# Appendix B1: Grounds for Exclusion

**Grounds for mandatory exclusion**

As per PCR 2015, Tenderers can be excluded from the procurement process based on the following mandatory exclusion criteria. Please submit a statement detailing any incidences of the below and any self-cleansing that has occurred. If this section is not applicable, please state so in the document.

If in the last five years any member (Directors or partner or any other person who has powers of representation, decision or control) of the Tenderer or any of the Relevant Companies has been convicted of the following offences:

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| 1. conspiracy within the meaning of section 1 or 1A of the Criminal Law Act 1977 or article 9 or 9A of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 where that conspiracy relates to participation in a criminal organisation as defined in Article 2 of Council Framework Decision 2008/841/JHA on the fight against organised crime; |
| 1. corruption within the meaning of section 1(2) of the Public Bodies Corrupt Practices Act 1889 or section 1 of the Prevention of Corruption Act 1906; |
| 1. the common law offence of bribery; |
| 1. bribery within the meaning of sections 1, 2 or 6 of the Bribery Act 2010; or section 113 of the Representation of the People Act 1983; |
| 1. any of the following offences, where the offence relates to fraud affecting the European Communities’ financial interests as defined by Article 1 of the Convention on the protection of the financial interests of the European Communities: |
| (i) the offence of cheating the Revenue; |
| (ii) the offence of conspiracy to defraud; |
| (iii) fraud or theft within the meaning of the Theft Act 1968, the Theft Act (Northern Ireland) 1969, the Theft Act 1978 or the Theft (Northern Ireland) Order 1978; |
| (iv) fraudulent trading within the meaning of section 458 of the Companies Act 1985, article 451 of the Companies (Northern Ireland) Order 1986 or section 993 of the Companies Act 2006; |
| (v) fraudulent evasion within the meaning of section 170 of the Customs and Excise Management Act 1979 or section 72 of the Value Added Tax Act 1994; |
| (vi) an offence in connection with taxation in the European Union within the meaning of section 71 of the Criminal Justice Act 1993; |
| (vii) destroying, defacing or concealing of documents or procuring the execution of a valuable security within the meaning of section 20 of the Theft Act 1968 or section 19 of the Theft Act (Northern Ireland) 1969; |
| (viii) fraud within the meaning of section 2, 3 or 4 of the Fraud Act 2006; or |
| (ix) the possession of articles for use in frauds within the meaning of section 6 of the Fraud Act 2006, or the making, adapting, supplying or offering to supply articles for use in frauds within the meaning of section 7 of that Act; |
| 1. any offence listed— |
| (i) in section 41 of the Counter Terrorism Act 2008; or |
| (ii) in Schedule 2 to that Act where the court has determined that there is a terrorist connection; |
| 1. any offence under sections 44 to 46 of the Serious Crime Act 2007 which relates to an offence covered by subparagraph (f); |
| 1. money laundering within the meaning of sections 340(11) and 415 of the Proceeds of Crime Act 2002; |
| 1. an offence in connection with the proceeds of criminal conduct within the meaning of section 93A, 93B or 93C of the Criminal Justice Act 1988 or article 45, 46 or 47 of the Proceeds of Crime (Northern Ireland) Order 1996; |
| 1. an offence under section 4 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004; |
| 1. an offence under section 59A of the Sexual Offences Act 2003; |
| 1. an offence under section 71 of the Coroners and Justice Act 2009 |
| 1. an offence in connection with the proceeds of drug trafficking within the meaning of section 49, 50 or 51 of the Drug Trafficking Act 1994; or |
| 1. any other offence within the meaning of Article 57(1) of the Public Contracts Directive— |
| (i) as defined by the law of any jurisdiction outside England and Wales and Northern Ireland; or |
| (ii) created, after the day on which these Regulations were made, in the law of England and Wales or Northern Ireland. |

**Non-payment of taxes**

A Tenderer may be excluded from the procurement process if has it been established by a judicial or administrative decision having final and binding effect in accordance with the legal provisions of any part of the United Kingdom or the legal provisions of the country in which the Tenderer is established (if outside the UK), that your Tender is in breach of obligations related to the payment of tax or social security contributions.

Grounds for discretionary exclusion – Part 1

The Contracting Authority may exclude a Tenderer if any of the following situations set out in paragraphs (a) to (i) have applied or currently apply to the Tenderer or any Relevant Companies:

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| 1. has violated applicable obligations referred to in Regulation 56 (2) of the Public Contracts Regulations 2015 in the fields of environmental, social and labour law established by EU law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to the Public Contracts Directive as amended from time to time; | |
| 1. is bankrupt or is the subject of insolvency or winding-up proceedings, where your assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under the laws and regulations of any State; | |
| 1. is guilty of grave professional misconduct, which renders its integrity questionable; | |
| 1. has entered into agreements with other economic operators aimed at distorting competition; | |
| 1. has a conflict of interest within the meaning of Regulation 24 of the Public Contracts Regulations 2015 that cannot be effectively remedied by other, less intrusive, measures; | |
| 1. has a prior involvement in the preparation of the procurement procedure that has resulted in a distortion of competition, as referred to in the Regulation 41, that cannot be remedied by other, less intrusive, measures; | |
| 1. has shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity, or a prior concession contract, which led to early termination of that prior contract, damages or other comparable sanctions; | |
| 1. has—   (i) been guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the selection criteria; or  (ii) withheld such information or is not able to submit supporting documents required under regulation 59 of the Public Contracts Regulations 2015; or | |
|  | has undertaken to –  (aa) unduly influence the decision-making process of the Contracting Authority, or |
| (bb) obtain confidential information that may confer upon your organisation undue advantages in the procurement procedure; or |
| 1. has negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award. | |

Grounds for discretionary exclusion – Part 2

**NOT USED**

Conflicts of interest

In accordance with paragraph (e) above, the Contracting Authority may exclude the Tenderer if there is a conflict of interest which cannot be effectively remedied. The concept of a conflict of interest includes any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure.

Where there is any indication that a conflict of interest exists or may arise then it is the responsibility of the Tenderer to inform the Contracting Authority, detailing the conflict. Provided that it has been carried out in a transparent manner, routine pre-market engagement carried out by the Contracting Authority should not represent a conflict of interest for the Tenderer.

Taking Account of Tenderer’s Past Performance

In accordance with paragraph (g) above, the Contracting Authority may assess the past performance of a Tenderer (through a Certificate of Performance provided by a Customer or other means of evidence). The Contracting Authority may take into account any failure to discharge obligations under the previous principal relevant contracts of the Tenderer completing this ITT. The Contracting Authority may also assess whether specified minimum standards for reliability for such contracts are met.

In addition, the Contracting Authority may re-assess reliability based on past performance at key stages in the procurement process (i.e. tender evaluation, contract award stage, etc.). Suppliers may also be asked to update the evidence they provide in this section to reflect more recent performance on new or existing contracts (or to confirm that nothing has changed).

‘Self-cleaning’

Any Tenderer that answers ‘Yes’ to criteria set out above in relation to the grounds for mandatory and discretionary exclusion should provide sufficient evidence that provides a summary of the circumstances and any remedial action that has taken place subsequently and effectively “self-cleans” the situation referred to in that question. The Tenderer has to demonstrate it has taken such remedial action, to the satisfaction of the Contracting Authority in each case.

If such evidence is considered by the Contracting Authority (whose decision will be final) as sufficient, the Tenderer concerned shall be allowed to continue in the procurement process.

In order for the evidence referred to above to be sufficient, the Tenderer shall, as a minimum, prove that it has;

• paid or undertaken to pay compensation in respect of any damage caused by the criminal offence or misconduct;

• clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities; and

• taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offences or misconduct.

The measures taken by the Tenderer shall be evaluated taking into account the gravity and particular circumstances of the criminal offence or misconduct. Where the measures are considered by the Contracting Authority to be insufficient, the Tenderer shall be given a statement of the reasons for that decision.