Tax & Social Security Obligations

The Scottish Government treats tax and social security obligations seriously.

Organisations can exclude a bidder where they have established that the bidder has breached its tax or social security obligations. Organisations must determine on a case-by-case basis whether a particular piece of evidence (which falls short of a judicial or administrative decision) is sufficient to demonstrate “appropriate means”.

Examples of evidence which may demonstrate breaches in tax or social security obligations, on which organisations can seek clarification from bidders, could include:

Credit references	i.e. details of any outstanding tax debt
Company accounts	depending on the size of the tax debt the bidder may be obliged to include this in their accounts
OONC	an admission by a bidder to an Occasion of Non-Compliance (OONC) or
Avoidance scheme failure	an admission by a bidder of the failure of an avoidance scheme which they were involved in and was, or should have been, notified under Disclosure of Tax Avoidance Scheme (DOTAS)

Where a bidder admits to a breach of its tax or social security obligations, which did not involve a judicial or administrative decision, the organisation can request further details and any mitigating factors, from the bidder. This is to further understand the nature of the breach.

.This could include:

- a brief description of the OONC and which tax it applied to
- where the OONC relates to a DOTAS, the number of the relevant scheme
- the date of the original breach
- corrective action taken by the bidder to date
- planned corrective action to be taken
- changes in personnel or ownership since OONC; and
- changes in financial, accounting, audit or management procedures

Self-Cleansing – Tax and Social Security Contributions

Where the bidder can provide evidence that it has fulfilled its obligations by paying the amount due, it must not be excluded from the procurement exercise on this basis alone. This also applies where it has entered into a binding agreement with the intention of paying taxes or social security contributions, including any interest due. Evidence of this could include:

- a receipt or confirmation of payment requested from the relevant tax authority or
- a written copy of the agreement to pay obligations.

Additionally, where excluding a bidder would be disproportionate, you may decide not to exclude them.

For example this could be because a minor amount of tax or social security contributions are owed, or a bidder has not had a sufficient time to pay the amount owed.

You must take a balanced view when deciding not to exclude on this basis. This could include considering the bidder’s overall tax and social security obligations and the overall risk to contract delivery.

For example there may be instances where an apparent "minor amount" may significantly affect the liquidity of the bidder and its ability to perform the contract, or where sufficient time did exist for the outstanding amounts to be paid.