;  2) bribery, trading in influence;  3) swindling, embezzlement, misappropriation of property, false declaration concerning the activities of a legal person, use of a credit, loan or special purpose allowance for a purpose other than that for which it is intended, credit fraud, false declaration of income, profits or assets, failure to submit a declaration, statement, report or any other document, fraudulent accounting or malpractice, when the offences are aimed at affecting the financial interests of the European Union, as defined in Article 1 of the Convention on the protection of the European Communities’ financial interests;  4) criminal bankruptcy;  5) terrorism crimes and terrorist-related offences;  6) legalisation of criminally obtained assets;  7) human trafficking, buying or selling a child;  8) an offence committed by a supplier from another country, as defined in the laws of other countries implementing the European Union legislation listed in Article 57(1) of Directive 2014/24/EU.  The supplier or the person responsible for the supplier shall be deemed to have been convicted of an offence referred to above where:  1) the supplier, who is a natural person, has been the subject of a conviction by a court of law within the last 5 years and has an unspent or unspent criminal record;  Applicable only in the case of international procurement:  2) the manager, other member of the management or supervisory body, or other person(s) authorised to represent or control the supplier, which is a legal entity, other organisation or its **structural** unit to make decisions on its behalf, to conclude transactions, a person (persons) who has (have) the right to draw up and sign the supplier's financial accounting documents (in the case of simplified procurement – the manager of a supplier who is a legal entity, another organization or its structural unit, manager or person(s) authorised to draw up and sign the supplier's financial accounting documents) has been convicted by a final court judgement in the last 5 years and this person has an unexpired or unrevoked criminal record;  Applicable only in the case of simplified procurement: 2) the manager or person(s) authorized to prepare and sign the supplier's financial accounting documents, if the supplier is a legal entity, other organization, or its **structural** unit, has been convicted by a final court judgement in the last 5 years and this person has an unexpired or unrevoked criminal record;  3) a supplier that is a legal entity, other organisation or its **structural** unit, has been convicted in the last 5 years by a final court judgement or, in the case of Article 46(3) of the Law on PP, by a final administrative decision, if such a decision is taken in accordance with the requirements of the supplier's country's legislation. | **Article 46(1) of the Law on PP**  ESPD Part III, clauses A1-A6  ESPD Part III, clause D1 | Entities established in Lithuania are required to submit:   * an extract from the judgement, or * a certificate from the Information Technology and Communications Department 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 established outside Lithuania are required to submit:   * a document from the relevant foreign authority[[1]](#footnote-2).   The documents specified must be issued no earlier than 120 days prior to the date *on which the supplier is required to submit documents confirming the absence of grounds for exclusion at the request of the contracting authority.* ***Example:*** *If the contracting authority contacted the supplier on 10 October 2022 requesting supporting documents to be submitted by 14 October 2022, these documents must have been issued no earlier than 120 days prior to 14 October 2022.*  If the document was issued earlier, but has a validity period longer than the final date for the submission of documents proving the absence of grounds for exclusion in accordance with the ESPD, it shall be admissible for the period of its validity.  ***NOTE***  In a simplified open tender, it is not necessary to submit certificates confirming the absence of grounds for exclusion of the supplier specified in Article 46 of the Law on PP. Their contracting authority will only require this if it has reasonable doubts about the reliability of the supplier. |
|  | The supplier has not complied with the criminal penalty imposed on it – a ban on the legal entity participating in public procurement. | **Article 46(21) of the Law on PP**  ESPD Part III, clause D2 | No supporting documents are required from entities established in Lithuania. The ESPD is sufficient. |
|  | The supplier 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 in which the supplier is registered or the country in which the contracting authority is located, as defined in Article 46(2) clauses 1 and 3 of the Law on PP, or the contracting authority has other evidence of non-compliance with these obligations.  A supplier shall be deemed to have been convicted of the offence referred to above when, as a result of:  1) the supplier, who is a natural person, has been the subject of a conviction by a court of law within the last 5 years and has an unspent or unspent criminal record;  2) a supplier that is a legal entity, other organisation or its **structural** unit has been convicted by a final court judgment or, in the case of Article 46(3) of the Law on PP, a final administrative decision has been taken in the last 5 years, if such a decision is taken in accordance with the requirements of the supplier's country's legislation.  However, this does not apply if:  1) the supplier has an obligation to pay taxes, including social security contributions, and is therefore, deemed to have already fulfilled the obligations referred to in this part;  2) the amount of the arrears does not exceed €50 (fifty Euro);  3) the supplier has been informed of the exact amount of his/her indebtedness at a time when he/she has not been able, before the deadline for the submission of proposals, to pay the 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 Clause 1. The supplier shall not be excluded from the procurement procedure on this basis if, at the request of the contracting authority to submit relevant documents in accordance with Article 50(6) of the Law on PP, it proves that it is already considered to have fulfilled its obligations relating to the payment of taxes, including social security contributions. | **Article 46(3) of the Law on PP**  ESPD Part III, clauses B1 B2 | 1) With regard to the fulfilment of obligations related to the payment of taxes, the following is requested from entities established in Lithuania:   * an extract from the court decision (if any) or a document issued by the State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania, * 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 established outside Lithuania are required to submit:   * a document from the relevant foreign authority[[2]](#footnote-3).   The documents specified must be issued no earlier than 120 days prior to the date on which the supplier is required to submit documents confirming the absence of grounds for exclusion at the request of the contracting authority. ***Example:*** *If the contracting authority contacted the supplier on 10 October 2022 requesting supporting documents to be submitted by 14 October 2022, these documents must have been issued no earlier than 120 days prior to 14 October 2022.*  If the document was issued earlier, but has a validity period longer than the final date for the submission of documents proving the absence of grounds for exclusion in accordance with the ESPD, it shall be admissible for the period of its validity.  2) With regard to the fulfilment of obligations related to the payment of social security contributions, the following is requested from entities established in Lithuania:  2.1) If the supplier is a legal entity registered in the Republic of Lithuania, it is not required to provide any documents proving this requirement. The contracting authority independently verifies 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 - “Sodra”), the contracting authority will not be able to verify the gratuitously available data on the supplier (legal entity), it will be entitled to request the supplier (legal entity) to provide an extract from a court judgement, if any, or a document issued by “Sodra” in accordance with the procedure laid down by “Sodra”, confirming compliance with this requirement. The Supplier may also submit 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 maintained by the competent authorities.  2.2) If thesupplier is a natural person registered in the Republic of Lithuania, the supplier 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 established outside Lithuania are required to submit:   * a document from the relevant foreign authority[[3]](#footnote-4).   The documents specified must be issued no earlier than 120 days prior to the date on which the supplier is required to submit documents confirming the absence of grounds for exclusion at the request of the contracting authority. ***Example:*** *If the contracting authority contacted the supplier on 10 October 2022 requesting supporting documents to be submitted by 14 October 2022, these documents must have been issued no earlier than 120 days prior to 14 October 2022.*  If the document was issued earlier, but has a validity period longer than the final date for the submission of documents proving the absence of grounds for exclusion in accordance with the ESPD, it shall be admissible for the period of its validity.  ***NOTE***  In a simplified open tender, it is not necessary to submit certificates confirming the absence of grounds for exclusion of the supplier specified in Article 46 of the Law on PP. Their contracting authority will only require this if it has reasonable doubts about the reliability of the supplier. |
|  | The supplier has entered into agreements with other suppliers aimed at distorting competition in the procurement and the contracting authority has conclusive evidence of this.\* | **Article 46(4) clause 1 of the Law on PP**  ESPD Part III, clause C10 | No supporting documents are required from entities established in Lithuania. The ESPD is sufficient. |
|  | The Supplier has entered into a conflict of interest situation within the meaning of Article 21 of the Law on PP and the situation cannot be remedied.  The conflict of interest situation in question shall be deemed to be irremediable if the persons involved in the conflict of interest have influenced the decisions of the Public Procurement Commission or the contracting authority and a change of those decisions would be contrary to the provisions of the Law on PP. | **Article 46(4) clause 2 of the Law on PP**  ESPD Part III, clause C12 | No supporting documents are required from entities established in Lithuania. The ESPD is sufficient. |
|  | The supplier has infringed competition within the meaning of Article 27(3) and (4) of the Law on PP and the situation cannot be remedied. | **Article 46(4) clause 3 of the Law on Public Procurement**  ESPD Part III, clause C13 | No supporting documents are required from entities established in Lithuania. The ESPD is sufficient. |
|  | 1) has concealed information or has provided false information concerning compliance with the requirements laid down in Articles 46 and 47 of the Law on PP and the contracting authority can prove it by any lawful means, or the supplier is unable to provide the supporting documents required by Article 50 of the Law on PP due to the provision of false information;  On this basis, the supplier shall also be excluded from the procurement procedure if, during previous procedures carried out in accordance with the Law on PP, the Law on Public Procurement in the Field of Defense and Security, the Law on Procurement in the Field of Water Management, energy, transport or postal services, or the Concessions Law, or if the supplier was unable to provide supporting documents due to the false information provided, required under Article 50 of the Law on PP, as a result of which it was excluded from procurement or concession award procedures in the last year.  On this basis, the supplier shall also be excluded from a procurement procedure where, in accordance with the legislation of other countries, it has, in previous procedures, withheld information or supplied false information or, as a result of the supply of false information, has been unable to furnish the supporting documents, with the result that it has been excluded from the award of the contract or the award of the concession in the preceding year, or has been subject to any other similar penalties. | **Article 46(4) clause 4 of the Law on PP**  ESPD Part III, clause C15 | No supporting documents are required from entities established in Lithuania. The ESPD is sufficient.  **When deciding on the exclusion of a supplier from the procurement procedure on the grounds specified in this paragraph, the information published in accordance with Article 52 of the Law on PP may, inter alia, be taken into account:**  <https://vpt.lrv.lt/melaginga-informacija-pateikusiu-tiekeju-sarasas-3> |
|  | The supplier has taken unlawful steps during the procurement procedure with a view to influencing the contracting authority's decisions, to obtaining confidential information which would give it an unfair advantage in the procurement procedure, or to supplying misleading information likely to materially influence the contracting authority's decisions concerning the exclusion of suppliers, the evaluation of their qualifications, or the determination of the successful tenderer and which may be proved by the contracting authority by any lawful means.\* | **Article 46(4) clause 5 of the Law on PP**  ESPD Part III, clause C15 | No supporting documents are required from entities established in Lithuania. The ESPD is sufficient. |
|  | The supplier has failed to perform an agreement concluded in accordance with the Law on Public Procurement, the Law on Procurement by the entities, operating in the Field of Procurement, Waste Water Management, Energy, Transport or Postal Services, or a concession agreement, or has failed to perform the agreement properly, and that failure constituted a material breach of the agreement as defined in Article 6.217 of the Civil Code, which has led to the termination of the agreement within the last 3 years, or to a court judgement which has been delivered and has become final within the last 3 years, granting the contracting authority, contracting entity or awarding authority's claim for compensation for the loss suffered as a result, the supplier's performance of an essential term of the agreement with serious or persistent deficiencies, or a decision of the contracting authority within the last 3 years that the supplier's performance of an essential term of the agreement with serious or persistent deficiencies has been subject to a contractual sanction.  The supplier shall also be excluded from the procurement procedure on this basis where it has been established, in accordance with the legislation of other countries, within the preceding 3 years, that, in the performance of a previous procurement agreement, a previous agreement with a contracting entity, or a previous concession agreement, it has fulfilled an essential requirement laid down in the agreement with serious or persistent deficiencies, with the result that that previous contract was terminated earlier than the period of validity laid down in the agreement, or where it was the subject of an action for damages, or of any other similar sanction. | **Article 46(4) clause 6 of the Law on PP**  ESPD Part III, clause C14 | No supporting documents are required from entities established in Lithuania. The ESPD is sufficient.  **When deciding on the exclusion of a supplier from the procurement procedure on the grounds specified in this paragraph, the information published in accordance with Article 91 of the Law on PP may be taken into account:**  <https://vpt.lrv.lt/lt/pasalinimo-pagrindai-1/nepatikimi-tiekejai-1>  <https://vpt.lrv.lt/lt/pasalinimo-pagrindai-1/nepatikimu-koncesininku-sarasas-1/nepatikimu-koncesininku-sarasas> |
|  | The supplier has committed a serious professional misconduct, which causes the contracting authority to doubt the supplier's integrity, when the supplier has committed a violation of financial reporting and auditing legislation and less than one year has passed since the date of the violation. | **Article 46(4) clause 7 of the Law on PP**  ESPD Part III, clause C11 | No supporting documents are required from entities established in Lithuania. The ESPD is sufficient. When deciding on the exclusion of a supplier from the procurement procedure on the grounds specified in this point, consideration shall be given, inter alia, to the national database at: <https://www.registrucentras.lt/jar/p/index.php>  the information published in this information notice:  <https://vpt.lrv.lt/lt/naujienos/finansiniu-ataskaitu-nepateikimas-gali-tapti-kliutimi-dalyvauti-viesuosiuose-pirkimuose> |
|  | The supplier has committed a serious professional misconduct, which causes the contracting authority to doubt the supplier's integrity, when the supplier does not meet the minimum criteria for a reliable taxpayer set out in Article 401(1) of the Law on Tax Administration of the Republic of Lithuania. | **Article 46(4) clause 7, sub-clause b of the Law on PP**  ESPD Part III, clause C11 | No supporting documents are required from entities established in Lithuania. The ESPD is sufficient.  When deciding on the exclusion of a supplier from the procurement procedure on the grounds specified in this point, account shall be taken, inter alia, of the information available in the national database at <https://www.vmi.lt/evmi/mokesciu-moketoju-informacija>. |
|  | The supplier has committed a serious professional misconduct, which causes the contracting authority to doubt the supplier's integrity, when it has committed a violation of the prohibition to enter into prohibited agreements, as established in the Law on Competition of the Republic of Lithuania or a similar legal act of another state, and less than three years have passed since the date of the violation. | **Article 46(4) clause 7, sub-clause c of the Law on PP**  ESPD Part III, clause C11 | No supporting documents are required from entities established in Lithuania. The ESPD is sufficient.  **Decisions to exclude a supplier from the procurement procedure on the grounds of exclusion referred to in this clause shall take account, inter alia, of the address in the national database:**  <https://kt.gov.lt/lt/atviri-duomenys/diskvalifikavimas-is-viesuju-pirkimu>. |

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

   *declaration of oath;*

   *an official declaration by the supplier, if the country does not use a declaration of oath. The official declaration must be certified by a competent legal or administrative authority, a notary public or a competent professional or trade organisation in the Member State or in the supplier's country of origin or in the country in which he is established.* [↑](#footnote-ref-2)
2. *If the supplier is unable to provide the specified documents proving that there are no grounds for exclusion as provided for in Article 46(1) and (3) and Article 6(2) of the Law on PP of the Republic of Lithuania, because such documents are not issued in the Member State or the country concerned, or because the documents issued in that country do not cover all the issues referred to in Article 46(1) and (3) and Article 46(6) clause 2, they may be replaced by:*

   *declaration of oath;*

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

   *declaration of oath;*

   *an official declaration by the supplier, if the country does not use a declaration of oath. The official declaration must be certified by a competent legal or administrative authority, a notary public or a competent professional or trade organisation in the Member State or in the supplier's country of origin or in the country in which he is established.* [↑](#footnote-ref-4)