

References and key personnel

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- How do you approach a bidder's reference if the key staff responsible for performing the contract have moved on?
- What is the relationship between key staff, contract performance and references?

- [references as to] timeliness of delivery of services, quality of services delivered, whether services delivered met the customer's requirement and specification, whether sub-contractors were managed well, and whether the customer needed to raise issues or complaints and how these were managed in the context of performing such previous contracts, would entail a certain degree of subjective appreciation and could therefore give rise to discriminatory treatment of tenderers.

Selection criteria – reg. 58



- (3) - Appropriate to ensure technical and professional ability
- (2) - Only (5) – (18)
- (16) - Sufficient level of experience demonstrated by suitable references
- (18) - Professional ability may be evaluated with regard to their skills, efficiency, experience and reliability (n/a supplies-only contracts)

- Contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner.
- *...the principle of proportionality requires that measures...do not exceed the limits of what is appropriate and necessary in order to attain the objectives pursued and that where there is a choice between several appropriate measures recourse must be had to the least onerous. - Case T - 211/02 Tideland Signal Ltd*

- ...equality of treatment means not only treating like cases alike but unlike cases differently – Public Interest Lawyers v Legal Services Commission [2010] EWHC 3277 (Admin)

It is possible that the provision of such an assessment could be influenced by elements which are not connected with the performance of a contractor as such...Moreover, it has to be observed that in a number of cases, contracting authorities do not provide qualitative references and limit themselves to the content of fact and therefore a condition in the tender, by which a non-qualitative certificate will receive a lower mark, causes unjustified differentiation among tenderers, putting at disadvantage those who are objectively not in a position to provide for such a qualitative certificate.

- References will be taken up, amongst other things to enable the authority to assess the EO's skills, efficiency, experience and reliability.
- An EO which, for good reasons, cannot provide references may submit [specified] equivalent evidence of past performance.
- If significant changes take place in the personnel delivering the service subsequent to the provision of references, the EO is to notify the authority and provide evidence as to the EO's skills, efficiency, experience and reliability.

Second question



- What is the relationship between key staff, contract performance and references?

- (3)(b) - **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; (NB r72(1)(a))
- (7)(b) - **Specifications** that allow the information provided by the tenderers to be **effectively verified** in order to assess how well the tenders meet the award criteria.
- (8) - In case of doubt, contracting authorities shall verify effectively the accuracy of the information and proof provided by the tenderers.

- Means of proof for selection criteria limited to reg. 60, 58(16), 62
- (9)(f) the educational and professional qualifications of the service provider or contractor or those of the undertaking's managerial staff, **provided that they are not to be evaluated as an award criterion;**
- *Cf* 67(3)(b) - Organisation, qualification and experience

It is possible that the provision of such an assessment could be influenced by elements which are not connected with the performance of a contractor as such. Secondly, this would also occur at the instance of the contracting authority which has asked to be provided with such a reference and would therefore then have to assess it. Moreover, it has to be observed that in a number of cases, contracting authorities do not provide qualitative references and limit themselves to the content of fact and therefore a condition in the tender, by which a non-qualitative certificate will receive a lower mark, causes unjustified differentiation among tenderers, putting at disadvantage those who are objectively not in a position to provide for such a qualitative certificate.

- Contracting authorities which make use of this possibility should ensure, by appropriate **contractual means**, that the staff assigned to contract performance **effectively fulfil the specified quality standards** and that such staff can only be replaced with the consent of the contracting authority which **verifies** that the replacement staff affords an **equivalent level of quality**.

(1)(a)...the modifications, irrespective of their monetary value, have been provided for in the initial procurement documents in clear, precise and unequivocal review clauses, which may include price revision clauses or options, provided that such clauses—

- (i) state the scope and nature of possible modifications or options as well as the conditions under which they may be used, and
- (ii) do not provide for modifications or options that would alter the overall nature of the contract or the framework agreement;

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