

Procurement Bill [HL]

AMENDMENTS TO BE MOVED ON REPORT

[Supplementary to the Marshalled List]

Amendment
No.

Schedule 7

LORD HENDY

91A★ Page 106, line 41, at end insert –

“Labour law infringements

15A (1) Subject to paragraph (2), a discretionary exclusion ground applies to a supplier if a contracting authority determines that a supplier, within the three years leading to the date of tender –

- (a) has been found by an employment tribunal or court to have significantly breached the rights of an employee or worker engaged or formerly engaged by it,
- (b) has admitted that it significantly breached the rights of an employee or worker engaged or formerly engaged by it, or
- (c) has made a payment to an employee or worker engaged or formerly engaged by it in respect of a significant breach by it of the employee or worker’s rights,

and the contracting authority may treat the supplier as an excluded supplier in relation to the award of the public contract.

- (2) Where a contracting authority determines that a supplier fulfils one or more of sub-paragraphs (1)(a), (b) or (c), the contracting authority must determine that the supplier is not an excluded supplier in relation to the award of the public contract if the contracting authority is satisfied that the supplier has provided convincing evidence to the effect that measures taken by the supplier are sufficient to demonstrate that it is in the public interest and in the interest of the contracting authority that the supplier should not be excluded from the procurement procedure.
- (3) The evidence referred to in sub-paragraph (2) must include proof that the supplier has –
 - (a) paid or undertaken to pay without delay compensation in respect of any damage caused by the breach of rights,

Schedule 7 - continued

- (b) clarified the facts and circumstances in a comprehensive manner by actively and without delay collaborating with any relevant employment tribunal or court process and the parties thereto, and
 - (c) taken concrete technical, organisational and personnel measures appropriate to prevent further breaches of rights of a similar kind.
- (4) Any such measures taken by the supplier must be evaluated taking into account the gravity and particular circumstances of the breach or breaches of rights.
- (5) Where the contracting authority considers such measures to be insufficient, the contracting authority must give the supplier a statement of the reasons for that decision.
- (6) “Rights” in paragraphs (1) to (4) means any entitlement or benefit of an employee or worker engaged or formerly engaged by the supplier or of a trade union of which he or she is a member deriving from common law (including contract and tort) or statute, or protected by the international obligations of the United Kingdom referred to in Article 399 of the Trade and Cooperation Agreement (within the meaning of section 37 of the European Union (Future Relationship) Act 2020).”

Member’s explanatory statement

This amendment is intended to give contracting authorities the discretion to exclude suppliers who have significantly breached the rights of staff in the last three years unless they have “self-cleansed”.

Clause 107

LORD HENDY

- 162A★** Page 70, line 12, after “considerations)” insert –
- “(a) in subsection (5), omit paragraphs (a) and (b), and
 - (b) ”

Member’s explanatory statement

The purpose of this amendment is to remove the prohibition on taking into account the terms and conditions of the staff or the legal status of sub-contractors’ staff.

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25 November 2022
