[Titel]

Form - Annex 7

Declaration of exclusion grounds and measures for self-cleaning and restoration of reliability

(proof to be provided by the candidate or each member of the supplier consortium as well as third parties upon whose eligibility the candidate or the supplier consortium relies)

*This English translation is for convenience of the bidder only and it is not provided to become part of any latter contract.*

**1. Declaration on grounds for exclusion**

Note from the Client: Economic operators interested in the contract must declare grounds for exclusion. The following rules on exclusion from procurement law must be observed:

- Section 123 GWB (cf. **Annex 1**)

- Section 124 GWB (cf. **Annex 2** )

I/we declare that

[ ]  none of the grounds for exclusion contained in the above provisions applies to me/us.

[ ]  the following grounds for exclusion contained in the above provisions applies to me/us:

The information provided here is complete; moreover the grounds for exclusion contained in the regulations named above do not apply to me/us.

**2. Declaration on grounds for exclusion and measures for self-cleaning and reliability restoration**

[ ]  I/we have taken measures for self-cleaning or the restoration of reliability in accordance with Section 11.5(d) of the Information Memorandum on the Selection of Eligible Bidders. We have provided further details in Annex No. B  .

**3. Declaration on self-cleaning measures in the event of failure to comply with the obligation to pay taxes, levies or social insurance contributions**

[ ]  I/we have taken self-cleaning measures in accordance with Section 11.5(e) of the Information Memorandum on the Selection of Eligible Bidders. We have provided further details in Annex No. B  .

     ,

(Name of signatory, company name)

|  |  |  |
| --- | --- | --- |
| Location:       | Date:       | Company stamp and signature\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**Annex 1**

**Section 123 GWB Compelling grounds for exclusion**

(1) Public clients shall exclude an enterprise from participation at any time during the tender procedure if they are aware that a person whose conduct is associated with the enterprise pursuant to paragraph 3 has been convicted by a court of law or a fine has been imposed on the enterprise by a court of law pursuant to Section 30 of the Administrative Offences Act for an offence committed under:

1. Section 129 of the Criminal Code (formation of criminal organisations), Section 129a of the Criminal Code (formation of terrorist organisations) or Section 129b of the Criminal Code (criminals and terrorist organisations abroad),

2. Section 89c of the Criminal Code (financing of terrorism) or because of participation in such an act or because of the provision or collection of financial means, knowing that all or part of such financial means are used or are to be used to commit an offence under Section 89a(2)(2) of the Criminal Code,

3. Section 261 of the Criminal Code (money laundering; concealment of unlawfully acquired assets),

4. Section 263 of the Criminal Code (fraud), insofar as the offence is directed against the budget of the European Union or against budgets administered by or on behalf of the European Union,

5. Section 264 of the Criminal Code (subsidy fraud), insofar as the offence is directed against the budget of the European Union or against budgets administered by or on behalf of the European Union,

6. Section 299 of the Criminal Code (bribery and corruption in commercial transactions),

7. Section 108e of the Criminal Code (bribery and corruption of elected officials),

8. Sections 333 and 334 of the Criminal Code (granting of advantages and bribery), in each case also in conjunction with Section 335a of the Criminal Code (foreign and international employees),

9. Section 2(2) of the Act to Combat International Bribery (Bribery of Foreign Members of Parliament in Connection with International Business Transactions) or

10. Sections 232, 232a paragraphs 1 to 5, Sections 232b to 233a of the Criminal Code (trafficking of human beings, forced prostitution, forced labour, exploitation of labour, exploitation by deprivation of liberty).

(2) A conviction or the imposition of a fine within the meaning of paragraph 1 shall be equivalent to a conviction or the imposition of a fine under the comparable provisions of other States.

(3) The conduct of a legally convicted person shall be associated with an enterprise if that person has acted as the person responsible for the management of the enterprise; this also includes the supervision of the management or the other exercise of control powers in a managerial position.

(4) Public clients shall exclude an undertaking from participation in a tender procedure at any stage of the procedure where

1. the enterprise has not fulfilled obligations relating to the payment of taxes, levies or social insurance contributions, as established by a final judicial or administrative decision, or

2. the contracting authorities can prove by any other appropriate means that an obligation referred to in point 1 has been breached.

The first sentence shall not apply where the enterprise has fulfilled its obligations by making the payment or by undertaking to pay taxes, duties and social insurance contributions, including interest, penalties and surcharges for late payment.

(5) The exclusion provided for in paragraph 1 may be waived where imperative reasons relating to the public interest so require. An exclusion pursuant to the first sentence of paragraph 4 may be waived if this is necessary for compelling reasons in the public interest or if an exclusion would obviously be disproportionate. Section 125 remains unaffected.

**Annex 2**

**Section 124 GWB Optional grounds for exclusion**

(1) Public clients may, taking into account the principle of proportionality, exclude an enterprise from participation in a tender procedure at any stage of the tender procedure where

1. the enterprise has demonstrably failed to comply with any applicable environmental, social or labour law obligations in the performance of public contracts,

2. the enterprise is insolvent, insolvency proceedings or similar proceedings have been instituted against the assets of the enterprise, the institution of such proceedings has been refused for lack of assets, the enterprise is in liquidation proceedings or has ceased its activities,

3. the undertaking has been found guilty of grave professional misconduct calling into question the integrity of the enterprise; Section 123(3) shall apply mutatis mutandis,

4. the public client has sufficient evidence that the enterprise has entered into agreements with other enterprises which have as their object or effect the prevention, restriction or distortion of competition,

5. there is a conflict of interest in the conduct of the tendering procedure which could affect the impartiality and independence of a person acting on behalf of the public client in the conduct of the tender procedure and which cannot be effectively remedied by other less restrictive measures,

6. distortion of competition results from the fact that the company was already involved in the preparation of the tender procedure and that this distortion of competition cannot be eliminated by other, less restrictive measures,

7. the entity has substantially or persistently failed to satisfy a material requirement in the performance of an earlier public contract or concession contract and this has resulted in premature termination, damages or a similar legal consequence,

8. the enterprise has committed serious misrepresentation or withheld information or is unable to provide the necessary evidence regarding grounds for exclusion or eligibility criteria, or

9. the enterprise

a) has attempted to influence the public client's decision-making in an inadmissible manner,

b) attempted to obtain confidential information which might give it undue advantage in the tender procedure, or

c) negligently or intentionally supplied misleading information which might significantly influence the public client's decision to award the contract, or attempted to supply such information.

(2) Section 21 of the Employee Secondment Act, Section 98c of the Residence Act, Section 19 of the Minimum Wage Act and Section 21 of the Act to Combat Undeclared Work shall remain unaffected.